

**LEGISLATIVE COUNCIL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION**

**Report of the 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**

The minutes of evidence which comprise the verbatim transcripts, in their original language, of the public hearings are part of the Report and are made available on the Legislative Council website at www.legco.gov.hk only.

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Part I Establishment of the Select Committee and its Work

Chapter 1 Introduction

Background

1.1 The Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") is an express rail system with a total length of about 140 kilometres ("km") linking Hong Kong with Guangzhou via Futian and Longhua in Shenzhen and Humen in Dongguan. It will form part of the National High-speed Railway Network. The Hong Kong section ("HKS") of XRL project ("the Project") is a 26-km long underground railway system running from a new terminus in West Kowloon, going northbound passing through Tsim Sha Tsui, Yau Ma Tei, Mong Kok, Sham Shui Po, Kwai Chung, Tsuen Wan, Yuen Long to the boundary area south of Huanggang, where it will connect to the Mainland section of XRL.

1.2 In April 2008, the Chief Executive in Council decided that the Central Alignment Scheme¹ should be adopted for HKS of XRL; that the MTR Corporation Limited ("the Corporation") should proceed with the planning and design of HKS of XRL on the understanding that it would be invited to operate HKS of XRL under the concession approach; and that further negotiations should be carried out with the Corporation on the implementation of HKS of XRL. In July 2008, the Legislative Council ("LegCo" or "Council") Finance Committee ("FC") approved a funding of \$2.7826 billion for the design and site investigation of the Project. On 24 November 2008, the Government of the Hong Kong Special Administrative Region ("the Government") and the Corporation entered into the Entrustment Agreement for Design and Site Investigation in relation to the Express Rail Link ("EA1"). The Chief Executive in Council further decided in October 2009 that the Corporation should

¹ The Central Alignment Scheme was a shorter and more direct route without going through the existing Kam Sheung Road Station of the West Rail Line. See Annex A of the Government's paper on HKS of XRL (Legislative Council Brief) (File Ref.: THB(T)CR 1/16/581/99) for the meeting of the Subcommittee on Matters Relating to Railways on 2 May 2008.

proceed with the construction, testing and commissioning of HKS of XRL on the understanding that it would be invited to operate the railway system under the concession approach.

1.3 On 16 January 2010, FC approved the funding for the construction of the railway (\$55.0175 billion) and non-railway works (\$11.8 billion) of HKS of XRL, amounting to a total of \$66.8175 billion. Of this amount, a sum of \$65 billion was allocated by the Government to the Corporation to carry out the construction and commissioning of the Project. The remaining \$1.8175 billion was retained by the Government for project monitoring, Government facilities and other works associated with the Project that are not within the responsibility of the Corporation. On 26 January 2010, the Government and the Corporation entered into the Entrustment Agreement for Construction and Commissioning of the Express Rail Link ("EA2"). According to EA2, the Corporation should use its best endeavours to complete or procure the completion of the Entrustment Activities in accordance with the Entrustment Programme (subject to fair and reasonable adjustment under justifiable situations) and to minimize any delay or other effect which any modification might have on the Entrustment Programme. EA2 indicated that the Project should have completed testing and trial running, and be ready for operation, in August 2015.

1.4 Construction work of the Project commenced at the end of January 2010 with a target completion date set for 4 August 2015. On 15 April 2014, Professor Anthony CHEUNG Bing-leung, Secretary for Transport and Housing, informed the public that the Government had recently received verbal notification from the Corporation that the construction of HKS of XRL could not be completed by 2015.

1.5 Professor Anthony CHEUNG Bing-leung indicated in his statement² (**Appendix 1**) that *"... Late last year [i.e. 2013] on November 22, when the Government made its regular report on the express rail project to the railways subcommittee (Subcommittee on Matters Relating to Railways) of the LegCo (Legislative Council), based on the information supplied by the Corporation, we informed the LegCo that our objective remained to have the construction works completed in*

² Source: The Government's press release on "Transcript of remarks by Secretary for Transport and Housing" issued on 15 April 2014.

2015. Following which there will be a period of six to nine months for testing and trial runs. And after that, of course, the rail service will be commissioned. However, over the last weekend, I was informed by the Chairman and the Chief Executive Officer of the MTR Corporation that based on the latest assessment of the progress of the construction works, the project will be subject to some delay. And it will not be possible for the works to be completed in 2015. I have to say I was totally caught by surprise by such information, and obviously I felt very disappointed and deeply concerned about the delay."

1.6 Professor Anthony CHEUNG Bing-leung immediately requested the Corporation to submit a full assessment report, provide a full account and explain the situation to the public as soon as possible.

1.7 On the same day, i.e. 15 April 2014, the Corporation announced³ (**Appendix 2**) that the time of completion of the Project would be postponed to 2016 and HKS of XRL would be ready for operation in 2017. The reasons provided by the Corporation included a tunnel boring machine being severely damaged by floodwater, the extremely difficult ground conditions at the West Kowloon Terminus ("WKT") site and the complex geology at the cross-boundary section of the tunnels under the protected wetland areas.

1.8 The announcements referred to in paragraphs 1.5 and 1.7 above caused wide public concern. The Corporation set up an Independent Board Committee ("IBC") on 29 April 2014 to comprehensively review the managerial approach of the Project. The Government also formed an Independent Expert Panel ("IEP") on 16 May 2014 to review matters relating to the delay of the construction of HKS of XRL ("the project delay"). The membership and terms of reference of IBC and IEP are set out in **Appendix 3** for reference.

1.9 Meanwhile at the LegCo House Committee ("HC") meeting on 2 May 2014, some Members proposed to seek Council's authorization in the name of HC for the appointment of a select committee to inquire into the project delay and related matters; and that in performance of its duties the select committee be authorized to exercise powers under section 9(1)

³ Source: The MTR Corporation Limited's press release on "Revised Programme for Hong Kong Section of Express Rail Link Project" issued on 15 April 2014.

of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) of the Laws of Hong Kong. After discussion, HC did not endorse the proposal. On 9 May 2014, some Members requested HC to reopen discussion on similar proposals. After discussion, the request was not supported.

1.10 At the LegCo Subcommittee on Matters Relating to Railways ("Railways Subcommittee") meeting on 19 May 2014, Hon WU Chi-wai moved a motion to seek the support of Railways Subcommittee to appoint a select committee to inquire into the causes for the delay in the construction of HKS of XRL and that the select committee be authorized to exercise powers under section 9(1) of Cap. 382. Hon Gary FAN Kwok-wai also moved a motion that Railways Subcommittee should seek HC's support for appointing a select committee to inquire into the Corporation in respect of the delay in the construction of HKS of XRL and the select committee be authorized to exercise powers under section 9(1) of Cap. 382. Both motions were defeated.

1.11 At the Council meeting on 11 June 2014, Hon Gary FAN Kwok-wai moved a motion to appoint a select committee to inquire into whether the Corporation had covered up the progress and causes of delay in the construction of HKS of XRL, and whether there were problems with the Government and the Corporation in supervising and coordinating the construction of HKS of XRL; and that in the performance of its duties the select committee be authorized under section 9(2) of Cap. 382 to exercise the powers conferred by section 9(1). The motion was defeated.

Establishment of the Select Committee

1.12 At the Council meeting on 25 June 2014, Hon WU Chi-wai and Hon Charles Peter MOK jointly presented a petition in connection with the project delay (**Appendix 4**). The request of Hon Charles Peter MOK for the petition to be referred to a select committee was supported by 21 Members who rose in their places. The petition then stood referred to a select committee under Rule 20(6) of the Rules of Procedure ("RoP") of LegCo.

1.13 At the HC meeting on 4 July 2014, Members agreed to appoint a subcommittee to undertake preparatory works for the select committee to

be formed. The subcommittee submitted a report to HC on 7 November 2014. HC noted the subcommittee's recommendations on the terms of reference and the name of the select committee, and endorsed 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.

1.14 On 14 November 2014, HC recommended 13 Members for appointment to the 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 ("the Select Committee"). The 13 Members then held a closed meeting and elected amongst themselves Hon Martin LIAO Cheung-kong and Hon Tony TSE Wai-chuen respectively as Chairman and Deputy Chairman of the Select Committee. In accordance with Rule 78(2) of RoP, on 17 November 2014, the President of LegCo appointed the Chairman, Deputy Chairman and members of the Select Committee as recommended by HC. The Select Committee held its first meeting on 9 December 2014.

Part I Establishment of the Select Committee and its Work

Chapter 2 Matters relating to the Select Committee

Membership of the Select Committee

2.1 On the recommendation of HC, the President of LegCo appointed on 17 November 2014 the Chairman, Deputy Chairman and members of the Select Committee in accordance with Rule 78(2) of RoP of LegCo. The 13 members of the Select Committee are as follows:

Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Tony TSE Wai-chuen, BBS (Deputy Chairman)
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, JP
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, SBS, MH, JP

Terms of reference, areas of study and work plan of the Select Committee

2.2 The Select Committee confirmed its terms of reference and endorsed its areas of inquiry and work plan at its open meeting on 9 December 2014.

2.3 The terms of reference of the Select Committee are as follows:

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 on

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.

2.4 Based on its terms of reference, the Select Committee decided to inquire into the following major areas in respect of the project delay:

- I. Background of and reasons for the project delay, as announced by the Government and the Corporation in April 2014:
 - (a) scope and implementation schedule of the construction of the Project;
 - (b) implementation progress of the Project as announced in April 2014;
 - (c) reasons for the project delay;
 - (d) monitoring mechanism on the Project, in particular the roles of the Government, the Corporation and the monitoring and verification consultant ("M&V consultant") in the Project; and
 - (e) delay recovery measures ("DRMs") adopted by the Corporation to catch up with the implementation schedule.

- II. Performance and accountability of the Government and the Corporation relating to the project delay:
- (a) matters relating to the Entrustment Agreement between the Government and the Corporation;
 - (b) major details of the concession approach which was adopted for implementation of the Project, including the responsibilities and liabilities of the Government and the Corporation under the Entrustment Agreement;
 - (c) performance of the Government, the Corporation and the parties concerned, in respect of the supervision of the implementation of the Project; and the interaction of these parties; and
 - (d) accountability of the Government and the Corporation in respect of the project delay.
- III. Whether the Government and the Corporation have deliberately covered up the project delay:
- (a) communication/reporting mechanism within the Corporation with regard to the progress of the Project;
 - (b) communication/reporting mechanism between the Corporation and the Government in respect of the progress of the Project;
 - (c) communication/reporting mechanism between the Corporation and the Government in respect of the announcement of the project delay; and
 - (d) timeliness and comprehensiveness of the information provided by the Government and the Corporation to Railways Subcommittee under the Panel on Transport of LegCo on the project delay.

IV. Recommendations on how the Government can enhance the supervision of construction of new railway projects and strengthen the governance of the Corporation in delivering railway projects in future:

- (a) based on the findings of the areas of study set out in parts I to III above, to make recommendations on how the Government can enhance the supervision of construction of new railway projects;
- (b) based on the findings of the areas of study set out in parts I to III above, to make recommendations on how the Government can strengthen the governance of the Corporation in railway projects in future; and
- (c) recommendations on any related matters.

2.5 The Select Committee decided to conduct its inquiry in three stages which are set out below:

Stage I – Preparatory work

2.6 The main work at this stage was to draw up and determine the practice and procedure of the Select Committee; to work out and decide on the areas of study; to decide on the information to be obtained from the relevant parties and analyze the relevant information; to identify witnesses to be invited to give evidence; and to decide on the order of the witnesses and the major areas of evidence to be obtained.

Stage II – Obtaining and deliberation on evidence from witnesses

2.7 The main work at this stage was to obtain evidence from witnesses in respect of the areas of study and to consider the evidence obtained. The duration of this stage might vary depending on the areas being looked into, the number of witnesses and the complexity of the issues involved.

Stage III – Preparation, discussion and finalization of the report

2.8 The main work at this stage was to deliberate on the evidence obtained; to make findings and draw conclusions; to prepare for drafting the report; to draft the report; to seek comments from persons/organizations that might be affected by the comments in the draft report; and to finalize the report.

2.9 Due to the unavailability of some of the witnesses invited to attend hearings, the Select Committee could only commence its Stage II work in March 2015 and complete it at the end of December 2015. The Stage III work commenced in January 2016 and was completed in late June 2016.

Practice and procedure

2.10 The procedure of the Select Committee is regulated by RoP of LegCo and the relevant provisions of Cap. 382 insofar as they are applicable. The Select Committee endorsed its practice and procedure at an open meeting on 9 December 2014. The practice and procedure is modelled on the practice and procedure adopted by previous select committees, in particular, 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, because that select committee had also considered matters referred to it under Rule 20(6) of RoP and had not been authorized by Council to exercise the powers under section 9(1) of Cap. 382 in the conduct of its inquiry, as in the case of the Select Committee.

2.11 With reference to the practice and procedure of some of the previous select committees of Council, the Select Committee adopted the following principles in its own practice and procedure:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation might be affected by the proceedings of the Select Committee;

- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertainment of the facts relevant to and within the scope of its inquiry as set out in the Select Committee's terms of reference, and should not include consideration of legal liabilities of any parties or individuals;
- (d) the proceedings should be conducted in a proper, fair and efficient manner; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

A copy of the Practice and Procedure of the Select Committee is in **Appendix 5**.

The process in which the Select Committee obtained evidence

2.12 The Select Committee obtained evidence by way of written statements from relevant persons and organizations upon request and also verbal evidence from witnesses at open hearings. After the Select Committee agreed on the major areas of inquiry on 9 December 2014, a list of information to be obtained from relevant persons and organizations and a list of witnesses to be invited to attend open hearings were drawn up. The Select Committee was mindful of its scope of inquiry in that it was to look into the background of and reasons for the project delay up to April 2014, excluding any further delay that might have taken place after April 2014.

Meetings/hearings of the Select Committee

2.13 Rule 79(2) of RoP provides that meetings of the select committee shall be held in public unless the chairman otherwise orders in accordance with any decision of the select committee. The Select Committee decided that, as a general rule, testimony of witnesses should be received at open hearings. Exceptions might be made as decided by the Select Committee in light of circumstances on each occasion.

2.14 In line with the practice of previous select committees, the Select Committee decided that its internal deliberations should be held at closed meetings. The Select Committee agreed that members, including the Chairman and the Deputy Chairman, should not disclose any information relating to the internal deliberations or the documents considered at the closed meetings, and that the Chairman and the Deputy Chairman should be the only persons authorized to handle media enquiries concerning the work of the Select Committee.

2.15 The Select Committee held three meetings between 9 December 2014 and 26 February 2015 to carry out the preparatory work for the inquiry. The Select Committee had intended to start the Stage II work in late February 2015 and had originally invited Mr Peter LAU Ka-keung, Director of Highways, to attend the first open hearing scheduled for 26 February 2015. The Select Committee issued letters on 15 January and 23 January 2015 respectively to request Mr Peter LAU Ka-keung and the Highways Department ("HyD") to provide information by 10 February and 12 February 2015 respectively. However, their replies were only received by LegCo Secretariat in the late afternoon on Chinese New Year Eve, i.e. 18 February 2015. The date of the first hearing with Mr Peter LAU Ka-keung's attendance had been fixed on the basis that the Select Committee would receive the requested information from HyD well in advance of the open hearing scheduled for 26 February 2015, so as to allow reasonable time for proper consideration by members. In view of insufficient lead time for members to consider the information and prepare for the hearing, the first open hearing on 26 February 2015 had to be cancelled and re-scheduled to 24 March 2015 as a consequence.

2.16 This was followed by 11 open hearings between 24 March and 21 December 2015. The hearings lasted a total of about 33 hours. Before and after hearings, the Select Committee held internal meetings to consider the information received and discuss follow-up action. To discuss the evidence obtained and deliberate on the report and other matters relating to the inquiry, the Select Committee held another 15 meetings comprising a total of 39 hours.

Transparency of the inquiry

2.17 In order to enable members of the public to better follow the proceedings of the Select Committee, the written statements provided by the witnesses, once formally produced by the witnesses at the open

hearings, were uploaded onto LegCo's website for public inspection. In addition, copies of the opening remarks from witnesses, if any, were made available on request to members of the public and the media. Their attention was also drawn to the fact that the written statements or the opening remarks were made available to them for the purpose of assisting them in understanding the proceedings at the open hearings. They were reminded that the use of the contents of the written statements for other purposes was not protected under Cap. 382 and that they should obtain their own legal advice before doing so.

2.18 All the documents and/or information obtained by the Select Committee will be uploaded onto LegCo's website as appropriate after the publication of this report.

2.19 Record of the evidence, in the form of verbatim transcripts made from sound recordings of the proceedings at the open hearings where witnesses were examined, forms part of the Select Committee's report to the Council. In order that witnesses could have a fair and reasonable opportunity to consider whether their oral evidence was accurately transcribed, the Select Committee sent to all witnesses the draft verbatim transcript of their respective oral evidence so that they could have the opportunity to propose corrections, subject to their signing an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The Select Committee accepted corrections proposed so long as they did not materially alter the general sense of the evidence recorded. All 12 witnesses who attended the Select Committee's hearing were given the opportunity to have sight of their draft verbatim transcript and to propose corrections.

Reports of IBC and IEP on the Project

2.20 On 29 April 2014, the Corporation set up IBC, consisting of its own Independent Non-executive Directors, to comprehensively review the managerial approach of the Project. IBC released its first report⁴ on 16 July 2014 recommending enhancements to the Corporation's system

⁴ Link to the First Report by the Independent Board Committee on the Express Rail Link Project:
http://www.expressrailink.hk/pdf/en/report/20140716_xrl_report_eng.pdf

and processes ("the 1st IBC Report"). The second report⁵ ("the 2nd IBC Report") was released on 28 October 2014 which contains IBC's findings and conclusions, with the aid of its two independent experts, on the Corporation's project management as well as its recommendations for consideration by the Board of directors of the Corporation ("the Board").

2.21 On 16 May 2014, the Chief Executive appointed IEP to review the project management, monitoring mechanism and other matters relating to the project delay. According to the Government, IEP submitted its report to the Chief Executive on 15 December 2014 and the report⁶ was made available to the public on 30 January 2015 ("the IEP Report").

2.22 The Select Committee decided at its meeting on 24 March 2015 that members could quote from available material and findings in the abovementioned reports for the purpose of its investigation, such as for questioning the witnesses but that the Select Committee should form its own judgment based on available evidence and information.

Difficulties encountered by and limitations of the Select Committee

Obtaining information from the Government and the Corporation

2.23 At the beginning of the inquiry, the Select Committee wrote to Professor Anthony CHEUNG Bing-leung in December 2014 requesting him and the Transport and Housing Bureau ("THB") to provide information, including a list of officials involved in the Project and membership of Project Supervision Committee, for the purpose of commencing its work. Further, on 23 January 2015, the Select Committee wrote to Professor Anthony CHEUNG Bing-leung requesting him to provide a list of documents, such as the Entrustment Agreements signed between the Government and the Corporation, the major details of the concession approach and the reports submitted to THB by HyD and

⁵ Link to the Second Report by the Independent Board Committee on the Express Rail Link Project:

[http://www.expressrailink.hk/pdf/en/report/2nd%20Report_ENG\(Full\).pdf](http://www.expressrailink.hk/pdf/en/report/2nd%20Report_ENG(Full).pdf)

⁶ Link to the Report of HKS of XRL Independent Expert Panel:

<http://www.gov.hk/en/theme/iep-xrl/>

the Corporation in respect of the progress of the construction of HKS of XRL from January 2010 to April 2014.

2.24 Further, on 23 January 2015, the Select Committee wrote to HyD requesting a list of documents, including extracts of the contract, in particular the scope of service, signed between HyD and Jacobs China Limited ("Jacobs"), i.e. the M&V consultant which was engaged to advise HyD on the construction of HKS of XRL; all Progress Reports submitted by Jacobs to HyD from January 2010 to April 2014 in respect of the Project; the membership, terms of reference and minutes of and papers for the 44 meetings of Project Supervision Committee held from January 2010 to April 2014 and the membership, terms of reference, and minutes of and papers for all meetings of the Project Coordination Meeting from January 2010 to April 2014.

2.25 Similarly, in December 2014, the Select Committee wrote to the Corporation seeking information, including a list of the persons on the Board, a list of the persons on the Executive Committee ("ExCom") and a list of the persons on the Project Control Group of the Corporation to facilitate the work of the Select Committee.

2.26 On 23 January 2015, the Select Committee further wrote to the Corporation requesting all papers relating to the progress/delay of the Project presented to the Board during the period from January 2010 to April 2014; minutes of the workshop held on 17 April 2013 between the Corporation and the contractor of contract 810A to analyze the progress and the measures adopted to recover the project delay; minutes of the meeting held between the Corporation and the representatives of the Government on 21 November 2013 in respect of the project delay; recording or transcript of the telephone conversation between Mr Jay H WALDER, the former Chief Executive Officer ("CEO") of the Corporation, and Professor Anthony CHEUNG Bing-leung discussing the Project on 21 November 2013 and extracts of the work contracts, including those on the scope of work and the completion dates, signed between the Corporation and the main contractors in respect of WKT and various Approach Tunnels.

2.27 The Select Committee was only able to obtain some of the information it requested. Details are set out in the following paragraphs.

2.28 Professor Anthony CHEUNG Bing-leung replied on 6 January 2015 to the Select Committee and provided a list of the officials involved in the Project, an organization chart of the Railway Development Office ("RDO") of HyD, the membership of Project Supervision Committee and the name of the person in Jacobs responsible for the Project.

2.29 HyD replied to the Select Committee on 18 February 2015 (**Appendix 6**) and provided a copy of the scope of the service of Jacobs as defined in the Project Brief of the Consultancy Agreement in respect of the Project. The Select Committee, however, notes from the reply that HyD was only prepared to provide the Select Committee with redacted versions of the minutes of the 44 Project Supervision Committee meetings held from March 2010 to April 2014 and of the monthly Progress Report prepared by Jacobs from October 2010 to April 2014 on condition that such documents were to be provided in confidence for use by Select Committee members in closed hearings. The reason proffered was that the nature of the redacted documents was confidential and/or commercially sensitive. Subject to the Select Committee's prior agreement to such condition, HyD would provide the requested documents and information in redacted version to the Select Committee in batches.

2.30 On 18 February 2015, THB provided in its reply (**Appendix 7**) major details of the concession approach which was adopted for implementation of the Project. However, as for the Entrustment Agreements signed between the Government and the Corporation, THB stated that the Entrustment Agreements were confidential in nature and their contents involved commercially sensitive information, therefore, the two agreements had to be classified as confidential and could only be provided to the Select Committee in confidence for its use in closed hearings.

2.31 As regards the reports submitted to Secretary for Transport and Housing by HyD and by the Corporation regarding the progress of the Project from January 2010 to April 2014, THB replied that *"the Corporation is required to submit a monthly progress report setting out the latest progress and financial position of the project to the [Project Supervision Committee] (PSC reports). For the period from February 2010 to April 2014, there were 51 PSC reports submitted by the Corporation ... Due to the confidential and commercially sensitive nature of the PSC reports, we will provide the Select Committee with redacted*

versions of these documents (same as the copies placed in the Corporation's XRL Project Data Room) in confidence for use by the Select Committee members at closed hearings." Whereas for the report from Director of Highways to Secretary for Transport and Housing, the Select Committee notes from the letter that "Head of Department (HoD) meetings are held regularly for DHy to update STH on various major aspects of the work of the Highways Department (HyD), including the project progress of the XRL. While there are no formal notes of such HoD meetings, briefing notes are prepared by the HyD for discussion at the meetings. In view of the confidential nature of the HoD meetings, these briefing notes are normally for Government's internal reference only. To facilitate the work of the Select Committee, we are prepared to provide a set of key points of those parts of the briefing notes in relation to XRL in confidence for reference by the Select Committee members at closed hearings."

2.32 On 5 January 2015, the Corporation provided in reply a list of the Board members and members of ExCom (**Appendix 8**). As for the membership of Project Control Group, only the job titles of its members were given. In respect of the further requests made by the Select Committee on 23 January 2015, the Corporation replied on 5 February 2015 (**Appendix 9**) expressing their commitment to working with the Select Committee in a cooperative manner to enable the Select Committee to perform the functions for which it had been established. However, the Corporation stated in their letter that, in providing documentary information and witness evidence to the Select Committee, the Corporation was bound to take into account their contractual, legal and regulatory obligations, that since the Corporation anticipated that there might be information and documents requested by the Select Committee that were confidential or commercially sensitive, it might be necessary for the Corporation to request that such information and documents should not be disclosed to the public and should be kept under strict control in a designated location.

2.33 Further to their reply on 5 February 2015, the Corporation sent to the Select Committee another letter on 12 February 2015 (**Appendix 10**), responding to requests made by the Select Committee. In brief, the Corporation was still considering the request for documents relating to the progress/delay of the Project presented to the Board during the period from January 2010 to April 2014. The letter further stated that there were no formal minutes of the 17 April 2013 workshop held

between the Corporation and the contractor of contract 810A and no contemporaneous written record of the telephone conversation between Mr Jay H WALDER and Professor Anthony CHEUNG Bing-leung and the meeting held on 21 November 2013.

2.34 As for extracts of the work contracts, including those on the scope of works and the completion dates, signed between the Corporation and the main contractors in respect of WKT and various Approach Tunnels, the Corporation indicated in its reply of 12 February 2015 that such documents would be provided if the Select Committee agreed to keep them and their contents confidential by securing them in a designated location within LegCo Complex and not to be removed from that location, photocopied or disclosed to any third party. Further, the Corporation stated that the documents and their contents might only be used by the Select Committee in closed hearings.

2.35 Since it was not authorized by Council to exercise powers under section 9(1) of Cap. 382, the Select Committee had no power to compel any person to produce any paper, book, record or document. The Select Committee deliberated on 26 February 2015 and 19 January 2016 on the responses from the parties in connection with the request for information. The Select Committee considered it inappropriate to enter into agreement with any of the parties as a condition precedent for the provision of information and documents. Whilst the Select Committee would consider conducting its proceedings in closed meetings upon a proper request from the parties, it was not prepared to make such decision based on unilateral assertions of confidentiality or commercial sensitivity, without even sight of the information asserted to be confidential or commercially sensitive. The Select Committee further considered it undesirable for the Select Committee to conduct examination of facts with the Government and the Corporation behind closed doors, unless there were strong and compelling reasons to do so. The Select Committee considered the requests of the Government and of the Corporation for holding closed hearings inappropriate or, at least, premature. Such a practice would be against the principle of the Select Committee that there should be transparency in its proceedings as far as practicable. The objective of the Select Committee was not to disclose confidential or commercially sensitive information but to ascertain the factual basis for the reasons of delay. The Select Committee would request only the relevant information to facilitate its inquiry.

2.36 In this connection, the Select Committee wrote to THB, HyD and the Corporation on 3 March 2015 to express its view that the Select Committee considered it inappropriate to enter into agreement with THB/HyD/the Corporation as a condition precedent for the provision of information and documents requested and found the demand for closed hearings in their respective letters unacceptable.

2.37 Further, the Select Committee indicated in the letter that it appreciated the concern of THB/HyD on the issue of confidentiality and commercial sensitivity, that the Select Committee would therefore not release to the media and the public any document provided by THB/HyD or place such document on the website of LegCo before it came to a decision on confidentiality under the Practice and Procedure of the Select Committee, in particular paragraph 21, upon request made by them.

2.38 In response to the Select Committee's letter of 3 March 2015, THB replied on 17 March 2015 (**Appendix 11**) that *"In considering whether the requested information, which contains commercially sensitive/confidential information, is to be released to the Select Committee, it is incumbent upon the Government to strike a balance between facilitating the work of the Select Committee and protecting public interests, including preserving the Government's rights in any future claims. The Entrustment Agreements are privy to the two contracting parties, i.e. the Government and [the Corporation], and their contents involve sensitive commercial information ... Disclosing the Entrustment Agreements to the public, and/or the discussions of specific terms of which in public hearings of the Select Committee, may hinder the Government's effective management of the Entrustment Agreements which are ongoing contracts, prejudicing the Government's position in negotiating/settlement of present and/or future claims, and may hamper the Government's position in negotiating contracts of similar nature in future projects thus affecting the Government's competitive or financial position, hence ultimately harming the public interests ... We have consulted [the Corporation] which also concurs with our view that the Entrustment Agreements may only be provided to the Select Committee if the Select Committee agrees to keep them confidential for use at closed hearings."* Subsequently and in contrast to such position, Professor Anthony CHEUNG Bing-leung disclosed the two Entrustment Agreements on 4 January 2016 as mentioned in paragraph 2.43 below.

2.39 In response to the Select Committee's letter of 3 March 2015, the Corporation replied on 17 March 2015 that "*... given the commercially sensitive nature of the documents [i.e. relevant works contracts and supplemental agreements] requested, the public disclosure of which may prejudice the legitimate interest of both the Corporation and the Government in their dealings with third parties, the Corporation reiterates the need for an agreement to maintain confidentiality on the terms set out in the Corporation's letter of 12 February 2015 before the documents can be provided to the Select Committee.*"

2.40 The Select Committee wrote again to the Corporation on 24 April 2015 expressing its disappointment with the Corporation's response and pointing out the fact that the Select Committee was appointed by LegCo to conduct inquiry on a matter of public concern and it was therefore also in the public interest for the Select Committee to have the requested information/documents for the purposes of its inquiry and that without prior access to these information/documents to enable an informed decision, the Select Committee could not form a view on the confidentiality or otherwise of the requested documents or any part thereof. In the letter, the Select Committee reiterated its position in its letter of 3 March 2015 to the Corporation and asked the Corporation to reconsider the matter carefully, in particular, the request for all papers presented to the Board during the period from January 2010 to April 2014, which still remained under consideration by the Corporation according to its letter of 17 March 2015.

2.41 The Corporation replied on 8 May 2015 that it maintained its position that there must be an agreement to maintain confidentiality on the terms set out in its letter of 12 February 2015 before the documents could be provided to the Select Committee. It was also stressed that full copies of the requested work contracts had been placed in their Data Room and were available for viewing by any LegCo Member. Up to this day, the Corporation has not provided any papers presented to the Board relating to the progress/delay on the Project during the period from January 2010 to April 2014 as requested in the Select Committee's letter of 23 January 2015.

2.42 In view of the fact that the work of the Select Committee must be completed before the commencement of the period of prorogation of the Fifth Term of LegCo, the Select Committee decided on 26 February 2015 to commence its inquiry as soon as possible, based on available

information provided by the Government and the Corporation, information contained in the reports published by IBC and IEP, available information in the public domain and the testimony of the witnesses given at the open hearings of the Select Committee.

2.43 At the hearing held on 21 December 2015, Professor Anthony CHEUNG Bing-leung made a remark at the end of his opening speech that the Government would actively consider the requests made by members of the Select Committee in early 2015 for copies of EA1 and EA2. In the evening of 4 January 2016, THB sent to the Clerk to the Select Committee copies of EA1 and EA2. THB's cover letter to the Select Committee (**Appendix 12**) stated that in view of the fact that the Government and the Corporation had disclosed a substantial portion of the material content of the Entrustment Agreements when announcing to the public the revised construction cost and the work progress of HKS of XRL on 30 November 2015, after careful consideration and consultation with the Corporation, they decided to provide copies of the two Entrustment Agreements to the Select Committee for reference.

2.44 At the open hearing on 21 December 2015, Professor Anthony CHEUNG Bing-leung informed the Select Committee that the then CEO of the Corporation wrote to him in July 2012 stating that the Corporation maintained their target date in 2015 to complete all works to enable the successful opening of HKS of XRL as planned. Professor Anthony CHEUNG Bing-leung was then requested to provide a copy of the aforementioned letter to the Select Committee. On 15 January 2016, Professor Anthony CHEUNG Bing-leung responded that the letter was for the internal reference of the Government only, and that to facilitate the work of the Select Committee, the Government was prepared to provide a redacted version of the letter in confidence for use by the Select committee members in closed hearings. On 19 January 2016, the Select Committee, after discussion, decided to write to Professor Anthony CHEUNG Bing-leung again, indicating that in order to address his concerns on the issue of confidentiality, the Select Committee would not release to the media and the public the requested information or place such document on the website of LegCo before it came to a decision on its confidentiality under paragraph 21 of the Practice and Procedure of the Select Committee. On 3 February 2016, the Select Committee was given a copy of a redacted version of the letter on a confidential basis.

Response to invitation to attend before the Select Committee at a hearing

2.45 Having considered the information provided by the Government and the Corporation on persons involved in the Project, the Select Committee decided to invite the following persons to attend the Select Committee at open hearings to give evidence regarding the reasons for the project delay and to assist the Select Committee with its inquiry:

From the Government

- (a) Mr Peter LAU Ka-keung
Director of Highways
- (b) Mr WAI Chi-sing
Former Director of Highways
- (c) Mr Henry CHAN Chi-yan
Principal Government Engineer/Railway Development
Highways Department
- (d) Mr TAM Hon-choi
Government Engineer/Railway Development 2
Highways Department
- (e) Mr Joseph LAI Yee-tak
Permanent Secretary for Transport and Housing (Transport)
- (f) Mr YAU Shing-mu
Under Secretary for Transport and Housing
- (g) Professor Anthony CHEUNG Bing-leung
Secretary for Transport and Housing
- (h) Ms Eva CHENG
Former Secretary for Transport and Housing

From the Corporation

- (i) Mr Lincoln LEONG Kwok-kuen
Acting Chief Executive Officer

- (j) Mr CHEW Tai-chong
Former Projects Director
- (k) Mr Jay H WALDER
Former Chief Executive Officer
- (l) Dr Raymond CH'IEN Kuo-fung
Non-executive Chairman of the Board

From M&V consultant

- (m) Mr Richard KO Kwai-nin
Project Director
Jacobs China Limited

2.46 The Select Committee decided to invite the above persons to attend hearings and give each of them a reasonable period of time to prepare and submit a written statement in advance. As already stated, since the Select Committee had not been authorized by the Council to exercise powers under section 9(1) of Cap. 382, the Select Committee could only invite a person to attend to give evidence but it had no power to order attendance.

2.47 Towards the end of December 2015, the Select Committee decided to invite the former Secretary for Transport and Housing, Ms Eva CHENG, to attend the Select Committee to give evidence on the project delay.

2.48 Eventually, all the seven Government officials named in paragraph 2.45 (a) to (g) accepted the invitation to attend before the Select Committee. While the invitations were verbally accepted in August 2015 by a representative of the Corporation on behalf of Mr Lincoln LEONG Kwok-kuen, who had become CEO of the Corporation in March 2015, and Dr Raymond CH'IEN Kuo-fung, the non-executive Chairman of the Board, the Select Committee was notified by the Corporation that Mr CHEW Tai-chong and Mr Jay H WALDER had either left or retired from the Corporation. In response to the Select Committee's invitation, Mr Jay H WALDER replied by e-mail that he had already provided full information to IBC. Mr CHEW Tai-chong also replied to the Select Committee via the Corporation that *"I have retired from MTR Corporation since October 2014. I do not possess any*

relevant documents, papers and records to support any investigation on XRL. Respectfully, it is not appropriate for me to return back and attend the Select Committee to talk about the past events. I have already spoken to the experts of the IBC and IEP investigation openly and frankly during the investigation. IEP and IBC reports provide a very clear account of the facts, the decision taken and judgement made by all concern. I really do not have anymore to add and do not wish to waste the valuable time of the Select Committee."

2.49 Having noted the above response, the Select Committee decided to invite Mr Simon TANG, General Manager–XRL, and Mr Mark LOMAS, Project Manager–Technical Support, and the then Project Manager–XRL Terminus (Controls) of the Corporation to give evidence at a hearing. The Select Committee decided to invite Mr Mark LOMAS because he had previously worked as Project Manager–XRL Terminus (Controls) and met the Railways Subcommittee members during a site visit on 28 April 2014 although he had been assigned to another position in the Corporation since mid-2015. To these invitations, the Corporation responded that Mr Simon TANG, who replaced Mr Antonio CHOI Fung-chung as the General Manager–XRL, had only second-hand information and that Dr Philco WONG Nai-keung, who replaced Mr CHEW Tai-chong as the Projects Director, was a more senior management officer who should be able to represent the project team. Both Dr Philco WONG Nai-keung and Mr Mark LOMAS attended a hearing of the Select Committee.

2.50 Dr Raymond CH'IEN Kuo-fung advised the Select Committee on 16 October 2015 that he would not be available on the proposed date of hearing on 16 November 2015 and would be out of town for a period of time (**Appendix 13**). Given his reply, the Select Committee wrote to Dr Raymond CH'IEN Kuo-fung on 26 October 2015 again inviting him to propose two alternative timeslots of three hours each from November 2015 to January 2016 to attend before the Select Committee. As the Select Committee had not received any response from Dr Raymond CH'IEN Kuo-fung, the Clerk to the Select Committee on 3 December 2015 contacted the Corporation. The Corporation informed the Clerk to the Select Committee that Dr Raymond CH'IEN Kuo-fung would not be able to attend any hearing between December 2015 and January 2016. In this connection, the Select Committee wrote to Dr Raymond CH'IEN Kuo-fung again on 9 December 2015 expressing its disappointment as well as inviting the Board to nominate one of their directors who was

familiar with the Project to attend a hearing on a date in January 2016 to be mutually agreed. It was also indicated in the letter that since the Select Committee would soon proceed to deliberate on the evidence, if the invitation was declined, the Select Committee would have to make findings in the absence of any testimony from a member of the Board. Ultimately, the Corporation replied on 21 December 2015 (**Appendix 14**) that no nomination of a director would be made to attend a hearing of the Select Committee. Ms Eva CHENG also declined the invitation, giving reasons similar to those given by Dr Raymond CH'EN Kuo-fung (**Appendix 15**).

2.51 As for Mr Richard KO Kwai-nin of Jacobs, HyD's M&V consultant, the Select Committee noted in mid-2015 that he had left his position as Project Director of Jacobs. Instead, Mr Anthony J W KING, the then Project Director, and Mr William NG Siu-kee, Project Manager, were invited to attend the hearing, which they did.

2.52 The Select Committee expresses its disappointment with Mr CHEW Tai-chong, Mr Jay H WALDER, Dr Raymond CH'EN Kuo-fung and Ms Eva CHENG for declining its invitation to attend to give evidence. The Select Committee also expresses disappointment with the Board of the Corporation for their failure in nominating one of its members to give evidence from the Board's perspective due to the unavailability of its Chairman to do the same. A list of the witnesses who attended the Select Committee to give evidence is in **Appendix 16**.

Presentation of the report

2.53 In order to ensure that the procedure was fair to the people whose interests or reputation might be affected by the proceedings, any party, person or organization who might be so affected in the report of the Select Committee was given an opportunity to comment on the relevant parts of the draft findings and observations in the report. The comments received have been carefully considered by the Select Committee before its report was finalized.

2.54 The report of the Select Committee consists of the main report, lists of the written evidence and the relevant documents, the minutes of proceedings, as well as the minutes of evidence in the form of verbatim transcripts in the original language used at the open hearings. The main

report comprises three parts. Part I (Chapters 1 and 2) is mainly an introduction to the background of the establishment of the Select Committee as well as matters relating to the work of the Select Committee. Part II (Chapters 3 to 6) gives an account of the relevant information and the evidence obtained by the Select Committee on matters relating to the background of and the reasons for the project delay, the performance and the accountability of the Government and the Corporation relating to the project delay, and the question of whether the Government and the Corporation have deliberately covered up the project delay at different stages of the implementation of the Project. Part III (Chapters 7 and 8) sets out the conclusions and the recommendations of the Select Committee on how the Government can enhance the supervision of construction of new railway projects and strengthen the governance of the Corporation in delivering railway projects in future.

2.55 For environmental protection purposes, the minutes of evidence in the form of verbatim transcripts are available on LegCo's website only. This report is also available on LegCo's website at www.legco.gov.hk.

Part II Findings

Chapter 3 Planning and Site Investigation Stage (May 2000 to January 2010)

3.1 In this Chapter, reference to "Planning and Site Investigation Stage" covers the preparatory works carried out by the Government and the Corporation in relation to the Project between May 2000 and January 2010 prior to the commencement of the construction of HKS of XRL. The Chapter highlights the background information of the Project and the Project framework, the concession approach adopted by the Government in delivering the Project, the Entrustment Agreements signed between the Government and the Corporation, the monitoring mechanism of the Project, and the site investigation work carried out at this stage. It also presents the observations of the Select Committee based on the evidence obtained from the witnesses and the documents available to it.

Key dates for the "Planning and Site Investigation Stage"

Date	Events
May 2000	HKS of XRL (formerly Regional Express Line ("REL")) was first recommended for implementation under the Railway Development Strategy 2000.
October 2007	The Chief Executive announced in his Policy Address the proposed HKS of XRL as one of ten major infrastructure projects.
Early 2008	RDO of HyD commissioned a consultancy study to review institutional arrangements to ensure efficient implementation of the Project by the Corporation.

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| 8 July 2008 | FC approved the funding of \$2.7826 billion for the design and site investigation of the Project. |
| July 2008 | RDO of HyD set up a dedicated team for the Project. |
| 24 November 2008 | The Government entered into EA1 with the Corporation for the design and site investigation of the Project. |
| 16 January 2010 | FC approved the funding of \$66.8175 billion for the Project, of which \$55.0175 billion was for the railway works and \$11.8 billion was for the non-railway works. |
| 26 January 2010 | The Government and the Corporation entered into EA2 for the construction, testing and commissioning of HKS of XRL with a target completion date scheduled for 4 August 2015. |

Background information on HKS of XRL

3.2 In the Railway Development Strategy 2000 promulgated in May 2000, REL was one of the railway projects recommended for implementation. Following some development, REL became the HKS of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("ERL") jointly pursued by the Mainland and Hong Kong. In mid-2007, the Kowloon-Canton Railway Corporation ("KCRC") submitted to the Government a project proposal on HKS of ERL on the basis of the Dedicated Corridor Option⁷.

3.3 Following the merger between KCRC and the Corporation on 2 December 2007 ("the Merger"), the Corporation took over the planning of HKS of ERL. Since then, the acronym for the Project was changed from "ERL" to "XRL" to avoid duplication with the use of the acronym "ERL" for the existing East Rail Line after the Merger.

⁷ Building a dedicated rail track running from the West Kowloon Terminus to the boundary.

3.4 HKS of XRL was one of the ten major infrastructure projects announced in the 2007 Policy Address. On 22 April 2008, the Executive Council ("ExCo") decided that the Corporation would be asked to proceed with the further planning and design of HKS of XRL. According to the LegCo Brief⁸ submitted by the Government to LegCo on the same day, the earliest completion date of HKS of XRL was 2014/2015.

3.5 FC approved on 8 July 2008 a sum of \$2,782.6 million in money-of-the-day ("MOD") prices for the design and site investigation of HKS of XRL which was entrusted to the Corporation for implementation under an Entrustment Agreement (EA1).

3.6 Following the Chief Executive in Council's decision on 20 October 2009 that the Corporation should be asked to proceed with the construction, testing and commissioning of HKS of XRL under the concession approach, FC approved on 16 January 2010 the funding for the railway works (\$55.0175 billion MOD) and the non-railway works (\$11.8 billion MOD) of HKS of XRL, amounting to a total of \$66.8175 billion MOD. As indicated in the funding paper⁹ submitted to FC, the work on HKS of XRL was expected to be completed in 2015.

3.7 On 26 January 2010, the Government and the Corporation entered into the Entrustment Agreement for the construction, testing and commissioning of HKS of XRL, i.e. EA2. Mr WAI Chi-sing, former Director of Highways, informed the Select Committee that the estimated handover date to the Government for the Project, as submitted by the Corporation in the final draft version of EA2, was set at 30 June 2015. As there was a six-week delay in obtaining FC's approval on the funding application of the Project, the estimated handover date of the Project was subsequently changed to 4 August 2015 when EA2 was entered into.

3.8 The Select Committee notes that HKS of XRL is a very large and complex project. It is the world's first all-underground high-speed railway project.¹⁰ When completed, HKS of XRL will connect with the

⁸ Legislative Council Brief, File Ref.: THB(T)CR 1/16/581/99.

⁹ Paper submitted by the Government to the Finance Committee of the Legislative Council, PWSC(2009-10)68.

¹⁰ Report of HKS of XRL Independent Expert Panel, paragraph 2.6.

Mainland's National High-speed Railway Network, enabling passengers to travel between Hong Kong and Mainland cities at a speed of up to 200 km/hour.¹¹

3.9 The Select Committee also notes that HKS of XRL will include a terminus situated in West Kowloon to enable passengers to arrive in and depart from the heart of the city.¹² According to Mr Lincoln LEONG Kwok-kuen, CEO of the Corporation, the excavation work at WKT is one of the largest and deepest excavations ever done in Hong Kong. The work at WKT involves building a four-storey underground structure with the lowest level located some 30 metres below ground. The 11-hectare WKT site area is approximately the size of 15 football fields. The main public area of the terminus incorporates a large atrium with a steel-framed station entrance building. The total construction floor area of the station, all of which underground, is around 380 000 m² – almost two thirds of the floor area of Terminal 1 at the Hong Kong International Airport. The trains will run in parallel tunnels, which will extend underground all the way to Shenzhen, a distance of some 26 km.

The Project framework

Concession approach first adopted

3.10 The Select Committee notes that before the Merger in December 2007, all railway projects had been financed under the ownership approach. Under this approach, the two railway corporations were responsible for the funding, design, construction, operation and maintenance of the railway, and ultimately owned the railway. Since the two railway corporations operated on commercial principles, they would not take up financially non-viable railway projects unless adequate financial support was provided by the Government. The form of funding support for each railway project was considered by the Government on a case-by-case basis. Under the ownership approach, the Government did not bear the risks associated with the construction and the operation of the railway.¹³

¹¹ Report of HKS of XRL Independent Expert Panel, paragraph 1.1.

¹² Report of HKS of XRL Independent Expert Panel, paragraph 2.6.

¹³ Legislative Council Brief, File Ref.: THB(T)CR 1/16/581/99, paragraph 13.

3.11 Upon the implementation of the Merger, the Corporation was granted a service concession by KCRC to operate KCRC's existing and new railway lines under construction. The Corporation was and is responsible for the operation, maintenance and improvement of KCRC's railway systems, including the replacement of the concession assets, during the concession period. It was agreed in the context of the Merger that, for new railway projects which were not natural extensions of the existing network of the Corporation, the Government had the discretion to decide whether to adopt the ownership approach or the concession approach.

3.12 HKS of XRL is the first railway project implemented by the Government under the concession approach. Under the concession approach, the Government funds the construction of the railway and its ancillary infrastructure, bears the construction risk and shares the operation risk of the Project¹⁴, and ultimately owns the railway. Under EA2, the Corporation is entrusted with the design, construction, and testing and commissioning of HKS of XRL. According to the letter dated 18 February 2015 from THB to the Clerk to the Select Committee (**Appendix 7**), upon completion of the railway, the Corporation would be granted a service concession for the operation and the Government would receive service concession payment accordingly.

3.13 The Select Committee notes that in considering whether the ownership or concession approach should be adopted for HKS of XRL in 2008, the Government had in mind the following considerations and finally decided to adopt the concession approach for HKS of XRL:

- (a) XRL was a major cross-boundary infrastructure. HKS of XRL would be connected to the Mainland section which would form part of the national railway network owned by the Mainland authorities. Ownership of HKS of XRL by the Government would facilitate coordination and resolution of interface issues between the Hong Kong and Mainland sections, during both construction and operation.

¹⁴ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1749/07-08(01), paragraph 6.

- (b) The financial viability of the Project was subject to a host of factors, including, for example, fare level, fare adjustment mechanism and revenue-sharing mechanism which would need to be discussed with the company running the Mainland section, and the availability of train paths and cross boundary facilities arrangement, which would need to be further negotiated between the Government and the Mainland authorities. In light of these uncertainties, a conservative approach had been adopted in assessing the financial viability of the Project, thus arriving at a substantial funding gap.
- (c) Under the concession approach, the Government could capture the upside of the performance of HKS of XRL under a revenue-sharing mechanism and could get back a fully operational XRL system at the end or upon a termination of the service concession. The Government would also be in a better position to liaise with the Mainland authorities over issues such as allocation of train paths and co-location of boundary control facilities to enhance the long-term profitability of the Project; hence the concession approach would in the long run make more sense for the Government.

Entrustment Agreements between the Government and the Corporation

3.14 The Select Committee notes that in early 2008, HyD commissioned a consultancy study to review the institutional arrangements to ensure efficient implementation of the Project by the Corporation. The Lloyd's Register Rail (Asia) Limited ("Lloyd's") was engaged to carry out the study. One of the key areas investigated by Lloyd's was the project management procedures which should be adopted to deliver the Project if the Project was entrusted to the Corporation by the Government under the concession approach. Lloyd's considered that the Corporation's processes were known to be robust and in line with industry best practices, and the processes were regularly reviewed and audited by external bodies and had been proven and refined through the delivery of many high quality railway projects in Hong Kong and abroad. Lloyd's also identified that, in general, there were many similarities between the processes adopted by the Corporation and the Government.

Introducing the "check the checker" system

3.15 Lloyd's recommended that the Corporation's current project management procedures should be adopted for the delivery of the Project, but that there should be Government participation in key control processes, and that the Government should be able to conduct monitoring and verification ("M&V") of the Corporation's performance in accordance with the agreements between them. This M&V role was described as "check the checker". It entailed a risk-based sampling approach to verify delivery of the requirements of the Project scope and authorized expenditure. Lloyd's also advised that the Government's resources should be utilized effectively to avoid repetition and micro management of the Project. Lloyd's recommendations were adopted by the Government and formed largely the basis of the Entrustment Agreements for the design and site investigation as well as the construction of HKS of XRL. In November 2008, the Government and the Corporation entered into EA1. In January 2010, the Government and the Corporation entered into EA2.

3.16 As mentioned in paragraph 2.43 of Chapter 2, the Select Committee was given copies of EA1 and EA2 on 4 January 2016¹⁵. The Select Committee notes that under EA2, the Corporation should use its best endeavours to complete, or procure the completion of, the Entrustment Activities (subject to specified exceptions) in accordance with the Entrustment Programme; and to minimize any delay or other effect which any modification may have on the Entrustment Programme¹⁶. In this connection, the Corporation should act in accordance with its management systems and procedures. Moreover, the Government should be entitled to appoint a consultant to help monitor and verify the Corporation's compliance with its obligations under EA2.¹⁷ At any time

¹⁵ Softcopy of EA1 and EA2 can be accessed at the following link:
http://www.legco.gov.hk/yr14-15/english/sc/sc_gshkerl/report/sc_gshkerl-ea1-ea2.pdf

¹⁶ Clause 16.4 of EA2. EA2 defines the term "Entrustment Activities" to mean all activities as detailed in Appendix B to EA2 which are related to specified works and activities. EA2 also defines the term "Entrustment Programme" to mean the programme for the execution of the Entrustment Activities as set out in Appendix C to EA2, as such programme may be adjusted in accordance with the provisions of Clause 8.2 of EA.

¹⁷ Clause 17.10 of EA2.

when the Corporation was in material or persistent breach (or the Government, acting reasonably, suspected that the Corporation was in material or persistent breach) of any of the Corporation's material obligations under EA2, the Government should be entitled to verify the Corporation's compliance with its obligations under EA2.¹⁸

3.17 In the event of any error or omission by the Corporation which constitutes a breach of EA2 by the Corporation as a result of which a re-execution of the Entrustment Activities is necessitated, the Corporation should, if required by the Government, at its own cost re-execute (or procure the re-execution of) such Entrustment Activities to the reasonable satisfaction of the Government.¹⁹

3.18 According to the Government, should there be a delay and to the extent that the delay in question was not covered by any modification or adjustment to the Entrustment Programme, it might amount to a breach of the Corporation's obligations under EA2 and the Government might have a claim against the Corporation for such a breach.

3.19 In addition, the Corporation warranted to the Government on a number of matters, including that the Entrustment Activities relating to the provision of project management services should be carried out with the skill and care reasonably expected of a professional and competent project manager whose role included coordination, administration, management and supervision of design and construction work. Should the delay in question involve a breach by the Corporation of any of its warranties, the Government might have a claim against the Corporation for breach of warranty.²⁰

Monitoring mechanism of the Project, including the roles of HyD and THB of the Government, the Corporation and M&V consultant

Roles of respective parties

3.20 Under the concession approach, the design and construction of the Project is entrusted to the Corporation. In gist, HKS of XRL is a public

¹⁸ Clause 17.11 of EA2.

¹⁹ Clause 5.3 of EA2.

²⁰ Clauses 5.1(A) and 5.2 of EA2.

work project and, according to HyD, the Corporation can be regarded as the Government's agent and project manager for the delivery of the Project. Some of the Corporation's responsibilities under EA2 are listed in paragraphs 3.16 to 3.19 above.

3.21 The Select Committee notes that under the Public Finance Ordinance (Cap. 2), the Controlling Officer for HKS of XRL is Director of Highways who is responsible and accountable for all expenditure for HKS of XRL. The key role of HyD in the implementation of HKS of XRL is to oversee the overall implementation of HKS of XRL and the prudent use of public funds allocated for the Project; to monitor and verify, with the support of an external consultant, that the Corporation properly fulfilled its obligations in accordance with the Entrustment Agreements; and to facilitate the implementation of HKS of XRL by liaising and coordinating with the Corporation and other departments concerned in resolving interface issues and seeking necessary approvals associated with the implementation, commission and operation of HKS of XRL.

3.22 According to Professor Anthony CHEUNG Bing-leung, THB is responsible for formulating transport policies and keeping general oversight on implementation of policies. Generally speaking, once an infrastructure project within its portfolio such as the Project has commenced, THB's main focus is to monitor the implementation progress and, where necessary, helps resolve at policy level issues which may affect the delivery of the project. Following established Government practices and division of responsibilities, implementation at the operational level is mainly the responsibility of the relevant departments. Since the commencement of the construction of HKS of XRL in January 2010, THB was carrying out its general oversight role in the implementation of the Project, including the overall programme and project cost. THB and HyD were also working jointly with the Mainland authorities on the development and cross-boundary matters of HKS of XRL.

Monitoring mechanism of the Project

3.23 In April 2010, the Government, vide LC Paper No. CB(1)1573/09-10(04), informed Railways Subcommittee of the Government's monitoring mechanism on the construction of HKS of XRL and its proposal of regular reporting to LegCo on the Project. As stated in the paper, Director of Highways, being the Controlling Officer for the

Project, would lead a Project Supervision Committee. Members of Project Supervision Committee included, among others, representatives of THB (normally a member of staff at Principal Assistant Secretary level) and the Corporation (including the Corporation's Projects Director). Project Supervision Committee would meet on a monthly basis to review progress and to monitor procurement activities, post-tender award cost control and resolution of contractual claims. Project Supervision Committee would also provide steer on matters that would affect the progress of HKS of XRL. The Corporation was required to submit progress reports setting out the latest progress and financial position of the Project. The Select Committee notes that, prior to mid-April 2014, Project Supervision Committee held a total of 44 meetings.

3.24 The Select Committee notes from the same Railways Subcommittee paper that to support and complement Project Supervision Committee's effort, HyD would insert check-points into the Corporation's work processes so that issues of potential concern could be flagged and properly resolved at an early stage. The flowchart on the Government's monitoring mechanism on the construction of the Project is in **Appendix 17**.

3.25 According to the statement from Mr Peter LAU Ka-keung, apart from Project Supervision Committee, an officer at Assistant Director level of HyD held monthly Project Coordination Meetings with the Corporation's General Managers and its Project Managers to monitor various activities for the delivery of the Project including, but not limited to, timely completion of land matters, resolution of third party requests, key issues on design, construction, environmental matters that might have potential impact on the progress and the programme of the Project as well as interface issues with other projects. From January 2010 to mid-April 2014, a total of 50 Project Coordination Meetings were held.

3.26 In addition, an officer, at Chief Engineer level, held monthly Contract Review Meetings with the site supervision staff of the Corporation for major civil and electrical & mechanical ("E&M") works. In case of delay encountered by the Corporation's contractors, the Corporation would report measures being considered to mitigate delay. Up to mid-April 2014, a total of 47 Contract Review Meetings were held. The membership and the terms of reference of Project Supervision Committee, Project Coordination Meeting and Contract Review Meeting appear in **Appendix 18**.

3.27 The Select Committee notes from Professor Anthony CHEUNG Bing-leung's statement that once an infrastructure project has commenced, THB's main focus is to monitor implementation progress and to leave implementation at operational level to the relevant departments. In the case of the Project, HyD assumed the M&V role in the design and construction of the Project. The M&V role was described as the "check the checker" role. HyD would use a risk-based sampling approach to verify the delivery of the requirements of the project scope and the authorized expenditure.

3.28 The Select Committee also notes that HyD had engaged an external consultant, Jacobs (the M&V consultant), to advise and assist in the M&V role. The M&V work of Jacobs focused on cost, programme, safety and quality of HKS of XRL.

3.29 The Select Committee has obtained a copy of the Project Brief of the Consultancy Agreement signed between the Government and Jacobs. The Select Committee notes that the main areas of the M&V work by Jacobs included the following:

- (a) attending the monthly Contract Review Meetings, carrying out regular site visits (joined by HyD staff) and conducting regular audits to verify whether the Corporation has fulfilled its obligations towards the Government under EA2 and implemented the entrusted works in accordance with its project management system for the delivery of HKS of XRL;
- (b) reporting to HyD through monthly reports on the progress of the various work contracts, their potential risks and concerns, as well as any progress delay, and commenting on the appropriateness of the proposed mitigation measures; and
- (c) reporting to HyD through monthly progress meetings discussing major areas of concern.

3.30 The Select Committee also notes that HyD had set up a dedicated division within RDO to oversee the implementation of HKS of XRL. This dedicated division comprised a total of 13 Civil Engineers including a Chief Engineer who was the division head, four Senior Engineers and

eight Engineers as at April 2014. In-house support on the advisory service on E&M works and building submissions were provided.

Communication/reporting mechanism between the Corporation and the Government in respect of the progress of the Project

3.31 The Select Committee observes that under the Entrustment Agreements, the Corporation was responsible for the overall management of the Project. In fulfilling its responsibility, the Corporation had to comply with its own management systems and procedures. The Corporation also had an obligation to provide information concerning any matter relating to HKS of XRL as requested by the Government.

3.32 As stated in paragraph 3.23, Director of Highways, being the Controlling Officer for HKS of XRL, led a high-level inter-departmental Project Supervision Committee. The Committee held monthly meetings with the Corporation and the related Government departments to review project progress, and to monitor procurement activities, post-tender award cost control and resolution of contractual claims. At the meetings, HyD also conveyed the comments from the M&V consultant to the Corporation on progress matters. When the Corporation reported programme delay and proposed mitigation measures, the Government, with the support of the M&V consultant, provided comments to the Corporation for follow-up.

3.33 The Corporation held internal monthly project report meetings among the General Managers, Project Managers and Construction Managers to monitor the progress of HKS of XRL. Representatives from HyD (officers at Senior Engineer level) attended such meetings. The Corporation was also required to submit relevant information to HyD. Upon request, the Corporation would arrange briefing for HyD and the M&V consultant, and/or the other Government departments on issues that might have bearing on the cost, quality or progress of the works.

3.34 The M&V consultant carried out technical audits on the master programme regularly in addition to the regular M&V works. Issues covered in the audits included adequacy of the work programmes, status of the master programme, measures to recover any accrued delay and their impact, etc.

3.35 As required by EA2, the Corporation submitted monthly progress reports to the Government, which provided information on the Project's financial situation and expenditure forecast, safety performance, status of contracts procurement, a summary of progress under individual contracts and any major issues, etc. The Corporation also reported to the Government the overall project progress in terms of percentage completion against the planned figure. Delays in individual contracts were also shown on the Entrustment Programme. In particular, the following regular reports and information were submitted to HyD which were provided to the M&V consultant, as appropriate:

- (a) Briefing and reports on the progress and areas of concern in individual contracts provided at the monthly Contract Review Meetings.
- (b) Briefing on progress and site problems in individual contracts provided at monthly site visits by the M&V consultant's and HyD's staff.
- (c) Monthly cost reports on actual/forecast expenditure, variations, claims and other cost changes with supporting justifications submitted to the Project Control Group meetings (please see **Appendix 19** for its membership and terms of reference).
- (d) Information on key project activities progress matters and interfacing related to coordination with other Government departments provided at the monthly Project Coordination Meetings.
- (e) Monthly Progress Reports and presentations on overall project progress and expenditures, progress of individual contracts, intended mitigation or DRMs, and issues of concern submitted to the monthly Project Supervision Committee meetings.

Observations

Site investigation issues

3.36 The Select Committee notes that unforeseen site conditions are said to be one of the major reasons for the project delay by HyD and the Corporation. The Select Committee has thus examined whether there were deficiencies in the execution of the site investigation for the Project, in particular, the site investigation carried out at the WKT site.

Background information on site investigation at WKT site

3.37 According to the 1st IBC Report²¹, the site investigation work at the WKT site was carried out in phases between 2008 and 2010. Before and after site possession, the Corporation obtained information from over 600 drill holes covering all areas of the work site, with the exception of the former Jordan Road area. The drill holes used in that process were spaced on average 14.4 metres apart. The Corporation indicated that this was in line with the relevant Government guidelines, and was also closer than the industry norm. However, due to the vertical formation of bedrock at this site, even with such closely spaced bore holes, it was possible to miss weak seams of rock and sub-surface boulders.

3.38 The Select Committee notes that at the location of the former City Golf Club, prior to the Corporation taking possession of the premises, the site investigation work had been carried out only at the pedestrian footpath and the car parking areas of the Club. It was only after re-possession of the Club site upon the expiry of an extended tenancy or licence that a full site investigation could be carried out covering the remaining areas of the Club.

3.39 In addition, due to the heavy daily volume of traffic using the eight-lane Jordan Road, road closure for site investigation had not been pursued in the early stages in order to avoid major traffic blockages. The ground conditions under Jordan Road were not adequately documented until the road was eventually re-directed after the construction had begun. Hence the ground conditions and the extensive

²¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.10 to 4.12.

utilities (and how closely laid and intertwined these utilities were) under Jordan Road could not be mapped out prior to the commencement of the construction.

3.40 Further, according to a paper submitted by the Corporation to Railways Subcommittee in May 2014²², up to 31 March 2014, while the southern part of the 810A work area (WKT) using the bottom-up method had been excavated down to B4 level, part of the northern area of the site using the top-down method still required the removal of approximately 78 000 cubic metres of fresh bedrock, out of 100 000 cubic metres of rock, to reach B4 level.

