

**立法會**  
***Legislative Council***

LC Paper No. FC269/15-16  
(These minutes have been  
seen by the Administration)

Ref : FC/1/1(19)

**Finance Committee of the Legislative Council**

**Minutes of the 37<sup>th</sup> meeting**  
**held at Conference Room 1 of the Legislative Council Complex**  
**on Friday, 26 February 2016, at 4:15 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, SBS, JP  
Hon Frederick FUNG Kin-kee, SBS, JP  
Hon Vincent FANG Kang, SBS, 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  
Dr Hon LAM Tai-fai, SBS, JP  
Hon CHAN Hak-kan, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon CHEUNG Kwok-che  
Hon IP Kwok-him, GBS, JP

Hon Mrs Regina IP LAU Suk-yee, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon Albert CHAN Wai-yip  
Hon WONG Yuk-man  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon James TIEN Pei-chun, GBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, JP  
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  
Dr Hon Kenneth CHAN Ka-lok  
Hon LEUNG Che-cheung, BBS, MH, 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  
Hon IP Kin-yuen  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu, JP  
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  
Dr Hon LEUNG Ka-lau  
Hon WONG Kwok-kin, SBS  
Hon CHAN Yuen-han, SBS, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon Helena WONG Pik-wan

**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) <sup>1</sup>
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) <sup>1</sup>
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) <sup>2</sup> , Highways Department
Dr Philco WONG	Projects Director, MTR Corporation Limited
Mr LEUNG Chi-lap	General Manager (XRL E&M), MTR Corporation Limited
Ms Maggie SO	General Manager (Corporate Relations), 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**

The Deputy Chairman advised that the Finance Committee ("the Committee") would continue with the joint debate on the two papers regarding the supplementary provision for the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL project") before putting them to vote separately. The first paper, FCR(2015-16)46, sought the approval of the Committee for an increase in the approved project estimate of 53TR, which concerned the construction of railway works, by \$15,387.5 million from \$55,017.5 million to \$70,405 million in money-of-the-day prices for the Hong Kong Section of the XRL, whereas the second paper, FCR(2015-16)47, sought the approval of the Committee for an increase in the approved project estimate of 57TR, which concerned the construction of non-railway works, by \$4,215 million from \$11,800 million to \$16,015 million in money-of-the-day prices for the Hong Kong Section of the XRL.

### Queries on the authority of the Deputy Chairman

2. In response to an enquiry from Mr Albert CHAN, the Deputy Chairman said that it was him in his capacity as the Deputy Chairman who had decided to convene the two meetings for today.

3. Mr Albert CHAN queried the authority of the Deputy Chairman in convening a meeting of the Committee and deciding the agenda as well as the propriety of the Committee meetings for today. In response, the Deputy Chairman advised that Mr CHAN could, if he so chose, withdraw from the meetings if he believed that the Committee meetings for today were not in order.

4. Referring to paragraphs 10 and 11 of the Finance Committee Procedure, Mr Alan LEONG pointed out that only the Chairman of the Committee had the authority to decide on matters relating to the convening of additional meetings. Irrespective of the interpretation given in a paper by the Legal Services Division (LC Paper No. LS35/15-16) that the deputy chairman would have all the powers of the chairman when the chairman did not preside over a meeting, the powers so conferred could not be exercised for matters required to be decided before the actual meeting was held, including any decisions regarding the convening of an additional meeting of the Committee. Therefore, the Deputy Chairman did not have the authority to give notices of meeting to members for convening additional meetings (i.e. the second meeting for today and the four meetings for 27 February), whereas any decisions made by the Committee on those meetings might be invalidated if in the future those meetings were ruled by the judiciary to be unlawful.

5. The Deputy Chairman remarked that the meetings for today were both lawful and in order. If any members had any opinions regarding the meetings for today, they could follow up the matter through other channels. No time slots had been reserved in the agenda of the meetings for today for discussion on this issue.

6. Mr CHAN Chi-chuen enquired about the differences between the original agenda and the updated agenda which members received just the day before the meeting was held. The Deputy Chairman advised that the Committee's deliberations on agenda items FCR(2015-16)46 and 47 had remained unaffected by the update. The Clerk to the Committee remarked that the Secretariat received supplementary papers from the Administration on the agenda items and replies to two letters from Mr TSE Wai-chuen regarding supplementary provision for the XRL project just the day before the meeting,

which had been copied to members by email. Meanwhile, the updated agenda and the copy of the reply to the first letter from Mr TSE Wai-chuen had been delivered to members' offices. The copy of the reply to the second letter from Mr TSE Wai-chuen had been placed on members' desk for their perusal.

