

**Select Committee to Inquire into the Background of and Reasons for
the Delay of the Construction of the Hong Kong section of the
Guangzhou-Shenzhen-Hong Kong Express Rail Link
("Select Committee")**

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I. Introduction

This Statement is prepared in response to the invitation by the Select Committee to me to attend a hearing and to provide the Select Committee with a written statement. As requested by the Select Committee, this Statement contains information which is relevant to the Select Committee's major areas of study. In preparing this Statement, I have, where appropriate, made reference to information which is available in the public domain¹.

II. Background of the delay of the construction of the XRL, as announced by the Government and MTRCL in April 2014

(a) Scope and implementation schedule of the construction of the XRL

2. The XRL is a 26-kilometre (km) long underground rail corridor. When completed, it will run from a new terminus in West Kowloon, going north passing Yau Tsim Mong, Sham Shui Po, Kwai Tsing, Tsuen Wan, Yuen Long to the boundary south of Huanggang, where it will connect to the Mainland section of XRL.

3. In April 2008, the Chief Executive in Council ("ExCo") decided, amongst others, that the Central Alignment Scheme² should be adopted for the XRL; that MTRCL should be requested to proceed with the further planning and design of the XRL on the understanding that it would be invited to undertake the operation of the XRL under the concession approach; and that further negotiation should be carried out with MTRCL on the implementation details of the XRL. The Legislative Council ("LegCo") Finance Committee Public Works Subcommittee ("PWSC") supported, and the Finance Committee ("FC") approved, the funding for

¹ For example, information provided in the Administration's papers and responses to the Legislative Council, written statements provided to the Select Committee, reports of the MTRCL Independent Board Committee and the Government's Independent Expert Panel.

² See Annex A of the Administration's paper on Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (Legislative Council Brief) for RSC meeting on 2 May 2008. The Central Alignment Scheme was a shorter and more direct route without going through the existing Kam Sheung Road Station of the West Rail Line.

the design and site investigation of the XRL project in June 2008 and July 2008 respectively. On 24 November 2008, the Government and MTRCL entered into an *Entrustment Agreement for Design and Site Investigation in relation to the Express Rail Link* (“EA1”). ExCo further decided in October 2009 that MTRCL should be requested to proceed with the construction, testing and commissioning (“T&C”) of the XRL on the understanding that it would be invited to undertake the operation under the concession approach.

4. On 16 January 2010, FC approved the funding for the construction of the railway (\$55.0175 billion) and non-railway works (\$11.8 billion) of the XRL, amounting to a total of \$66.8175 billion. On 26 January 2010, the Government and MTRCL entered into an *Entrustment Agreement for Construction and Commissioning of the Express Rail Link* (“EA2”). According to the EA2, MTRCL shall use its best endeavours to complete, or procure the completion of, the Entrustment Activities in accordance with the Entrustment Programme (subject to fair and reasonable adjustment under justifiable situations); and to minimise any delay or other effect which any modifications may have on the Entrustment Programme. The Entrustment Programme indicates that the XRL project would complete testing and trial running, and be ready for operation, in August 2015.

(b) Major details of the concession approach which is adopted for implementation of the project

5. Before the Rail Merger in December 2007, all railway projects were financed under the ownership approach. Under this approach, the two railway corporations (i.e. MTRCL and Kowloon-Canton Railway Corporation (“KCRC”)) were responsible for the funding, design, construction, operation and maintenance of the railway, and ultimately own the railway. Since the two railway corporations operated on commercial principles, they would not take up financially non-viable railway projects unless some form of financial support was provided by the Government as appropriate. The form of funding support for each railway project was considered on a case-by-case basis. In gist, such funding support took the form of either capital grants or property development rights.

6. Upon the implementation of the Rail Merger, MTRCL was granted a service concession by KCRC to operate existing and new KCR railway lines under construction. Henceforth, MTRCL is responsible for the operation, maintenance and improvement of the KCR system, including the replacement of the concession assets, during the concession period. It exercises control over all the operational arrangements of the KCRC network in addition to its own network, and is responsible for the performance of the total system. Under the terms of the service concession agreement dated 9 August 2007 between MTRCL and KCRC, upon expiry or termination of the service concession, MTRCL would be required to return to KCRC an operating KCR system that meets the prevailing operating standards. In other words, KCRC is not disposing of the railway system to MTRCL, and MTRCL is not acquiring the KCRC's railway assets (except for certain low value items such as spare parts and consumables).

7. It was also agreed in the context of the Rail Merger that for individual new railway projects which are not natural extensions of the MTRCL network, the Government has the discretion to determine whether to adopt the ownership approach or the concession approach.

8. XRL is the first railway project implemented by the Government under the concession approach. Under the concession approach, the Government will fund the construction of the railway and its ancillary infrastructure, and ultimately owns the railway. MTRCL is entrusted with the design, construction, T&C of the XRL. Upon completion of the railway, MTRCL would be granted a service concession for the operation, and the Government would receive service concession payment. Subject to the agreement between the Government and MTRCL concerning the terms of the service concession, it is the Government's intention that one of the conditions for the grant of service concession for the operation of XRL to MTRCL would be that upon the expiry or early termination of the franchise granted to MTRCL under section 4 of the Mass Transit Railway Ordinance (Cap. 556), MTRCL shall return the XRL railway and assets to the Government.

9. When considering whether the ownership or concession

approach should be adopted for the XRL in 2008, the Government had in mind the following considerations and finally decided to adopt the concession approach for the XRL:

- (i) XRL is a major cross-boundary infrastructure. XRL would be connected to the Mainland section which forms part of the national railway network owned by the Mainland authorities. Ownership of the XRL by the HKSAR Government would facilitate coordination and resolution of interface issues between the Hong Kong and Mainland sections, both during construction and operation. These interface issues include, for example, the adoption of standards to ensure inter-operability of the two systems, the allocation of train paths, the fire-fighting and emergency evacuation arrangements etc.;
- (ii) the financial viability of the project is subject to a host of factors, including, for example, fare level, fare adjustment mechanism and revenue split mechanism which need to be discussed with the company running the Mainland section, and the availability of train paths and cross boundary facilities arrangement, which need to be further negotiated between the HKSAR Government and the Mainland authorities. In the light of these uncertainties, a conservative approach had been adopted in assessing the financial viability of the project, thus arriving at a substantial funding gap; and
- (iii) under the concession approach, the Government could capture the upside of the XRL's performance under a revenue-sharing mechanism and could get back a fully operational XRL system at the end or upon termination of the service concession. The Government would also be in a better position to liaise with the Mainland authorities over issues such as allocation of train paths and co-location of boundary control facilities to enhance the long-term profitability of the project; hence the concession approach would in the long run make more financial sense for the Government.

III. Performance and accountability of the Government and MTRCL relating to the project delay

(a) Entrustment Agreements between the Government and MTRCL, including the responsibilities and liabilities of the Government and MTRCL under the Entrustment Agreement

10. In early 2008, the Highways Department (“HyD”) commissioned a consultancy to review the institutional arrangements to ensure implementing the XRL project by MTRCL efficiently. The Lloyd’s Register Rail (Asia) Limited (“Lloyd’s”) was employed to carry out the study. One of the key areas investigated by Lloyd’s was the project management procedures which should be adopted to deliver the XRL project if the project was entrusted to MTRCL by the Government under the concession approach. Lloyd’s considered that MTRCL’s processes were known to be robust and in line with industry best practice, and the processes were regularly reviewed and audited by outside bodies and had been proven and refined through the delivery of many high quality railway projects in Hong Kong and abroad. Lloyd’s also identified that, in general, there were many similarities between the processes adopted by MTRCL and the Government.

