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Paper for the House Committee meeting on 7 November 2014

Report of the Subcommittee to Prepare for the Operation of the Select Committee on the Petition Presented at the Council Meeting of 25 June 2014

Purpose

This paper reports on the deliberations of the Subcommittee to Prepare for the Operation of the Select Committee on the Petition Presented at the Council Meeting of 25 June 2014 ("the Subcommittee").

Background

2. At the Council meeting of 25 June 2014, Hon WU Chi-wai and Hon Charles Peter MOK presented a petition in connection with the delay in the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (**Appendix I**). The request of Hon Charles MOK for the petition to be referred to a select committee was supported by 21 Members who rose in their places. The petition has thus been referred to a select committee under Rule 20(6) of the Rules of Procedure ("the Select Committee").

3. At the House Committee meeting on 4 July 2014, Members agreed to appoint a subcommittee to undertake preparatory work for the operation of the Select Committee, including drawing up recommendations on the terms of reference ("TOR") to reflect the substance of the petition, the membership size and the nomination procedure in respect of the Select Committee.

The Subcommittee

4. The Subcommittee comprises 13 members, with Hon Martin LIAO Cheung-kong elected as Chairman and Hon Tony TSE Wai-chuen as Deputy Chairman. The membership list of the Subcommittee is in **Appendix II**.

Deliberations and recommendations of the Subcommittee

5. The Subcommittee held two meetings on 11 July 2014 and 21 October 2014 and its major deliberations and recommendations are set out in paragraphs 6 to 14 below.

Terms of reference and name of the Select Committee

6. In considering the draft TOR for the Select Committee, the Subcommittee notes that the Select Committee to Inquire into Matters Relating to Mr Timothy TONG's Duty Visits, Entertainment, and Bestowing and Receipt of Gifts during his Tenure as Commissioner of the Independent Commission Against Corruption ("the Select Committee on Timothy TONG") is the first select committee formed pursuant to the referral by the Council of the petition presented to it under Rule 20(6) of the Rules of Procedure ("ROP"). The scope of its work is defined by the substance of the petition.

7. The Subcommittee has considered the proper approach to consider the matters set out in the petition referred to the Select Committee by the Council at its meeting of 25 June 2014. Members note that should the Subcommittee recommend to the Select Committee that the latter should follow the approach of the Select Committee on Timothy TONG, it could put forward that as a recommendation, and propose the draft TOR for adoption. However, should the Subcommittee consider as an alternative approach that there are other steps that the Select Committee should take for the purpose of considering the petition, it would be a matter for the Subcommittee to recommend accordingly. What these steps might be is subject to the requirement that they are properly considered as follow up actions in relation to the matters set out in the petition in response to the request made by the petitioners.

8. Members finally agree that the Subcommittee should recommend to the Select Committee that the latter should follow the approach of the Select Committee on Timothy TONG. To this end, the Select Committee has considered the following draft TOR drawn up by the Secretariat:

"The terms of reference of the Select Committee, which reflect the substance of the petition jointly presented by Hon WU Chi-wai and Hon Charles Peter MOK at the Council meeting of 25 June 2014 and referred to the Select Committee under Rule 20(6) of the Rules of Procedure, are as follows -

To inquire into the background of and reasons for the delay of the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("the project delay"), as announced by the Government and MTR Corporation Limited ("the Corporation") on 15 April 2014, and related issues, including the performance and accountability of the Government and the Corporation relating to the project delay and whether they have deliberately covered up the project delay; and to make recommendations on how the Government can enhance the supervision of the construction of new railway projects and strengthen the governance of the Corporation in delivering railway projects in the future."