Site investigation prior to commencement of construction

3.41 The Select Committee is of the view that, at the time when FC approved funding for the construction of HKS of XRL and when EA2 was signed on 26 January 2010, the site investigation work had not yet been completed for the following reasons:

- (a) According to the statement of Dr Philco WONG Nai-keung, Projects Director of the Corporation, during the site investigation process, access was not available before site possession of certain areas such as Jordan Road, the public transport interchange between Austin Road and Kowloon stations and the central portion of the City Golf Club used as a golf driving range. In particular, before re-possession of the land at the City Golf Club, investigation at the site was only possible at the perimeters and the car parking areas of the Club.
- (b) Mr WAI Chi-sing informed the Select Committee at the open hearing on 2 June 2015 that the site investigation carried out in 2009 did not include the location of the former City Golf Club as the Government had acceded to the request of the operator to extend its operation until December 2009. A complete site investigation was only

²² Paper submitted by the MTR Corporation Limited to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1354/13-14(01), paragraph 29.

carried out in 2010 after re-possession of the land and the same was completed after June 2010.²³

- (c) As for Jordan Road, Mr Lincoln LEONG Kwok-kuen, CEO of the Corporation, stated in his statement that, due to the heavy daily volume of traffic using the eight-lane Jordan Road, road closure for the site investigation work was not possible. The ground conditions under Jordan Road could not be adequately documented until the road was moved from its original location after construction had started. It is for this reason that the ground conditions and the extensive utilities (and how closely laid and intertwined these utilities were) under Jordan Road could not be mapped out prior to the construction work commencing.
- (d) The Select Committee has asked THB whether the Corporation had made any request to the Government for a temporary closure of Jordan Road for the site investigation work before the commencement of the construction of WKT. THB replied on 18 February 2015 (**Appendix 7**) and stated that the construction of WKT at Jordan Road fell within contract 811B (West Kowloon Terminus Approach Tunnels (South)) which had commenced in August 2010. According to HyD's available records, before the commencement of the contract, there was one record of request made by the Corporation in March 2010 to carry out trial trench excavation for water-mains laying across Jordan Road

²³ Minutes of evidence of open hearing of the Select Committee, 2 June 2015, pages 25 to 27; and the Official Record of Proceedings of the Legislative Council, 11 June 2014, page 14827. At that Council meeting, the Secretary for Transport and Housing, Professor Anthony CHEUNG Bing-leung, pointed out that the Government noted that the geological memoir mentioned by Ms Claudia MO, which was conducted by the Kowloon-Canton Railway Corporation in 1997 at Austin Station of the West Rail, as well as the other geological memoirs completed on the relevant projects in the area of the West Kowloon Terminus Station North in the early period, had been included in the relevant contracts, i.e. the contractual documents of contract 810A on West Kowloon Terminus Station North, to serve as reference information for the contractors concerned.

outside the WKT boundary. This application was approved by HyD in March 2010.

The Select Committee considers that notwithstanding the need to carry out site investigation before work began in the Project, the Corporation did not conduct as soon as possible full site investigation at the City Golf Club, resulting in the time allowed for site investigation to be further compressed. This showed that the Corporation was lacking in alertness to the complex ground conditions in the area concerned.

Whether underground conditions were known before construction

3.42 The Select Committee considers that the higher-than-industry norm site investigation work should have minimized, albeit not eliminated, the possibility of unforeseen site conditions but this was not the case in reality. The Select Committee is dismayed by the fact that the enormous quantity of underground bedrock at WKT was not discovered at an earlier stage so that appropriate actions could be taken in time.²⁴

3.43 Notwithstanding the incomplete site investigation, Mr WAI Chi-sing informed the Select Committee that, prior to the commencement of the construction of HKS of XRL, both he and the Corporation had been aware of the underground conditions and the complex underground utilities at the WKT site when he was Director of Highways prior to June 2010. There was also no record showing that the Corporation had drawn to the attention of HyD or himself the magnitude of the difficulties in removing the bedrock at WKT before he left the office of Director of Highways in June 2010. As for the cost of removing the underground bedrock, Mr WAI Chi-sing advised that it had been included in the estimated cost of the Project. The work for removing the bedrock had also been included in the relevant tender documents.

3.44 Mr Peter LAU Ka-keung informed the Select Committee at the open hearing on 21 April 2015 that, according to the assessment of HyD, there was no substantial difference between the quantity of rock estimated

²⁴ Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 3.42. The proposal was defeated (please refer to paragraphs 6 and 7 of the Minutes of Proceedings of the meeting held on 7 June 2016 in this Report).

during the site investigation and at the current stage but time was required to excavate the volume of rock present.

3.45 The Select Committee notes from the statement of Mr Lincoln LEONG Kwok-kuen, CEO of the Corporation, that "*[a]s the project involves approximately 25 km of underground tunnels and an underground station as deep as 30 metres below surface level, ground conditions are a major determinant of project progress. Unfavourable ground conditions have been a significant cause of delay. These conditions include higher than anticipated rock head levels, weak seams, the presence of cobbles and boulders, high water inflows and the presence of underground steel obstructions. These conditions were often unanticipated despite extensive site investigation*". His view was echoed by Mr Henry CHAN Chi-yan, Principal Government Engineer/Railway Development of HyD, who explained to the Select Committee that even with site investigation, it was impossible to know every rock detail. Mr Henry CHAN Chi-yan said that, in large-scale projects, it was very difficult to provide an accurate estimate of underground conditions.

3.46 Mr Lincoln LEONG Kwok-kuen also informed the Select Committee at the open hearing on 15 July 2015 that extensive site investigation had indeed been carried out prior to the commencement of construction. However, even with closely-spaced bore holes used in the site investigation, it was still possible and likely that weak seams of rocks and subsurface boulders would be missed, and the actual ground conditions were worse than those originally envisaged during the site investigation.

3.47 The Select Committee is of the view that many construction projects have to deal with underground utilities and ground conditions and has enquired at a hearing why it was particularly difficult for the WKT site. In response, Mr Mark LOMAS, Project Manager-Technical Support of the Corporation, said that the WKT site was formed from a very complex series of reclamations over a number of years. It was almost 700 metres long from the start of the structure under 811B, north of Jordan Road, down to the south of Jordan Road and all the way down to the diaphragm wall near the Victoria Harbour. The complexity of the site posed different construction challenges. He said that, on a project of this scale and nature, these kinds of problems were inevitable and, whilst they were able to overcome many of these challenges through hard work,

unfortunately, they were unable to overcome all the challenges that occurred at WKT.

3.48 Dr Philco WONG Nai-keung, Projects Director of the Corporation, also informed the Select Committee in his statement that, although public utilities, such as power and lighting cables, were known to exist and were charted to an extent, the configuration, spread²⁵, alignment and slack²⁶ within the utilities and the locations of the utilities joints, as well as the interrelationship between the various services, could not be properly identified until possession of the site was taken for construction.

3.49 Mr WAI Chi-sing and Dr Philco WONG Nai-keung also explained to the Select Committee that site investigation could only provide underground information of particular bore holes. In many cases, there would be a difference between the actual distribution and the kinds of underground rock and the results of site investigation.

3.50 The Select Committee considers that, since full site investigation had not been conducted at the location of the former City Golf Club and Jordan Road covering a substantial area prior to the construction work commencing, the contingency period set by the Corporation should have been lengthened to absorb risks brought by unexpected ground conditions.

3.51 The Select Committee considers that the setting of the timetable to complete the Project by 4 August 2015 imprudent. The Corporation as the project manager should have allowed a longer contingency period to cater for unforeseen ground conditions as site investigation was known to have its limitations.²⁷

²⁵ The term "spread" refers to the manner in which a number of cables are bundled together.

²⁶ The term "slack" refers to the extent to which cables can be moved out of the way of construction works.

²⁷ Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 3.51. The proposal was defeated (please refer to paragraphs 12 and 13 of the Minutes of Proceedings of the meeting held on 7 June 2016 in this Report).

New role of the Government under the concession approach and deficiencies of EA2

3.52 The Select Committee notes the differences between the ownership approach adopted in development of railway projects in the past and the concession approach adopted for the Project. The rationale of the Government in adopting the concession approach for this Project is given in paragraph 3.13 of this Chapter.

3.53 The Select Committee observes that, under the ownership approach, the Government's role in monitoring the implementation of railway projects had been more passive because the Government's involvement was essentially financial in that it would bridge a funding gap either by providing a capital grant or by granting development rights to the Corporation for construction of railway lines found to be financially not viable. The Corporation would then build, own and run the railway line upon completion at its own risk and cost. Whereas under the concession approach, the Government would own the railway system, pay for the project and assume the construction risks.²⁸

3.54 The Select Committee has studied the respective responsibilities of the Government and the Corporation in respect of the management of the Project under EA2, as set out in paragraphs 3.14 to 3.30 of this Chapter.

3.55 The Select Committee observes that, on paper, the concession approach, EA2, the monitoring mechanism, the communication channels between the Government and the Corporation were carefully designed to provide guidelines for stakeholders to follow as well as different check points at different levels to ensure delivery of the Project on time and within budget. As stated by Mr WAI Chi-sing at a hearing, "*the systems were already there but they are not alive, the people who use them are alive*". The Select Committee takes Mr WAI Chi-sing's words to mean that the Government officers who have been monitoring the Project did not make better use of the systems already in place when performing their duties.²⁹

²⁸ Report of HKS of XRL Independent Expert Panel, paragraph 2.3.

²⁹ Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 3.55. The proposal was defeated (please refer to paragraphs 19 and 20 of the Minutes of Proceedings of the meeting held on 7 June 2016 in this Report).

3.56 As stated in paragraph 3.19, the Corporation has to carry out the Entrustment Activities with the skill and care reasonably expected of a professional and competent project manager whose role includes coordination, administration, management and supervision of the design and the construction work.

3.57 Professor Anthony CHEUNG Bing-leung informed the Select Committee at the hearing on 21 December 2015 that, under EA2, the Corporation as the project manager had the responsibility to monitor and deliver the Project. The Government adopted the indirect "check the checker" M&V role recommended by Lloyd's back in 2008. The Select Committee was also informed by Professor Anthony CHEUNG Bing-leung that, other than as the checker, the Corporation also had the duty to deliver the Project. HyD needed the Corporation to provide information for its work in its role as the checker of the checker. Professor Anthony CHEUNG Bing-leung said that there were approximately 750 employees within the Corporation engaged in the Project, compared to about 40 staff within HyD and the M&V consultant.

3.58 Professor Anthony CHEUNG Bing-leung admitted to the Select Committee that, with the benefit of hindsight, the "check the checker" approach had flaws. He also said at an open hearing that, if the concession approach were to be adopted again in future, the content of the Entrustment Agreement should be reviewed.

Institutional arrangements to be improved

3.59 The Select Committee notes IEP's recommendation that the institutional arrangements in concession agreements should be improved. To this end, it is important to set up robust institutional arrangements, introduce incentives and penalties, allow step-in arrangements to allow the Government to take over the relevant project, and conduct quantitative risk analysis to establish baseline parameters including schedule and cost.³⁰

3.60 Mr Peter LAU Ka-keung stated in his statement that HyD would accept the above recommendation generally. HyD agrees that there is a need to improve the institutional arrangements in concession agreements

³⁰ Report of HKS of XRL Independent Expert Panel, paragraph 7.2.

and to clearly define the obligations, duties, roles and responsibilities of the contracting parties. HyD considers that, before proceeding to another Entrustment Agreement adopting the concession approach, there is a need to carry out a detailed study probably by engaging a consultant and taking into account the experience gained from the implementation of the Project, the suggestions recommended by IEP and overseas experience.

3.61 The Select Committee also notes the view of Mr WAI Chi-sing that a lack of cooperation and trust amongst the stakeholders might have led to the project delay. Mr WAI Chi-sing suggested that, in future, the spirit of cooperation and trust between the contracting parties should be emphasized in Government work contracts.

3.62 The Select Committee considers that, under the concession approach, while HyD might have over-relied on the Corporation to deliver the Project on time and within budget, the Corporation might have been taking the view that it was only required to use its best endeavours to complete the Project under EA2, without having to bear the risk of project delay and cost overrun.

3.63 The Select Committee is of the view that, although the Corporation was entrusted with the design, construction, and testing and commissioning of HKS of XRL and had a duty to deliver the Project, HyD should have played a more active and proactive role in monitoring the Project regardless of the size of staff engaged in the Project and whether or not such role was expressly stipulated in the Entrustment Agreement. Given the considerable scale and cost of the Project and the fact that HKS of XRL is the first railway project carried out under the concession approach, the Select Committee considers that the Government, as the ultimate owner of HKS of XRL and guardian of public fund, should have been monitoring more closely the construction of the Project and taking to heart its important role in the Project.

3.64 The Select Committee considers that the lack of initiative on the part of HyD in monitoring the Project might have been brought about by the knowledge of the good track record of the Corporation in delivering railway projects. The Select Committee also suspects that the lack of practical experience and expertise in building railway lines within the Government might also have contributed to a lack of confidence within HyD/RDO in playing a more active and proactive monitoring role over

the work of the Corporation, which was considered an expert in this area.³¹

3.65 The Select Committee considers that, when the Government implements large-scale railway projects in future, they will have to substantially improve the concession approach with reference to experience gained in the Project.

³¹ Members voted on Mr Gary FAN Kwok-wai's proposal to delete paragraph 3.64. The proposal was defeated (please refer to paragraph 27 of the Minutes of Proceedings of the meeting held on 7 June 2016 in this Report).

Part II Findings

Chapter 4 Early Construction Stage (January 2010 to April 2013)

4.1 In this Chapter, reference to "Early Construction Stage" covers the incidents that took place at different sites of the Project between late January 2010 and April 2013, the corresponding actions taken by the stakeholders and the issues that arose as a result. This Chapter outlines the key dates for the Early Construction Stage and the chronology of developments mainly based on the 1st IBC Report. It also sets out the Select Committee's observations on whether the Entrustment Programme in EA2 is tight, the project management issues and the corporate governance of the Corporation. During the course of its inquiry, the Select Committee has used its best endeavours to discover the reasons for the project delay and to draw conclusions based on the available evidence and information.

Key dates for the "Early Construction Stage"

Date	Events
Late January 2010	Construction of the Project commenced.
1 February 2010	Mr CHEW Tai-chong was appointed as Projects Director of the Corporation.
28 May 2010	The Corporation advised the Government that the Mainland section of the cross-boundary tunnel would suffer a delay of six months.
12 July 2010	Contract 823A at the location of the former Choi Yuen Tsuen was awarded.
16 August 2010	HyD employed Jacobs as the M&V consultant to monitor and verify cost, programme, safety and quality aspects of the Project. Contract

- commenced in August 2010 and was scheduled to end in January 2016.
- September 2010 Mr Peter LAU Ka-keung was appointed Director of Highways.
- May 2011 Land resumption in Choi Yuen Tsuen was completed.
- End May 2012 Mr Joseph LAI Yee-tak was appointed Permanent Secretary for Transport and Housing (Transport).
- 1 July 2012 Professor Anthony CHEUNG Bing-leung was appointed Secretary for Transport and Housing.
- 18 July 2012 Mr Jay H WALDER, the then CEO of the Corporation, wrote to Professor Anthony CHEUNG Bing-leung stating that the Corporation maintained their target of completing all works to enable the successful opening of HKS of XRL in 2015 as planned.
- 17 April 2013 Contractor of contract 810A proposed to revise the completion date of WKT to June 2016, but was rejected by Projects Director. Contractor of contract 810A was asked to work on a Partial Opening Plan, with the aim of achieving the opening of HKS of XRL in 2015.

Chronology of developments

4.2 The Select Committee had difficulties in obtaining certain important minutes of meetings/documents which were considered to be pertinent to the reason for the project delay. For this reason, the Select Committee had to rely on certain findings of fact in the 1st IBC Report to fill in gaps in the period from January 2010 to April 2013 during the construction phase of HKS of XRL. The construction phase of the Project began in late January 2010. At the second Project Supervision Committee meeting held on 28 April 2010, it was reported that the tunnel

and E&M detailed design were on schedule, the piling and the diaphragm wall works at WKT were gaining momentum and there was only a minor delay in the civil works design and in the preparation of tender documents. The progress report presented at the April 2010 Board meeting indicated that HKS of XRL would be ready for service in 2015.³²

First signs of delay

4.3 At the third Project Supervision Committee meeting on 28 May 2010, the Corporation reported to the Government a possible project delay, advising that the Mainland section of the cross-boundary tunnel would likely incur a delay of approximately six months; however, mitigation measures were discussed with Shenzhen authorities in order to ensure the commissioning of the Mainland section by mid-2015. In June 2010, the Government reported to Railways Subcommittee that the progress of the tunnel works in the Project was generally satisfactory with no major difficulty, the foundation works of WKT were progressing on schedule and the detailed design of the terminus building was being finalized.³³

4.4 Since early days of the Project, however, specific work streams started to experience delay – namely, the cross-boundary tunnel works, the removal and re-provisioning of the Nam Cheong Property Foundation under contract 802 and the West Kowloon Terminus Approach Tunnels as well as some issues with the WKT itself. These delays were reported to the Government and the Corporation undertook certain mitigation measures.³⁴

Impact of late land possession on contract 823A

4.5 At an early stage, the late possession of land in Yuen Long caused delay to contract 823A – railway tunnels from Tai Kong Po to Tse Uk Tsuen. The Select Committee notes from the Corporation's report

³² First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.14.

³³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.15.

³⁴ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.16.

submitted to Railways Subcommittee in May 2014³⁵ that "[contract 823A] is at the location of the former Choi Yuen Tsuen. Site access was delayed at the beginning of the project due to land resumption problems. Landowners and other interested parties strongly objected to the land being resumed and as a result, the land resumption process took significantly longer than originally anticipated resulting in a delay from November 2010 to May 2011. This also restricted the amount and extent of the site investigation works that could be carried out prior to this contract being tendered". It is understood from the 2nd half-yearly report to Railways Subcommittee that contract 823A was awarded on 12 July 2010 whereas the land resumption in Choi Yuen Tsuen was completed in May 2011.

4.6 According to the evidence of Mr Lincoln LEONG Kwok-kuen, contract 823A was delayed by the late possession of land at Choi Yuen Tsuen, higher than anticipated rock head levels, tunnel boring machine breakdown and frequent repair and inability to achieve the planned production rates.

4.7 While the original contract scope was to use only one tunnel boring machine, it became necessary to deploy a second tunnel boring machine to mitigate the delay and the Corporation instructed the contractor to procure the machine accordingly.³⁶

All tunnel projects affected by delay events

4.8 The Select Committee notes that³⁷ in fact all eight of the major tunnel contracts for the Project, namely contract 820 – Mei Lai Road to Hoi Ting Road Tunnels; contract 821 – Mei Lai Road to Shek Yam Tunnels; contract 822 – Shek Yam to Pat Heung Tunnels; contract 823A – Tse Uk Tsuen to Tai Kong Po Tunnels; contract 823B – Shek Kong Stabling Sidings and Emergency Rescue Sidings; contract 824 – Tai Kong Po to Ngau Tam Mei Tunnels and contract 825 – Ngau Tam Mei to Mai Po Tunnels and contract 826 – Huanggang to Mai Po Tunnels

³⁵ Paper submitted by the MTR Corporation Limited to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1354/13-14(01), paragraph 36.

³⁶ Paper submitted by the MTR Corporation Limited to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1354/13-14(01), paragraph 38.

³⁷ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.108.

had been affected by a number of delay events some of which had been critical to the Project programme path.

4.9 Problems with the major tunnel contracts include:

- (a) all eight tunnel contracts had been affected by unforeseen ground conditions, such as higher than anticipated rock head levels, high water inflows, presence of cobbles and boulders and presence of underground steel obstructions and so on. The delay to each contract as a result of unforeseen ground conditions varied up to 12 months;
- (b) the late arrival of both tunnel boring machines from the Mainland substantially delayed the commencement of the Hong Kong section of contract 826 by up to 15 months, thus making contract 826 one of the three most critical contracts affecting the completion of the Project on time;
- (c) contract 823A had been delayed by the late possession of land at Choi Yuen Tsuen, unforeseen ground conditions, breakdown and frequent repairs of both tunnel boring machines and inability to achieve the planned production rates; and
- (d) with the exception of contracts 820 and 821, all tunnel contracts had been unable to achieve the overall planned production rates which was one of the major causes of delay to the Project.

Problems at WKT

4.10 The Select Committee also notes that the four civil construction work contracts for WKT, namely: contract 811A – West Kowloon Terminus Approach Tunnel (North); contract 811B – West Kowloon Terminus Approach Tunnels (South); contract 810A – West Kowloon Terminus Station (North) and contract 810B – West Kowloon Terminus Station (South), had all been affected by delay in a number of events some of which had been critical to the Project programme path.³⁸

³⁸ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.106.

4.11 Such events include:

- (a) the two advanced work foundation contracts 803A and 803D in the 810A station (north) and 810B station (south) areas encountered unforeseen ground conditions prolonging the construction of the external station box diaphragm wall. This affected the contract award dates for the two main station contracts 810A and 810B;
- (b) in the 810B station (south) area a number of design changes were incorporated to align with the latest design of West Kowloon Cultural District. Despite the site investigation that had been carried out, the unforeseen ground conditions together with the late utility diversions also affected the progress of the works. These delays caused knock-on delay to the work of the critical 810A station (north) area, in particular, the centre core station structure and the roof, to an order of 11 months;
- (c) in the 811A and 811B approach tunnel areas and in particular 811B, significant delays due to the late utility diversions, deployment of measures to overcome the complex utility arrangements and more unforeseen ground conditions had prolonged the construction of the diaphragm wall in the three key areas (to the north of Jordan Road and then within the area bounded by Jordan Road after the road had been diverted) that were required to be constructed sequentially. These delays had knock on effect on the work of the 810A station (north) top-down area directly affecting one of the Project's critical paths to an order of 15 months; and
- (d) 810A was further delayed by the issues relating to the quality of the steel couplers³⁹, the unexpected movement of the west diaphragm wall, the unforeseen ground conditions, the design changes, the issues related to the quality of roof steelwork fabrication and the

³⁹ Couplers are used to couple two steel reinforcement sections before pouring concrete into the structure.

interdependencies between the temporary and permanent structural designs. The latter three issues caused significant delay to the roof construction.⁴⁰

The then CEO wrote to Professor Anthony CHEUNG Bing-leung on 18 July 2012

4.12 Despite the difficulties set out above, on 18 July 2012, the then CEO of the Corporation wrote to Professor Anthony CHEUNG Bing-leung to the effect that the Corporation maintained its target of completing all works to enable the successful opening of HKS of XRL in 2015 as planned, despite certain challenges including those on completion of the connecting tunnels with the Shenzhen side, which was six months behind schedule as of 18 July 2012.

4.13 By the end of 2012, WKT was experiencing considerable delay to its civil works, and there were also delays in the tunnelling works of the Mainland section.⁴¹ At the Project Supervision Committee meeting on 25 January 2013, the Corporation confirmed that as at the end of December 2012, the actual progress of the Project was 31.4% complete against the planned progress of 46.1% under the original programme. Mr Peter LAU Ka-keung enquired when the Corporation could advise on the overall Project master programme as well as the DRMs planned for WKT. The Corporation responded that it was working on a presentation for the matter. The Corporation advised the Government that the slippage in the programme for excavating the WKT site could be made up for by mid-2013 and that the Corporation was further exploring measures to compress the works of contract 826 (the cross-boundary tunnels) and expediting other activities so as to absorb the delay and to ensure completion in 2015.⁴²

4.14 The Select Committee notes from the 1st IBC Report that from 2010 to 2012, there was no change made to the planned opening date in

⁴⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.106.

⁴¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.18.

⁴² First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.19.

August 2015.⁴³ The Select Committee finds this extraordinary in light of the fact that the construction works in different areas under different contracts were going through very rough patches during this period.

Projects Director told the Board in March 2013 that things were fine

4.15 During his presentation on the progress on all the Corporation's projects at the Audit Committee Meeting on 5 February 2013, Mr CHEW Tai-chong noted that there were "critical" delays with the WKT construction and significant delays with the tunnelling works. However, he confirmed that good progress was still being made despite the challenges and discussed at the meeting the DRM initiatives. Subsequently, at the Board meeting on 7 March 2013, Mr CHEW Tai-chong confirmed to the Board that all projects were on target from a cost and time perspective.⁴⁴

4.16 A similar commitment to the August 2015 goal was expressed in the Project Supervision Committee meeting on 22 March 2013, when the Corporation stated that, despite the slow progress of the tunnelling works in the Mainland section, most of the works would be completed by August 2015 for testing and commissioning. By the time of this Project Supervision Committee meeting, the Corporation was reporting that the actual progress of the Project was 34.3% complete as against the 51.9% planned under the original programme.⁴⁵

Projects Director was urged to revise completion date

4.17 In an e-mail dated 27 March 2013 to Mr CHEW Tai-chong, the Chief Programming Engineer of the Corporation urged that the completion date for the whole of the works should be revised to the end of September 2015 with a revised opening date in December 2015 for HKS of XRL. At the Board meeting on 15 April 2013, while slippages were acknowledged, there was no suggestion that HKS of XRL would not

⁴³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.16.

⁴⁴ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.20 and 4.21.

⁴⁵ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.22.

open in 2015.⁴⁶

4.18 On 27 March 2013, Jacobs attended a Project Master Programme ("PMP") Audit meeting with the Corporation at which an updated copy of the PMP was tabled. But Jacobs was not given a copy of the updated PMP. (**Appendix 22**)

Contractor requested to revise completion date to June 2016

4.19 On 17 April 2013, a workshop was held by the Project Team of the Corporation with the contractor for contract 810A in WKT to analyze progress and measures to recover delay. At that meeting, the contractor put forward a revised construction completion date of June 2016 for the entire work. This revised completion date in 2016 was rejected, however, by Mr CHEW Tai-chong, and the contractor was asked to work with the Project site team to identify solutions for achieving the original target opening of HKS of XRL in 2015.⁴⁷

4.20 Whilst the Project Team had first begun to consider a partial opening plan in March 2013 due to the delays already experienced with the WKT contracts, it was after this meeting with the contractor of contract 810A that a plan for a partial opening scenario was worked on in earnest ("Partial Opening Plan"). This Partial Opening Plan, which the Project Team worked on throughout April to June 2013, was being made on the assumption that only six long-haul tracks would be operational at the time of the opening (as opposed to the originally proposed 10 tracks) with the tunnels fully operational. It was formulated and proposed as a solution for achieving the opening of HKS of XRL in 2015 on a reduced operational scope.⁴⁸

4.21 Under the Partial Opening Plan, some external works (e.g. footbridges and subways) and the WKT roof structure would not be completed by the end of 2015. It was thought that this would not affect the operation of passenger services. The knowledge of the existence of

⁴⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.23.

⁴⁷ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.26.

⁴⁸ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.27.

the Partial Opening Plan was largely confined to the Project Team until it was revealed to ExCom in a presentation in July 2013.⁴⁹

4.22 The Select Committee sent a letter to the Corporation at an early stage of the inquiry in January 2015, requesting a copy of the minutes of the workshop held on 17 April 2013 between the Corporation and the contractor of contract 810A. The Corporation responded that no formal minutes of the 17 April 2013 workshop had been taken by the Corporation.

4.23 At the Board meeting on 25 April 2013, Mr CHEW Tai-chong reported that, despite some slippages in the programme (including delays in the WKT excavation work), all works remained generally on target and, from a budget perspective, contingency balances were generally appropriate.⁵⁰

Director of Highways asked to be informed of any delay

4.24 At the Project Supervision Committee meeting on 26 April 2013, the Chairman of Project Supervision Committee, i.e. Mr Peter LAU Ka-keung, indicated that, if there was delay to the opening of HKS of XRL, HyD should be informed as soon as possible. The Corporation advised that a presentation of a revised programme for WKT would be given to HyD in July 2013. At that meeting, Mr Peter LAU Ka-keung also requested that due consideration should be given to the potential prolongation cost and the acceleration cost and that either approach would have to be substantiated and justified.⁵¹

4.25 On 30 April 2013, the Corporation reported to Project Supervision Committee that the actual percentage completion as against the planned progress of the Project was 37.56% and 53.87%, respectively.⁵²

⁴⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.27 and 4.28.

⁵⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.29.

⁵¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.30.

⁵² First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.31.

4.26 THB submitted a total of five half-yearly reports to Railways Subcommittee, covering the period from 16 January 2010 to 30 June 2012, with the 5th report submitted in October 2012. In these reports, the Corporation was said to have maintained throughout the period a target completion of the Project in 2015. However, the actual and planned progress of the Project was not presented in any of these five reports.

Observations

Whether the Entrustment Programme is too tight

Timetable

4.27 The Select Committee has focused on the issue of whether the Entrustment Programme in EA2 to complete the Project was tight. The Select Committee notes the comments of IEP and IBC and sought the views of the witnesses from the Government and the Corporation; and deliberated on whether a "too-tight" programme was a reason for the project delay.

4.28 The Select Committee notes from the IEP Report that "*[a]s to the provision in EA2 that the XRL Project would be completed and handed to Government by 4 August 2015, [the Corporation] set this planned completion date and sought assurance from third party consultants regarding the achievability of the timeline. [The Corporation] was advised that the schedule was extremely tight but achievable and was dependent on unusually high production rates for certain key activities, notably the Terminus. In addition, [the Corporation] had been made aware of potential shortages of skilled labour resources.*"⁵³

⁵³ Report of HKS of XRL Independent Expert Panel, paragraph 3.13.

4.29 On 3 November 2015, Mr Lincoln LEONG Kwok-kuen informed the Select Committee that *"with regard to the timetable, as members are aware and well highlighted in the IEP Report, there were a number of third parties that reviewed and looked at the timetable and the programme-to-complete together with [the Corporation]. And, all along, the views that we have from the third parties are that the timetable is doable but tight"*.

4.30 Mr Peter LAU Ka-keung also informed the Select Committee at the hearing on 21 April 2015 that the Entrustment Programme was indeed a tight one and the Government had asked the M&V consultant to check the feasibility of the timetable, which had been found feasible by the Corporation back in 2007. The M&V consultant found that the timetable would be a tight one with little contingency. But the consultant did not advise that it was impossible.

4.31 When asked at a hearing whether there were contingency periods allowed for the contracts under EA2 and whether they were sufficient, Dr Philco WONG Nai-keung, the Projects Director, and Mr Mark LOMAS, Project Manager–Technical Support, of the Corporation confirmed that, although there were contingency periods allowed for critical contracts, those contingency periods were not sufficient to cater for the delays caused by the unexpected ground conditions.

4.32 Mr WAI Chi-sing, former Director of Highways, also informed the Select Committee at the hearing on 2 June 2015 that when the Government set the completion date, the Entrustment Programme was found to be reasonable with 4 August 2015 set as the target completion date. Referring to the comments made by his colleagues in HyD, Mr WAI said that the contractors had also assessed the schedule and had found that the work could be completed within the time frame and budget.

4.33 The Select Committee also notes from the evidence of Mr WAI Chi-sing at the above hearing that no tenderer had raised during the tender process that the deadline in individual contracts was not achievable, and that after all major contracts had been awarded, there was still a considerable amount of time for contingency left for the Project. The

Select Committee was not, however, provided with any of the contracts signed between the Corporation and its contractors despite request.⁵⁴

No change of completion date if commencement date of a contract deferred

4.34 Mr WAI Chi-sing commented that when the Government considered the Entrustment Programme, there were a total of over 40 contracts in the Project and that each contract would have a start date and a completion date. When one were to realistically analyze the situation, one had to consider that, if the start date of a contract was deferred, its completion date should also be correspondingly deferred. If in any contract the start date was postponed but the completion date was not, then the contingency allowed would be reduced. The 1st IBC Report⁵⁵ said that "[f]rom 2010 to 2012, there was no change made to the planned opening date of August 2015".

4.35 The Select Committee further notes from the evidence of Mr Henry CHAN Chi-yan at the hearing on 20 October 2015 that contract 811B had been delayed by the problems with the construction of the diaphragm wall and had in turn affected the commencement of contract 810A. Mr Henry CHAN Chi-yan also informed the Select Committee that they understood that the commencement date of contract 810A had

⁵⁴ In response to the Select Committee's request for extract of the work contracts signed between the Corporation and main contractors in respect of the WKT and a number of tunnels for the Project, the Corporation informed the Select Committee in February 2015 that owing to concerns on confidentiality or commercial sensitivity, the documents would be provided to the Select Committee if the Select Committee agrees that such documents would not be disclosed to the public and be kept under strict control in a designated location and not to be removed from that location or photocopied. The Corporation further stated that the consent of the Select Committee to this arrangement would be required before the relevant information or documents could be disclosed and that extracts from the relevant work contracts would be provided if the Select Committee agrees to keep the documents and their contents confidential and to use the documents at closed hearings only. The Select Committee considers it inappropriate to enter into an agreement with the Corporation as condition precedent for the provision of documents to it and finds the proposed arrangements unacceptable and rejects them.

⁵⁵ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.16.

been deferred but its completion date had not been postponed. It was Mr CHAN's belief that the Project Team of the Corporation had taken the view that the Project could still be completed by August 2015 without having to extend the work schedule and with the use of DRMs.

4.36 Mr TAM Hon-choi, Government Engineer/Railway Development 2 of HyD, also informed the Select Committee that *"it was normal for the industry to move some of the items in a contract to the other contract so as to retain the completion date of the contract due to the late commencement of the contract. We noticed that the Corporation had put in a lot of efforts and taken out some works items from a contract to the other contract. It was also observed that during the tender process, no tenderer for the other contract had raised that it was not achievable even if the completion date was not postponed."*

4.37 The Select Committee notes the view of Mr Anthony J W KING of Jacobs at the hearing on 10 November 2015 that *"...we reported consistently that the project was in delay due to the various component delays of the various contracts. And if the delays continued and were not recovered, there was going to be a risk to the end date of the Project"*.

4.38 The Select Committee considers that, as all the planned work items under the Project had to be completed by the original completion date of August 2015, the postponement of the commencement dates of some contracts along the line would inevitably have impact on the overall completion date of the Project. The Select Committee sees no evidence to show that the DRMs, in general, had the effect of reducing the overall delay, which was accumulating. The act of the Corporation to rearrange the work items from one contract to another contract was postponing the problem, not reducing it, let alone eliminating it. Other project management issues will be further discussed in the ensuing Chapters.

Over-optimism on the part of the Corporation

4.39 The Select Committee notes IEP's comment⁵⁶ that *"[a]lthough [the Corporation] generally acknowledged the risks identified by its consultants, no [Schedule Risks Assessments] or sensitivity studies were carried out at the time of establishing EA2 or the initial baseline to*

⁵⁶ Report of HKS of XRL Independent Expert Panel, paragraph 3.14.

estimate the probability that the Project could be completed by the specified date". It is noted that IEP believed that such analysis would have shown that the 2015 opening date of HKS of XRL was overly optimistic.

4.40 The Select Committee also observes that⁵⁷ the Project had an increased risk profile compared to the previous railway projects, because HKS of XRL was of a different project type (High-speed Rail), required integration with Mainland rail (cross-boundary issues) and followed a new organizational setup (concession approach). Each of these factors was a "first" for the Corporation, thereby increasing the uncertainties and, therefore, the risk profile of the Project.

4.41 The Select Committee further notes that the 2nd IBC Report⁵⁸ commented that *"[i]nternational experience shows that [high-speed rail] projects are notoriously difficult to build to schedule and cost. It is not unusual for projects of this size and complexity to be subject to delays and cost increases. Building this type of project underground, including a main terminal, in one of the most densely populated urban areas in the world – as is the case for XRL – exacerbates the difficulties".*

4.42 Based on the above findings, the Select Committee considers that the Corporation and the Project Team were over-optimistic in accepting the project completion date. The Select Committee considers that, if the risk of cost overrun in the Project was borne by the Corporation instead of by the Government (EA2, Clauses 2.3 and 8.1), the Corporation might have been more cautious in agreeing to work with such a tight time schedule given the uncertainties inherent in the Project.

4.43 Mr Lincoln LEONG Kwok-kuen admitted at the hearing on 3 November 2015 that *"[e]ventually, continuing delays in several critical contracts meant that the original project completion date could not be achieved. Although the challenges and delays on individual contracts were well communicated to Government, over-optimism led to a belief that the original overall project completion date could still be met."*

⁵⁷ Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraph 1.2.

⁵⁸ Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraph 1.1.

Target completion date of 4 August 2015

4.44 It appears to the Select Committee that the Government and the Corporation have different interpretations of the completion date of the Project. The Select Committee is of the view that when an agreement for work is signed (in this case EA2), there must be a target completion date of the work programme, otherwise there would not be any discussion about delay. The Select Committee also notes that in Appendix C (Entrustment Programme) to EA2, there is a reference to "Estimated Handover Date: 4 August 15".

4.45 The Select Committee notes from the statement of Mr WAI Chi-sing that "*[a]ccording to the EA2, the [Corporation] shall use its best endeavours to complete the Entrustment Activities in accordance with the Entrustment Programme subject to adjustment under justifiable situation. The [Corporation] shall consult and liaise with the Government in a timely manner if any adjustment would have the effect of amending the Entrustment Programme. The Entrustment Programme indicates that the XRL project would complete testing and trial running, and be ready for operation by 4 August 2015*". The statement of Mr YAU Shing-mu, Under Secretary for Transport and Housing, also stated that "*[t]he Entrustment Programme indicates that the XRL project would complete testing and trial running, and be ready for operation in August 2015*."

4.46 However Mr Lincoln LEONG Kwok-kuen said in his statement that "*[EA2] does not impose an absolute obligation [on the Corporation] to complete the project by 4 August 2015 considering that, with a project as challenging and complex as the XRL, there is always a risk of delays. Rather, under [EA2], the Corporation is to use its best endeavours to complete, or procure the completion of, the project in accordance with the Entrustment Programme and to minimise the effect of any delay. The Entrustment Programme is subject to modification as a result of change, including as a matter of right due to contractor delays that result in extensions of time for the contractors to deliver their obligations*."

4.47 At the hearing on 21 December 2015, Professor Anthony CHEUNG Bing-leung, in reply to the questions raised by the Select Committee, expressed that the date of 4 August 2015 was meaningful and should be regarded as a completion date in the implementation of the Project. Professor CHEUNG also informed the Select Committee that,

although it was difficult to take the date as an absolute date subject to no change, the Corporation should use its best endeavours to procure the completion of the Project because, before signing EA2, the contracting parties should have made their own assessment and found the completion date acceptable.

4.48 The Select Committee considers that the Government, or indeed the Government led by Sir Donald TSANG Yam-kuen, the former Chief Executive, chose at the planning stage to rely on the Corporation to deliver the Project by adopting the "check the checker" formula and the fast-track front end approach. The Select Committee considers that, if the "check the checker" system was not working well, or not seen to be working well, and the Entrustment Programme was set too tight and ultimately led to delay in the Project, the delay might be inevitable. As such, it might be unfair to put all the blame on the incumbent officials in THB or HyD.^{59, 60, 61}

Insufficient contingency to absorb unforeseen conditions or events

4.49 At the hearing held on 2 June 2015, Mr WAI Chi-sing quoted the view of the Independent Experts appointed by the Corporation that *"the negative impact of unforeseen events on the schedule was not so much caused by any flaw in engineering or project management as by a lack of an adequate schedule contingency for critical contracts. A longer schedule contingency would have allowed the Project Team to absorb unforeseen events as they occurred"*.

⁵⁹ Members voted on Mr WU Chi-wai's proposal to delete paragraph 4.48. The proposal was defeated (please refer to paragraph 44 of the Minutes of Proceedings of the meeting held on 7 June 2016 in this Report).

⁶⁰ Members voted on Mr TANG Ka-piu's proposal to delete "因此，把所有責任歸咎於運輸及房屋局或路政署的現任官員，指他們沒有做好監察該工程項目的工作，或會有欠公允。". The proposal was defeated (please refer to paragraphs 45 and 46 of the Minutes of Proceedings of the meeting held on 7 June 2016 in this Report).

⁶¹ Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 4.48. The proposal was defeated (please refer to paragraphs 47 and 48 of the Minutes of Proceedings of the meeting held on 7 June 2016 in this Report).

4.50 In this connection, the Select Committee notes⁶² the observation of IBC that, when compared with the benchmark of international projects, HKS of XRL was planned with a shorter than usual front-end process for the project programme. The front-end process from ExCo policy support to signing project agreement included the gazettal of the scheme and the gazettal of amendments to the scheme. The time between these gazettals reflected the time needed by projects to address objections regarding their environmental and social impact. The Select Committee notes that⁶³ the other four railway projects currently under construction took on average 45 months from ExCo policy support to project agreement, whereas the international benchmark showed an average length of front-end process at 37 months. The Select Committee notes that the Project completed the front-end process in 22 months, which was substantially shorter than the average of the other four railway projects under construction in Hong Kong and the international benchmark.

4.51 However, the Select Committee finds no evidence to show that the relatively short front-end process for the Project had affected the site investigation.

4.52 As stated in paragraph 4.5 above, the protests at Choi Yuen Tsuen and the delayed site possession demonstrated that, due to fast tracking, the objections of the external stakeholders had not been fully addressed in time. Subsequently, the late site possession delayed the commencement of work by 225 days (contract 823A) and 130 days (contract 823B) respectively.⁶⁴

4.53 The Select Committee also notes from the 2nd IBC Report that, at interviews, the Project Team acknowledged that, in hindsight, the Corporation should have re-negotiated the opening date instead of relying on schedule compression.⁶⁵

⁶² Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraph 3.12.

⁶³ Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraph 3.13.

⁶⁴ Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraph 3.13.

⁶⁵ Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraph 3.13.

Queries surrounding the PMP

4.54 The Select Committee notes the criticism of IEP⁶⁶ that "*[t]he absence of reporting against a fully integrated, whole-project master programme has left Government in the dark*".

4.55 In brief, IEP recommends⁶⁷ that, in accordance with best practice, the project manager should establish a project control and oversight function; develop and maintain an integrated master programme covering the whole scope of the project as a baseline for progress monitoring and reporting and carry out quantitative risk analysis to cover cost and schedule risks. IEP, in particular, recommends that "*the integrated master programme is to show, inter alia, all significant contracts, interfaces, handovers, contract completions, overall project completion and dates when the railway will enter passenger service. The critical path or paths to overall project completion are to be highlighted.*"

4.56 Mr Peter LAU Ka-keung indicated in his statement to the Select Committee that HyD accepted this recommendation generally. HyD agreed that an integrated master programme could easily show the effect of delay of any activity under the individual contracts on the Project's critical paths. Mr Peter LAU Ka-keung also stated that, while an integrated master programme had its advantages, the same information could also be obtained by making reference to a contract-based master programme coupled with analysis of the relevant progress information.

4.57 Mr Peter LAU Ka-keung stated that, for project progress monitoring, the Corporation used P6 Primavera (a software for programming and progress monitoring) to prepare its work programmes and required the contractors to use the same software to develop their contract programmes for compatibility. The Corporation set up a master programme of the Project with key dates and managed the contracts to achieve those key dates.

4.58 Mr Henry CHAN Chi-yan informed the Select Committee at the hearing on 20 October 2015 that, to his knowledge, the Corporation had

⁶⁶ Report of HKS of XRL Independent Expert Panel, paragraph 6.11.

⁶⁷ Report of HKS of XRL Independent Expert Panel, paragraphs 7.5 to 7.9.

not developed an integrated master programme, but they knew that the Corporation had a master plan showing the timetable of each individual contract. He informed the Select Committee that the most important thing was that the Corporation had developed a programme called "TRIP" (i.e. Track Related Installation Programme) for monitoring the progress of the tunnelling works, track-laying and E&M works, and that the Project Team of the Corporation was able to sequence the track-related activities to best achieve the target completion date of the Project. He said that they had understood that the Corporation had made use of TRIP to monitor the Project.

4.59 Mr William NG Siu-kee of Jacobs, the M&V consultant, informed the Select Committee at the hearing on 10 November 2015 that *"generally, we did not have too much difficulty in...getting information from the Corporation...But for some of the sensitive documents like the overall master programme, we might have difficulty obtaining that instantly first-hand information..."*.

4.60 Mr Anthony J W KING also informed the Select Committee at the same hearing that *"but as you see from earlier discussions, we did ask for a project master programme and we did not see that project master programme. It was not delivered to us. We saw it on the table at audits but it was not delivered to us."*

4.61 The Select Committee has asked Jacobs in writing the number of times it had requested both verbally and in writing, through HyD, the "overall Project Programme" from the Corporation up to mid-April 2014 and the feedback from, or follow-up actions taken by, HyD. In response, Jacobs replied (**Appendix 20**) that they had requested the Corporation to provide and update the PMP on at least 17 occasions from April 2011 to April 2014 through the Monthly Progress Reports to HyD; and had raised similar programme related issues through the Issue List which was updated regularly and sent to HyD. HyD then forwarded the Issue List to the Corporation and requested it to respond to the issues raised by Jacobs, including the provision of the updated PMP. HyD requested Jacobs to review the Corporation's responses and note for the future M&V if necessary.

4.62 The Select Committee notes that, according to HyD (**Appendix 21**), the Issue List was prepared by the M&V consultant on a monthly basis based on the findings and observations during the course of

its document reviews, site visits and audits in its M&V work. HyD and the M&V consultant reviewed the Corporation's response to the comments and followed up with the Corporation, through regular meetings and other means within the monitoring mechanism until HyD was satisfied with the Corporation's response. It is noted that, through this arrangement, the Government would communicate with the Corporation in a timely manner on major and prevailing concerns on the progress of work, technical matters, safety and quality issues and necessary follow up actions. Nevertheless, at the hearing of 20 October 2015, Mr Henry CHAN Chi-yan informed the Select Committee that in respect of the advice given by HyD, they had not kept any record in the Issue List of any advice that the Corporation did not take actions accordingly, and that HyD would review such arrangement.

4.63 Further, in response to the questions raised by the Select Committee on the "overall Project Programme" as mentioned in paragraph 4.61 above, Jacobs replied that "*[i]n August 2011, following a Request for Documents (RFD), Jacobs received a copy of the programme entitled "MTRCL's Master Programme for XRL Project (July 2011)" from [the Corporation] via HyD. Jacobs carried out a review of that Programme. In its review, Jacobs raised concerns regarding 16 issues it believed were deficiencies in the Programme, including that it was not an integrated and coordinated programme but a collection of individual contract programmes for Civil and E&M works.*" Jacobs also informed the Select Committee that it had requested copies of three PMP related programmes through the Request For Documents process in April 2013. However, the Corporation advised Jacobs that it was not appropriate to supply these copies as the overall programme had not been finalized. It appears to the Select Committee that Jacobs was only given in August 2011, following a Request for Documents, a copy of the programme entitled "MTRCL's Master Programme for XRL Project (July 2011)" via HyD, which was not "*an integrated and coordinated programme*" envisaged by Jacobs or referred to by IEP in its report.

4.64 In November 2015, the Select Committee has sought answers from the Corporation on whether the Corporation had in its possession or under its control an integrated master programme for the Project; if yes, whether the Corporation had provided the integrated master programme to the Government and/or Jacobs, and if so, when.

4.65 The Corporation replied to the Select Committee on 21 December 2015 (**Appendix 22**) stating that the Corporation had developed and maintained an integrated PMP during the construction phase of the Project, that the PMP was based on summarising the individual contractors' master programmes using P6 Primavera format planning software. The reply also pointed out that Jacobs carried out seven separate audits of the PMP relating to the process and technical compliance under EA2 up to 30 April 2014 (i.e. PMP audits) and that none of the PMP audits necessitated any follow-up action on the part of the Corporation.

4.66 The letter also confirmed that a copy of the PMP updated to 31 January 2011 was tabled at the first PMP Audit meeting with Jacobs on 23 February 2011. Updated copies of the PMP were tabled at subsequent PMP Audit meetings with Jacobs on 1 December 2011, 24 August 2012, 27 March 2013 and 25 September 2013 respectively. It also said that, in response to the request made by Jacobs, the Corporation provided a copy of the PMP, updated to July 2011, to RDO on 24 August 2011. The Corporation indicated in their reply letter that the PMP had been developed and in place at the time of the announcement of the project delay and included elements not materially different from the elements of the master programme referred to in paragraph 7.6 of the IEP Report. All major civil and E&M contracts were shown, as were the key interfaces and handovers, the work dates for the individual contracts, the testing and commissioning and the operational readiness dates for the overall project, as well as other significant activities such as the implementation of temporary traffic management schemes and the major utility diversions.

4.67 The Select Committee notes that the Corporation also reiterated in their reply that, together with the use by the Corporation of internationally recognized and effective methodology for forecasting completion of complex railway projects, including the Track-Related Installation Programme, the Corporation had applied effective methods for monitoring the progress across the multiple contracts in the Project, in accordance with the Corporation's Project Integrated Management System.

4.68 At the hearing on 21 December 2015, the Select Committee raised with Professor Anthony CHEUNG Bing-leung a question whether the PMP had been supplied to him. Professor CHEUNG informed the

Select Committee that he knew that the Corporation had a master plan. However, he thought that it was not the master delivery strategy document mentioned by IEP. Professor CHEUNG further said that what IEP recommended was a document which should provide the metrics of performance for each of the parties that could be checked and verified throughout the course of the Project and that these metrics would include high-level milestones and key cost triggers appropriate to the different stakeholders. He considered that the document proposed by IEP was different from the master plan that the Corporation had been using.

4.69 In the light of paragraphs 4.54 to 4.68 above, the Select Committee considers that the Corporation might have a master plan showing "*a collection of individual contract programmes for Civil and E&M works*" (see paragraph 4.63). It agrees with the finding of IEP that the Corporation did not have "*a fully integrated, whole-project master programme*" (see paragraph 4.54). The effect was that "*[the Corporation] was late to recognise and forecast delays on individual contracts. This, coupled with the absence of an integrated master programme, meant that it was not possible to understand which contracts were critical to the project completion date*".⁶⁸

Effectiveness of DRMs to mitigate the project delay

4.70 The Select Committee has inquired into the effectiveness of the DRMs adopted by the Corporation to mitigate the project delay. Views and statements were reviewed and witnesses were questioned at the hearings to ascertain the effectiveness of the DRMs.

4.71 According to Mr Peter LAU Ka-keung, the Corporation was responsible for negotiating with the contractors for the use of DRMs to catch up with the programme plan in case of delay. With the "check the checker" role, HyD and the M&V consultant would provide the Corporation with their professional advice on the proposed DRMs.

4.72 Mr Peter LAU Ka-keung stated that, where there was any progress delay, the Corporation would be asked to consider mitigation measures to make up for the delay. In the process, the Corporation would discuss with the contractors and formulate a revised programme

⁶⁸ Report of HKS of XRL Independent Expert Panel, paragraph 3.23.

for the critical components of the works. HyD would use this revised programme as a basis to continue monitoring the work progress. The existence of progress delay in the individual contracts did not necessarily imply that the overall completion of the Project would be delayed. The overall progress was also an important consideration.

4.73 At the hearing on 3 November 2015, Mr Lincoln LEONG Kwok-kuen informed the Select Committee that DRMs were important to stop any further delay, for instance, in the programme or further cost overruns, and to move a particular contract back into the original contract duration. Mr Lincoln LEONG Kwok-kuen also said that there were many examples of successful DRMs.

4.74 Mr Peter LAU Ka-keung indicated that, from experience in other major work contracts, a contractor could adopt mitigation and DRMs to catch up with progress delay. The increase in manpower, plant and work overtime would be considered. The important thing was to avoid impact on the commencement of subsequent critical work activities. Through splitting of work processes into parts and re-sequencing work flow, delayed activities could be removed from the critical path.

4.75 The Select Committee notes from the statement of Mr Peter LAU Ka-keung that the Corporation had deployed some DRMs to catch up with the programme, including the deployment of additional plant and labour resources; the adoption of alternative work procedures or work methods, e.g. using blasting instead of mechanical breaking of rock; design changes and re-sequencing work activities; re-defining the programme completion date of non-critical contracts; and the refinement of the subsequent E&M work programme, sometimes through phased access arrangements.

4.76 The Select Committee notes from the IEP Report⁶⁹ that it had identified instances where the Project had benefitted through DRMs, such as the procurement of an additional tunnel boring machine for tunnelling in contract 823A and the removal of piles obstructing the tunnelling activities in contract 820.

⁶⁹ Report of HKS of XRL Independent Expert Panel, paragraphs 3.16 to 3.19.

Examples of successful DRMs at contracts 823A and 802

4.77 The Select Committee notes the successful examples of DRMs from the evidence given by Mr Peter LAU Ka-keung that in April 2011, during the construction of the launching shaft of the tunnel boring machine under contract 823A, the contractor encountered rock head levels higher than those anticipated in the Geotechnical Baseline Report. This slowed down the progress of the tunnelling works and also directly affected the commencement of the subsequent tunnel excavation works. To recover the progress delay, the Corporation proposed a series of DRMs which included the procurement of an additional tunnel boring machine to allow two tunnel sections to be excavated simultaneously. As a result, the additional tunnel boring machine was launched in March 2013. The tunnel boring excavation progress was improved after the implementation of these measures.

4.78 The Select Committee also notes another example of successful DRMs in that, in mid-2010 during the course of the pile-removal work in contract 802, the contractor found that the piles were deformed and were not straight as shown in the record drawings. Thus, the normal extraction methods could not be used. As the deformed piles were in conflict with the alignment of HKS of XRL, they had to be removed before the arrival of the tunnel boring machine. After exploring different options with the contractor, the Corporation suggested adopting a "Rotator and Wedge" extraction method from Japan to remove these piles. On 23 December 2010, the Corporation submitted the DRM proposal to the Project Control Group for approval. HyD and the M&V consultant, without indicating any disagreement⁷⁰, kept on monitoring the effectiveness of the alternative method, visited the pile-removal site every month and held Contract Review Meetings with the Corporation regularly to track the removal progress. Eventually, the contractor recovered the delay successfully such that the piles were removed before the arrival of the tunnel boring machine, which was itself delayed.

4.79 The Select Committee observes that, initially, the DRMs enabled catching up on progress in certain contracts as set out in the preceding paragraphs. It is possible that these instances of success and past

⁷⁰ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1422/13-14(02), paragraphs 11 and 12.

successful experience in other railway projects boosted the confidence of the Project Team/Mr CHEW Tai-chong in recovering delays with the use of DRMs.

4.80 However, the DRMs implemented in relation to the other contracts did not have much success. The Select Committee notes that IEP found instances where the Corporation was over-optimistic on the viability of the proposed DRMs in achieving their purpose.⁷¹ Besides, the Select Committee also notes from the joint statement of Mr Anthony J W KING and Mr William NG Siu-kee of Jacobs with respect to DRMs in March 2012, "*[t]here is no sign yet that the situation will improve, nor that Delay Recovery Measures instructed and Supplemental Agreements implemented to date have started to have any meaningful impact*". The effectiveness of DRMs will be further discussed in Chapter 5.

⁷¹ Report of HKS of XRL Independent Expert Panel, paragraph 3.17.

Part II Findings

Chapter 5 Difficult Stage (May to October 2013)

5.1 In this Chapter, reference to "Difficult Stage" covers various incidents that took place between May 2013 and October 2013 which are said to have made the construction work of the Project difficult, the issues that have surfaced and the corresponding actions taken by the Corporation and the Government. It also sets out the Select Committee's observations on the impact of labour shortage on the construction of the Project and on the Corporation's project management and corporate governance.

Key dates for the "Difficult Stage"

Date	Events
7 May 2013	Media reported that there would be a delay of one year or more in the completion of the Project.
23 May 2013	THB submitted the 6 th half-yearly report covering the period from 1 July 2012 to 31 December 2012, which was discussed at the Railways Subcommittee meeting on 24 May 2013. At this meeting, Professor Anthony CHEUNG Bing-leung reported that the target completion date of the Project in 2015 would be maintained.
June 2013	The Projects Programme team of the Corporation produced a Schedule Risk Assessment for the first time, in which it was shown that the opening of HKS of XRL in 2015

could be achieved on a partial opening basis.⁷²

- 13 July 2013 The Corporation's Project Team gave a presentation ("the July Presentation") to the then CEO, the then Deputy Chief Executive Officer ("DCEO"), the then Finance Director ("FD") of the Corporation on the Partial Opening Plan.
- 13 July 2013 Mr CHEW Tai-chong, the then Projects Director of the Corporation, highlighted labour shortage as one of the key challenges affecting the delivery of the Project on time.
- 20 August 2013 The Corporation proposed to RDO and HyD the Partial Opening Plan.
- 22 August 2013 Mr CHEW Tai-chong presented to the Corporation's Board meeting that there was a programme in place to complete the key elements of the Project for opening in 2015. At this Board meeting, there was no mention of the Partial Opening Plan by Mr CHEW Tai-chong and others who had been present at the July Presentation.
- July to October 2013 The Corporation's Project Team considered what might entail to achieve the Partial Opening Plan. The contractors were asked to think of a work plan.
- 13 September 2013 A presentation was given by the Chief Programming Engineer of the Corporation to Mr Peter LAU Ka-keung and RDO, putting forward the Partial Opening Plan in detail.

⁷² First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.37 and 4.65.

- October 2013 The Projects Programme team updated the Schedule Risk Assessment, which showed that the situation in contract 826 was deteriorating and would not meet the December 2015 deadline for opening even with the Partial Opening Plan, and that the situation in contract 810A had deteriorated significantly since March 2013.
- 22 October 2013 HyD reported to Professor Anthony CHEUNG Bing-leung and Mr Joseph LAI Yee-tak that there were delays in the cross-boundary tunnelling works and that the Corporation had proposed a Partial Opening Plan to achieve opening in 2015.
- 29 October 2013 At the Project Supervision Committee meeting, the Corporation reported that the gap between the actual and planned progress at the end of September 2013 had reached approximately 25%.

Chronology of developments⁷³

Delay reported by the media

5.2 In early May 2013, approximately three years into the construction process, news articles appeared in the media to the effect that there would be a delay of one year or more before the Project's completion, with an estimated cost overrun of more than \$4 billion. The news reports appeared to have been based on information received from contractors. At that time, the press reports were refuted by the Corporation and the Government, who maintained that the Project would be completed on time and within budget.⁷⁴

⁷³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.41 to 4.77.

⁷⁴ Report of HKS of XRL Independent Expert Panel, paragraph 2.14.

5.3 In May 2013, THB submitted the 6th half-yearly report covering the period from 1 July to 31 December 2012 to Railways Subcommittee, in which the Corporation was said to have reported a target completion date of the Project in 2015. The 6th half-yearly report was discussed at the Railways Subcommittee meeting on 24 May 2013. At this meeting, the Government stated that the construction of HKS of XRL would still be targeted for completion in 2015 and that the Corporation had an obligation to comply with EA2.

5.4 In June 2013, the Projects Programme team of the Corporation produced a Schedule Risk Assessment for the first time to some members of ExCom, in which it was shown that opening in 2015 could be achieved on a partial opening basis.⁷⁵

5.5 At the Project Supervision Committee meeting held on 28 June 2013, the actual progress of the Project as at the end of May 2013 was reported as 39.7% complete against the planned progress of 61.8% under the original programme, representing an overall delay of six to seven months.

Presentation by the Project Team of the Partial Opening Plan

5.6 On Saturday 13 July 2013, a presentation was given by the Project Team to the then CEO, the then DCEO and the then FD, i.e. the July Presentation, where it was reported that the Project's completion cost was estimated to be \$65.1 billion and that a 2015 opening could be achieved on the Partial Opening Plan. The July Presentation suggested that the target opening date would not be in August 2015 but in December 2015.

5.7 According to its report, IBC understood that the focus of the July Presentation was on achieving the Project goals that had been agreed with the Government. The progress of the tunnelling sections was discussed, in relation to which the Project Team indicated that the excavation would be 100% complete by September 2014 and that all sections would be handed over to E&M works by March 2015. The Project Team also indicated that the trains would be delivered by December 2014 and the

⁷⁵ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.37 and 4.65.

stabling yards would be ready. These indications were consistent with a commencement of passenger service at the end of 2015.⁷⁶

5.8 The Select Committee notes that, in relation to WKT, however, the Project Team reported significant delays in some of the works and the DRMs being undertaken as well as how they were then prioritizing critical plant rooms and track access for Day-1 operations. Day-1 operations would include six long-haul tracks in the centre of WKT, railway facilities, station entrances, customs, immigration, quarantine, Government areas, taxi lay-by, Public Transport Interchange and pedestrian connections to Kowloon Station and Austin Station at ground level. The Project Team had informally begun to refer to the changes made to the individual components of the Project, and that notwithstanding, the Project would still achieve the overall goal under Minimum Operating Requirement ("MOR"). However, at this stage, MOR was described in just one of an approximately 20-slide presentation pack showing how the works could be prioritized.⁷⁷

Partial opening to meet Day-1 Operational Requirements

5.9 The attraction of the Partial Opening Plan to the presenter, and to the three members of ExCom to whom it was addressed, was that it would allow the Corporation to commence a limited passenger service that would be able to meet Day-1 Operational Requirements with the Government's agreement.⁷⁸

5.10 The presentation of Mr CHEW Tai-chong also highlighted shortage of labour as one of the key challenges affecting the Corporation's ability to meet the time schedule in the Project.⁷⁹

5.11 The Select Committee notes from the 1st IBC Report that at a briefing given to THB on construction progress on 23 July 2013, the

⁷⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.41 and 4.42.

⁷⁷ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.43.

⁷⁸ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.44.

⁷⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.46.

Corporation advised the Government that the target for revenue service of HKS of XRL would be December 2015. THB reminded the Corporation to use its best endeavours to deliver the Project on time and within budget.⁸⁰

5.12 At the ExCom meeting on 25 July 2013, Mr CHEW Tai-chong highlighted the fact that under the Project Cost Report for June 2013, the Project exceeded its budget projection at the time. He mentioned that an update on the Project would be given to ExCom in August 2013, followed by a paper to RDO. The then DCEO was chairing this meeting (in the then CEO's absence). Apparently no reference to the Partial Opening Plan or the meeting on 13 July 2013 was made at this ExCom meeting held on 25 July 2013.⁸¹

5.13 In the following week, at the ExCom meeting on 31 July 2013 chaired by the then DCEO (in the then CEO's absence), Mr CHEW Tai-chong reported that the shortage of workers remained a serious concern for the Corporation's ongoing projects and that the Project continued to experience challenges, but so far its costs had stayed within budget and the target opening date could still be met. The apparent contradiction between this report and Mr CHEW Tai-chong's report in the previous week regarding budget projection excess appeared not to have been commented upon.⁸²

5.14 At the Audit Committee meeting on 14 August 2013, Mr CHEW Tai-chong reported that the Project was on time and within budget, although there would be multiple challenges to overcome and DRMs to be undertaken.⁸³

⁸⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.47.