Declaration of interest

7. Mr Kenneth LEUNG declared that he was a tax and compliance consultant to ACE Co. Ltd. and he drew a salary from the post. ACE Co. Ltd. had business in project insurance across the world and therefore might be involved in insurance contracts related to the XRL project. Therefore, he declared that he might have indirect pecuniary interest regarding the project.

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

9. Ms Starry LEE declared that she was a paid employee of KPMG, which was an accounting firm providing professional and auditing services to MTRCL and other engineering firms.

10. Referring to Rule 84(1) of the Rules of Procedure, Mr LEE Cheuk-yan pointed out that "in the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy". In this regard, since Dr KWOK Ka-ki and Mr CHAN Han-pan were shareholders of MTRCL who would have direct pecuniary interest from MTRCL with the distribution of special dividends pursuant to the approval of the supplementary provision for the XRL project, the Committee should review the validity of the votes cast by these two members on motions relating to the supplementary provision for the XRL project in the course of the Committee's deliberations on the proposals.

11. In response, the Deputy Chairman pointed out that under paragraph 48 of the Finance Committee Procedure, "if a member fails to declare that he has a direct pecuniary interest in an item in accordance with Rule 84 of the Rules of Procedure, and has voted on it, then his vote stands (and the decision of the Committee is valid) unless his vote is disallowed under Rule 84(4) of the Rules of Procedure". In accordance with the procedure, it was not necessary for the Committee to review the relevant votes.

Speech of the Secretary for Transport and Housing

12. The Secretary for Transport and Housing spoke on the item. He said that the Subcommittee on Matters Relating to Railways had held two meetings in December last year to discuss the item of supplementary provision for the XRL project; together with the deliberations of the Public Works Subcommittee and the Finance Committee, more than 29 hours had been spent in the relevant discussion. At the request of members, the Administration had submitted a total of 15 supplementary papers or written replies in response to members' enquiries. With respect to the progress of the project, more than 77% of the overall XRL project had been completed. MTRCL was confident that the project could complete for commissioning in the third quarter of 2018. The Administration deeply regretted and apologized for the serious delay and cost overrun of the XRL project. The Administration had improved the supervision work, and a capping agreement had been reached with MTRCL. In addition, the responsibility for project delays and cost overrun would be pursued. The Administration would be relentless in pursuing the completion of the XRL project. Besides, the Administration believed that "co-location arrangements" were the most effective option. In formulating a proposal, reference would be made from international experience such as the agreements entered into in the United Kingdom, France, the United States and Canada etc.. Giving approval to the supplementary provision for the XRL project did not mean that the Legislative Council ("LegCo") was also giving its consent to any proposals regarding "co-location arrangements". The Administration would come up with a comprehensive proposal, explain it to the community, and submit it to LegCo for approval before implementation.

*[Post-meeting note: The speaking note of the Secretary for Transport and Housing was issued vide LC Paper No. FC145/15-16 on 1 March 2016.]*

13. The Deputy Chairman urged that if members wished to hand in any motions under Paragraph 37A of the Finance Committee Procedure to express their views on items FCR(2015-16)46 or 47, they should mark on the motion the item (i.e., FCR(2015-16) 46 or 47) on which they would like to express their opinion and hand them in as soon as possible.

14. The Deputy Chairman remarked that 29 members had asked questions since deliberations on this item had begun. Members had repeatedly spoken on the same questions, and the same questions had been asked repeatedly. He called on members to put forth questions which had not been raised.

Co-location arrangements

15. Dr KWOK Ka-ki and Ms Claudia MO criticized the Administration for failing to provide any concrete information regarding proposals on "co-location arrangements". They were also gravely concerned whether "co-location arrangements" would jeopardize "one country, two systems".

16. Mr Frederick FUNG remarked that when the Committee deliberated on the funding proposal for XRL project during the 2009-2010 session, the Government had given an undertaking that the XRL project cost would not overrun. Now the undertaking had failed to materialize. Against this backdrop, he was concerned the undertakings that the "co-location arrangements" would comply with the principle of "one country, two systems" and the provisions of the Basic Law, and that the arrangements would be subject to LegCo's scrutiny, would once again be unable to materialize.

17. The Secretary for Transport and Housing said that according to LegCo's records of proceedings, the remark made by the Government when funding application for the XRL project was made in 2009 that the cost of the XRL project would not overrun referred to the post-commissioning operational stage of the XRL. He reiterated that the Administration would continue to adhere to the undertaking regarding "co-location arrangements" in examining feasible options.