11. Lloyd’s recommended that MTRCL’s project management procedures for the delivery of the XRL project should be adopted, but that there should be Government representation in key control processes, and that the Government should be able to conduct monitoring and verification (“M&V”) of its interests in the design and construction of the XRL project. This M&V role would effectively be “check the checker”, i.e. verifying that MTRCL was implementing its process as specified. It entailed a risk based sampling approach to verify delivery of the requirements of the project scope and authorized expenditure. Lloyd’s also advised that the Government’s resources should be utilized effectively to avoid repetition and micro management of the project. Lloyd’s recommendations were adopted by the Government and formed largely the basis of the Entrustment Agreements for the design and site investigation as well as construction and commissioning of the XRL. In November 2008, the Government and MTRCL entered into the EA1. In January 2010, the Government and MTRCL entered into the EA2.

12. As mentioned in paragraph 4 above, according to the EA2, MTRCL shall use its best endeavours to complete, or procure the completion of, the Entrustment Activities in accordance with the Entrustment Programme (subject to fair and reasonable adjustment under justifiable situations); and to minimise any delay or other effect which any modifications may have on the Entrustment Programme. In this connection, MTRCL shall act in accordance with its management systems and procedures. Moreover, the Government shall be entitled to appoint an appropriate consultant to verify MTRCL's compliance with its obligations under the EA2. At any time MTRCL is in material or persistent breach (or the Government, acting reasonably, suspects that MTRCL is in material or persistent breach) of any of MTRCL's material obligations under the EA2, the Government shall be entitled to verify MTRCL's compliance with MTRCL's obligations under the EA2.

13. In the event of any errors or omissions by MTRCL which constitutes breaches of the EA2 by MTRCL and as a result of which the re-execution of the Entrustment Activities is required, MTRCL shall, if required by the Government, at its own cost re-execute (or procure the re-execution of) such Entrustment Activities to the reasonable satisfaction of the Government.

14. Should there be a delay and to the extent that the delay in question is not covered by any modification or adjustment to the Entrustment Programme, it may amount to a breach of MTRCL's obligations under the EA2 and the Government may have a claim against MTRCL for such a breach.

15. In addition, MTRCL warrants the Government on a number of matters, including that the Entrustment Activities that relate to the provision of project management services, such Entrustment Activities shall be carried out with the skill and care reasonably expected of a professional and competent project manager whose role includes co-ordination, administration, management and supervision of the design and the construction of works. Should the delay in question involve a breach of MTRCL of any of its warranties, the Government may have a claim against MTRCL for breach of warranties.

(b) Monitoring mechanism of the project, including the role of the Transport Branch (“TB”) of THB, and the accountability of the Government and MTRCL in respect of the project delay

16. As set out in the Controlling Officer’s Report for Transport Branch in the 2015-16 Estimates, one of TB’s aims is to plan for and implement the construction and improvement of Hong Kong’s transport infrastructure, and to improve cross-boundary rail. One of TB’s main responsibilities is to formulate policies on the development of transport infrastructure. Regarding XRL, TB’s responsibility is to oversee its construction and operational arrangements. Before the commencement of the construction of the XRL in January 2010, TB also oversaw the planning and public consultation of the XRL.

17. I was appointed Secretary for Transport and Housing (“STH”), as the Head of the Transport and Housing Bureau, on 1 July 2012. My main duties include the following:

- (i) to set policy objectives and goals, and develop, formulate and shape policies on land and waterborne transport, air services, port and maritime services, logistics development, and housing;
- (ii) to assist the Chief Executive in policy making as a member of the Executive Council;
- (iii) to secure the support of the community and the Legislative Council for policies and initiatives within the Bureau’s purview; and
- (iv) to exercise relevant statutory functions and oversee the delivery of services by the executive department under the Bureau’s purview.

18. As the funding approval of the XRL had a controversial history, I was mindful of the need to keep the project on schedule and within budget since I assumed office.

19. As set out in the statement of the Director of Highways (“DHy”) to the Select Committee in February 2015, the key roles of HyD in the implementation of the XRL project are as follows:

- (i) to oversee the overall implementation of the XRL project and the prudent use of public funds allocated for this project;
- (ii) to monitor and verify that MTRCL properly fulfills its obligations in accordance with the Entrustment Agreements entered between the Government and MTRCL for the design, procurement, construction and T&C of the XRL project; and
- (iii) to facilitate the implementation of the XRL project by liaising and coordinating with MTRCL and other departments concerned in resolving interfacing issues and seeking necessary approvals associated with the implementation, commissioning and operation of the XRL.

20. As described in paragraph 11 above, HyD’s consultant Lloyd’s recommended HyD to adopt the M&V role for the design and construction of the XRL project. The M&V role would effectively be “check the checker”, i.e. verifying that MTRCL was implementing its process as specified.

21. In April 2010, the Government, vide LC Paper No. CB(1) 1573/09-10(04), informed LegCo of the Government’s detailed monitoring mechanism on the construction of the XRL. As stated in the paper, DHy, being the Controlling Officer responsible for the XRL project, leads a Project Supervision Committee (“PSC”). Members of the PSC include, among others, representatives of THB (normally a staff at Principal Assistant Secretary level) and MTRCL (including MTRCL’s Projects Director). The PSC meets on a monthly basis to review project progress and to monitor procurement activities, post-tender award cost control and resolution of contractual claims. The PSC also provides steer on matters that would affect the progress of XRL. MTRCL is required to submit a progress report setting out the latest progress and financial position of the project. Up till November 2015, the PSC has held 62 meetings (including a special meeting held in mid-April 2014),

with the last meeting held on 30 October 2015. Prior to mid-April 2014, the PSC held 44 meetings.

22. In addition, an officer at Assistant Director level of HyD holds monthly Project Coordination Meetings (“PCMs”) with MTRCL’s General Managers and Project Managers to monitor various activities for the delivery of the XRL project including, but not limited to, timely completion of land matters, resolution of third party requests, key issues on the design, construction, environmental matters that may have potential impact on the progress and programme of the XRL project as well as interfacing issues with other projects. From January 2010 to end-November 2015, a total of 68 PCMs were held. Prior to mid-April 2014, the PCM held 50 meetings.

23. Furthermore, an officer from HyD, at Chief Engineer level, holds monthly Contract Review Meetings (“CRMs”) with site supervision staff of MTRCL for major civil and electrical and mechanical (“E&M”) works. In case of delays encountered by MTRCL’s contractors, MTRCL would report measures being considered to mitigate such a delay. Up to end-November 2015, a total of 66 CRMs were held. Prior to mid-April 2014, the CRM held 47 meetings.

24. HyD has employed an external consultant, Jacobs China Limited (“the M&V consultant”), to assist in the monitoring work. The monitoring and verification work of the M&V consultant focuses on cost, programme, safety and quality of the XRL project. The M&V consultant performs its monitoring role by adopting “check the checker” approach. The main areas of monitoring work include the following:

- (i) carrying out regular site visits (joined by HyD staff) and conducting regular audits systematically to verify whether MTRCL has fulfilled its obligations under the EA2 with the Government and implemented the entrusted works in accordance with its project management system for delivery of XRL;
- (ii) reporting to HyD on a monthly basis and having monthly progress meeting with HyD on its M&V works to report and discuss major areas of concerns; and

- (iii) reporting to HyD the progress of various works contracts, their potential risks and concerns, as well as any progress delay, and commenting on the appropriateness of the proposed mitigation measures.

25. Furthermore, HyD has set up a dedicated division to oversee the implementation of the XRL project. This dedicated division comprises a total of 13 Civil Engineer posts, including a Chief Engineer who is the division head, 4 Senior Engineers and 8 Engineers as at April 2014.