⁸¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.48.

⁸² First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.49.

⁸³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.50.

The Government first informed of the Partial Opening Plan

5.15 The Government was first informed of the Partial Opening Plan on 20 August 2013, when the Corporation made known its proposal to RDO and HyD to open HKS of XRL by the end of 2015 with six long-haul platforms/tracks in service. The outstanding balance of the works would be completed in mid-2016.⁸⁴

Partial Opening Plan not reported at the Board meeting

5.16 The Select Committee notes that, in his presentation to the Board meeting on 22 August 2013, Mr CHEW Tai-chong said that he believed that there was a programme in place to complete the key elements of the Project for opening in 2015 and within budget, although some non-essential works might have to be completed at a later date. He explained that various measures had been adopted to control costs and manage the programme, including awarding fixed-price contracts and ensuring all contracts to have on average 80% of their labour requirements. At this meeting, however, there was no mention of the Partial Opening Plan by Mr CHEW Tai-chong or any other person who had attended the meeting on 13 July 2013.⁸⁵

5.17 The Select Committee also notes from the IEP Report⁸⁶ that when Mr CHEW Tai-chong was questioned by the independent non-executive directors at the Board meeting on 22 August 2013 on the progress of the Project, he responded that the Project would be delivered on time and within budget.

5.18 The Select Committee further notes that, at the same Board meeting, one of the independent non-executive directors stressed the importance of good project management so that any issue could be identified and reported to the Government at the right opportunity, especially in light of the fact that any additional funding would require LegCo's approval. There appeared to have been no reaction to this

⁸⁴ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.51.

⁸⁵ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.52.

⁸⁶ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraph 176.

observation from Mr CHEW Tai-chong or anyone else present at the 13 July 2013 meeting.⁸⁷

5.19 At the 29 August 2013 Project Supervision Committee meeting, Mr Peter LAU Ka-keung expressed concerns on the difference between the actual progress and the planned progress of the Project, especially the progress of the WKT works.⁸⁸

5.20 At the ExCom meeting on the same day, the General Manager-XRL Tunnels presented a report headed "Projects Progress Reports for July 2013". In that report, it was stated that labour shortage was an issue common to all five of the Corporation's on-going projects. On average, there was a 20% shortfall across all contracts.⁸⁹

Challenges mounting

5.21 On 13 September 2013, a presentation (the content of which was largely the same as the July Presentation) was given by the Chief Programming Engineer of the Corporation to Mr Peter LAU Ka-keung and RDO, putting forward the Partial Opening Plan in greater detail with a target opening date set for December 2015. RDO was very concerned about the incomplete works shown by the Partial Opening Plan, but it did not make any explicit objection to the Corporation. HyD, without indicating agreement to the Partial Opening Plan, requested the Corporation to provide further information for a report to be made to THB.⁹⁰

5.22 Notwithstanding the commitment of Mr CHEW Tai-chong made at the ExCom meeting on 25 July 2013 to update ExCom on the Project in August 2013, it was in fact on 19 September 2013 that the Project Team made another presentation to ExCom (chaired by DCEO as the then CEO was away) on the Project programme and projected outturn costs.

⁸⁷ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.53.

⁸⁸ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.54.

⁸⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.55.

⁹⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.56.

The presentation included a description of the Partial Opening Plan and a reference to the target opening date in December 2015 with cost estimated at \$65.1 billion.⁹¹

5.23 The Select Committee notes that, during the presentation by the Project Team, it was explained to ExCom that there were major delays in contracts 810A, 810B and 811B which would prevent the completion of works in May 2015 as originally planned and that a partial opening would be achievable in December 2015. The programme progress and timelines were based on the assumption that the key challenges identified would be mitigated with improved productivity and efficiency. In the absence of an improvement in productivity, the Project Team warned that further delay would be expected.⁹²

5.24 The Corporation's Corporate Relations Department was asked at the meeting on 19 September 2013 to come up with a "line to take" taking into account the latest status of the Project and the briefing provided by the Project Team. This item did not appear to have been logged on the register of matters arising and followed up by DCEO in subsequent meetings or elsewhere.⁹³

5.25 During the period from July to October 2013, the delay in the Project became steadily worse. In an e-mail exchange between Mr CHEW Tai-chong and the Chief Programming Manager on 11 October 2013, Mr CHEW Tai-chong stated his concern that the opening of HKS of XRL by the end of 2015 was reaching a point of "near impossibility".⁹⁴

⁹¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.57.

⁹² First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.58.

⁹³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.59.

⁹⁴ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.60.

Professor Anthony CHEUNG Bing-leung being informed of the Partial Opening Plan

5.26 The Select Committee notes that on 22 October 2013, based on the third quarterly report on the construction progress of the cross-boundary tunnel section of HKS of XRL, the subject team in THB reported to Professor Anthony CHEUNG Bing-leung and Mr Joseph LAI Yee-tak that the cross-boundary tunnelling works continued to suffer delay. The subject team also reported that the Corporation had recently proposed to HyD a partial opening of HKS of XRL (putting in use six tracks by end-2015) and the commissioning of four more tracks in mid-2016, and that WKT and the cross-boundary tunnel section were on the critical paths of the Project and any further delay at either of these work projects might jeopardize the target commissioning date of HKS of XRL. Mitigation measures were under consideration. In view of the development, Mr Joseph LAI Yee-tak became very concerned that HKS of XRL could not commence service in 2015 and therefore requested the Corporation and HyD to provide a detailed briefing on the latest progress of the Project.

5.27 When presenting his Project Progress Report for September 2013 at the ExCom meeting on 24 October 2013, Mr CHEW Tai-chong emphasized that critical delays were occurring in contracts 810A, 810B, 811B and the Mainland section of XRL. According to the latest forecast, the first tunnel boring machine from the Mainland side would only reach the boundary at Shenzhen by the end of November 2013, which would have a significant impact on the overall timetable for completing the Project in 2015. It was also noted by Mr CHEW Tai-chong that THB had been made aware of the delay and that a further briefing would be given to THB on the latest progress. On the WKT recovery plan, it was reported that there were still issues to be overcome due to unforeseen complications.⁹⁵

5.28 At the end of July 2013, the Corporation had begun discussion with the WKT contractors and the E&M experts in relation to what a Partial Opening Plan would entail. Between July and October 2013, the Corporation's on-site team (together with the E&M team) had been

⁹⁵ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.62.

working to ascertain the critical parts of the WKT construction programme in order to decide on the essential elements of the Partial Opening Plan.⁹⁶

5.29 In October 2013, the Corporation gave the contractors the E&M mark-ups and a set of drawings which showed the footbridges and the other facilities needed for partial opening. The contractors were asked to come up with a plan on that basis.⁹⁷

Actual progress falls behind planned progress by 25%

5.30 At the Project Supervision Committee meeting on 29 October 2013, it was reported by the Corporation that the difference between the actual progress and the planned progress of the Project as at the end of September 2013 had reached approximately 25%. According to HyD's information⁹⁸, the difference was 28.3%. The Corporation further reported that there was an overall delay in the Project of about nine months and an 11-month delay in the cross-boundary tunnelling works.⁹⁹ The IEP inquiry confirmed that the Project was delayed by about nine months in general and by eleven months in respect of the cross-boundary tunnelling works.¹⁰⁰

5.31 In October 2013, the Projects Programme team updated the Schedule Risk Assessment which they had first produced in June 2013. This showed that the situation in contract 826 was deteriorating and the Project would not meet the December 2015 deadline for partial opening, as the Mainland section was three months late in reaching Hong Kong. The Schedule Risk Assessment also showed that the situation in contract 810A had worsened significantly since March 2013.¹⁰¹

⁹⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.63.

⁹⁷ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.63.

⁹⁸ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways in May 2014, LC Paper No. CB(1)1328/13-14(03).

⁹⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.64.

¹⁰⁰ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraph 189.

¹⁰¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.65.

5.32 The Select Committee notes that¹⁰² Mr Peter LAU Ka-keung, at the Project Supervision Committee meeting held on 29 October 2013, had requested the Corporation to provide information on the roadmap toward the proposed opening scenario for monitoring against the actual progress. At the following Project Supervision Committee meeting in November 2013, General Manager-XRL of the Corporation responded that "*[the] Project Team had developed a roadmap towards the proposed target opening scenario, which set down the target dates for completion of all civil works and E&M works by June 2015 for testing and commissioning.*"

Observations

Project management and corporate governance of the Corporation

The Partial Opening Plan not reported to the Board until mid-April 2014

5.33 As indicated in paragraph 4.20 of Chapter 4, the Project Team of the Corporation first began to consider a Partial Opening Plan in March 2013 due to the delay already experienced with the WKT contracts. After the workshop held on 17 April 2013, the contractor for contract 810A was requested to work on a Partial Opening Plan under which only six long-haul platforms/tracks would be operational in WKT with the relevant tunnels fully operational. It was formulated and proposed as a solution for achieving an opening of HKS of XRL in 2015 on a reduced scope.¹⁰³ It could be inferred from the necessity for such a plan that there was already a very serious overall delay in the Project at that time. Yet the existence of the Partial Opening Plan eventually formed was knowledge restricted to ExCom and not brought to the attention of the Board until mid-April 2014.

¹⁰² Report of HKS of XRL Independent Expert Panel, Annex 3 paragraph 190.

¹⁰³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.27.

5.34 The Select Committee shares IBC's view¹⁰⁴ that the Partial Opening Plan was not a unilateral solution that could be imposed on the Government under EA2. If implemented, this would represent a material change to the Project programme and would require the consent of the Government. IBC found that the failure to report the Partial Opening Plan by ExCom to the Board reflected poor judgment on the part of Mr CHEW Tai-chong, the then Projects Director of the Corporation, and Mr Jay H WALDER, the then CEO. The Select Committee considers that the failure also reflected poor judgment on the part of ExCom as a whole.

5.35 Since Mr CHEW Tai-chong and Mr Jay H WALDER declined the Select Committee's invitation to attend a hearing, the Select Committee did not have the opportunity to make enquiry on relevant matters of concern.

5.36 The Select Committee is of the view that, apart from the poor judgment of Mr CHEW Tai-chong, Mr Jay H WALDER and ExCom, the Board's governance over the Corporation's affairs was also less than satisfactory. The Select Committee notes that¹⁰⁵ the Corporation announced on 15 April 2014 that the opening date for HKS of XRL had been delayed to 2017 from an originally anticipated opening in 2015, and that the Board was only informed of such delay and its reasons for the first time at a Special Board Meeting held on 16 April 2014. It was also at this time that the Board and its Chairman first learned of the Partial Opening Plan. In the context of the history of this matter, this speaks volumes of the governance, or the lack of it, in the Corporation. The Select Committee finds this startling from a corporate governance perspective.

¹⁰⁴ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 1.31 and 1.32. The Select Committee notes Clause 8.1 of EA2. The Select Committee also notes Clause 8.2 of EA2 providing that the Corporation shall be entitled to adjust Appendix C (Entrustment Programme) to EA2 under specified circumstances.

¹⁰⁵ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 1.29.

5.37 The Select Committee observes¹⁰⁶ that within the Corporation, there were a number of matters delegated by the Board to be dealt with by ExCom without the need to refer back to the Board for approval. The Select Committee considers such a delegation without a proper and effective mechanism and system for reporting back to the Board inappropriate.

5.38 With regard to internal communication amongst ExCom, Mr CHEW Tai-chong and Mr Jay H WALDER, the Select Committee notes from the IEP Report that "*[b]y October 2011, the ExCom Reports stopped quantifying delays to overall Project and less precise statements were included.*"¹⁰⁷

5.39 The Select Committee further notes from the IEP Report that¹⁰⁸ "*[a] review of ExCom monthly progress meeting notes has identified limited discussion concerning the Project. In addition, in the ExCom Report, 'matters requiring executive action' has been blank for the 17 ExCom reports that we [IEP] have reviewed. During the Panel Meeting with Projects Director on 15 August 2014, the following was noted on his communication with the CEO/ExCom:*

'Mr Chew admitted that on three or four earlier occasions he could have made it clear to the CEO that 2015 was out of question but he had left it to the programme and writing in the monthly progress reports to tell the situation of the project.'

'He opined that there were clear indications on the problems encountered in the Project and it was up to the senior executives on what questions should be raised or asked.'"

Mr CHEW Tai-chong's assertiveness hindered frank communication

5.40 It is noted that when Mr CHEW Tai-chong was questioned by independent non-executive directors of the Board at the meetings on

¹⁰⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 1.40 to 1.47.

¹⁰⁷ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraph 170.

¹⁰⁸ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraphs 171 to 173.

22 August and 10 December 2013 on the progress of the Project, he had persistently responded that the Project would be delivered on time and within budget.¹⁰⁹ He never suggested that the cumulative effect of the contract delays, including delay in contracts 810A and 826, was making the original timetable unachievable. He also did not report fully and accurately to the then CEO, ExCom, the Audit Committee and the Board the information presented by the Project Team indicating their concerns about delivering the Project on time.

5.41 The Select Committee shares the view of IBC that Mr CHEW Tai-chong should have responded fully, frankly and unreservedly to the questions and concerns raised by the members of the Board.

5.42 Mr Jay H WALDER has indicated¹¹⁰ to IBC that, other than attending a number of ExCom meetings in which the members of the Project Team were present, he had also met with Mr CHEW Tai-chong individually and reviewed with him the status of the Project frequently, and that in those meetings, he had accepted and relied in good faith upon the assurances from Mr CHEW Tai-chong that notwithstanding the delay, the Project would still be completed by the end of 2015 on a partial opening basis. If what Mr Jay H WALDER said to IBC were true, the Select Committee finds his judgment questionable. According to paragraph 5.39, since Mr CHEW Tai-chong had told the situation of the Project in the ExCom monthly progress reports with clear indication on the problems encountered in the Project, Mr Jay H WALDER should have a good understanding of the progress status of the Project. The Select Committee considers that as head of the executive arm of the Corporation, Mr Jay H WALDER could not have relied upon the assurances given by Mr CHEW Tai-chong alone, without question and without proper, credible and verifiable evidence to show how the problems could be managed. As Mr CHEW Tai-chong stated to IEP, it was up to the senior executives (including Mr Jay H WALDER) on what questions should be raised or asked. Mr Jay H WALDER should have made independent enquiries, raised questions and sought clarification and corroboration of such assurances.

¹⁰⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 1.42.

¹¹⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 1.43.

5.43 According to the 1st IBC Report¹¹¹, when Mr CHEW Tai-chong was asked why he had not reported the concerns of the Project Team, he stated that pending a response from the WKT contractor to the Partial Opening Plan, he believed that there was still time for DRMs to effectively mitigate the delay. IBC also found it unfortunate that there had been a "chain of command" style within the Project Team as to who should do the talking such that caution and proper concerns were not openly and freely aired to qualify or challenge Mr CHEW Tai-chong's assertion that an opening for HKS of XRL in 2015 was achievable. This might have led to the failure of the Audit Committee and the Board to have been notified and the consequent lack of regular and proper enquires made on progress.

5.44 The Select Committee notes¹¹² that the then CEO stated to IBC that he was largely relying on the information and views provided by Mr CHEW Tai-chong alone. Given the then CEO's knowledge of the sustained delays in the Project, and particularly given the importance of the Project to the Government and the public, IBC believed that the then CEO should have exercised more critical judgment in supervising the progress of the Project as a whole. The Select Committee finds it difficult to believe that, in implementing such a large scale project, the Corporation seemed to merely rely on the then CEO and ExCom, who would, in turn and for so many years, merely rely upon the views fed by Mr CHEW Tai-chong alone. In reality, therefore, it would seem that one person was effectively making the important decisions relating to the Project, at least as to time and costs.

5.45 In this connection, the Select Committee notes¹¹³ IEP's comment that the Corporation's project organization arrangements were missing an independent project control function that is typical in large capital projects usually known as Programme Management Office. IEP commented that, although there was good communication among the managers within the Project Team for HKS of XRL on technical matters, overall project delays and forecast completion dates were not clearly

¹¹¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 1.45.

¹¹² First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 1.46 and 1.47.

¹¹³ Report of HKS of XRL Independent Expert Panel, paragraphs 3.9 to 3.11.

communicated in the monthly project progress reports submitted to ExCom or in the Project Supervision Committee reports submitted to HyD.

5.46 The Select Committee finds the failure of Mr CHEW Tai-chong to properly report the progress and the challenges of the Project to the Board startling and unacceptable. The Select Committee notes from the 1st IBC Report that the Board (including the Chairman) was informed for the first time at a Special Board Meeting on 16 April 2014 that the completion of the Project would be delayed to 2017 and the reasons for the delay. It was also at this time that the Board first learnt of the Partial Opening Plan.¹¹⁴ The Select Committee considers that the Board should have taken a more earnest and vigilant interest in the progress of the Project, especially after the media reports in May 2013 had articulated possible delays and cost overrun at WKT. The Board should have raised more questions with the then CEO, ExCom and the Projects Division. In light of the above, the Select Committee considers that the Board has neglected to exercise adequate supervisory functions in the Project.

Establishment of the Capital Works Committee

5.47 As indicated in Chapter 2, the Select Committee is disappointed that the non-Executive Chairman of the Board, Dr Raymond CH'EN Kuo-fung, declined the Select Committee's invitation to attend to give evidence. In view of this, the Select Committee subsequently decided to extend the invitation to any member of the Board who was familiar with the Project to attend to give evidence from the Board's perspective. Regrettably, such invitation was also declined.

5.48 The Select Committee notes from the 1st IBC Report¹¹⁵ that "[t]he Board should establish a Capital Works Committee to oversee in the future any project involving design and/or construction with a capital value of a certain material size as assessed by the Board". This recommendation seems to suggest, perhaps with the benefit of hindsight,

¹¹⁴ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 1.29.

¹¹⁵ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 6.5 and 6.6.

that there was inadequacy in the past and the proposed establishment of a Capital Works Committee under the Board would provide a remedy for the future. The Select Committee also notes that the Capital Works Committee would have to report to the Board on a quarterly basis on progress of projects and their respective budgets. It was the view of IBC that the role of the Capital Works Committee was not to manage projects but to provide oversight and review to the Board in relation to project progress.

5.49 The Select Committee notes that IBC has also reviewed the format and the content of future project reporting by ExCom to the Board and the Audit Committee. This is to ensure that the Board would be provided with clear and comprehensive information regarding ongoing projects and be advised of critical challenges as well as financial reporting in each project.

5.50 The Select Committee finds it unacceptable that for a public company providing railway service to more than 5 million passenger rides per day¹¹⁶, having vast experience in construction of railways and being entrusted with the task of building the world's first underground high-speed rail, Mr CHEW Tai-chong appeared to be the only person having overall charge of the Project and the Board and the senior management simply relied on his take on the status of the Project, without more. The Select Committee does not see any effective check and balance in this respect. As a corollary, the Select Committee finds that the Board should take a measure of criticism for failing to supervise ExCom and the senior management diligently and effectively in delivering the Project according to EA2.

Project management of the Corporation

5.51 The Select Committee notes that IEP criticized the project management of the Corporation as lacking in robustness¹¹⁷. The Select Committee has examined this issue.

5.52 According to the evidence of Mr Lincoln LEONG Kwok-kuen, CEO of the Corporation, the Corporation's project management systems

¹¹⁶ Source: <http://www.mtr.com.hk/en/corporate/investor/patronage.php>

¹¹⁷ Report of HKS of XRL Independent Expert Panel, paragraph 6.1.

and procedures were set out in the Corporation's Project Integrated Management System and Procurement and Contracts Procedures documents. These documents covered all project delivery areas including programme management, design management, construction management, safety management, environmental management, cost management, procurement, contract administration and reporting. They were designed to operate in accordance with recognized international standards on safety, quality, and risk and asset management, as well as internationally recognized good practices.

5.53 Mr Lincoln LEONG Kwok-kuen also pointed out in his statement to the Select Committee that Jacobs performed a total of over 250 audits between January 2010 and April 2014. The audit reports from Jacobs disclosed no significant deficiencies other than certain observations such as opportunities for improvement (mainly in relation to safety reporting on near misses) and updating of contractor submissions in method statements, in relation to which improvement actions were taken.

5.54 Further, Mr Lincoln LEONG Kwok-kuen quoted paragraph 5.3 of the 1st IBC Report in his statement to the Select Committee that IBC had *"not identified any systemic flaw in the engineering aspects of the project management process which would suggest that [the project] delays should have been avoided or could reasonably have been handled better."*

5.55 Nevertheless, according to IEP, the Corporation's project management systems and practices, which had worked well on projects with less complex interfaces, have come under severe stress in the Project. This was primarily due to the complexity of contract interfaces and the multiple delays in adjacent contracts.

Communication channels not effective enough

5.56 The Select Committee notes the comment of IEP¹¹⁸ that *"although there were good communications among the managers within the XRL Project Team on technical matters, overall project delays and forecast completion dates were not clearly communicated in the monthly*

¹¹⁸ Report of HKS of XRL Independent Expert Panel, paragraphs 3.9 to 3.11.

project progress reports (submitted to the [Corporation]'s ExCom) or Project Supervision Committee reports (submitted to the Highways Department). As a result, the interpretation of the likelihood of achieving the planned project completion date relied on the judgment of the Projects Director [Mr CHEW Tai-chong]."

5.57 The Select Committee further notes from the statement of Professor Anthony CHEUNG Bing-leung that, according to the Corporation's own submission to Railways Subcommittee in May 2014 and from its 2nd IBC Report, Project Supervision Committee was not given an accurate picture of the prognosis for the Project as a whole by the Corporation so that Project Supervision Committee was unable to make timely decision on the critical delay in the Project.

5.58 At the hearing on 28 April 2015, Mr YAU Shing-mu informed the Select Committee that even the senior management of the Corporation failed to have an accurate picture of the Project, and that the Corporation had not disclosed all the necessary information, including the progress of the Project, to the Government.

5.59 The Select Committee has reservations on whether the senior management of the Corporation and the Board had used their best endeavours to monitor and supervise the Project. The Select Committee considers that the senior management of the Corporation and the Board should have coordinated various parts of the Project at a higher level and made proper enquiries on the progress of the Project at different stages instead of relying solely on the report and assurances made by the Project Team headed by Mr CHEW Tai-chong.

DRMs not so effective at certain sites

5.60 In Chapter 4, the Select Committee has examined the effectiveness of some DRMs adopted by the Corporation to mitigate the project delay. The Select Committee notes the successful examples of DRMs used in contract 823A and contract 802, as set out in paragraphs 4.77 and 4.78 in Chapter 4. The Select Committee notes that initially, the DRMs implemented were able to recover the delays in certain contracts. These successes and past successful experience might have boosted the confidence of the Project Team and Mr CHEW Tai-chong in recovering the cumulative delays in the Project by means of DRMs.

5.61 The Select Committee notes from the evidence of Mr Peter LAU Ka-keung that, under contract 811B (West Kowloon Terminus Approach Tunnel (South)), the original plan was to divert Jordan Road northward on top of the completed diaphragm wall at north of Jordan Road, thus allowing the diaphragm wall within the existing alignment of Jordan Road to be constructed. However, the construction of the diaphragm wall at north of Jordan Road was delayed due to unfavourable ground conditions, such as core stones. If no DRM was taken, the Jordan Road northward diversion would be delayed for about eight months from December 2011 to July 2012.

5.62 In view of this, the Corporation presented a DRM proposal to Project Control Group on 29 September and 6 October 2011, proposing to move Jordan Road to the south allowing the contractor to take up the major portion of the original space of Jordan Road to construct the underground diaphragm wall and, at the same time, continue to complete the construction of the diaphragm wall at north of Jordan Road. HyD provided comments on the proposed DRM with particular concerns on its effectiveness and requested the Corporation to submit further assessment of its impact to the construction sites nearby.

5.63 Since the Project Supervision Committee meeting held in September 2011, HyD raised concerns on the implementation of the Temporary Traffic Management Scheme and requested the Corporation to regularly report on progress. HyD and the M&V consultant inspected the site regularly in order to monitor the progress after the Temporary Traffic Management Scheme's implementation in February 2012. It was intended that the construction of the diaphragm wall panels at the northern part of WKT could be brought forward by about six months.

5.64 It is noted from the evidence of Mr Peter LAU Ka-keung that since then, adverse ground conditions had further affected the bulk of the excavation works in both contract 811B and contract 810A (WKT(North)), and the overall delays in these two contracts accumulated. The Corporation subsequently proposed other mitigation measures to address the problems.

5.65 The Select Committee finds that unfavourable ground conditions had the effect of reducing the effectiveness of the DRMs adopted. The Select Committee notes that IEP found instances where the Corporation had been over-optimistic about the viability of the proposed DRMs. IEP,

in particular, pointed out that the Partial Opening Plan had assumed the workability of certain perceived time-saving benefits before their viability could be determined.¹¹⁹ Further, the Select Committee notes IEP's comment that, despite the heavy reliance on DRMs to bring the overall Project back on track, it has found no evidence that the Corporation had any process for measuring the benefits of DRMs.¹²⁰

5.66 Further, at the hearing on 10 November 2015, Mr Anthony J W KING told the Select Committee that they had reported at certain stages that, despite the implementation of DRMs, the Project's progress was still slipping. Mr Anthony J W KING also said, "*...we reported to HyD through our monthly reports, at monthly meetings and through our review reports; and we reported the delays, the escalating delays, and then some assessments of what those delays would mean for the end date of the project*".

5.67 The Select Committee notes the comment from the joint statement of Mr Anthony J W KING and Mr William NG Siu-kee on the DRMs taken in March 2012, "*[t]here is no sign yet that the situation will improve, nor that Delay Recovery Measures instructed and Supplemental Agreements implemented to date have started to have any meaningful impact*".

5.68 The Select Committee notes from IEP¹²¹ that Jacobs had reported delays in individual construction contracts and had estimated the impact on the overall project programme in its monthly reports to HyD. From December 2011 (and at monthly intervals thereafter), Jacobs alerted HyD that delays in individual construction contracts were likely to threaten the overall project completion date. Starting from May 2012, Jacobs recommended that the Corporation should "*undertake a complete appraisal of the overall project programme and the current delay situation*".

5.69 The Select Committee observes that when the Project encountered challenges, the Corporation would make efforts to speed up progress through the use of DRMs. The Select Committee observes that

¹¹⁹ Report of HKS of XRL Independent Expert Panel, paragraph 3.17.

¹²⁰ Report of HKS of XRL Independent Expert Panel, paragraph 3.18.

¹²¹ Report of HKS of XRL Independent Expert Panel, paragraph 4.10.

nevertheless, even with the implementation of DRMs, there were still signs of a widening gap between the actual and the planned progress of the Project according to the reports made to Project Supervision Committee from June 2010 to April 2014. According to the chart presented in paragraph 6.46 in Chapter 6, the differences between the actual and the planned progress as of January in 2011, 2012, 2013 and 2014 were 0.9%, 4.9%, 14.7% and 30.7% respectively. Given these data, the Select Committee considers that the DRMs deployed were unable to avert the delay in the programme or to narrow the widening gap between the actual and the planned progress, which seemed to have become a systemic trend.

5.70 The Select Committee notes from the 2nd IBC Report¹²² that, at the interviews, *"the Project Team acknowledged that in hindsight [the Corporation] should have renegotiated the opening date instead of relying on schedule compression."* It also notes from the same report that *"[w]hilst the proposed DRMs were undertaken in good faith with the clear objective of recovering delays and completing the Project by 2015, in hindsight and taking into account the on-going effect of other delay events, the DRMs implemented were insufficient to finish the Project by 2015."* The Select Committee shares these views.

Whether labour shortage led to delay in the Project

5.71 The Select Committee has examined the issue of whether labour shortage had contributed to the project delay. Both the Corporation and Mr Peter LAU Ka-keung claimed that labour shortage was one of the factors contributing to the delay in the Project.

5.72 The Select Committee notes from the IEP Report¹²³ that the Corporation had foreseen early in the Project that the manpower requirement was expected to reach a peak of about 11 000 workers in 2013, including 9 200 construction workers and 1 800 technical and professional staff. Mr CHEW Tai-chong also reported to the Board on 9 July 2010 that staff recruitment was generally satisfactory and there was

¹²² Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraphs 3.13 and 3.30.

¹²³ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraphs 293 to 296.

no problem in hiring senior staff, and that the supply of local construction workers might be a concern in future. However, the Corporation's half-yearly reports to Railways Subcommittee covering June 2010 to June 2012 suggested that the Project seemed to have met its planned staffing levels for technical and professional staff during the period, but they also showed that the levels of construction workers fell short of the planned levels in June 2011 and June 2012 by 7.7% and 13% respectively.

5.73 The IEP Report¹²⁴ further commented that *"the XRL Project and the current expansion of the Hong Kong rail network have been handicapped by a shortage of skilled labour. [The Corporation] was aware of this problem from the outset of the XRL Project."* The Select Committee also notes from the IEP Report, quoting the 2009 report by Arup and Atkins which had warned that *"construction resources, particularly skilled labour...are no longer available in the same quantities as was the case during the last major expansion of infrastructure that took place"*.

5.74 In July 2013, when Mr CHEW Tai-chong presented the Partial Opening Plan to the then CEO, DCEO and FD, he highlighted labour shortage as one of the key challenges affecting the Corporation's ability to meet the Project's programme schedule.¹²⁵ Mr Peter LAU Ka-keung also mentioned labour shortage as one of the reasons accounting for the delay in the Project.

5.75 Mr Lincoln LEONG Kwok-kuen expressed in his statement to the Select Committee that *"the acute shortage of labour has had a significant impact on the project. This is an industry wide factor that has impacted on all projects in Hong Kong. The Corporation was aware that we would face challenges in this area, although the extent of those challenges has been greater than foreseen at the time the original programme was developed"*.

¹²⁴ Report of HKS of XRL Independent Expert Panel, paragraph 2.11.

¹²⁵ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.46.

5.76 Mr Lincoln LEONG Kwok-kuen said that the Corporation had introduced various mitigation measures to deal with the labour shortage issue, for instance:

- (a) active engagement with the Government and the Construction Industry Council on the enhancement of the Supplementary Labour Supply Scheme and the construction-related training schemes;
- (b) holding job fairs;
- (c) improving work conditions (e.g. introduction of a life insurance scheme for contractors' site workers, provision of free health check services); and
- (d) incorporating additional requirements in work contracts relating to safety and welfare issues, employment of apprentices and graduate engineers and training.

5.77 Mr Lincoln LEONG Kwok-kuen said that despite these measures, labour shortage had significantly impacted a large number of third party contracts. Civil works contractors in the Project had reported a shortage of labour averaging around 20% on a monthly basis for the period between January 2013 to April 2014 (monthly average of 4 894 actual against 6 135 planned). Mr Lincoln LEONG Kwok-kuen informed the Select Committee that the problem was especially acute with regard to skilled labour, specialist tunnel workers and frontline supervision. Particular trades had reported an average shortage of over 60% in the last year.

5.78 Dr Philco WONG Nai-keung, Projects Director of the Corporation, stated that *"a significant shortfall in skilled labour and frontline supervision has caused, or contributed to, production rates falling short of programme plans across many of the contracts."* Dr Philco WONG Nai-keung also informed the Select Committee at the hearing on 15 December 2015 that *"in the most recent few months, the Project is short of 6 to 8 % workers, i.e. about 300 workers. Since it will take about 6 to 8 months to apply for import of labour through the Supplementary Labour Scheme, such a long process could not fit well our works programme. At the present moment (i.e. December 2015), we are still suffering from shortage of labour"*.

5.79 Dr Philco WONG Nai-keung further explained at the hearing that the Corporation had to undergo a series of procedures in applying for import of labour. For instance, they had to try to recruit workers from the local labour market first, having failed to find suitable workers, they then had to provide the number of workers, the trade to which they belonged, the level of wages offered and the other arrangements to the Labour Department in the application.

5.80 When asked whether HyD had provided assistance in this respect at the hearing, Dr WONG said that HyD had provided assistance in getting workers through the Supplementary Labour Scheme and, as a result, the relevant time required was shortened. But he said it would still take about five to six months to successfully get the workers in place, and each case differed from another.

5.81 In an e-mail on 6 December 2013, shortly before Mr CHEW Tai-chong was due to meet the Labour Department (with RDO), the Chief Programming Manager expressed his concern on the labour shortage as follows:¹²⁶

- (a) Age of workers and hence consequential lack of productivity;
- (b) Lack of frontline supervision;
- (c) Lack of new blood or continuous inflow of workers to maintain a core of experienced workers; and
- (d) Lack of skilled workers, general labour used for skilled trades.

5.82 The Select Committee also observes that the Corporation and the Government have tried to work together to resolve the problem. The solution, however, seemed not to have come timely enough to raise productivity at the sites where it was greatly needed to recover delay. Given the serious labour shortage in some trades and the ageing problem within the construction industry, the Select Committee considers that

¹²⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.87.

some of the DRMs proposed by the Corporation involving additional labour would unlikely be effective.

5.83 The Select Committee considers that, if the Corporation and the Government had anticipated labour shortage back in 2009 before the signing of EA2, they should have taken early measures to address the problem, such as stepping up training of the local workforce to increase the supply of skilled labour and streamlining the procedures required by the Supplementary Labour Scheme to expedite the import of labour (if necessary) to meet the manpower demand of the Project. Since the Government had the overall picture of labour supply through the Construction Workers Registration System, it had a greater responsibility than the Corporation for lack of foresight of the impact of labour shortage on the construction of the Project, in particular, when the Government had decided to implement five railway projects in parallel with construction commencing between 2009 and 2012 and completing between 2014 and 2020.

5.84 The Select Committee considers that, in future, when a major infrastructure project is to be undertaken by the Government, manpower resources, in particular, the maintenance of a core skilled and experienced workers and frontline supervisors, must be given a more meticulous consideration and effective measures should be in place to ensure a continuous and steady supply of labour throughout the implementation of the project.

Part II Findings

Chapter 6 Very Difficult Stage (November 2013 to April 2014)

6.1 In this Chapter, reference to "Very Difficult Stage" covers various incidents that took place between November 2013 and April 2014 when the Government and the Corporation announced the project delay. It also sets out the Select Committee's observations on the causes of the project delay, as well as the deficiencies of the Government and the Corporation in respect of the monitoring and delivery of the Project in various aspects.

Key dates for the "Very Difficult Stage"

Date	Events
7 November 2013	Mr CHEW Tai-chong, the then Projects Director of the Corporation, wrote to the General Managers in the Project Team proposing that, if there were serious doubts on the commencement of service operation by December 2015, he wanted to have a plan to first inform the Board and the executives.
8 November 2013	The Project Team gave a presentation on partial opening to Mr Joseph LAI Yee-tak, Permanent Secretary for Transport and Housing (Transport); Ms Rebecca PUN Ting-ting, Deputy Secretary for Transport and Housing (Transport) ¹ ; Mr Peter LAU Ka-keung, Director of Highways, and RDO. THB raised the concern that, if testing could only commence in October 2015 as proposed, it was unlikely that HKS of XRL could commence operation by the end of 2015.

- 20 November 2013 Professor Anthony CHEUNG Bing-leung was briefed by HyD about the possibility that HKS of XRL might only commence passenger service operation after 2015 due to delay in the cross-boundary tunnelling works.
- 21 November 2013 Mr Jay H WALDER called Professor Anthony CHEUNG Bing-leung to express his disagreement on informing Railways Subcommittee that the 2015 completion target could not be met.
- 21 November 2013 Professor Anthony CHEUNG Bing-leung directed that an urgent meeting should be held the same day amongst THB (led by Mr Joseph LAI Yee-tak), Mr YAU Shing-mu, HyD and the Corporation (led by the then CEO).
- 22 November 2013 At the Railways Subcommittee meeting, the Government stated that, based on the latest assessment of the Corporation, the major works of HKS of XRL could be completed within 2015. Thereafter, testing and trial runs would be conducted and this would normally take six to nine months.
- 19 December 2013 The Chief Programming Manager of the Corporation sent an updated Schedule Risk Analysis report to the General Manager of the Project, copied to Mr CHEW Tai-chong, stating that WKT could not be opened within 2015 even on a partial opening basis and suggesting an opening date in May 2016.
- 7 March 2014 In a programme status presentation given by the Project Team to Mr CHEW Tai-chong, the slides in the presentation showed the overall programme outlook and set January 2017 as the target month for the completion of the railway works and April 2017 as the target month for revenue operation.

- 30 March 2014 A black rainstorm of exceptional intensity led to serious flooding at the Yuen Long Tunnel.
- 15 April 2014 Professor Anthony CHEUNG Bing-leung informed the public that he had received verbal notification from the Corporation that the completion of HKS of XRL would be delayed. The Corporation subsequently held a press conference and stated that the completion date of HKS of XRL would be postponed to 2016 for operation in 2017.

Chronology of developments

Target to complete the Project by August 2015 became difficult or impossible to achieve

6.2 The Select Committee notes from the 1st IBC Report¹²⁷ that, starting from November 2013, the target to complete the Project by August 2015 had become well nigh difficult, if not impossible, to achieve, as shown in the internal communications of the Corporation below:

- (a) On 7 November 2013, Mr CHEW Tai-chong, the then Projects Director, wrote to the General Managers in the Project Team: *"The figures and achievement by each contract remain a serious concern. I am sure you have a plan or a DRM or two to secure the recovery to what we have committed in July to CEO of our Minimum Operating Requirement for Day-1 operation by December 2015. If we are now in serious doubt about this commitment, I want to be sure that we have a plan to first inform of Board and Executive ASAP..."*¹²⁸

¹²⁷ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.66, 4.71 and 4.72.

¹²⁸ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.66.

- (b) On 11 November 2013, Mr CHEW Tai-chong wrote: *"Further to my e-mail [of 7 November...], I have had a number occasions trying to come to some clearer understanding with all the progress and challenges associated with XRL [sic]. But I have totally failed. We have presented to our CEO and Executives in July indicating that we can make December 2015. A similar presentation was given to Perm Sec (Transport) last Friday. As you know, many of our planned target and production rate have failed to materialise and if anything, the pressure on our cost/contingency is increasing..."*¹²⁹
- (c) On 14 November 2013, a memorandum from the Chief Programming Manager to the Projects Director confirmed that the opening would likely be delayed to about April or May 2016, even on a partial opening basis. In his cover e-mail, the Chief Programming Manager stated: *"We need a major turnaround of events on 810A to Open to Public MOR in mid 2016 and complete all external works within a 2016 time frame."*¹³⁰

The Government contemplated making public the project delay

6.3 On 8 November 2013, HyD (represented by Mr Peter LAU Ka-keung) and the Corporation (represented by Mr CHEW Tai-chong) briefed Mr Joseph LAI Yee-tak and other THB officers on the latest position of the Project. The Corporation presented the progress of the works of HKS of XRL, including WKT and the contract 826 (Hong Kong/Shenzhen boundary to Mai Po) tunnelling works. At the meeting, the Corporation stated that WKT would be ready for partial opening by December 2015. They explained that, even with only six tracks in operation in this interim period, it would be sufficient to meet early demand. As for the contract 826 tunnelling works, they could only be completed by October 2015 and the testing (which would normally take three months) could only commence from October 2015. As it would

¹²⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.71.

¹³⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.72.

take another three months to conduct trial runs, the target opening date of end-2015 might be affected.

6.4 Mr Joseph LAI Yee-tak informed the Select Committee that it was at this meeting that the Corporation first formally put to THB the proposed Partial Opening Plan. At that meeting, the Corporation maintained that, notwithstanding the delay with the tunnelling works, HKS of XRL could still commence service in 2015 in a partial opening scenario. Mr Joseph LAI Yee-tak informed the Select Committee that as he considered that it was necessary for the Government departments, including HyD and Transport Department, to examine the feasibility of the proposal, he did not confirm whether the proposed partial opening was acceptable to the Government. He further queried whether and how the proposed partial opening would help, given that the slow progress of the tunnelling works remained a major obstacle. He pointed out to the Corporation that, if the testing of HKS of XRL could only commence from October 2015, it was unlikely that HKS of XRL could start operation by the end of 2015. If that were the case, the public should be informed as soon as possible.

6.5 A similar briefing was conducted by Mr Peter LAU Ka-keung for Professor Anthony CHEUNG Bing-leung on 20 November 2013. Professor Anthony CHEUNG Bing-leung informed the Select Committee in his statement that as HKS of XRL was controversial, he considered that the Government should come clean if there was a possibility that the target of 2015 could not be achieved. Based on the assessment of the work progress then, he contemplated making it public at the Railways Subcommittee meeting scheduled for 22 November 2013 that HKS of XRL might only commence operation after 2015 and explaining the latest progress in construction and the actual challenges encountered.

The telephone calls on 21 November 2013, the day before the Railways Subcommittee meeting on 22 November 2013

6.6 The Select Committee notes that in the morning of the following day (i.e. 21 November 2013), Mr Jay H WALDER spoke with Professor Anthony CHEUNG Bing-leung over the telephone expressing his disagreement on informing Railways Subcommittee that the target for commencing operation in 2015 could not be met. According to paragraph 4.78 of the 1st IBC Report, Mr Jay H WALDER expressed the Corporation's concern that any such announcement would compromise

the Corporation's leverage to put pressure on the contractors to meet the timetable. The Select Committee notes from Professor Anthony CHEUNG Bing-leung's statement that, in response, he told Mr Jay H WALDER that the decision had been made after taking into account Mr CHEW Tai-chong's advice on the progress of HKS of XRL. Mr Jay H WALDER later telephoned Professor Anthony CHEUNG Bing-leung again and stressed that, after consulting Mr CHEW Tai-chong, it was still feasible to complete all the necessary works to enable HKS of XRL to commence operation by the end of 2015.

The urgent meeting in the evening of 21 November 2013

6.7 Professor Anthony CHEUNG Bing-leung informed the Select Committee that, as a result of the telephone conversation in the preceding paragraph, he had asked Mr Joseph LAI Yee-tak to convene an urgent meeting with the Corporation on the same day, i.e. 21 November 2013.

6.8 The Select Committee notes that at the meeting on 21 November 2013, Mr Joseph LAI Yee-tak, Mr YAU Shing-mu, Mr Peter LAU Ka-keung, Mr Henry CHAN Chi-yan (Head of RDO), and three other government representatives were present. The Corporation's representatives included Mr Jay H WALDER, Mr CHEW Tai-chong, Dr Jacob KAM Chak-pui, Operations Director, Mr Antonio CHOI Fung-chung, the former General Manager (XRL), and another representative. Jacobs was not present at the meeting.

6.9 The Select Committee notes that, at the meeting, the Corporation emphasized that it was imperative that the target completion in 2015 should be maintained, lest the Corporation would lose its leverage to press its contractors to complete the Project on time. The Corporation indicated at the meeting that it was still possible for HKS of XRL to be completed and to commence operation within 2015. THB pointed out that, according to an earlier briefing by the Corporation, HKS of XRL was experiencing problems at WKT and in the cross-boundary tunnelling works. THB queried that, even if the partial opening scenario for WKT were adopted, HKS of XRL could not commence operation if the

tunnelling works of contract 826 could not be finished in time¹³¹. THB queried why the Corporation should still take the view that HKS of XRL could be completed and commissioned in 2015. The Corporation responded that it was trying hard to identify solutions to meet this target and, at the very least, a single-track operation¹³² was possible. It was explained to the Corporation that a single-track operation would not satisfy the Government's requirements and was unacceptable. THB reiterated that while it appreciated that the Corporation needed to use the 2015 target as leverage with its contractors to expedite the works, the Government required a realistic assessment and should alert the public immediately if the 2015 target was not achievable. THB said that based on the Corporation's latest information, HKS of XRL would only be ready for testing in October 2015 and queried whether HKS of XRL could be commissioned in time within 2015. It was noted that there was delay in the cross-boundary tunnelling works and such delay would eat into the time for the tunnelling works on the Hong Kong side of the boundary, thus posing challenges to the Corporation. The Corporation responded that it would be in a position to assess the impact once the cross-boundary tunnelling works had been completed on the Mainland side and works had begun on the Hong Kong side.

6.10 THB cautioned the Corporation not to over-state its ability to overcome the challenges. To this Mr CHEW Tai-chong responded that without the single-track option, the Corporation would look at other ways to recover the delays (e.g. by bringing in an additional tunnel boring machine). While he was confident that this could be achieved over the next two years, he stated that the Corporation would be able to give a better picture in six months after the cross-boundary tunnelling works had commenced on the Hong Kong side.¹³³

6.11 The Corporation requested the Government to give it six months before making judgment on whether HKS of XRL could be completed by

¹³¹ The construction works of the Project can be grouped into two categories, namely WKT and the Approach Tunnels which are constructed by cut-and-cover method, and the 26 km tunnel.

¹³² Single track operation scenario is to use a single tunnel for the northbound and southbound trains, running alternatively between WKT and the boundary of the Mainland.

¹³³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.81.

2015. After much discussion, it was eventually concurred at the meeting that while the target completion of 2015 should be maintained at that stage, the Government and the Corporation should be upfront with the challenges faced by the Project when attending the Railways Subcommittee meeting on the following day. Meanwhile, the Corporation was asked to provide the Government with a clear roadmap on how the target could be met.

The Railways Subcommittee meeting on 22 November 2013

6.12 At the Railways Subcommittee meeting on 22 November 2013, Mr YAU Shing-mu, heading the Government team, stated that based on the latest assessment of the Corporation, the major works of HKS of XRL could be completed within 2015. Thereafter, testing and trial runs would be conducted. In response to an enquiry from the Railways Subcommittee Chairman, Mr YAU Shing-mu said that the testing and trial runs normally would take about six to nine months. HKS of XRL would only come into operation after the relevant authorities had approved the test results on the safety and reliability of the service.

6.13 According to the 7th half-yearly report presented to Railways Subcommittee, the Government indicated that "*[w]e will continue to monitor the progress of the project to ensure that it is within the approved budget and will be completed as scheduled with high quality.*"¹³⁴

The Board meeting on 10 December 2013

6.14 The Select Committee notes that after the Railways Subcommittee meeting on 22 November 2013, the Board held a meeting on 10 December 2013. Professor Anthony CHEUNG Bing-leung, being a non-executive Director of the Board, mentioned that the actual opening date of HKS of XRL would depend upon the completion date of the construction works, given the six-month period required for testing and trial runs. Mr CHEW Tai-chong gave his Half Yearly Update of New Railway Projects presentation which included an update on the progress of the Project. He made a general statement that the project works were

¹³⁴ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)81/13-14(01).

managed with necessary mitigations, coupled with recovery plans in case of programme delay. The Select Committee notes from IEP¹³⁵ that the other Board members had put questions to Mr CHEW Tai-chong on the Project cost and progress, and Mr CHEW Tai-chong confirmed that "*XRL Project works would be completed by end of 2015.*"

6.15 The Board also asked questions regarding the budget (covering management of claims) and completion was also discussed¹³⁶. In response to a direct question from an independent non-executive director, Mr CHEW Tai-chong confirmed that the Project would be completed by the end of 2015. None of the other members of ExCom present or anyone else present with knowledge of the Partial Opening Plan challenged or qualified this statement made by Mr CHEW Tai-chong or mentioned the Partial Opening Plan to the Board. Another independent non-executive director¹³⁷, on the back of this dialogue, stressed the importance of keeping LegCo informed of any development which could have an impact on the budget for the Project.

Mr CHEW Tai-chong came to know that commissioning of WKT within 2015 was impossible even on a partial opening basis

6.16 The Select Committee notes that, on 19 December 2013, the Chief Programming Manager sent an updated Schedule Risk Analysis report to the General Manager of the Project, copied to Mr CHEW Tai-chong, stating that WKT could no longer be opened within 2015 even on a partial opening basis and suggesting an alternative opening date in May 2016. The actual progress of the Project by the end of December 2013 was reported as 51.34% complete against the planned progress of 81.41% in the original programme.¹³⁸

6.17 On 19 February 2014, the Project Team of the Corporation received an informal and incomplete response from the contractor of contract 810A in relation to the Partial Opening Plan which the Corporation had supplied to the contractor in October 2013. The

¹³⁵ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraph 177.

¹³⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.89 and 4.90.

¹³⁷ Mr Abraham SHEK.

¹³⁸ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.91.

response indicated that according to the contractor's calculations, even with the proposed partial opening, there would be no track access until June 2016.¹³⁹

6.18 The opening date was further revised to mid-2017 in a programme status presentation given by the Project Team to Mr CHEW Tai-chong on 7 March 2014; the slides in the presentation showed the overall programme outlook and set January 2017 as the target month for completion of the railway works and April 2017 as the target month for revenue operation.¹⁴⁰

6.19 However, in the RDO/HyD coordination meetings held from January to March 2014, the Corporation maintained that the Project remained on target for completion in 2015.¹⁴¹

Two significant events at the end of March 2014

6.20 Two events occurred at the end of March 2014. The first was a black rain storm in the night of 30 March 2014, and its aftermath; the second was a formal presentation by the contract 810A contractor on 31 March 2014 regarding the construction progress at WKT.¹⁴²

6.21 On 31 March 2014, the contract 810A contractor gave a presentation to the Corporation in relation to the Partial Opening Plan, showing that access for track-laying would not be available in December 2015 and through 2016, and that a completion of contract 810A's scope of work would only take place in 2017. Hence at least one of the critical paths which the Partial Opening Plan had relied upon was unworkable. Mr CHEW Tai-chong indicated that the entire Project completion schedule should be re-assessed ignoring partial opening.

¹³⁹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.96.

¹⁴⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.99.

¹⁴¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 4.92 and 4.100.

¹⁴² First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.102.

Implementation progress of the Project in April 2014

6.22 At the 44th Project Supervision Committee meeting held on 2 April 2014, the Corporation reported that the actual progress of the Project was 54.8% complete against the planned progress of 85.5% in the original programme. At the meeting, the Chairman (Mr Peter LAU Ka-keung) expressed concerns on the significant programme slippage and asked whether the target completion in 2015 was still attainable. The Corporation replied that they were reviewing the overall picture of project delivery and would give a presentation to Mr Peter LAU Ka-keung in May 2014.¹⁴³

6.23 The Select Committee notes that, at the above meeting, the Corporation reported a serious flooding incident concerning the Tai Kong Po to Tse Uk Tsuen tunnels, which had caused the submersion of a tunnel boring machine in flood water. The Corporation said that the contractor was assessing the damage and would make use of any available spare parts for replacement if the machine was repairable. The Corporation and the contractor were also looking into the feasibility of contingency plans. The Chairman requested the Corporation to report on the detailed findings of the incident and their assessment on the associated cost and time implications when available.

Announcement of the project delay

6.24 Professor Anthony CHEUNG Bing-leung informed the Select Committee that at around noon on 12 April 2014 when he was out of town, Mr Jay H WALDER called to inform him that the construction work of HKS of XRL could only be completed by the end of 2016 and that service could only be commissioned in 2017. More details had yet to be ascertained. According to Professor Anthony CHEUNG Bing-leung, he was shocked by the news as there was a two-year gap between the new and the original target and it had been projected by the Corporation at the 21 November 2013 meeting that HKS of XRL would be opened in 2015. He immediately contacted his staff after the telephone conversation. Ms Rebecca PUN Ting-ting, Deputy Secretary for Transport and Housing (Transport)¹, informed Professor Anthony

¹⁴³ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1328/13-14(03), Annex G.

CHEUNG Bing-leung that she had also just received the same news from Mr CHEW Tai-chong who had telephoned Mr Peter LAU Ka-keung and her in the afternoon of that day. Professor Anthony CHEUNG Bing-leung asked her to get in touch with Mr Peter LAU Ka-keung to find out more.

6.25 In the morning of 13 April 2014, the Chairman of the Corporation, Dr Raymond CH'EN Kuo-fung, called Professor Anthony CHEUNG Bing-leung with regard to the delay. Both of them agreed that the Government and the Corporation should inform the public as soon as possible. They also agreed to have an urgent meeting on 14 April 2014 when Professor Anthony CHEUNG Bing-leung would be back in the office.

6.26 On 14 April 2014, an urgent meeting was held at THB attended by, amongst others, Dr Raymond CH'EN Kuo-fung, Mr Jay H WALDER and Mr CHEW Tai-chong. Professor Anthony CHEUNG Bing-leung requested the Corporation to provide a full assessment report on the construction progress including a full and proper account for the substantial delay. He also instructed Mr Peter LAU Ka-keung to provide him with an independent review and assessment of the construction progress of HKS of XRL, including an assessment of the reasons for the substantial delay.¹⁴⁴ At the meeting, it was agreed that Professor Anthony CHEUNG Bing-leung and the Corporation should inform the public on the following day, and make a report to Railways Subcommittee at the meeting originally scheduled for 2 May 2014 to explain the situation.

6.27 On 15 April 2014, Professor Anthony CHEUNG Bing-leung informed the public via the media that he had received verbal notification from the Corporation that the completion of HKS of XRL would be delayed, and that he had requested the Corporation to submit a full assessment report. At the same time, he had also requested Mr Peter LAU Ka-keung to conduct an independent review and assessment of the construction progress. The Corporation subsequently held a press conference and stated that the completion date of HKS of XRL would be

¹⁴⁴ The review report by HyD is attached in Annex C of the paper submitted by the Government to the Subcommittee on Matters Relating to Railways for the meeting on 5 May 2014, LC Paper No. CB(1)1328/13-14(03).

pushed back to 2016 for operation in 2017. Copies of the press releases of the Government and the Corporation appear in **Appendices 1 and 2** respectively.

6.28 Railways Subcommittee subsequently held two meetings on 5 May and 19 May 2014 to discuss the matter and conducted a site visit to WKT on 28 April 2014. The Government also submitted a paper to Railways Subcommittee¹⁴⁵ providing information on the latest position of the Project as at the end of March 2014.

Observations

Progress of the Project not fully reported to the Government by the Corporation

6.29 As revealed by the internal communications of the Corporation in November 2013 mentioned in paragraph 6.2 above, the Select Committee observes that the target to complete the Project by August 2015 had become impossible to achieve, even if HKS of XRL was to operate on a partial opening basis. However, the Corporation assured the Government on 21 November 2013 that it was still feasible to complete all the necessary works to enable HKS of XRL to commence operation by the end of 2015.

6.30 Professor Anthony CHEUNG Bing-leung informed the Select Committee in his statement that *"Now, from [the Corporation's] own submission to [Railways Subcommittee] in May 2014 and from its Independent Board Committee (IBC) Report of October 2014 that:*

- (i) *as early as February 2013 [the Corporation's] Projects Director was citing "critical" delays with WKT construction;*
- (ii) *despite delays, [the Corporation] had consistently adopted the stance that it was confident that the project could be delivered on time and on budget;*

¹⁴⁵ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1328/13-14(03).

- (iii) *[Project Supervision Committee] chaired by [Director of Highways] was not being given by [the Corporation] an accurate picture of the prognosis for the project as a whole so that it was unable to make timely decision on the critical delay of the whole XRL project;*
- (iv) *by December 2013, [the Corporation's] Management must have known clearly that WKT could not open, even on a partial basis, until May 2016, but it has failed to inform Government; and*
- (v) *from December 2013 onwards, [the Corporation's] Management had been contemplating various scenarios of XRL delay in commissioning target year, and the cost implications involved, but had all along failed to keep Government informed. This is not the kind of trusting, honest and timely communication expected of [the Corporation] under the Entrustment Agreement."*

6.31 The Select Committee notes a similar observation in the 1st IBC Report¹⁴⁶, which stated that Mr CHEW Tai-chong had not communicated with the Government regarding the mounting concerns of the Project Team expressed in November 2013 as to the cumulative effect of delays across the key parts of the Project and that, as a result, the completion date would be in 2016. IBC believed that while the Government clearly had access to a great deal of information about the delays on the contracts, it should have been given a fuller assessment of the achievability of the overall Project timetable. IBC also commented that the more analytical and objective assessment communicated by the members of the Project Team regarding the effect of the cumulative delays in the critical paths of the Project should have been reported by Mr CHEW Tai-chong to the Government.

6.32 The Select Committee notes from the IEP Report¹⁴⁷ that "*we [IEP] are not aware of meeting minutes for any Contract Review Meetings. Briefings prepared for Contract Review Meetings include*

¹⁴⁶ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 1.38 and 5.41.

¹⁴⁷ Report of HKS of XRL Independent Expert Panel, Annex 3 paragraph 192.

quantified delays (in weeks) for individual contracts. No reporting on overall Project delay is provided in the briefings that we [IEP] have reviewed. In briefings between June 2010 and August 2013, numerous bar charts with 'time-now lines' were included and the 'Estimated Handover Date' or 'XRL Opening' date on these charts remains at August 2015. From September 2013 bar charts were not included."

6.33 The Select Committee considers that the Corporation and its Project Team should have reported the actual progress of the Project to the Government in a timely and proper manner, so as to enable the Government to form its own judgment and deal with the problems much earlier. On the other hand, the Select Committee also takes the view that HyD had not properly and professionally performed its monitoring role in the Project and its performance was unsatisfactory. This issue will be examined further in paragraph 6.54.

Judgment of the Government

The urgent meeting between the Government and the Corporation on 21 November 2013

6.34 The Select Committee observes that starting from November 2013, THB became increasingly concerned about whether the target completion date of August 2015 could be achieved, and was aware that the chances of completing the Project by August 2015 were extremely low. Therefore, THB had contemplated reporting the project delay at the Railways Subcommittee meeting scheduled for 22 November 2013. However, the telephone conversation between Mr Jay H WALDER and Professor Anthony CHEUNG Bing-leung and the subsequent meeting between the Government and the Corporation on 21 November 2013 brought about a change of mind.

6.35 The Select Committee has examined whether the judgment of the Government made on 21 November 2013 was sound. Due to the importance of the events that took place on 21 November 2013, the Select Committee has asked THB and the Corporation to provide the telephone recording or transcript of the telephone conversation between Mr Jay H WALDER and Professor Anthony CHEUNG Bing-leung, as well as the record of the meeting on 21 November 2013. Professor Anthony CHEUNG Bing-leung responded (**Appendix 7**) that there was no telephone recording or record of the telephone conversation and that what

had transpired during the telephone conversation was already included in the Government's paper to Railways Subcommittee (LC Paper No.: CB(1)1328/13-14(03)) based on his recollection. The Corporation also advised (**Appendix 10**) that no recording or contemporaneous written record of this conversation had been prepared by the Corporation.

6.36 As for the record of the meeting on 21 November 2013, Professor Anthony CHEUNG Bing-leung informed the Select Committee (**Appendix 7**) that the key points of discussion at the meeting had already been put in the Government's response to Railways Subcommittee dated 15 May 2014 (LC Paper No.: CB(1)1422/13-14(04)) and that THB had no other record of that meeting. The Corporation informed the Select Committee (**Appendix 10**) that no contemporaneous written record of that meeting had been prepared by the Corporation.

6.37 Mr Joseph LAI Yee-tak informed the Select Committee in an open hearing that he had convened the meeting of 21 November 2013 on the basis that the discussion between the Government and the Corporation would be conducted in "good faith". The Corporation should have the professional engineering expertise and project management competence to tender sound advice to the Government. Further, the Corporation should have been well prepared for the meeting, with full grasp of the latest situation. He had also expected that the Corporation had fully understood the consequences of not informing the public in good time if it had known that it could not achieve the target date for commissioning HKS of XRL.

6.38 Mr Joseph LAI Yee-tak pointed out that the Government had two prime considerations at the meeting on 21 November 2013, namely:

- (a) while the commissioning of HKS of XRL by 2015 was an important policy and planning objective which should be achieved as much as possible, the Government had to face fairly and squarely any irreversible delay caused by insurmountable technical difficulties. If there were any irreversible delay, it was important that the Government should alert LegCo and the public as soon as possible; and
- (b) at the meeting, the then CEO and the then Projects Director both assured the Government many times that HKS of XRL could be commissioned in 2015, and

remained firm on their assurance despite the Government's repeated queries and challenges. Based on the information available, Mr Peter LAU Ka-keung and his colleague could not completely rule out the possibility of commissioning HKS of XRL in 2015. At the meeting, the Corporation also made it clear that should the target of 2015 be postponed at that stage, the Corporation would lose its leverage with its contractors in pushing the Project forward, and the commissioning of HKS of XRL in 2015 would then be really impossible. At the time, the Government representatives considered the Corporation's view not unreasonable.

6.39 Mr Joseph LAI Yee-tak further informed the Select Committee that the Government officers at the meeting had decided to give the Corporation the benefit of the doubt. The Corporation was requested to provide the Government with a clear roadmap to demonstrate how the target of opening in 2015 could be met.

6.40 Professor Anthony CHEUNG Bing-leung informed the Select Committee that, based on the judgment of Mr Joseph LAI Yee-tak and Mr Peter LAU Ka-keung, he had directed Mr YAU Shing-mu that the Government should not report to Railways Subcommittee that HKS of XRL would be commissioned in 2015 but the construction of HKS of XRL could be "*completed within 2015 plus six to nine months for testing and trial runs*".

The Railways Subcommittee meeting on 22 November 2013

6.41 The Select Committee has examined whether the Government and/or the Corporation had deliberately covered up the project delay at the Railways Subcommittee meeting on 22 November 2013 as instructed by its terms of reference. The Select Committee notes that the statement made by Mr YAU Shing-mu at the Railways Subcommittee meeting was consistent with the instruction given to him by Professor Anthony CHEUNG Bing-leung.

6.42 According to Professor Anthony CHEUNG Bing-leung, the statement made at the Railways Subcommittee meeting on 22 November 2013 by the Government reflected the respective views of THB (and HyD) and the Corporation on the progress of the construction. In particular,

THB sought to convey the message that while the major works could be completed within 2015, the date of commissioning had yet to be confirmed. The statement also took into account the consideration canvassed by the Corporation that by not giving up on the 2015 completion target, the Corporation could press the contractors to give the Project a further push, thereby giving the Corporation a chance to catch up with the delay.

