

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 39th meeting
held at Conference Room 1 of the Legislative Council Complex
on Saturday, 27 February 2016, at 9:03 am

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 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 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 WONG Kwok-kin, SBS
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 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 CHAN Yuen-han, SBS, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
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 Christopher CHUNG Shu-kun, BBS, MH, JP
Hon Tony TSE Wai-chuen, BBS

Members absent:

Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP

Dr Hon LEUNG Ka-lau
Hon Frankie YICK Chi-ming, JP
Hon Kenneth LEUNG
Dr Hon Helena WONG Pik-wan
Hon CHUNG Kwok-pan

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
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

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
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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
Miss Queenie LAM	Senior Legislative Assistant (1)2
Mr Frankie WOO	Senior Legislative Assistant (1)3
Miss Yannes HO	Legislative Assistant (1)6

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

Discussion on meeting procedure

Mr Albert CHAN, Mr LEE Cheuk-yan, Ms Claudia MO, Dr KWOK Ka-ki, Mr LEUNG Kwok-hung, Mr Alan LEONG, Mr CHAN Chi-chuen and Dr Fernando CHEUNG sought clarification from the Deputy Chairman on whether it was his decision to call the four meetings scheduled for the day. These members were of the opinion that according to the Rules of Procedure and the Finance Committee Procedure ("FCP"), the Deputy Chairman was not conferred with the power to convene meetings. They queried about the legitimacy of the meetings convened by him.

2. The Deputy Chairman remarked that the meetings were legally valid as they were called jointly by the Chairman and himself. He pointed out that there were other funding proposals on that day's meeting agenda in addition to the two funding proposals related to the project of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL"). Even though the Chairman had decided not to chair the meeting to deliberate on the funding

proposals for the XRL project, he would chair the meetings when other funding proposals were under discussion. The Deputy Chairman also pointed out that he had responded many times to the same queries from members in the previous meetings, and the Legislative Council Secretariat had also issued a paper affirming that these meetings were jointly convened by the Chairman and himself. If members continued to harp on about this matter, he would rule it as a disorderly conduct disrupting the meeting. If members ignored his warning and persisted in such conduct, he would consider ordering them to withdraw from the meeting.

3. Mr Alan LEONG and Ms Cyd HO requested the Deputy Chairman to specify which paper issued by the Legislative Council Secretariat he was talking about. Ms Emily LAU asked the Deputy Chairman to provide the number of the paper in order to put an end to the argument. Mr WU Chi-wai opined that the Deputy Chairman should respond to the queries of members one by one in a question-and-answer format so as not to hamper the progress of the meeting.

4. The Deputy Chairman said the paper that he had mentioned was FC129/15-16 issued by the Secretariat to members on 20 February 2016. The paper indicated that the four additional meetings scheduled for the day was convened with the agreement of the Chairman and the Deputy Chairman.

5. Mr WONG Kwok-hing expressed approval of the way the Deputy Chairman handled the points of order raised by members, and hoped that the Deputy Chairman would commence discussion on the agenda items as soon as possible. Dr CHIANG Lai-wan was of the opinion that those members who considered this meeting not legitimate should withdraw from the meeting of their own accord.

6. The meeting continued with the discussions on agenda items FCR(2015-16)46 and 47.

Determining liability for cost overruns and works delays

7. Dr Kenneth CHAN asked why the Administration did not immediately file claims against the MTR Corporation Limited ("MTRCL") for its liability for works delays and cost overruns of the XRL project. He considered the Administration's attitude towards this matter not positive and worried that this would affect the outcome of the claims for compensation. Secretary for Transport and Housing ("STH") replied that initiating legal proceedings against MTRCL at this moment would impede works progress. As such, the Administration decided that the relevant procedure would be initiated upon the completion and commissioning of XRL.

8. Mr CHEUNG Kwok-che enquired whether the Administration had estimated the amount of compensation that could be claimed from MTRCL. Both he and Mr LEUNG Yiu-chung worried that MTRCL would try to cover the expenses on compensation by increasing local railway fares.

9. STH remarked that a Senior Counsel had been hired to follow up the matter and was gathering relevant information currently, including the assessment of the performance of MTRCL set out in the Report of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link Independent Expert Panel. The exact claim amount was still being calculated. Since the Government and MTRCL had different views in respect of the latter's obligations, it was not appropriate for him to disclose details about the claim at this moment, as doing so might have an impact on the claim in future. He added that the adjustment mechanism of local railway fares was not linked to the profitability of MTRCL. Therefore, the amount of compensation would not affect the fares of other rail lines.

10. Mr Alan LEONG pointed out that the capped Entrustment Cost of \$84.42 billion included MTRCL's estimated amount of compensation to be paid to contractors in respect of their claims arising from project delays. He expressed concern about MTRCL's ability to remain objective in assessing these claims, which would affect the amount of compensation that the Administration could receive when it filed its claim against MTRCL in the future. He also enquired whether it was true that the amount of compensation was subject to a cap equal to the \$6.3 billion of Project Management Cost ("PMC") that the Administration had already paid to MTRCL.

