

Part I Establishment of the Select Committee and its Work

Chapter 1 Introduction

Background

1.1 The Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") is an express rail system with a total length of about 140 kilometres ("km") linking Hong Kong with Guangzhou via Futian and Longhua in Shenzhen and Humen in Dongguan. It will form part of the National High-speed Railway Network. The Hong Kong section ("HKS") of XRL project ("the Project") is a 26-km long underground railway system running from a new terminus in West Kowloon, going northbound passing through Tsim Sha Tsui, Yau Ma Tei, Mong Kok, Sham Shui Po, Kwai Chung, Tsuen Wan, Yuen Long to the boundary area south of Huanggang, where it will connect to the Mainland section of XRL.

1.2 In April 2008, the Chief Executive in Council decided that the Central Alignment Scheme¹ should be adopted for HKS of XRL; that the MTR Corporation Limited ("the Corporation") should proceed with the planning and design of HKS of XRL on the understanding that it would be invited to operate HKS of XRL under the concession approach; and that further negotiations should be carried out with the Corporation on the implementation of HKS of XRL. In July 2008, the Legislative Council ("LegCo" or "Council") Finance Committee ("FC") approved a funding of \$2.7826 billion for the design and site investigation of the Project. On 24 November 2008, the Government of the Hong Kong Special Administrative Region ("the Government") and the Corporation entered into the Entrustment Agreement for Design and Site Investigation in relation to the Express Rail Link ("EA1"). The Chief Executive in Council further decided in October 2009 that the Corporation should

¹ 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. See Annex A of the Government's paper on HKS of XRL (Legislative Council Brief) (File Ref.: THB(T)CR 1/16/581/99) for the meeting of the Subcommittee on Matters Relating to Railways on 2 May 2008.

proceed with the construction, testing and commissioning of HKS of XRL on the understanding that it would be invited to operate the railway system under the concession approach.

1.3 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 HKS of XRL, amounting to a total of \$66.8175 billion. Of this amount, a sum of \$65 billion was allocated by the Government to the Corporation to carry out the construction and commissioning of the Project. The remaining \$1.8175 billion was retained by the Government for project monitoring, Government facilities and other works associated with the Project that are not within the responsibility of the Corporation. On 26 January 2010, the Government and the Corporation entered into the Entrustment Agreement for Construction and Commissioning of the Express Rail Link ("EA2"). According to EA2, the Corporation should 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 minimize any delay or other effect which any modification might have on the Entrustment Programme. EA2 indicated that the Project should have completed testing and trial running, and be ready for operation, in August 2015.

1.4 Construction work of the Project commenced at the end of January 2010 with a target completion date set for 4 August 2015. On 15 April 2014, Professor Anthony CHEUNG Bing-leung, Secretary for Transport and Housing, informed the public that the Government had recently received verbal notification from the Corporation that the construction of HKS of XRL could not be completed by 2015.

1.5 Professor Anthony CHEUNG Bing-leung indicated in his statement² (**Appendix 1**) that *"... Late last year [i.e. 2013] on November 22, when the Government made its regular report on the express rail project to the railways subcommittee (Subcommittee on Matters Relating to Railways) of the LegCo (Legislative Council), based on the information supplied by the Corporation, we informed the LegCo that our objective remained to have the construction works completed in*

² Source: The Government's press release on "Transcript of remarks by Secretary for Transport and Housing" issued on 15 April 2014.

2015. Following which there will be a period of six to nine months for testing and trial runs. And after that, of course, the rail service will be commissioned. However, over the last weekend, I was informed by the Chairman and the Chief Executive Officer of the MTR Corporation that based on the latest assessment of the progress of the construction works, the project will be subject to some delay. And it will not be possible for the works to be completed in 2015. I have to say I was totally caught by surprise by such information, and obviously I felt very disappointed and deeply concerned about the delay."

1.6 Professor Anthony CHEUNG Bing-leung immediately requested the Corporation to submit a full assessment report, provide a full account and explain the situation to the public as soon as possible.

1.7 On the same day, i.e. 15 April 2014, the Corporation announced³ (**Appendix 2**) that the time of completion of the Project would be postponed to 2016 and HKS of XRL would be ready for operation in 2017. The reasons provided by the Corporation included a tunnel boring machine being severely damaged by floodwater, the extremely difficult ground conditions at the West Kowloon Terminus ("WKT") site and the complex geology at the cross-boundary section of the tunnels under the protected wetland areas.

1.8 The announcements referred to in paragraphs 1.5 and 1.7 above caused wide public concern. The Corporation set up an Independent Board Committee ("IBC") on 29 April 2014 to comprehensively review the managerial approach of the Project. The Government also formed an Independent Expert Panel ("IEP") on 16 May 2014 to review matters relating to the delay of the construction of HKS of XRL ("the project delay"). The membership and terms of reference of IBC and IEP are set out in **Appendix 3** for reference.

1.9 Meanwhile at the LegCo House Committee ("HC") meeting on 2 May 2014, some Members proposed to seek Council's authorization in the name of HC for the appointment of a select committee to inquire into the project delay and related matters; and that in performance of its duties the select committee be authorized to exercise powers under section 9(1)

³ Source: The MTR Corporation Limited's press release on "Revised Programme for Hong Kong Section of Express Rail Link Project" issued on 15 April 2014.

of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) of the Laws of Hong Kong. After discussion, HC did not endorse the proposal. On 9 May 2014, some Members requested HC to reopen discussion on similar proposals. After discussion, the request was not supported.