26. THB is responsible for formulating transport policies and keeping general oversight on implementation of policies. Generally speaking, once an infrastructure project such as the XRL project has commenced, THB's main focus is to monitor implementation progress and, where necessary, help resolve at policy level issues which may affect the delivery of the project. Following established Government practices and division of responsibilities, implementation at the operational level is mainly the responsibility of the relevant departments. In the case of XRL, as explained in paragraph 11 above, HyD adopts the M&V role in the design and construction of the XRL project. The M&V role is effectively "check the checker". HyD would use a risk based sampling approach to verify delivery of the requirements of the project scope and authorised expenditure. HyD, in liaison with MTRCL, undertakes necessary preparatory work and statutory procedures, and resolve interface issues between Government and MTRCL arising from the implementation of the XRL. Also, HyD co-ordinates with other departments concerned on approval of the infrastructure layout design for the XRL and its interface arrangements with other projects, and takes part in site liaison for traffic diversion and other construction matters, as well as issues on the commissioning and operation of the XRL. THB and HyD have also worked jointly with the Mainland authorities on the development and cross-boundary matters relating to the XRL.

27. Since the commencement of the construction of the XRL in January 2010, THB has been carrying out its general overseeing role on the implementation of the XRL project, including overall programme and project cost. Such general overseeing is carried out through a number of means. Representative(s) from THB sit on the monthly PSC meetings

chaired by the DHy between the Government and MTRCL. In addition, I am the Chairman of a regular Head of Department (“HoD”) meeting on the work of HyD and DHy updates me on project progress in such meeting. Relevant senior directorate officers of THB and HyD attend the regular meeting as well. As and when necessary, DHy also reports to me any significant issue relating to the implementation of the XRL (please see DHy’s letter of 10 April 2015 to the Select Committee). From time to time, I received updated information (including briefings) on the progress of the XRL project from colleagues in THB and HyD. I rely on Permanent Secretary for Transport and Housing (Transport) (“PS(T)”), Deputy Secretary for Transport and Housing (Transport) 1 (“DS(T)1”) and the subject team under DS(T)1 for information and advice on the XRL. Internally in THB, I have meetings with other senior staff of THB, mainly including PS(T), the Under Secretary for Transport and Housing (“USTH”), DS(T)1 and other colleagues as appropriate. In these meetings, the progress of the XRL project would be discussed, usually based on information gathered from HyD and MTRCL. The subject team, led by a Principal Assistant Secretary, in THB assists DS(T)1 in monitoring the XRL project. DS(T)1 obtains information about the XRL project from the subject team in THB or from HyD or MTRCL direct, depending on the nature, importance, urgency and sensitivity of the issue.

28. As officers in THB are mostly generalists by training, in carrying out their work in overseeing the implementation of the XRL project, they have to, by necessity, defer to the judgement and advice of professionals in HyD and MTRCL on engineering, project management and other related technical matters. The subject officers in THB mainly offer advice/input from the policy angle in relation to the planning and implementation of the project and on issues which may attract public or media attention. There is no regular meeting *per se* between THB and MTRCL for monitoring the XRL project as the day-to-day monitoring of the project requires a high degree of technical expertise. The day-to-day liaison with MTRCL to facilitate project implementation is mainly carried out by HyD. However, when THB identifies issues of concerns, it will make enquiry with HyD and request HyD to provide information and/or arrange briefings, together with MTRCL as necessary.

29. With information submitted by MTRCL and vetted by HyD, THB prepares and submits regular progress reports (11 such reports were submitted as at November 2015) on the project to the Legislative Council Panel on Transport Subcommittee on Matters Relating to Railways (“RSC”). Where necessary, THB and HyD will submit papers to the RSC in response to their specific requests for discussion or information.

IV. Whether the Government and MTRCL have deliberately covered up the project delay, particularly the communication/reporting mechanism between MTRCL and the Government in respect of the announcement of the project delay

(a) Communication/reporting mechanism between MTRCL and the Government in respect of the progress of the project and the announcement of the project delay

30. Since the commencement of the XRL project in 2010, HyD has instituted a multi-level project monitoring system. HyD has been carrying out monitoring works in line with the monitoring framework as reported to LegCo (see paragraph 21 above). In general, the following regular monitoring actions are carried out:

- (i) the M&V consultant and HyD staff attend monthly CRMs in which the site staff of MTRCL of the major contracts report the progress of individual contracts and areas of concern;
- (ii) the M&V consultant and HyD staff carry out site visits and meets with MTRCL's site staff regularly and the M&V Consultant submits monthly reports to HyD;
- (iii) HyD at Chief Engineer level attends monthly cost control meetings convened by MTRCL, and provides views on MTRCL's assessment of variations, claims and other cost changes through correspondence or attendance at MTRCL's Project Control Group's meetings;
- (iv) HyD at Assistant Director level co-chairs monthly PCMs with the General Manager of MTRCL to monitor project progress and to assist in coordination with other Government departments to facilitate the process of works under the project; and
- (v) DHy chairs monthly PSC meetings attended by the Projects

Director of MTRCL and his team. Among other issues, progress is discussed on the basis of Monthly Progress Reports submitted by MTRCL and other available information. When delay is noted by HyD at different monitoring fora, MTRCL is asked to explain the causes of delay and the intended mitigation measures or delay recovery measures (“DRM”).

31. Until early April 2014, MTRCL repeatedly reassured the Government that the target completion date of 2015 was achievable, and that even though the project had encountered various challenges, programmes would be speeded up through mitigation or DRM.

32. As mentioned in paragraphs 27-29, at the Bureau level, general oversight of the works progress of the project, including overall programme and project cost, is carried out through THB’s attendance at the monthly PSC meetings and the regular HoD meetings between STH and DHy. THB, being the policy bureau, defers to HyD for professional judgement and advice regarding the implementation of the XRL project. HyD, with the support of its M&V consultant, and with input from MTRCL, is responsible for monitoring the progress of the XRL project, on a day-to-day basis adopting the “check-the-checker” approach. THB would offer advice/input from the policy angle in relation to the planning and implementation of the project and on issues which may attract public or media attention. When THB identifies issues of concerns, it will make enquiry with HyD and request HyD to provide information and/or arrange briefings, together with MTRCL as necessary. From time to time, HyD and/or MTRCL are requested to provide briefings to THB on major issues relating to the project. Where necessary, DHy also reports to me any significant issue relating to the implementation of the XRL.

33. Generally speaking, it is not unusual for major civil works contracts (in particular those involving extensive underground works in built up urban areas) to experience programme delay whereby the progress of works at a certain moment in time lags behind the programmed level of production due to various project risks. Such delay may often be mitigated or even rectified with appropriate mitigation or recovery measures.

34. During the course of project implementation, THB noticed from the aforementioned channels of reporting and communication that the XRL project at various junctures has encountered issues causing delay and remedial measures have been deployed by MTRCL to mitigate the delay. When there was delay vis-à-vis the programmed schedule, HyD would request MTRCL to devise mitigation measures or DRM to ensure that the overall programme would be maintained. The Administration's paper to the RSC for its meeting on 5 May 2014 (LC Paper No. CB(1)1328/13-14(03)) has set out the Government's progress monitoring actions from January 2010 to April 2014. The Government's major actions since July 2012 (when I was appointed as STH) are highlighted in the following paragraphs.

35. In July 2012, the Chief Executive Officer ("CEO") of MTRCL wrote to me stating that MTRCL maintained their target to complete all works to enable the successful opening of the XRL in 2015 as planned. Amongst others, he highlighted the cross-boundary tunnel as one of the challenges to overcome in achieving the 2015 target opening for XRL. THB responded by saying that HyD had registered concern about the cross-boundary tunnel to the relevant Mainland authorities. I was conscious that the cross-boundary tunnelling works was one of the main issues.

36. In August 2012, HyD met with the relevant Mainland authorities expressing concern with the cross-boundary tunnelling works. The latter undertook to take measures to expedite the works.

