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**Transport and
Housing Bureau
Government Secretariat**

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本局檔號 Our Ref. THB(T)1/16/581/99

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傳真 Fax No : 2136 8016

17 March 2015

Ms Sophie Lau
Clerk to Select Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

By Fax : 2978 7569

Dear Ms Lau,

**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")**

Request for Information

I refer to your letter of 3 March 2015 to the Transport and Housing Bureau (THB) requesting us to provide information listed as items (a) and (c) in the Appendix of your letter of 23 January 2015. Item (a) refers to the Entrustment Agreements between the Government and the MTR Corporation Limited (MTRCL) ("Entrustment Agreements"). Item (c) refers to reports submitted to THB by the Highways Department and by MTRCL in respect of the progress of the construction of the Hong Kong section of the

Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) since January 2010 up to April 2014. As explained in our letter of 18 February 2015, these include reports submitted by MTRCL to the Project Supervision Committee (chaired by the Director of Highways and attended by a THB representative) (“PSC reports”) and briefing notes submitted by the Highways Department for the Head of Department meetings with the Secretary for Transport and Housing (“HoD briefing notes”).

It is noted from your letter of 3 March 2015 that the Select Committee has considered our letter of 18 February 2015 at its meeting on 26 February 2015. We are informed that whilst the Select Committee appreciates our concern on confidentiality and commercially sensitive information, the Select Committee considers it inappropriate to enter into an agreement with THB as condition precedent for the provision of documents to it. We also note that the Select Committee will not release to the media or the public any document provided by THB, nor will it place such document on the website of the Legislative Council before it comes to a decision on its confidentiality under the Practice and Procedure of the Select Committee (“SC P&P”); and THB will be given an opportunity to address it if we so wish.

First and foremost, we wish to reiterate that the Government will strive to facilitate the work of the Select Committee as far as possible. Hence, we are prepared to provide the requested information to the Select Committee with minimal redactions. However, for the reasons as set out in our letter of 18 February 2015 which we shall further elaborate below, we can only provide the information if the Select Committee agrees to keep the information confidential for use at closed hearings.

In considering whether the requested information, which contains commercially sensitive/confidential information, is to be released to the Select Committee, it is incumbent upon the Government to strike a balance between facilitating the work of the Select Committee and protecting public interests, including preserving the Government’s rights in any future claims. The Entrustment Agreements are privy to

the two contracting parties, i.e. the Government and MTRCL, and their contents involve sensitive commercial information. In fact, the Government has already provided a summary of the obligations under the Entrustment Agreements in our paper to the LegCo Subcommittee on Matters Relating to Railways (see paragraphs 59-63 of LC Paper No. CB(1)1328/13-14(03)). Disclosing the Entrustment Agreements to the public, and/or the discussions of specific terms of which in public hearings of the Select Committee, may hinder the Government's effective management of the Entrustment Agreements which are ongoing contracts, prejudicing the Government's position in negotiating/settlement of present and/or future claims, and may hamper the Government's position in negotiating contracts of similar nature in future projects thus affecting the Government's competitive or financial position, hence ultimately harming the public interests. Therefore, it is necessary for the Government to keep the Entrustment Agreements confidential. We have consulted MTRCL which also concurs with our view that the Entrustment Agreements may only be provided to the Select Committee if the Select Committee agrees to keep them confidential for use at closed hearings.

Subject to the Select Committee's agreement to keep the Entrustment Agreements as confidential documents for use at closed hearings, we will arrange with the Clerk to the Select Committee on how the documents will be produced.

As regards item (c) in the Appendix of your letter of 23 January 2015, the Select Committee would appreciate that the PSC reports contain details on how each contract is administered under the XRL project. Such details have to be kept confidential, lest this might affect the handling of existing and any future claims from or on contractors by the Government and MTRCL. Hence our request for these details to be kept confidential for use at closed hearings. The PSC reports are already deposited in MTRCL's Data Room and we are prepared to provide redacted copies (same as those in the Data Room) to the Select Committee if it agrees to keep the information confidential for use at closed hearings.

Regarding the HoD briefing notes, the Select Committee would appreciate that these are confidential internal records of the Government which include discussions in relation to the assessment and investigation of claims. The disclosure thereof may prejudice the Government's position in the negotiation/settlement of claims. Having struck a balance amongst different public interests, including facilitating the work of the Select Committee and preserving the Government's rights in future claims, we have offered (in our letter of 18 February 2015) to provide a set of key points of these notes to the Select Committee subject to its agreement to keep the information in confidence for reference by the Select Committee members at closed hearings.

We would like to assure members of the Select Committee that the Government is committed to facilitating the work of the Select Committee. However, as public interests are at stake, it is necessary for us to safeguard the confidentiality of the information they request, as explained above. We look forward to receiving the Select Committee's positive reply. Subject to the Select Committee's confirmation, we will strive to provide the Select Committee with the documents as soon as we can.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Winnie Wong', written in a cursive style.

(Miss Winnie Wong)

for Secretary for Transport & Housing

c.c. Director of Highways