During deliberation, members generally agree that the TOR of the Select Committee should only cover the matters set out in the petition. Members also agree that since the Select Committee is mainly concerned with finding out whether or not the matters set out in the petition can be supported by facts, it would be appropriate to adopt expressions that carry a neutral connotation for the TOR whose wording should be as concise as possible. Some members consider it necessary to remove the reference to the date of 15 April 2014 because the date concerned will restrict the scope of investigation, while other members consider it necessary to keep the date. Some members wish to mention the month of April 2014 instead in the TOR so as to focus the examination on the delay as announced during the entire month. At the end of the deliberation, members agree to mention the month, April 2014 instead of the date, 15 April 2014 in the TOR. Furthermore, members agree to add the word "一事" to the TOR after "工程延誤" and before "(「該工程延誤」)" for the Chinese version so that further announcements made by the Government and the Corporation in April can be examined by the Select Committee, but to exclude any other further delays that may take place afterwards. Whereas for the English version of the TOR, the Subcommittee agrees by way of circulation on 24 October 2014, to add the words "the incident of" after "the background of and reasons for" and before "the delay of the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link".

9. A member also proposes to refine the TOR to include the examination of the cost overrun due to the implementation of the railway project in question under the concession approach whereby the Corporation was tasked to undertake the implementation of the project to ensure the proper use of public funds. However, most members consider that this aspect will be adequately covered if the phrase "and on related issues" is appended at the end of the last sentence "how the Government can enhance the supervision of the construction of new railway projects and strengthen

the governance of the Corporation in delivering railway projects".

10. After discussion, the Subcommittee agrees to recommend the following TOR for the Select Committee –

"The terms of reference of the Select Committee, which reflect the substance of the petition jointly presented by Hon WU Chi-wai and Hon Charles Peter MOK at the Council meeting of 25 June 2014 and referred to the Select Committee under Rule 20(6) of the Rules of Procedure, are as follows -

To inquire into the background of and reasons for the incident of the delay of the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("the project delay"), as announced by the Government and MTR Corporation Limited ("the Corporation") in April 2014, and related issues, including the performance and accountability of the Government and the Corporation relating to the project delay and whether they have deliberately covered up the project delay; and to make recommendations for the future on how the Government can enhance the supervision of the construction of new railway projects and strengthen the governance of the Corporation in delivering railway projects and on related issues."

11. The Subcommittee also agrees to recommend the following name for the Select Committee –

"Select Committee to Inquire into the Background of and Reasons for the Delay of the Construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link"

Membership size of the Select Committee and the procedure for nomination and election of Members for appointment to the Select Committee

12. In accordance with Rule 78(2) of ROP, the President shall decide the size of every select committee and shall appoint the chairman, deputy chairman and members thereof, taking into account the recommendations of the House Committee.

13. The Subcommittee proposes that the membership size of the Select Committee should be 13.

14. Having regard to the nomination procedure adopted by the Select Committee on Timothy TONG for nomination and election of Members for appointment to the Select Committee, the Subcommittee proposes that the following procedure be adopted for the nomination and election of Members for appointment to the Select Committee –

- (a) The nomination and election of Members for appointment to the Select Committee shall be conducted at a meeting of the House Committee, the date of which shall be appointed by the House Committee;
- (b) A valid nomination shall be made orally by a Member, seconded by at least one other Member who should not be the Member being nominated, and accepted by the Member being nominated. A Member who nominates a Member who is absent from the meeting when the nomination is made may only do so if the former states that the absent Member's acceptance of the nomination has been secured;
- (c) If the number of nominations exceeds that required for appointment, a poll shall be taken at the House Committee meeting at which the election is conducted. Members shall cast their votes by using the Electronic Voting System. A Member may vote for as many nominees as, but not more than, the number required for appointment. If a Member has voted for a number of nominees which exceeds the number required for appointment, all the votes which the Member has cast will not be counted. The nominees who get the highest numbers of votes will be declared elected;
- (d) In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes, a separate poll shall be taken in respect of that nominee and such other nominee(s) in accordance with the manner of election provided in paragraph 14(c) above;
- (e) If, after a separate poll is held, there is still a nominee who would have been elected but for there being one or more other nominees having been given the same number of votes, lots shall be drawn by the Chairman of the House Committee among such nominees to determine which of them will take up the remaining place/places;

- (f) After the nomination and election of Members to the Select Committee, the House Committee meeting should be suspended for 10 minutes to enable the nominated Members to elect the chairman and deputy chairman of the Select Committee from amongst themselves. The House Committee will then resume its meeting and be asked to endorse the results of election of the chairman and deputy chairman of the Select Committee; and
- (g) The election of the chairman and deputy chairman of the Select Committee will follow the procedure set out in **Appendix III** of this paper, which is modeled on the procedure for election of the chairman and deputy chairman of a committee given in Appendix IV of the House Rules.

