

立法會
Legislative Council

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seen by the Administration)

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Finance Committee of the Legislative Council

Minutes of the 32nd meeting
held at Conference Room 1 of the Legislative Council Complex
on Friday, 5 February 2016, at 5:26 pm

Members present:

Hon CHAN Kin-por, BBS, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon WONG Kwok-hing, BBS, MH
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon CHAN Hak-kan, JP
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip

Hon WONG Yuk-man
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon CHAN Yuen-han, SBS, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS

Members absent:

Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Dr Hon LEUNG Ka-lau
Hon CHEUNG Kwok-che
Hon WONG Kwok-kin, SBS
Hon Alan LEONG Kah-kit, SC

Hon James TIEN Pei-chun, GBS, JP
Hon Frankie YICK Chi-ming, JP
Dr Hon Kenneth CHAN Ka-lok
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP
Hon TANG Ka-piu, JP

Public officers attending:

Ms Elizabeth TSE Man-yee, JP	Permanent Secretary for Financial Services and the Treasury (Treasury)
Ms Esther LEUNG, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Alfred ZHI Jian-hong	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)
Prof Anthony CHEUNG, GBS, JP	Secretary for Transport and Housing
Mr Joseph LAI, JP	Permanent Secretary for Transport and Housing (Transport)
Ms Rebecca PUN Ting-ting, JP	Deputy Secretary for Transport and Housing (Transport) 1
Mr Peter LAU Ka-keung, JP	Director of Highways
Mr Jimmy CHAN Pai-ming, JP	Principal Government Engineer (Railway Development), Highways Department
Mr TAM Hon-choi	Government Engineer (Railway Development) 2, Highways Department
Mr Lincoln LEONG	Chief Executive Officer, MTR Corporation Limited
Dr Philco WONG	Projects Director, MTR Corporation Limited
Ms Linda SO	Corporate Affairs Director, MTR Corporation Limited
Mr LEUNG Chi-lap	General Manager (XRL E&M), MTR Corporation Limited
Ms Maggie SO	Deputy General Manager (Projects and Property Communications), MTR Corporation Limited

Clerk in attendance:

Ms Anita SIT

Assistant Secretary General 1

Staff in attendance:

Mr Derek LO

Chief Council Secretary (1)5

Mr Ken WOO

Senior Council Secretary (1)5

Mr Raymond SZETO

Senior Council Secretary (1)7

Mr Keith WONG

Council Secretary (1)5

Mr Frankie WOO

Senior Legislative Assistant (1)3

Ms Michelle NIEN

Legislative Assistant (1)5

Action

Item No. 1 – FCR(2015-16)46

CAPITAL WORKS RESERVE FUND

HEAD 706 – HIGHWAYS

Transport – Railways

53TR – Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link – construction of railway works

Item No. 2 – FCR(2015-16)47

CAPITAL WORKS RESERVE FUND

HEAD 706 – HIGHWAYS

Transport – Railways

57TR – Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link – construction of non-railway works

Declaration of interests

Dr KWOK Ka-ki declared that he was a shareholder of the MTR Corporation Limited ("MTRCL").

2. Ms Starry LEE declared that she was the Learning and Development Director of KPMG, which was the auditor of MTRCL. However, she was not involved in the professional services provided by KPMG, so she did not have any direct or indirect pecuniary interest in the project.

3. Mr Abraham SHEK declared that he was a non-executive director of MTRCL.

Continuation of combined discussion on FCR(2015-16)46 and 47*Cost overruns*

4. Mr WONG Yuk-man criticized that the Administration, as the major shareholder of MTRCL, had not tried its best to monitor the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") project, thus resulting in cost overruns and project delay, wasting 19.6 billion public money. Nonetheless, the Administration simply stated that it would reserve the right to hold MTRCL accountable for that.

5. Mr Tony TSE said that the XRL project was an important railway infrastructure which must be completed despite cost overruns. On the other hand, the Administration had the responsibility to ensure that the estimated cost overruns would be kept at a reasonable level. He expressed concern as to whether the Administration had conducted adequate independent supervision on the works projects of MTR.