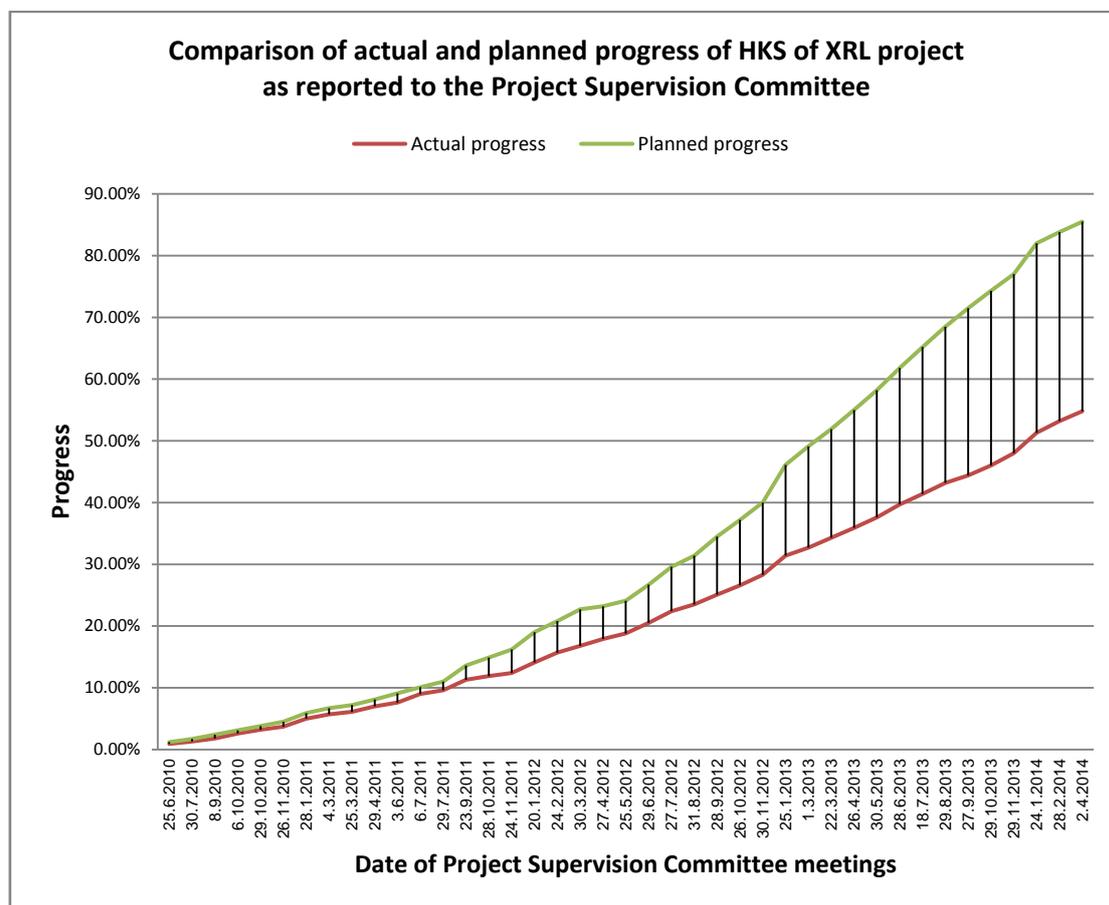
6.43 Nevertheless, Professor Anthony CHEUNG Bing-leung admitted in evidence that, with the benefit of hindsight, THB and HyD had reposed too much trust in the Corporation. In addition, the Government should have made public the difference of views between the Government and the Corporation at the Railways Subcommittee meeting in November 2013.

6.44 The Select Committee enquired whether the Government had consulted Jacobs after the meeting on 21 November 2013 and before attending the Railways Subcommittee meeting on the following day. Professor Anthony CHEUNG Bing-leung replied in the negative. The Select Committee considers that THB/HyD should have made better use of the M&V consultant to provide independent objective assessment and advice as to whether the Project could be delivered on time throughout the implementation of the Project.

6.45 The Select Committee recognizes that in the construction industry, it may not be uncommon for contractors to lose incentive to meet targets if completion dates were postponed. However, the Select Committee considers that the public should have been informed when the target completion date of the Project had become impossible or nearly impossible to achieve and that all the relevant parties should have been more pragmatic in accepting reality and come up with contingency plans and a revised schedule at the earliest opportunity.

6.46 The Select Committee notes that at the monthly Project Supervision Committee meeting, the Corporation had regularly reported the percentage of the actual progress of the Project against the planned progress of the Project. These figures were only presented to Railways

Subcommittee for the first time at its meeting on 5 May 2014¹⁴⁸ after the announcement of the project delay. The Select Committee has made use of these percentages provided in the Government's paper to Railways Subcommittee in May 2014 to produce the chart below.



6.47 It can be seen from the chart that there was persistently a widening gap between the planned progress and the actual progress of the Project despite the implementation of DRMs from January 2013 onwards. Together with the repeated warnings from Jacobs on the project slippage since December 2011¹⁴⁹ and on the ineffective DRMs as mentioned in Chapter 5 of this report, the Select Committee finds it incomprehensible why the Government should have accepted the repeated assurances from the Corporation in catching up with the delay which ran contrary to the figures presented to Project Supervision Committee on a monthly basis

¹⁴⁸ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1328/13-14(03), Annex G.

¹⁴⁹ Report of HKS of XRL Independent Expert Panel, paragraph 4.10.

and which conflicted with the assessment and advice of Jacobs. In fact, the figures showed that delay had been building up since late 2011 and still the Government chose to give the Corporation "the benefit of the doubt" at the meeting on 21 November 2013. It was said that the officers in THB were mostly generalists by training. The Select Committee considers that this factor could not absolve the Government as such civil service system was adopted by the Government. Even generalists could adopt various common management tools such as "management by exception" or "management by result" to ensure that their judgment was soundly based on the key performance indicators available to them. The Select Committee considers that the Government was not well prepared for its role under the new concession approach and might have in practice been affected by the ethos of the old ownership approach when monitoring the Project (paragraphs 3.10 to 3.13 of Chapter 3 of this report refer).

6.48 The Select Committee is of the view that, when the partial opening scenario was proposed to the Government in August and September 2013, the Government should have been alerted to the grave extent of the project delay and should have informed Railways Subcommittee of the possibility of delay. The chances of catching up with the delay appeared to be very remote even then.

Performance and judgment of HyD

6.49 As indicated in paragraphs 5.32 and 6.4 of this report, the Select Committee finds that both THB and HyD had queried the Corporation regarding the progress of the Project. In response, the Corporation consistently reassured the Government that the delays in the individual contracts could be recovered through DRMs and that the original target completion date could still be achieved.¹⁵⁰ HyD acquiesced in this response before April 2014.

¹⁵⁰ Report of HKS of XRL Independent Expert Panel, paragraph 4.18.

6.50 The Select Committee also notes IEP's opinion regarding the performance of HyD¹⁵¹ as follows:

- (a) *"In July 2013, the M&V Consultant estimated a 'potential delay of almost 11 months to the Completion Date' (i.e. July 2016). There is no indication that the Highways Department acted upon this information to request [the Corporation] for an in-depth review on XRL Project progress."*
- (b) *"Highways Department could have done more to validate the Corporation's opinions by demanding regular updates on: i) the forecast for overall project completion; and ii) the effectiveness of DRMs. This was not done."*
- (c) *"The Panel [IEP] has found no evidence of Highways Department exercising independent insight to plan, programme, forecast, etc. at any time prior to its review in April 2014."*

6.51 Mr Peter LAU Ka-keung informed the Select Committee in his statement that the "potential delay" mentioned in paragraph 6.50 above reflected what would happen if the Corporation did not do anything to catch up. In fact, HyD was at the time well aware of the delay and the Corporation had been asked to submit an overall PMP back in January 2013. The Corporation presented a revised programme in May 2013 and, at the same time, proposed a DRM to speed up the track work. According to Mr Peter LAU Ka-keung, it was recorded in the minutes of the 37th Project Supervision Committee meeting in July 2013 that the Corporation promised to make a presentation on the overall PMP and a revised WKT programme in August 2013 at HyD's request. Subsequent to the Railways Subcommittee meeting in November 2013, HyD had pressed the Corporation at every Project Supervision Committee meeting to submit a revised PMP to address the delay. The Select Committee notes that the requests for PMP and updated PMP by HyD were probably done at the request of Jacobs, but apparently to no avail.

¹⁵¹ Report of HKS of XRL Independent Expert Panel, paragraphs 4.11, 4.19 and 4.20.

6.52 Mr Peter LAU Ka-keung further informed the Select Committee at an open hearing that, since the construction of WKT was very complicated, HyD was not able to form a judgment itself on whether the assurances made by the Corporation should be accepted or not. As such, it had pressed the Corporation to submit a revised PMP to enable HyD to make an assessment on the completion date of the Project.

6.53 Mr Peter LAU Ka-keung said in his statement to the Select Committee that with the benefit of hindsight, HyD should have considered whether it would be appropriate to request Jacobs to conduct an independent assessment on the completion of WKT. However, as mentioned in paragraph 6.50(a) above, it would appear that Jacobs had already estimated that the completion date would need to be postponed to July 2016 and had alerted HyD. But no follow-up action was taken.

6.54 The Select Committee considers that the approach taken by HyD in assessing the completion date of the Project was highly unsatisfactory. While the performance of HyD might have been restricted by its role under EA2, the Government had nonetheless failed to make the best use of Jacobs as the M&V consultant in the Project. The Select Committee considers that HyD's excuse of having limited manpower resources in the Department, compared to that of the Corporation, to perform its monitoring role is not acceptable. When information was presented to HyD, it showed, more often than not, that the progress in the construction work was seriously lagging. The Select Committee shares IEP's opinions set out in paragraph 6.50 that HyD should have done more to validate the Corporation's opinions by, for instance, demanding regular updates on the forecast for overall project completion and the effectiveness of DRMs.

Flooding as one of the causes of the project delay

6.55 The Select Committee notes that the flooding as a result of the severe black rainstorm in the night of 30 March 2014 was one of the causes of the project delay as reported by Mr Peter LAU Ka-keung in his statement and in the 2nd IBC Report.¹⁵² When the Corporation announced the project delay on 15 April 2014, the first paragraph of the

¹⁵² Second Report by the Independent Board Committee on the Express Rail Link Project, Appendix paragraph 1.3.

press release (**Appendix 2**) reads: *"A tunnel boring machine (TBM) severely damaged by floodwater is affecting progress on the Hong Kong Section of the Express Rail Link (XRL) project. This unforeseen challenge has added to the difficulties of the project and will push the completion date to 2016 with the line ready for operation in 2017."* This was a major reason then given by the Corporation to the public.

6.56 The Select Committee has enquired whether the Corporation had required the contractor of contract 823A (Construction of Tse Uk Tsuen to Tai Kong Po Tunnels) to take flood prevention measures at the work site; and whether the Government has assessed the impact of the damage to the tunnel boring machine on the progress of the Project.

6.57 The Corporation's response to the Select Committee (**Appendix 22**) was that flood protection plans for the work sites were constantly revised to suit each particular construction stage. The flood plan at the contract 823A work site prior to the black rainstorm on 30 March 2014 had been implemented accordingly. The principle behind the flood plan was to have a surface flood wall built around the cut-and-cover tunnel to channel surface water away from the tunnel. A drainage system and multi-tier flood protection measures were in place within the site boundary and protected the site during past typhoons and rainstorms. The flood on 30 March 2014 was caused by a collapsed slope, which was built in compliance with the Government requirements but could not withstand the exceptionally heavy rain that blocked the drainage system and the resultant flood damaged part of the surface flood wall in that area, allowing water to enter the tunnel.

6.58 Mr Peter LAU Ka-keung also stated in his statement that the situation caused by flooding was made worse by the mal-functioning of the emergency pumps at the tunnel boring machine shaft. The mining operation of the relevant tunnel was stopped due to the incident.

6.59 The Select Committee notes IBC's comment in its report¹⁵³ that *"by its tone and content the press statement materially overstated the effect on the Project programme of the flooding of the [tunnel boring machine] (contract 823A)"*. The Select Committee asked Mr Joseph

¹⁵³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 5.62 (E).

LAI Yee-tak whether the Corporation had reported at the 44th Project Supervision Committee meeting held on 2 April 2014 on the damage of the tunnel boring machine and how it had impacted on the progress of the work.

6.60 Mr Joseph LAI Yee-tak informed the Select Committee (**Appendix 23**) that at the 44th Project Supervision Committee meeting held on 2 April 2014, the Corporation had reported that a tunnel boring machine had been damaged due to flooding. The contractor was assessing the damage to the machine and would make use of any available spare parts for replacement if necessary, provided that the machine was not beyond repair. The Corporation had also said at the meeting that they had been working on measures to minimize the delay. At that meeting, the Chairman, Mr Peter LAU Ka-keung, requested the Corporation to make detailed findings of the incident, as well as their assessment on the associated cost and programme impact, and report back to Project Supervision Committee. The Corporation submitted on 5 May 2014 a preliminary investigation report on the flooding incident and a final report on 5 June 2014 which addressed the queries from HyD.

6.61 According to the statement of Dr Philco WONG Nai-keung, due to the severe damage to the tunnel boring machine at the north down-track tunnel as a result of flooding, more than 2 000 (mostly electrical and electronic) components in the machine required replacement. While it was originally anticipated that the damaged machine would only be able to resume full operation after repair and testing in December 2014, the contractor was able to borrow the parts from another tunnel boring machine that had just completed a task and was being repositioned. As such, the damaged machine was able to resume operation in July 2014, several months earlier than planned.

6.62 The Select Committee notes that the assessment of the impact of flooding to the project delay was not provided to the Government by the Corporation before the public announcement of the project delay in mid-April 2014. In addition, at the Project Supervision Committee meeting on 2 April 2014, the Corporation did not mention that the damage to the tunnel boring machine had an impact on the project delay.

6.63 The Select Committee notes that flood prevention measures were in place at the work site of contract 823A (Construction of Tse Uk Tsuen to Tai Kong Po Tunnels). Unfortunately, the rainfall in the night of 30 March 2014 was exceptionally heavy, causing damage to a tunnel boring machine and making it impossible to catch up with its programme. The Select Committee considers that the damage to the tunnel boring machine caused by flooding was a contributing factor to the project delay which was beyond the control of the Corporation. However, the Select Committee also notes that, before the black rainstorm on 30 March 2014, Mr CHEW Tai-chong had known that the target to complete the Project by August 2015 had become impossible to achieve (see paragraphs 6.16 and 6.18 of this report). As such, the Select Committee shares IBC's view that the press statement of the Corporation on 15 April 2014 had overstated the effect of the damaged tunnel boring machine caused by the flooding on 30 March 2014 on the Project programme.

Comprehensiveness and timeliness of reporting to Railways Subcommittee on the progress of the Project by the Government and the Corporation

6.64 The Select Committee notes that, as agreed at the Railways Subcommittee meeting on 16 April 2010, the Government would submit reports at six-month intervals to Railways Subcommittee which would cover the progress and the financial position of the Project. The first report covered the period between 16 January 2010, i.e. when FC approved the project funding of HKS of XRL, and 30 June 2010. The subsequent half-yearly reports covered the Project progress for the periods ending 30 June and 31 December respectively of each of the following years.¹⁵⁴ The Select Committee notes that, up to April 2014, the Government had submitted a total of seven half-yearly progress reports to Railways Subcommittee.

6.65 The Select Committee further notes that the scope of the progress reports, in addition to the work progress, also covered some major aspects of the Project such as pre-construction preparatory work, claims situation, interface issues and employment opportunities created by the Project.

¹⁵⁴ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1573/09-10(04).

6.66 The Select Committee notes that, except for the 1st half-yearly report which mentioned that "*Up to 30 June 2010...[t]here is no sign of budget overrun or programme delay*",¹⁵⁵ the remaining six half-yearly reports did not mention at all whether there was any budget overrun or programme delay in the Project. Furthermore, although the seven half-yearly reports contained descriptions of the progress of some major contracts in the Project, there was no information on the actual progress against the planned progress of the Project. Nevertheless, the Select Committee notes from a report submitted to Railways Subcommittee in May 2014 that such information had been regularly included in the monthly reports submitted by the Corporation to Project Supervision Committee chaired by Mr Peter LAU Ka-keung.

6.67 Furthermore, as mentioned in paragraph 5.68 of this report, Jacobs had repeatedly alerted HyD on the project slippage since December 2011¹⁵⁶. Mr Peter LAU Ka-keung also informed the Select Committee that HyD had been well aware of the project delay. However, the Select Committee notes that Railways Subcommittee members were not informed of the worsening situation and the accruing slippage in the overall programme.

6.68 The Select Committee finds that the Government and the Corporation did not report the Project's progress to Railways Subcommittee in sufficient detail, including those figures mentioned in paragraph 6.46 of this report, to enable the Subcommittee to fully understand the actual status and progress of the Project. Further, both the Government and the Corporation appeared to have reported only the good news but not the bad news about the Project before April 2014. The progress of the construction work at WKT is an obvious example.

6.69 In the 7th half-yearly report for the period ending 30 June 2013¹⁵⁷ presented at the Railways Subcommittee meeting on 22 November 2013, the progress of the construction work at WKT was reported in Annex 1 to the report that: "*[a]s regards the main structure of the WKT, the concrete*

¹⁵⁵ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)2290/09-10(01).

¹⁵⁶ Report of HKS of XRL Independent Expert Panel, paragraph 4.10.

¹⁵⁷ Paper submitted by the Government to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)81/13-14(01).

structure of the underground station to the south of Austin Road was being constructed by top-down approach. Underground structural works at the southern end of the WKT reached the lowest level B4 (a total of four levels from B1 to B4). For the northern part of the WKT, excavation works reached the lowest level B4 and construction of the main structure by bottom-up approach continued."

6.70 However, in another paper submitted by the Corporation to Railways Subcommittee in May 2014¹⁵⁸ (i.e. after the announcement of the project delay), which was discussed at the Railways Subcommittee meeting on 5 May 2014, it was reported that "*[w]hile one part of the 810A works area has been excavated down to the B4 level and that part of the terminus structure is being built using the bottom-up method, **the north top-down area of the site still requires the removal of approximately 78,000 cubic metres of fresh bedrock, out of 100,000 cubic metres of rock, to reach B4 level.***" [emphasis added]

6.71 It is noted that in relation to the same area at WKT, in the 7th half-yearly report presented at the Railways Subcommittee meeting on 22 November 2013, it mentioned that "*For the northern part of the WKT, excavation works reached the lowest level B4*"; whereas in the other paper submitted to Railways Subcommittee in May 2014, it mentioned that "*the north top-down area of the site still requires the removal of approximately 78 000 cubic metres of fresh bedrock, out of 100 000 cubic metres of rock, to reach B4 level*". Obviously, the necessity for removing about 78 000 cubic metres of fresh bedrock in the top-down area of the site had not been reported in the 7th half-yearly Report submitted to Railways Subcommittee in November 2013.

6.72 The Select Committee further observes that the slide presented at the Railways Subcommittee meeting on 5 May 2014 (**Appendix 24**) showed the division of different parts of the site, i.e. WKT(core area), WKT(North) and WKT(South) as well as the construction methods adopted for the different parts together with their respective progress. It was clearly noted from the slide that the **north top-down area** of WKT(North) only reached B1/B2 Level. In comparison, none of these details had been included in the slide presented at the Railways

¹⁵⁸ Paper submitted by the MTR Corporation Limited to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)1354/13-14(01).

Subcommittee meeting on 22 November 2013 (**Appendix 25**). The slide presented at the 22 November 2013 meeting would give an erroneous impression that the bottom-up method had been adopted for the whole of WKT(North) when no detail was given on the north top-down part of WKT(North). A member of the Select Committee pointed out that the report and the slide presented to Railways Subcommittee on 22 November 2013 had misled some members of Railways Subcommittee.

6.73 In addition, the Select Committee gets the impression that the wording used in the half-yearly reports submitted to Railways Subcommittee was toned down compared with the wording used in the monthly Project Supervision Committee reports relating to the progress of the Project. The Select Committee has enquired into how the half-yearly reports to Railways Subcommittee were prepared. In response, Mr Peter LAU Ka-keung said that HyD had to "digest" the reports prepared by the Corporation and then produce the half-yearly reports to THB, which would then submit the reports to Railways Subcommittee. Railways Subcommittee received its reports on the progress of the Project at six-month intervals whereas Project Supervision Committee received its reports on a monthly basis. Hence the situation might not be the same.

6.74 Professor Anthony CHEUNG Bing-leung informed the Select Committee (**Appendix 26**) that the Corporation, as the project manager, was responsible for preparing the first draft of the half-yearly progress reports. Upon receipt of the Corporation's draft progress reports, HyD would verify the accuracy of their content and proof-read the original version, such as correcting spelling and grammar as well as improving presentation to facilitate easier reading and comprehension. In principle, the main content in the Corporation's draft progress reports was retained. Any amendment to the draft would first be given to the Corporation for review. With the agreement of the Corporation, the Government would submit the reports as the joint reports of the Government and the Corporation to Railways Subcommittee. The Select Committee considers that the "digesting" of the reports submitted by the Corporation to HyD might have led to a failure in providing a full picture of the situation to Railways Subcommittee.

Part III Conclusions and Recommendations

Chapter 7 Conclusions

7.1 In this Chapter, the Select Committee sets out its findings and conclusions in respect of the inquiry in accordance with its terms of reference as set out in paragraph 2.3 of Chapter 2 of this report.

7.2 The main focus of the Select Committee is to conduct an inquiry into three major areas of the project delay as announced in April 2014 by THB and the Corporation, namely:

- I. Background of and causes for the project delay;
- II. Performance and accountability of the Government and the Corporation relating to the project delay; and
- III. Whether the Government and the Corporation have deliberately covered up the project delay.

Limitations of the Select Committee

7.3 The Select Committee would like to stress that it has experienced difficulties in obtaining information from THB, HyD and the Corporation and, as a result, was handicapped in the conduct of its inquiry, as outlined in paragraphs 2.23 to 2.52 of Chapter 2 of this report. As the Select Committee was not authorized to exercise powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), it could only proceed with its inquiry on the basis of limited information provided by THB, HyD and the Corporation, information contained in the reports published by IBC and IEP, information available in the public domain and the testimony of the witnesses given at the open hearings of the Select Committee. (paragraph 2.42)

7.4 The Select Committee notes that HKS of XRL is a colossal and complex project. The Project is the world's first all-underground high-speed railway project with a total length of 26 km. It requires integration with the railway system on the Mainland. The excavation work at WKT is one of the largest and deepest excavations ever done in

Hong Kong. Further, it is the first railway project undertaken by the Government under the concession approach. All of the above factors have added to the risk profile of the Project. (paragraph 4.40) In view of the risk profile, the Select Committee considers that the relevant Government bureaux/departments and the Corporation should have exercised greater care and vigilance at all stages in the implementation of the Project. The Select Committee considers that, unfortunately, both the relevant Government bureaux/departments and the Corporation have come short in this regard.

Weaknesses in EA2 under the concession approach

7.5 The Select Committee notes that, under the concession approach, the design and construction of the Project was entrusted to the Corporation. The Government adopted the indirect "check the checker" M&V role as recommended by Lloyd's in 2008. The Select Committee notes that the role of the Corporation was not only that of a checker but also a project manager having a crucial role in the monitoring and delivery of the Project. Furthermore, it was the contracting party in the work contracts in the construction of the Project. As Professor Anthony CHEUNG Bing-leung admitted to the Select Committee, with the benefit of hindsight, the "check the checker" approach had flaws and also said at an open hearing of the Select Committee that, if the concession approach were to be adopted again in future, the content of the Entrustment Agreement should be reviewed. (paragraph 3.58)

7.6 The Select Committee observes that, unlike the ownership approach adopted for other railway projects in which the Government's role had been more passive, the concession approach adopted for the Project entails the Government owning the railway system, paying for the Project and assuming the construction risk. (paragraph 3.53) The Select Committee further observes that, at least on paper, the concession approach, EA2, the monitoring mechanism and the communication channels between the Government and the Corporation were designed to provide guidance for stakeholders to follow, and different check points at different levels were put in place to ensure delivery of the Project on time and within budget. However, HyD and, to a lesser extent, THB, who were entrusted with the responsibility to monitor the Project to completion, did not appear to have performed their task well by making the best use of the systems and the available resources at their disposal. (paragraph 3.55)

7.7 The Select Committee considers that, under the concession approach, while HyD might have overly relied on the Corporation to deliver the Project on time, the Corporation might have been taking the view that it was only required to use its best endeavours to complete the Project in accordance with the terms of EA2, without having to bear any risk in relation to construction, particularly in terms of delay and cost overrun. (paragraph 3.62) The Select Committee considers that this could be due to the lack of a master delivery strategy document clearly defining the obligations, duties and roles of all parties concerned as proposed by IEP¹⁵⁹ and the lack of indicators to gauge and measure objectively the performance of the Corporation in fulfilling its duties and obligations with respect to delivery of the Project.

7.8 The Select Committee takes the view that, although the Corporation was entrusted with the design, construction, testing and commissioning of HKS of XRL, and had the responsibility to deliver the Project in accordance with EA2, HyD should have assumed a more active role in monitoring and verifying the performance of the Corporation in the Project, regardless of the size of its staff engaged in the Project and regardless of whether or not such role was expressly spelt out in the Entrustment Agreement. The Government is the owner of HKS of XRL, a guardian of the public fund earmarked for the Project and the grantor of the operation concession in the future. Given the considerable scale and cost of the Project, and HKS of XRL was the first trial of the concession approach, HyD could and should have been more active, proactive and vigilant during the implementation of the Project, as aided by Jacobs, the external consultant. It could do that as long as it did not act in breach of EA2. The Select Committee is of the opinion that HyD should have taken more seriously its role, as the first line of defence of the Government, as the checker (the Government) of the checker (the Corporation). This is a dominant role, rather than a subservient one. In view of that role, any excessive or over reliance by HyD and THB on the Corporation's view is inappropriate, as the Corporation was supposed to be checked by HyD and THB in the "check the checker" modus operandi. (paragraph 3.63)

7.9 The Select Committee considers that the lack of initiatives and over reliance on the Corporation on the part of HyD in monitoring the

¹⁵⁹ Report of HKS of XRL Independent Expert Panel, paragraph 7.2.

implementation of the Project might have been brought about by the good track record of the Corporation in delivering railway projects. Further, a lack of practical experience and expertise within HyD/RDO itself in the building of railway systems might have contributed to the lack of confidence among its staff in assuming a more active and proactive monitoring role over the performance of the Corporation. Mr Henry CHAN Chi-yan suggested at a hearing that, as the work contracts were signed between the Corporation and the contractors, it would be difficult for the Government to interfere with the management of the contractors. The Select Committee considers that he has missed the point. The point was not to interfere with the management of the contractors, but was rather the effective M&V of the work and performance of the Corporation, which was the responsibility of the Government. (paragraph 3.64) The Select Committee considers that the combined effect of the above factors has rendered the "check the checker" role of the Government in the Project much less effective than it should have been.¹⁶⁰

The Entrustment Programme is unrealistic

7.10 The Select Committee finds that both the Government and the Corporation had been aware that the timetable of the entrustment programme with target completion by August 2015 was tight, and they had known about this even before EA2 was signed on 26 January 2010. (paragraphs 4.27 to 4.33) Nevertheless, 4 August 2015 was still adopted as the target date for completion.

7.11 On the other hand, the Select Committee finds that, when FC approved funding for the construction of HKS of XRL and when EA2 was signed, the site investigation work had not yet been completed, as a full site investigation could not be carried out at the location of the former City Golf Club and Jordan Road. (paragraph 3.41) Notwithstanding this, the Select Committee finds that the Government and the Corporation had been aware of the underground conditions and the complex underground utilities at the WKT site before June 2010. (paragraph 3.43)

¹⁶⁰ Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.9. The proposal was defeated (please refer to paragraphs 67 and 68 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

7.12 The Select Committee considers the adoption of a tight time frame for the Project unwise. The Corporation should have allowed a longer contingency period to cater for unforeseen ground conditions as site investigation is known to have its limitations. (paragraph 3.51) The Select Committee also considers that the Corporation was over-optimistic in accepting the target completion date. The Select Committee considers that if the risk of cost increase were the responsibility of the Corporation under a different arrangement, the Corporation might have been more cautious in agreeing to work with such a tight time schedule given the numerous uncertain factors. (paragraph 4.42)^{161, 162}

7.13 The Select Committee was surprised, to say the least, when Mr Lincoln LEONG Kwok-kuen, CEO of the Corporation, informed it in his statement that *"the EA2 does not impose an absolute obligation [on the Corporation] to complete the project by 4 August 2015 considering that, with a project as challenging and complex as the XRL, there is always a risk of delays."* (paragraph 4.46) Whilst the Select Committee acknowledges that delay associated with construction projects is not uncommon, it takes the view that, once an agreement is signed, the target completion date contained in it ought to be adhered to as much as possible. Otherwise, target completion date in contract is meaningless and nugatory.

¹⁶¹ Members voted on Mr LEE Cheuk-yan's proposal to amend paragraph 7.12. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 73 to 75 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

¹⁶² Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.12. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. Mr Michael TIEN Puk-sun abstained from voting. As the votes were equally divided, the Chairman exercised his casting vote in the negative according to paragraph 8 of the Practice and Procedure of the Select Committee. The proposal was defeated (please refer to paragraphs 76 to 78 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

7.14 The Select Committee takes the view that the Government at the time chose, at the planning stage, to rely on the Corporation to deliver the Project by the August 2015 timeline. The Select Committee considers that as the time frame in the Entrustment Programme was set too tight against a background of great uncertainties, delay is almost inevitable. (paragraph 4.48) Notwithstanding this, the Select Committee considers that both HyD and THB have been found wanting in their mission in the implementation of the Project.^{163, 164}

Shortcomings of the Government

Judgment of the Government

7.15 The Select Committee notes that THB had contemplated reporting the project delay to Railways Subcommittee at its meeting scheduled for 22 November 2013. However, the telephone conversation between Mr Jay H WALDER and Professor Anthony CHEUNG Bing-leung and the subsequent meeting between THB/HyD and the Corporation on 21 November 2013 had caused a change of mind. (paragraph 6.34) Mr Joseph LAI Yee-tak informed the Select Committee that the Government officers had decided at the meeting on 21 November 2013 to give the Corporation the benefit of the doubt. (paragraph 6.39) Finally, under the direction of Professor Anthony CHEUNG Bing-leung, Mr YAU Shing-mu, in a carefully worded presentation, reported to Railways Subcommittee at its meeting on 22 November 2013 that the construction of HKS of XRL could be "*completed within 2015 plus six to nine months for testing and trial runs*". (paragraph 6.40)

¹⁶³ Members voted on Ms Claudia MO's proposal to amend paragraph 7.14. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 81 to 83 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

¹⁶⁴ Members voted on Mr WU Chi-wai's proposal to amend paragraph 7.14. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 84 to 86 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

7.16 According to Professor Anthony CHEUNG Bing-leung, the statement made by the Government at the Railways Subcommittee meeting on 22 November 2013 reflected the respective views of THB (and HyD) and the Corporation on the progress of the construction. In particular, THB sought to convey the message that, while the major works could be completed within 2015, the date of commissioning had yet to be confirmed. The statement also took into account the consideration canvassed by the Corporation that, by not giving up on the 2015 completion target, the Corporation could press the contractors to give the Project a further push, thereby giving the Corporation a chance to catch up with the programme. (paragraph 6.42)

7.17 Nevertheless, Professor Anthony CHEUNG Bing-leung admitted in evidence that, with the benefit of hindsight, THB and HyD had reposed too much trust in the Corporation. The Select Committee shares Professor CHEUNG's view that the Government should have made known to Railways Subcommittee on 22 November 2013 the difference of views between the Government and the Corporation on delay. (paragraph 6.43)^{165, 166, 167}

¹⁶⁵ Members voted on Ms Claudia MO's proposal to amend paragraph 7.17. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 95 to 97 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

¹⁶⁶ Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.17. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 98 and 99 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

¹⁶⁷ Members voted on Mr LEE Cheuk-yan's proposal to amend paragraph 7.17. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 100 to 102 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

7.18 The Select Committee considers that in the construction industry it is possible that contractors may lose incentive to meet a target date for completion if it is postponed. The Select Committee takes the view that the public was entitled to know the true situation as soon as the target completion date of the Project had become impossible or nearly impossible to achieve and this entitlement should not be sacrificed for the sake of commercial expediency. The relevant parties should have accepted reality more readily and come up with contingency plans and a revised schedule at the earliest opportunity. (paragraph 6.45)

Performance of the Government in monitoring the Project

7.19 The Select Committee notes that, at the Project Supervision Committee meetings, the Corporation reported monthly the percentages of the actual progress against the planned progress in the Project. (paragraph 6.46) As there was a widening gap between the planned and actual progress of the Project despite the implementation of DRMs from January 2013 onwards, together with the repeated warnings from Jacobs on the continuous slippage since December 2011 and on the ineffective DRMs, the Select Committee finds it incomprehensible why the Government would still have accepted the repeated assurances from the Corporation in addressing the project delay which had been building up and worsening since late 2011. (paragraph 6.47) The sentiment in giving the Corporation "the benefit of the doubt" is perhaps understandable, the wisdom is questionable.¹⁶⁸

7.20 The Select Committee considers that although the officers in THB were mostly generalists by training, they should have adopted various common management tools such as "management by exception" or "management by result" to ensure that their judgment was soundly based on the key performance indicators and the information available to them. (paragraph 6.47)

¹⁶⁸ Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.19. Mr Gary FAN Kwok-wai voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming, Mr TANG Ka-piu and Ir Dr LO Wai-kiwok voted against the proposal. The proposal was defeated (please refer to paragraphs 3 to 5 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

7.21 The Select Committee finds that both THB and HyD have queried the Corporation regarding the progress of the Project. In response, the Corporation routinely assured the Government that the delay in individual contracts could be recovered through DRMs and that the original project completion date would still be intact. (paragraph 6.49) The Select Committee considers the approach taken by HyD in assessing the completion date of the Project highly unsatisfactory. Whilst the role of HyD might have been confined to M&V under EA2, it had nonetheless failed to make the best use of Jacobs, the M&V consultant in the Project, who have sounded repeated warnings but apparently in vain. This indicates that HyD has unreasonably reposed trust in the Corporation. (paragraphs 6.44 and 6.54) The Select Committee considers HyD's assertion of having limited manpower in the Department, compared to that of the Corporation, no more than an excuse. When information was presented to HyD, it showed, more often than not, that the progress of the construction work was seriously lagging behind schedule. Based on IEP's factual findings, the Select Committee agrees with IEP that HyD could have done more to validate the Corporation's opinions by demanding regular updates on the forecast for the overall Project completion and the effectiveness of the DRMs. (paragraph 6.54)¹⁶⁹

7.22 The Select Committee also finds that Jacobs had encountered difficulties in obtaining PMP from the Corporation. (paragraphs 4.59 and 4.60) The Select Committee notes that Jacobs had requested PMP on at least 17 occasions from April 2011 to April 2014 through Monthly Progress Reports to HyD. Although HyD did take up the requests of Jacobs with the Corporation through the Issue List, it had failed to follow up on the matter in a diligent and effective manner. HyD should have made more effort to pursue the matter with the Corporation to provide PMP as requested by Jacobs. (Details are given in paragraphs 4.61 to 4.63 of Chapter 4 of this report.)

¹⁶⁹ Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.21. Mr Gary FAN Kwok-wai and Mr TANG Ka-piu voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 10 to 12 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

7.23 Upon an enquiry made by a member of the Select Committee, Professor Anthony CHEUNG Bing-leung confirmed in evidence that he agreed with the contents of the reports submitted by IBC and IEP. On a similar question put by the same member of the Select Committee with respect to the IEP Report, Dr Philco WONG Nai-keung indicated that the view of the Corporation differed from that of IEP on the integrated master programme and commented that parts of the IEP Report were similar to the reports submitted by IBC. Dr WONG also confirmed that the Corporation agreed with the facts set out in the IEP Report.

Shortcomings of the Corporation

Deficiencies in project management by the Corporation

7.24 The Select Committee notes that it is common practice in the construction industry to maintain an integrated master programme which should mark up the critical paths to overall project completion for large scale and complex capital projects. The Select Committee further notes that there were different views of the Corporation, the Government and Jacobs as to whether the Corporation had an integrated master programme covering the entire Project as a baseline for progress monitoring and reporting. (paragraphs 4.54 to 4.68) The Select Committee finds no evidence to show that the Corporation had "*a fully integrated, whole-project master programme*" but there is some evidence to show that a master plan of "*a collection of individual contract programmes for Civil and E&M works*" existed. The Select Committee shares the observation of IEP that the effect of the lack of an integrated master programme was that the Corporation was late to recognize and forecast delays on individual contracts and their impact on the overall target completion date. (paragraph 4.69)

7.25 The Select Committee notes that when Mr CHEW Tai-chong, the then Projects Director of the Corporation, was questioned by some independent non-executive directors at the Board meetings on 22 August and 10 December 2013 on the progress of the Project, he responded persistently that the Project would be delivered on time and within budget.¹⁷⁰ He did not disclose to the Board that the cumulative effect of

¹⁷⁰ First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 1.42.

various contract delays was making the original timetable impossible or at least unrealistic. Apart from this, he did not report fully and accurately to the then CEO, ExCom, the Audit Committee or the Board the information presented by the Project Team indicating their concerns about the delivery of the Project on time. (paragraph 5.40)

7.26 The Select Committee notes that Mr Jay H WALDER informed IBC that he had accepted and relied upon the assurances given by Mr CHEW Tai-chong that, despite delay, the Project would still be completed by the end of 2015 on a partial opening basis. The Select Committee finds such judgment of Mr Jay H WALDER questionable. The Select Committee considers that, as head of the executive arm of the Corporation, he could not have relied upon the assurances made by Mr CHEW Tai-chong alone, without question and without credible and verifiable evidence to show how the project delay could be effectively mitigated. Mr Jay H WALDER should have made his own enquiries, raised queries and sought clarification and corroboration of such assurances, and should have made his own judgment on the situation as CEO. (paragraph 5.42)

7.27 The Select Committee also finds it difficult to believe that during the implementation of such a large scale project spanning several years, the Corporation would merely rely on the then CEO and ExCom, who would in turn be merely relying upon the information and views fed by Mr CHEW Tai-chong alone. In reality, therefore, it would seem that one person was effectively making all the important decisions relating to the construction work of the Project, at least as to time and cost. (paragraph 5.44)¹⁷¹

Some DRMs not so effective

7.28 The Select Committee observes that, when the Project encountered delay, the Corporation would make an effort to speed up

¹⁷¹ Members voted on Mr Gary FAN Kwok-wai's proposal to amend this paragraph. Ms Claudia MO, Mr Michael TIEN Puk-sun and Mr Gary FAN Kwok-wai voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming and Ir Dr LO Wai-kwok voted against the proposal. Mr CHAN Han-pan abstained from voting. The proposal was defeated (please refer to paragraphs 29 to 31 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

progress through the use of DRMs. However, the Select Committee also observes that, even with the use of DRMs, there were still signs of a widening gap between the actual and the planned progress of the Project as shown by the regular reports made to Project Supervision Committee from June 2010 to April 2014. (paragraph 5.69) Owing to significant labour shortage in some trades and the ageing of workers in the construction industry, the Select Committee considers that "additional labour", which was proposed as one of the DRMs by the Corporation, was unlikely to be effective. (paragraph 5.82)

7.29 The Select Committee considers that the Corporation and the Government should have predicted acute labour shortage in the construction process back in 2009 before the signing of EA2, and should have taken early measures to deal with the problem, such as stepping up training of the local workforce to increase the supply of skilled labour, and streamlining official procedures required by the Supplementary Labour Scheme in order to expedite the import of labour if and when necessary to meet the manpower demand of the Project. Since the Government had the overall picture of labour supply through the Construction Workers Registration System and was involved in all the major infrastructure projects in Hong Kong, the Government bore a greater responsibility than the Corporation for the lack of foresight as to the impact of labour shortage on the construction of HKS of XRL. This is particularly so when the Government had decided to undertake five railway projects in parallel with construction commencing between 2009 and 2012 and completing between 2014 and 2020. (paragraph 5.83)

Progress of the Project not fully reported to the Government by the Corporation

7.30 The Select Committee finds it unacceptable that the Corporation has not reported fully to the Government on the progress of the Project. For example, Professor Anthony CHEUNG Bing-leung informed the Select Committee in his statement that "*Now, from [the Corporation's] own submission to [Railways Subcommittee] in May 2014 and from its Independent Board Committee (IBC) Report of October 2014 that: ...by December 2013, [the Corporation] Management must have known clearly that WKT could not open, even on a partial basis, until May 2016, but it has failed to inform Government; and from December 2013 onwards, [the Corporation's] Management had been contemplating various scenarios of XRL delay in commissioning target year, and the*

cost implications involved, but had all along failed to keep Government informed..." (paragraph 6.30)

7.31 The Select Committee considers that if the Project Team and/or Mr CHEW Tai-chong had properly and timeously reported the actual progress to the Government, the situation might have been different as the Government might have been able to make better judgment as to how the Project should be proceeded with at a much earlier time. (paragraph 6.33)

Corporate governance of the Corporation

7.32 The Select Committee notes that the Project Team of the Corporation first began in March 2013 to consider a partial opening plan which was formulated and proposed as a solution for achieving an opening of HKS of XRL in 2015 on a diminished scope.¹⁷² It could be inferred from such a plan that there existed a serious concern within the Project Team on the overall delay in the Project as early as March 2013. Yet the Partial Opening Plan was restricted to ExCom only and not brought to the attention of the Board until more than a year later in mid-April 2014. (paragraph 5.33) The Select Committee considers that the failure to report in good time the Partial Opening Plan by ExCom to the Board (to whom it was accountable) reflected poor judgment on the part of ExCom as a whole. (paragraph 5.34)

7.33 The Select Committee also considers the Board's governance over the Corporation's affairs in the context of the Project's management less than satisfactory. It notes that the Board was only informed of the project delay and the reasons therefor for the first time at a Special Board Meeting held on 16 April 2014. The Select Committee also notes that it was at this time that the Board, including the Chairman, first learnt of the Partial Opening Plan. This speaks volumes of the governance, or the lack of it, in the Corporation. The Select Committee finds this startling from a corporate governance perspective. (paragraph 5.36)

7.34 The Select Committee observes¹⁷³ that, within the Corporation, there were a number of matters delegated by the Board to be dealt with by

¹⁷² First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.27.

¹⁷³ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 1.40 to 1.47.

ExCom without the need to refer back to the Board for approval. The Select Committee considers such delegation arrangement without a proper corresponding mechanism for reporting back to the Board unacceptable. (paragraph 5.37) A proper check and balance is missing.

7.35 The Select Committee also finds it unacceptable that for a public company being the sole provider of railway service to more than 5 million passenger rides per day¹⁷⁴ in Hong Kong, having vast experience in construction of railways in Hong Kong and elsewhere and being entrusted with the task of building the world's first underground high-speed rail, Mr CHEW Tai-chong, the former Projects Director, appeared to be the only person within the Corporation having overall knowledge of the Project's progress, and the Board and the senior management simply relied on his assessment of the status of the Project, without more. The Select Committee does not see any effective check and balance in practice in this respect. (paragraph 5.50) Further, the Select Committee notes that Mr Jay H WALDER, being both an ExCom member and a Board member at the material time, should have had full knowledge of the serious delay in the Project. However, he did not appear to have reported the progress of the Project to the Board fully and accurately when asked by Board members at their meeting on 10 December 2013. (paragraphs 6.14 and 6.15)

7.36 The Select Committee finds that the Board should take a measure of criticism for failing to supervise ExCom and the senior management effectively in delivering the Project according to EA2. (paragraph 5.50) The Select Committee considers that both the Board and the senior management of the Corporation should have coordinated various aspects of the Project at a higher level and made adequate enquiries on the progress of the Project at different stages instead of relying solely on the report and assurances made by the Project Team headed by Mr CHEW Tai-chong. (paragraph 5.59)

Whether there was deliberate cover-up of the project delay

7.37 The Select Committee considers that it is not uncommon to experience delay in large-scale construction projects. However, it is a serious matter if the parties concerned have deliberately covered up the

¹⁷⁴ Source: <http://www.mtr.com.hk/en/corporate/investor/patronage.php>

project delay when the target completion date of the Project was in jeopardy, bearing in mind at all times that the Project was publicly funded (also see paragraph 7.18).

7.38 In considering whether the Government and the Corporation had deliberately covered up the project delay, the Select Committee has carefully considered the meaning of the word "deliberate" in its terms of reference and agreed that the word should carry its ordinary dictionary meaning of "intentional, done on purpose"¹⁷⁵. This meaning is adopted in this report.

7.39 Referring to paragraph 6.68, the Select Committee finds that HyD and THB have failed to report in sufficient detail information on the project delay to Railways Subcommittee, and through Railways Subcommittee, the public. For example, Railways Subcommittee was not informed of the worsening situation and of the accruing slippage in the overall programme in the half-yearly progress reports. (paragraph 6.67) The progress at WKT, in particular, the fact that a large quantity of bedrock had to be removed, was not reported to Railways Subcommittee as outlined in paragraphs 6.69 to 6.72 above. As a result, it has conveyed to Railways Subcommittee before April 2014 an erroneous impression that the target of completing the Project by 2015 was achievable.

7.40 The Select Committee finds unanimously that there was non-disclosure on the part of both HyD/THB and the Corporation regarding the project delay to Railways Subcommittee and the public before April 2014. The project delay and information evidencing such delay were conspicuously absent in THB's half-yearly reports, which were prepared jointly by THB/HyD and the Corporation, to Railways Subcommittee before April 2014. There was also no public announcement of the project delay before April 2014.

7.41 The Select Committee considers that THB/HyD and the Corporation should have made known the project delay at a time when there were signs indicating that such delay might jeopardize the target completion date in 2015. The Select Committee is of the view that the right time would be August/September 2013 when the Corporation gave a

¹⁷⁵ The Shorter Oxford English Dictionary Sixth Edition 2007.

presentation of the Partial Opening Plan to RDO and Director of Highways. (paragraph 5.21) If this was done, the project delay might not have provoked so much public concern and anxiety.^{176, 177}

7.42 Some members of the Select Committee consider that, whilst there was non-disclosure, the fact that THB/HyD and the Corporation did not provide important information about delay to Railways Subcommittee before April 2014 does not necessarily mean that they had deliberately covered up the project delay. Such members find no or no sufficient evidence to lead to a conclusion that THB/HyD and the Corporation had deliberately covered up the project delay.

7.43 Some members of the Select Committee consider that it could be inferred from the conduct of Mr CHEW Tai-chong and Mr Jay H WALDER of the Corporation and the selective presentation of information in the reports submitted to Railways Subcommittee that there had been some degree of deliberate cover-up of the project delay on the part of the Corporation and THB/HyD.

7.44 After deliberation, a majority of the Select Committee finds that by virtue of the matters set out in paragraphs 4.17, 4.19, 4.20, 4.23, 4.24, 5.6, 5.12, 5.14, 5.16, 5.17, 5.18, 5.19, 5.25, 5.31, 5.32, 5.33, 5.34, 5.38, 5.39, 5.40, 5.41, 5.42, 5.57, 6.2, 6.4, 6.5, 6.6, 6.9, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.29, 6.30, 6.31, 6.32, 6.34, 6.37, 6.39, 7.25 and 7.35 of this report, there was deliberate cover-up of the project delay on the part of Mr CHEW Tai-chong and Mr Jay H WALDER. In the opinion of the majority, the Corporation is responsible for such cover-up to the extent

¹⁷⁶ Members voted on Mr Gary FAN Kwok-wai's proposal to amend this paragraph. Mr LEE Cheuk-yan and Mr Gary FAN Kwok-wai voted in favour of the proposal. Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. Mr Tony TSE Wai-chuen abstained from voting. The proposal was defeated (please refer to paragraphs 38 to 40 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

¹⁷⁷ Members voted on Mr CHAN Kam-lam's proposal to amend this paragraph. Mr CHAN Kam-lam and Mr Frankie YICK Chi-ming voted in favour of the proposal. Mr LEE Cheuk-yan, Mr Gary FAN Kwok-wai and Mr TANG Ka-piu voted against the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Han-pan and Ir Dr LO Wai-kwok abstained from voting. The proposal was defeated (please refer to paragraphs 44 to 46 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

that it is responsible for the conduct of Mr CHEW Tai-chong and Mr Jay H WALDER, being its senior management staff.¹⁷⁸

7.45 After deliberation, a majority of the Select Committee finds that there was no deliberate cover-up of the project delay on the part of THB, HyD or any of their officers.¹⁷⁹

¹⁷⁸ Members voted on Mr Gary FAN Kwok-wai's proposal to amend this paragraph. Mr Gary FAN Kwok-wai and Mr TANG Ka-piu voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 55 to 57 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

¹⁷⁹ Members voted on Mr Gary FAN Kwok-wai's proposal to amend this paragraph. Mr LEE Cheuk-yan and Mr Gary FAN Kwok-wai voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 59 to 61 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

Part III Conclusions and Recommendations

Chapter 8 Recommendations

8.1 The Select Committee makes the following recommendations on how the Government can enhance supervision of construction of railway projects and strengthen the control mechanism of the Corporation in delivering railway projects in future based on its findings and conclusions set out in Chapters 3 to 7.

Recommendation 1: To improve institutional arrangements under the concession approach

8.2 The Select Committee is of the view that although the Corporation was entrusted with the design, construction, testing and commissioning of HKS of XRL and the delivery of the Project, HyD, as the professional department carrying the responsibility of the Government, should have played a more active and proactive role in monitoring the Project and tried its best to ensure the completion of the Project on time and within budget. The Select Committee recommends that, if the concession approach were to be adopted again for large scale railway projects in future, the Government would require a major and comprehensive review of the approach in general and in detail. To better protect public interest and use of public money, the Government, as the ultimate owner of the projects, must take a more active and proactive role in monitoring more closely the execution of the projects with the aid of expert and independent advice. (paragraphs 3.62, 3.63, 7.7 and 7.8)¹⁸⁰

8.3 While the Government may have good justification for adopting the concession approach, particularly in commercially not viable projects required for the public good, the Government should review and study in

¹⁸⁰ Members voted on Ms Claudia MO's proposal to amend paragraph 8.2. Ms Claudia MO voted in favour of the proposal. Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming and Mr CHAN Han-pan voted against the proposal. The proposal was defeated (please refer to paragraphs 64 to 66 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

detail ways to improve the work mechanisms of the concession approach, including matters such as setting up the necessary institutional arrangements for effective M&V, defining clearly the roles and responsibilities of the parties concerned, putting in place objective measurement of performance and means of intervention and replacement. For example, for effective M&V, the Government should require explicitly the project manager to develop and maintain adequate management tools, such as an integrated PMP with specified project milestones, as a baseline to facilitate monitoring.

Recommendation 2: To improve the corporate governance of the Corporation

8.4 The Select Committee considers that the Board's governance over the Corporation's affairs is less than satisfactory. (paragraphs 5.36, 5.37, 7.33 and 7.34) The Select Committee notes as facts that the Government is the majority shareholder of the Corporation and that the Corporation is one of the most important public transport providers in Hong Kong holding a de facto monopoly in rail transport which touches on the daily life of many Hong Kong citizens.

8.5 The Select Committee notes that one of the recommendations in the 1st IBC report was that the Board should establish a Capital Works Committee to oversee in future any project involving design and construction of a significant capital value as assessed by the Board. The Select Committee supports this recommendation and is pleased to see that the Corporation has set up two new committees under the Board, namely the Capital Works Committee and the Risks Committee, in August 2014 to facilitate more in-depth and focused monitoring of the construction progress of the Project and overall risk management of the Corporation. Further, the Select Committee welcomes the Government's initiatives, as announced in the 2015 Policy Address, to enhance monitoring of the Corporation in tandem with railway development to ensure that the Corporation can maintain an overall high standard of corporate governance.

8.6 The Select Committee recommends that the Corporation should itself ensure that its corporate governance is maintained at a high standard commensurate with a company of such size and reputation. When undertaking railway projects in future, the Corporation should work on an

appropriate and effective internal mechanism so that important matters relating to the railway projects under construction would be brought to the attention of the Project Team, the CEO, the relevant supervisory committees such as the Capital Works Committee, the Risks Committee and the Audit Committee and, ultimately, the Board itself. It should also ensure that reporting of such important matters is made to the Government timeously, fully and frankly in projects which involve public interest and/or require public funding or public resources.

Recommendation 3: To enhance communication with LegCo and the public

8.7 The Select Committee finds that the information provided in the seven half-yearly reports before April 2014 was not comprehensive, precise or timely enough to provide a full picture of the Project's progress to Railways Subcommittee. The Select Committee considers that THB and the Corporation should have reported progress of railway projects to LegCo in a more transparent, comprehensive and timely manner with a view to keeping LegCo Members informed of the latest status and progress of railway construction.

8.8 The Government should also communicate with the public in a more transparent manner in order to address any possible public concern at the earliest opportunity.¹⁸¹

8.9 The Select Committee notes that THB has strengthened its reporting to Railways Subcommittee on the latest progress of the Project. Since the fourth quarter of 2014, THB has been providing reports to Railways Subcommittee on a quarterly basis instead of a half-yearly basis on the progress and the financial situation of the Project. In addition, the quarterly reports were also appended with the Corporation's progress

¹⁸¹ Members voted on Ms Claudia MO's proposal to amend this paragraph. Ms Claudia MO, Mr Gary FAN Kwok-wai and Mr CHAN Han-pan voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam and Mr Frankie YICK Chi-ming voted against the proposal. As the votes were equally divided, the Chairman exercised his casting vote in the negative according to paragraph 8 of the Practice and Procedure of the Select Committee. The proposal was defeated (please refer to paragraphs 73 to 75 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

report on the Project. The Select Committee recommends that the Government should adopt this reporting arrangement in other railway projects to better facilitate LegCo in fulfilling its role and function.

Recommendation 4: To emphasize the spirit of cooperation and trust between the contracting parties in the Government work contracts

8.10 The Select Committee notes that, as required by EA2, the Corporation should have provided all the necessary information relating to the Project to the Government such as the financial situation and expenditure forecast. However, the Select Committee observes that both HyD and Jacobs encountered difficulties in obtaining information from the Corporation, despite requests. For example, the Corporation did not provide an accurate picture to Project Supervision Committee of the prognosis for the Project as a whole. Jacobs also had difficulty in obtaining first-hand information and some of the documents in a timely manner. (paragraphs 4.59 and 6.30 (iii))

8.11 In this respect, the Select Committee agrees with Mr WAI Chi-sing, the former Director of Highways, that a lack of cooperation and trust amongst the stakeholders might have led to the project delay. The Select Committee recommends that the spirit of cooperation and the level of trust between the contracting parties should be emphasized in Government contracts in future. (paragraph 3.61)

Recommendation 5: To recruit professionals/experts and train professionals within the Government

8.12 The Select Committee is of the opinion that the lack of practical experience in implementing railway projects within the Government might have affected the confidence of HyD/RDO staff in fulfilling the Government's monitoring role over the work of the Corporation. The Select Committee recommends that the Government should consider recruiting local and overseas professionals and experts in railway construction to assist the Government in carrying out its monitoring work when implementing railway projects in future. (paragraphs 3.64 and 7.9)

8.13 In view of a dearth of experienced personnel within the Government in railway construction, the Select Committee also

recommends that the Government should consider training professionals within the Government by way of secondment or "revolving door" arrangements to attract talent and gain experience and knowledge within the Government, with a view to enhancing the Government's capacity in monitoring railway projects.

Recommendation 6: To ensure a steady supply of manpower throughout the implementation of future railway projects

8.14 As observed in paragraphs 5.83 and 7.28 of this report, labour shortage has contributed to the delay in the Project.

8.15 The Select Committee recommends that the Government should seek to undertake railway and other major public work projects in an even and orderly spread and avoid rolling out major projects within a short span of time. The Government should have better coordination in future to ensure that the labour supply in the construction industry in Hong Kong corresponds largely with the labour demand for major public work projects while keeping a close watch on the demand in the private sector.

8.16 The Select Committee also recommends that in implementing new railway projects in future, the Government should have careful and thorough consideration of manpower resources required for delivery of projects, in particular the maintenance of an adequate supply of core skilled and experienced workforce and frontline supervisors. The Government should also introduce effective measures to ensure a continuous and steady supply of labour throughout construction projects in both public and private sectors. (paragraph 5.84)

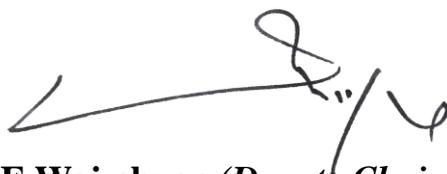
Acknowledgement

The 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 wishes to thank all witnesses who have attended the hearings of the Select Committee to give evidence. The Select Committee also wishes to record its appreciation towards the staff of the Legislative Council Secretariat for their support and assistance throughout its work.

Members of the Select Committee who signed the report



Martin LIAO Cheung-kong (*Chairman*)



Tony TSE Wai-chuen (*Deputy Chairman*)



CHAN Kam-lam



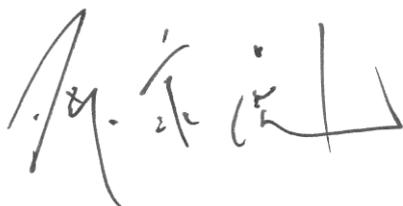
Michael TIEN Puk-sun



Frankie YICK Chi-ming



CHAN Han-pan



TANG Ka-piu



Ir Dr LO Wai-kwok

Members of the Select Committee who did not sign the report

LEE Cheuk-yan

Claudia MO

WU Chi-wai

Gary FAN Kwok-wai

Charles Peter MOK

Abbreviations

Abbreviations

CEO	Chief Executive Officer of the MTR Corporation Limited
Council	Legislative Council
DCEO	Deputy Chief Executive Officer of the MTR Corporation Limited
DRMs	delay recovery measures
E&M	electrical & mechanical
EA1	Entrustment Agreement for Design and Site Investigation in relation to the Express Rail Link
EA2	Entrustment Agreement for Construction and Commissioning of the Express Rail Link
ERL	Guangzhou-Shenzhen-Hong Kong Express Rail Link
ExCo	Executive Council
ExCom	Executive Committee of the MTR Corporation Limited
FC	Finance Committee of the Legislative Council
FD	Finance Director of the MTR Corporation Limited
HC	House Committee of the Legislative Council
HKS	Hong Kong section
HyD	Highways Department

IBC	Independent Board Committee
IEP	Independent Expert Panel
Jacobs	Jacobs China Limited
KCRC	Kowloon-Canton Railway Corporation
km	kilometres
LegCo	Legislative Council
Lloyd's	Lloyd's Register Rail (Asia) Limited
M&V	monitoring and verification
M&V consultant	monitoring and verification consultant
MOD	money-of-the-day
MOR	Minimum Operating Requirement
Partial Opening Plan	the Project Team of the MTR Corporation Limited worked on a partial opening scenario after the meeting in March 2013 with the contractor of contract 810A
PMP	Project Master Programme
Railways Subcommittee	Subcommittee on Matters Relating to Railways
RDO	Railway Development Office
REL	Regional Express Line
RoP	Rules of Procedure of the Legislative Council
THB	Transport and Housing Bureau
the 1 st IBC Report	the first report published by Independent Board Committee on 16 July 2014

the 2 nd IBC Report	the second report published by Independent Board Committee 28 October 2014
the Board	Board of directors of the MTR Corporation Limited
the Corporation	MTR Corporation Limited
the Government	Government of the Hong Kong Special Administrative Region
the IEP Report	the report published by Independent Expert Panel on 30 January 2015
the July Presentation	on 13 July 2013, the MTR Corporation Limited's Project Team gave a presentation to the then Chief Executive Officer, the then Deputy Chief Executive Officer, the then Finance Director of the MTR Corporation Limited on the Partial Opening Plan
the Merger	the merger between the Kowloon-Canton Railway Corporation and the MTR Corporation Limited on 2 December 2007
the Project	Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link project
the project delay	delay of the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link
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
WKT	West Kowloon Terminus

XRL

Guangzhou-Shenzhen-Hong Kong Express
Rail Link

Appendices

新聞公報

運輸及房屋局局長會見傳媒談話全文

以下是運輸及房屋局局長張炳良教授今日（四月十五日）在添馬政府總部西翼大堂，就廣深港高速鐵路香港段工程會見傳媒的談話全文：

各位好。大家都知道政府委託港鐵公司進行廣深港高速鐵路香港段的工程，即簡稱高鐵香港段。這項工程於二〇一〇年一月動工。我們在去年十一月二十二日向立法會鐵路事宜小組委員會匯報這項工程的進展時，當時我們是基於港鐵公司提供的進度資料，說明我們的目標是於二〇一五年內完成高鐵香港段的工程，隨後大約需要六至九個月的時間進行必須測試和試行運作，之後便會正式通車。

但是在上周末，港鐵公司主席與行政總裁通知我，表示依照港鐵公司最新掌握的施工進度，高鐵香港段的工程將會有一定的延誤，未能在二〇一五年完成。

對這個消息我是感到非常驚訝和意外。我已要求港鐵公司盡快就工程進度向政府提交全面評估的報告，並盡快向公眾交代最新的情況。我知道港鐵公司於今日稍後會舉行記者會。

此外，我亦已責成路政署署長就高鐵工程進度作出獨立的審視和評估，向我提交報告。

我們與港鐵公司會在下一個月，即五月二日的立法會鐵路事宜小組委員會（會議）上交代詳情。

記者：造價方面，（工程）延遲會令造價相差多少？其實延遲的消息一早已經有，為何你會對這消息感到驚訝？

運輸及房屋局局長：這個（工程）延遲消息是在剛過去的周末，即數天前我才收到。我自己所以感到非常驚訝，因為直至去年（年）底為止，我們收到港鐵的定期報告，當時港鐵給我們的分析，對工程進展的評估，是在二〇一五年內完成有關的工程，然後當然有一段時間，即六至九個月，作為測試和試運行，跟着便會通車。現在我獲知道的延誤，是令到有關工程是不可以在二〇一五年完成。當然細節方面，（工程）具體延遲多久、不同導致延誤的成因等等，港鐵需要向我詳盡解釋，我要求他們盡快向我提交全面的評估，我們亦會在下月初的立法會鐵路事宜小組委員會作出詳細的交代。

（請同時參閱談話全文的英文部分。）

完

2014年4月15日（星期二）
香港時間16時11分

Press Releases

Transcript of remarks by STH

Following is the transcript of remarks by the Secretary for Transport and Housing, Professor Anthony Cheung Bing-leung, at a media session today (April 15) on the construction works of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link at the West Wing lobby, Central Government Offices, Tamar:

Secretary for Transport and Housing: You are aware that the Government has entrusted the construction of the Guangzhou-Shenzhen-Hong Kong Express Rail Link Hong Kong Section to the Mass Transit (Railway) (MTR) Corporation Limited. The construction work started in January 2010. Late last year on November 22, when the Government made its regular report on the express rail project to the railways subcommittee (Subcommittee on Matters Relating to Railways) of the LegCo (Legislative Council), based on the information supplied by the Corporation, we informed the LegCo that our objective remained to have the construction works completed in 2015. Following which there will be a period of six to nine months for testing and trial runs. And after that, of course, the rail service will be commissioned. However, over the last weekend, I was informed by the Chairman and the Chief Executive Officer of the MTR Corporation that based on the latest assessment of the progress of the construction works, the project will be subject to some delay. And it will not be possible for the works to be completed in 2015.