Advice sought

15. The House Committee is invited to-

- (a) note the Subcommittee's recommendations on the TOR and name of the Select Committee as set out in paragraphs 10 and 11 above; and
- (b) endorse the Subcommittee's recommendations on the membership size of the Select Committee and the procedure for nomination and election of Members for appointment to the Select Committee as set out in paragraphs 13 and 14 above.

呈
香港特別行政區
立法會主席及全體議員

附錄I
Appendix I

(只備中文本)
(in Chinese only)

呈請書
(根據議事規則第 20 條提交)

今年四月，政府及香港鐵路有限公司(“港鐵公司”)宣佈廣深港高速鐵路(“高鐵”)香港段未能如期於 2015 年完成及通車。其後政府及港鐵公司披露的資料顯示，港鐵公司及政府早於去年已得悉高鐵香港段或未能如期完工，然而從未向公眾及立法會交代。資料亦顯示，政府有關部門對港鐵公司的監督及港鐵公司的內部管治及工程監督存有漏洞。由於當初政府向立法會申請撥款近 670 億元進行高鐵工程，故此立法會有必要跟進事件，追究相關政府官員及港鐵在高鐵香港段工程延誤一事中的責任，並保障公帑運用。

儘管政府已宣佈成立三人的獨立專家小組，而港鐵亦委任一個由獨立非執行董事組成的委員會，以檢討有關事件。然而，政府已表明獨立專家小組不會追究相關官員或港鐵責任。而港鐵基於本身利益，亦令公眾難以信任港鐵提交的報告能夠全面反映事件，從而無法讓公眾了解政府部門及港鐵公司在事件中應承擔的責任。

因此，我們懇請各位議員支持此呈請書，以確保公帑用得其所，讓公眾了解高鐵工程延誤上所出現的問題的原委及有關事宜，包括運輸及房屋局、路政署及其他政府部門在高鐵香港段工程延誤一事中有否妥善履行監督責任、有否蓄意隱瞞公眾或涉及其他瀆職行為，以及港鐵在高鐵工程延誤一事上的失責行為及責任，並根據調查的結果，就日後政府監管新鐵路項目的興建及如何加強對港鐵的管治及有關事宜作出建議。

呈請人：胡志偉 莫乃光 李卓人 何秀蘭 張國柱 張超雄 梁耀忠
葉建源 梁繼昌 梁家傑 湯家驊 毛孟靜 郭家麒 陳家洛
郭榮鏗 馮檢基 劉慧卿 何俊仁 涂謹申 單仲偕 黃碧雲
李國麟 范國威

2014 年 6 月 18 日

Appendix II

Subcommittee to Prepare for the Operation of the Select Committee on the Petition Presented at the Council Meeting of 25 June 2014

Membership list

Chairman	Hon Martin LIAO Cheung-kong, SBS, JP
Deputy Chairman	Hon Tony TSE Wai-chuen, BBS
Members	Hon LEE Cheuk-yan Hon CHAN Kam-lam, SBS, JP Hon Claudia MO Hon Michael TIEN Puk-sun, BBS, JP Hon Frankie YICK Chi-ming Hon WU Chi-wai, MH Hon Gary FAN Kwok-wai Hon Charles Peter MOK, JP Hon CHAN Han-pan, JP Hon TANG Ka-piu, JP Ir Dr Hon LO Wai-kwok, BBS, MH, JP
	(Total : 13 Members)
Clerk	Ms Sophie LAU
Legal Adviser	Miss Winnie LO

**Procedure for election of the chairman and
deputy chairman of the Select Committee**

Election of chairman

Presiding member

For the election of chairman of the Select Committee, the member present who has the highest precedence shall preside at the election. If he is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside.