37. In November 2012, meetings were held between HyD and relevant Mainland authorities with focus on the lack of progress of the two Tunnel Boring Machines ("TBM"s) heading for Shenzhen-Hong Kong boundary. It was noted that works had to be expedited. The meeting agreed to step up monitoring of the relevant works. To that end, MTRCL and the owner of the Mainland section of XRL (the business counterpart of MTRCL) were requested to submit quarterly reports on progress of cross-boundary tunnelling works.

38. In March 2013, HyD received the first progress report from MTRCL and owner of the Mainland Section of the XRL on the progress

of the cross-boundary tunneling works to the Government. According to the report, the two TBMs driving towards the Shenzhen/Hong Kong border was experiencing a delay of about 10-11 months, and T&C of the XRL might begin in July 2015. Measures were being explored to expedite works.

(b) Media report dated 7 May 2013 regarding delay of the XRL project

39. On 7 May 2013, there was a media report claiming that the XRL project would be delayed by a year with significant cost overrun (“西九總站設計出事 嚴重超支 高鐵延誤一年”). Amongst other things, the report claimed that the cause of the “major delay” lay with the construction of WKT, which would result in a delay of at least one year and cost overrun up to \$4.4 billion. Based on information provided by MTRCL, the Government replied on the same day (7 May 2013) to the media that target completion of the XRL remained 2015.

40. However, taking note of the growing concern in the media on the matter, I was not prepared to let things stay there and preferred to get more details from HyD and MTRCL. THB and HyD requested MTRCL to review the latest position and get ready to brief the RSC at its next meeting on 24 May 2013 on the alleged delay and claims issues. I also decided to attend the RSC meeting personally, together with DHy. On 8 May 2013, MTRCL briefed HyD on the progress of the XRL, including the progress of all major contracts. MTRCL reported, in particular, the delays in the works of the tunnel section from the boundary to Mai Po (Contract 826) and WKT. MTRCL noted that works for the WKT and Contract 826 were behind schedule, with the track-related installation programme works extending into the T&C period. MTRCL proposed to procure additional plants for trackworks as mitigation measures to catch up the delay. The M&V consultant also joined the briefing by MTRCL and did not disagree with the effectiveness of DRM proposals. The procurement was subsequently made.

41. In May 2013, THB submitted a paper (LC Paper No. CB(1)1072/12-13(03)) to the RSC on the basis of assurances received from MTRCL. In paragraph 2 of the paper, the Government stated that

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“[t]he construction is targeted for completion in 2015. We spare no effort in monitoring the works entrusted to MTRCL to ensure the implementation of the XRL project is within the approved project estimate, of good quality and on schedule. We will continue to work closely with the parties concerned to ensure that the XRL works will be completed as scheduled within the approved budget”.

42. At the RSC meeting on 24 May 2013, I stated that it was not uncommon for some activities to encounter delay against the original programme. In the case of WKT, it was an underground station as deep as at 26 metres below ground and its construction was very complicated and involves careful coordination. MTRCL and the contractors had been exploring feasible measures to catch up with the programme so that the completion of the construction of the XRL would not be affected.

43. Following the above RSC meeting, DHy reminded MTRCL at the PSC meeting on 30 May 2013 that if the delay rendered the current target completion not achievable, HyD should be informed as early as possible. MTRCL confirmed that it would do so and said that it would continue to closely monitor the situation.

(c) Monitoring work in the second half of 2013, and the meeting amongst THB, HyD and MTRCL in the evening of 21 November 2013

44. In July 2013, the second quarterly report on the construction progress of the cross-boundary tunnel section compiled by MTRCL and the owner of the Mainland section of XRL was submitted to THB. I was given sight of the report and advised HyD and MTRCL to continue liaison with the Mainland partner to devise measures to mitigate the delay.

45. At the request of THB, HyD and MTRCL briefed THB on 23 July 2013 on the overall progress of the XRL and the cross-boundary section. According to MTRCL, it was forecast that the cross-boundary tunnel civil works would be completed in March 2015; testing across the boundary would commence in July 2015; and the target date for revenue service would be December 2015. The Government reminded MTRCL to make its best endeavour to deliver the project on time and within budget.

46. In August and September 2013, MTRCL approached HyD to explore a partial opening scenario whereby essential parts of the works would be completed towards the end of 2015 whereas testing and trial runs would start following the completion of various sections of tunnels with the aim of allowing partial operation (sufficient to meet early year demand) by the end of 2015. Under the partial opening scenario, six out of the 15 tracks and the essential railway facilities should be ready to provide passenger service. As there was inadequate information supporting the feasibility of the partial opening scenario, HyD, without indicating agreement to the proposal, requested MTRCL to provide further information such that a report could be made to THB.

47. On 22 October 2013, based on the third quarterly report on the construction progress of the cross-boundary XRL tunnel section, the subject team in THB reported to me that the cross-boundary tunnelling works continued to encounter delay. If the delay could not be mitigated, T&C of the XRL could only start in October 2015, thus impacting on the overall commissioning date for the XRL. The subject team also reported that MTRCL had recently proposed to HyD a target of partial opening of XRL (putting into service six tracks by end-2015) and the commissioning of four more tracks in mid-2016. This was based on the latest progress of works, taking into account all DRM being implemented in various contracts. WKT and the cross-boundary tunnel section were on the critical path of the XRL project and any further delays at either of these might affect the target commissioning date of the XRL. Mitigation measures such as re-sequencing of works and phased access of E&M installation works were under consideration. Based on the latest financial situation and status of contract claims, it was considered that the expenditure of the project could be kept within the approved project

estimate. In view of the latest development, THB became very concerned that the XRL could not commence service in 2015 and therefore requested MTRCL and HyD to provide a detailed briefing on the latest progress of the project.

48. On 8 November 2013, HyD (represented by DHy) and MTRCL (represented by its former Projects Director) were invited to brief PS(T) and other THB officers on the latest position of the XRL project. MTRCL presented the progress of the works of the XRL, including WKT and Contract 826 tunnelling works. At the meeting, MTRCL stated that WKT could be ready for partial opening scenario by December 2015. MTRCL explained that by “partial opening”, it meant that six out of the 15 tracks and the essential railway facilities should be ready to provide passenger service. They explained that even with only six tracks in this interim period, it would be sufficient to meet early year demand. As for Contract 826 tunnelling works, they could only be completed by October 2015 and the testing of the XRL (which would normally take three months) could only commence from October 2015. As it would take another three months to conduct trial runs, the target opening date of end-2015 might be affected.

49. A similar briefing was conducted for me by DHy on 20 November 2013. As the XRL was controversial, I considered that the Government should come clean if there was a possibility that the target of 2015 could not be achieved. Based on the assessment of works progress then, I contemplated making it public at the RSC meeting scheduled for 22 November 2013 that the XRL might only commence operation after 2015 and explaining the latest construction progress and the actual challenges encountered.

50. In the morning of the following day (21 November 2013), the former CEO of MTRCL called me expressing disagreement with reporting to RSC that the target for commencing operation in 2015 could not be met. I told the former CEO that the decision was made having taken into Project Director’s advice on the XRL progress. The former CEO returned call to me after consulting Project Director and stressed that it was still feasible to complete all the necessary works to enable the XRL to commence operation by end-2015.