18. Ms Emily LAU advised that the Administration had mentioned that it would consider similar international experience in formulating "co-location arrangements". However, the "co-location arrangements" in other countries were based on agreements entered into between two independent sovereign states. Under the framework of "one country, two systems", the relationship between the Mainland and Hong Kong was unlike those mentioned above, but were instead subject to the provision of Article 18 of the Basic Law. As such, it was not feasible to implement any "co-location arrangements" within the territory of Hong Kong.

19. The Secretary for Transport and Housing advised that the references to international examples were made with a view to illustrating that "co-location arrangements" were feasible and the most effective arrangements. The Administration would continue to explore "co-location arrangements" proposals subject to the principle of "one country, two systems" and the Basic Law.



20. Ms Cyd HO enquired about the amount of space in the West Kowloon Terminus of the XRL reserved for the implementation of "co-location arrangements" and whether the space in question could be used for other commercial purposes if implementation of "co-location arrangements" was not possible.

21. The Secretary for Transport and Housing said that as the Administration had previously mentioned, while discussion with the relevant ministries and departments on the Mainland regarding "co-location arrangements" was still underway, relevant details were not yet available.

22. The Deputy Chairman remarked that a number of members had asked about issues relating to "co-location arrangements", and replies had already been given by the Administration.

#### Claims from contractors

23. Mr Frederick FUNG enquired about the number of claims made by contractors with respect to additional works arising from problems relating to geological conditions and investigations, and the amount of money involved. Dr Philco WONG, Projects Director, MTRCL advised that claims from contractors related to multiple factors, and MTRCL was in the process of verifying those claims.

24. Mr Frederick FUNG argued that the expenses should be borne by MTRCL on account of its mistakes. He asked whether the Administration, being a major shareholder of MTRCL, should be responsible for claims from contractors to a degree proportionate to the shares it held.

25. The Secretary for Transport and Housing advised that the role of the Administration as a major shareholder of the MTRCL should not be confused with its role as the owner of the XRL project. Therefore, issues relating to contractors seeking claims from MTRCL and how the Administration would hold MTRCL accountable for cost overrun and delays should be dealt with separately.

#### Operation of the XRL

26. Dr KWOK Ka-ki queried that the Administration's estimations on the profits of the XRL did not take into account the expenditures on the infrastructure for which investment had been made. He demanded that the Administration should give an account of the formula for calculating depreciation and related expenditures.

27. Mr Kenneth LEUNG criticized that EBITDA approach (which excluded the capital expenditures and depreciation expenditures) was used for calculating the economic return of the XRL in an attempt to disguise the fact that the XRL project was unable to achieve cost-recovery.

28. The Secretary for Transport and Housing remarked that the Administration had clearly stated that interest payments for the project were not taken into account in calculating the estimated returns of the XRL. A paper had been submitted to LegCo to explain the rationale. Furthermore, the use of EBITDA in calculating the operational returns and economic benefits of the XRL was a usual and international practice for assessing the efficacy of similar infrastructure projects. Given the substantial amount of investment involved in major railway projects and the existence of funding gap, it was necessary to invest with public money, which would not be included in EBITDA.

29. Mr SIN Chung-kai noted that the according to assessment made by the Administration in 2009, the XRL project would achieve an Economic Internal Rate of Return ("EIRR") of 6%, and the figure was later revised to 4%. He asked how those figures were arrived at.

30. The Secretary for Transport and Housing advised that compared to 2009, the revised EIRR had been arrived at through an estimation by using the same transport model and inputting the latest data (such as growth rate in population and GDP) with consideration of the latest planning data and development of Hong Kong and the Mainland (including road and railway network data, public transport data, and XRL assumed fares, etc.). The Director of Highways added that consideration had been given to the slowdown in population growth in Hong Kong and the Mainland in downwardly adjusting the EIRR.

#### Responsibility for cost overrun and delays

31. Mr LEUNG Yiu-chung referred to the supplementary paper provided by the Administration where it was pointed out that the Administration had appointed Lloyd's Register Rail (Asia) Limited to examine the arrangements for monitoring the project management mechanism of the XRL project. Irrespective of the opinion of the consultancy firm who described the project management mechanism as robust, the project had nevertheless experienced cost overrun and delays. He queried whether the consultancy firm should be held accountable, and why the Administration had kept adopting the improvement suggestions made by the consultant.

32. The Deputy Chairman advised that many members had already raised questions regarding the responsibility for cost overrun and delays of the XRL, and since they were not directly related to the project, members who wished to follow up on that should do so in the Select Committee.

33. Mr LEUNG Yiu-chung and Mr Gary FAN raised a point of order. They asked the Deputy Chairman to explain why questions raised by members on the supplementary papers submitted by the Administration were considered not directly related to the project.

