

立法會
Legislative Council

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Panel on Transport

Subcommittee on Matters Relating to Railways

**Minutes of special meeting on
Monday, 23 April 2012, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

- Members present** :
- Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon Andrew CHENG Kar-foo
 - Hon LI Fung-ying, SBS, JP
 - Hon WONG Kwok-hing, MH
 - Hon Jeffrey LAM Kin-fung, GBS, JP
 - Hon CHEUNG Hok-ming, GBS, JP
 - Hon KAM Nai-wai, MH
 - Hon Starry LEE Wai-king, JP
 - Hon CHAN Hak-kan
 - Hon WONG Sing-chi
 - Hon IP Wai-ming, MH
 - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
 - Hon Tanya CHAN
 - Hon Albert CHAN Wai-yip
- Members absent** :
- Hon LAU Kong-wah, JP
 - Hon Abraham SHEK Lai-him, SBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Hon LEUNG Kwok-hung

- Public Officers attending** : **Agenda item I**
- Mr YAU Shing-mu, JP
Under Secretary for Transport and Housing
- Mr LAM Sai-hung
Principal Assistant Secretary for Transport and Housing(Transport)7
- Mr TAM Hon-choi
Government Engineer/Railway Development 2
Highways Department
- Attendance by invitation** : **Agenda item I**
- Mr Stephen CHIK
Head of Project Engineering
MTR Corporation Limited
- Ms Maggie SO
Deputy General Manager – Projects and Property
Communications
MTR Corporation Limited
- Mr Paul LO
General Manager – XRL
MTR Corporation Limited
- Mr LAU Pak-wai
Design Manager – WIL
MTR Corporation Limited
- Clerk in attendance** : Ms Joanne MAK
Chief Council Secretary (1)2
- Staff in attendance** : Mr Franco KWONG
Council Secretary (1)2
- Miss Ariel SHUM
Clerical Assistant (1)2

Action

I	Mechanism for handling complaints and compensation claims concerning construction of new railway lines	
(LC Paper No. - Administration's paper entitled "Mechanism for handling complaints and compensation claims concerning construction of new railway lines"	CB(1)1595/11-12(01)	
LC Paper No. - Information note on the mechanism for handling complaints and compensation claims concerning construction of new railway lines prepared by the Legislative Council Secretariat)	CB(1)1595/11-12(02)	

The Subcommittee deliberated (Index of proceedings attached in **Annex**).

2. With the aid of Powerpoint presentation, the Administration and MTR Corporation Limited (MTRCL) briefed members on the mechanism for handling complaints and compensation claims concerning building structures affected by the construction of new railway lines. Subcommittee members in general expressed concern whether the interests of the owners and occupiers were adequately safeguarded under the existing mechanism and made the following points –

- among a total of 222 complaints (as at end of February 2012) on the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link, the West Island Line and the South Island Line (East) received by MTRCL, it had not been established in any one case that the identified damages to buildings would affect building safety;
- as the loss adjuster responsible for conducting assessment of complaint about building damage was employed by the insurance company, there might be doubt about the independence of the loss adjuster;
- if the complainant was dissatisfied with the assessment of the loss adjuster, there was a lack of appeal avenues under the existing mechanism; and

- as a number of railway projects were underway, MTRCL might receive many complaints from affected owners and occupiers in the years ahead. There was a need to strengthen the mechanism to better safeguard the interests of owners and occupiers and ensure that their complaints would be properly handled.

Voting on a motion

3. Mr Albert CHAN moved the following motion –

"就處理鐵路工程涉及的投訴及補償申索的處理機制，本鐵路事宜小組委員會要求政府必須成立"獨立委員會"，負責處理有關的投訴及補償申索。

(Translation)

"That regarding the mechanism for handling complaints and compensation claims concerning railway construction works, the Subcommittee requests the Government to set up an "independent committee" to be responsible for handling the relevant complaints and compensation claims."

4. The Chairman put the motion to vote. Five members voted for and no member voted against the motion. The Chairman declared that the motion moved by Mr Albert CHAN was carried.

- MTRCL 5. At the suggestion of Ms LI Fung-ying, MTRCL was requested to provide information on cases involving repair works carried out by MTRCL's contractors for claimants and cases involving claims.

