

Your Ref.: CB4/SC/13

8 January 2016

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 Dr. Philco Wong dated 22 December 2015.

As requested, please find enclosed our reply (in English with Chinese translation) to your questions.

In addition, following certain comments made by members of the Select Committee during the public hearings which took place on 15 and 21 December 2015, the Corporation would like to clarify its position concerning the contents and findings of the IEP Report, as set out in the last two pages of this letter.

Thank you for your attention.

Yours sincerely,



Gillian Meller
Legal Director & Secretary

Encl.

(a) Whether the Corporation has issued any warning letter or imposed any penalty to any of its contractors from January 2010 to April 2014 regarding their unsatisfactory performance which caused delay or failing to complete the works contract of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“XRL”) Project according to the work schedule and completion date provided for in the individual contract.

1. The Corporation refers to and repeats our response under item (d) of our letter to the Select Committee dated 21 December 2015.
2. The Corporation reiterates that we manage the performance of all contractors working on the XRL project in accordance with the provisions of the relevant contracts entered into with those contractors, our established contract management procedures and the provisions of the 2nd Entrustment Agreement.
3. Issues arising from a contractor’s performance considered by the Corporation not to be in accordance with the contractor’s contractual responsibilities are addressed in the regular site and monthly progress meetings conducted between the Corporation and each of its civil works contractors, and in formal correspondence as appropriate.
4. The details and consequences of legal liability on the part of individual contractors for delaying events is confidential and commercially sensitive information. The Corporation has made available a number of examples of warning letters issued to contractors regarding their performance 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, ie. 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. 請參照港鐵公司於 2015 年 12 月 21 日致專責委員會之函件的(d)項，港鐵公司就此事宜之回覆一致。
2. 港鐵公司重申，我們乃按照與承建商簽訂之相關合約、公司訂定之合約管理程序及第二份委託協議的條款管理高鐵項目承建商之表現。
3. 港鐵公司若認為承建商並未按其合約責任履行應有之表現，會於定期與各土木工程合約承建商進行之工地會議及每月進度會議處理，並於有需要時正式致函承建商。

4. 就個別承建商在延誤事件上的細節和其法律責任之後果，屬機密及商業敏感資料。港鐵公司已將向承建商就其表現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。

(b) As mentioned by Dr Philco WONG, Projects Director of the Corporation, at the public hearing of the Select Committee held on 15 December 2015, the Corporation has provided all information as per requests made by the Government and Jacobs China Limited (“Jacobs”), the Monitoring and Verification Consultant, including the project master programme (“PMP”) which is referred to by the Independent Expert Panel as integrated master programme (“IMP”) in its report. This seems to be inconsistent with paragraph 96 of the joint written statement submitted by Mr Anthony J W KING and Mr William NG of Jacobs at the public hearing on 10 November 2015 (extracted in Annex A) and the evidences given by them at the said public hearing; and paragraph 3.23 of the report of the XRL Independent Expert Panel (extracted in Annex B). As such, please provide details about when, how and the occasions on which the Corporation has provided to the Government and/or Jacobs the PMP. Please explain if PMP is the same document as the IMP or not.

The Corporation refers to and repeats our response under item (a) of our letter to the Select Committee dated 21 December 2015.

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請參照港鐵公司於 2015 年 12 月 21 日致專責委員會之函件的(a)項，本公司就此事宜之回覆一致。

(c) Whether Dr Philco WONG, Projects Director of the Corporation, or Mr Mark LOMAS, Projects Manager – Technical Support of the Corporation, had mentioned in the regular reports prepared by them before April 2014 that the labour shortage problem would likely cause serious delays to the XRL Project so as to alert their supervisor(s) or the senior management of the Corporation of such problem. If yes, please provide the details.

1. The Corporation's Projects Division has referred to the issue of labour shortage as a cause of delay to the XRL project in its regular monthly progress reports provided to the Corporation's Executive Committee.
2. The Board was informed by the former Projects Director about the labour shortage issue faced by various projects (including the XRL project) through the Project Director's Reports and his Half Yearly Updates.
3. The Corporation regularly reported the labour shortage issue to the Government through presentations and on-going communications with RDO.