51. As a result of the aforesaid tele-conversation, I asked PS(T) to convene an urgent meeting with MTRCL the same day (21 November 2013). The MTRCL team was led by the former CEO. At the meeting, MTRCL emphasized that it was imperative that the target of 2015 be adhered to, lest MTRCL would lose its leverage to press its contractors to push forth the project. MTRCL added that it was still possible for the XRL to complete and commence operation within 2015. THB pointed out that according to an earlier briefing by MTRCL, the XRL had encountered problems at WKT and the cross-boundary tunnelling works. THB queried that even if the partial opening scenario for WKT were adopted, the XRL could not commence operation if the tunneling works of Contract 826 could not be completed in time. THB asked why MTRCL remained of the view that the XRL could be completed and commissioned in 2015. MTRCL said that it was trying hard to identify solutions to meet this target; at the very least, single track operation³ was possible. It was explained to MTRCL that single track operation did not comply with Government's requirement and was therefore unacceptable. THB reiterated that while it was appreciated that MTRCL needed to use the 2015 target to continue exerting pressure on its contractors to expedite the works, the Government needed a realistic assessment and should alert the public immediately if the target was not achievable. THB said that based on MTRCL's information, the XRL would only be ready for testing in October 2015 and queried if the XRL could be commissioned in time within 2015. It was noted that there was delay in the cross-boundary tunnelling works, and such delay would eat into the time for the tunnelling work on Hong Kong side, thus posing challenges to MTRCL. MTRCL responded that it would be in a position to assess the impact once the cross-boundary tunnelling works were completed on the Mainland side and commenced on the Hong Kong side. THB cautioned MTRCL not to over-state its ability to overcome the challenges. MTRCL requested that the Government give it six months before making a judgment on whether XRL could be completed by 2015. After much discussion, the meeting eventually concurred that while the target of 2015 should be maintained at that stage, the Government and MTRCL should

³ Single track operation scenario is to use a single tunnel for the northbound and southbound trains, running alternatively between WKT and the boundary of the Mainland.

be upfront with the challenges faced by the project when attending the RSC meeting the following day. Meanwhile, MTRCL should provide the Government with a clear roadmap on how the target could be met.

52. The key points of discussion at the meeting held on 21 November 2013 between THB and MTRCL have already been detailed at the Annex to the Administration's response to RSC dated 15 May 2014 (LC Paper No.: CB(1)1422/13-14(04)), which is also appended to this statement (**Annex 2**) and THB's letter to the Select Committee dated 18 February 2015 (SC Ref. No. G3). As stated in the key points of discussion and paragraph 51 above, the meeting on 21 November 2013 deliberated at length the possibility of the completion and commissioning of the XRL in 2015. At that time, it was considered that the crux of the issue lay in the assessment on the progress of cross-boundary tunneling works under Contract 826 rather than the works of WKT.

53. The Government had two prime considerations during the meeting on 21 November 2013. First, while the commissioning of the XRL by 2015 was an important policy and planning objective which should be achieved as far as possible, we had to face squarely any irreversible delay caused by insurmountable technical difficulties that the project came across. If there were any irreversible delay, it was paramount that we alert LegCo and the public as early as possible. Second, at the meeting, the former CEO and former Projects Director of MTRCL both assured the Government many times, with much confidence, that the XRL could be commissioned in 2015, and did not lose their confidence despite the Government's repeated queries and challenges. Based on the information available, DHy and his colleague could not completely rule out, at the meeting, the possibility of the commissioning of the XRL by 2015. At the meeting, MTRCL also made it clear that should it be made public at that stage that the target of 2015 might be postponed, MTRCL would lose its leverage to urge its contractors to push forth the project, and the commissioning of the XRL by 2015 would then really be impossible. At that time, the Government representatives considered MTRCL's view not unreasonable. It was finally decided to give MTRCL the benefit of doubt. MTRCL was requested to provide Government with a clear roadmap to demonstrate how the 2015 target could be achieved.

54. At the RSC meeting on 22 November 2013, USTH, heading the Government team, stated that based on the latest assessment of MTRCL, the major works of the XRL could be completed within 2015. Thereafter, testing and trial runs would be conducted. Normally, this would take six to nine months. The railway might only come into operation after the relevant authorities had approved the test results to ensure the safety and reliability of the railway service. The statement reflected the respective views of THB (and HyD) and MTRCL on the progress of the works. In particular, THB sought to convey the message that while the major works could be completed within 2015, the date of commissioning would have to be confirmed. The statement also took account of the consideration, put forth by MTRCL, that by not giving up on the end-2015 target, MTRCL could press the contractors to give the project a further push, giving MTRCL a chance to catch up the delay. We made it clear to MTRCL, both before and after the RSC meeting, that it had to report to Government and the public as soon as possible if it became clear in the coming months that the progress of delay recovery was not satisfactory.

55. We did not mention the “partial opening” arrangement of WKT at the RSC meeting. This was because the Government had not agreed to such an arrangement. We opined that MTRCL had not provided adequate information supporting the feasibility of the scenario. More importantly, our assessment at that time was that the crux lay in the assessment on the progress of cross-tunneling works under Contract 826. If the tunneling works could not be completed, the timely completion of WKT works would not be of much relevance. Our focus was thus on the completion date of the tunneling works, and it was then considered by Government we could not totally rule out such completion within 2015.

56. Following the RSC meeting on 22 November 2013, HyD kept pressing MTRCL to submit details on the progress of the DRM to ascertain whether the target commissioning date should be revised, including the following-

- (i) At the PSC meeting on 29 November 2013, MTRCL presented a roadmap towards the proposed target opening scenario, which set

down the target dates for completion of all civil works and E&M works by June 2015 for T&C. DHy was not satisfied because the roadmap was very brief and only listed out the target completion dates without any milestones for assessing and monitoring whether the target dates could be met. MTRCL undertook to arrange another briefing to provide more details on the proposed opening arrangement of the XRL, including the readiness of WKT external works and public areas.

- (ii) Subsequently, at the PSC meetings in January and February 2014, DHy expressed his continued concerns on the programme slippage against the original schedule. MTRCL said that it would review the overall programme situation and present to HyD in April 2014 the latest forecast opening arrangement and commissioning timeframe. Apart from the progress of works, DHy reiterated the importance of financial control to ensure project delivery within the approved budget. At the February 2014 meeting, MTRCL said that it had been working closely with the contractors on measures to catch up with the construction programme.
- (iii) At the Project Coordination Meeting on 18 March 2014, MTRCL still maintained that the project was targeted for completion in 2015.
- (iv) At the PSC meeting on 2 April 2014, in response to HyD's concerns about the continued programme slippage, MTRCL said that it was still reviewing the overall picture of the project delivery and had scheduled to give a briefing to HyD on 7 May 2014 on the forecast project commissioning date and updated financial position. At the same meeting, MTRCL reported that a minor slope failure at the side of a drainage channel at Shek Kong had caused flooding of the lower end of the tunnel including the north drive TBM and that the contractor was assessing the damage to the TBM. HyD requested MTRCL to report the detailed findings of the incident and its assessment on the associated cost and programme impacts.

57. In the meantime, THB continued to maintain close liaison with HyD in monitoring the progress of the XRL. As outlined in paragraph 27 above, THB has been kept informed of the progress of the XRL project through attendance at the PSC meetings and reporting by HyD at HoD meetings. Internal meetings between me and senior staff of THB (as mentioned in paragraph 27) continued to discuss the progress of the XRL. All through the period up to April 2014, MTRCL repeatedly maintained end-2015 as the target completion date when THB and HyD enquired with them.

(d) Announcement of delay of the XRL project in April 2014

58. Around noon time on 12 April 2014 (when I was out of town), the former CEO of MTRCL called me and said that construction works of the XRL could only be completed by end-2016 and that service could only be commissioned in 2017. More details had yet to be ascertained. I was quite shocked why there was a two-year gap as it was projected by MTRCL at the 21 November 2013 meeting that the XRL would still be opened in 2015. The then assessment was that even with delays in cross-boundary tunneling works, the works would still be completed by October 2015, and that with six to nine months' testing and trial runs, the XRL should be commissioned by mid-2016. I immediately contacted my staff after my telephone conversation with the former CEO of MTRCL. DS(T)1 told me that she just received the news from the Projects Director of MTRCL who phoned DHy and DS(T)1 in the afternoon of the same day. I asked DS(T)1 to get in touch with DHy to obtain more information.