6. Secretary for Transport and Housing ("STH") advised that the Administration had conducted independent review on the estimated cost overruns submitted by MTRCL, and provided the contents of the report of the monitoring and verification ("M&V") consultant to the Subcommittee on Matters Relating to Railways. Director of Highways ("DH") added that the M&V consultant had conducted stringent review on the revised estimates of expenditure, including, among others, the allowances for future claims, remaining risks, anticipated variable expenditures, as well as contingency allowance. Moreover, the M&V consultant had also checked the consultancy fee of MTRCL carefully. Any ultimate surplus from the estimates would be kept in the public coffer.

Special dividend paid by MTRCL

7. Dr Fernando CHEUNG queried why the Administration did not ask MTRCL to bear the cost overruns when the project went over budget seriously, but used public money instead to cover the amount first, and why the Administration allowed MTRCL to manoeuvre its "financial skills" by paying special dividend to all shareholders of MTRCL, including the Administration, thereby enabling the Administration to recover the relevant amount and other shareholders to gain monetary benefits. Such an arrangement might probably involve conflict of interest, as it enabled members in attendance at the meeting and the organizations they represented to obtain benefits.

8. STH said that the decision of paying special dividend was made by MTRCL, and the Administration, as the major shareholder, did not participate in the relevant discussion and decision. The Administration was of the view that as this project was funded by the Capital Works Reserve Fund, any changes to the budget of the project should be approved by the Finance Committee ("FC"). MTRCL could not unilaterally state that it would bear the cost. As regards the accountability of MTRCL in cost overruns and project delays, the Administration considered that if the relevant proceedings were initiated at present, the progress of the project might be further delayed. Therefore, the Administration would initiate the relevant legal proceedings only after the completion and commissioning of XRL.

9. The Deputy Chairman said that he had reminded members at the beginning of the meeting that they were required to declare their interests under Rule 83A of the Rules of Procedure ("RoP") if they had direct or indirect pecuniary interest in the item, and that they should pay attention to provisions under Rule 84 regarding voting in case of direct pecuniary interest.

Rate of operating return of XRL

10. Referring to the Administration's estimates that XRL could bring about an Economic Internal Rate of Return of 4% in its 50 years of operation, Mr SIN Chung-kai asked whether MTRCL, which was the proposed operator of XRL, had made similar estimates concerning the rate of return of XRL.

11. STH said that according to the Entrustment Agreement, although MTRCL would be invited to operate XRL under the concession approach in future, this arrangement, legally speaking, was not yet in force formally. The details of the service concession were still subject to negotiation. The Administration's estimates would be affected by changes in the actual circumstances, such as the fare and agreement with the XRL operators in the Mainland concerning revenue-sharing.

12. Mr Lincoln LEONG, Chief Executive Officer, MTR Corporation Limited ("CEO of MTRCL") remarked that as MTRCL had not yet obtained the right of operation of XRL, it had not made any assessment on the rate of return. The present target of MTRCL was to focus on completing the XRL project within the revised budget and timeframe.

Co-location arrangements

13. Mr WU Chi-wai queried that if co-location arrangements were to be implemented at the West Kowloon Terminus ("WKT") of XRL, it might be necessary to introduce the national laws relating to affairs which were within the limits of the autonomy of Hong Kong (i.e. immigration control) and to enforce them locally. This arrangement contravened Article 18 of the Basic Law ("BL"), which provided that only national laws relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Hong Kong Special Administrative Region as specified by BL should be applied in Hong Kong.

14. STH remarked that how to implement co-location arrangements in accordance with the principle of "one country, two systems" and requirements of BL was a very complicated issue, whether legally or practically speaking. The Administration was still discussing the issue with the relevant Mainland ministries and commissions, with a view to drawing up a proposal in line with the principle of "one country, two systems" and requirements of BL. It was not suitable for the Administration to make any assumptions at present. Nevertheless, the Administration undertook that it would provide a comprehensive proposal to the Legislative Council ("LegCo") for public examination and seek LegCo's approval before implementation.