I have to say I was totally caught by surprise by such information, and obviously I felt very disappointed and deeply concerned about the delay. So I've asked the Corporation to provide me with a full assessment report on the progress of the construction work as soon as possible. The Corporation is also asked to explain the situation to the public as soon as possible.

I understand that the Corporation will be holding a media conference this afternoon. Separately, I've asked the Director of Highways to conduct an independent review and assessment of the project progress. We are aiming to make a report to the railways subcommittee of the LegCo at its meeting early next month on May 2.

Reporter: Any legal consequences for the MTRCL? Is it going to cost much more?

Secretary for Transport and Housing: At the moment I'm still awaiting a full assessment report from the MTR Corporation. Of course various questions will be asked including the question that you've raised. But at this stage I don't think I can be more specific on the matter. I understand the Corporation will be holding a press conference later on to explain the situation.

(Please also refer to the Chinese portion of the transcript.)

Ends/Tuesday, April 15, 2014
Issued at HKT 16:40



新聞稿

Press Release

PR029/14
15 April 2014

Revised Programme for Hong Kong Section of Express Rail Link Project

A tunnel boring machine (TBM) severely damaged by floodwater is affecting progress on the Hong Kong Section of the Express Rail Link (XRL) project. This unforeseen challenge has added to the difficulties of the project and will push the completion date to 2016 with the line ready for operation in 2017.

“The Express Rail Link project is a very large undertaking and immensely complex. Since construction began, we have been presented with numerous challenges which have put pressure on our schedule,” said Mr T C Chew, Projects Director of MTR Corporation. “We have been very focused on catching up through fine-tuning designs and adjusting the construction works but this latest situation with the TBM makes it clear that completion of the project by 2015 is not achievable.”

During the black rainstorm on 30 March 2014, a section of tunnel in Yuen Long connecting Tsat Sing Kong and Tai Kong Po was flooded when heavy rain washed soil and debris into the work site, blocking the surface drains. As a result, flood water found their way into the partially bored tunnel where the TBM was located.

After clearing the site, the MTR project team, the contractor and TBM manufacturer conducted detailed inspection of the TBM to assess the extent of the damage. Their findings have concluded that substantial repair work is required, particularly complete replacement of the sophisticated electronic components, before the TBM can become functional again. Further studies are being carried out to determine whether the TBM should be repaired or if an alternative method should be used to finish excavating the remaining tunnel section. The current assessment is a prolonged delay of up to nine months in the construction programme.

There are two other critical locations where the challenges are of particular concern. One is the extremely difficult ground condition at the West Kowloon Terminus site. The underground rock strata sitting at a higher than expected level is requiring more time to excavate. But progress has also been hindered by boulders and uncharted utilities that had to be negotiated during the excavation process.

The second critical challenge involves the complex geology at the cross-boundary section of the tunnels under the protected wetland area. As marble caverns are known to be located in the zone, tunnel boring work have to proceed with extreme care and any unforeseen circumstances will have to be dealt with as they surface.

- more -

"As you can appreciate, the unforeseen challenges of this project are great. Difficult ground conditions, unforeseen obstructions and the black rainstorm have all impacted our programme. While we make every effort to complete the XRL project as early as possible, we will strictly uphold our 'safety first' principle in the management of our worksites and the safety of our workers," added Mr Chew.

"Taking all this into account, we needed to set out a new timeline for the completion of the project, with major construction works to be finished within 2016. With the time required for testing and commissioning to ensure safe operations, the opening of the line for passenger service will be in 2017. We recognise the Government has entrusted the management of this project to us and we are sorry to have to bring forth this revised schedule. Nevertheless, this will now allow us to complete this project and deliver an important addition to Hong Kong's transportation network."

- End -

**Membership and Terms of Reference of the
Independent Board Committee and Independent Expert Panel**

	Independent Board Committee ("IBC")¹	Independent Expert Panel ("IEP")²
<i>Appointed by</i>	the MTR Corporation Limited ("the Corporation")	the Government
<i>Establishment date</i>	29 April 2014	16 May 2014
<i>Chairman</i>	Professor Frederick MA Si-hang	Mr Justice Michael HARTMANN
<i>Members</i>	<p>Dr Dorothy CHAN YUEN Tak-fai Mr Edward HO Sing-tin Mr Alasdair MORRISON Mr Abraham SHEK Lai-him Mr T Brian STEVENSON</p> <p>- Two independent experts were appointed to assist</p>	<p>Dr Peter HANSFORD Professor Andrew J WHITTLE</p>
<i>Terms of Reference</i>	<p>(a) to review the background of and reasons for the revised schedule for Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link project ("the Project"); and</p> <p>(b) to look forward and advise on the manner in which the Corporation can deliver the Project in a transparent and timely manner and in accordance with the Corporation's obligations under the Entrustment Agreement.</p>	<p>(a) to review the project management, monitoring, and cost control mechanisms of the Corporation on the implementation of the Project – covering relevant systems, processes, practices and modus operandi of the Corporation;</p> <p>(b) to review the monitoring mechanism adopted by the Government over the delivery of the Project – covering the interface between the Corporation and the Highways Department</p>

¹ First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 1.1, 1.2 and 1.4, and Appendix 1.

² Report of HKS of XRL Independent Expert Panel, paragraphs 1.5 to 1.7.

	Independent Board Committee ("IBC")¹	Independent Expert Panel ("IEP")²
		<p>over the Project; the system, processes, practices and modus operandi of the Highways Department in supervising the implementation of the Project; as well as the overseeing role and modus operandi of the Transport and Housing Bureau; and</p> <p>(c) to identify systemic and any other problems involved in project implementation and supervision, and to make recommendations on measures for improving the above systems, processes and practices, where appropriate.</p>

呈
香港特別行政區
立法會主席及全體議員

(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

立法會
Legislative Council

SC(4)(XRL) Paper No.: L3

Ref : CB4/SC/13

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

Practice and Procedure of the Select Committee

The procedure of the Select Committee is governed by the Rules of Procedure of the Legislative Council and the relevant provisions in the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) insofar as they are applicable. For reason of operational needs and in the interest of fair conduct of business, the Select Committee has determined and established its own set of practice and procedure, as detailed in the ensuing paragraphs. The practice and procedure include those not expressly provided for in the Rules of Procedure and Cap. 382.

2. The terms of reference of the Select Committee are as follows:

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.

Principles

3. In determining its own practice and procedure, the Select Committee has drawn reference from those adopted by previous select committees and committees which carried out investigations. The Select Committee adopts the following principles:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation may be affected by the proceedings of the Select Committee;
- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertaining of the facts relevant to, and within the scope of, its inquiry, as set out in the Select Committee's terms of reference, which do not include the adjudication of the legal liabilities of any parties or individuals;
- (d) its proceedings should be conducted in a proper, fair and efficient manner; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

Practice and procedure

Term of office

4. In accordance with Rules 78(4) and (5) of the Rules of Procedure, the Select Committee shall be dissolved upon reporting to the Council or at the end of the Fifth Legislative Council. If the Select Committee is of the opinion that it will not be able to complete consideration of the matter before the prorogation of the Fifth Legislative Council, it shall so report to the Council.

Chairmanship

5. All meetings and hearings of the Select Committee are chaired by the Chairman or, in his absence, by the Deputy Chairman. In accordance with

Rule 79(3) of the Rules of Procedure, in the event of the temporary absence of the Chairman and Deputy Chairman, the Select Committee may elect a chairman to act during such absence.

Quorum

6. Rule 78(3) of the Rules of Procedure provides that the quorum of a select committee shall be one-third of the members excluding the chairman (a fraction of the whole number being disregarded). If a member of the Select Committee draws to the attention of the Chairman on the absence of a quorum as and when there is such absence, the Chairman shall direct the members to be summoned. If after 15 minutes have expired, a quorum is not then present the Chairman shall close the meeting or hearing.

Voting

7. Decisions of the Select Committee shall be decided by a majority of the members present and voting, which is done by a show of hand. Abstentions are not counted for the purpose of determining the result of the vote.

8. In accordance with Rules 79(5), 79(6), and 79A(1) of the Rules of Procedure, divisions in the Select Committee shall be taken by the Clerk who shall ask each member separately how he/she wishes to vote and record the votes accordingly. Neither the Chairman nor any other member presiding shall vote, unless the votes of the other members are equally divided in which case he/she shall have a casting vote, which shall not be exercised in such a way as to produce a majority vote in favour of the question put.

Obtaining evidence

9. The Select Committee may invite any person or body to attend a hearing to give evidence orally. The Select Committee may also request any person or body to give evidence in writing or any person or body to produce specified paper(s), book(s), record(s) or document(s) to the Select Committee.

10. Any person attending before the Select Committee to give evidence or to produce specified paper(s), book(s), record(s) or document(s) before the Select Committee does not enjoy the privileges given to witnesses by section 14(1) of Cap. 382.

Conduct of meetings

General principles

11. In accordance with Rule 79(1) of the Rules of Procedure, the deliberations of the Select Committee shall be confined to the matter or matters referred to it by the Council. The Select Committee shall focus its work on the areas of study proposed in LC Paper No. CB(4)216/14-15(02), which may be subsequently amended if necessary, having regard to the terms of reference set out in paragraph 2 above.

12. A schedule of meetings for the Select Committee is usually agreed beforehand, but the Chairman has the authority to determine the agenda, and to vary the schedule by changing the date, time and venue of meetings, which includes venues outside of the Legislative Council Complex. Members of the Select Committee will be notified by the Clerk of the agenda or any variations determined by the Chairman.

13. In accordance with Rule 79(2) of the Rules of Procedure, meetings of the Select Committee shall be held in public unless the Chairman otherwise orders in accordance with any decision of the Select Committee.

Hearings for the examination of witnesses

14. Examination of witnesses will normally be conducted in public. Exceptions to open hearings may be made as decided by the Select Committee, based on the individual circumstances of each occasion.

15. During open hearings, members should only ask questions for the purpose of ascertaining facts relevant to, and within the scope of, the Select Committee's inquiry. Members should not make comments or statements during these hearings.

16. Open hearings are generally conducted in the following manner:

- (a) at the beginning of each open hearing, the Chairman will remind the public and the media that dissemination or disclosure of the evidence given at the hearing outside of the proceedings of the Select Committee is not protected under Cap. 382. The media should obtain legal advice as to their legal responsibilities;
- (b) before the examination of a witness, the Chairman will remind the witness as appropriate that –

- (i) the witness does not enjoy the privileges given to witnesses by section 14(1) of Cap. 382; and
 - (ii) any person, who before the Select Committee intentionally gives a false answer to any question material to the subject of inquiry during the course of any examination or presents to the Select Committee any false, untrue, fabricated or falsified document with intent to deceive the Select Committee, commits an offence;
- (c) facts are established by questions and evidence given at hearings. Usually, the Chairman will first make an introduction and then ask the witness an appropriate opening question, giving him/her an opportunity to state his/her case;
- (d) members wishing to ask questions should so indicate by a show of hand and they will ask the questions when called upon by the Chairman. The Chairman will ensure, as far as possible, that members have equal opportunities to ask questions and that the hearing is conducted in a structured and fair manner;
- (e) the Chairman will decide whether a question or evidence is relevant to, and within the scope of, the Select Committee's inquiry, as set out in its terms of reference;
- (f) short follow-up questions may be allowed to seek further answers to the original question or clarifications to the answers given. The Chairman has the discretion to decide whether a question is a follow-up question and whether it should be allowed or otherwise; and
- (g) the privileges of Members provided in Cap. 382 are available only within the context of the hearings. All Members, including non-Select Committee Members should refrain from making comments relating to the hearing outside of the proceedings of the Select Committee. Evidence given in closed hearings should not be made public by any members.

17. Subject to the Select Committee's decision, witnesses attending before the Select Committee may be allowed to be accompanied by other persons, who may include legal adviser(s), to assist the witnesses concerned. However, such accompanying person(s) may not address the Select Committee.

Measures taken to avoid possible prejudice to a person's interest in pending legal proceedings

18. In accordance with Rule 41(2) of the Rules of Procedure, a Member shall not make reference in his/her speech to a case pending in a court of law in such a way as, in the opinion of the President or the Chairman, might prejudice that case. This rule applies to the proceedings of the Select Committee by virtue of Rule 43 of the Rules of Procedure.

19. If there are pending legal proceedings arising from matters which are related to the subject of the Select Committee's inquiry, the following measures will be adopted to avoid possible prejudice to a person's interest in pending legal proceedings:

- (a) the Department of Justice will be asked to keep the Select Committee informed of the development of the criminal proceedings concerned, if any;
- (b) the Chairman would explain to each witness that the function of the Select Committee is not to adjudicate on the legal liability of any party or individual and advise him/her of the Chairman's power to disallow the making of any reference to a case pending in a court of law if such reference might, in the Chairman's opinion, prejudice the proceedings;
- (c) where it is considered necessary and justified, either on an application by a witness or on the Select Committee's own motion, the Select Committee may determine to hold closed hearings to obtain evidence from a witness;
- (d) where the Select Committee considers necessary, it will provide the Department of Justice with a copy of the draft findings and observations of the Select Committee and request it to comment whether the contents of the draft might prejudice pending criminal proceedings, if any; and
- (e) the report of the Select Committee should not contain any material which might prejudice a pending jury trial.

20. In respect of pending civil proceedings, the following principles will, in addition to any applicable measures stated in paragraph 19 above, apply:

- (a) references to matters awaiting adjudication in a court of law should be excluded if there is a risk that they might prejudice its adjudication;
- (b) references referred to in (a) would include comments on, inquiry into and the making of findings on such matters;
- (c) matters awaiting adjudication referred to in (a) would include matters in respect of which proceedings have been initiated by the filing of the appropriate documents; and
- (d) prejudice referred to in (a) might arise from an element of explicit or implicit prejudgment in the proceedings of the Select Committee in two possible ways -
 - (i) the references might hinder the court or a judicial tribunal in reaching the right conclusion or lead it to reach other than the right conclusion; and
 - (ii) whether the court or judicial tribunal is affected in its conclusion or not, the references might amount to an effective usurpation of the judicial functions of the court or judicial tribunal.

Handling of requests for classifying documents as confidential

21. If requests are made by witnesses for classifying certain information or documents as confidential, the Select Committee shall consider carefully the circumstances of each case and the justifications provided.

Handling of information contained in classified documents or obtained at closed hearings

22. In fairness to persons who have provided classified documents for the Select Committee, if information contained in such documents is to be used at a public hearing, the source of the information will only be disclosed if it is necessary to do justice to the witness or to enable him to understand a question.

23. If closed hearings are held to obtain evidence from a witness who is a party to pending legal proceedings, information obtained in these closed hearings should be used with care, and the identity of the witness who has provided the information should not be disclosed if it is so decided by the Select Committee.

24. Where the Select Committee is inclined to refer to information obtained in closed hearings in the Select Committee's report, an extract of the relevant part of the report in draft form should be provided to the witness concerned for comment. The comments received will be carefully considered by the Select Committee before its report is finalized.

25. Any information obtained by way of oral evidence or in the form of documents provided at closed hearings shall not be disclosed.

Internal deliberations

26. Subject to Rule 79(2) of the Rules of Procedure, the Select Committee may hold closed meetings to deliberate on procedural matters, progress of its work, the logistical arrangements for hearings, the evidence obtained, the draft report of the Select Committee and any other matters relevant to the Select Committee's work. Members including the Chairman and the Deputy Chairman should not disclose any information about the internal deliberations held or documents considered at these meetings. The Select Committee Chairman or the Deputy Chairman should be the only persons authorized to handle media enquiries.

Handling of documents

27. All documents submitted to the Select Committee are numbered: by document and by page. Each member of the Select Committee will be given a copy of the documents produced to the Select Committee, unless advised otherwise with the consent of the Select Committee. Where a document is classified confidential, members should not make photocopy of it, in whole or in part.

Disclosure of interests

28. Rules 83A and 84 of the Rules of Procedure relating to Members' pecuniary interest shall apply to the proceedings of the Select Committee.

29. In addition, there may be situations in which a member wishes to declare non-pecuniary interests. In such a case, he/she should write to the Chairman to declare such interests. Where appropriate, the Chairman may announce at public meetings or hearings of the Select Committee the nature of interests so declared by individual members.

Participation of Non-Select Committee Members

30. Non-Select Committee Members may attend meetings or hearings held in public but may not speak at these meetings or hearings. If a non-Select Committee Member wishes to direct any questions to a witness, he/she should put his/her questions in writing and pass them to the Chairman without interrupting the proceedings, and the Chairman will decide whether or not the Chairman will ask the questions.

31. Non-Select Committee Members are not allowed to be present at closed meetings or hearings of the Select Committee.

Minutes of proceedings of the Select Committee

32. All proceedings of hearings and meetings are sound-recorded. Members of the public may obtain copies of the sound recordings of hearings and meetings held in public upon the payment of a fee.

33. Minutes of evidence, usually in the form of a verbatim transcript, are kept for each hearing at which witnesses are examined. Relevant parts of the draft transcript are forwarded to the person or body giving evidence for sight and correction, if any, before being incorporated into the minutes of evidence, subject to their signing of an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The procedures in the **Annex**, which apply to witnesses, shall also apply to persons or bodies other than the witnesses giving evidence requesting copies of transcripts of evidence. Any person may obtain a copy of the finalized form of transcript for hearings held in public upon the payment of a fee.

34. For closed hearings, no transcripts will be provided for any person including the witnesses concerned. All witnesses however are provided with the relevant parts of the draft transcripts of evidence for sight and correction. The undertaking they are required to sign includes an additional requirement that any part of the draft transcript in question must not be divulged.

35. For meetings not attended by any outside party, the minutes of meetings are normally presented in a condensed form, recording the Select Committee's decisions, follow-up actions required, procedural matters and declarations of interest made by members. Verbatim record of such meetings may be prepared on the direction of the Select Committee.

Report of the Select Committee

36. The draft report of the Select Committee is considered by the Select Committee at closed meetings. In accordance with Rule 79(9) of the Rules of Procedure, the minutes of proceedings of the Select Committee record all proceedings on the consideration of the report and on every amendment proposed thereto, with a note of divisions, if divisions were taken in the Select Committee, showing the names of members voting in the division or declining to vote.

37. In order to ensure that the procedure is fair and seen to be fair to people whose interests or reputations may be affected by its proceedings, any party, person or organization against whom adverse comments are intended to be made in the Select Committee's report will be given an opportunity to comment on relevant parts of the draft findings and observations of its report. The comments received will be carefully considered by the Select Committee before its report is finalized.

38. In accordance with Rule 79(10) of the Rules of Procedure, a report of the Select Committee, with the minutes of proceedings and the minutes of evidence, if evidence was taken, shall be laid on the Table of the Council by the Chairman of the Select Committee.

Premature publication of evidence

39. In accordance with Rule 81 of the Rules of Procedure, the evidence taken before the Select Committee and documents presented to it shall not, except in the case of its meetings or hearings held in public, be published by a member of the Select Committee or by any other person before the Select Committee has presented its report to the Council. Any member of the Select Committee who fails to comply with this Rule may be admonished or reprimanded by the Council on a motion to that effect.

Council Business Division 4
Legislative Council Secretariat
9 December 2014

Provision of Transcripts of Evidence

The following procedures shall apply to the provision of transcripts of evidence taken by the 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 -

- (a) where considered appropriate, the Select Committee may permit copies of the transcripts of evidence taken in public be provided to witnesses and prospective witnesses on request;
- (b) where copies of transcripts of evidence taken in public are provided to witnesses or prospective witnesses, the unpublished and/or uncorrected status of the transcripts shall be stated clearly; and
- (c) the provision of unpublished and/or uncorrected transcripts of evidence taken in public to witnesses or prospective witnesses be made on the condition that they shall not make public use of the transcripts; shall not quote directly from the transcripts; and shall not use the transcripts in a manner prejudicial to the interest of the Select Committee or other persons.



**HIGHWAYS DEPARTMENT
RAILWAY DEVELOPMENT OFFICE**

1st FLOOR, HO MAN TIN GOVERNMENT OFFICES
88 CHUNG HAU STREET, HOMANTIN, KOWLOON, HONG KONG
Web site : <http://www.hyd.gov.hk>

Urgent by hand

路政署
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香港九龍何文田忠孝街八十八號
何文田政府合署一樓
網址: <http://www.hyd.gov.hk>

本署檔案 Our Ref. : () in HYD RDO 16-3/17/25 C
來函檔號 Your Ref. : CB4/SC/13
電話 Tel. : 2762 4000
圖文傳真 Fax : 2714 8176

18 February 2015

Ms Sophie Lau
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Lau,

**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 (XRL)

Request for Information

Thank you for your letter of 23 January 2015 to the Director of Highways requesting a list of documents as set out in the Appendix to the said letter. We apologize for not being able to provide the requested information by 12 February 2015. I have been authorized to reply as follows.

Please rest assured that Highways Department (HyD) will cooperate with the Select Committee in this inquiry. It is also noted that unless reasons are specified for the Select Committee's consideration, the requested documents will be made available upon the request of the media and the public and be placed onto the website of Legislative Council. They may also be included in the Select Committee's report.



Regarding your request for the XRL-related documents, my responses are as follows : -

- (a) **Extract of the contract, in particular the scope of service, signed between HyD and Jacobs China Limited (“M&V consultant”) in respect of the construction of the XRL**

The scope of the service of the M&V consultant as defined in the Project Brief of the Consultancy Agreement is enclosed herewith.

- (b) **Jacobs Progress Reports (October 2010 to April 2014 - each with 3 volumes)**

Please be informed that there are a total of 43 sets of monthly Progress Report prepared by Jacobs China Limited from its first submission in October 2010 up to April 2014, each set consists of three volumes. For Volume 1 and Volume 2 of the Progress Reports, given the contents of these reports may contain some commercially sensitive information, we can only provide the Select Committee with the redacted versions of these documents.

Further, as only minimal redactions have been made in order to maintain their readability, given the confidential and/or commercially sensitive nature of these documents (despite the minimal redaction), we request that these documents be provided to the Select Committee in confidence for use by the Select Committee members at closed hearings only.

Subject to your agreement to our request, we will provide a set of Volume 1 and Volume 2 of the April 2014 report to you within two working days from the receipt of your agreement. For the rest of these documents (from October 2010 to March 2014), as we need more time to go through each report and to redact the relevant parts of the report, we will provide these documents to you in batches with the last batch by May 2015.

For Volume 3 of the Progress Reports, as they contain the project expenditure, financial / Cash Flow status and Claims

matters, which are commercially sensitive information, we are not able to provide them to the Select Committee.

(c) Project Supervision Committee (PSC) - Membership, Terms of Reference, Minutes and Papers of meetings

We enclose the Membership and Terms of Reference of the PSC as requested.

Please be informed that there are a total of 44 sets of the PSC minutes with the first meeting held in March 2010 up to April 2014, and the minutes of a special meeting held in mid-April 2014. There are a total of 9 sets of PSC papers. Due to the confidential and/or commercially sensitive nature of these documents, we can only provide the Select Committee with redacted versions of these documents.

Further, as only minimal redactions have been made in order to maintain their readability, given the confidential and/or commercially sensitive nature of these documents (despite the minimal redaction), we request that these PSC minutes and papers be provided to Select Committee in confidence for use by the Select Committee members at closed hearings only.

Subject to your agreement to our request, we will provide all the minutes of PSC meetings (March 2010 to April 2014), and the minutes of the special meeting held in mid-April 2014 within two working days from the receipt of your agreement.

For the PSC papers, as we need more time to go through each paper and to redact the relevant parts of the paper, subject to your agreement to our request, we will provide these documents to you in batches with the last batch by April 2015.

(d) Project Coordination Meetings - Membership, Terms of Reference and Minutes of meetings

We have reviewed our records and note that there was no "Membership" and "Terms of Reference" of the Project Coordination meetings, as these meetings had started off as

informal working group meetings as early as in late 2007. The purpose of the Project Coordination meetings is to monitor various activities for the delivery of the XRL project including, but not limited to, timely completion of land matters, resolution of third party requests, key issues on the design, construction, environmental matters that may have potential impact on the progress and programme of the XRL project as well as interfacing issues with other projects.

Please be informed that there are a total of 51 sets of the minutes of Project Coordination meetings for the period from January 2010 to May 2014. Given the minutes of Project Coordination meetings may contain some commercially sensitive and/or confidential information, we can only provide the Select Committee with redacted versions of these documents. Further, we request that the documents be given the same confidential treatment as the PSC minutes and papers as mentioned in (c) above.

Subject to your agreement to our request, we will provide the minutes of Project Coordination meetings held in May 2014, as the meeting originally scheduled for April 2014 was cancelled, within one week from the receipt of your agreement. For the rest of the minutes, as we need more time to go through each minutes and to redact the relevant parts of the minutes, we will provide these documents to you in batches with the last batch by May 2015.

Please kindly take note that there are no papers submitted for the Project Coordination meetings.

I should be most grateful if you would confirm your agreement to our request for item (b), item (c) and item (d) as mentioned above. Subject to your confirmation, we would provide you with the documents per the prescribed timing accordingly. Please note that only English version of all your requested documents are available.

Yours sincerely,



(Henry CHAN)

Principal Government Engineer/Railway Development
Railway Development Office
Highways Department

Encls. (hardcopy and softcopy in CD-Rom)

cc Secretary for Transport Housing (Attn. : Mr Jackson Sin) – w/encls.

Project Supervision Committee (PSC)
for Hong Kong section of Guangzhou-Shenzhen-Hong Kong
Express Rail Link (XRL)

Membership

- Chairman: Director of Highways
- Members: Transport and Housing Bureau
Deputy Secretary for Transport & Housing (Transport)1 or representative
- Railway Development Office (RDO), HyD
Principal Government Engineer/Railway Development
Government Engineer/Railway Development 2
Chief Engineer/Railway Development 2-3
- MTRCL
Projects Director
General Manager – XRL
General Manager – XRL Civil Construction
Programming Manager - XRL
- Ad hoc Members: Representative(s) of other relevant Government departments (on need basis)
- Secretary: Senior Engineer/XRL(3), RDO, HyD

Terms of Reference

- (a) To review the progress and programme of project activities including design, construction and commissioning;
- (b) To review overall project expenditure and cashflow, including the Project Control Total;
- (c) To review project procurement activities;
- (d) To monitor post tender award cost control;
- (e) To monitor resolution of contractual claims and proposed commercial settlements; and
- (f) To discuss any key issues relating to the project.

Agreement No. CE 8/2010 (HY)

**Hong Kong section of
Guangzhou – Shenzhen - Hong Kong Express Rail Link (XRL)
Monitoring and Verification for
Construction, Testing and Commissioning Phase
– Investigation**

Brief

Note: For environmental reason, only Brief 1-25 are attached.

Agreement No. CE 8/2010 (HY)

**Hong Kong section of Guangzhou – Shenzhen - Hong Kong Express Rail Link (XRL)
Monitoring and Verification for Construction, Testing and Commissioning Phase –
Investigation**

Brief

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Agreement No. CE 8/2010 (HY)

**Hong Kong section of Guangzhou – Shenzhen - Hong Kong Express Rail Link (XRL)
Monitoring and Verification for Construction, Testing and Commissioning Phase –
Investigation**

Brief

1. Introduction

1.1 This Brief is to be read in conjunction with the Memorandum of Agreement, General Conditions of Employment of Engineering and Associated Consultants for an Investigation Assignment (1997 Edition) (hereafter called the “General Conditions of Employment”), Special Conditions of Employment, Schedule of Fees, and any other detailed instructions issued by the Director’s Representative.

2. Description of the Project

Background of XRL

2.1 In the Railway Development Strategy 2000 promulgated in May 2000, the Regional Express Line (REL) is one of the railway projects recommended for implementation. Following some developments, the REL became the Hong Kong section of the Guangzhou – Shenzhen – Hong Kong Express Rail Link (ERL) jointly pursued by the Mainland and Hong Kong. In middle of 2007, the Kowloon-Canton Railway Corporation (KCRC) submitted to Government a project proposal on the Hong Kong section of the ERL on the basis of the Dedicated Corridor Option.

2.2 Following the rail merger with the KCRC on 2 December 2007, the MTR Corporation Limited (MTRCL) took over the planning of the ERL. Since then, the acronym for the project has been changed from “ERL” to “XRL” to avoid duplication with the use of the acronym “ERL” for the existing East Rail Line after the rail merger. For the avoidance of doubt, the XRL means the Hong Kong section of the Guangzhou – Shenzhen – Hong Kong Express Rail Link in the context of this Assignment unless otherwise specified.

2.3 The XRL is one of the ten major infrastructure projects announced in the 2007 Policy Address. On 22 April 2008, the Executive Council decided that the MTRCL would be asked to proceed with the further planning and design of the XRL. The design work of the XRL then proceeded. On 28 November 2008, the XRL scheme was gazetted under the Railways Ordinance (Cap. 519). Finally, the Chief Executive-in-Council authorized the XRL scheme on 20 October 2009. Following the approval of the funding application of the railway and non-railway works of the project in January 2010, construction of this \$67-billion project commenced in January 2010 for completion in 2015.

General features of XRL

2.4 The XRL is a 26-kilometre (km) long underground rail corridor. It will run from the terminus in West Kowloon, going north passing Yau Tsim Mong, Sham Shui Po, Kwai Tsing, Tsuen Wan, Yuen Long to the boundary south of Huanggang, where it will connect to the Mainland section of the Express Rail Link seamlessly for through train services. Boundary control facilities (BCF) of Hong Kong will be provided at the West

Kowloon Terminus (WKT). Moreover, space has been reserved inside WKT for accommodating future Mainland's BCF under the co-location scenario. Along the whole tunnel alignment, there will be eight ventilation buildings and one emergency access point. An emergency rescue station (ERS) and stabling sidings (SSS) will be located at Shek Kong of Yuen Long. The XRL is designed for a maximum train speed of 200kph.

- 2.5 The Mainland section of the Express Rail Link runs for a further 116 km from the boundary to Guangzhou, with new stations at Futian, Longhua, Humen and Shibi serving the trains to/from Hong Kong. Apart from shuttle services between Hong Kong and Shenzhen, Dongguan and Guangzhou, the XRL would also operate direct high-speed train services to other Mainland major cities outside Pearl River Delta area, such as Beijing and Shanghai through connections with the future national high-speed railways which have been designed up to a maximum speed of 350 kph. The Mainland section of the Express Rail Link from Shibi to Futian is scheduled for completion in 2012 while the cross-boundary section from Futian to the boundary will be constructed to a programme that would tie in with that of the XRL. The alignments of the Express Rail Link and XRL are shown in **Appendix A** and **Appendix B** respectively. The longitudinal section of the XRL is shown in **Appendix C**.
- 2.6 Having a size of over 10 hectare in area, the WKT is an underground station located immediately north of the proposed West Kowloon Cultural District (WKCD) between the Airport Railway Kowloon Station to the west and the Austin Station to the east. Future private development is also being planned for at top of the WKT. When completed, the WKT is likely to be the world's largest and deepest underground railway station. Being the southernmost terminus of the national high-speed passenger rail network, the WKT will be developed as a gateway to the Mainland, with distinctive architecture, landmark features and user-friendly layout. The plan and typical cross section of WKT are shown in **Appendix D** and **Appendix E** respectively.
- 2.7 The XRL tunnel configuration will vary depending upon the geological conditions and method of construction. Tunnel boring machine (TBM) tunnels will adopt a twin cell tunnel configuration with interconnecting cross passages. Drill & blast and cut & cover tunnels will adopt a single tunnel with a central partition wall to divide the tunnel into two cells.
- 2.8 The Hong Kong section of the Express Rail Link, or XRL, is intended to mean the part of the Express Rail Link south of the boundary at Shenzhen River. For the purpose of construction administration, agreement has been reached with the Mainland authorities/parties that the cross-boundary section of the Express Rail Line tunnel will be driven continuously from a shaft at Huanggang Park, a place at about 2km north of the boundary, by TBM to Mai Po shaft/ventilation building. For the avoidance of doubt, the scope of this Assignment will also include the section of tunnel between Huanggang Park of the Mainland side and the boundary.
- 2.9 Apart from the above railway works, the project also includes non-railway works which comprise essential public infrastructure works (EPIW), reprovisioning, remedial and improvement works (RRIW), property development enabling works at WKT and other works to be entrusted from other parties to the project. Details of the non-railway works are listed in **Appendix F**.

Mode of Implementation of XRL

- 2.10 The XRL is the first railway project implemented under the concession approach in Hong Kong after the rail merger. Under this approach, Government will fund the project and the MTRCL will be granted a concession agreement to operate the completed railway. The design and construction of the project has been entrusted to the MTRCL. In gist, the XRL is a public works project and the MTRCL could be regarded as the Government's agent and project manager for the delivery of the project.
- 2.11 In November 2008, Government and the MTRCL entered into an entrustment agreement for the design and site investigation phase of the XRL (design phase EA), which covers, among others, the preliminary and detailed design of the project works, site investigation and invitation and assessment of tenders for the construction contracts and contracts for the procurement of goods relating to the project. On 26 January 2010, the construction and commissioning phase entrustment agreement (construction phase EA) was executed between Government and the MTRCL.
- 2.12 One of the major considerations behind the entrustment of the design and construction of the project to the MTRCL is to fully utilise the expertise and experience of the MTRCL in managing large-scale railway projects. Thus, the XRL will be implemented by using MTRCL's internal systems for project management and control. That is to say, the MTRCL will carry out or procure to carry out the design and construction works using its own system. Under the provisions of the XRL design and construction phase EAs, the XRL shall be designed, constructed, procured and delivered to standards and/or specifications which are consistent with and not materially in excess of those applicable to relevant elements of comparable completed railway projects in Hong Kong and the Mainland and to reflect the long distance, intercity and high-speed nature of the project. Main key features of the XRL construction phase EA in relation to this Assignment are shown in **Appendix G** for reference.
- 2.13 Being a public works project, the XRL is exempted from the Buildings Ordinance (BO). This is unlike other previous railway projects undertaken by railway corporations, for example, Tseung Kwan O Line or Kowloon Southern Link etc., in which the building submissions and control of these projects were subject to the approval of the Building Authority under the BO and other related ordinance(s). In order to achieve the same level of standards and requirements applicable to other railway projects, the building submissions and control will be conducted in substantially the same manner and extent as in other railway projects implemented under ownership approach. For WKT, since there will be topside private development, arrangements have been made so that the building submissions and control in relation to WKT and the property enabling works will be subject to BO. As for the rest of XRL works (excluding EPIW, RRIW and other works entrusted to this project), the building submissions in respect of the XRL would be submitted by the MTRCL or its consultants/contractors/agents to the Highways Department for vetting and approval to meet the requirements and standards equivalent to those stipulated under the BO.

Programme of XRL

- 2.14 The XRL entrustment programme is shown in **Appendix H**. As at end of April 2010, the majority of the detailed design for civil and structural works has been completed and some of the major tunnel and WKT contracts were either awarded or being tendered. The rest of the civil works design is anticipated to be completed by mid or late 2010 to ensure that all the civil contracts would be let out for tender in late 2010/early 2011. As for the

systemwide electrical and mechanical (E&M) and rolling stock contracts, the detailed design is now in full gear for issuance of tender document in late 2010/early 2011. In summary, packages of construction and supply contracts would be awarded in a progressive manner to suit the project programme. The XRL Summary Design Programme and the Contracts Tender Issue and Award Cascade are shown in **Appendix I** and **Appendix J** respectively.

- 2.15 The MTRCL has employed consultancies or utilised in-house design resources for the detailed design of the project including tender preparation and assessment. Construction project administration and site supervision will generally be carried out by MTRCL's in-house resources.
- 2.16 Railway Development Office (RDO) of the Highways Department is tasked with the overall administration of the XRL. There is a need to monitor and verify the MTRCL's work (including submissions by its consultants, agents, contractors and suppliers to MTRCL) in the XRL to ensure that the MTRCL's work is in compliance with the provisions of the XRL design phase EA and construction phase EA and has achieved value for money so as to meet the public aspiration. In particular, the RDO has a duty to the public to closely monitor the project cost and expenditure to ensure that public funds are justifiably used.

3. Objectives of the Assignment

- 3.1 The overall objective of the Assignment is to provide monitoring and verification services in relation to the work undertaken by the MTRCL (including submissions by its consultants, contractors or agent to MTRCL) during the construction, testing and commissioning phase of the project so as to provide assurance that the MTRCL's obligations stated in the XRL construction phase EA have been properly fulfilled. The monitoring and verification shall focus on cost, programme, safety and quality of the XRL project.
- 3.2 Provision of professional services to the Highways Department in respect of the assessment of building submissions and compliance with the building safety standards.

4. Description of the Assignment

- 4.1 The Assignment shall include but not be limited to the following:

(a) a review of the documents relating to the following:-

- (i) post contract award design changes, including Contractor's alternative designs and the corresponding engineer's detailed designs;
- (ii) detailed designs of the permanent works under design-and-built contract forms, but excluding those works listed in **Appendix K**;
- (iii) construction programmes;
- (iv) testing, commissioning and system acceptance plans;
- (v) services standards and operation-related proposals;
- (vi) method statements and proposals bearing major implications and significance to the project in terms of cost, programme, safety and quality;

- (vii) issues arising from submissions for Station and Transport Integration Committee (STIC), Trackside Safety and Security Committee (TSSC) and Safety and Security Co-ordinating Committee (SSCC);
 - (viii) project finance including reports/information on contract expenditure/forecast, contract commercial issues;
 - (ix) safety plans; and
 - (x) other key documents relating to the XRL works.
- (b) carrying out monitoring on MTRCL's works through a review of the concerned project documents and necessary site inspection and identification of and providing advice on key issues bearing significant cost, programme, safety and quality implications to the project;
- (c) carrying out verification by conducting audits (including process and/or technical audits) to the activities/processes undertaken by the MTRCL, reporting and the necessary follow-up work;
- (d) provision of professional services on the assessment of building submissions and compliance with the building safety standards.
- 4.2 Notwithstanding Clause 4.1 above, the Consultants shall not be required to carry out any detailed checking of proposals or site supervision of the works.
- 4.3 The XRL is anticipated to be commissioned in August 2015. This Assignment shall cover the entire entrustment activities.
- 4.4 Notwithstanding Clause 4.3 above, during the course of the Assignment, the Director's Representative has or will also engage other consultants to undertake the following:
- (a) monitoring and verification for design and site investigation phase of the XRL;
 - (b) an independent design review of the Electrical and Mechanical (E&M) systems of the XRL for the design phase; and
 - (c) an independent review of the E&M systems of the XRL for the construction design, testing and commissioning
- the Director's Representative may also engage other consultants to undertake other tasks relating to the XRL. The division of responsibilities of the Consultants under this Assignment and other consultants for the above tasks shall be described in fuller details in Clause 6 below.
- 4.5 The Consultants shall keep confidential the findings of the monitoring and verification activities unless otherwise agreed by the Director's Representative. The Consultants and their sub-consultants may be required to enter into confidentiality agreements with the MTRCL if so requested.
- 4.6 The Consultants shall carry out the monitoring and verification activities with due regard to minimising disruption to the construction, testing and commissioning activities of the XRL.

5. Deliverables

5.1 The Consultants shall produce and submit the documents outlined below to the Director's Representative. The Consultants shall also be responsible for circulating the documents directly to relevant parties as directed by the Director's Representative. Unless otherwise agreed by the Director's Representative, the documents shall be submitted according to the submission schedule as specified below.

Item No.	Deliverables	Reference Clause	Max. no. of hard copies	Submission Schedule (Due Dates)
1	Draft Inception Report	6.7.1	6	Within 3 weeks from commencement of Assignment
2	Inception Report	6.7.1	6	Within 2 weeks from issuance of comments on the Draft Inception Report
3	Programme	8	6	Refer to Clause 8
4	Summary Report on MTRCL's Project Management Systems and Procedures	6.2.1	6	Within 8 weeks from commencement of Assignment
5	Summary Report on contract documents	6.2.1	6	Within 4 weeks upon availability of relevant document/information
6	Draft Monitoring Plan	6.7.2	6	Within 4 weeks from commencement of Assignment
7	Monitoring Plan	6.7.2	6	Within 2 weeks from issuance of comments on the Draft Monitoring Plan
8	Draft Verification Plan	6.7.3	6	Within 4 weeks from commencement of Assignment
9	Verification Plan	6.7.3	6	Within 2 weeks from issuance of comments on the Draft Verification Plan
10	Audit Plan	6.7.4	6	Within 1 month before conducting of each audit session
11	Audit Report	6.7.5	6	Within 2 weeks after completion of each audit session
12	Review Reports	6.2.2	6	Within 3 weeks upon availability of relevant document/information
13	Monthly Progress	9.2	6	Within 1 week from

Item No.	Deliverables	Reference Clause	Max. no. of hard copies	Submission Schedule (Due Dates)
	Report			start of each reporting month
14	Draft Six-monthly Interim Report and Draft Executive Summary of Annual Interim Report on Monitoring and Verification	6.5	6	Within 2 weeks after completion of the reporting period
15	Annual Six-monthly Report and Executive Summary of Annual Interim Report on Monitoring and Verification	6.5	6	Within 2 weeks from the comments given to the draft report in item 14
16	Draft Final Report and Draft Executive Summary of Final Report on Monitoring and Verification	6.5	6	Within 12 weeks after a date to be agreed with the Director's Representative which shall not be later than the completion date of the last construction contract for the project
17	Final Report and Executive Summary of Final Report on Monitoring and Verification	6.5	6	Within 2 weeks from issuance of comments on the draft report in item 16

- 5.2 The Consultants shall seek the prior agreement of the Director's Representative on the format of all Deliverables listed in Clause 5 of this Brief. To enable the Director's Representative to give comments, the submissions of Deliverables shall be in two stages, i.e. draft and final stages, unless otherwise agreed by the Director's Representative.
- 5.3 The Consultants shall provide any other reports, papers, submissions, programmes, certificates, plans, drawings and any other documents in connection with the Assignment and as required by the Director's Representative.
- 5.4 Reports shall be in A4 size and accompanying drawings should be in convenient sizes but not exceeding A3 size unless otherwise approved by the Director's Representative. The final or agreed version of all Deliverables shall be accompanied by a digital copy. The digital copy shall be saved in a convenient medium, such as compact disc or DVD disc with a clear label indicating the contents of the discs, the date of production of the compact/DVD discs, agreement number, title of the Assignment and name of the Consultants, and be kept in a protective pocket attached to the hard copy delivered. Upon the request of the Director's Representative, the Consultants shall also provide a digital copy of the draft version of the deliverables.

5.5 Unless otherwise agreed by the Director's Representative, the digital copies of the Deliverables shall be as follows :-

- (a) written documents shall be in Microsoft Word 2000 format;
- (b) spreadsheets and/or powerpoint shall be in Microsoft Excel 2000 format or Microsoft Office or other compatible software approved by the Director's Representative;
- (c) CAD drawings shall be prepared conforming to the CAD Standard for Works Projects version 1.02.00 (or later versions as agreed between the Employer and the Consultants from time to time) as posted on the Development Bureau's web site <http://www.devb-wb.gov.hk/index.aspx>;
- (d) programmes shall be in SureTrak Project Manager 3.0 format or other format agreed by the Director's Representative; and
- (e) photographs, illustrations, portraits, documents provided by others and documents involving signatures such as Design Certificates shall be scanned and saved in TIFF, GIF, JPEG, bitmap or Acrobat format.

The Consultants shall further provide 1 additional digital copy of the deliverables in Adobe PDF format printable without loss of data or change in appearance as compared with the corresponding hardcopy.

5.6 The submitted Deliverables shall become the property of the Employer. The Consultants shall draw to the Employer's attention any Deliverables that are under licence and any pre-existing copyright or patent on any Deliverables and any other restriction whatsoever affecting the Employer's use of the same. The Consultants, if required by the Director's Representative, shall establish the existence of any licence, copyright, patent or restriction.

5.7 The Consultants shall adopt the following green measures in preparing the deliverables required above:

- (a) deliverables shall be printed on recycled paper. Recycled paper with no less than 50% recycled materials and not exceeding 80 gsm shall be used as a general rule. The logo of recycled paper shall be printed in a prominent area of the report;
- (b) documents other than deliverables should preferably be printed on recycled paper;
- (c) bleached papers shall not be used if possible;
- (d) unnecessary or excessive use of plastic laminates, glossy covers or double covers shall be avoided as far as possible. Use of recyclable non-glossy art board paper as document covers shall be encouraged;
- (e) deliverables shall be of single line spacing on both sides of the paper;
- (f) Excessive white space around the borders and in between the paragraphs of all documents prepared by the Consultants shall be avoided. A margin of 2 cm shall be sufficient;
- (g) excessive use of blank papers shall be avoided as far as possible; and
- (h) number of pages can be reduced by reducing the font size. For example, "Times New Roman" or "CG Times" of font size 12 or 10 shall be used in balancing

legibility and the waste reduction objective. The appearance and readability of the document can be improved by using two columns where the font size used is ≤ 12 points.

- 5.8 Soft copies of the reports, presentation materials and any supporting notes, photographs and charts shall be submitted to the Director's Representative at the same time as submission of the deliverables.

6. Services to be provided by the Consultants

6.1 General

- 6.1.1 The services to be provided by the Consultants shall be as defined in the General Conditions of Employment and Special Conditions of Employment, and as amplified, extended, supplemented and set out in the Brief.
- 6.1.2 The Consultants shall consult, liaise and correspond direct with project stakeholders including but not limited to the MTRCL, other Government departments and authorities, other public and private organisations and their agencies/consultants on matters related to the project with the prior consent of the Director's Representative. However, the Consultants are not expected to consult, liaise and correspond with MTRCL's consultants, contractors or agents without the consent of the Director's Representative and the MTRCL. The Consultants shall copy relevant correspondence relating to these consultation, liaison and co-ordination to the Director's Representative.
- 6.1.3 The Consultants shall co-ordinate all work as detailed in the Brief and take the lead in liaising with relevant parties for the purpose of completing this Assignment.
- 6.1.4 The Consultants shall arrange and attend meetings with the Director's Representative at monthly or other agreed intervals to review the Consultants' services and progress and to receive guidance and instructions from the Director's Representative. Upon request from the Director's Representative, the Consultants shall attend meetings with the MTRCL.
- 6.1.5 The Consultants shall discuss all preliminary findings and present all draft reports to the Director's Representative before finalising reports or issuing such reports to parties other than the Director's Representative.
- 6.1.6 The Consultants and/or its sub-consultants shall have extensive and relevant international experience in high-speed rail projects and in the provision of monitoring and verification services. The Consultants shall have suitably qualified (academically and professionally) senior and key staff. The Consultants will report to the Director's Representative and be independent of the main detailed design consultants or consultants engaged by the contractors/suppliers of the XRL project.
- 6.1.7 The main roles of the Consultants is to appraise, monitor and audit the activities/processes of the MTRCL, and verify that these activities/processes are carried out in accordance with the MTRCL's management and control procedures and in compliance with the design or construction phase EA, and that value for money is achieved through procedures that are complied with. Hence, the Consultants shall be proactive, working closely with the

Director's Representative and the MTRCL and timely adjust its work plan to suit the progress and programme of the XRL works.

6.1.8 The XRL project team of the MTRCL will be residing in the MTR's Kam Tin Building and the site offices distributed along the XRL alignment. The Consultants' right of access to the project areas and construction sites shall be subjected to the giving of reasonable advance notice to and with the prior agreement of the Director's Representative and MTRCL. The Consultants shall not give instructions to MTRCL, its consultants or contractors or interfere with the works of the MTRCL, its consultants or contractors.

6.1.9 For the avoidance of doubt, the Consultants' monitoring and verification shall cover all the work carried out by the MTRCL during the construction, testing and commissioning phase, including the E&M systems, unless otherwise stipulated in this Brief. The monitoring and verification should be undertaken in parallel with the MTRCL's construction, testing and commissioning programme and in a manner which will minimise any delay or interruption to the project activities.

6.1.10 Upon the instructions of the Director's Representative, the Consultants shall carry out detailed assessments of claims and/or act as expert witnesses on matters relating to the XRL. Such services may be carried out during the entrustment activities or within a reasonable period after completion of the entrustment activities. Such services shall be paid for as Additional Services based on time charge.

6.1.11 The Consultants shall take cognizance of the following consultancies engaged/to be engaged by the Director's Representative during the course of the Assignment:

(a) Monitoring and Verification for the Design and Site Investigation Phase

The objective of this consultancy is to provide monitoring and verification services in relation to the work undertaken by the MTRCL during the design and site investigation phase of the project so as to provide assurance that the MTRCL's obligations stated in the XRL design and site investigation phase EA have been properly fulfilled. The consultancy also included the provision of professional services in respect of the assessment of building submissions to the Highways Department.

(b) Independent Review on the Detailed Design of XRL E&M Systems

The objective of the consultancy is to conduct an independent review on the detailed design and tender specifications for the XRL E&M systems (including railway systems, permanent-way, rolling stocks and other E&M systems), so as to ensure proper design, proper choice of equipment, and interoperability between the Hong Kong and Mainland Sections. The review/checking would be conducted with focus on a set of detailed review objectives specific to E&M design, and would include examination of common design aspects across the major E&M systems in an integrated manner. Prior to this consultancy, a design review agent was engaged to conduct independent review on the preliminary design for the XRL E&M systems.

The Consultants shall note that at the time of award of this Assignment, the review work for the schemes of the E&M systems is still on-going, and review work for the tender specifications has just commenced.

(c) Independent Review of the E&M systems of the XRL for the Construction Design, Testing and Commissioning

The objective of this consultancy is to conduct an independent review on the equipment suppliers' and contractors' detailed design and testing & commissioning procedures/results, in relation to the E&M works undertaken by the MTRCL during the construction, testing and commissioning phase of the project.

A list of the E&M works to be included in the consultancy for the Independent Review of the E&M systems of the XRL for the Construction Design, Testing and Commissioning is shown in **Appendix K**. For the avoidance of doubt, construction design, testing and commissioning review of those works not listed in **Appendix K** shall be covered by this Assignment.

The monitoring and verification of the construction, testing and commissioning of the E&M systems shall be carried out under this Assignment with due regard to the review work on the construction design, testing and commissioning to be undertaken under the consultancy for the Independent Review of the E&M systems of the XRL for the Construction Design, Testing and Commissioning.

The Consultants shall note that at the time of award of this Assignment, the consultancy for the Independent Review of the E&M systems of the XRL for the Construction Design, Testing and Commissioning has not yet commenced.

The Consultants of this Assignment shall liaise closely with all the consultants engaged or to be engaged by the Director's Representative throughout the course of the Assignment.

6.1.12 The XRL will become part of the Mainland's high-speed rail network and therefore the XRL works shall be so designed, constructed and maintained to meet the interface and interoperability requirements with the Mainland section of the Express Rail Link as well as the entire national high-speed rail network to ensure satisfactory through running. The Consultants shall be required to review Chinese technical documents provided by the Mainland design institutes and authorities/agencies in the course of the Assignment, and be capable of applying such Mainland standards and practices in the review concerning interface designs and interoperability. The Consultants shall also be required to prepare specific technical documents/comments in Chinese as and when required. The Consultants shall have members who are able to communicate in fluent Putonghua and are familiar with Mainland practices for efficient liaison and discussions with Mainland design institutes and authorities/agencies.

6.1.13 Not used

6.1.14 The Consultants shall provide presentation of work done and findings upon request by the Director's Representative.

6.1.15 The Consultants shall at their own cost print all necessary documents received in the form of soft copy for carrying out their duties under the Assignment.

6.1.16 In delivering the Services to this Assignment, the Consultants shall take into account the following operational scenarios into consideration:

- (a) the likelihood of the operation mode of the entire Express Rail Link upon completion, including cooperation via agreement (similar to how the East Rail through trains are being operated) or in a joint ventured mode between Hong Kong and Mainland operators; and
- (b) the possibility of introducing BCF co-location at WKT at the beginning of or after the commercial operation of the XRL or any other possible mode of BCF scenario as advised by the Director's Representative from time to time.

6.2 Review Reports

6.2.1 The Consultants shall carry out the following :

- (a) acquaint themselves with the MTRCL project management system and procedures (including the MTRCL's quality and internal audit systems);
- (b) acquaint themselves with the contract documents for all construction and procurement activities ;
- (c) prepare and submit to the Director's Representative summary reports of the above activities.

6.2.2 Upon the review of the reports/information listed in Clause 4.1(a), the Consultants shall provide a report on the review findings for each of the report/information reviewed. Such report shall include any major observations or comments on the report, identify any major risks to the cost, programme, safety and quality of the project, recommendations on the course of action to be taken to minimize the risk or address the issues.

6.2.3 As the XRL will be carried out in a fast-track manner, Consultants shall bear in mind that the Director's Representative may request the Consultants to provide comments on document review at a timeframe shorter than those allowed for in Clause 5.1. Consultants shall co-operate with such requests from the Director's Representative.

6.2.4 In the review of the construction, testing and commissioning plans and proposals, the Consultants shall take due consideration of the fact that the Mainland section of the Express Rail Link from Shibi to Futian would be completed and put into commercial operation ahead of the XRL completion date.

6.2.5 The Consultants shall be proactive throughout the course of the Assignment. Where necessary, the Consultants shall identify any additional information/documents from the MTRCL or other related parties through the Director's Representative to facilitate their work in this Assignment.

6.3 Monitoring

- 6.3.1 The Consultants shall develop a comprehensive Monitoring Plan for the monitoring work covering the various aspects of the works throughout the construction, testing and monitoring phases of the project. The Monitoring Plan shall include document review, site inspection together with other necessary processes or means to ensure that the objectives of the Assignment would be satisfactorily met. The Consultants shall review regularly and as necessary the Monitoring Plan during the course of the Assignment and advise the Director's Representative of any necessary adjustments.
- 6.3.2 In view of the intensity and tight programme of the construction works, the Consultants shall set up and maintain a Monitoring Team (MT) led by a professional staff (at least Corporate Member of the HKIE or equivalent with a minimum of 12 years relevant post-qualification experience) throughout the course of the Assignment and comprises at least one Quantity Surveyor (at least Corporate Member of the Hong Kong Institute of Surveyors or equivalent with a minimum of 5 years relevant post-qualification experience) and one Chinese Liaison Officer (with at least 3 years working experience in Mainland inter-city railway projects, preferably with the Ministry of Railways, and speaks fluent Putonghua). The set up and logistic arrangements of the MT shall be detailed in the monitoring plan. The MT shall work and liaise closely with the Director's Representative and the MTRCL and other concerned parties. The full MT shall be set up within 2 months from the date of commencement of the Assignment.
- 6.3.3 The Monitoring Team and the Building Submission Review & Compliance team (BSRC) as stipulated in Clause 6.6 shall maintain close liaison in carrying out their respective duties. The MT shall supplement the BSRC's duties such that there is no gap between their respective duties.
- 6.3.4 The Consultants shall, on risk basis with focus on cost, programme, safety and quality aspects, carry out, but without limitation to, the following:
- (a) monitor and check on a quarterly basis the cost related processes which include payments, claims, variations and commercial settlements and identify any significant changes of costing which would affect the total project cost estimate; monitor and check payments to MTRCL, MTRCL's consultants, contractors and agents;
 - (b) monitor and keep track of, on a monthly basis, the overall project expenditures and expenditure for individual contracts, breaking down into railway and non-railway works, in a format to be agreed with the Director's Representative;
 - (c) monitor and keep track of, on a monthly basis, variation orders, claims and commercial settlements, in a format to be agreed with the Director's Representative;
 - (d) monitor and comment on a quarterly basis the progress of works against the progress reports and project programmes; advise any slippages and other relevant implications if any;
 - (e) review and comment on major changes of Engineer's design, contractors' alternative designs, major temporary works, waste management, environmental, blasting and spoil disposal plan ;

- (f) review and comment on method statements, proposals and any relevant documents which are of project-wide significance or are of significant public concerns ;
- (g) monitor the quality of works, including conducting site inspections to assess the quality of materials and workmanship against standards as stipulated in the construction phase EA;
- (h) monitor the setup and records of site monitoring regime including existing ground movements, existing buildings, water levels etc;
- (i) assess building submissions and the compliance with the building safety standards of the project;
- (j) provide 2 sets of monthly progress photographs of the XRL; the monthly progress photographs shall be taken and processed by a professional photographer, in 8R size and submitted in albums with a minimum of 30 numbers per month. The content of the progress photographs and submission format are to be agreed with the Director's Representative;
- (k) assist in the updating and maintenance of a web page for the project maintained by Highways Department on a monthly basis;
- (l) monitor the public's opinion on the XRL as expressed in various major websites in the internet, including social networking websites, microblogs, blogs and forums. The Consultants shall prepare and submit to the Director's Representative the records of these public opinions on a bi-weekly basis.
- (m) assist in the project handover processes of the railway works from the MTRCL to Government include the checking of relevant documentation and attending and recording key issues of the joint inspections and handing over meetings.
- (n) assist in liaising with the Highways Department, the MTRCL and Mainland Authorities, including but not limited to the Ministry of Railways, on the future operation of the XRL under a joint venture or other possible arrangements.

6.3.5 Upon the reasonable requests of the Director's Representative, the Consultants shall be required to attend various ad-hoc or regular meetings including project presentations. The Consultants shall review the output of the meeting and identify any high risk elements of activities and processes for further examination or verification works.

6.3.6 The site walks or inspections undertaken by the Consultants are limited to the works sites or areas within the territory of Hong Kong. Should the Consultants require inspection of any works outside the territory of Hong Kong upon the request of the Director's Representative, the Consultants shall be paid for under the Additional Services based on time charge. For the avoidance of doubt, the Consultants shall provide the general personal protective equipment including helmets, safety boots and reflective jackets etc. for the staff involved on site at their own cost. The Consultants shall also bear the cost of all the training and necessary certification, for example training for entering confined space, required for their staff to perform their duties on site.

- 6.3.7 Upon the directions of the Director's Representative, the Consultants shall be required to witness the site testing and commissioning activities undertaken by the MTRCL, its contractors, suppliers or agents during the system integration test and trial operation stage. The Consultants shall provide reports on such tests and activities to the Director's Representative.

6.4 Verification

- 6.4.1 Verification shall comprise process and technical compliance audits (hereinafter refer to as verification audit) to be carried out by the Consultant to ensure that the processes taken by the MTRCL comply with:

- (a) MTRCL's internal management control and procedures; and
- (b) the requirements and standards stipulated in the design and construction phase EAs.

The Consultants may use risk based approach to identify high risk areas for forward planning of verification audits. The Consultants may include other verification methods in addition to verification audits to ensure the accomplishment of the objectives of the Assignment on verification.

- 6.4.2 The Consultants shall produce a Verification Plan for the project according to the contents mentioned in Clause 6.7.3 within 4 weeks of the commencement of the Assignment. The Consultants shall take cognizance of the programmes and staging of works in formulating the Verification Plan. The Consultants shall review regularly and as necessary the Verification Plan during the course of the Assignment and advise the Director's Representative of any necessary adjustments.
- 6.4.3 The Consultants shall, for each verification audit session, liaise with the MTRCL and to agree with them on the audit arrangements. The Consultants shall submit a verification audit plan to the Director's Representative and to notify the MTRCL one month before carrying out of the relevant audit. During the auditing period, the Consultants shall submit a daily report of the audit to the Director's Representative. Within two weeks from the completion of the audit session, the Consultants shall submit an audit report showing the details and findings/results to the Director's Representative.
- 6.4.4 The Consultants shall carry out verification audits in sessions for each of the construction contracts at a minimum frequency as listed in **Appendix L**, with the first to be carried out no later than 6 months after the commencement of the Assignment. The extent and scope of the verification audits shall provide reasonable assurance that the works of the MTRCL comply with the required project scope, standards/specifications, MTRCL's procedures and/or relevant Government's procedures as stipulated in the XRL design and construction Phase EAs.
- 6.4.5 The Consultants shall propose the construction contracts and items of works to be audited on the basis of risk in safety, quality of works, cost implications or programme delay etc., using their railway expertise and experience. The Consultants shall detail how the risk assessment would be taken. The audits shall cover a spectrum of the aspects of

construction processes including but not be limited to alternative or contractor's design, temporary works, materials, construction processes, and workmanship.

6.4.6 In amplification of Clause 6.4.5 above, the Consultants shall carry out verification by auditing each of the following financial processes. The verification audits shall provide assurance of the compliance by the MTRCL with the XRL construction phase EA, and the payments are fair charges under the XRL construction phase EA.

- (a) Payments to MTRCL's consultants/contractors/agents under MTRCL's contracts;
- (b) Changes, modifications and variations with cost implication;
- (c) Claims; and
- (d) Commercial settlements.

6.4.7 The Consultant shall take cognizance that MTRCL may engage independent safety auditors to carry out safety audits of the project. Notwithstanding the carrying out of such audits, the Consultant shall carry out verification audits on the overall safety regime of the project to provide assurance that the project is implemented on a safe manner.

6.4.8 At any time the MTRCL, or Government reasonably suspects that the MTRCL, is in material or persistent breach of any of their material obligations under the XRL construction phase EA, Government shall be entitled to carry out further verification to verify the MTRCL's compliance with their obligations. Upon the instruction of the Director's Representative, the Consultants shall carry out such verification audit. The Consultants shall propose the methodology and criteria for such verification audit work for the agreement of the Director's Representative. Such additional verification audit as mentioned in this Clause shall be paid for as additional Services based on time charges.

6.5 Interim and Final Reports on Monitoring and Verification

6.5.1 The Consultants shall produce six-monthly Interim Reports and an executive summary of the six-monthly Interim Report making reference to all monitoring and verification work done on the project activities. The Interim Reports shall be a summary of the monitoring and verification work done in the reporting period to demonstrate the compliance by the MTRCL to the requirements in the XRL construction phase EA during the period concerned. The first six-monthly Interim Reports shall cover the period from the commencement of the Assignment up to 31 December 2010. Subsequent six-monthly reports shall then report the work done for the subsequent period ending 30 June and 31 December respectively. The last six-monthly report will cover the period when the last audit is carried out.