59. In the morning on 13 April 2014, the Chairman of MTRCL called me about the delay. Both the Chairman and I agreed that the Government and MTRCL should inform the public as soon as possible. We also agreed to hold an urgent meeting on 14 April 2014 when I would be back to office.

60. On 14 April 2014, an urgent meeting was held at THB attended by, amongst others, the Chairman, the former CEO and the former Projects Director of MTRCL to review the latest situation. I asked MTRCL to provide a full assessment report on the construction progress

including a full and proper account for the substantial delay. I also tasked DHy to provide me with an independent review and assessment of the construction progress of the XRL, including an assessment on the reasons for the substantial delay. (The review report by HyD is attached at Annex C of the Administration's paper to the RSC for its meeting on 5 May 2014 (LC Paper No. CB(1)1328/13-14(03)).) At the meeting, it was agreed that THB (myself) and MTRCL should inform the public on the following day, and make a report to the RSC at the meeting originally scheduled for 2 May 2014 to explain the situation.

61. On 15 April 2014, I informed the public at a media stand-up that I had received verbal notification from MTRCL that the completion of the XRL would be delayed. I had asked MTRCL to submit a full assessment report. At the same time, I had tasked DHy to conduct an independent review and assessment of the construction progress. MTRCL subsequently held a press conference and stated that the completion date of the XRL would be pushed back to 2016 for operation in 2017.

62. Now, from MTRCL's own submission to RSC in May 2014 and from its Independent Board Committee ("IBC") Report of October 2014 that:

- (i) as early as February 2013 MTRCL's Projects Director was citing "critical" delays with WKT construction;
- (ii) despite delays, MTRCL had consistently adopted the stance that it was confident that the project could be delivered on time and on budget;
- (iii) PSC chaired by DHy was not being given by MTRCL an accurate picture of the prognosis for the project as a whole so that it was unable to make timely decision on the critical delay of the whole XRL project;
- (iv) by December 2013, MTRCL Management must have known clearly that WKT could not open, even on a partial basis, until May 2016, but it has failed to inform Government; and

- (v) from December 2013 onwards, MTRCL Management had been contemplating various scenarios of XRL delay in commissioning target year, and the cost implications involved, but had all along failed to keep Government informed. This is not the kind of trusting, honest and timely communication expected of MTRCL under the Entrustment Agreement.

V. Recommendations on enhancement of the supervision of the construction of new railway projects and strengthening the governance of the Corporation in delivering railway projects in the future

(a) Enhancement measures in supervising the construction of XRL and future new railway projects

Initial responses to Independent Expert Panel's ("IEP") recommendations and observations

63. In the light of the delay of the construction of the XRL, the Chief Executive appointed an IEP in May 2014. The report of the IEP ("the Report") was released on 30 January 2015. The Report reviewed the implementation of the XRL and put forward recommendations (at **Annex 3**) aiming to improve the systems, processes and practices for implementing and monitoring the XRL as well as future new railway projects.

64. With the release of the Report, HyD has made initial responses to the recommendations and observations of the IEP, which are set out in DHy's statement to the Select Committee in February 2015 (SC(4)(XRL) Paper No.: W1(C)). The Government attaches great importance to the observations and recommendations in the Report, and will actively pursue the Report's recommendations and explore the implementation arrangements with MTRCL and other relevant parties, particularly in relation to monitoring and reporting of construction works. Besides, necessary changes in the monitoring mechanism and institutional arrangements, in connection with the mode of agreement to be adopted in the implementation of new railway projects in future, will also be studied in detail. This will include a review as to the appropriateness of, the concession approach for implementing future new railway projects under the Railway Development Strategy 2014, taking into account the experience of the implementation of the XRL project and the Report's recommendations.

HyD's enhancement measures

65. As stated in DHy's statement to the Select Committee in February 2015 (SC(4)(XRL) Paper No.: W1(C)), HyD has also carried out other enhancement measures; these are summarised at **Annex 4**.

Enhanced Reporting by the Government to LegCo

66. The Government has strengthened its reporting to the RSC on the latest progress of the XRL project. Since the fourth quarter of 2014, we are providing reports to the RSC quarterly, instead of half-yearly, on the progress and financial situation of the XRL. We also attend meetings of the RSC to report progress of XRL, including the RSC meetings in November 2014, January 2015, March 2015 and May 2015. We have provided the RSC with the latest XRL report in November 2015 (LC Paper No.: CB(4)280/15-16(01)).

(b) Relationship between the Government and MTRCL

67. The Government will continue to proactively carry out its duty as the majority shareholder of MTRCL and enhance monitoring of MTRCL. The Government has required MTRCL to strengthen its management to ensure high-quality services and proper delivery of new railways, as well as early identification of risks faced by MTRCL in different aspects and to introduce the necessary reform so as to maintain an overall high standard of corporate governance. MTRCL established an IBC to review the revised schedule for the commissioning of the XRL. The IBC has published two reports. The reports recommended enhancements to MTRCL's system and processes. For example, it is recommended that the MTRCL Board should establish a Capital Works Committee to oversee any project involving design and/or construction with a capital value of a certain material size, etc. Among other things, MTRCL announced on 21 August 2014 the establishment of two new committees under the Board of MTRCL, namely the Capital Works Committee and Risk Committee. These two new committees will facilitate more in-depth and focused monitoring of construction progress and overall risk management of MTRCL (including railway service, maintenance and repair). Subsequently, MTRCL announced on 14 October 2014 the memberships of the two aforementioned committees. On the same day, MTRCL also announced the appointment of four new

Directors, including one Government Director and three independent non-executive Directors. It is expected that this would strengthen MTRCL's corporate governance and operation.

68. The obligations of MTRCL with respect to the XRL project is summarised at paragraphs 4, 12 to 15 above. The Government will assess MTRCL's obligations regarding XRL project implementation, works delay and project cost overrun, and will reserve all the rights to pursue the warranties and obligations from MTRCL.

Professor Anthony BL CHEUNG
Secretary for Transport and Housing
December 2015

List of Abbreviations

XRL	Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link
CEO	Chief Executive Officer
CTC	Cost to Complete
DHy	Director of Highways
DRM	Delay Recovery Measures
E&M	electrical and mechanical
EA1	Entrustment Agreement for Design and Site Investigation in relation to the Express Rail Link
EA2	Entrustment Agreement for Construction and Commissioning of the Express Rail Link
ExCo	Executive Council
DS(T)1	Deputy Secretary for Transport and Housing (Transport) 1
FC	Legislative Council Finance Committee
HoD	Head of Department
HyD	Highways Department
IBC	Independent Board Committee
LegCo	Legislative Council
M&V	monitoring and verification
MTRCL	MTR Corporation Limited
PSC	Project Supervision Committee
PS(T)	Permanent Secretary for Transport and Housing (Transport)
PTC	Programme to Complete
PWSC	Legislative Council Finance Committee Public Works Subcommittee
RSC	Legislative Council Panel on Transport Subcommittee on Matters Relating to Railways
STH	Secretary for Transport and Housing
TBM	tunnel boring machine
T&C	testing and commissioning
THB	Transport and Housing Bureau
WKT	West Kowloon Terminus

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15 May 2014

Secretary General
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms. Sophie LAU)

By Fax: 2978 7569

Dear Ms. LAU,

**Request for Administration's Submission of
Notes of the Meeting held on 21 November 2013 between
Representatives of the Administration and MTR Corporation Limited to
Subcommittee on Matters Relating to Railways**

I refer to the letter dated 7 May 2014 from the Hon. James TO to the Chairman of the Subcommittee on Matters Relating to Railways (RSC) that you forwarded to us on 8 May 2014. I have been authorised to reply as follows.