II Any other business

6. There being no other business, the meeting ended at 10:16 am.

Panel on Transport

Subcommittee on Matters Relating to Railways

Proceedings of the special meeting on Monday, 23 April 2012, at 8:30 am in Conference Room 3 of the Legislative Council Complex

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Mechanism for handling complaints and compensation claims concerning construction of new railway lines			
000755 – 001124	Chairman Administration	Briefing by the Administration (LC Paper No. CB(1)1595/11-12(01)).	
001125 – 003443	Chairman MTRCL	Powerpoint presentation by the MTR Corporation Limited (MTRCL) (LC Paper No. CB(1)1595/11-12(01)).	
003444 – 004244	Chairman Mr KAM Nai-wai MTRCL	<p>Mr KAM Nai-wai's enquiries –</p> <p>(a) whether the MTRCL would provide the pre-construction condition survey reports to building owners at an earlier stage so that the owners could know whether the building damages had existed before the construction of railway, hereby reducing the number of complaints; and</p> <p>(b) whether the MTRCL would subsidize the appointment of independent surveyors by owners to conduct condition surveys for their buildings.</p> <p>The MTRCL's response –</p> <p>(a) to conduct the pre-construction condition survey, the MTRCL had to obtain the prior consent of the owners and occupiers. Upon their requests, the MTRCL would provide the survey reports to them. If the reports covered common areas, the MTRCL would provide the survey reports to the Incorporated Owners of the relevant buildings; and</p> <p>(b) the loss adjuster would carry out inspection to take photos and measurements of damages.</p> <p>The MTRCL agreed to follow up with Mr KAM's request for installation of additional monitoring points at a residential building at Queen Street.</p>	

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004245 – 004635	Chairman Mr WONG Kwok-hing MTRCL	<p>Mr WONG Kwok-hing enquired about the percentage of buildings concerned where the pre-construction building condition surveys had not been conducted yet and whether the MTRCL would subsidize the appointment of loss adjusters by the building owners concerned.</p> <p>The MTRCL's response –</p> <p>(a) to conduct the pre-construction building condition survey for a building, the MTRCL had to obtain the prior consent of the owners and occupiers. For the railway projects in progress, all necessary surveys had been conducted, covering the buildings within 50 metres of the works areas; and</p> <p>(b) the current practice adopted by MTRCL was widely adopted in Hong Kong and other countries for handling similar claims.</p>	
004636 – 005455	Chairman Ms LI Fung-ying MTRCL	<p>Ms LI Fung-ying considered that the survey reports could help owners better understand the updated condition of their buildings. The MTRCL should take the initiative to distribute the survey reports to the owners and assist the owners to employ their own loss adjusters. She expressed concern about the handling of the 222 complaints received by MTRCL.</p> <p>The MTRCL's response –</p> <p>(a) the loss adjuster, which was employed by an insurance company acting as a third party and not employed by the MTRCL, would assess the claim case in an independent, professional and open manner. This well-established practice had been widely adopted in Hong Kong and other countries for handling building damage claims;</p> <p>(b) the arrangement for distributing survey reports had been improved. Currently, the MTRCL would take the initiative to ask the owners whether they wished to have the survey reports;</p> <p>(c) as the survey reports contained information on the interior conditions of the flats involved, the MTRCL would pass them directly to the owners of the relevant flats upon their requests so as to</p>	

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		<p>protect their interests and privacy;</p> <p>(d) in case that the assessment by the independent loss adjuster indicated that the identified damages to the building were caused by the railway works, the MTRCL and its contractor would discuss with the claimant about the arrangement of repair works; and</p> <p>(e) the MTRCL agreed to provide supplementary information on cases involving claims and repair works.</p>	<p>MTRCL to provide information. (para 5 of the minutes)</p>
<p>005456 – 010235</p>	<p>Chairman Mr CHEUNG Hok-ming MTRCL</p>	<p>Mr CHEUNG Hok-ming's enquiries –</p> <p>(a) if the outcomes of the assessments made by loss adjuster and Buildings Department (BD) were different, how the MTRCL made its judgement on the complaint and whether the MTRCL would rely on the views of BD; and</p> <p>(b) if the complainant was dissatisfied with the assessment of the loss adjuster, whether there was an appeal avenue under the existing mechanism.</p> <p>The MTRCL's response –</p> <p>(a) each case would have to be considered on its own merits. So far, the MTRCL had not come across any case that the outcomes of assessments made by the loss adjuster and BD were different; and</p> <p>(b) if the owner could provide supplementary information to support his complaint, the loss adjuster would assess the complaint again.</p> <p>Mr CHEUNG also followed up the case concerning the impact of construction of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) on the level of underground water in Ngau Tam Mei.</p> <p>The MTRCL advised that monitoring points had been installed at Ngau Tam Mei, which showed that the level of underground water was not affected by the works. The tunnelling method adopted by MTRCL on XRL project could effectively prevent</p>	