Motion to adjourn further proceedings of the Committee

15. At 5:53 pm, Mr WU Chi-wai moved under paragraph 39 of the Finance Committee Procedure ("FCP") that further proceedings of the Committee be then adjourned. The Deputy Chairman thereupon proposed the question that further proceedings of the Committee be then adjourned. The Deputy Chairman directed that each member, when speaking on the motion, might speak once for not more than three minutes.

16. Mr WU Chi-wai introduced his motion. Mr WU remarked that the issue of co-location arrangements was the crux of the proposal related to the funding for XRL, involving the principle of "one country, two systems" and XRL's economic efficiency. However, so far since 2010, the Administration had failed to provide information on co-location arrangements. Before the concerns about co-location arrangements were fully addressed, the Committee should not continue with the deliberation on this item.

17. Dr Fernando CHEUNG, Mr Charles MOK, Ms Emily LAU, Mr Albert HO, Mr Kenneth LEUNG, Mr Gary FAN, Mr CHAN Chi-chuen, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr LEUNG Yiu-chung, Dr KWOK Ka-ki, Mr Albert CHAN, Mr LEE Cheuk-yan, Mr James TO and Ms Cyd HO expressed support for Mr WU's motion. These members criticized the Administration for submitting the proposal directly to FC by circumventing the Public Works Subcommittee ("PWSC") before the latter finished considering the item, thereby undermining the established practice of the Council. These members also queried that the XRL project was a "white elephant" project which was a waste of public money, and while its economic effectiveness was questionable, the cost overruns had to be covered by public funds. Furthermore, the implementation of co-location arrangements which allowed officers of the Mainland authorities to take enforcement actions at WKT might contravene the principle of "one country, two systems" and the Basic Law. However, in the face of numerous queries, the Administration could not provide a proposal on co-location arrangements for PWSC and FC, nor could it as well as MTRCL provide a specific response to the questions raised by members so as to address their concerns. Therefore, these members supported the motion to adjourn the meeting to enable the Administration to re-consider the proposal on additional funding.

18. Dr Fernando CHEUNG, Mr Kenneth LEUNG, Mr Gary FAN, Mr CHAN Chi-chuen and Mr LEE Cheuk-yan queried that the Deputy Chairman, without the expressed powers vested by RoP and FCP, was neither entitled to chair this meeting nor empowered to dispense with the requirement under paragraph 21 of FCP that a notice of six clear days be given before including in the agenda the item on additional funding for XRL. Although Mr CHAN Kin-por, the Chairman, claimed that he did not chair the meeting as he might have pecuniary interest in the item on additional funding for XRL, Mr Albert CHAN and Mr CHAN Chi-chuen suspected that he could still exert his influence on the operation of FC from behind.

19. Mr Gary FAN referred to media reports that Mr Lincoln LEONG, CEO of MTRCL, was the director of Mandarin Oriental Hotel which was a member of the Jardine Matheson Group, and the Group was also the parent company of one of the contractors awarded the contracts No. 810A and 811B of the XRL project, Gammon Construction. He queried that there might be conflict of interest in this respect. Moreover, the works projects under both contracts involved cost overruns. Mr LEUNG Kwok-hung and Dr KWOK Ka-ki raised similar queries.

20. When Mr LEUNG Kwok-hung was speaking, CEO of MTRCL indicated that he wished to respond. The Deputy Chairman said that members would be called upon first to speak on the motion to adjourn further proceedings of the Committee at this stage, while the officials and other persons attending the meeting could respond subsequently.

21. Mr YIU Si-wing, Mr WONG Kwok-hing, Ms Starry LEE, Mr IP Kwok-him, Mr Jeffrey LAM, Mr CHAN Hak-kan and Mr TAM Yiu-chung expressed objection to Mr WU's motion, and criticized that some members of the opposition camp did not comply with RoP when they spoke and resorted to filibustering to obstruct the Committee's continuous discussion of the item. These members opined that by connecting XRL with the express rail network in the Mainland, Hong Kong people would be benefited. Furthermore, in view of the cost overruns of the XRL project, the Committee should seize the opportunity to raise questions to the Administration, instead of supporting the motion to adjourn the meeting.