11. STH advised that according to the Entrustment Agreement between the Administration and MTRCL, MTRCL, as the Project Manager, had to work out solutions that were in the best interests of the project when dealing with matters related to contracts, including contractors' claims. Therefore, they must process the claims filed by contractors in a stringent manner, making sure that the claims themselves were substantiated and the claim amounts were reasonable. If MTRCL did not act in the best interests of the project when processing the claims, it would be a factor to be taken into account when the Administration looked into its liability in the future. He added that the Government and MTRCL had different understanding on the liability and amount of compensation that MTRCL owed to the Government for causing works delays and cost overruns to the XRL project. MTRCL thought that the maximum amount of compensation was subject to a cap equal to the PMC that the Company had received. But the Government differed with them on this matter. The differences would be resolved as well when legal proceedings between the Government and MTRCL were initiated in the future.

Monitoring of XRL works

12. Dr KWOK Ka-ki enquired whether the Administration had, when commissioning the Lloyd's Register Rail (Asia) Limited ("Lloyd's") in 2008 as the project consultant to monitoring MTRCL's performance in taking forward the XRL project, reviewed the relationship between Lloyd's and MTRCL, including whether the former had been commissioned by MTRCL to provide services. Dr KWOK worried that there would be a conflict of interest.

13. Director of Highways advised that when they engaged Lloyd's, they already knew that it had provided services for MTRCL before. However, there were no relevant records showing that the company had provided the Government with the relevant information at that time. He added that the fact that Lloyd's had provided services for MTRCL before did not necessarily constitute a conflict of interest when it was commissioned to monitor MTRCL's performance in taking forward the XRL project.

14. Mr CHAN Chi-chuen requested the Administration to disclose the contents of 42 major contracts in connection with the XRL project, including the completion date and the estimated increase in construction costs. STH replied that MTRCL was still processing the contractors' claims arising from works delays, and disclosure of the estimated increase in particular contract prices was tantamount to informing contractors of the amounts that they could claim from the MTRCL. Hence, in order to safeguard the interest of public money, the Administration could not disclose the relevant information.

15. Mr Albert CHAN pointed out that the Beijing HollySys Co., Ltd., the company that had successfully bid for the contract for the signaling system of the XRL project, had publicly disclosed the names of other companies that had submitted tenders for the contract. He required an explanation from the Administration about why the said company was in possession of the information of other bidding companies. STH replied that the Administration would not disclose the identities of other bidders to a company that tendered for the contract. He declined to comment on the remarks Mr Albert CHAN cited from that particular company.

16. Mr Frederick FUNG enquired whether, during the construction of XRL, the authorities and MTRCL had attempted to reduce cost overruns of the XRL project by modifying the project design and cutting the salaries of the management. STH advised that in light of the advice of Lloyd's, the Administration would not micro-manage the XRL project, including issues relating to MTRCL's internal manpower management. Nevertheless, the Monitoring and Verification ("M&V") Consultant engaged by the Highways Department would evaluate MTRCL's way of handling things and raise queries as appropriate when assessing the PMC. Projects Director, MTRCL added that they had reduced the cost of works to the absolute minimum by means of project design and allocation of manpower.

17. Mr Alan LEONG asked how the Administration could ensure that the final construction cost of the XRL project would not exceed the capped Entrustment Cost of \$84.42 billion, and whether the Administration would seek additional funding from the Finance Committee if the final construction cost exceeded that capped amount. STH advised that the analysis of the M&V Consultant to the Administration and Highways Department indicated that \$84.42 billion would be sufficient for carrying out the rest of the works. According to the supplementary agreement signed between the Administration and the MTRCL in November 2015, the amount of \$84.42 billion was the capped cost, which also served as a basis for MTRCL's effort to seek its shareholders' endorsement for the supplementary agreement.

18. Mr LEUNG Yiu-chung enquired about the Administration's measures to tighten supervision over MTRCL's management of the project in future. STH replied that Highways Department had taken account of the suggestions of the Independent Expert Panel and formulated concrete measures for further monitoring the performance of MTRCL.

Estimated patronage and revenue of XRL

19. Mr LEE Cheuk-yan enquired about the details of the service concession arrangement for the operation of XRL in the future, including the method for determining the reasonableness of the rate of return of XRL, and whether MTRCL had been granted the franchise for operating XRL. STH said that when the XRL project was planned, the Government had already made clear its intention to request MTRCL to proceed with the design, construction, testing and commissioning on trial basis of XRL on the understanding that MTRCL would be invited to undertake the operation of XRL in future under the concession approach. The Government would receive service concession payments from the operator of XRL. Since it took time to negotiate the terms

of the agreement, the Government had not signed the concession agreement with MTRCL and the amount of the service concession payment had not been finalized. He added that the Government would compare the estimated expenditure against the estimated revenue of the operation of XRL to determine whether there would be a reasonable return from the project or there would be a loss that needed to be covered by government subsidy.