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1. 港鐵公司工程處已於定期向公司之執行委員會提交的每月進度報告中提及勞工短缺乃引致高鐵項目滯後的一個原因。
2. 董事局從時任工程總監提交之報告及其半年匯報中，得知勞工短缺是多個項目（包括高鐵項目）所面對的問題。
3. 港鐵公司透過簡報及與路政署鐵路拓展處的持續溝通，已定期向政府匯報勞工短缺問題。

Report of the Government-appointed Independent Expert Panel (“IEP Report”)

The Corporation’s position has been discussed by the Corporation’s Chief Executive Officer, Mr. Lincoln Leong Kwok-kuen, in his Written Statement dated 29 June 2015 and in his evidence given to the Select Committee during the course of the public hearings which took place on 15 July and 3 November 2015.

In particular, as explained by Mr. Leong during the 3 November hearing:

“MTRCL has co-operated significantly with the IEP and their experts. In general, we agree with the factual findings of the IEP which are highlighted in the appendix to the IEP Report. There are certain aspects of the IEP Report, the recommendations and the comments from the IEP which we take a different view on.”

To be clear, while it is not the purpose of this letter to set out all the areas where the Corporation takes a different view to findings made by the IEP, the areas of difference are not limited to the issue of an integrated project master programme (the Corporation’s position in relation to which has been set out under item (a) of our letter to the Select Committee dated 21 December 2015).

Further, as explained by Mr. Leong in his evidence, while the Corporation accepts that in general the factual information presented in the Factual Annexure to the IEP Report has been correctly stated, this should not be taken to imply that the opinions and conclusions stated therein or in the body of the IEP Report are accepted or agreed, and there may be different interpretations of the facts stated.

As stated at paragraphs 126 to 129 of Mr. Leong’s written Statement, the Corporation has reviewed and commented to the Government on the IEP’s findings and recommendations in so far as they concern the Corporation. The IEP has endorsed the recommendations made by the Corporation’s IBC and its Independent Experts, and the Corporation will continue to work with the Government so that the IEP’s findings and recommendations are given due consideration in relation to the XRL project and other current and future concession projects.

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由政府委任之獨立專家小組所撰寫之報告 (“獨立專家小組報告”)

港鐵公司之立場已在行政總裁梁國權先生於 2015 年 6 月 29 日向專責委員會提交之陳述書及 2015 年 7 月 15 日和 11 月 3 日之公開研訊上提及。

尤其是在 11 月 3 日之研訊上，梁先生解釋：

“港鐵公司已全力配合獨立專家小組及其專家。總體而言，我們認同獨立專家小組於其報告之附件中所述的事實調查結果。然而，獨立專家小組報告中有部分範疇、其建議及評論，我們與獨立專家小組持不同觀點。”

雖然本信函之目的並非為列舉所有港鐵公司與獨立專家小組持不同觀點之處，但我們希望清楚表明我們與獨立專家小組持不同觀點的地方並不只局限於綜合工程總綱計劃（港鐵公司就此方面的立場已列載於 2015 年 12 月 21 日致專責委員會之函件中的(a)項）。

再者，誠如梁先生於作供時所述，儘管港鐵公司大致接受獨立專家小組報告 **Factual Annexure** 中所述之事實資料，但這並不代表我們接受或認同獨立專家小組報告內文中所述之意見及結論，我們亦可能對所述之事實有不同的理解。

誠如梁先生的陳述書第 126 至 129 段中所述，港鐵公司已檢視獨立專家小組的調查結果及建議，並已就其中涉及港鐵公司的內容向政府提出意見。獨立專家小組已同意港鐵公司的獨立董事委員會及其聘任的獨立專家之建議，港鐵公司將繼續與政府合作，在採用服務經營權模式之高鐵項目及其他現有和未來的項目，適當考慮獨立專家小組的調查結果和建議。