2. For the election to fill a vacancy in the office of chairman during a term, the deputy chairman shall preside at the election. If the deputy chairman is absent or is being nominated for the office, the member present who has the highest precedence shall preside at the election. If he is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside.

Election procedure

3. At the start of the election, the presiding member shall call for nominations for the chairmanship. A valid nomination shall be made orally by a member, seconded by at least one other member who should not be the member being nominated, and accepted by the member being nominated. A member who nominates an absent member for the office is required to state that the absent member's acceptance of the nomination has been secured.

4. If the presiding member is being nominated for the office, he shall be replaced in accordance with paragraph 1 or 2 above, as appropriate, unless otherwise decided by the committee.

5. If there is only one nomination, the presiding member shall declare the nominee elected as chairman.

6. If there are two or more nominations, the presiding member shall announce a vote by secret ballot and shall order the clerk to distribute a ballot paper to each of the members present, including the presiding member. Each nominee shall be assigned a nominee number according to the order of their nominations made during the election.

7. A member present who wishes to vote shall mark on a ballot paper using a chop with a "✓" in the box opposite the nominee number of his choice, and place the ballot paper into the ballot box. Any ballot paper not marked, not properly marked or marked with a "✓" in the respective boxes opposite two or more nominee numbers shall be discarded.

8. After all the members present who wish to vote have done so, the clerk shall count the ballot papers in front of all the members present and report the result to the presiding member who shall check the result for confirmation.

9. The presiding member shall declare elected as chairman the nominee who receives the highest number of valid votes among all the nominees.

10. If two or more nominees receive the same highest number of valid votes, the presiding member shall announce that lots will be drawn by him to decide how he shall give the casting vote in respect of these nominees.

11. The presiding member shall then draw lots and give the casting vote to one of the nominees in accordance with the lot drawn, and shall forthwith declare that nominee elected as chairman.

Election of deputy chairman

Presiding member

12. The member to preside at the election of the deputy chairman of the committee is the chairman thereof. If the chairman is absent, the member present who has the highest precedence shall preside. If such a member is being nominated for the office, the member present who has the highest precedence among the members not nominated for the office shall preside.

Election procedure

13. The presiding member shall call for nominations for the deputy chairmanship. A valid nomination shall be made orally by a member, seconded by at least one other member who should not be the member being nominated, and accepted by the member being nominated. A member who nominates an absent member for the office is required to state that the absent member's acceptance of the nomination has been secured.

14. If there is only one nomination, the presiding member shall declare the nominee elected as deputy chairman.

15. If there are two or more nominations, the presiding member shall announce a vote by secret ballot and shall order the clerk to distribute a ballot paper to each of the members present, including the presiding member. Each nominee shall be assigned a nominee number according to the order of their nominations made during the election.

16. A member present who wishes to vote shall mark on a ballot paper using a chop with a "✓" in the box opposite the nominee number of his choice, and place the ballot paper into the ballot box. Any ballot paper not marked, not properly marked or marked with a "✓" in the respective boxes opposite two or more nominee numbers shall be discarded.

17. After all the members present who wish to vote have done so, the clerk shall count the ballot papers in front of all the members present and report the result to the presiding member who shall check the result for confirmation.

18. The presiding member shall declare elected as deputy chairman the nominee who receives the highest number of valid votes among all the nominees.

19. If two or more nominees receive the same highest number of valid votes, the presiding member shall announce that lots will be drawn by him to decide how he shall give the casting vote in respect of these nominees.

20. The presiding member shall then draw lots and give the casting vote to one of the nominees in accordance with the lot drawn, and shall forthwith declare that nominee elected as deputy chairman.