Time marker	Speaker	Subject(s)	Action required
		loss of underground water.	
010236 – 011142	Chairman Mr Albert CHAN Administration	<p>Mr Albert CHAN considered that MTRCL should subsidize the appointment of independent surveyors by owners to conduct condition surveys for their buildings. He also suggested the Administration to set up an independent committee to be responsible for handling the relevant complaints and compensation claims.</p> <p>The Administration advised that if the assessment by the independent loss adjuster indicated that the identified damages were caused by railway works, the MTRCL would arrange repair works and the claimant did not require to commission surveyors for verifications.</p>	
011143 – 011710	Chairman Mr Jeffrey LAM MTRCL	<p>Mr Jeffery LAM expressed concerns that the MTRCL might not be able to conduct pre-construction building condition surveys if the relevant owners or occupiers did not give consent to MTRCL. He was also concerned that there was a lack of appeal avenues under the existing mechanism.</p> <p>The MTRCL advised that during the design stage of new railway projects, it would conduct assessments and surveys on the environment, geology, underground utilities and buildings in the vicinity of the railway alignment and its working areas. This would ensure that the environment and the structural integrity of buildings nearby would not be affected by railway works. To conduct pre-construction building condition survey for a building, the MTRCL had to obtain the prior consent of the owners as well as the occupiers.</p>	
011711 – 012256	Chairman Mr Andrew CHENG	Mr Andrew CHENG considered that the existing mechanism could not safeguard the interests of the owners and occupiers. Sharing the views of Mr Albert CHAN, Mr Andrew CHENG pointed out that the Administration should set up an independent committee to handle the relevant complaints and compensation claims.	
012257 – 012357	Chairman Mr Albert CHAN	Discussion on the wording of the motion moved by Mr Albert CHAN.	

Time marker	Speaker	Subject(s)	Action required
012358 – 012553	Chairman Administration	In response to Mr Andrew CHENG's concerns, the Administration advised that there was no obvious defect with the existing mechanism. Under the Railways Ordinance (Cap. 519), a claimant could serve written notice to the Secretary for Transport and Housing to claim compensation before the expiration of one year from the completion date of railway works. The claimant could also refer the claim to the Lands Tribunal for judgment.	
012554 – 012853	Chairman Administration	The Administration considered the existing mechanism fair and effective. The loss adjuster would assess claims in an independent, professional and open manner.	
012854 – 013633	Chairman Mr KAM Nai-wai Administration MTRCL	<p>Mr KAM Nai-wai expressed concern that among a total of 222 complaints concerning the railway projects in progress received by MTRCL, it had not been established in any one case that the identified damages to buildings would affect building safety. To safeguard the interests of owners, he considered that MTRCL should subsidize the appointment of independent surveyors by owners to conduct condition surveys for their buildings. Mr KAM also requested the MTRCL to take the initiative to provide the survey reports to the residents of the buildings in the vicinity of the works areas of West Island Line.</p> <p>The Administration explained that the conduct of surveys and handling of claims were separate issues. A pre-construction condition survey was to accurately record the conditions of the buildings before the railway works, while a claim was required to be assessed by an independent loss adjuster to identify the cause of damage. If the claimant was dissatisfied with the assessment of loss adjuster, he could provide supplementary information for re-assessment.</p> <p>The MTRCL advised that as the survey reports contained information on the interior conditions of the flats involved, it needed to ascertain the identities of owners before providing the survey reports.</p>	
013634 – 014033	Chairman Mr Albert CHAN	Mr Albert CHAN further expressed his views on the existing mechanism of handling claims and compensation and the need for setting up an independent committee.	

Time marker	Speaker	Subject(s)	Action required
014034 – 014502	Chairman Mr Andrew CHENG Administration	Mr Andrew CHENG remained of the view that the existing mechanism could not safeguard the interests of owners and occupiers. The Administration advised that it would continue to closely monitor the MTRCL's handling of claims and compensation.	
014503 – 014538	Chairman	Voting on the motion moved by Mr Albert CHAN.	

Council Business Division 1
Legislative Council Secretariat
6 September 2012