6.5.2 The Consultants shall produce a Final Report and an executive summary of the Final Report making reference to all monitoring and verification work done during the course of the Assignment. The Final Report shall be a summary of the entire monitoring and verification work to demonstrate the compliance by the MTRCL to the requirements in the XRL construction and commissioning Phase EA.

6.5.3 The Interim and Final Reports on monitoring and verification shall consist of but not limited to the following:-

- (a) an overview of the XRL project works focusing on cost, programme, safety and quality;
 - (b) an overview of the works carried out by the Consultant;
 - (c) a summary of the observation and findings of the Assignment; and
 - (d) a brief evaluation on the works of the Assignment in respect of the achievement of the Assignment objectives
- 6.5.4 The executive summaries to the Interim and Final Reports on monitoring and verification shall be in both English and Chinese and shall consist of but not limited to the following:-
- (a) general description of the service provided by the Consultant; and
 - (b) the methodology and key observations and findings of the Assignment and any suggestions/recommendations.
- 6.5.5 Consultants' attention is drawn to the likelihood of making availability of the Interim and Final Reports on monitoring and verification and their executive summaries to the public including the Legislative Council and/or its Public Accounts Committee.
- 6.6 Provision of professional services on assessment of building submissions and compliance with the building safety standards**
- 6.6.1 The Consultants shall provide assessments on the building submissions submitted by the MTRCL and/or its consultants/agents, and provide input on compliance with the building safety standards in respect of the XRL to the Director's Representative. In view of the intensity and urgency of these submissions and compliance check, the Consultants shall set up a dedicated Building Submission Review & Compliance (BSRC) team comprising the minimum manpower requirement as shown in **Appendix M**. The BSRC team shall work and liaise closely with the Monitoring Team, the Director's Representative and other relevant Government departments including Buildings Department, Geotechnical Engineering Office and Fire Services Department. The BSRC team shall be set up within 2 months from the date of commencement of the Assignment.
- 6.6.2 The Consultants shall submit a building submission review and assessment procedure, and a checking procedure on assessing the compliance with the building safety standards within 3 weeks from the date of commencement of the Assignment for the approval of the Director's Representative. Consultants' attention is drawn to the particularly tight programme in the project programme and thus only a minimum period for review and assessment, and compliance check could be allowed for in the review processes. The Consultants shall review and assess the building submissions and check compliance with the building safety standards in accordance with the agreed procedures. Furthermore, in view of the possible safety-related emergencies affecting the safety of private buildings/structures and the public, round-the-clock consultancy services may be required.
- 6.6.3 The scope of the services on assessing the building submissions shall include, but not be limited to, the following:
- (a) examine building plans and proposals to a safety standard not inferior to that required under the BO and related Regulations;

- (b) examine structural plans and proposals, method statement in accordance with the standards not inferior to that required under the BO and related Regulations, and carry out any related actions such as recommending the acceptance of the submissions and conditions to be imposed, if any, for commencement of works, related site inspections, witnessing related site testing etc.; and
- (c) identify the deficiencies, if any, from the submissions by the MTRCL and/or its consultants/agents and provide necessary advice.

6.6.4 The scope of the services on checking the compliance with building safety standards include, but not limited to, the following:

- (a) examine proposals on precautionary and protective measures and check on site the safety installation of the measures;
- (b) examine the temporary and permanent drainage systems and monitor the drainage tests conducted on site;
- (c) examine documents relating to impact on existing buildings/structures and assess results, if any, such as condition surveys and monitoring reports submitted by MTRCL;
- (d) assist in attending inspections and recommend follow-up actions on safety-related emergencies relating to XRL construction sites and adjacent existing buildings/structures, and provide structural and geotechnical comments on the remedial/rectification measures, if any, carried out by MTRCL;
- (e) assist in attending complaints about defects of adjacent private buildings caused by the works of XRL or not, and recommend follow-up actions, if any, to the Director's Representative and to advise on the monitoring of rectification works carried out by MTRCL;
- (f) conduct audit and surprise checks to construction sites on aspects of the structural safety and integrity of foundation, tunnel, superstructure and etc. for safety assurance and for compliance with the building safety standards, and examine the remedial proposals submitted by MTRCL if contravention is detected;
- (g) carry out site inspections to identify irregularities, contraventions or non-compliance with the building safety standards; and
- (h) check the compliance of the completed works to ensure the standards achieved do not inferior to the requirements of BO and allied regulations.

6.6.5 The professional and technical supporting members of the dedicated BSRC team shall be conversant to the provisions of the BO and shall meet the minimum qualifications and experience or equivalent, as shown in **Appendix N**. The Consultants shall submit the proposed qualifications and experience of the professional and technical members of the team for the approval of the Director's Representative.

6.6.6 The Consultants are required to work closely with the Director's Representative, the MTRCL and other relevant government departments. Upon the request of the Director's Representative, the Consultants shall coordinate the comments of other government departments on building submissions for the attention of the Director's Representative. Where necessary, the Consultants shall attend meetings with the Director's Representative, the MTRCL and/or other relevant government departments to discuss the building submissions.

6.7 Requirements of Deliverables

6.7.1 Inception Report

The Consultants shall prepare an Inception Report showing the plan to complete the tasks. The Inception Report shall consist of but not be limited to the following:

- (a) the Consultants' understanding and appreciation of the objectives of the Assignment ;
- (b) the proposed approach and methodology for meeting the objectives of the Assignment including breakdown of tasks, description of these tasks and the key issues involved;
- (c) a programme containing all activities and tasks, key dates, schedule of submission of Deliverables and meetings; and
- (d) organisation of the Consultants' project team and curricula vitae of the key project team members, including the auditors of the Consultants.

6.7.2 Monitoring Plan

The Consultants shall describe clearly the methodology and resources to be deployed for the monitoring activities and the programme to be followed. The Consultants shall show clearly in the Plan how the objectives of the Assignment in respect of monitoring could be achieved.

6.7.3 Verification Plan

The Consultants shall describe clearly the methodology and resources to be deployed for the verification activities and the programme to be followed. The Consultants shall show clearly in the Plan how the objectives of the Assignment in respect of verification could be achieved. The Consultants may include other verification methods in addition to verification audits to ensure the accomplishment of the objectives of the Assignment on verification.

6.7.4 Audit Plans

The Consultants shall prepare an Audit Plan for each of the verification audit sessions. The Audit Plan shall include but not be limited to the following:

- (a) scope of audit, audit checklist and anticipated stages of works at which audits would be carried out;
- (b) rationale in the selection of the construction contracts and item of works for auditing;
- (c) detailed proposal on the approach and methodology for carrying out the audits;
- (d) the composition and name(s) of the audit team;
- (e) proposal on the number, schedule and places of audits and staff and manpower resources to be deployed for the audit; and

- (f) a review of the last audit report, if any, on similar aspect of audit.

6.7.5 Audit Reports

The Consultants shall prepare an Audit Report after completing each audit session. The Consultants shall propose the format and content of an Audit Report for the agreement with Director's Representative. The Audit Report shall include but not limited to the following:-

- (a) description of the scope of the audit, dates of audit, personnel involved and brief notes on meetings or interviews held;
- (b) list of documents reviewed; findings and observations of previous audits, if applicable; and
- (c) report on observations and findings in the audit on the aspects of safety, quality, cost and programme;
- (d) comments on the compliance with the XRL construction phase EA by the MTRCL;
- (e) duly completed audit checklists used, if applicable, and;
- (f) recommendations on the necessary follow-up actions to the observations and findings of the audits. The Consultants shall provide sufficient details for implementing the recommendations.

7. **Response to Queries**

- 7.1 The Consultants shall respond to queries under Clause 20 of the General Conditions of Employment raised prior to a date 3 months after the final submission of the Deliverables required under the Agreement. Such dates shall be confirmed in writing to the Consultants by the Director's Representative.

8. **Programme of Implementation**

- 8.1 The due date for commencement of the Agreement is 16 August 2010.

- 8.2 Pursuant to Clause 26(B) of the general Conditions of Employment, the Consultants shall submit the draft programme and revised draft programmes and the Director's Representative shall agree, or instruct, within the following periods:

Submission of the draft programme : Within 3 weeks of the commencement of the Assignment

Agreement of the draft programme : Within 4 weeks from receipt of the draft programme or instruction for submission of the revised draft programme

Submission of revised draft programme : Within 2 weeks from the instruction of the Director's Representative

- 8.3 The draft and revised programmes shall detail the activities to be carried out and their inter-relationships, target/key dates for particular tasks and decision dates that may be required for the uninterrupted progress of the Assignment. The Consultants shall discuss

with the Director's representative during the above periods to agree the timing of submission of reports, other documents and plans for each of the main elements of the Assignment, for inclusion in the draft programme and revised draft programme.

- 8.4 The target/key dates referred to in Clause 8.3 of this Brief shall include, but not be limited to, the date of submission of deliverables as stated in Clause 5 of the Brief.
- 8.5 The Consultants shall make every endeavour to ensure that the Assignment is carried out in accordance with the Programme and shall submit regular reviews as part of the progress reports referred to in Clause 9 of this Brief.

9. Progress Reports

- 9.1 The Consultants shall submit to the Director's Representative progress reports at monthly intervals on all aspects of the Services referred to in Clause 6 of this Brief. The format of the report is to be agreed with the Director's Representative.
- 9.2 The Monthly Progress Reports shall include but not be limited to the following:
- (a) progress achieved in the month and a list of those parts of the Services the execution of which is behind the Programme together with proposals to expedite progress, so as to complete the work on time.;
 - (b) summary of activities carried out and summary of observation and findings in the last reporting period;
 - (c) work schedule for the following month;
 - (d) resource availability and deployment in the month;
 - (e) resource availability and proposed deployment for the following month;
 - (f) key issues for comment, discussion, for the Director's Representative's immediate attention with recommendations; and
 - (g) updated expenditure forecasts in accordance with Clause 10 of this Brief.
- 9.3 The Consultants shall attend progress meetings with the Director's Representative at monthly or at agreed intervals. In the meeting, the Consultants shall report the progress of the Assignment and receive instructions, guidance from the Director's Representative.

10. Financial Management

- 10.1 At monthly intervals or at such other intervals as the Director's Representative may require, the Consultants shall submit a report on the current and forecast expenditure on the Assignment and the fees due to the Consultants, in a form to be agreed by the Director's Representative. The monthly financial reports shall be submitted together with the progress reports.

11. Standards and Specifications

- 11.1 In undertaking the assessment activities, the Consultants shall specify clearly which standards and specifications are being used as the basis of assessment and benchmarking for acceptability. The Consultants shall define in the early stages of the project the basic criteria which shall be derived from a combination of the following source, depending upon the nature of the area being assessed.
- (a) HKSAR or Mainland Government requirements;
 - (b) XRL specific requirements;
 - (c) Reference system (if applicable);
 - (d) The railway experience and good engineering practice of the MTRCL and its consultants/agents;
 - (e) Industry standards (where applicable); and
 - (f) International codes and standards (where applicable).
- 11.2 The specific details of the standards and specifications to be used by the Consultants shall be included in the Verification Plan.
- 11.3 In addition, the Consultants shall adopt such technical & design standards and specifications as are in current use by the Government or, if non-existent, British Standards Codes of Practice and Specifications. Should instances arise for which suitable standards or specifications do not exist or for which the current standards or specifications appear to require modifications or if by the adoption of current standards the Consultants would incur additional expenses not within reasonable contemplation, the Consultants shall submit recommendations on appropriate alternatives to the Director's Representative for agreement.
- 11.4 The Consultants shall comply with HyD's management policies and objectives in conformance with the standards of ISO 9001:2000 and ISO 14001: 2004.

12. Variations and Other Commitments

Not used.

13. Director's Representative

- 13.1 The Director's Representative as defined in the General Conditions of Employment shall be the Principal Government Engineer/Railway Development (PGE/RD) of the Highways Department or such other person as may be authorised by the Director in writing and notified to the Consultants. The Director's Representative may delegate any of the powers and functions vested in him to other officers. In this regard, the Government Engineer/Railway Development(2) of the Highways Department (GE/RD(2)) is responsible for the day-to-day management of the Assignment. If the Consultants are dissatisfied with a decision or instruction of any such officer the matter shall be referred to the Director's Representative for a ruling.
- 13.2 During the course of the Agreement, the Consultants shall report direct to the Director's Representative via GE/RD(2) and all work shall be submitted to him.

14. Control of the Project and Assignment

- 14.1 In amplification of Clause 13 of the General Conditions of Employment, the Consultants will be required to attend, in connection with the project, Legislative Council, District Councils and other public committees or public consultation bodies as required by the Director's Representative. In this connection, the Consultants shall be required to attend a maximum of five numbers of these external meetings. Additional attendances of these external meetings beyond the maximum number stated above shall be paid for as Additional Services based on time charges. The above meetings will be in addition to the meetings, which are not regarded as external and shall also form part of the Services for this Assignment, with the Director's Representative, the MTRCL or its consultants, relevant Government bureaux/departments, other consultants and other parties who may be affected by the project.

15. Information and Facilities Provided by the Employer

- 15.1 All available information relevant to the Assignment will be provided to the Consultants and shall be used exclusively for the purpose of executing the Assignment. The Consultants shall indicate for guidance those documents which they currently hold and those of which a copy may be needed, should the Assignment be awarded to them. A copy of each of the documents indicated as needed will be supplied free of charge by the Director's Representative on request from the Consultants, except those currently available from the Sales section of the Information Services Department. In the case of plans and drawings, one print of each plan or drawing shall be provided free of charge if requested by the Consultants.

16. Consultants' Office and Staffing

- 16.1 The Consultants shall maintain for the duration of this Agreement an office in Hong Kong under the control of the Project Director of the Consultants who shall be responsible for the Assignment. He shall have adequate authority and sufficient professional, technical and administrative support staff in all relevant disciplines to ensure progress to the satisfaction of the Director's Representative.
- 16.2 The Consultants shall also maintain for the duration of this Agreement office(s) for the Monitoring Team and Building Submission Review & Compliance Team at a location, close to the project area, to be approved by the Director's Representative.
- 16.3 The Consultants shall provide the staff and manpower input in accordance with the Technical Proposal which was submitted with the Consultants' tender for this Assignment. The Director's Representative shall have the right to check the time-log record of the Consultants' staff deployed for the Assignment.
- 16.4 If the Director's Representative considers that the performance of the Consultants is not satisfactory due to inadequate staffing and manpower input allocated to this Assignment, the Consultants shall, upon the request of the Director's Representative, forthwith submit to the Director's Representative the time-log record of the staff deployed for the

Assignment for the Director's Representative to check against the Technical Proposal.

- 16.5 The Consultants' failure to adhere to their staffing proposal, in particular the employment of core personnel of the Consultants and their sub-consultants, thus causing an adverse impact on the performance of the Services, shall be duly reflected in the Employer's performance report on the Consultants.
- 16.6 If the Consultants are unable to maintain any of the core personnel specified in the Technical Proposal, the Consultants shall as soon as possible report this to the Director's Representative and propose, for the Director's Representative's approval, a revised personnel arrangement which is equivalent to or better than the existing personnel arrangement in terms of qualifications, experience and competence.

17. Specialist and Sub-consultant Services

- 17.1 The Consultants shall provide all specialist and sub-consultant services required for the satisfactory completion of the Assignment. No additional fees or expenses for the provision of such services rendered locally or overseas shall be payable by the Employer except as otherwise provided for in the Schedule of Fees.
- 17.2 Without derogating from the generality of clauses 38(i) of the General Conditions of Employment, the Consultant shall, upon the award of this Agreement and save as otherwise agreed by the Director's Representative, appoint the sub-consultants as proposed in their Technical Proposal for the Assignment. The Director's Representative shall have the right to check the sub-consultancy agreements. If the Director's Representative considers that the performance of the Consultants is not satisfactory due to inadequate staffing and manpower input allocated to the Assignment, the Consultants shall, upon the request of the Director's Representative, forthwith submit to the Director's Representative a certified copy of any or all of the sub-consultancy agreements.

18. Surveys

Not used.

19. Insurance

- 19.1 The amount of insurance cover to be maintained in accordance with Clause SCE13 of the Special Conditions of Employment shall be twice the lump sum fee for this Assignment, subject to a maximum of HONG KONG Dollars 75,000,000 and a minimum of HONG KONG Dollars 5,000,000.

- End -

By Fax: 2978 7569

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18 February 2015

Ms Sophie LAU
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms. LAU,

**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 (“Select Committee”)**

Request for information

Thank you for your letter dated 23 January 2015 to the Secretary for Transport and Housing (“STH”) on the captioned subject. I have been authorised to reply as follows.

Item (a)

On 26 January 2010, the Government and the MTR Corporation Limited (“the Corporation”) entered into an *Entrustment Agreement for Construction and Commissioning of the Express Rail Link* (“EA2”). Earlier on 24 November 2008, the Government and the Corporation entered into an *Entrustment Agreement for Design and Site Investigation in relation to the Express Rail Link* (“EA1”).

Given these two documents are confidential in nature and their contents involve sensitive commercial information, the EA1 and EA2 are for the internal reference of Government and the Corporation only (i.e. the two contractual parties of

the EA1 and EA2). To facilitate the work of the Select Committee, and having obtained the consent from the Corporation to disclose the EA1 and EA2, we are prepared to provide the EA1 and EA2 (with very minimal redactions) to the Select Committee on a confidential basis, i.e. the EA1 and EA2 are to be classified as confidential and are to be provided in confidence for use by the Select Committee members at closed hearings. We note from the practice and procedure of the Select Committee that any information obtained by way of oral evidence or in the form of documents provided at closed hearings shall not be disclosed by the Select Committee. Subject to the Select Committee's agreement, we will provide a copy of the EA1 and EA2 to the Select Committee separately.

Item (b)

Before the Rail Merger in December 2007, all railway projects were financed under the ownership approach. Under this approach, the railway corporations were responsible for the funding, design, construction, operation and maintenance of the railway, and ultimately own the railway. Since the two railway corporations operated on commercial principles, they would not take up financially non-viable railway projects unless some form of financial support was provided by the Government as appropriate. The form of funding support for each railway project was considered on a case-by-case basis.

Upon the implementation of the Rail Merger, the Corporation was granted a service concession by the Kowloon-Canton Railway Corporation ("KCRC") to operate the existing and new KCR railway lines under construction. The Corporation is now responsible for the operation, maintenance and improvement of the KCR system, including the replacement of the concession assets, during the concession period. It exercises control over all the operational arrangements of the KCRC network in addition to its own network and is responsible for the performance of the total system. Upon expiry or termination of the service concession, under the terms of the service concession agreement dated 9 August 2007 between the Corporation and KCRC, the Corporation would be required to return to KCRC an operating KCR system that meets the prevailing operating standards. In other words, KCRC is not disposing of the railway system to the Corporation, and the Corporation is not acquiring the KCRC's railway assets (except for certain low value items such as spare parts and consumables).

It was also agreed in the context of the Rail Merger that for individual new

railway projects which are not natural extensions of the network of the Corporation, the Government has the discretion to determine whether to adopt the ownership approach or the concession approach.

The Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”) is the first railway project implemented by the Government under the concession approach. Under the concession approach, the Government will fund the construction of the railway and its ancillary infrastructure, and ultimately owns the railway. The Corporation is entrusted with the design, construction, testing and commissioning of the Hong Kong section of the XRL. Upon completion of the railway, the Corporation would be granted a service concession for the operation and the Government would receive service concession payment accordingly. Subject to the agreement between the Government and the Corporation concerning the terms of the service concession, it is the Government’s intention that one of the conditions for the grant of service concession for the operation of XRL to the Corporation would be that upon the expiry or early termination of the franchise granted to the Corporation under section 4 of the Mass Transit Railway Ordinance (Cap. 556), the Corporation will have to return the XRL railway and assets to the Government.

When considering whether the ownership or concession approach should be adopted for the Hong Kong section of the XRL in 2008, the Government had in mind the following considerations and finally decided to adopt the concession approach for the XRL:

- (i) XRL is a major cross-boundary infrastructure. The Hong Kong section of the XRL would be connected to the Mainland section which forms part of the national railway network owned by the Mainland authorities. Ownership of the Hong Kong section by the HKSAR Government would facilitate coordination and resolution of interface issues between the Hong Kong and Mainland sections, both during construction and operation. These interface issues include, for example, the adoption of standards to ensure inter-operability of the two systems, the allocation of train paths, the fire-fighting and emergency evacuation arrangements etc.
- (ii) The financial viability of the project is subject to a host of factors, including, for example, fare level, fare adjustment mechanism and revenue split mechanism which need to be discussed with the company running the Mainland section, and the availability of train paths and

cross boundary facilities arrangement, which need to be further negotiated between the HKSAR Government and the Mainland authorities. In light of these uncertainties, a conservative approach had been adopted in assessing the financial viability of the project, thus arriving at a substantial funding gap.

- (iii) Under the concession approach, the Government could capture the upside of the XRL's performance under a revenue-sharing mechanism and could get back a fully operational XRL system at the end or upon termination of the service concession. The Government would also be in a better position to liaise with the Mainland authorities over issues such as allocation of train paths and co-location of boundary control facilities to enhance the long-term profitability of the project; hence the concession approach would in the long run make more financial sense for the Government.

As provided in the EA2, the Corporation shall use its best endeavours to complete, or procure the completion of, the Entrustment Activities in accordance with the Entrustment Programme; and to minimize any delay or other effect which any modifications may have on the Entrustment Programme. In this connection, the Corporation shall act in accordance with its management systems and procedures. Moreover, the Government shall be entitled to appoint an appropriate consultant to verify the Corporation's compliance with its obligations under the EA2. At any time the Corporation is in material or persistent breach (or the Government, acting reasonably, suspects that the Corporation is in material or persistent breach) of any of the Corporation's material obligations under the EA2, the Government shall be entitled to verify the Corporation's compliance with the Corporation's obligations under the EA2.

In the event of any errors or omissions by the Corporation which constitute breaches of the EA2 by the Corporation and as a result of which the re-execution of the Entrustment Activities is required, the Corporation shall, if required by the Government, at its own cost re-execute (or procure the re-execution of) such Entrustment Activities to the reasonable satisfaction of the Government.

Should there be a delay and to the extent that the delay in question is not covered by any modification or adjustment to the Entrustment Programme, it may amount to a breach of the Corporation's obligations under the EA2 and the

Government may have a claim against the Corporation for such a breach.

In addition, the Corporation warrants the Government on a number of matters including that the Entrustment Activities that relate to the provision of project management services, such Entrustment Activities shall be carried out with the skill and care reasonably expected of a professional and competent project manager whose role includes co-ordination, administration, management and supervision of the design and the construction of works. Should the delay in question involve a breach by the Corporation of any of its warranties, the Government may have a claim against the Corporation for breach of warranties.

The Administration's papers submitted to the Legislative Council during 2008 to 2009 contained relevant information on implementing the Hong Kong section of the XRL under the concession approach, viz.:

- (i) *Administration's paper on Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (Legislative Council Brief)* for the Legislative Council Subcommittee on Matters Relating to Railways ("RSC") meeting on 2 May 2008;
- (ii) *Administration's paper on Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (Follow-up paper)* (LC Paper No. CB(1)1749/07-08(01)) in May 2008; and
- (iii) *Administration's paper on Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link: Funding Arrangement and Special Rehousing Package (Legislative Council Brief)* for the RSC meeting on 22 October 2009.

Item (c)

The Project Supervision Committee ("PSC"), which is chaired by the Director of Highways ("DH") meets on a monthly basis between the Government and the Corporation. The current membership list of the PSC is at **Appendix A**. The Corporation is required to submit a monthly progress report setting out the latest progress and financial position of the project to the PSC ("PSC reports"). For the period from February 2010 to April 2014, there were 51 PSC reports submitted by the Corporation. These PSC reports, with necessary redactions in relation to commercially sensitive information, are placed in the Corporation's XRL Project Data Room. Due to the confidential and commercially sensitive nature of the PSC reports, we will provide the Select Committee with redacted versions of these documents (same as the copies placed in the Corporation's XRL Project Data Room) in

confidence for use by the Select Committee members at closed hearings. Subject to the Select Committee's agreement on our proposed arrangement, we will send those PSC reports to the Select Committee separately.

Head of Department ("HoD") meetings are held regularly for DHy to update STH on various major aspects of the work of the Highways Department ("HyD"), including the project progress of the XRL. While there are no formal notes of such HoD meetings, briefing notes are prepared by the HyD for discussion at the meetings. In view of the confidential nature of the HoD meetings, these briefing notes are normally for Government's internal reference only. To facilitate the work of the Select Committee, we are prepared to provide a set of key points of those parts of the briefing notes in relation to XRL in confidence for reference by the Select Committee members at closed hearings. Subject to the Select Committee's agreement on our proposed arrangement, we will send the set of key points to the Select Committee separately.

Item (d)

The key points of discussion at the meeting held on 21 November 2013 between THB and the Corporation have already been detailed at the Annex to the Administration's response to RSC dated 15 May 2014 (LC Paper No.: CB(1)1422/13-14(04)), which is also now provided at **Appendix B** of this letter. THB has no other record on that meeting.

Item (e)

There is no telephone recording or record of the telephone conversation between Mr Jay H WALDER, the former Chief Executive Officer of the Corporation, and Professor Anthony CHEUNG, STH, discussing the project of the Hong Kong section of the XRL on 21 November 2013. What had transpired during that telephone conversation was already included in the Administration's paper to RSC (LC Paper No.: CB(1)1328/13-14(03)) based on STH's recollection. Paragraph 2 of the Annex of the Administration's response at Appendix B also has relevant information. As a matter of practice, STH does not make any recording of telephone calls or of any conversation with callers over telephones.

Item (f)

The construction of West Kowloon Terminus (“WKT”) at Jordan Road falls within Contract 811B which commenced in August 2010. According to HyD’s available records, before the commencement of the contract, there was one record of request made by the Corporation in March 2010 to carry out trial trench excavation for watermains laying across Jordan Road between D1A Road and Canton Road, which was outside the WKT boundary. This application was approved by HyD in March 2010.

Disclosure of information

We note from your letter of 23 January 2015 that information provided by us will be made available to the media and the public upon request and be placed on the website of the Legislative Council, and may also be included in the Select Committee’s report. Please be advised that the information mentioned in preceding paragraphs is provided to the Select Committee for the sole purpose of assisting its inquiry into the delay of the Hong Kong section of the XRL project. On Items (a) and (c), the documents contain commercially sensitive information. We should therefore be grateful if the Select Committee would confirm its agreement to our proposed arrangement as aforesaid. Subject to the Select Committee’s confirmation, we will provide the Select Committee with the documents accordingly.

Yours sincerely,



(Jackson SIN)

for Secretary for Transport and Housing

c.c.

Mr. Henry CHAN, Principal Government Engineer/Railway Development, HyD
(Fax: 2714 5297)

**Project Supervision Committee (“PSC”)
for Hong Kong section of Guangzhou-Shenzhen-Hong Kong
Express Rail Link (“XRL”)**

Current membership
(as at 2 January 2015)

Highways Department

Director of Highways (*Chairman*)

Principal Government Engineer/Railway Development

Government Engineer/Railway Development 2

Chief Engineer/Railway Development 2-3

Senior Engineer/XRL(3) (*Secretary*)

Transport and Housing Bureau

Principal Assistant Secretary for Transport & Housing (Transport) 3

Assistant Secretary for Transport and Housing (Transport) 3A

MTR Corporation Limited

Projects Director

General Manager – XRL

General Manager – XRL E&M

Programming Manager – XRL

政府總部
運輸及房屋局
運輸科
香港添馬添美道 2 號
政府總部東翼



**Transport and
Housing Bureau**
Government Secretariat

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

本局檔號 Our Ref.:
來函檔號 Your Ref.:

電話 Tel : (852) 3509 8163
傳真 Fax : (852) 2136 8016

15 May 2014

Secretary General
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms. Sophie LAU)

By Fax: 2978 7569

Dear Ms. LAU,

**Request for Administration's Submission of
Notes of the Meeting held on 21 November 2013 between
Representatives of the Administration and MTR Corporation Limited to
Subcommittee on Matters Relating to Railways**

I refer to the letter dated 7 May 2014 from the Hon. James TO to the Chairman of the Subcommittee on Matters Relating to Railways (RSC) that you forwarded to us on 8 May 2014. I have been authorised to reply as follows.

The key points of discussion at the meeting held on 21 November 2013 between the Transport and Housing Bureau (THB) and the representatives of the MTR Corporation Limited (MTRCL) are detailed at the **Annex**. They are prepared by the Government as a record of the meeting. Comments from MTRCL have not been sought.

The meeting deliberated at length the possibility of the **completion and commissioning** of the XRL in 2015. The crux lay in the assessment on the progress of cross-boundary tunneling works under Contract 826 instead of the works of the West Kowloon Terminus (WKT).

In August/September 2013, MTRCL raised the possibility of “partial opening” scenario with the Highways Department (HyD). Under the “partial opening” scenario, six out of the 15 tracks and the essential railway facilities at the WKT should be ready to provide passenger service in order to meet the passenger demand at the initial commissioning of the XRL. As MTRCL did not provide adequate information at that time supporting the feasibility of the “partial opening” scenario, HyD, without indicating agreement to the proposal, requested MTRCL to provide further information such that a report could be made to THB. At the meeting on 21 November, the Government queried that even if the “partial opening” scenario for the WKT were adopted, the XRL could not commence operation if the tunneling works of Contract 826 could not be completed in time. MTRCL explained that based on their successful experience in delivering several rail lines in the past, they were confident that they could catch up with the delay.

The Government had two prime considerations on that day. First, while the commissioning of the XRL by 2015 was an important policy and planning objective which should be achieved as far as possible, we had to face squarely any delay caused by insurmountable technical difficulties that the project had come across. The point was that we had to alert the Legislative Council (LegCo) and the public as early as possible. Second, at the meeting, the Chief Executive Officer and the Projects Director of MTRCL both assured the Government many times, with much confidence, that the XRL could be commissioned by 2015, and did not lose their confidence despite the Government’s repeated queries and challenges. In fact, based on the information available, the Director of Highways and his colleague could not rule out, at the meeting, the possibility of the commissioning of the XRL by 2015. At the meeting, MTRCL also made it clear that should it be made public at that stage that the target of 2015 might be changed, MTRCL would lose its leverage to urge its contractors to push forth the project, and the commissioning of the XRL by 2015 would then be really impossible. At that time, the Government considered the MTRCL’s view reasonable and we should strive to avoid a self-fulfilling prophecy.

The reason for not mentioning the “partial opening” arrangement of the WKT at the LegCo RSC meeting held on the following day (22 November) was that the Government had not agreed to such an arrangement. We opined that MTRCL had not provided adequate information supporting the feasibility of the scenario. More importantly, our assessment at that time was that the crux lay in the assessment on the

progress of cross-tunnelling works under Contract 826. If the tunneling works could not be completed, the timely completion of WKT works would not be of much relevance. Our focus was thus on the completion date of the tunneling works. The fact was, on that day the Government could not completely rule out the possibility of the construction works to be completed by 2015.

Therefore, at the LegCo RSC meeting on 22 November, the Government stated that “based on the latest assessment of MTRCL, the major works of the XRL could be completed within 2015. Thereafter, testing and trial runs would be conducted. Normally, this would take six to nine months. The railway might only come into operation after the relevant authorities have approved the test results so as to ensure the safety and reliability of the railway service”. The statement did reflect the respective views of the THB (including HyD) and MTRCL on the progress of the works. In particular, from the perspective of THB, we would like to convey the message that while the major works could be completed within 2015, the date of commissioning would have to be confirmed. The statement also took account of the consideration on urging the contractors to push forth the project hoping to give the MTRCL a chance to catch up with the delay. We also made it clear to the MTRCL that we had to report to the public as soon as possible if it became clear in the coming months that the progress of delay recovery was not satisfactory. Following the meeting, HyD has been asking MTRCL to submit details on the progress of the delay recovery measures to ascertain whether the target commissioning date should be revised.

Yours sincerely,



(Miss Winnie Wong)
for Secretary for Transport and Housing

Encl.

c.c. Director of Highways

Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL)

Meeting on 21 November 2013

Present

Government representatives

Mr. Joseph Lai, Permanent Secretary for Transport and Housing
(Transport)

Mr. S M Yau, Under Secretary for Transport and Housing,

Mr. K K Lau, Director of Highways

Mr. F Chan, Director of Electrical and Mechanical Services,

Mr. Henry Chan, Principal Government Engineer/Railway Development,
Highways Department

Ms. Rebecca Pun, Deputy Secretary for Transport and Housing
(Transport)¹

Ms. Winnie Wong, Principal Assistant Secretary for Transport and
Housing (Transport)³

MTRCL's representatives

Mr. Jay Walder, Chief Executive Officer

Mr. T C Chew, Projects Director

Mr. Jacob Kam, Operations Director

Mr. Antonio Choi, General Manager (XRL)

Ms. Maggie So, Deputy General Manager – Projects & Property
Communications

1. The Government stated that the Highways Department (HyD) and MTRCL briefed the Transport and Housing Bureau (THB) on 8 November 2013 on the latest position of the XRL project, including the construction progress of the West Kowloon Terminus (WKT) and the tunneling works under Contract 826. At that meeting, MTRCL expressed that WKT could be ready for “partial opening” by December 2015. Under the “partial opening” scenario, six out of the 15 tracks and the essential railway facilities at the WKT should be ready to provide passenger service. As for the tunneling works under Contract 826, they could only be completed by October 2015 and the testing of XRL (which would normally take three months) could only commence from October 2015. As it would take at least another three months to conduct trial runs, the target opening date of end-2015 might be affected. A similar briefing was conducted for the Secretary for Transport and Housing (STH) on 20 November. Based on the assessment of works progress, THB contemplated making it public at the Legislative Council (LegCo) Subcommittee on Matters Relating to Railways (RSC) meeting scheduled for 22 November 2013 that the XRL might only commence operation after 2015.
2. In the morning of that day (21 November), the Chief Executive Officer (CEO) of MTRCL called STH saying that the XRL works could be completed in 2015 and service could commence by end-2015. The CEO did not agree to inform the RSC on

22 November that the completion date of 2015 would be delayed. STH responded that the Projects Director of MTRCL had informed the Government of the delay. The CEO said that he would further check with the Projects Director. He subsequently called STH again saying that he had confirmed with the Projects Director and stressing that the XRL could come into service by end-2015. STH did not accept this conclusion and directed the Permanent Secretary for Transport and Housing (Transport) (PST) to hold an urgent meeting with the CEO of MTRCL to clarify the situation.

3. The Government said that the meeting aimed at obtaining the latest assessment from MTRCL on the completion and commissioning date of the XRL. Should it become apparent that the XRL could not be completed and commissioned by 2015, we had a duty to inform the public as early as possible.
4. The MTRCL expressed that the 2015 commissioning date was still achievable and all contractors were working towards this target.
5. The Government said that they were confident that the MTRCL could complete the works. But the Government expected the LegCo RSC would ask whether the XRL could be completed and commissioned in 2015. The Government said that the MTRCL had been informing the Government that even if the WKT could be partially opened by end-2015, the severe delay in the cross-boundary tunneling works under Contract 826 was their main concern. If the

testing and trial runs of XRL could only commence in October 2015, the Government queried how MTRCL could complete all necessary procedures within three months. If there was indeed delay in the XRL, we could not avoid the question and we had to inform the public as soon as possible.

6. The Government said that we could inform the public that the works were very complicated. Taking into account the need to conduct testing and trial runs, we anticipated that there would be delay in the XRL. While we hoped to complete the XRL by 2015, a more realistic assessment for the commissioning date would be within 2016 even though we could not preclude, at that stage, the possibility that the XRL might be commissioned in 2015. The Government asked if the MTRCL was still confident that they could complete the XRL works within 2015.
7. MTRCL said that two dates were crucial, i.e. the completion date and the commissioning date. They said that it was still possible for the XRL to be completed and commissioned in 2015.
8. The Government said that if the XRL works could be completed in the first half of 2015, then we could say that the XRL could be commissioned in 2015.
9. MTRCL said that they had indeed been saying that the XRL works could be completed by 2015. At the briefing for THB on 8 November 2013, they said that the opening date of 2015 might be

affected. Their assessment then had assumed that the contractors had not yet fully recovered the delay. But MTRCL said that they were trying hard to identify solutions to meet the target commissioning date of 2015. They said that they believed, at the very least, single track operation would be possible in 2015 (single track operation was to use a single track for the northbound and southbound trains, running alternatively between WKT and the boundary of the Mainland). As the train schedule at the initial opening phase was not frequent, such an arrangement might be feasible. In addition, they explained that the information presented earlier was meant for the relevant Mainland units so as to urge them to expedite the tunneling works on the Mainland side.

10. The Government said that both sides were trying to tackle the situation in good faith. Given what was happening on the ground, we should inform the public immediately that the XRL might not commence operation in 2015 even though we could not completely discount this possibility.
11. MTRCL said that they would have a better sense of the subsequent works after the first cross-boundary tunneling boring machine had crossed to the Hong Kong side. Once the works for one of the tracks were completed, they could start trial runs using that track. MTRCL said that all projects encountered challenges and such challenges could be overcome. They did not see how XRL was fundamentally different from other projects in this aspect. They

failed to see any benefit of changing the 2015 target at that time. Based on their successful experience in delivering several rail lines in the past and Hong Kong's "can do" spirit, they were confident that they could catch up with the delay. MTRCL said that the project had encountered delays earlier and such delays could be recovered.

12. The Government queried that single track operation did not comply with government's requirement. They expressed clearly that this was unacceptable. If the 2015 target was only achievable by using the single track operation, we had to inform the public.
13. MTRCL said that it remained their target to have dual track dual direction operation and that single track operation was only a fall-back in the worst case scenario. They would need another six months before they could confirm if they could catch up with the delay.
14. The Government asked MTRCL if they were confident that the second cross-boundary tunnel boring machine could cross to the Hong Kong side by early 2015 and that the XRL works could be completed within 2015.
15. MTRCL said that they did not under-estimate the challenges in the project and they would keep urging the contractors to expedite works. They considered it premature to inform the LegCo RSC on the following day (22 November) that the target commissioning date of XRL would be changed.

16. The Government said that the MTRCL had submitted to the Government quarterly reports on the progress of the cross-boundary tunneling works for the past year and the reports had indicated continual delay in the works. According to the latest report, the tunneling works could only be completed in October 2015. The Government asked why MTRCL would still be confident that they could recover the delay for the entire project.
17. MTRCL said that it was imperative to adhere to the 2015 target so that they could continue to “exert pressure” on the contractors. They said that if we were to announce a change of commissioning date to 2016, it might become a “self-fulfilling prophecy”. The best way for the project to achieve its original target was to keep urging the contractors to move forward.
18. The Government asked MTRCL what target they had given to the contractors. MTRCL said that they had been telling the contractors that the XRL should start passenger service within 2015.
19. The Government noted that there was delay in the cross-boundary tunneling works, and such delay would eat into the time for the tunneling work on Hong Kong side, thus posing challenges to MTRCL. MTRCL said that once the cross-boundary tunneling works had completed and the tunnel boring machine had crossed to and started works on the Hong Kong side, they would be in a better position to assess the situation and catch up with the delay as soon as

possible. MTRCL requested that Government give them six more months before making a judgment on whether XRL could be completed by 2015.

20. The Government reminded MTRCL not to over-state its ability to overcome all the challenges then. MTRCL said that while there was delay in the cross-boundary tunneling works, WKT could start operation by end-2015.
21. MTRCL expressed the view that it was too early to say at this stage (i.e. November 2013) that the target date could not be met as there were two more years to go. Doing so would be rare for a project of this scale. Giving up the target would relieve the pressure on the contractors to complete the works on time and would not help the Projects Team in delivering the project.
22. The Government asked the MTRCL what delay recovery measures they intended to deploy and if MTRCL continued to use 2015 as the completion and commissioning target. With the prime objective of ensuring rail safety, there had to be a period of testing and trial runs after the completion of works before the XRL could come into service. MTRCL said that they would make the best endeavor to achieve the 2015 commissioning target.
23. The Government asked MTRCL, based on the assessment then, whether we could state that the XRL works could be completed

within 2015. MTRCL said that we could stress that the MTRCL would make their best endeavor to achieve the 2015 target. MTRCL also said that testing on the Hong Kong side could be conducted in phases. The Government said that cross-boundary testing could only start upon the completion of works for the entire section.

24. The Government enquired again if MTRCL remained confident that the XRL could be commissioned by end-2015. MTRCL said that there were still two years before 2015 and they remained confident that they could recover the delay. The Government asked MTRCL if that meant the information they had submitted earlier (i.e. 8 November) was overly pessimistic. MTRCL said that according to his understanding, the report was intended to be used for requesting the relevant Mainland units to recover delay.

25. MTRCL also said that they had all along kept HyD abreast of the challenges they faced. The Government said that they were aware that the project had encountered delay in different contracts and MTRCL had taken measures to recover delay. At the same time, the Government had reminded MTRCL before that any delay recovery measures should not cause any cost-overrun for the XRL project. The Government reminded MTRCL that they should inform the Government immediately if they found that the XRL works could not be completed on time.

26. In the end, both sides at the meeting agreed to inform the LegCo RSC that the main works of XRL could be completed within 2015. There would be testing and trial runs (which would normally take six to nine-months) upon the completion of works. Separately, both sides agreed that if pressed on the month in which the works would be completed, it should be pointed out that the concrete timing was uncertain though the best efforts would be made to complete the works by 2015. If asked on whether the XRL could only come into service in 2016, we should undertake to report to the RSC in six months' time when we had a better assessment.

- End -

MTR Corporation Limited
香港鐵路有限公司
www.mtr.com.hk



Your Ref.: CB4/SC/13

5th January 2015

Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

By Email (ssylau@legco.gov.hk)
and By Hand

Attention: Ms. Sophie Lau, Clerk to Select Committee

Dear Ms. Lau,

**Select Committee Inquiry - Construction of
the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong
Express Rail Link ("XRL")**

We refer to your letter of 18th December, and are pleased to provide information as requested in both English and Chinese in the Appendix hereto.

Information concerning membership of the Corporation's Project Control Group ("PCG") is not in the public domain. In order to protect the data privacy rights of the individuals concerned, we do not consider it appropriate for the names of individual PCG members to be provided and/or published presently. Accordingly, only the job titles of PCG members are given.

If the Select Committee requires information or evidence to be provided by particular PCG members in due course, then we would be pleased to discuss further at the appropriate time.

The composition of PCG meetings varies according to the project under consideration. Titles of PCG members for discussion of issues relating to the XRL project are provided. With effect from December 2014, two separate PCG meetings relating to XRL are held on alternate weeks. These are an internal meeting to discuss XRL and Kwun Tong Line extension matters (of which the General Manager – KTE is also a member), and a meeting to



discuss XRL matters alone to which representatives from the Railway Development Office / Highways Department are invited. Similar arrangements relating to XRL have been in place since January 2009.

Yours sincerely,
For and on behalf of
MTR Corporation Limited

A handwritten signature in blue ink that reads "G. E. Meller".

Gillian Elizabeth Meller
Legal Director and Secretary

Encl.

c.c. Dr Raymond Ch'ien Kuo-fung, Non-Executive Chairman of the Board of MTRCL
(Fax No. 2596 0245)

GM/JB/mt

Appendix

Members of the Corporation's Board 董事局成員	
Non-Executive Directors 非執行董事	
Name in English	Name in Chinese
Dr. Raymond Ch'ien Kuo-fung (Chairman)	錢果豐博士 (主席)
Professor Chan Ka-keung, Ceajer (Secretary for Financial Services and the Treasury)	陳家強教授 (財經事務及庫務局局長)
Professor Anthony Cheung Bing-leung (Secretary for Transport and Housing)	張炳良教授 (運輸及房屋局局長)
Wai Chi-sing (Permanent Secretary for Development (Works))	韋志成 (發展局常任秘書長(工務))
Ingrid Yeung Ho Poi-yan (Commissioner for Transport)	楊何蓓茵 (運輸署署長)
Independent Non-Executive Directors 獨立非執行董事	
Name in English	Name in Chinese
Pamela Chan Wong Shui	陳黃穗
Dr. Dorothy Chan Yuen Tak-fai	陳阮德徽博士
Vincent Cheng Hoi-chuen	鄭海泉
Christine Fang Meng-sang	方敏生
Edward Ho Sing-tin	何承天
Kwan Yuk-choi	關育材
Lucia Li Li Ka-lai	李李嘉麗
Professor Frederick Ma Si-hang	馬時亨教授
Alasdair George Morrison	文禮信
Ng Leung-sing	吳亮星
Abraham Shek Lai-him	石禮謙
T. Brian Stevenson	施文信
Benjamin Tang Kwok-bun	鄧國斌

Members of the Corporation's Executive Committee 執行總監會成員			
Name in English	Name in Chinese	Title in English	Title in Chinese
Lincoln Leong Kwok-kuen	梁國權	Acting Chief Executive Officer	署理行政總裁
Morris Cheung Siu-wa	張少華	Human Resources Director	人力資源總監
Jacob Kam Chak-pui	金澤培	Operations Director	車務總監
Stephen Law Cheuk-kin	羅卓堅	Finance Director	財務總監
Gillian Elizabeth Meller	馬琳	Legal Director and Secretary	法律總監及公司秘書
David Tang Chi-fai	鄧智輝	Property Director	物業總監
Philco Wong Nai-keung	黃唯銘	Projects Director	工程總監
Jeny Yeung Mei-chun	楊美珍	Commercial Director	商務總監
Wong May-kay	王美琪	General Manager- Corporate Relations	公司事務總經理

Members of the Corporation's Project Control Group 項目監控小組成員	
Title in English	Title in Chinese
Projects Director (Chairman)	工程總監 (主席)
Operations Director	車務總監
Finance Director	財務總監
General Manager - Procurement & Contracts	總經理-採購及合約
General Manager – XRL	總經理-高速鐵路
General Manager - XRL E&M	總經理-高速鐵路機電工程
General Manager – Projects Management Office	總經理-工程管理辦公室
Head of Project Engineering	工程技術總管
Head of Property Project	物業工程主管
Financial Controller – Projects	副總經理-財務控制
Chief Programming Engineer	總策劃工程師

MTR Corporation Limited
香港鐵路有限公司
www.mtr.com.hk



Direct Line : (852) 2993 3551
Fax : (852) 2993 3379

February 5, 2015

Ms Sophie Lau
Clerk to Select Committee
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

By hand and by fax (2978 7569)

Dear Ms. Lau

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 (“Select Committee”)

Request for information dated 23rd January 2015 – Supply of documentary information by MTR Corporation Limited (“the Corporation”)

We refer to your letter dated 23rd January 2015.

The Corporation is committed to working with the Select Committee in a cooperative manner to enable the Select Committee to perform the functions for which it has been established.

In providing documentary information (and in due course witness evidence) to the Select Committee, the Corporation is bound to take account of the following considerations in particular:

- (i) Contractual obligations – the Corporation has entered into numerous contracts with Government and third parties in relation to the construction of the Express Rail Link. Pursuant to these contracts, the Corporation is bound by certain contractual confidentiality provisions;
- (ii) Commercially sensitive information – certain documentation contains commercially sensitive information, the disclosure of which may prejudice the Corporation’s and Government’s legal and commercial position vis-a-vis third parties, in particular contractors working on the project;
- (iii) Legal and regulatory obligations – as a listed company, the Corporation is subject to obligations concerning the disclosure of information under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited and the Securities and Futures Ordinance.

The Corporation notes the procedure established by the Select Committee for the handling of material provided to it, in particular information or documents classified as confidential under paragraphs 21 and 22 of the Practice and Procedure of the Select Committee



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- 2 -

(Appendix to LC Paper No. CB(4)216/14-15(01)) ("the Practice and Procedure") . The Corporation intends to rely on the protection afforded by the Practice and Procedure in so far as may be appropriate in all the circumstances.

The Corporation anticipates that there may be certain information or documents requested by the Select Committee during the course of its inquiry in respect of which, owing to particular confidentiality or commercial sensitivity concerns, it may be necessary for the Corporation to request that such information or documents should not be disclosed to the public and should be kept under strict control in a designated location (such as a room in the Legislative Council Building) and not removed from that room or photocopied. We understand that such practices were adopted by the Select Committee on Building Problems of Public Housing Units which operated between 2001 and 2004. The consent of the Select Committee to this treatment will then be required before the relevant information or documents may be disclosed.

The Corporation would like to assure the Select Committee that this approach is only intended to be adopted in circumstances where the Corporation considers that the interests, rights and obligations of itself, the Government or relevant third parties will be materially affected in the event of public disclosure of particular information or documents, primarily taking into account the considerations outlined at (i) to (iii) above.

The Corporation also reserves the right to redact information from any documents supplied to the Select Committee, whether on an open or confidential basis, based upon the same considerations.

We look forward to receiving the Select Committee's comments, if any.
The contents of this letter and any subsequent correspondence concerning the same subject-matter are confidential and shall not be disclosed to any third party.

Yours sincerely
For and on behalf of MTR Corporation Limited

A handwritten signature in black ink that reads "Gill Meller". The signature is written in a cursive style.

Gill Meller
Legal Director & Secretary

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MTR Corporation Limited
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Direct Line : (852) 2993 3551
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February 12, 2015

Ms Sophie Lau
Clerk to Select Committee
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

By hand and by e-mail (ssylau@legco.gov.hk)

Dear Ms. Lau

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 (“Select Committee”)
Request for information

We write further to your letter dated 23rd January 2015 and our letter dated 5th February 2015. The responses in the lettered paragraphs below relate to the requests contained in the equivalent paragraphs in the Appendix to your letter dated 23rd January 2015.

- (a) The Corporation is currently considering the Select Committee’s request.
- (b) No formal minutes of the 17th April 2013 workshop were taken by the Corporation.
- (c) No contemporaneous written records of this meeting were prepared by the Corporation.
- (d) No recording or contemporaneous written records of this conversation were prepared by the Corporation.
- (e) Extracts from the relevant works contracts and supplemental agreements, where applicable, will be provided if the Select Committee agree to keep the documents and their contents confidential upon the following terms:
 - (i) The documents may be reviewed by members of the Select Committee for the purpose of obtaining information relevant to its major areas of study.
 - (ii) Members of the Select Committee may discuss or enter into written communications with each other concerning the documents, and may make notes of their contents, provided that all such discussions, communications and notes are made on a confidential basis and not disclosed to any third party.
 - (iii) The documents and their contents must be kept secure in a designated location within the Legislative Council Building and not removed from that location, photocopied nor disclosed to any third party.



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- 2 -

- (iv) The documents and their contents may only be used in closed hearings only, and may not be referred to by members of the Select Committee during the questioning of witnesses in open hearings or in its report, except with the Corporation's prior written consent. In this regard, the Corporation intends to work constructively with the Select Committee to ensure that its consent will only be withheld in circumstances where the interests, rights and obligations of the Corporation, the Government or relevant third parties, taking into account the considerations referred to in our letter dated 5th February 2015, would be materially affected.

Kindly note that the documents concerned were prepared only in English and that certain financial information contained in them and not relevant to the request will be redacted.

We look forward to receiving the Select Committee's reply to the above.

Yours sincerely
For and on behalf of MTR Corporation Limited

A handwritten signature in black ink, appearing to read 'Gill Meller'.

Gill Meller
Legal Director & Secretary

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政府總部
運輸及房屋局
運輸科
香港添馬添美道 2 號
政府總部東翼



**Transport and
Housing Bureau**
Government Secretariat
Transport Branch
East Wing, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

本局檔號 Our Ref. THB(T)1/16/581/99

電話 Tel. No. : 3509 8163

來函檔號 Your Ref.

傳真 Fax No : 2136 8016

17 March 2015

Ms Sophie Lau
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax : 2978 7569

Dear Ms Lau,

**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
("Select Committee")**

Request for Information

I refer to your letter of 3 March 2015 to the Transport and Housing Bureau (THB) requesting us to provide information listed as items (a) and (c) in the Appendix of your letter of 23 January 2015. Item (a) refers to the Entrustment Agreements between the Government and the MTR Corporation Limited (MTRCL) ("Entrustment Agreements"). Item (c) refers to reports submitted to THB by the Highways Department and by MTRCL in respect of the progress of the construction of the Hong Kong section of the

Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) since January 2010 up to April 2014. As explained in our letter of 18 February 2015, these include reports submitted by MTRCL to the Project Supervision Committee (chaired by the Director of Highways and attended by a THB representative) (“PSC reports”) and briefing notes submitted by the Highways Department for the Head of Department meetings with the Secretary for Transport and Housing (“HoD briefing notes”).

It is noted from your letter of 3 March 2015 that the Select Committee has considered our letter of 18 February 2015 at its meeting on 26 February 2015. We are informed that whilst the Select Committee appreciates our concern on confidentiality and commercially sensitive information, the Select Committee considers it inappropriate to enter into an agreement with THB as condition precedent for the provision of documents to it. We also note that the Select Committee will not release to the media or the public any document provided by THB, nor will it place such document on the website of the Legislative Council before it comes to a decision on its confidentiality under the Practice and Procedure of the Select Committee (“SC P&P”); and THB will be given an opportunity to address it if we so wish.

First and foremost, we wish to reiterate that the Government will strive to facilitate the work of the Select Committee as far as possible. Hence, we are prepared to provide the requested information to the Select Committee with minimal redactions. However, for the reasons as set out in our letter of 18 February 2015 which we shall further elaborate below, we can only provide the information if the Select Committee agrees to keep the information confidential for use at closed hearings.

In considering whether the requested information, which contains commercially sensitive/confidential information, is to be released to the Select Committee, it is incumbent upon the Government to strike a balance between facilitating the work of the Select Committee and protecting public interests, including preserving the Government’s rights in any future claims. The Entrustment Agreements are privy to

the two contracting parties, i.e. the Government and MTRCL, and their contents involve sensitive commercial information. In fact, the Government has already provided a summary of the obligations under the Entrustment Agreements in our paper to the LegCo Subcommittee on Matters Relating to Railways (see paragraphs 59-63 of LC Paper No. CB(1)1328/13-14(03)). Disclosing the Entrustment Agreements to the public, and/or the discussions of specific terms of which in public hearings of the Select Committee, may hinder the Government's effective management of the Entrustment Agreements which are ongoing contracts, prejudicing the Government's position in negotiating/settlement of present and/or future claims, and may hamper the Government's position in negotiating contracts of similar nature in future projects thus affecting the Government's competitive or financial position, hence ultimately harming the public interests. Therefore, it is necessary for the Government to keep the Entrustment Agreements confidential. We have consulted MTRCL which also concurs with our view that the Entrustment Agreements may only be provided to the Select Committee if the Select Committee agrees to keep them confidential for use at closed hearings.

Subject to the Select Committee's agreement to keep the Entrustment Agreements as confidential documents for use at closed hearings, we will arrange with the Clerk to the Select Committee on how the documents will be produced.

As regards item (c) in the Appendix of your letter of 23 January 2015, the Select Committee would appreciate that the PSC reports contain details on how each contract is administered under the XRL project. Such details have to be kept confidential, lest this might affect the handling of existing and any future claims from or on contractors by the Government and MTRCL. Hence our request for these details to be kept confidential for use at closed hearings. The PSC reports are already deposited in MTRCL's Data Room and we are prepared to provide redacted copies (same as those in the Data Room) to the Select Committee if it agrees to keep the information confidential for use at closed hearings.

Regarding the HoD briefing notes, the Select Committee would appreciate that these are confidential internal records of the Government which include discussions in relation to the assessment and investigation of claims. The disclosure thereof may prejudice the Government's position in the negotiation/settlement of claims. Having struck a balance amongst different public interests, including facilitating the work of the Select Committee and preserving the Government's rights in future claims, we have offered (in our letter of 18 February 2015) to provide a set of key points of these notes to the Select Committee subject to its agreement to keep the information in confidence for reference by the Select Committee members at closed hearings.

We would like to assure members of the Select Committee that the Government is committed to facilitating the work of the Select Committee. However, as public interests are at stake, it is necessary for us to safeguard the confidentiality of the information they request, as explained above. We look forward to receiving the Select Committee's positive reply. Subject to the Select Committee's confirmation, we will strive to provide the Select Committee with the documents as soon as we can.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Winnie Wong', written in a cursive style.

(Miss Winnie Wong)

for Secretary for Transport & Housing

c.c. Director of Highways

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Ms Sophie Lau
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

4 January 2016

Dear Ms Lau,

**Select Committee to Inquire into the Background and Reasons for
the Delay of the Construction of the Hong Kong Section of the
Guangzhou-Shenzhen-Hong Kong Express Rail Link (“Select Committee”)**

Entrustment Agreements

Your Office wrote to the Secretary for Transport and Housing on 23 January 2015 and 3 March 2015 requesting the following documents –

- (i) the two Entrustment Agreements signed between the Government and the MTR Corporation Limited (“MTRCL”) on 24 November 2008 and 26 January 2010 respectively;
- (ii) the monthly progress reports submitted by MTRCL to the Project Supervision Committee (“PSC reports”); and
- (iii) the briefing notes provided by the Highways Department to the Transport and Housing Bureau for the Head of Department meetings (“Briefing Notes”).

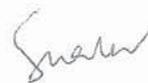
In view of the fact that the Government and MTRCL had disclosed a substantial portion of the material content of the Entrustment Agreements when announcing to the public the revised construction cost and works progress of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link on 30

November 2015, after careful consideration and consultation with MTRCL, we have decided to provide a copy of the two Entrustment Agreements at Appendix to the Select Committee for reference.

As for the PSC reports, due to their confidential and commercially sensitive nature, we consider it appropriate to provide a redacted version of them for the Select Committee's viewing on a confidential basis at closed hearings. Regarding the Briefing Notes, as they are confidential internal records of the Government, we may provide the Select Committee with a set of key points of the Briefing Notes for reference on a confidential basis at closed hearings.

If the Select Committee agrees to our proposed arrangements, we will separately provide it with the relevant information in the manners described above.

Yours sincerely,



(Klaus Chan)

for Secretary for Transport and Housing

Encl.

c.c. Director of Highways
Chairman, MTRCL
Chief Executive Officer, MTRCL

Note: For environmental reason, the Appendix is only provided in softcopy.

MTR Corporation Limited
香港鐵路有限公司
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Your Ref.: CB4/SC/13

16 October 2015

Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

By Email (ssylau@legco.gov.hk)
and By Hand

Attention: Ms. Sophie Lau
Clerk to Select Committee

Dear Ms. Lau,

**Select Committee Inquiry - Construction of
the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong
Express Rail Link ("XRL")**

I refer to your letter of 4 August 2015 inviting our Chairman, Dr. Raymond Ch'ien, to attend a hearing of the Select Committee on 16 November 2015.

I regret to inform you that Dr. Ch'ien is not able to attend the Select Committee hearing on 16 November 2015 due to an important engagement outside of Hong Kong requiring his presence.

As Dr. Ch'ien will be travelling most of the time in the remainder of the year, he would like to offer to provide answers in writing to questions that the Select Committee members may have for him regarding the background of and reasons for the delay of the construction of the XRL.

Dr. Ch'ien would like to apologize for any inconvenience caused.

Yours sincerely,

A handwritten signature in black ink that reads 'Gillian Meller'.

Gillian Meller
Legal Director and Secretary

MTR Corporation Limited
香港鐵路有限公司
www.mtr.com.hk



Your Ref.: CB4/SC/13

21 December 2015

Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

By Email (ssylau@legco.gov.hk)
and By Hand

Attention: The Hon. Martin Liao
Chairman of Select Committee

Dear Mr. Liao,

**Select Committee Inquiry - Construction of
the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong
Express Rail Link ("XRL")**

I refer to your letter of 9 December 2015 addressed to our Chairman, Dr. Raymond Ch'ien.

An account of the Board's involvement in the XRL Project has been detailed in the Corporation's First Independent Board Committee Report, and the Corporation's Chief Executive Officer and Projects Director (both Directors of the Board) have already attended hearings of the Select Committee to give evidence. We believe there is nothing we can add to the investigation of the Select Committee in so far as the Board's involvement in the Project is concerned.

We therefore regret to inform you that we make no nomination of a Director to attend a Select Committee's hearing in January 2016.

Yours sincerely,

A handwritten signature in blue ink that reads "Gillian Meller".

Gillian Meller
Legal Director and Secretary

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運輸科
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Ms. Sophie LAU
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

8 January 2016

Dear Ms. LAU,

**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 (“Select Committee”)**

I refer to your invitation to former Secretary for Transport and Housing, Ms. Eva Cheng, to attend the hearing on 21 January 2016 from 8:30 am to around 10:00 am to give evidence on the matters relating to 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. We have informed Ms. Cheng of the Select Committee’s invitation. She asked us to thank the Select Committee for the invitation and advise that unfortunately she would be out of town on 21 January 2016.

On the method for communication between Ms. Cheng and the Select Committee, Ms. Cheng advises that she prefers such communication to be made through this Bureau as she would always be out of town and would have difficulty in accessing emails whilst travelling.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'CWG', written over a light blue circular stamp.