34. The Deputy Chairman advised that the supplementary papers submitted by the Administration on the project elaborated on additional information related to the project in response to member's questions. Members could continue to ask the Government questions with respect to the papers, but not everything in the papers were directly related to the project. In addition, he had to remind members that not only were these questions not directly related to the project, but they had also been raised repeatedly, and they had been responded to by the Administration.

35. The Secretary for Transport and Housing remarked that Lloyd's Register Rail (Asia) Limited was not a monitoring and verifying consultant for the XRL project; instead, it was a consultancy firm appointed by the Highways Department to examine the monitoring mechanism of the XRL project prior to the commencement of the XRL project. That Lloyd's Register Rail (Asia) Limited considered it appropriate for the Highways Department to adopt a "check the checker" role in monitoring the construction works of the XRL had no relevance to the responsibility of cost overrun and delays of the XRL.

Motion that further proceedings of the Committee be now adjourned

36. On 5:33 pm, Mr LEUNG Kwok-hung moved that further proceedings of the Committee be now adjourned under paragraph 39 of the Finance Committee Procedure.

37. Before proceeding with the motion moved by Mr LEUNG Kwok-hung, the Deputy Chairman remarked that to date the Committee had spent more than 13 hours to scrutinize the items, of which more than six hours were spent on processing motions moved under paragraph 39 of the Finance Committee Procedure and other procedural matters. He queried that in moving motions on discussion on an item or further proceedings of the Committee be now adjourned in each and every meeting, members were in effect wasting the time and the opportunities for raising questions. Furthermore, members had raised questions on the same topics repeatedly, which the Administration had

given its best endeavour to reply. Against this backdrop, the Deputy Chairman was of the view that sufficient time had been given to members for raising questions. He would consider putting the two items to vote as soon as practicable after the motion on further proceedings of the Committee be now adjourned was voted upon.

38. Mr Alan LEONG, Mr LEE Cheuk-yan, Dr Fernando CHEUNG, Ms Claudia MO, Ms Emily LAU, Ms Cyd HO, Mr Kenneth LEUNG, Mr Gary FAN, Mr LEUNG Kwok-hung, Mr WU Chi-wai, Mr CHAN Chi-chuen, Dr Kenneth CHAN, Mr James TO, Mr Albert HO, Mr LEUNG Yiu-chung, Mr Dennis KWOK and Mr SIN Chung-kai expressed strong opposition to the view of the Deputy Chairman. These members remarked that moving a motion on further proceedings of the Committee be now adjourned under paragraph 39 of the Finance Committee Procedure did not mean that members had no further questions to ask. The Deputy Chairman did not have the authority to deter members from asking questions or deter members from moving a motion without notice in accordance with the procedure. Furthermore, the Administration had not fully replied to all the questions raised by members, especially those relating to "co-location arrangements". Therefore, the Deputy Chairman must not stop members from speaking simply for the sake of putting the items to vote within a specific timeframe.

39. Mr WONG Kwok-hing and Ms Starry LEE spoke in support of the Deputy Chairman.

40. In response, the Deputy Chairman pointed out that he understood members were concerned about the XRL project and he respected that members had the right to speak. The Administration had responded to questions raised by members as much as practicable. Repeatedly moving motions under paragraph 39 of the Finance Committee Procedure had clearly impeded the progress of the meeting. He urged members to respect the operation of the Committee.

41. The Deputy Chairman proposed the question on the motion that further proceedings of the Committee be now adjourned. He instructed that each member could speak on the motion once for not more than three minutes.

42. Mr LEUNG Kwok-hung introduced his motion. Mr LEUNG said that he did not agree with the Deputy Chairman, who opined that moving a motion on further proceedings of the Committee be now adjourned meant that the items no longer needed to be discussed. Furthermore, with respect to the speeches of individual members, while the Deputy Chairman could rule that a

member was being verbose and discontinue his/her speech, but he should not discontinue the entire discussion session.

43. While delivering his speech, Mr LEUNG Kwok-hung said that Mr IP Kwok-hung had also moved motions to adjourn discussion on agenda items and accused him as a "pimp" who was "pimping" for the Deputy Chairman. At the request of Mr IP Kwok-him, the Deputy Chairman urged that Mr LEUNG Kwok-hung must not offend other members in his speech.

44. Mr WONG Kwok-hing agreed with the Deputy Chairman; he criticized that by "filibustering" on points of order, some members were impeding the deliberation on the items by the Committee. He considered that the items should be put to vote by the end of February 2016.

45. At 6.15 pm the Deputy Chairman declared that the meeting be adjourned.

46. The meeting was adjourned at 6:15 pm.

Legislative Council Secretariat  
29 June 2016