22. Mr WONG Kwok-hing referred to media reports which alleged that some members of the opposition camp, including Mr LEUNG Kwok-hung and Mr LEE Cheuk-yan, were suspected of receiving contribution from Mr Jimmy LAI Chee-ying. He queried that these members opposed the XRL project with the intention to hinder the implementation of government policies, and there might be conflict of interest in this respect. Mr LEE Cheuk-yan, Mr LEUNG Kwok-hung, Ms Claudia MO, Mr CHAN Chi-chuen, Dr KWOK Ka-ki and Mr Gary FAN raised a point of order in relation to Mr WONG's remarks. They alleged that his remarks were offensive and insulting to other members and imputing improper motives to other members, thus breaching Rules 41(4) and (5) of RoP.

23. Mr Kenneth LEUNG queried that Mr WONG Kwok-hing's remarks were irrelevant to the agenda item and the motion to adjourn further proceedings of the Committee.

24. At the invitation of the Deputy Chairman, Mr WONG Kwok-hing clarified that he simply referred to the facts already reported by the media and considered by the Committee on Members' Interests of LegCo.

25. The Deputy Chairman considered that Mr WONG Kwok-hing's reference to the media reports was to present the facts. His remarks were neither offensive to other members nor carried an implication that any member had an improper motive.

26. Mr LEE Cheuk-yan said that some members and parties of the pro-government camp, such as the Democratic Alliance for the Betterment and Progress of Hong Kong, might have received contribution from MTRCL at fund-raising dinners. Ms Starry LEE raised a point of order, stating that Mr LEE Cheuk-yan's remarks were at variance with the facts, and she requested him to withdraw his remarks. The Deputy Chairman urged that members should focus on the motion when they spoke, and should not refer to irrelevant matters.

27. At 7:21 pm, the Deputy Chairman decided to extend the meeting for 15 minutes.

28. Mr Abraham SHEK requested the Administration to provide the English translation copy of the speech made by STH when the FC meeting began on that day. STH responded that he would provide it later.

[*Post-meeting note:* The English translation of STH's opening remarks was issued to members vide LC Paper No. FC122/15-16 on 19 February 2016.]

29. At the invitation of the Deputy Chairman, STH responded that the approval of the additional funding for XRL was not tantamount to giving endorsement to the proposal on co-location arrangements.

30. Responding to members' queries about the conflict of interest allegation against him in relation to his position of non-executive director of Mandarin Oriental Hotel, CEO of MTRCL pointed out that MTRCL attached great importance to good corporate governance. Management staff of MTRCL had to obtain prior approval from the Corporation before they took up posts of non-executive directors of other companies, and also they had to make full declaration. The appointment concerned would also be made public. He had absolutely complied with the relevant requirements when he assumed the position of non-executive director of Mandarin Oriental Hotel. Besides, the procurement process of MTRCL was managed by a dedicated team which adopted principles such as separation of duties and collective decision-making. The relevant tendering process was fair, equitable and transparent, and was in line with the requirements set out in the Agreement on Government Procurement of the World Trade Organization. It was also subject to independent M&V. In addition, all tenders in relation to the XRL project had been awarded before he assumed the aforesaid position.

31. At 7:30 pm, the Deputy Chairman advised that as the meeting of the Committee would end before the motion to adjourn further proceedings of the Committee was put to vote, he would declare the meeting be adjourned after Mr WU Chi-wai had spoken in reply on his motion.

32. Mr WU Chi-wai spoke reply on his motion.

33. At 7:31 pm, the Deputy Chairman declared that the meeting be adjourned.

34. The meeting was adjourned at 7:31 pm.

Legislative Council Secretariat
21 June 2016