(Chris NG)

for Secretary for Transport and Housing

**List of witnesses who attended the
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**

<u>Dates of hearings</u>	<u>Names of witnesses</u>
24 March 2015	Mr Peter LAU Ka-keung Director of Highways
21 April 2015	Mr Peter LAU Ka-keung Director of Highways
28 April 2015	Mr YAU Shing-mu Under Secretary for Transport and Housing
26 May 2015	Mr Joseph LAI Yee-tak Permanent Secretary for Transport and Housing (Transport)
2 June 2015	Mr WAI Chi-sing Former Director of Highways
15 July 2015	Mr Lincoln LEONG Kwok-kuen Chief Executive Officer MTR Corporation Limited
20 October 2015	Mr Henry CHAN Chi-yan Principal Government Engineer/Railway Development Highways Department Mr TAM Hon-choi Government Engineer/Railway Development 2 Highways Department
3 November 2015	Mr Lincoln LEONG Kwok-kuen Chief Executive Officer MTR Corporation Limited

Dates of hearings

Names of witnesses

10 November 2015

Mr Anthony J W KING
Project Director
Jacobs China Limited

Mr William NG Siu-kee
Project Manager
Jacobs China Limited

15 December 2015

Dr Philco WONG Nai-keung
Projects Director
MTR Corporation Limited

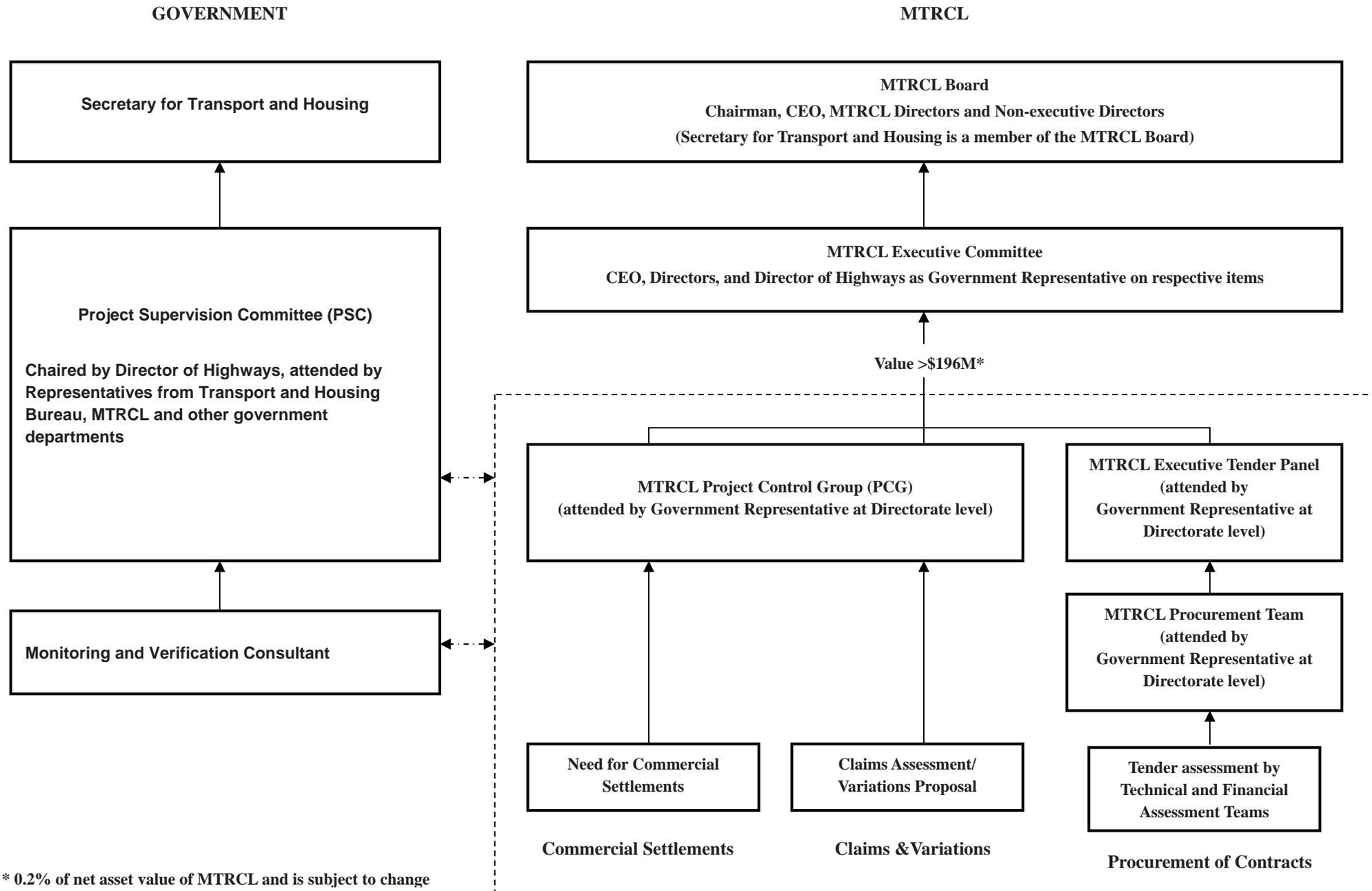
Mr Mark LOMAS
Project Manager – Technical Support
MTR Corporation Limited

21 December 2015

Professor Anthony CHEUNG Bing-leung
Secretary for Transport and Housing

Note: The above post titles were those held by witnesses at the time when they attended the hearings of the Select Committee.

Flowchart on Government's monitoring mechanism on the construction of the Hong Kong section of the XRL Project



* 0.2% of net asset value of MTRCL and is subject to change

**Membership and Terms of Reference of
Project Supervision Committee, Project Coordination Meeting and
Contract Review Meeting**

	Membership	Terms of Reference
Project Supervision Committee ¹	<p><u>Chairman</u> Director of Highways</p> <p><u>Members</u> Transport and Housing Bureau</p> <ul style="list-style-type: none"> - Deputy Secretary for Transport & Housing (Transport)1 or representative <p>Railway Development Office ("RDO"), Highways Department ("HyD")</p> <ul style="list-style-type: none"> - Principal Government Engineer/Railway Development - Government Engineer/Railway Development 2 - Chief Engineer/Railway Development 2-3 <p>MTR Corporation Limited ("The Corporation")</p> <ul style="list-style-type: none"> - Projects Director - General Manager – XRL - General Manager – XRL Civil Construction - Programming Manager – XRL <p><u>Ad hoc Members</u> Representative(s) of other relevant Government departments (on need basis)</p> <p><u>Secretary</u> Senior Engineer/XRL(3), RDO, HyD</p>	<p>(a) To review the progress and programme of project activities including design, construction and commissioning;</p> <p>(b) To review overall project expenditure and cashflow, including the Project Control Total;</p> <p>(c) To review project procurement activities;</p> <p>(d) To monitor post tender award cost control;</p> <p>(e) To monitor resolution of contractual claims and proposed commercial settlements; and</p> <p>(f) To discuss any key issues relating to the project.</p>
Project Coordination Meeting ^{1, 2}	<p>There was no "Membership" and "Terms of Reference" of Project Coordination Meetings. These meetings started off as informal working group meetings as early as in late 2007. An officer at Assistant Director level of HyD holds monthly Project Coordination Meetings with the Corporation's General Managers and Project Managers to monitor various activities for the delivery of the Project including, but not limited to, timely completion of land matters, resolution of third party requests, key issues on the design, construction, environmental matters that may have potential impact on the progress and programme of the Project as well as interfacing issues with other projects.</p>	
Contract Review Meeting ³	<p>An officer, at Chief Engineer level, holds monthly Contract Review Meetings with site supervision staff of the Corporation for major civil and electrical & mechanical works. In case of delays encountered by the Corporation's contractors, the Corporation would report measures being considered to mitigate such a delay.</p>	

¹ Source: Letter dated 18 February 2015 from the Highways Department to the Clerk to Select Committee.

² Written Statement of Mr Peter LAU Ka-keung, Director of Highways, paragraph 26.

³ Written Statement of Mr Peter LAU Ka-keung, Director of Highways, paragraph 27.

**Membership and Terms of Reference
of the Project Control Group of the MTR Corporation Limited**

Membership	Terms of Reference
<p><u>Chairman</u> Projects Director or a member of the Executive Directorate</p> <p><u>Members</u> Operations Director General Manager – Procurement & Contracts General Manager – WIL/SIL General Manager – XRL General Manager – XRL Tunnels General Manager – XRL Terminus General Manager – SCL General Manager – KTE General Manager – Projects Management Head of Projects Engineering Chief Civil Construction Engineer Head of Property Project Financial Controller – Projects</p> <p><u>Secretary</u> Manager – Project Secretariat</p> <p><u>In attendance</u> Procurement & Contracts Manager – HK Projects (Civil) Procurement & Contracts Manager – HK Projects (E&M) Chief Architect Chief E&M Engineer Chief Civil & Planning Engineer Manager – Estimating, Cost Control & Logistics Technical Assistant to Projects Director Representatives from the Highways Department/ Railway Development Office</p>	<p>(a) To control the cost of all new projects (excluding those outside Hong Kong) within the powers delegated by the Executive Committee ("ExCom") in order to ensure that the projects are completed on time and within budget to an approved quality;</p> <p>(b) To review, endorse or otherwise papers, Change Forms and Forms F1 to ensure timely decisions on matters of a value greater than \$10 million for individual consultancies and greater than \$20 million for other expenditure (individual contracts and purchase orders);</p> <p>(c) To review and endorse project procurement (contract) strategies;</p> <p>(d) To review and endorse project programmes and any amendments thereto;</p> <p>(e) To meet, on a monthly basis:</p> <ul style="list-style-type: none"> - to review, endorse or otherwise, and refer to ExCom monthly cost reports including current expenditure, current commitment to expenditure and forecast capital costs and information for the whole of the project; - to modify, and to consider for recommendation to ExCom, mitigation proposals where unacceptable cost trends are developing; and - to review controllers budget submissions in terms of whole of project cost and make appropriate recommendations to ExCom; and <p>(f) To receive project risk summary reports and review the trend in significant project risks for new projects.</p>

The Project Control Group ("PCG") is an internal working group within the MTR Corporation Limited ("the Corporation"). The PCG meetings are held weekly. The Highways Department has its own representatives to attend the meetings of PCG. The Project Team and certain members of the Projects Division of the Corporation are also required to attend meetings of PCG.

Source: First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 3.2 to 3.4.



15th Floor, Cornwall House, Taikoo Place
979 King's Road, Quarry Bay
Hong Kong, China
852.2880.9788 Fax 852.2565.5561

23 December 2015

By Post & by Email

Our Ref: G3232/11/1814

Hong Kong Special Administrative Region of
the People's Republic of China
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
HONG KONG

For the attention of Ms Sophie LAU (Clerk to Select Committee)

Dear Ms Lau,

**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 ("Select Committee")
Request for Further Information**

We refer to your letter ref. CB7/SC/13 dated 13 November 2015 requesting further information in respect of the 3 question as listed in the Appendix of your letter. We are pleased to reply as follows:

Question (a)

Paragraph 92 of the joint Written Statement of Mr Anthony KING and Mr. William NG formally produced at the hearing on 10 November 2015 ("the Written Statement") mentioned that, in the Monthly Progress Report ("MPR") of March 2012 provided to the Highways Department ("HyD"), Jacobs ".....would strongly recommend that the MTR Corporation Limited ("the Corporation") now undertakes a complete appraisal of the overall Project Programme and the current delay situation throughout the whole of the Project." Please advise: -

- (i) **the number of times Jacobs had requested (both verbally and in writing), through HyD, the "overall Project Programme" from the Corporation up to mid-April 2014 and the relevant dates and the feedback from, or follow-up actions taken by, HyD, if any, and when;**
1. Jacobs recommended that MTRCL either provide or up-date the Project Master Programme (PMP) on at least 17 occasions from April 2011 to April 2014 through Monthly Progress Reports to HyD. In that period Jacobs also commented on PMP related issues, the Track Related Installation Programme (TRIP) and Testing and Commissioning (T&C) proposals.
 2. Jacobs raised similar programme related issues through the "Issue List". The "Issue List" was updated regularly and sent to HyD. HyD forwarded the issue lists to MTRCL and requested MTRCL to respond to the issues raised by Jacobs, including the provision of the updated PMP. HyD requested Jacobs to review MTRCL's responses and note for future M&V if necessary.

3. In August 2011, following a Request for Documents (RFD), Jacobs received a copy of the programme entitled "MTRCL's Master Programme for XRL Project (July 2011)" from MTRCL via HyD. Jacobs carried out a review of that Programme. In its review, Jacobs raised concerns regarding 16 issues it believed were deficiencies in the Programme, including that it was not an integrated and co-ordinated programme but a collection of individual contract programmes for Civil and E&M works.
4. Jacobs requested copies of three PMP related programmes through the RFD process in April 2013. However, MTRCL advised that it was not appropriate to issue these as the overall programme was not finalized.
5. Jacobs also raised comments, similar to those raised in Jacobs monthly progress report, in briefing notes for the monthly Project Supervision Committee (PSC) meetings.
6. Jacobs received feedback from HyD when Jacobs presented and discussed the programme and progress information at the monthly progress meetings with HyD. In the discussion HyD indicated that they had taken account of our concerns in their discussions with MTRCL.

(ii) whether the aforementioned recommendation is one of the substantive issues considered by Jacobs that required response from the Corporation. If yes, whether the Corporation has responded to the recommendation and the details of the response, if any.

1. The Independent Expert Panel, in its report of December 2014, recommended in Para 7.6 that MTRCL should develop and maintain an integrated master programme. The report then describes the details as well as how it should be used and reported to Government. Accordingly, Jacobs considers this a substantive issue.
2. MTRCL provided a PMP for Jacobs review in August 2011, which Jacobs reported on, as set out above. MTRCL also tabled the PMP at the Programme Audits. During those Audits, Jacobs discussed the PMP with MTRCL but copies were not retained by Jacobs at the end of the discussion.
3. MTRCL continued to report progress against percentage of works complete but without reference to the critical path. MTRCL advised in:
 - a. reports;
 - b. responses to the Issues List; and
 - c. comments at audit prior to 2013,

that it believed delays could be recovered by the use of delay recovery methods.

Question (b)

Mr. Anthony KING referred to paragraph 51 of the Written Statement at the hearing which provides, inter alia, that prior to a site visit Jacobs will advise any particular part of the works or activity that it wishes to observe and nominates particular site records it wishes to see. Please advise the particular part of the works or activity that Jacobs has observed during each site visit, the summary of observations or comments made by Jacobs relating to each site visit and the feedbacks from or follow-up actions taken by HyD, if any.

1. Up to April 2014, with HyD, Jacobs made 611 visits to the XRL construction sites. A schedule, up to April 2014, is attached.
2. Jacobs would have verbal communication with the MTRCL construction teams for the different contracts, prior to the preparation of the monthly site visit programme. Jacobs would advise MTRCL the locations and works Jacobs/HyD would like to visit and discuss the availability of all those locations and works. The format of these visits was normally a presentation by the MTRCL site specific Contract Management (CM) team followed by a site walk to look at specific areas. The visits were to interface with MTRCL site personnel, observe site activities, verify against MTRCL's reporting and to gain a better understanding of certain identified construction issues.
3. Jacobs' reports were factual, setting out observations on site to support information gathered from other sources to use in Jacobs reporting to HyD.

Question (c)

In a letter dated 12 January 2010, Jacobs informed HyD that according to its further review report no. G/3152/213/069 review on Consultancy Agreement No. C801 Civil and Structural Scheme Design Report Geotechnical Engineering Report (Deliverable No. 2.4A) for WKT (the West Kowloon Terminus), there of the additional observations made on the review were considered critical which needed the Corporation's earlier attention (see Annex). Please advise the details of the three observations which are considered critical by Jacobs and whether, in Jacobs' opinion, the issues and/or relevant works referred to in the three observations have attributed to the delay of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link project.

The three observations included in that report arose from a review of the Civil and Structural Scheme Design Report – Geotechnical Engineering Report. They related to:-

- Rock bearing capacities adopted in the foundation design.

"The results of 4 trial piles may not provide sufficient conclusive evidence that the presumed allowable vertical bearing capacities of Grade 111 or better rock and Grade 11 or better rock may be enhanced by 2,500 kPa in each case given that the current allowable bearing capacities in the COP for Foundations are based on extensive empirical correlations. Evidence of the ongoing consultation with BD and GEO on the recommended site specific allowable bearing pressures should be provided."

- Formation of rock sockets for DWalls.

"The report proposes that diaphragm walls be adopted as temporary and permanent lateral support of the WKT sub-surface structures. The diaphragm walls are also proposed to support part of the vertical compression loads of the structure and hence will be founded on rock. However the report proposes that the diaphragm walls are not socketed into the rock owing to the difficulty in forming the sockets but does not elaborate the difficulty or justify the reason for not specifying sockets."

- Structural faults in the bedrock.

"The report mentions that the possibility of the presence of structural faults in the bedrock and associated deep weathering will result in substantial variations in the founding levels of foundations. Although the report provides inferred rockhead contour plans derived from borehole data, it does not indicate any interpretation of faulting as may be derived from known regional faults and extrapolation of surface features from both sides of the harbour."

MTRCL responded to these comments, which refer to structural design issues, by giving explanations of the further action they would take to ensure the integrity of the WKT structure. As such these issues were not of a programme nature.

We trust the above addresses your questions and if you require any further information, please do not hesitate to contact us.

Yours sincerely,
For and on behalf of Jacobs China Limited



William NG
Project Manager

WN/cyy

Encl. Site Visit Schedule Jan 2011 - Apr 2014

Site Visits Schedule from January 2011 - April 2014

	802	803A	803B	803C	803D	805	810A	810B	811A	811B	816A	816B	816C	816D	820	821	821 Shek Yam	822	822 Shing Mun	822 Pat Heung	823A	823B	824	825	826	826 Huangang Park	830	830 Nam Cheong	841A	845	856	847	849	Total Visited		
Jan-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓											
Feb-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓											
Mar-11																																				
Apr-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓											
May-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓											
Jun-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Jul-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Aug-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Sep-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
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Nov-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Dec-11	✓	✓	✓	✓	✓	✓			✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
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Jan-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
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Mar-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Apr-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
May-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Jun-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Jul-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Aug-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Sep-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Oct-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Nov-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Dec-13	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Jan-14	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Feb-14	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Mar-14	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
Apr-14	✓								✓	✓					✓	✓		✓			✓	✓	✓	✓	✓	✓										
No. of Visit	39	12	12	12	12	39	27	36	39	39	2	2	2	2	39	5	34	6	33	34	40	40	39	39	11	1	7	1	1	2	2	2	1	1	Total Visited 611	



HIGHWAYS DEPARTMENT

5TH FLOOR, HO MAN TIN GOVERNMENT OFFICES,
88 CHUNG HAU STREET, HOMANTIN, KOWLOON, HONG KONG.
WEB SITE : <http://www.hyd.gov.hk>

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Your Ref. 來函檔號 : CB4/SC/13
Our Ref. 本署檔號 : () in HyD CR 9/27
Telephone 電話 : 2762 3800
Fax 圖文傳真 : 2714 5216

Urgent by fax
(2543 9197)

9 June 2015

Ms Sophie LAU
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Lau,

**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 (“Select Committee”)**

Request for further information and/or documents

Thank you for your letter dated 4 May 2015. I would like to reply as follows :-

- (a) *According to the evidence given by Mr. Peter LAU Ka-keung, Director of Highways, at the public hearing held on 24 March 2015, when the monitoring and verification (“M&V”) consultant had expressed doubts over the progress of the construction programme or the effectiveness of the delay recovery measure(s) of the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link project, the Highways Department would relay the doubts of the M&V consultant to the MTR Corporation Limited (“the Corporation”) for response. If the M&V consultant was not satisfied with the response of the Corporation, the Highways Department would record the relevant items, to which the doubts relate, on the “concern list”. Please provide details of those relevant items and a copy of the “concern list”.*



ISO 9001 : 2008
Certificate No.: CC 1881



ISO 14001 : 2004
Certificate No.: CC 2634

We believe that the “concern list” as mentioned in your letter refers actually to our “Issue List”. The Issue List is prepared by the M&V Consultant on a monthly basis based on the findings and observations during the course of its document reviews, site visits and audits under its monitoring and verification works. The Highways Department (“HyD”) reviews the Issue List and forwards it to MTR Corporation Limited (“MTRCL”) for response. The HyD and the M&V Consultant review MTRCL’s response to the comments and follow up with the MTRCL, through regular meetings with the MTRCL and the monitoring mechanism until we are satisfied with the response by the MTRCL. Through this arrangement, the Government communicates with MTRCL in a timely manner on major and prevailing concerns on the progress of works, technical, safety and quality issues, and the necessary follow up actions.

Please be advised that some of the issues in the above Issue List contain commercially sensitive information, the disclosure of which may prejudice Government’s position in the negotiation/settlement of claims with the contractors. Having struck a balance amongst different public interests, including facilitating the work of the Select Committee and preserving the Government’s rights in future claims, we offer to provide some samples of the issues extracted from the Issue List (at **Annex 1**) showing the comments raised by the M&V Consultant and the responses provided by the MTRCL for Members’ reference.

(b) Of the 44 meetings of the Project Supervision Committee held from January 2010 to April 2014, the date(s) of meeting(s) which the representative(s) of the Transport and Housing Bureau was/were absent from.

Out of the 44 PSC meetings held between January 2010 and April 2014, representative(s) of the Transport and Housing Bureau (“THB”) attended all of them except two, i.e. the 9th meeting held on 26 November 2010 and the 44th meeting held on 2 April 2014.

- (c) *Whether the Highways Department had critically reviewed or not the quality of site investigations carried out by the works contractors prior to civil works commencing at all the sites of the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link project. If it had, details of the review. If it had not, why not.*

The HyD appointed the M&V Consultant to undertake a monitoring and verification assignment for the design and site investigation phases for the XRL project. The M&V Consultant was required to carry out assessment on the site investigation works undertaken and the geotechnical reports in accordance with the consultancy brief. The consultancy commenced in June 2009. The M&V Consultant reviewed the concerned Geotechnical Engineering Reports and Geotechnical Baseline Reports submitted by MTRCL.

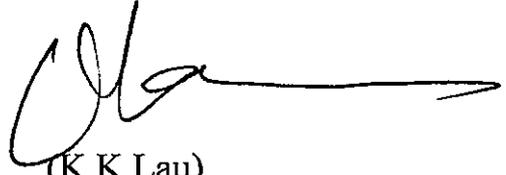
Please be advised that comments on the Reports by M&V Consultant and response on M&V Consultant's comments by MTRCL may contain commercially sensitive information, the disclosure of which may prejudice Government's position in the negotiation/settlement of claims with the contractors. Having struck a balance amongst different public interests, including facilitating the work of the Select Committee and preserving the Government's rights in future claims, we offer to provide a typical covering letter submitted by the M&V Consultant on its review findings of the documents on the Geotechnical Reports (at **Annex 2**) for Members' information.

We note from paragraph 4.11 of the first report of MTRCL's Independent Board Committee released in July 2014 that the volume of fresh bedrock that has to be excavated in the WKT north area is a known factor based on the site investigation works. It is not expected that excavation work will be particularly challenging technically but time is required to excavate the volume of rock present.

Lastly, we wish to take this opportunity to correct a typographical error in the staff cost information that was submitted via my letter dated 10 April 2015 as follows :-

The first sentence of the third paragraph should read “The annual staffing expenses for this dedicated team based on notional annual mid-point salary at 2014/15 level is about \$11.0 Million to \$11.3 Million.”

Yours sincerely,

A handwritten signature in black ink, consisting of stylized initials and a long horizontal stroke extending to the right.

(K K Lau)
Director of Highways

cc Secretary for Transport and Housing
(Attn: Miss Winnie Wong)

Sample of issues extracted from the Issue List:

Contract	Observations by JCL	Response by MTRCL
824	Injection pressures of over 65 bars are proposed for pre excavation grouting, with Stop criteria set at 65 bars for 5 minutes and / or 3500 litres of grout per 20m long hole. The Specification Clause 3.23.7 limits the maximum grouting pressure for probeholes, to 20 bars. Benefits are claimed from the use of high pressure grouting, which may well be true over the majority of these tunnels, however this may not be the case in the specific vicinities of the Ngau Tam Mei shaft and the WSD Aqueduct Tunnel. This has not been addressed in this Method Statement.	The strategy report provides an overview of the grouting design and methods. More detailed method statements with regards to different sections of the works are/will be prepared. In particular there will be a separate method statement for the work in the vicinity of the WSD Aqueduct tunnel which will specify the stop criteria. The pressures in the area of the WSD aqueduct will be limited to the minimum. The grouting will commence at a lower pressure and only increased if required.
810A	Sections 3 and 4 - Serviceability: In addition to the structural capacity of the supporting elements to the traffic deck (that the report has covered), the serviceability of the deck should also be reviewed. The concern is the apparent localized movement and therefore its implications on the longitudinal alignment of the deck.	The recent daily monitoring records show that there is no significant longitudinal movement of the king posts supporting the deck.
810B	Does the proposed methodology for the construction of the seawater intake and outfall structures and modifications to the sea wall take account of the difference between the seawater level variations and the drawn down water table behind the sea wall? Are groundwater conditions being monitored at this location? What arrangements are proposed to protect the integrity of the sea wall either side of the intake and outfall during the temporary condition?	The envisaged excavation and lateral support system (ELS) has taken into account the difference between the seawater level variations and the drawn down water table behind the seawall. Standpipes and piezometers are in place in the SWIC Main Area to monitor groundwater conditions. More groundwater monitoring points will be installed around the intake / outfall culvert areas and behind the existing seawalls when the relevant site works commence. The details on the protection measures is not available at present as the construction method for the modification of existing seawall is being developed.
810A	Impact assessment: The review seemed to have focused only on the structural capacity (bending moment) of the diaphragm wall. In addition, the contractor should also review the impact of the diaphragm wall works on existing structures and facilities.	The impact of the diaphragm works on existing structures and facilities have been reviewed by the Contractor and will be updated.

List of Abbreviations:

JCL	Jacobs China Limited
MTRCL	MTR Corporation Limited
WSD	Water Supplies Department
SWIC	Sea Water Intake Culvert

JACOBS™

15th Floor, Cornwall House, Taikoo Place
979 King's Road, Quarry Bay
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852.2880.9788 Fax 852.2565.5561

12 January 2010

By E-mail and By Post

Highways Department
Railway Development Office
1/F, Homantin Government Offices
88 Chung Hau Street
Homantin
Kowloon

Our Ref: G3152/213/0268

For the attention of Mr. C T Chan

Dear Sirs,

Agreement No. CE 6/2009 (HY)
XRL - Monitoring and Verification for Design and Site Investigation Phase
Review on Consultancy Agreement No. C801 Civil and Structural Scheme Design
Further review on Geotechnical Engineering Report (Deliverable No. 2.4A)

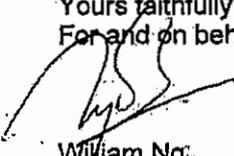
We refer to our letter dated 1 December 2009 with our reference no. G3152/213/0199, we are pleased to submit our further review report no. G/3152/213/069 review on Consultancy Agreement No. C801 Civil and Structural Scheme Design Report Geotechnical Engineering Report (Deliverable No. 2.4A) for WKT for your reference. Please note that the MTRCL transmittal number for the report reviewed is quoted in our review report for your ease of reference.

According to our review, we have a number of additional observations made on the review and 3 of them are considered critical which need MTRCL earlier attention. The observations are marked as "Critical" in the remarks column. Therefore, we would recommend to send these observations to MTRCL for their consideration.

Please also note that this letter will supersede our letter dated 11 January 2009 with reference no. G3152/213/0261.

Should you have any queries regarding the submission, please do not hesitate to contact the undersigned.

Yours faithfully
For and on behalf of Jacobs China Limited


William Ng
Project Manager

WN/LSL/LCC/VS/vs

enc

Jacobs China Limited
嘉科工程顧問有限公司

15th Floor, Cornwall House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong, China
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15NF\John\G3152 XRL Monitoring and Verification for Design and SI Phase\Correspondence\Letter\201001.2010\0268\ Further Review on C801 Civil Scheme Design Report GER (D2.4A).doc

12/01/2010

MTR Corporation Limited
香港鐵路有限公司
www.mtr.com.hk



Your Ref.: CB4/SC/13

21 December 2015

Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

By Email (ssylau@legco.gov.hk)
and By Hand

Attention: Ms. Sophie Lau
Clerk to Select Committee

Dear Ms. Lau,

**Select Committee Inquiry - Construction of
the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong
Express Rail Link**

Request for further information

Thank you for your letter to Mr. Lincoln Leong dated 6 November 2015.

As requested, please find enclosed our reply (in English with Chinese translation) to your questions.

Yours sincerely,

A handwritten signature in blue ink that reads 'Gillian Meller'.

Gillian Meller
Legal Director & Secretary

Encl.

(a) The Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”) Independent Expert Panel recommends in paragraph 7.6 of its report that the project manager (the Corporation or other entity) should develop and maintain an integrated master programme, covering the whole scope of the project, as a baseline for progress monitoring and reporting. The integrated master programme is to show, inter alia, all significant contracts, interfaces, handovers, contract completions, overall project completion and dates when the railway will enter passenger service.

Please advise whether the Corporation has in its possession or custody or under its control of the above-mentioned integrated master programme for the XRL project; if yes, whether the Corporation has provided the integrated master programme to the Government and/or its Monitoring and Verification (“M&V”) Consultant, and if so, when; if not, whether the Government or its M&V Consultant has requested the Corporation to provide them with the integrated master programme before the setting of the project completion date, and if so, when.

1. The Corporation developed and has maintained an integrated project master programme (“**PMP**”) during the construction phase of the project. The PMP was developed based on summarising individual contractors’ master programmes using P6 Primavera format planning software.
2. The Government’s Monitoring and Verification Consultant, Jacobs (China) Limited (“**Jacobs**”), carried out seven separate audits of the PMP relating to process and technical compliance under the 2nd Entrustment Agreement up to 30 April 2014 (“**PMP audits**”). None of the PMP audits necessitated any follow-up action on the part of the Corporation.
3. A copy of the PMP updated to 31 January 2011 was tabled at the first PMP Audit meeting with Jacobs on 23 February 2011. Updated copies of the PMP were tabled at subsequent PMP Audit meetings with Jacobs on 1 December 2011, 24 August 2012, 27 March 2013 and 25 September 2013.
4. Jacobs requested a copy of the PMP via the Railway Development Office (“**RDO**”) on 11 March 2011. After some consideration and a further verbal request from the RDO in or around August 2011, the Corporation provided a copy of the PMP, updated to July 2011, to the RDO on 24 August 2011.
5. The PMP developed by the Corporation and in place at the time of the announcement of the project delay included elements not materially different from the elements of the master programme referred to at paragraph 7.6 of the IEP Report. All major civil and electrical and mechanical contracts are shown, as are key interfaces and handovers, whole of the works dates for individual contracts, testing and commissioning and operational readiness dates for the overall project, and other significant activities including implementation of temporary traffic management schemes and major utility diversions.

6. The Corporation wishes to reiterate that, together with the use by the Corporation of internationally recognized and effective methodology for forecasting the completion of complex railway projects, including the Track-Related Installation Programme, the Corporation has applied effective approaches for monitoring progress across the multiple contracts under the project in accordance with the Corporation's Project Integrated Management System.

中文譯本

(如中文版本與英文版本之間有任何不一致之處，概以英文版本為準。)

1. 港鐵公司在高鐵項目建造期間制定了綜合項目整體時間表（“PMP”），並不時進行更新。此 PMP 是採用 P6 Primavera 規劃軟件，綜合個別合約承建商之施工時間表而成。
2. 截至 2014 年 4 月 30 日，政府的監察和核證顧問嘉科公司就項目在程序及技術上是否遵照第二份委託協議推行，分別進行了七次審核，均未有需要港鐵公司跟進行動之處。
3. 港鐵公司於 2011 年 2 月 23 日與嘉科公司進行第一次 PMP 審核會議，在會議上展示了更新至 2011 年 1 月 31 日的 PMP 副本。隨後於 2011 年 12 月 1 日、2012 年 8 月 24 日、2013 年 3 月 27 日及 2013 年 9 月 25 日的 PMP 審核會議上，亦展示了更新後的 PMP 副本。
4. 嘉科公司曾於 2011 年 3 月 11 日透過路政署鐵路拓展處（“鐵路拓展處”）要求 PMP 的副本。經過考慮及收到鐵路拓展處於大約 2011 年 8 月進一步的口頭要求後，港鐵公司於 2011 年 8 月 24 日向鐵路拓展處提交了更新至 2011 年 7 月的 PMP 副本。
5. 由港鐵公司制定的 PMP，亦即是去年公佈項目延誤時所使用的 PMP，當中包含的成份與獨立專家小組報告第 7.6 段中所指的總綱計劃相若。在此 PMP 中，所有主要土木工程和機電工程合約均有顯示，關鍵的合約交接、個別合約的完工日期、試運行及項目可準備營運的日期、以及其他重要工程活動包括實施臨時交通管理措施和遷移主要公共管線亦有顯示。
6. 港鐵公司希望重申，結合了國際認可及行之有效的方法（包括使用 Track-Related Installation Programme (TRIP)）預測複雜的鐵路項目之竣工日期，港鐵公司已按其項目綜合管理系統，運用有效的方式監察項目多份合約的進度。

(b) The amount of the resources used, including manpower and money, by the Corporation for conducting the site investigation, in particular the West Kowloon Terminus, for the XRL project.

1. The Corporation has detailed processes in place under its Project Integrated Management System (“**PIMS**”) for the planning and control of Ground Investigation (“**GI**”) works carried out during the design, pre-construction and construction phases of railway development projects.
2. Under the 1st Entrustment Agreement entered into with Government dated 24 November 2008 and in accordance with the PIMS, the Corporation engaged Preliminary and Detailed Design Consultants (“**Design Consultants**”) to collect and study existing GI information at and adjacent to WKT and the alignment of the XRL to the boundary with the Mainland of China.
3. The GI information was obtained from various sources, including the Geotechnical Engineering Office of the Government’s Civil Engineering and Development Department and from the Corporation’s own records. Material which became available subsequently during the design phase was also taken into consideration.
4. The Design Consultants designed GI plans after reviewing the existing GI information. The plans were then reviewed by the Corporation before onward submission to the Buildings Department for approval or information in accordance with statutory requirements.
5. Thereafter the Corporation appointed a third party contractor to perform the GI works (“**GI Contractor**”). These works were supervised by a third party consultant (“**Supervising Consultant**”), again in accordance with statutory requirements. The works included:
 - (i) digging of trial pits and utilities trenches;
 - (ii) vertical and inclined drillholes;
 - (iii) horizontal directional drillholes;
 - (iv) soil and rock laboratory testing;
 - (v) field testing for soil and rock in trial pits and drillholes; and
 - (vi) detection of foundations and other obstructions.
6. All GI works were designed and carried out according to applicable Hong Kong standards, including the Building (Construction) Regulations, Code of Practice for Site Supervision and the Guide to Site Investigation issued by the Geotechnical Engineering Office (also known as Geoguide 2).
7. Based on all existing and project-specific GI results, the Detailed Design Consultants prepared preliminary Geotechnical Engineering Reports among other reports and design recommendations.

8. Once all relevant information had been obtained, the Corporation issued a Geotechnical Baseline Report (“**GBR**”) prepared by the Detailed Design Consultants for each of the main tunnel and WKT civil engineering contracts. The Geotechnical Baselines within the GBR were made available to each contractor tendering for the relevant contracts as a contractual statement of the geotechnical and geological conditions anticipated to be encountered during construction of underground and subsurface works.
9. In particular at WKT, ground investigation was carried out in various stages starting from April 2008, initially by the GI Contractor and then under the foundation works Contracts 803A, B, C and D and Contract 811B.
10. At WKT, information from over 600 drillholes was obtained and samples collected at an average spacing of 14.4 metres, consistent with Government guidelines and representing a closer spacing than the industry norm.
11. The consent of the Government is required to release of information concerning manpower and costs relating to the contracts entered into with the GI Contractor and Supervising Consultant. The Corporation will discuss with the Government accordingly.

中文譯本

(如中文版本與英文版本之間有任何不一致之處，概以英文版本為準。)

1. 港鐵公司的項目綜合管理系統中已有詳細流程，規劃及監控在新鐵路發展項目於設計、施工前及施工階段所進行的土質勘測工作。
2. 根據與政府於 2008 年 11 月 24 日簽訂的第一份委託協議及按照港鐵公司的項目綜合管理系統，港鐵公司委聘了前期及詳細設計顧問（“設計顧問”）收集及研究當時存在於西九龍總站及其附近，以及遠至中國大陸邊界的高鐵香港段沿綫的土質勘測資料。
3. 土質勘測資料是由多方面收集而來，包括土木工程拓展署土力工程處及港鐵公司本身所擁有的紀錄，亦顧及了隨後在設計階段可取得的資料。
4. 設計顧問檢討當時存在的土質勘測資料後設計了土質勘測方案。港鐵公司在審視有關方案後，按照法定要求提交方案予屋宇署審批或參考。
5. 其後，港鐵公司委聘第三方承建商進行土質勘測工作，並按法定要求由第三方顧問監督其工作，這些工作包括：
 - (i) 挖探坑及管線溝槽；
 - (ii) 垂直及傾斜鑽孔；
 - (iii) 水平定向鑽孔；

- (iv) 土壤及岩石的實驗室測試；
 - (v) 探坑及鑽孔土壤和岩石的現場測試；及
 - (vi) 探測地基及地下障礙物。
6. 所有土質勘測工作的設計及執行，都是按適用的香港標準，包括建築物（建造）規例、地盤監督作業守則及由土力工程處所發出之 **Guide to Site Investigation**（亦稱 **Geoguide 2**）。
 7. 根據所有當時存在及特別為項目而做的土質勘測結果，詳細設計顧問撰寫了初步的土力工程報告，以及其他報告和設計建議。
 8. 當取得所有相關資料後，港鐵公司發出由詳細設計顧問為每條主要隧道及西九龍總站土木工程合約而撰寫的土力工程基準報告。該報告內之土力工程基準會給予每個有意就相關合約進行投標的承建商，以作為其中的合約表述有關進行地底及地面建造工程時可能預見的土力工程及地質情況。
 9. 尤其是在西九龍總站，土質勘測自 2008 年分不同階段進行，由土質勘測承建商開始，一直到地基工程的合約 803A、B、C 及 D，以及合約 811B。
 10. 在西九龍總站，通過超過 600 個平均距離 14.4 米的鑽孔所收集到的樣本所取得的資料，符合政府指引，密度亦較業界的慣常距離為高。
 11. 有關與土質勘測承建商及監督顧問合約相關的人力資源及成本資料，需取得政府的同意後才能公開。港鐵公司將就此與政府商議。

(c) Copies of the minutes of a typical meeting of the Project Control Group of the Corporation held before April 2014 and related paper(s) and document(s) showing the implications of the delay recovery measures on costs of the project.

Minutes and papers of the Project Control Group (“PCG”) are confidential documents containing sensitive commercial information. Copies of these documents are available in the Data Room. In response to the Select Committee’s specific request, the Corporation has prepared copies of relevant PCG minutes and papers related to delay recovery measures in the Data Room for reference by members of the Select Committee upon the terms of use of the Data Room. Alternatively, the Corporation is prepared to provide the relevant documents on a confidential basis, i.e. the relevant documents are to be provided in confidence for use by the Select Committee members at closed hearings.

中文譯本

(如中文版本與英文版本之間有任何不一致之處，概以英文版本為準。)

項目監控小組的會議記錄及文件均為載有商業敏感資料的機密文件，這些文件的副本已存放於資料室。為回應專責委員會的具體要求，港鐵公司已於資料室準備了與追回進度措施有關的項目監控小組會議記錄及文件之副本，供專責委員會各委員在遵守使用資料室守則的條款下參閱。港鐵公司亦可在基於保密原則下提供相關文件，即是以保密形式提供相關文件讓專責委員會委員在閉門研訊下使用。

(d) Whether the Corporation has issued any letter, including any warning letter, to any of its contractors from January 2010 to April 2014 reminding them of the need to complete the XRL project according to the completion date provided for in the individual contract.

1. The Corporation has detailed processes in place to monitor and report the progress and quality of railway projects. Project programme and progress of work are in particular covered in regular meetings between representatives of the Corporation and relevant contractors.
2. Weekly site meetings and monthly progress meetings are held between the Corporation and each of the XRL civil works contractors to review programme and progress. The Corporation also writes formally to any contractor as and when necessary to record delaying events, to advise the contractor to comply with its contractual responsibilities and to seek the contractor's proposals to mitigate any delay and to expedite progress.
3. As a responsible project manager, the Corporation has written to our contractors reminding them of the need to complete the XRL project according to the completion date provided for in the individual contracts. Communications between the Corporation and its contractors contain commercially sensitive information. In response to the Select Committee's specific request, the Corporation has made available a number of examples of reminder letters to contractors regarding completion progress in the Data Room for reference by members of the Select Committee upon the terms of use of the Data Room. Alternatively, the Corporation is prepared to provide the relevant documents on a confidential basis, i.e. the relevant documents are to be provided in confidence for use by the Select Committee members at closed hearings.

中文譯本

(如中文版本與英文版本之間有任何不一致之處，概以英文版本為準。)

1. 港鐵公司有詳細的程序以監管及匯報鐵路項目的進度和品質。在港鐵公司與相關承建商之代表進行的定期會議中，都有特別討論項目時間表及工程進度。
2. 港鐵公司與高鐵項目各土木工程承建商於每周的工地會議及每月的工程進度會議中，均會檢視工程時間表及進度。當有需要記錄滯後的情況時，港鐵公司亦會正式致函相關承建商，敦促承建商履行其合約責任，以及要求承建商提交緩解措施以加快進度。
3. 作為負責任的項目管理人，港鐵公司已致函提醒承建商需按個別合約的完工期完成項目。有關港鐵公司與相關承建商之間的通訊包含商業敏感資料。為回應專責委員會之具體要求，港鐵公司已將公司就竣工進度向承建商發

出的提醒函件之一些樣本存放於資料室，供專責委員會各委員在遵守使用資料室守則的條款下參閱。港鐵公司亦可在基於保密原則下提供相關文件，即是以保密形式提供相關文件讓專責委員會委員在閉門研訊下使用。

(e) Whether the Corporation has required the contractor(s) of Contract 823A (Construction of Tse Uk Tsuen to Tai Kong Po Tunnels) to provide floodgate(s) as a flood prevention measure at the work site; if yes, whether the contractor(s) concerned has/have provided the floodgate(s) as required, and how the Corporation monitors whether the contractor(s) has/have fulfilled the requirements.

Flood protection plans for XRL project work sites are constantly revised to suit each particular construction stage. The flood plan at the 823A work site prior to the black rainstorm on the night of 30 March 2014 was implemented accordingly. The principle of the flood plan was to have a surface flood wall built around the cut-and-cover tunnel to channel surface water away from the tunnel. A drainage system and multi-tier flood protection measures are in place within the site boundary and have protected the site during past periods of typhoons and rainstorms. The flood on 30 March 2014 was caused by a collapsed slope, which was built in compliance with government requirements but could not withstand the exceptionally heavy rain, blocking the site drainage system and the resultant flood damaging part of the flood wall in that area, allowing water to enter the tunnel.

中文譯本

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高鐵項目工地的防洪計劃會因應個別施工階段而有所修訂。823A 工地的防洪計劃，早於 2014 年 3 月 30 日晚的黑色暴雨前已經實施。防洪計劃的原則是於明挖回填隧道周邊地面建設堤圍，防止洪水流入隧道。工地範圍內設有臨時渠道及多層防洪措施，於過往颱風及暴雨期間亦一直發揮作用。2014 年 3 月 30 日的水浸，因為按相關政府要求建造的斜坡，未能承受異常的暴雨而被沖毀，堵塞工地渠道，而洪水帶來的沉積物亦沖毀附近部分堤圍，從而令雨水流入隧道。

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26 June 2015

Ms Sophie LAU
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax : 2543 9197

Dear Ms. LAU,

**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 (“Select Committee”)**

Request for further information

Thank you for your letter dated 9 June 2015 to me on the captioned subject. Your letter requested the provision of certain information by me and the Transport and Housing Bureau (“THB”). My reply is as follows.

Item (a)

In paragraph 27 of my written statement formally produced at the hearing on 26 May 2015, I stated that when THB identified issues of concerns, it would make enquiry with the Highways Department (“HyD”) and requested HyD to provide information and/or arrange briefings, together with the MTR

Corporation Limited (“MTRCL”) as necessary. A list of the examples of the related events and incidents is at **Annex 1**. The Select Committee may wish to note that since, during the period in question, communication among THB, HyD and MTRCL were numerous, it would not be practicable to list out, exhaustively, all related events and incidents.

Item (b)

HyD and MTRCL briefed me and other THB officers on 23 July 2013 on the overall progress of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”) and the cross-boundary section. The attendance list of the 23 July 2013 meeting is at **Annex 2**.

Item (c)

The written statement of Mr Yau Shing-mu, Under Secretary for Transport and Housing (“USTH”), formally produced at the hearing on 28 April 2015 stated that “[a]s mentioned in paragraph 4.52 of the First Report by the Independent Board Committee on the Express Rail Link Project of MTRCL, at the MTRCL Board meeting on 22 August 2013, the former Projects Director of MTRCL said in his presentation to the MTRCL Board meeting that he believed that there was a programme in place to complete the key elements of the XRL project for opening in 2015 and within the budget set, although some non-essential works may have to be completed at a later date, however there was no mention of partial opening by the former Projects Director or any other of those who were present at the MTRCL Board meeting.”

Generally speaking, prior to a MTRCL Board meeting, THB officers would prepare brief(s) for the reference of the Secretary for Transport and Housing (“STH”) (or, in the case of the MTRCL Board meeting on 22 August 2013, for the reference of USTH who attended the said meeting as an alternate member to STH) in anticipation of the items scheduled for discussion at the MTRCL Board meeting. The XRL was not among the agenda items scheduled for discussion at the MTRCL Board meeting on 22 August 2013, and hence no brief on XRL was provided to USTH for attending that meeting. The discussion on XRL at the MTRCL Board meeting on 22 August 2013 was incidental to the discussion of another item.

Item (d)

At the 44th Project Supervision Committee (“PSC”) meeting held on 2 April 2014, MTRCL reported that the contractor was assessing the damage to the tunnel boring machine (“TBM”) and would make use of any available spare parts for necessary replacement, if the machine was not beyond repair. MTRCL also said at the same meeting that they were working on measures to minimize the delay. At the meeting, the Chairman (i.e. the Director of Highways (“DHy”)) requested MTRCL to report on the detailed findings of the incident, as well as their assessment on the associated cost and programme impacts when available. MTRCL submitted on 5 May 2014 a preliminary investigation report on the TBM tunnel flooding incident and a final report on 5 June 2014 which addressed the queries from HyD. It is noted that the report did not cover any aspect on programme and cost. The effect on programme and cost were separately included in the Programme to Complete (“PTC”) and Cost to Complete (“CTC”) exercises conducted by MTRCL.

As requested by DHy, MTRCL submitted in May 2014 the proposed PTC (i.e. commissioning of the XRL by end 2017) which included the impact due to the flooding incident on 30 March 2014. On 11 August 2014, MTRCL announced that the CTC of the XRL would be \$71.52 billion. On the same day, HyD wrote to MTRCL requesting supplementary information on the CTC. On 22 August 2014, MTRCL submitted details of the CTC to the Government. HyD and the monitoring and verification (“M&V”) consultant reviewed the details on PTC and CTC submitted by MTRCL and provided comments to MTRCL in October and November 2014 respectively for the Corporation to follow-up.

Item (e)

Risk-based samplings are carried out by HyD and its M&V consultant as part of their regular monitoring work on the XRL project. The information requested by the Select Committee has been provided by DHy in Item (c) of his response of 10 April 2015 to the Select Committee’s request of 27 March 2015. I have no further information to add.

Disclosure of information

Your letter of 9 June 2015 that information provided by me or THB will be made available to the media and the public upon request and be placed on the website of the Legislative Council, and may also be included in the Select Committee's report. Please be advised that the information mentioned in the preceding paragraphs is provided to the Select Committee for the sole purpose of assisting in its inquiry into the delay of the XRL project.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Joseph Y T Lai', is centered on the page.

(Joseph Y T Lai)
for Secretary for Transport & Housing

Encl.

c.c.
Director of Highways

**Examples of events and incidents relating to
Item (a) of Select Committee's letter of 9 June 2015**

No.	Example
1.	On 7 May 2013, there was a media report claiming that the XRL project would be delayed by a year with significant cost overrun (“西九總站設計出事 嚴重超支 高鐵延誤一年”). Amongst other things, the report claimed that the cause of “major delay” lay with the construction of the West Kowloon Terminus (“WKT”), which would result in a delay of at least one year and cost overrun up to \$4.4 billion. Based on information provided by MTRCL, the Government replied on the same day (7 May 2013) to the media that the target completion date of the XRL remained as 2015. Taking note of the growing concern in the matter, THB and HyD requested MTRCL to review the latest position and get ready to brief the Legislative Council Panel on Transport Subcommittee on Matters Relating to Railways (“RSC”) at its next meeting on 24 May 2013. On 23 May 2013, a meeting was held among THB, HyD and MTRCL to further review the latest position of the project. THB submitted a paper (LC Paper No. CB(1)1072/12-13(03)) to the RSC on the basis of assurances the Government received from MTRCL.
2.	In July 2013, the second quarterly report on the construction progress of the cross-boundary tunnel section compiled by MTRCL and the owner of the Mainland section of XRL was submitted through HyD to THB. The subject team of THB submitted the report to STH for sight. STH advised HyD and MTRCL to continue liaison with the Mainland partner to devise measures to mitigate the delay.
3.	At my request and arranged by HyD, HyD and MTRCL briefed me and other THB officers on 23 July 2013 on the overall progress of the XRL and the cross-boundary section. According to MTRCL, it was forecast that the cross-boundary tunnel civil works would be completed in March 2015; testing of the XRL across the boundary would commence in July 2015; and the target date for commissioning would be December 2015. The Government reminded MTRCL to make its best endeavours to deliver the project on time and within budget.
4.	Based on the third quarterly report on the construction progress of the cross-boundary XRL tunnel section, the subject team in THB reported on 22 October 2013 to STH (and me) that the cross-boundary tunnelling works continued to encounter delay. If the delay could not be mitigated, testing and commissioning of the XRL could only start in October 2015, thus impacting on the overall commissioning date for the XRL. The subject team also reported that MTRCL had recently proposed to HyD a target of

	<p>partial opening of XRL (putting into service six tracks by end-2015) and the commissioning of four more tracks in mid-2016. This was based on the latest progress of works, taking into account all delay recovery measures being implemented in various contracts. WKT and the cross-boundary tunnel section were on the critical path of the XRL project and any further delays at either of these might affect the target commissioning date of the XRL. Mitigation measures such as re-sequencing of works and phased access of E&M installation works were under consideration. Based on the latest financial situation and the status of contract claims, it was considered that the expenditure of the project could be kept within the approved project estimate. In view of the latest development, I became very concerned with the possibility that the XRL might not commence service in 2015 and requested MTRCL and HyD to provide a detailed briefing on the latest progress of the project (see Event no. 5).</p>
5.	<p>As requested by THB, HyD (represented by DHy) and MTRCL (represented by the then Projects Director) provided on 8 November 2013 a detailed briefing to me and other THB officers on the latest progress of the XRL project. MTRCL presented the progress of the works of the XRL, including WKT and Contract 826 tunnelling works. At the meeting, MTRCL stated that WKT could be ready for operation on a partial opening basis (“the partial opening scenario”) by December 2015. MTRCL explained that by “partial opening”, it meant that 6 out of the 15 tracks and the essential railway facilities should be ready to provide passenger service. They explained that even with only 6 tracks in this interim period, it would be sufficient to meet early year demand. As for Contract 826 tunnelling works, they could only be completed by October 2015 and the testing of the XRL (which would normally take three months) could only commence from October 2015. As it would take another three months to conduct trial runs, the target opening date of end-2015 might be affected. I considered that it was necessary for Government departments, including, for example, HyD and the Transport Department (“TD”), to examine the feasibility of the proposal, I did not confirm with MTRCL whether the partial opening scenario was acceptable to the Government or not. I further queried whether and how the partial opening scenario would have helped, given that the slow progress of the tunnelling works remained a main hurdle. It was pointed out to MTRCL that if the testing of the XRL could only commence from October 2015, it would be unlikely that the XRL could start operation by end-2015. If that was the case, the public should be informed as soon as possible. As the XRL might not be able to commence operation in 2015, THB subsequently arranged DHy to report to STH (see Event no. 6).</p>
6.	<p>The subject team of THB arranged a briefing on 20 November 2013 by HyD for STH, essentially using the information provided by MTRCL on 8 November 2013. Based</p>

	<p>on the assessment of works progress, THB contemplated making it public at the RSC meeting scheduled for 22 November 2013 that the XRL might only commence operation after 2015 and explaining the latest construction progress and the actual challenges encountered.</p>
7.	<p>As directed by STH, an urgent meeting was held amongst THB (led by me), HyD and MTRCL (led by the then Chief Executive Officer (“CEO”)) in the evening of 21 November 2013.</p> <p>The key points of discussion at the meeting have been set out in detail in my written statement (SC(4)(XRL) Paper No.: W7(C)), the written statement by Mr Yau Shing-mu, USTH (SC(4)(XRL) Paper No.: W4(C)) and the Annex to the Administration’s response to the RSC dated 15 May 2014 (LC Paper No.: CB(1)1422/13-14(04)).</p>

**Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL)
Briefing by RDO and MTRCL on 23 July 2013**

Progress of Construction

Attendance

Transport and Housing Bureau

Mr. Joseph LAI	Permanent Secretary for Transport and Housing (Transport)
Ms. Rebecca PUN	Deputy Secretary for Transport and Housing (Transport) 1
Miss Winnie WONG	Principal Assistant Secretary for Transport and Housing (Transport) 3
Mr. Frankie WAN	Assistant Secretary for Transport and Housing (Transport) 3D

Highways Department

Mr. Henry CHAN	Principal Government Engineer / Railway Development
Mr. H.C. TAM	Government Engineer / Railway Development (2)
Mr. Robert CHAN	Chief Engineer / Railway Development 2-2
Mr. Jason LEUNG	Chief Engineer / Railway Development 2-3 (Acting)

MTR Corporation Limited

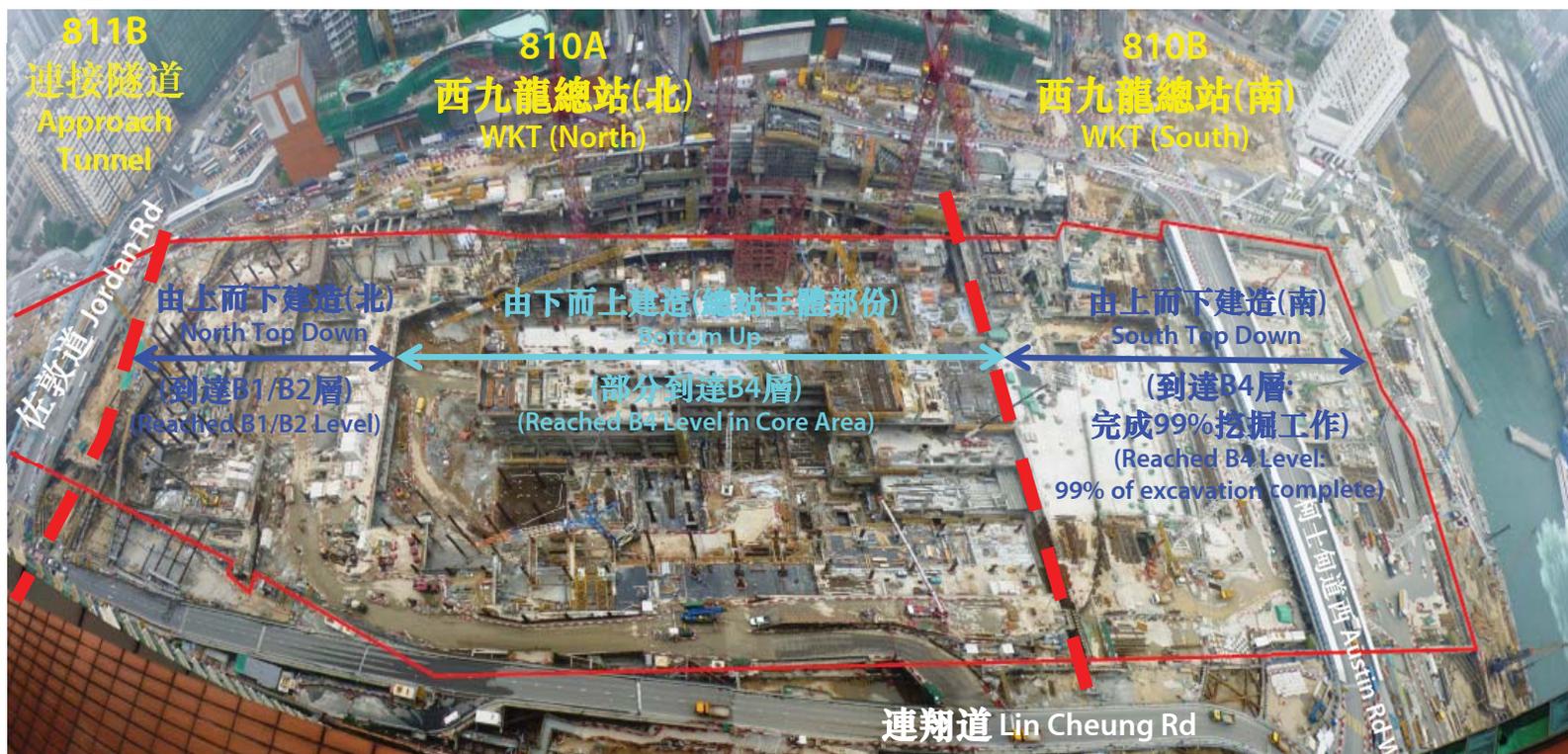
Mr. T. C. CHEW	Projects Director
Mr. Antonio CHOI	General Manager - XRL
Mr. Simon TANG	General Manager - XRL Tunnels
Mr. Alvin LUK	General Manager - XRL E&M
Mr. Eric CHAN	Senior Construction Engineer

合約 810A- 西九龍總站(北)

Contract 810A - West Kowloon Terminus Station (North)

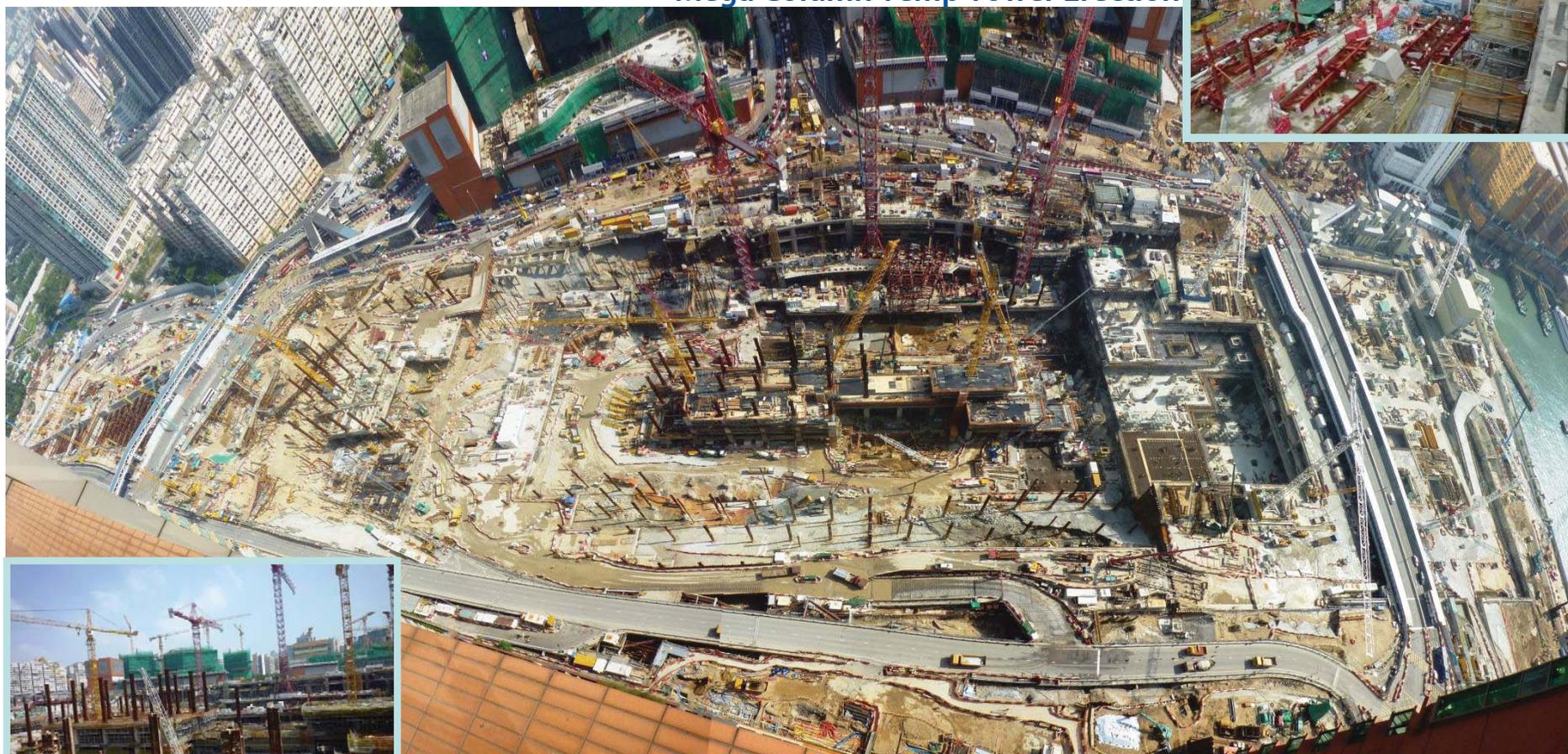
延誤原因 Causes of Delay

- 811B的地下連續護土牆建造工程受阻 Diaphragm Wall construction at 811B delayed by:
 - 未能預見的地質情況 Unforeseen ground conditions
 - 佐敦道底錯綜複雜的地下公共管綫 Complex underground utilities at Jordan Road
- 延遲進場 Late site possession



高鐵總站北（主要工地） West Kowloon Terminus North (Core Area)

安裝主柱臨時支撐架
Mega Column Temp Tower Erection



由下而上建造總站主體
Main Station Bottom-up Construction

MTR Corporation

2013/11/22

Page 12



Source: Paper submitted by the MTR Corporation Limited to the Subcommittee on Matters Relating to Railways, LC Paper No. CB(1)392/13-14(02)

政府總部
運輸及房屋局
局長辦公室
香港添馬添美道 2 號
政府總部東翼 22 樓



Office of the
Secretary for Transport and Housing
Government Secretariat
22/F., East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

本局檔號 Our Ref. THB(T)CR 10/1/16/581/99

來函檔號 Your Ref. CB4/SC/13

15 January 2016

Ms. Sophie LAU
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax : 2543 9197

Dear Ms. LAU,

**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 (“Select Committee”)**

Request for further information

Thank you for your letter dated 23 December 2015 to me on the captioned subject. Your letter requested the provision of certain information by me and the Transport and Housing Bureau (“THB”). My reply is as follows.