The key points of discussion at the meeting held on 21 November 2013 between the Transport and Housing Bureau (THB) and the representatives of the MTR Corporation Limited (MTRCL) are detailed at the **Annex**. They are prepared by the Government as a record of the meeting. Comments from MTRCL have not been sought.

The meeting deliberated at length the possibility of the **completion and commissioning** of the XRL in 2015. The crux lay in the assessment on the progress of cross-boundary tunneling works under Contract 826 instead of the works of the West Kowloon Terminus (WKT).

In August/September 2013, MTRCL raised the possibility of “partial opening” scenario with the Highways Department (HyD). Under the “partial opening” scenario, six out of the 15 tracks and the essential railway facilities at the WKT should be ready to provide passenger service in order to meet the passenger demand at the initial commissioning of the XRL. As MTRCL did not provide adequate information at that time supporting the feasibility of the “partial opening” scenario, HyD, without indicating agreement to the proposal, requested MTRCL to provide further information such that a report could be made to THB. At the meeting on 21 November, the Government queried that even if the “partial opening” scenario for the WKT were adopted, the XRL could not commence operation if the tunneling works of Contract 826 could not be completed in time. MTRCL explained that based on their successful experience in delivering several rail lines in the past, they were confident that they could catch up with the delay.

The Government had two prime considerations on that day. First, while the commissioning of the XRL by 2015 was an important policy and planning objective which should be achieved as far as possible, we had to face squarely any delay caused by insurmountable technical difficulties that the project had come across. The point was that we had to alert the Legislative Council (LegCo) and the public as early as possible. Second, at the meeting, the Chief Executive Officer and the Projects Director of MTRCL both assured the Government many times, with much confidence, that the XRL could be commissioned by 2015, and did not lose their confidence despite the Government’s repeated queries and challenges. In fact, based on the information available, the Director of Highways and his colleague could not rule out, at the meeting, the possibility of the commissioning of the XRL by 2015. At the meeting, MTRCL also made it clear that should it be made public at that stage that the target of 2015 might be changed, MTRCL would lose its leverage to urge its contractors to push forth the project, and the commissioning of the XRL by 2015 would then be really impossible. At that time, the Government considered the MTRCL’s view reasonable and we should strive to avoid a self-fulfilling prophecy.

The reason for not mentioning the “partial opening” arrangement of the WKT at the LegCo RSC meeting held on the following day (22 November) was that the Government had not agreed to such an arrangement. We opined that MTRCL had not provided adequate information supporting the feasibility of the scenario. More importantly, our assessment at that time was that the crux lay in the assessment on the

progress of cross-tunnelling works under Contract 826. If the tunneling works could not be completed, the timely completion of WKT works would not be of much relevance. Our focus was thus on the completion date of the tunneling works. The fact was, on that day the Government could not completely rule out the possibility of the construction works to be completed by 2015.

Therefore, at the LegCo RSC meeting on 22 November, the Government stated that “based on the latest assessment of MTRCL, the major works of the XRL could be completed within 2015. Thereafter, testing and trial runs would be conducted. Normally, this would take six to nine months. The railway might only come into operation after the relevant authorities have approved the test results so as to ensure the safety and reliability of the railway service”. The statement did reflect the respective views of the THB (including HyD) and MTRCL on the progress of the works. In particular, from the perspective of THB, we would like to convey the message that while the major works could be completed within 2015, the date of commissioning would have to be confirmed. The statement also took account of the consideration on urging the contractors to push forth the project hoping to give the MTRCL a chance to catch up with the delay. We also made it clear to the MTRCL that we had to report to the public as soon as possible if it became clear in the coming months that the progress of delay recovery was not satisfactory. Following the meeting, HyD has been asking MTRCL to submit details on the progress of the delay recovery measures to ascertain whether the target commissioning date should be revised.

Yours sincerely,



(Miss Winnie Wong)

for Secretary for Transport and Housing

Encl.

c.c. Director of Highways

Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL)

Meeting on 21 November 2013

Present

Government representatives

Mr. Joseph Lai, Permanent Secretary for Transport and Housing
(Transport)

Mr. S M Yau, Under Secretary for Transport and Housing,

Mr. K K Lau, Director of Highways

Mr. F Chan, Director of Electrical and Mechanical Services,

Mr. Henry Chan, Principal Government Engineer/Railway Development,
Highways Department

Ms. Rebecca Pun, Deputy Secretary for Transport and Housing
(Transport)¹

Ms. Winnie Wong, Principal Assistant Secretary for Transport and
Housing (Transport)³

MTRCL's representatives

Mr. Jay Walder, Chief Executive Officer

Mr. T C Chew, Projects Director

Mr. Jacob Kam, Operations Director

Mr. Antonio Choi, General Manager (XRL)

Ms. Maggie So, Deputy General Manager – Projects & Property
Communications

1. The Government stated that the Highways Department (HyD) and MTRCL briefed the Transport and Housing Bureau (THB) on 8 November 2013 on the latest position of the XRL project, including the construction progress of the West Kowloon Terminus (WKT) and the tunneling works under Contract 826. At that meeting, MTRCL expressed that WKT could be ready for “partial opening” by December 2015. Under the “partial opening” scenario, six out of the 15 tracks and the essential railway facilities at the WKT should be ready to provide passenger service. As for the tunneling works under Contract 826, they could only be completed by October 2015 and the testing of XRL (which would normally take three months) could only commence from October 2015. As it would take at least another three months to conduct trial runs, the target opening date of end-2015 might be affected. A similar briefing was conducted for the Secretary for Transport and Housing (STH) on 20 November. Based on the assessment of works progress, THB contemplated making it public at the Legislative Council (LegCo) Subcommittee on Matters Relating to Railways (RSC) meeting scheduled for 22 November 2013 that the XRL might only commence operation after 2015.

2. In the morning of that day (21 November), the Chief Executive Officer (CEO) of MTRCL called STH saying that the XRL works could be completed in 2015 and service could commence by end-2015. The CEO did not agree to inform the RSC on

22 November that the completion date of 2015 would be delayed. STH responded that the Projects Director of MTRCL had informed the Government of the delay. The CEO said that he would further check with the Projects Director. He subsequently called STH again saying that he had confirmed with the Projects Director and stressing that the XRL could come into service by end-2015. STH did not accept this conclusion and directed the Permanent Secretary for Transport and Housing (Transport) (PST) to hold an urgent meeting with the CEO of MTRCL to clarify the situation.

3. The Government said that the meeting aimed at obtaining the latest assessment from MTRCL on the completion and commissioning date of the XRL. Should it become apparent that the XRL could not be completed and commissioned by 2015, we had a duty to inform the public as early as possible.
4. The MTRCL expressed that the 2015 commissioning date was still achievable and all contractors were working towards this target.
5. The Government said that they were confident that the MTRCL could complete the works. But the Government expected the LegCo RSC would ask whether the XRL could be completed and commissioned in 2015. The Government said that the MTRCL had been informing the Government that even if the WKT could be partially opened by end-2015, the severe delay in the cross-boundary tunneling works under Contract 826 was their main concern. If the

testing and trial runs of XRL could only commence in October 2015, the Government queried how MTRCL could complete all necessary procedures within three months. If there was indeed delay in the XRL, we could not avoid the question and we had to inform the public as soon as possible.