20. Dr Fernando CHEUNG pointed out that the Administration's assessment of XRL patronage was conducted back in 2009. Both its estimates of local demographic growth and mainland cities' economic development were found differing from actual figures. Moreover, the arrangements for the co-location of customs, immigration and quarantine facilities of Hong Kong and the Mainland ("co-location arrangements") might not be realized, making XRL not as fast and convenient as originally expected. He asked whether the Administration would reassess the cost-effectiveness of the XRL project according to the actual demographic growth and the economic situation of mainland cities, and evaluate the worthiness of continuing to pour in money to complete the XRL project.

21. STH responded that the authorities had made an updated patronage forecast based on the latest census figures at the end of 2015. The average annual hours saved were adjusted downwards from the 42 million hours in the 2009 forecast to 39 million hours. The total economic benefits were adjusted upwards from \$87 billion to \$90 billion. These projections were made with the assumption that XRL could operate with a fast-track border clearance system only. If the "co-location arrangements" could be implemented, the cost-effectiveness of XRL could be further enhanced. He added that the 2015 prediction put the economic internal rate of return of the XRL project at 4%, which was higher than the average expected economic internal rate of return of 2% that the Government had for other new railway projects.

Co-location arrangements

22. Mr Michael TIEN and Mr James TO queried whether the Administration would promise that after it worked out the details of the "co-location arrangements" option, it would achieve its implementation by way of local legislation, so as to obtain the approval of Legislative Council Members. Mr James TO also asked whether it was possible for the Central Government to use certain procedures to implement the "co-location arrangements" option for XRL without securing the Legislative Council's approval.

23. STH responded that the Legislative Council was an important agency of public opinion and the implementation of the co-location arrangements for XRL would require a solid legal basis. This was a view shared by relevant departments on the mainland that the "co-location arrangements" option must be scrutinized and approved by the Legislative Council. Specific procedures and practices of seeking the Legislative Council's approval for the option would depend on the details of the arrangements. Enacting local legislation was one possible way. He added that the Administration was still negotiating with the relevant ministries of the Central Government to hammer out the details. So, he could not reveal the details of the "co-location arrangements" at this stage.

Termination of XRL project

24. Mr CHEUNG Kwok-che and Dr Kenneth CHAN enquired whether the Administration had considered terminating the XRL project to reduce the loss of public money. STH said that as at the end of January this year, 77% of the XRL project was completed. It was estimated that the target of commissioning XRL in the third quarter of 2018 could be achieved. In addition to saving the time of passengers travelling between Hong Kong and mainland China, the commissioning of XRL could also bring about benefits to aspects like economic, trading and cultural exchanges and tourism, etc., as well as create jobs. Therefore, it was in the best interest of the public to complete the project. He did not think that aborting the project or turning the West Kowloon Terminus into a shopping mall was a practical way to deal with the issue.

Handling of motions proposed to be moved by members under paragraph 37A of FCP

25. The Deputy Chairman said that on the evening of 26 February 2016, the Secretariat received from members a total of 151 proposed motions to be moved under paragraph 37A of FCP. After going over them, he opined that most of the motions were repetitive and similar in content. He would return those motions to members for consolidation and selection, and hoped that they would resubmit the consolidated or selected motions within one hour. The Deputy Chairman also reminded members that if they had new proposed motions, they had to submit them to the Secretariat as soon as possible, so as to allow sufficient time for him to scrutinize them with assistance from the staff of the Secretariat. He added that when the Committee started to vote to decide whether the proposed motions from members should be proceeded with, he would not accept new proposed motions from members.

26. Ms Claudia MO, Dr Fernando CHEUNG, Mr LEE Cheuk-yan, Mr James TO, Ms Cyd HO, Mr LEUNG Kwok-hung and Mr Dennis KWOK were dissatisfied with the Deputy Chairman's decision. These members considered that according to paragraph 37A of FCP, prior to the question on an agenda item being put to vote, a member might move a motion without notice. Therefore, they were of the opinion that they could move a motion without notice as long as the relevant agenda item was not yet put to vote.

27. The Deputy Chairman pointed that even though FCP stipulated that a member might move a motion without notice, it was impossible for him to allow members to submit proposed motions incessantly. Therefore, it was necessary to set an appropriate cut-off time for receiving motions. This arrangement was aimed at ensuring that the business on the agenda of the meeting could be handled in an organized and orderly manner.

28. At 11:02 am, the Deputy Chairman declared that the meeting be adjourned. He said that a total of 454 proposed motions were received from members in the morning of the day. He would scrutinize them one by one.

29. The meeting was adjourned at 11:02 am.

Legislative Council Secretariat
13 July 2016