Item (a)

The Select Committee requested me to provide a copy of the letter from the then Chief Executive Officer of the MTR Corporation Limited (“MTRCL”) to me in July 2012 mentioned in paragraph 35 of my Written Statement. The letter is an internal correspondence between the Government and MTRCL being the project manager of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”). In normal circumstances, the letter is for the internal reference of the Government only.

To facilitate the work of the Select Committee, we are prepared to provide the letter (some sensitive information may need to be redacted) on a confidential basis for use by the Select Committee members at closed hearings. Subject to the Select Committee's agreement, we will provide the document to the Select Committee separately.

Item (b)

At the meeting on 16 April 2010 of the Subcommittee on Matters Relating to Railway ("RSC") under Panel on Transport of the Legislative Council, Members requested the Administration to submit a report at six-month intervals, with the first report covering the period between 16 January 2010, i.e. when the Finance Committee approved the project funding of the XRL, and 30 June 2010. The subsequent half-yearly reports covered the project progress for the periods ending 30 June and 31 December of each of the following year. On the scope of the progress reports, in addition to the work progress of the XRL project, it also covered some major aspects such as pre-construction preparatory work, claims situation, interface issues and employment opportunities created by the XRL project .

Up to mid-2014, the Administration had submitted a total of seven half-yearly progress reports to the RSC. The MTRCL, as the project manager of the XRL project, was responsible for **preparing the first draft** of the above mentioned half-yearly progress reports. Upon receipt of MTRCL's progress reports, Highways Department ("HyD") **verified** the accuracy of the content in the reports, and also proof-read the original version such as correcting spelling and grammar as well as the organisation to facilitate readers in comprehending the reports. In principle, the main content in the MTRCL's draft progress reports was retained. The above mentioned amendments would be given to the MTRCL for review. With the agreement by the MTRCL, the Administration would submit the report, as a joint report by the Administration and the MTRCL, to the RSC.

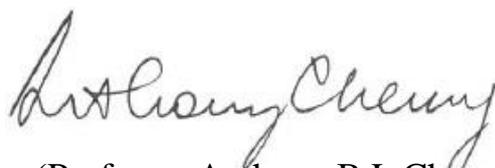
Starting from the fourth quarter of 2014, in order to enhance the reporting of the progress and financial situation of the construction of XRL project to the Legislative Council, we have been submitting the progress and financial situation reports of the XRL project **from half-yearly to quarterly**. For the quarterly reports submitted by the MTRCL, the verification by the HyD is the same as the above mentioned half-year reports. The MTRCL will submit the draft progress reports to the Administration for giving comments. However, the content of the progress reports for submission to the Legislative Council is

ultimately decided by the MTRCL. In addition to MTRCL's progress report on the XRL project, THB and HyD will prepare a separate paper, mainly on the assessment on the progress and challenges of critical contracts of the XRL project, and submit to the RSC along with the progress report provided by the MTRCL.

Disclosure of information

We note from your letter of 23 December 2015 that information provided by me or the THB will be made available to the media and the public upon request and be placed on the website of the Legislative Council, and may also be included in the Select Committee's report. Please be advised that the information mentioned in preceding paragraphs is provided to the Select Committee for the sole purpose of assisting its inquiry into the delay of the XRL project. On Item (a), the document is for internal reference within the Government only. We should therefore be grateful if the Select Committee would confirm its agreement to our proposed arrangement as aforesaid. Subject to the Select Committee's confirmation, we will provide the Select Committee with the documents accordingly.

Yours sincerely,



(Professor Anthony B L Cheung)
Secretary for Transport and Housing

c.c.
Director of Highways

Lists of written evidence/documents

Lists of written evidence/documents

- A. Evidence/documents provided by the Government
- B. Evidence/documents provided by the MTR Corporation Limited
- C. Evidence/documents provided by Jacobs China Limited
- D. Evidence/documents provided by witnesses
- E. Documents referred to by the Select Committee

A. Evidence/documents provided by the Government

Documents	Select Committee reference no.
1. Reply dated 6 January 2015 from the Transport and Housing Bureau ("THB")	G1*
2. Reply dated 18 February 2015 from the Highways Department ("HyD") (English version only)	G2
3. Reply dated 18 February 2015 from THB	G3
4. Reply dated 17 March 2015 from THB	G4
5. Reply dated 17 March 2015 from HyD (English version only)	G5
6. Reply dated 23 March 2015 from THB	G6*
7. Reply dated 10 April 2015 from HyD	G7
8. Reply dated 8 June 2015 from THB	G8
9. Reply dated 9 June 2015 from HyD	G9
10. Reply dated 26 June 2015 from THB	G10
11. Reply dated 6 July 2015 from Mr WAI Chi-sing, Former Director of Highways	G11
12. Reply dated 17 November 2015 from HyD	G12
13. Reply dated 11 December 2015 from HyD	G13
14. Reply dated 4 January 2016 from THB	G14
15. Reply dated 15 January 2016 from THB	G15
16. Reply dated 3 February 2016 from THB	G1(C)*

* Documents not available for public inspection

B. Evidence/documents provided by the MTR Corporation Limited ("the Corporation")

Documents	Select Committee reference no.
1. Reply dated 5 January 2015 from the Corporation	MTR1
2. Reply dated 17 March 2015 from the Corporation (English version only)	MTR2
3. Reply dated 8 May 2015 from the Corporation (English version only)	MTR3
4. Reply dated 14 August 2015 from the Corporation	MTR4
5. Reply dated 21 December 2015 from the Corporation	MTR5
6. Reply dated 8 January 2016 from the Corporation	MTR6
7. Reply dated 5 February 2015 from the Corporation (English version only)	MTR1(C)
8. Reply dated 12 February 2015 from the Corporation (English version only)	MTR2(C)

C. Evidence/documents provided by Jacobs China Limited

Documents	Select Committee reference no.
1. Reply dated 23 December 2015 from the Jacobs China Limited	J1

D. Evidence/documents provided by witnesses

Documents	Select Committee reference no.
1. Written statement from Mr Peter LAU Ka-keung, Director of Highways	W1(C)
2. Opening statement by Mr Peter LAU Ka-keung, Director of Highways (Chinese version only)	W2(C)
3. Opening statement by Mr Peter LAU Ka-keung, Director of Highways (Chinese version only)	W3(C)
4. Written statement from Mr YAU Shing-mu, Under Secretary for Transport and Housing	W4(C)
5. Opening statement by Mr YAU Shing-mu, Under Secretary for Transport and Housing (Chinese version only)	W5(C)
6. Written statement from Mr WAI Chi-sing, Former Director of Highways	W6(C)
7. Written statement from Mr Joseph LAI Yee-tak, Permanent Secretary for Transport and Housing (Transport)	W7(C)
8. Opening statement by Mr Joseph LAI Yee-tak, Permanent Secretary for Transport and Housing (Transport) (Chinese version only)	W8(C)
9. Written statement from Mr Lincoln LEONG Kwok-kuen, Chief Executive Officer, MTR Corporation Limited	W9(C)
10. Opening statement by Mr Lincoln LEONG Kwok-kuen, Chief Executive Officer, MTR Corporation Limited (English version only)	W10(C)
11. Written statement from Mr Henry CHAN Chi-yan, Principal Government Engineer/Railway Development, Highways Department	W11(C)
12. Written statement from Mr TAM Hon-choi, Government Engineer/Railway Development 2, Highways Department	W12(C)

Documents	Select Committee reference no.
13. Joint written statement from Mr Anthony J W KING, Project Director, and Mr William NG Siu-kee, Project Manager, Jacobs China Limited (English version only)	W13(C)
14. Opening statement by Mr Lincoln LEONG Kwok-kuen, Chief Executive Officer, MTR Corporation Limited (English version only)	W14(C)
15. Written statement from Dr Philco WONG Nai-keung, Projects Director, MTR Corporation Limited	W15(C)
16. Written statement from Professor Anthony CHEUNG Bing-leung, Secretary for Transport and Housing	W16(C)
17. Opening statement by Dr Philco WONG Nai-keung, Projects Director, MTR Corporation Limited (Chinese version only)	W17(C)
18. Opening statement by Professor Anthony CHEUNG Bing-leung, Secretary for Transport and Housing (Chinese version only)	W18(C)

E. Documents referred to by the Select Committee

Documents	Select Committee reference no.
1. Major areas of study	L1
2. Work plan	L2
3. Practice and Procedure of the Select Committee	L3
4. Updated indexing system for Select Committee papers	L4
5. Legislative Council Brief submitted by the Government to the Legislative Council on 22 April 2008 on Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (Ref No: THB(T)CR 1/16/581/99)	--
6. Paper submitted by the Government to the Subcommittee on Matters Relating to Railways of the Legislative Council ("Railways Subcommittee") (follow-up paper to the Railways Subcommittee meeting on 2 May 2008) (LC Paper No. CB(1)1749/07-08 (01))	--
7. Paper submitted by the Government to the Public Works Subcommittee of the Legislative Council ("PWSC") (discussed at PWSC meetings on 2 and 3 December 2009) (PWSC(2009-10)68)	--
8. Paper submitted by the Government to PWSC (discussed at PWSC meetings on 2 and 3 December 2009) (PWSC(2009-10)69)	--
9. Paper submitted by the Government to the Finance Committee of the Legislative Council (FCR(2009-10)44)	--
10. Paper submitted by the Government to Railways Subcommittee (discussed at the Railways Subcommittee meeting on 16 April 2010) (LC Paper No. CB(1)1573/09-10(04))	--

Documents	Select Committee reference no.
11. Paper submitted by the Government to Railways Subcommittee (First half-yearly report for the period ending 30 June 2010) (discussed at the Railways Subcommittee meetings on 6 July 2010 and 20 September 2010) (LC Paper No. CB(1)2290/09-10(01))	--
12. Paper submitted by the Government to Railways Subcommittee (Second half-yearly report for the period ending 31 December 2010) (discussed at the Railways Subcommittee meeting on 20 May 2011) (LC Paper No. CB(1)1585/10-11(07))	--
13. Paper submitted by the Government to Railways Subcommittee (Third half-yearly report for the period ending 30 June 2011) (LC Paper No. CB(1)3049/10-11(01))	--
14. Paper submitted by the Government to Railways Subcommittee (Fourth half-yearly report for the period ending 31 December 2011) (LC Paper No. CB(1)1710/11-12(01))	--
15. Paper submitted by the Government to Railways Subcommittee (Fifth half-yearly report for the period ending 30 June 2012) (LC Paper No. CB(1)24/12-13(02))	--
16. Paper submitted by the Government to Railways Subcommittee (discussed at the Railways Subcommittee meeting on 24 May 2013) (LC Paper No. CB(1)1072/12-13(03))	--
17. Paper submitted by the Government to Railways Subcommittee (Sixth half-yearly report for the period between 1 July 2012 and 31 December 2012) (discussed at the Railways Subcommittee meeting on 24 May 2013) (LC Paper No. CB(1)1108/12-13(01))	--
18. Notes of the meeting held on 21 November 2013 between representatives of the Government and the MTR Corporation Limited (LC Paper No. CB(1)1422/13-14(04))	--

Documents	Select Committee reference no.
19. Paper submitted by the Government to Railways Subcommittee (Seventh half-yearly report for the period ending 30 June 2013) (discussed at the Railways Subcommittee meeting on 22 November 2013) (LC Paper No. CB(1)81/13-14(01))	--
20. Paper submitted by the Government to Railways Subcommittee (discussed at the Railways Subcommittee meetings on 5 May and 19 May 2014) (LC Paper No. CB(1)1328/13-14(03))	--
21. Paper submitted by the MTR Corporation Limited to Railways Subcommittee (discussed at the Railways Subcommittee meetings on 5 May and 19 May 2014) (LC Paper No. CB(1)1354/13-14(01))	--
22. Paper submitted by the Government to Railways Subcommittee (discussed at the Railways Subcommittee meeting on 19 May 2014) (LC Paper No. CB(1)1422/13-14(02))	--
23. Paper submitted by the MTR Corporation Limited to Railways Subcommittee (discussed at the Railways Subcommittee meeting on 19 May 2014) (LC Paper No. CB(1)1438/13-14(01))	--
24. Powerpoint slides presented at the Railways Subcommittee meeting on 22 November 2013 (LC Paper No. CB(1)392/13-14(02))	--
25. Powerpoint slides presented at the Railways Subcommittee meeting on 5 May 2014 (LC Paper No. CB(1)1379/13-14(01))	--
26. Report of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link Independent Expert Panel	--
27. First Report by the Independent Board Committee on the Express Rail Link Project	--
28. Second Report by the Independent Board Committee on the Express Rail Link Project	--

Minutes of proceedings

Ref: CB4/SC/13

**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**

**Minutes of the closed meeting
held on Monday, 6 June 2016, at 9:00 am
in Conference Room 4 of the Legislative Council Complex**

Members present : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Tony TSE Wai-chuen, BBS (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHAN Kam-lam, SBS, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
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, SBS, MH, JP

Members absent : Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)6

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Mr Matthew LOO
Assistant Secretary General 4

Miss Winnie LO
Assistant Legal Adviser 7

Ms Macy NG
Senior Council Secretary (4)6

Miss Katherine CHAN
Council Secretary (4)6

I. Consideration of the comments received on extracts of the draft report of the Select Committee and consideration and endorsement of the report of the Select Committee paragraph by paragraph

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4. Members agreed to first consider the Chinese text of the draft report paragraph by paragraph, together with the comments made by witnesses and relevant parties on the relevant paragraphs and/or parts of the draft report. The English text of the draft report would be considered after the Select Committee had concluded consideration of the Chinese text of the report paragraph by paragraph.

Chapter 1

5. Paragraph 1.1 read and agreed to.
6. Paragraph 1.2 read, amended and agreed to.
7. Paragraphs 1.3 and 1.4 read, amended and agreed to.
8. Paragraphs 1.5 and 1.6 read and agreed to.
9. Paragraphs 1.7 to 1.10 read and agreed to.
10. Paragraph 1.11 read, amended and agreed to.
11. Paragraphs 1.12 to 1.14 read and agreed to.

Chapter 2

12. Paragraphs 2.1 to 2.3 read and agreed to.
13. Paragraph 2.4 read and agreed to.

14. Paragraphs 2.5 to 2.9 read and agreed to.
15. Paragraphs 2.10 and 2.11 read and agreed to.
16. Paragraph 2.12 read and agreed to.
17. Paragraphs 2.13 to 2.15 read and agreed to.
18. Paragraph 2.16 read, subject to further update and agreed to.
19. Paragraphs 2.17 to 2.19 read and agreed to.
20. Paragraphs 2.20 and 2.21 read and agreed to.
21. Paragraph 2.22 read, amended and agreed to.
22. Paragraphs 2.23 to 2.26 read and agreed to.
23. Paragraphs 2.27 to 2.30 read and agreed to.
24. Paragraphs 2.31 and 2.32 read and agreed to.
25. Paragraph 2.33 read, amended and agreed to.
26. Paragraphs 2.34 to 2.37 read and agreed to.
27. Paragraphs 2.38 to 2.41 read and agreed to.
28. Paragraphs 2.42 to 2.44 read and agreed to.
29. Paragraph 2.45 read, amended and agreed to.
30. Paragraphs 2.46 and 2.47 read and agreed to.
31. Paragraph 2.48 read, amended and agreed to.
32. Paragraphs 2.49 to 2.52 read and agreed to.
33. Paragraph 2.53 read, amended and agreed to.
34. Paragraphs 2.54 and 2.55 read and agreed to.

Chapter 3

35. Paragraph 3.1 read and agreed to.
36. Paragraphs 3.2 to 3.4 read and agreed to.
37. Paragraphs 3.5 to 3.8 read and agreed to.
38. Paragraph 3.9 read, amended and agreed to.
39. Paragraphs 3.10 to 3.12 read and agreed to.
40. Paragraph 3.13 read, amended and agreed to.
41. Paragraph 3.14 read, amended and agreed to.
42. Paragraph 3.15 read and agreed to.
43. Paragraph 3.16 read, amended and agreed to.
44. Paragraphs 3.17 to 3.19 read and agreed to.
45. Paragraphs 3.20 to 3.22 read and agreed to.
46. Paragraphs 3.23 to 3.26 read and agreed to.
47. Paragraphs 3.27 to 3.30 read and agreed to.
48. Paragraphs 3.31 to 3.35 read and agreed to.
49. Paragraph 3.36 read, amended and agreed to.
50. Paragraphs 3.37 to 3.40 read and agreed to.
51. Mr Gary FAN proposed some amendments to paragraphs 3.41, 3.42 and 3.51, and footnote to paragraph 3.41(b). His proposed amendments were tabled at the meeting.

(Post-meeting note: The proposed amendments by Mr Gary FAN were circulated to members on 8 June 2016 via LC Paper Nos CB(4)1092/15-16(01) and (02).)

52. Mr Gary FAN proposed to amend paragraph 3.41 by substituting the last two sentences with

"但路政署及港鐵公司並沒有要求盡早於城市高爾夫球會內進行全面的地底勘測，令勘測時間進一步變得緊迫。可見路政署及港鐵公司對該範圍複雜的地質情況缺乏警覺性。"

53. Members agreed to amend Mr Gary FAN's amendment by deleting "路政署及" after "但" and "可見" respectively; and "要求" after "並沒有". In addition, "地底勘測" should be amended as "工地勘測".

54. Mr Gary FAN also proposed to amend footnote to paragraph 3.41(b) by adding:

"專責委員會亦察悉，運輸及房屋局局長曾經在2014年6月的立法會會議上確認，承認政府知悉九廣鐵路曾於1997年委託法國地基建公司(Bachy Soletanche Group Limited)在西九龍總站(北)現址完成的地質報告，以及其他早期在西九龍總站(北)範圍內一些有關項目所完成的地質報告，並均已納入西九龍總站(北)810A的合約文件中，作為給予有關承建商參考的資料。"

55. Members agreed to amend Mr Gary FAN's proposed amendment by deleting "專責委員會亦察悉，". Members also considered that the wording of Mr FAN's proposed amendment should be amended to adhere to the wording of the Official Record of Records of Proceedings of the Legislative Council meeting on 11 June 2014 at page 14827 (English version) or page 10870 (Chinese version), in which "委託法國地基建公司(Bachy Soletanche Group Limited)" was not mentioned.

(Post-meeting note: Footnote to paragraph 3.41(b) reads as "專責委員會公開研訊的取證紀錄，2015年6月2日，第25至27頁；以及立法會會議過程正式紀錄，2014年6月11日，第10870頁。運輸及房屋局局長張炳良教授在該次立法會會議上指出，政府知悉毛孟靜議員提及有關九廣鐵路公司曾於1997年在西鐵柯士甸站完成的地質報告，以及其他早期在西九龍總站(北)範圍內就一些有關項目所完成的地質報告，均已納入西九龍總站(北)810A的合約文件中，作為給予有關承建商參考的資料。")

56. Paragraph 3.41 read, amended and agreed to.

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Council Business Division 4
Legislative Council Secretariat
29 June 2016

Ref: CB4/SC/13

**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**

**Minutes of the closed meeting
held on Tuesday, 7 June 2016, at 9:00 am
in Conference Room 4 of the Legislative Council Complex**

Members present : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Tony TSE Wai-chuen, BBS (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHAN Kam-lam, SBS, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon WU Chi-wai, MH
Hon Gary FAN Kwok-wai
Hon TANG Ka-piu, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Members absent : Hon Frankie YICK Chi-ming, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, JP

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)6

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Mr Matthew LOO
Assistant Secretary General 4

Miss Winnie LO
Assistant Legal Adviser 7

Ms Macy NG
Senior Council Secretary (4)6

Miss Katherine CHAN
Council Secretary (4)6

I. Consideration of the comments received on extracts of the draft report of the Select Committee and consideration and endorsement of the report of the Select Committee paragraph by paragraph

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3. The Select Committee further considered paragraph 3.41 which was amended and agreed to at the meeting on 6 June 2016. The Select Committee considered it inappropriate to make further amendments to the endorsed version.

4. Mr Michael TIEN proposed to amend paragraph 3.41 by substituting the last two sentences with "但港鐵公司並沒有按城市高爾夫球會的短期租約，盡早於球會內進行全面的地底勘測，令勘測事件進一步變得緊迫。可見港鐵公司對該範圍複雜的地質情況缺乏承擔。". His proposed amendment was tabled at the meeting. The Select Committee considered that since Mr Michael TIEN's proposed amendment was submitted after paragraph 3.41 had been endorsed at the meeting on 6 June 2016, his proposed amendment should not be dealt with.

(Post-meeting notes:

(a) The proposed amendment by Mr Michael TIEN was circulated to members on 8 June 2016 via LC Paper No CB(4)1093/15-16(01).

(b) On 8 June 2016, Mr Michael TIEN requested to revise the wording of his proposed amendment as "但港鐵公司並沒有按城市高爾夫球會的短期租約，盡早於球會內進行全面的地底勘測，令勘測時間進一步變得緊迫。可見港鐵公司沒有盡責任去了解該範圍的複雜地質情況。")

5. Members continued to consider the Chinese text of the report of the Select Committee paragraph by paragraph together with the comments made

by witnesses and relevant parties on the relevant paragraphs and/or parts of the report.

Chapter 3

6. Mr Gary FAN proposed to amend paragraph 3.42 by substituting the last three sentences with "對於港鐵公司未有在較早階段製定預備方案，以應對西九龍總站地底的大量基岩石，及其他可能出現的不利地質情況，以致未能及時採取適當行動，專責委員會亦感到遺憾。"

7. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote. Three members voted for and four members voted against Mr Gary FAN's proposal. The Chairman declared that Mr Gary FAN's proposal was defeated.

8. Paragraph 3.42 read, with a textual amendment and agreed to.

9. Paragraphs 3.43 to 3.45 read and agreed to.

10. Paragraphs 3.46 to 3.48 read, amended and agreed to.

11. Paragraphs 3.49 and 3.50 read and agreed to.

12. Mr Gary FAN proposed that paragraph 3.51 be substituted by the following paragraph:

"專責委員會認為，以 2015 年 8 月 4 日為該工程項目的目標完工日期是粗疏及盲目自信的做法。鑒於工地勘測公認有其限制，政府及港鐵公司作為監核監督者和項目管理人，理應預留較長的緩衝期以應付西九龍總站地底複雜的地質情況，而並非明知地質情況複雜，仍堅持以緊迫的工期及成本開展工程。"

13. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote. Three members voted for and three members voted against Mr Gary FAN's proposal. The Chairman then exercised his casting vote in the negative according to paragraph 8 of the Practice and Procedure of the Select Committee, and declared that Mr Gary FAN's proposal was defeated.

14. Paragraph 3.51 read and agreed to.

15. Paragraph 3.52 read and agreed to.
16. Paragraph 3.53 read, amended and agreed to.
17. Paragraph 3.54 read and agreed to.
18. Mr Michael TIEN proposed to amend paragraph 3.50 by substituting "無法" with "沒有". The Select Committee considered that since Mr Michael TIEN's proposed amendment was submitted after paragraph 3.50 was endorsed, his proposed amendment should not be dealt with.
19. Mr Gary FAN proposed that the last sentence of paragraph 3.55 be substituted by the following sentence:

"負責監察該工程項目的政府人員並未有履行他們的職責，即善用既有的制度。"
20. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote. One member voted for and two members voted against Mr Gary FAN's proposal, and one member abstained from voting. The Chairman declared that Mr Gary FAN's proposal was defeated.
21. Paragraph 3.55 read and agreed to.
22. Paragraph 3.56 read and agreed to.
23. Paragraphs 3.57 and 3.58 read, amended and agreed to.
24. Paragraph 3.59 read and agreed to.
25. Paragraph 3.60 read, amended and agreed to.
26. Paragraphs 3.61 to 3.63 read and agreed to.
27. Mr Gary FAN proposed to delete paragraph 3.64. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote. One member voted for and two members voted against Mr Gary FAN's proposal, and one member abstained from voting. The Chairman declared that Mr Gary FAN's proposal was defeated.
28. Paragraph 3.64 read and agreed to.

29. Paragraph 3.65 read and agreed to.

Chapter 4

30. Paragraph 4.1 read, amended and agreed to.

31. Paragraph 4.2 read and agreed to.

32. Paragraphs 4.3 and 4.4 read and agreed to.

33. Paragraphs 4.5 to 4.7 read and agreed to.

34. Paragraphs 4.8 and 4.9 read and agreed to.

35. Paragraphs 4.10 and 4.11 read and agreed to.

36. Paragraphs 4.12 to 4.14 read and agreed to.

37. Paragraphs 4.15 and 4.16 read and agreed to.

38. Paragraphs 4.17 to 4.23 read and agreed to.

39. Paragraphs 4.24 to 4.26 read and agreed to.

40. Paragraphs 4.27 to 4.33 read and agreed to.

41. Paragraphs 4.34 to 4.38 read and agreed to.

42. Paragraphs 4.39 to 4.43 read and agreed to.

43. Paragraphs 4.44 to 4.47 read and agreed to.

44. Mr WU Chi-wai proposed to delete paragraph 4.48. As there were divided views among members on Mr WU Chi-wai's proposal, the Chairman put the proposal to vote. Two members voted for and three members voted against Mr WU Chi-wai's proposal. The Chairman declared that Mr WU Chi-wai's proposal was defeated. Mr WU Chi-wai requested to add a footnote to paragraph 4.48 to reflect his proposed amendment. Members agreed.

45. Mr TANG Ka-piu proposed to amend paragraph 4.48 by deleting "因此，把所有責任歸咎於運輸及房屋局或路政署的現任官員，指他們沒有做好監察該工程項目的工作，或會有欠公允。"

46. As there were divided views among members on Mr TANG Ka-piu's proposal, the Chairman put the proposal to vote. One member voted for and three members voted against Mr TANG Ka-piu's proposal, and one member abstained from voting. The Chairman declared that Mr TANG Ka-piu's proposal was defeated. Mr TANG Ka-piu requested to add a footnote to paragraph 4.48 to reflect his proposed amendment. Members agreed.

47. Mr Gary FAN proposed to amend paragraph 4.48 by substituting the last four sentences with "運輸及房屋局或路政署的現任官員並沒有及早察覺'監核監督者'機制的缺陷，沒有加強對該工程項目的監察工作，反而繼續依賴港鐵公司，盲目信任港鐵公司過於樂觀的判斷，故此有關官員應該為延誤負上責任。"

48. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote. Two members voted for and three members voted against Mr Gary FAN's proposal. The Chairman declared that Mr Gary FAN's proposal was defeated. Mr Gary FAN requested to add a footnote to paragraph 4.48 to reflect his proposed amendment. Members agreed.

49. The Chairman proposed to amend paragraph 4.48 by deleting the second last sentence, i.e. "指他們沒有做好監察該工程項目的工作，". As there were divided views among members on the Chairman's proposal, the Chairman put the proposal to vote. Three members voted for and two members voted against the Chairman's proposal. The Chairman declared that his proposal was carried.

50. Paragraph 4.48 read, amended and agreed to.

51. Paragraphs 4.49 and 4.50 read and agreed to.

52. Paragraph 4.51 read, amended and agreed to.

53. Paragraphs 4.52 and 4.53 read and agreed to.

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Ref: CB4/SC/13

**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**

**Minutes of the closed meeting
held on Friday, 10 June 2016, at 9:00 am
in Conference Room 4 of the Legislative Council Complex**

- Members present** : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Tony TSE Wai-chuen, BBS (Deputy Chairman)
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, JP
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, SBS, MH, JP
- Clerk in attendance** : Ms Sophie LAU
Chief Council Secretary (4)6
- Staff in attendance** : Mr Stephen LAM
Senior Assistant Legal Adviser 2
- Mr Matthew LOO
Assistant Secretary General 4
- Ms Macy NG
Senior Council Secretary (4)6

I. Consideration of the comments received on extracts of the draft report of the Select Committee and consideration and endorsement of the report of the Select Committee paragraph by paragraph from paragraph 4.54

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2. Members continued to consider the Chinese text of the report of the Select Committee paragraph by paragraph together with the comments made by witnesses and relevant parties on the relevant paragraphs and/or parts of the report.

Chapter 4

3. Paragraphs 4.54 to 4.58 read and agreed to.
4. Paragraphs 4.59 to 4.63 read and agreed to.
5. Paragraphs 4.64 to 4.69 read and agreed to.
6. Paragraphs 4.70 to 4.76 read and agreed to.
7. Paragraphs 4.77 to 4.80 read and agreed to.

Chapter 5

8. Paragraph 5.1 read and agreed to.
9. Paragraphs 5.2 to 5.5 read and agreed to.
10. Paragraphs 5.6 to 5.8 read and agreed to.
11. Paragraphs 5.9 to 5.14 read and agreed to.
12. Paragraphs 5.15 to 5.20 read and agreed to.
13. Paragraphs 5.21 to 5.23 read and agreed to.

14. Paragraph 5.24 read, amended and agreed to.
15. Paragraph 5.25 read and agreed to.
16. Paragraphs 5.26 to 5.29 read and agreed to.
17. Paragraphs 5.30 to 5.32 read and agreed to.
18. Paragraphs 5.33 to 5.39 read and agreed to.
19. Paragraphs 5.40 to 5.43 read and agreed to.
20. Paragraph 5.44 read, amended and agreed to.
21. Paragraphs 5.45 to 5.48 read and agreed to.
22. Paragraphs 5.49 and 5.50 read, amended and agreed to.
23. Paragraphs 5.51 to 5.55 read and agreed to.
24. Paragraphs 5.56 to 5.59 read and agreed to.
25. Paragraphs 5.60 and 5.61 read and agreed to.
26. Paragraph 5.62 read, amended and agreed to.
27. Paragraphs 5.63 to 5.65 read and agreed to.
28. Paragraphs 5.66 to 5.69 read and agreed to.
29. Paragraphs 5.70 to 5.73 read and agreed to.
30. Paragraph 5.74 read and agreed to.
31. Paragraph 5.75 read, amended and agreed to.
32. Paragraphs 5.76 to 5.80 read and agreed to.
33. Paragraphs 5.81 to 5.84 read and agreed to.

(Post-meeting note: At the Select Committee meeting on 14 June 2016, Mr LEE Cheuk-yan, Ms Claudia MO and Mr Gary FAN expressed that they disagreed to the suggestion of "在有需要時精簡

補充勞工計劃所需的程序，加快輸入勞工以應付……" mentioned in paragraph 5.83.)

Chapter 6

34. Paragraph 6.1 read, amended and agreed to.
35. Paragraph 6.2 read and agreed to.
36. Paragraphs 6.3 to 6.5 read and agreed to.
37. Paragraphs 6.6 to 6.11 read and agreed to.
38. Paragraphs 6.12 to 6.15 read and agreed to.
39. Paragraphs 6.16 to 6.19 read and agreed to.
40. Paragraph 6.20 read, amended and agreed to.
41. Paragraphs 6.21 to 6.23 read and agreed to.
42. Paragraphs 6.24 to 6.28 read and agreed to.
43. Paragraphs 6.29 to 6.31 read and agreed to.
44. Paragraph 6.32 read, amended and agreed to.
45. Paragraph 6.33 read and agreed to.
46. Paragraphs 6.34 to 6.39 read and agreed to.
47. Paragraph 6.40 read and agreed to.
48. Paragraphs 6.41 to 6.45 read and agreed to.
49. Paragraph 6.46 read and agreed to.
50. Paragraph 6.47 read, amended and agreed to.
51. Paragraph 6.48 read and agreed to.
52. Paragraph 6.49 read, amended and agreed to.

53. Paragraphs 6.50 to 6.52 read and agreed to.
54. Paragraphs 6.53 and 6.54 read, amended and agreed to.
55. Paragraphs 6.55 to 6.61 read and agreed to.
56. Paragraphs 6.62 and 6.63 read and agreed to.
57. Paragraphs 6.64 to 6.69 read and agreed to.
58. Paragraphs 6.70 and 6.71 read and agreed to.
59. Paragraph 6.72 read, amended and agreed to.
60. Paragraph 6.73 read and agreed to.
61. Paragraph 6.74 read, amended and agreed to.

Chapter 7

62. Paragraphs 7.1 to 7.4 read and agreed to.
63. Paragraph 7.5 read and agreed to.
64. Paragraph 7.6 read, amended and agreed to.
65. Paragraph 7.7 read and agreed to.
66. Paragraph 7.8 read and agreed to.
67. Mr Gary FAN proposed to amend paragraph 7.9 by substituting

"此外，路政署／鐵路拓展署本身缺乏興建鐵路系統的實際經驗及專業技能，或許亦導致其職員缺乏信心，未能在監察港鐵公司表現時承擔更主動和積極的角色。"

with

"此外，路政署署長對工程進度一直作出錯誤的專業判斷，認為滯後不等於整體項目的完工期一定都有延誤，因而需給予港鐵機會，讓其繼續研究一些追回進度措施，繼續推展工程，這判斷導致路政署／鐵路拓展處盲目認為港

鐵可追回進度，遲遲未能下定決心在監察港鐵公司表現時承擔更主動的角色。"

His proposed amendment was tabled at the meeting.

(Post-meeting note: The proposed amendment by Mr Gary FAN was circulated to members on 10 June 2016 via LC Paper No CB(4)1104/15-16(01) .)

68. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote. Five members voted for and six members voted against Mr Gary FAN's proposal. The Chairman declared that Mr Gary FAN's proposal was defeated.

69. Paragraph 7.9 read and agreed to.

70. Ms Claudia MO and Mr Gary FAN requested a division in relation to all subsequent amendments proposed by members. Members agreed.

71. Paragraphs 7.10 and 7.11 read and agreed to.

72. Mr Gary FAN proposed to amend paragraph 7.12 by

(a) substituting the first four sentences with "專責委員會認為，為該工程項目制訂緊迫的時限是政府及港鐵公司的錯誤判斷，而政府及港鐵公司亦沒有在2010年工程開展之初，如實向公眾交代緊迫工期的風險，是誤導公眾錯信2015年8月是一個合理的完工期。鑒於地底勘測公認有其限制，政府及港鐵公司理應預留較長的緩衝期以應付西九龍總站地底複雜的地質情況，而並非明知地質情況複雜，仍堅持以緊迫的工期及成本開展工程。"; and

(b) substituting

"專責委員會亦認為，港鐵公司接納該目標完工日期，實屬過於樂觀。"

with

"專責委員會亦認為，港鐵公司接納該目標完工日期，實屬不負責任。專責委員會察悉，梁國權先生於

2015年7月15日出席的研訊中，有委員質疑港鐵公司前工程總監柏立恆在2009年時曾提出2015年8月的目標完工日期太趕急，估算要在2017年才能完工，而且工程費用需要800億元。但港鐵公司並不接納該估算，柏立恆因而辭職，梁國權在研訊中對該質疑不置可否。"

His proposed amendments were tabled at the meeting.

(Post-meeting note: The proposed amendments by Mr Gary FAN were circulated to members on 10 June 2016 via LC Paper No CB(4)1104/15-16(01) .)

73. Mr LEE Cheuk-yan proposed to amend Mr Gary FAN's proposal by deleting "，是誤導公眾錯信2015年8月是一個合理的完工期".

74. As there were divided views among members on Mr LEE Cheuk-yan's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN and Mr Charles Peter MOK.
(5 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr CHAN Han-pan and Ir Dr LO Wai-kwok.
(6 members)

75. The Chairman declared that five members voted for and six members voted against Mr LEE Cheuk-yan's proposal. He declared that Mr LEE Cheuk-yan's proposal was defeated.

76. Mr Gary FAN proposed to amend the last sentence of his proposed amendment to paragraph 7.12 by substituting "梁國權在研訊中對該質疑不置可否" with "梁國權先生在研訊中聲稱未能記起".

77. As there were divided views among members on Mr Gary FAN's revised proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN and Mr Charles Peter MOK.

(5 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Frankie YICK, Mr CHAN Han-pan and Ir Dr LO Wai-kwok.

(5 members)

The following member abstained from voting:

Mr Michael TIEN.

(1 member)

78. As the votes were equally divided, the Chairman exercised his casting vote in the negative according to paragraph 8 of the Practice and Procedure of the Select Committee and declared that Mr Gary FAN's proposal was defeated.

79. Paragraph 7.12 read, with textual amendments and agreed to.

80. Paragraph 7.13 read, amended and agreed to.

81. Ms Claudia MO proposed to amend the last part of the last sentence of paragraph 7.14 after the word "未" by substituting "好好地履行其任務" with "盡責".

82. As there were divided views among members on Ms Claudia MO's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN and Mr Charles Peter MOK.

(5 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr CHAN Han-pan and Ir Dr LO Wai-kwok.

(6 members)

83. The Chairman declared that five members voted for and six members voted against Ms Claudia MO's proposal. He declared that Ms Claudia MO's proposal was defeated. Ms Claudia MO requested to add a footnote to paragraph 7.14 to reflect her proposed amendment. Members agreed.

84. Mr WU Chi-wai proposed to amend the last part of the last sentence of paragraph 7.14 by substituting "好好" with "盡責" before the phrase "地履行其任務".

85. As there were divided views among members on Mr WU Chi-wai's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN and Mr Charles Peter MOK.

(5 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr CHAN Han-pan and Ir Dr LO Wai-kwok.

(6 members)

86. The Chairman declared that five members voted for and six members voted against Mr WU Chi-wai's proposal. He declared that Mr WU Chi-wai's proposal was defeated.

87. Ir Dr LO Wai-kwok proposed to amend paragraph 7.14 by substituting the last two sentences with "儘管如此，專責委員會認為路政署和運輸及房屋局在履行其職責推展該工程項目上均有不足之處。".

88. The Chairman put Ir Dr LO Wai-kwok's proposal to vote. Eleven members voted for it. Members agreed that a division was not required. The Chairman declared that Ir Dr LO Wai-kwok's proposal was passed unanimously.

89. Paragraph 7.14 read, amended and agreed to.

90. Mr Gary FAN proposed to amend paragraph 7.15 by substituting

"在2013年11月22日鐵路事宜小組委員會的會議上作匯報時，以謹慎的措辭表述，"

with

"在2013年11月22日鐵路事宜小組委員會的會議上作匯報時，以隱晦的措辭表述，".

His proposed amendment was tabled at the meeting.

(Post-meeting note: The proposed amendment by Mr Gary FAN was circulated to members on 10 June 2016 via LC Paper No CB(4)1104/15-16(02) .)

91. After discussion, members decided to substitute "隱晦" with "小心". Members also agreed to amend the heading after 7.14 as "政府的不足".

92. Paragraph 7.15 read, amended and agreed to.

93. Paragraph 7.16 read and agreed to.

94. Mr Gary FAN proposed to add the following paragraph after paragraph 7.17:

"專責委員會認為，政府在2013年11月22日的鐵路事宜小組委員會上的說法，向委員掩蓋了部分事實，即高鐵工程或未能在2015年完工，是有意淡化運輸及房屋局對工程延誤的憂慮。運輸及房屋局縱使理解'明知不可為而不及早向社會交代的後果'，並預期港鐵會有同樣的理解(6.37段)，但張炳良局長仍然信納韋達誠的建議，甘願冒險，與港鐵公司合謀向鐵路事宜小組委員會隱瞞實際的延誤情況，張炳良局長理應承擔此風險所帶來的後果，就是即使隱瞞實際的延誤情況，但工程最終仍然超支延誤。"

His proposed amendment was tabled at the meeting.

(Post-meeting note: The proposed amendment by Mr Gary FAN was circulated to members on 10 June 2016 via LC Paper No CB(4)1104/15-16(02).)

95. Ms Claudia MO proposed to amend Mr Gary FAN's proposal by deleting "甘願冒險，" and substituting "與港鐵公司合謀" with "聯同港鐵公司".

96. As there were divided views among members on Ms Claudia MO's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN and Mr Charles Peter MOK.

(5 members)

The following members voted against the proposal:

Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.

(6 members)

97. The Chairman declared that five members voted for and six members voted against Ms Claudia MO's proposal. He declared that Ms Claudia MO's proposal was defeated.

98. The Chairman put Mr Gary FAN's original proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN and Mr Charles Peter MOK.

(5 members)

The following members voted against the proposal:

Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.

(6 members)

99. The Chairman declared that five members voted for and six members voted against Mr Gary FAN's proposal. He declared that Mr Gary FAN's proposal was defeated.

100. Mr LEE Cheuk-yan proposed that paragraph 7.17 be substituted by the following paragraph:

"專責委員會認為，政府在 2013 年 11 月 22 日的鐵路事宜小組委員會上的說法，是聯同港鐵公司向委員刻意隱瞞實際的延誤情況，委員會對此表示遺憾。張炳良局長理應承

擔此風險所帶來的後果，就是即使隱瞞實際的延誤情況，但工程最終仍然超支延誤。"

His proposed amendment was tabled at the meeting.

(Post-meeting note: The proposed amendment by Mr LEE Cheuk-yan was circulated to members on 10 June 2016 via LC Paper No CB(4)1104/15-16(03).)

101. As there were divided views among members on Mr LEE Cheuk-yan's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN and Mr Charles Peter MOK.
(5 members)

The following members voted against the proposal:

Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(6 members)

102. The Chairman declared that five members voted for and six members voted against Mr LEE Cheuk-yan's proposal. He declared that Mr LEE Cheuk-yan's proposal was defeated.

103. Paragraphs 7.17 and 7.18 read and agreed to.

104. In response to the Chairman, Mr Gary FAN requested to add a footnote to the relevant paragraphs of the report for all his proposed amendments which were defeated by voting. Members agreed.

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Council Business Division 4
Legislative Council Secretariat
29 June 2016

Ref: CB4/SC/13

**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**

**Minutes of the closed meeting
held on Tuesday, 14 June 2016, at 8:30 am
in Conference Room 4 of the Legislative Council Complex**

Members present : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Tony TSE Wai-chuen, BBS (Deputy Chairman)
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, JP
Hon Gary FAN Kwok-wai
Hon CHAN Han-pan, JP
Hon TANG Ka-piu, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Members absent : Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)6

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Mr Matthew LOO
Assistant Secretary General 4

Miss Winnie LO
Assistant Legal Adviser 7

Ms Macy NG
Senior Council Secretary (4)6

Miss Katherine CHAN
Council Secretary (4)6

I. Consideration of the comments received on extracts of the draft report of the Select Committee and consideration and endorsement of the report of the Select Committee paragraph by paragraph from paragraph 7.19

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2. Members then considered the Chinese text of the report of the Select Committee from paragraph 7.19. Members noted that as agreed at the meeting on 10 June 2016, the names of members who voted in favour of and against the proposed amendments to the report, and those abstained from voting should be recorded in the minutes of proceedings.

Chapter 7

3. Mr Gary FAN proposed to amend paragraph 7.19 by substituting the last three sentences with "政府把'疑點利益'歸於港鐵公司的做法，只是出於避免工程延誤引發公眾批評的共同憂慮，此憂慮蓋過客觀、理性的判斷，令政府錯判形勢。".

4. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote.

The following member voted in favour of the proposal:

Mr Gary FAN.
(1 member)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Frankie YICK, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(5 members)

5. The Chairman declared that one member voted for and five members voted against Mr Gary FAN's proposal. He declared that Mr Gary FAN's proposal was defeated.

6. Members noted that Mr Michael TIEN had submitted a proposal to amend paragraph 7.19 by substituting the last three sentences with "政府'疑點利益'歸於港鐵公司的做法，情感蓋過客觀、理性的判斷，令政府錯判形勢。".

7. As Mr Michael TIEN was not present at the meeting to move his proposed amendment at the time when paragraph 7.19 was considered by the Select Committee, members agreed that Mr Michael TIEN's proposal should not be dealt with.

8. Paragraph 7.19 read and agreed to.

9. Paragraph 7.20 read and agreed to.

10. Mr Gary FAN proposed to amend paragraph 7.21 by substituting:

"雖然按《第二份委託協議》所訂，路政署的角色或許只限於監察和核證，但路政署確實未有在該工程項目中善用其監核顧問嘉科，因為嘉科曾一再提出警示，但結果似乎也是徒然。"

with

"按《第二份委託協議》所訂，路政署須負上監察和核證的責任，但專責委員會認為，路政署署長對工程進度一直作出錯誤的專業判斷，認為滯後不等於整體項目的完工期一定都有延誤，盲目信任港鐵公司可以追回進度，令路政署未能履行監察的角色，而路政署確實未有在該工程項目中善用其監核顧問嘉科，因為嘉科曾一再提出警示，但基於路政署對港鐵的盲目信任，結果似乎也是徒然。"

11. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr Gary FAN and Mr TANG Ka-piu.
(2 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK and Ir Dr LO Wai-kwok.
(5 members)

12. The Chairman declared that two members voted for and five members voted against Mr Gary FAN's proposal. He declared that Mr Gary FAN's proposal was defeated.

13. Mr Michael TIEN proposed to amend paragraph 7.21 by substituting:

"雖然按《第二份委託協議》所訂，路政署的角色或許只限於監察和核證，但路政署確實未有在該工程項目中善用其監核顧問嘉科，因為嘉科曾一再提出警示，但結果似乎也是徒然。"

with

"雖然按《第二份委託協議》所訂，路政署的角色或許只限於監察和核證，但路政署確實未有在該工程項目中善用其監核顧問嘉科，因為嘉科曾一再提出警示，但結果似乎也是徒然，顯示路政署對港鐵不合理地信任。"

14. The Chairman put Mr Michael TIEN's proposal to vote.

The following members voted in favour of the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(6 members)

No member voted against the proposal.

The following member abstained from voting:

Mr Gary FAN.
(1 member)

15. The Chairman declared that six members voted for and no member voted against Mr Michael TIEN's proposal, and one member abstained from voting. He declared that Mr Michael TIEN's proposal was carried.

16. Paragraph 7.21 read, amended and agreed to.
17. Paragraph 7.22 read and agreed to.
18. The Deputy Chairman proposed to add the following new paragraph after paragraph 7.22 as paragraph 7.23:

(Chinese version)

"因應專責委員會一名委員提出的查詢，張炳良教授在作供時確認，他贊同獨立董事委員會報告及獨立專家小組報告所載的內容。該名委員亦就獨立專家小組報告向黃唯銘博士提出類似的問題，黃唯銘博士回應時表示，就綜合工程總綱計劃而言，港鐵公司所持意見與獨立專家小組的意見不同，他又認為獨立專家小組報告有若干部分與獨立董事委員會提交的報告相似。黃博士亦確認，港鐵公司贊同獨立專家小組報告所載的事實。"

(English version)

"Upon enquiry made by a member of the Select Committee, Professor Anthony CHEUNG Bing-leung confirmed in evidence that he agreed with the contents of the reports submitted by IBC and IEP. On a similar question put by the same member of the Select Committee with respect to the IEP Report, Dr Philco WONG Nai-keung indicated that the view of the Corporation differed from that of IEP on the integrated master programme and commented that parts of the IEP Report were similar to the reports submitted by IBC. Dr WONG also confirmed that the Corporation agreed with the facts set out in the IEP Report."

19. The Chairman put the Deputy Chairman's proposal to vote.

The following members voted in favour of the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.

(6 members)

No member voted against the proposal.

The following members abstained from voting:

Mr LEE Cheuk-yan and Mr Gary FAN.
(2 members)

20. The Chairman declared that six members voted for and no member voted against the Deputy Chairman's proposal, and two members abstained from voting. He declared that the Deputy Chairman's proposal was carried.

21. The new paragraph 7.23 read and agreed to.

22. Members noted that the addition of the new paragraph 7.23 would entail consequential changes to the numbers of subsequent paragraphs. To facilitate consideration of the remaining paragraphs of the draft report, members agreed to continue to consider the remaining paragraphs by reference to the original paragraph numbers printed in the draft report (Paper No. SCXRL/REP/F/C/D1).

23. Paragraph 7.23 (updated paragraph number as 7.24) read, with an amendment to the heading before the paragraph, and agreed to.

24. Paragraph 7.24 (updated paragraph number as 7.25) read and agreed to.

25. The Chairman proposed to amend paragraph 7.25 (updated paragraph number as 7.26) by substituting the first two sentences with "專責委員會察悉，韋達誠先生告知獨立董事委員會，周大滄先生向他保證，".

26. The Chairman put his proposal to vote.

The following members voted in favour of the proposal:

Mr Tony TSE, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(7 members)

No member voted against the proposal.

The following member abstained from voting:

Mr Gary FAN.
(1 member)

27. The Chairman declared that seven members voted for and no member voted against his proposal, and one member abstained from voting. He declared that his proposal was carried.

28. Paragraph 7.25 (updated paragraph number as 7.26) read, amended and agreed to.

29. Mr Gary FAN proposed to add the following sentences after the last sentence of paragraph 7.26 (updated paragraph number as 7.27):

"專責委員會認為，港鐵公司的項目管理模式不利於政府的監核工作，是'監核監督者'方式無法發揮作用的原因之一。"

30. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Ms Claudia MO, Mr Michael TIEN and Mr Gary FAN.
(3 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Frankie YICK and Ir Dr LO Wai-kwok.
(4 members)

The following member abstained from voting:

Mr CHAN Han-pan.
(1 member)

31. The Chairman declared that three members voted for and four members voted against Mr Gary FAN's proposal, and one member abstained from voting. He declared that Mr Gary FAN's proposal was defeated.

32. Paragraph 7.26 (updated paragraph number as 7.27) read and agreed to.

33. Paragraph 7.27 (updated paragraph number as 7.28) read, amended and agreed to.

34. Paragraphs 7.28 to 7.30 (updated paragraph numbers as 7.29 to 7.31) read and agreed to.

35. Paragraphs 7.31 to 7.35 (updated paragraph numbers as 7.32 to 7.36) read and agreed to.

36. Paragraphs 7.36 to 7.38 (updated paragraph numbers as 7.37 to 7.39) read, amended and agreed to.

37. Paragraph 7.39 (updated paragraph number as 7.40) read and agreed to.

38. Mr Gary FAN proposed to retain "2013年3月" as the right time to make known the project delay in the original draft paragraph 7.40 (updated paragraph number as 7.41).

39. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan and Mr Gary FAN.
(2 members)

The following members voted against the proposal:

Mr CHAN Kam-lam, Mr Frankie YICK, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(5 members)

The following member abstained from voting:

Mr Tony TSE.
(1 member)

40. The Chairman declared that two members voted for and five members voted against Mr Gary FAN's proposal, and one member abstained from voting. He declared that Mr Gary FAN's proposal was defeated.

41. The Chairman proposed to add "專責委員會認為，" after the third sentence and before the fourth sentence in paragraph 7.40 (updated paragraph number as 7.41).

42. The Chairman put his proposal to vote.

The following members voted in favour of the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Frankie YICK, Mr CHAN Han-pan
Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(6 members)

No member voted against the proposal.

The following members abstained from voting:

Mr LEE Cheuk-yan and Mr Gary FAN.
(2 members)

43. The Chairman declared that six members voted for and no member voted against his proposal, and two members abstained from voting. He declared that his proposal was carried.

44. Mr CHAN Kam-lam proposed to delete "若當時有作公布，該工程延誤未必會引發如此重大的公眾關注和憂慮。" from paragraph 7.40 (updated paragraph number as 7.41).

45. As there were divided views among members on Mr CHAN Kam-lam's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr CHAN Kam-lam and Mr Frankie YICK.
(2 members)

The following members voted against the proposal:

Mr LEE Cheuk-yan, Mr Gary FAN and Mr TANG Ka-piu.
(3 members)

The following members abstained from voting:

Mr Tony TSE, Mr CHAN Han-pan and Ir Dr LO Wai-kwok.
(3 members)

46. The Chairman declared that two members voted for and three members voted against Mr CHAN Kam-lam's proposal, and three members

abstained from voting. He declared that Mr CHAN Kam-lam's proposal was defeated.

47. Paragraph 7.40 (updated paragraph number as 7.41) read, amended and agreed to.

48. Paragraph 7.41 (updated paragraph number as 7.42) read and agreed to.

49. Members noted that paragraph 7.42 as printed in the draft report (Paper No. SCXRL/REP/F/C/D1) was a new paragraph drafted by the Secretariat for consideration by members based on the comments received from a relevant party. The Chairman said that as the draft paragraph 7.42 contained some information which was not clear and comprehensive enough, he proposed not to accept the proposed paragraph 7.42 and proposed to add instead "基於本報告第4.17、4.19、4.20、4.23、4.24、5.6、5.12、5.14、5.16、5.17、5.18、5.19、5.25、5.31、5.32、5.33、5.34、5.38、5.39、5.40、5.41、5.42、5.57、6.2、6.4、6.5、6.6、6.9、6.14、6.15、6.16、6.17、6.18、6.19、6.29、6.30、6.31、6.32、6.34、6.37、6.39、7.24及7.34段所述，" to paragraph 7.44 before "周大滄先生及韋達誠先生" as printed in the draft report (Paper No. SCXRL/REP/F/C/D1).

(Post-meeting note: Due to the subsequent changes of paragraph numbers, paragraphs 7.24 and 7.34 above should read as 7.25 and 7.35 respectively.)

50. As there were divided views among members on the Chairman's proposal, the Chairman put his proposal to vote.

The following members voted in favour of the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Frankie YICK, Mr CHAN Han-pan
Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(6 members)

The following member voted against the proposal:

Mr Gary FAN.
(1 member)

The following member abstained from voting:

Mr LEE Cheuk-yan.
(1 member)

51. The Chairman declared that six members voted for and one member voted against his proposal, and one member abstained from voting. He declared that his proposal was carried.

52. Mr Gary FAN proposed to retain the following sentences in paragraph 7.43:

"加上港鐵公司和運輸及房屋局／路政署在其向鐵路事宜小組委員會提交的報告中選擇性地陳述資料，可以推斷港鐵公司和運輸及房屋局／路政署在某程度上有蓄意隱瞞該工程延誤。"

53. The Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan and Mr Gary FAN.
(2 members)

No member voted against the proposal.

The following members abstained from voting:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Frankie YICK, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(6 members)

54. The Chairman declared that two members voted for and no member voted against Mr Gary FAN's proposal, and six members abstained from voting. He declared that Mr Gary FAN's proposal was carried.

55. Mr Gary FAN proposed to retain "、項目管理團隊、執行委員會" in paragraphs 7.43 and 7.44.

56. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr Gary FAN and Mr TANG Ka-piu.
(2 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Frankie YICK, Mr CHAN Han-pan and Ir Dr LO Wai-kwok.
(5 members)

57. The Chairman declared that two members voted for and five members voted against Mr Gary FAN's proposal. He declared that Mr Gary FAN's proposal was defeated.

58. Paragraphs 7.43 and 7.44 read, amended and agreed to.

59. Mr Gary FAN proposed to add the following paragraphs after paragraph 7.45:

"專責委員會部分委員認為，運輸及房屋局局長張炳良在2013年11月22日的鐵路事宜小組委員會會議中，信納韋達誠的建議，與港鐵公司合謀蓄意隱瞞實際的延誤情況，令工程延誤的訊息延遲了五個月才獲公開，做法違反公眾利益，亦有違公職人員的誠信，理應予以強烈譴責。

而路政署署長劉家強不論在履行監核工程、及出席研訊的過程中，均表現出'專業傲慢'，顯然缺乏鐵路工程的專業知識不能成為劉家強失職的藉口，反之，劉家強對工程滯後對最後完工日期的影響犯下了專業判斷失誤，因而令路政署未能有效履行監核者的角色，專責委員會理應予以強烈譴責及訓斥。

專責委員會部分委員亦譴責政府及港鐵公司未有全面配合專責委員會的工作，包括未有公開兩份項目委託協議、獨立顧問的報告、以及項目監管委員會會議紀錄在內的資料，令專責委員會只能憑藉相當有限的資料展開工作，直至超支撥款提交至立法會財務委員會，政府才公開兩份項目委託協議，但專責委員會因時間關係已無法向證人提出質詢。

而個別獲邀的證人，包括前運輸及房屋局局長鄭汝樺、前港鐵主席錢果豐、前港鐵行政總裁韋達誠、前港鐵工程總監周大滄拒絕接受專責委員會出席研訊的邀請，專責委員會部分委員譴責相關人士不負責任的表現。"

60. As there were divided views among members on Mr Gary FAN's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Mr LEE Cheuk-yan and Mr Gary FAN.
(2 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(5 members)

61. The Chairman declared that two members voted for and five members voted against Mr Gary FAN's proposal. He declared that Mr Gary FAN's proposal was defeated.

62. Paragraph 7.45 read and agreed to.

Chapter 8

63. Paragraph 8.1 read and agreed to.

64. Ms Claudia MO proposed to delete "細緻" from paragraph 8.2.

65. As there were divided views among members on Ms Claudia MO's proposal, the Chairman put the proposal to vote.

The following member voted in favour of the proposal:

Ms Claudia MO.
(1 member)

The following members voted against the proposal:

Mr CHAN Kam-lam, Mr Frankie YICK and Mr CHAN Han-pan.
(3 members)

66. The Chairman declared that one member voted for and three members voted against Ms Claudia MO's proposal. He declared that Ms Claudia MO's proposal was defeated.

67. Paragraph 8.2 read, with other textual amendments, and agreed to.

68. Paragraph 8.3 read and agreed to.

69. Paragraphs 8.4 to 8.6 read and agreed to.

70. Members agreed to delete paragraphs 8.7 and 8.8 as consequential changes to the amendment made to paragraph 3.41.

71. Members noted that the deletion of paragraphs 8.7 and 8.8 would entail consequential changes to the numbers of subsequent paragraphs. To facilitate consideration of the remaining paragraphs of the draft report, members agreed to continue to consider the remaining paragraphs by reference to the original paragraph numbers printed in the draft report (Paper No. SCXRL/REP/F/C/D1).

72. Paragraph 8.9 (updated paragraph number as 8.7) read and agreed to.

73. Ms Claudia MO proposed to add "保障公眾知情權，" after the first sentence in paragraph 8.10 (updated paragraph number as 8.8).

74. As there were divided views among members on Ms Claudia MO's proposal, the Chairman put the proposal to vote.

The following members voted in favour of the proposal:

Ms Claudia MO, Mr Gary FAN and Mr CHAN Han-pan.
(3 members)

The following members voted against the proposal:

Mr Tony TSE, Mr CHAN Kam-lam and Mr Frankie YICK.
(3 members)

75. As the votes were equally divided, the Chairman exercised his casting vote in the negative according to paragraph 8 of the Practice and Procedure of the Select Committee and declared that Ms Claudia MO's proposal was defeated.

76. Paragraph 8.10 (updated paragraph number as 8.8) read and agreed to.
77. Paragraph 8.11 (updated paragraph number as 8.9) read, amended and agreed to.
78. Paragraph 8.12 (updated paragraph number as 8.10) read, with amendments to the heading before the paragraph, and agreed to.
79. Paragraph 8.13 (updated paragraph number as 8.11) read and agreed to.
80. Paragraphs 8.14 and 8.15 (updated paragraph numbers as 8.12 and 8.13) read and agreed to.
81. Paragraphs 8.16 to 8.18 (updated paragraph numbers as 8.14 to 8.16) read and agreed to.
82. Members agreed that unless the members concerned raised objection, a footnote would be added to the relevant paragraphs of the report for all proposed amendments by members which were defeated by voting.
83. Members then considered other parts of the report.
84. Table of contents, list of abbreviations, appendices and list of written evidence/document read and agreed to.
85. The acknowledgement read and agreed to.
86. The Chairman advised that the Select Committee had completed the consideration and endorsement of the Chinese version of the report paragraph by paragraph. Members agreed to authorize the Chairman and the Secretariat to make textual and editorial amendments to the Chinese version of the report and make corresponding amendments to the English version of the report.
87. Members also agreed to send the revised paragraphs which contained adverse comments against witnesses or other relevant parties for their comments to ensure that the procedure was fair to them.
88. Mr LEE Cheuk-yan, Ms Claudia MO and Mr Gary FAN would like to add a post-meeting note that they disagreed with "在有需要時精簡補充勞工計劃所需的程序，加快輸入勞工以應付" in

paragraph 5.83 mentioned in the minutes of meeting on 10 June 2016.
Members agreed.

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Council Business Division 4
Legislative Council Secretariat
29 June 2016

Ref: CB4/SC/13

**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**

**Minutes of the closed meeting
held on Monday, 27 June 2016, at 9:00 am
in Conference Room 4 of the Legislative Council Complex**

Members present : Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Tony TSE Wai-chuen, BBS (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Frankie YICK Chi-ming, JP
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, SBS, MH, JP

Member absent : Hon LEE Cheuk-yan

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)6

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Mr Matthew LOO
Assistant Secretary General 4

Miss Winnie LO
Assistant Legal Adviser 7

Ms Macy NG
Senior Council Secretary (4)6

Miss Katherine CHAN
Council Secretary (4)6

I. Consideration of comments received on extracts of the revised draft report of the Select Committee and endorsement of the report of the Select Committee

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2. Members noted that the Select Committee had completed the consideration and endorsement of the Chinese version of the report paragraph by paragraph at the meeting on 14 June 2016. Members also noted that by the deadline of 24 June 2016, no member had proposed amendments to the English version of the revised draft report circulated to members vide LC Paper No. CB(4)1154/15-16.

3. Members then considered the comments received on the extracts from the revised draft report of the Select Committee. Members agreed that no amendment should be made to the draft report based on the comments received. Members also agreed that paragraph 4.9(d) should be moved to paragraph 6.1 to tally with the time frame. Members proposed no further amendments to the report of the Select Committee.

4. The Chairman put the question that the report of the Select Committee, as amended, be adopted as the Select Committee's report.

The following members voted in favour of the question:

Mr Tony TSE, Mr CHAN Kam-lam, Mr Michael TIEN, Mr Frankie YICK, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok.
(7 members)

The following member voted against the question:

Mr Gary FAN.
(1 member)

The following members abstained from voting:

Mr WU Chi-wai and Mr Charles Peter MOK.
(2 members)

5. The Chairman declared that seven members voted for and one member voted against the question, and two members abstained from voting. He declared that the report of the Select Committee, as amended, be adopted as the Select Committee's report.

6. Members agreed to authorize the Chairman and the Secretariat to make textual and editorial amendments to the report of the Select Committee, if necessary.

Minority report

7. Mr WU Chi-wai and Mr Gary FAN indicated that both of them together with a few other members of the Select Committee might present a minority report as they held some views which were different from the majority's views in the report of the Select Committee which had just been adopted.

8. Mr WU Chi-wai proposed that the minority report be incorporated into the report of the Select Committee as an appendix. As there were divided views among members on Mr WU Chi-wai's proposal, the Chairman put the proposal to vote. No member voted in favour of the proposal and seven members voted against the proposal. The Chairman declared that Mr WU Chi-wai's proposal was defeated.

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Council Business Division 4
Legislative Council Secretariat
29 June 2016