6. The Government said that we could inform the public that the works were very complicated. Taking into account the need to conduct testing and trial runs, we anticipated that there would be delay in the XRL. While we hoped to complete the XRL by 2015, a more realistic assessment for the commissioning date would be within 2016 even though we could not preclude, at that stage, the possibility that the XRL might be commissioned in 2015. The Government asked if the MTRCL was still confident that they could complete the XRL works within 2015.
7. MTRCL said that two dates were crucial, i.e. the completion date and the commissioning date. They said that it was still possible for the XRL to be completed and commissioned in 2015.
8. The Government said that if the XRL works could be completed in the first half of 2015, then we could say that the XRL could be commissioned in 2015.
9. MTRCL said that they had indeed been saying that the XRL works could be completed by 2015. At the briefing for THB on 8 November 2013, they said that the opening date of 2015 might be

affected. Their assessment then had assumed that the contractors had not yet fully recovered the delay. But MTRCL said that they were trying hard to identify solutions to meet the target commissioning date of 2015. They said that they believed, at the very least, single track operation would be possible in 2015 (single track operation was to use a single track for the northbound and southbound trains, running alternatively between WKT and the boundary of the Mainland). As the train schedule at the initial opening phase was not frequent, such an arrangement might be feasible. In addition, they explained that the information presented earlier was meant for the relevant Mainland units so as to urge them to expedite the tunneling works on the Mainland side.

10. The Government said that both sides were trying to tackle the situation in good faith. Given what was happening on the ground, we should inform the public immediately that the XRL might not commence operation in 2015 even though we could not completely discount this possibility.
11. MTRCL said that they would have a better sense of the subsequent works after the first cross-boundary tunneling boring machine had crossed to the Hong Kong side. Once the works for one of the tracks were completed, they could start trial runs using that track. MTRCL said that all projects encountered challenges and such challenges could be overcome. They did not see how XRL was fundamentally different from other projects in this aspect. They

failed to see any benefit of changing the 2015 target at that time. Based on their successful experience in delivering several rail lines in the past and Hong Kong's "can do" spirit, they were confident that they could catch up with the delay. MTRCL said that the project had encountered delays earlier and such delays could be recovered.

12. The Government queried that single track operation did not comply with government's requirement. They expressed clearly that this was unacceptable. If the 2015 target was only achievable by using the single track operation, we had to inform the public.
13. MTRCL said that it remained their target to have dual track dual direction operation and that single track operation was only a fall-back in the worst case scenario. They would need another six months before they could confirm if they could catch up with the delay.
14. The Government asked MTRCL if they were confident that the second cross-boundary tunnel boring machine could cross to the Hong Kong side by early 2015 and that the XRL works could be completed within 2015.
15. MTRCL said that they did not under-estimate the challenges in the project and they would keep urging the contractors to expedite works. They considered it premature to inform the LegCo RSC on the following day (22 November) that the target commissioning date of XRL would be changed.

16. The Government said that the MTRCL had submitted to the Government quarterly reports on the progress of the cross-boundary tunneling works for the past year and the reports had indicated continual delay in the works. According to the latest report, the tunneling works could only be completed in October 2015. The Government asked why MTRCL would still be confident that they could recover the delay for the entire project.
17. MTRCL said that it was imperative to adhere to the 2015 target so that they could continue to “exert pressure” on the contractors. They said that if we were to announce a change of commissioning date to 2016, it might become a “self-fulfilling prophecy”. The best way for the project to achieve its original target was to keep urging the contractors to move forward.
18. The Government asked MTRCL what target they had given to the contractors. MTRCL said that they had been telling the contractors that the XRL should start passenger service within 2015.
19. The Government noted that there was delay in the cross-boundary tunneling works, and such delay would eat into the time for the tunneling work on Hong Kong side, thus posing challenges to MTRCL. MTRCL said that once the cross-boundary tunneling works had completed and the tunnel boring machine had crossed to and started works on the Hong Kong side, they would be in a better position to assess the situation and catch up with the delay as soon as

possible. MTRCL requested that Government give them six more months before making a judgment on whether XRL could be completed by 2015.

20. The Government reminded MTRCL not to over-state its ability to overcome all the challenges then. MTRCL said that while there was delay in the cross-boundary tunneling works, WKT could start operation by end-2015.
21. MTRCL expressed the view that it was too early to say at this stage (i.e. November 2013) that the target date could not be met as there were two more years to go. Doing so would be rare for a project of this scale. Giving up the target would relieve the pressure on the contractors to complete the works on time and would not help the Projects Team in delivering the project.
22. The Government asked the MTRCL what delay recovery measures they intended to deploy and if MTRCL continued to use 2015 as the completion and commissioning target. With the prime objective of ensuring rail safety, there had to be a period of testing and trial runs after the completion of works before the XRL could come into service. MTRCL said that they would make the best endeavor to achieve the 2015 commissioning target.
23. The Government asked MTRCL, based on the assessment then, whether we could state that the XRL works could be completed

within 2015. MTRCL said that we could stress that the MTRCL would make their best endeavor to achieve the 2015 target. MTRCL also said that testing on the Hong Kong side could be conducted in phases. The Government said that cross-boundary testing could only start upon the completion of works for the entire section.

24. The Government enquired again if MTRCL remained confident that the XRL could be commissioned by end-2015. MTRCL said that there were still two years before 2015 and they remained confident that they could recover the delay. The Government asked MTRCL if that meant the information they had submitted earlier (i.e. 8 November) was overly pessimistic. MTRCL said that according to his understanding, the report was intended to be used for requesting the relevant Mainland units to recover delay.
25. MTRCL also said that they had all along kept HyD abreast of the challenges they faced. The Government said that they were aware that the project had encountered delay in different contracts and MTRCL had taken measures to recover delay. At the same time, the Government had reminded MTRCL before that any delay recovery measures should not cause any cost-overrun for the XRL project. The Government reminded MTRCL that they should inform the Government immediately if they found that the XRL works could not be completed on time.

26. In the end, both sides at the meeting agreed to inform the LegCo RSC that the main works of XRL could be completed within 2015. There would be testing and trial runs (which would normally take six to nine-months) upon the completion of works. Separately, both sides agreed that if pressed on the month in which the works would be completed, it should be pointed out that the concrete timing was uncertain though the best efforts would be made to complete the works by 2015. If asked on whether the XRL could only come into service in 2016, we should undertake to report to the RSC in six months' time when we had a better assessment.

- End -

Recommendations put forward by the IEP

- (1) Improve institutional arrangements for concession agreements;
- (2) Adopt internationally recognised best practices for complex projects;
- (3) Enhance progress reporting;
- (4) Suggestions for immediate application to the XRL Hong Kong Section project, including: MTRCL to report against an integrated master programme, the Government and the MTRCL to provide enhanced access for the Monitoring and Verification Consultant to perform its duties, etc; and
- (5) the Government to introduce external scrutiny of its portfolio of infrastructure projects.

Enhancement measures by HyD

Enhanced involvement of M&V consultant

HyD has asked the M&V consultant to assist in reviewing MTRCL's proposed revised Programme to Complete ("PTC") (end-2017) and Cost to Complete ("CTC"). HyD has also extended certain service of the M&V consultant to cover the lengthened construction period. Moreover, with effect from February 2015, the M&V consultant has been invited to join the PSC meetings for more direct communication with MTRCL.

Strengthening of HyD's XRL team

2. An additional Senior Engineer has been deployed to the XRL team in HyD since August 2014 to strengthen the support for M&V work. A further addition of one Senior Engineer has been deployed to the XRL team with effect from April 2015. The additional manpower would be tasked to strengthen monitoring of the programming and cost of the XRL project.

Requested MTRCL to enhance reporting

3. In response to HyD's request, MTRCL has enhanced its progress reporting to enable readers of different background to have a clear appreciation of current and forecast project status, e.g. reporting on progress status using a "traffic light" system and a Schedule Performance Index, etc.

Enhanced reporting to THB

4. HyD now provides progress report on major projects (including the XRL project) to THB on a monthly basis for discussion with STH at a dedicated meeting in addition to the regular HoD meeting. The reports give quantified progress in an easy-to-understand "traffic light" system to facilitate understanding of current project status. The reports also cover

project cost estimates, risks and mitigation.