1.10 At the LegCo Subcommittee on Matters Relating to Railways ("Railways Subcommittee") meeting on 19 May 2014, Hon WU Chi-wai moved a motion to seek the support of Railways Subcommittee to appoint a select committee to inquire into the causes for the delay in the construction of HKS of XRL and that the select committee be authorized to exercise powers under section 9(1) of Cap. 382. Hon Gary FAN Kwok-wai also moved a motion that Railways Subcommittee should seek HC's support for appointing a select committee to inquire into the Corporation in respect of the delay in the construction of HKS of XRL and the select committee be authorized to exercise powers under section 9(1) of Cap. 382. Both motions were defeated.

1.11 At the Council meeting on 11 June 2014, Hon Gary FAN Kwok-wai moved a motion to appoint a select committee to inquire into whether the Corporation had covered up the progress and causes of delay in the construction of HKS of XRL, and whether there were problems with the Government and the Corporation in supervising and coordinating the construction of HKS of XRL; and that in the performance of its duties the select committee be authorized under section 9(2) of Cap. 382 to exercise the powers conferred by section 9(1). The motion was defeated.

Establishment of the Select Committee

1.12 At the Council meeting on 25 June 2014, Hon WU Chi-wai and Hon Charles Peter MOK jointly presented a petition in connection with the project delay (**Appendix 4**). The request of Hon Charles Peter MOK for the petition to be referred to a select committee was supported by 21 Members who rose in their places. The petition then stood referred to a select committee under Rule 20(6) of the Rules of Procedure ("RoP") of LegCo.

1.13 At the HC meeting on 4 July 2014, Members agreed to appoint a subcommittee to undertake preparatory works for the select committee to

be formed. The subcommittee submitted a report to HC on 7 November 2014. HC noted the subcommittee's recommendations on the terms of reference and the name of the select committee, and endorsed the subcommittee's recommendations on the membership size of the select committee and the procedure for nomination and election of Members for appointment to the select committee.

1.14 On 14 November 2014, HC recommended 13 Members for appointment to the 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 ("the Select Committee"). The 13 Members then held a closed meeting and elected amongst themselves Hon Martin LIAO Cheung-kong and Hon Tony TSE Wai-chuen respectively as Chairman and Deputy Chairman of the Select Committee. In accordance with Rule 78(2) of RoP, on 17 November 2014, the President of LegCo appointed the Chairman, Deputy Chairman and members of the Select Committee as recommended by HC. The Select Committee held its first meeting on 9 December 2014.

Part I Establishment of the Select Committee and its Work

Chapter 2 Matters relating to the Select Committee

Membership of the Select Committee

2.1 On the recommendation of HC, the President of LegCo appointed on 17 November 2014 the Chairman, Deputy Chairman and members of the Select Committee in accordance with Rule 78(2) of RoP of LegCo. The 13 members of the Select Committee are as follows:

Hon Martin LIAO Cheung-kong, SBS, JP (Chairman)
Hon Tony TSE Wai-chuen, BBS (Deputy Chairman)
Hon LEE Cheuk-yan
Hon CHAN Kam-lam, SBS, JP
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH
Hon Gary FAN Kwok-wai
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, JP
Hon TANG Ka-piu, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Terms of reference, areas of study and work plan of the Select Committee

2.2 The Select Committee confirmed its terms of reference and endorsed its areas of inquiry and work plan at its open meeting on 9 December 2014.

2.3 The terms of reference of the Select Committee are as follows:

The terms of reference of the Select Committee, which reflect the substance of the petition jointly presented by Hon WU Chi-wai and Hon Charles Peter MOK at the Council meeting on

25 June 2014 and referred to the Select Committee under Rule 20(6) of the Rules of Procedure, are as follows:-

To inquire into the background of and reasons for the incident of the delay of the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (the project delay), as announced by the Government and MTR Corporation Limited (the Corporation) in April 2014, and related issues, including the performance and accountability of the Government and the Corporation relating to the project delay and whether they have deliberately covered up the project delay; and to make recommendations for the future on how the Government can enhance the supervision of the construction of new railway projects and strengthen the governance of the Corporation in delivering railway projects and on related issues.

2.4 Based on its terms of reference, the Select Committee decided to inquire into the following major areas in respect of the project delay:

- I. Background of and reasons for the project delay, as announced by the Government and the Corporation in April 2014:
 - (a) scope and implementation schedule of the construction of the Project;
 - (b) implementation progress of the Project as announced in April 2014;
 - (c) reasons for the project delay;
 - (d) monitoring mechanism on the Project, in particular the roles of the Government, the Corporation and the monitoring and verification consultant ("M&V consultant") in the Project; and
 - (e) delay recovery measures ("DRMs") adopted by the Corporation to catch up with the implementation schedule.

II. Performance and accountability of the Government and the Corporation relating to the project delay:

- (a) matters relating to the Entrustment Agreement between the Government and the Corporation;
- (b) major details of the concession approach which was adopted for implementation of the Project, including the responsibilities and liabilities of the Government and the Corporation under the Entrustment Agreement;
- (c) performance of the Government, the Corporation and the parties concerned, in respect of the supervision of the implementation of the Project; and the interaction of these parties; and
- (d) accountability of the Government and the Corporation in respect of the project delay.

III. Whether the Government and the Corporation have deliberately covered up the project delay:

- (a) communication/reporting mechanism within the Corporation with regard to the progress of the Project;
- (b) communication/reporting mechanism between the Corporation and the Government in respect of the progress of the Project;
- (c) communication/reporting mechanism between the Corporation and the Government in respect of the announcement of the project delay; and
- (d) timeliness and comprehensiveness of the information provided by the Government and the Corporation to Railways Subcommittee under the Panel on Transport of LegCo on the project delay.

IV. Recommendations on how the Government can enhance the supervision of construction of new railway projects and strengthen the governance of the Corporation in delivering railway projects in future:

- (a) based on the findings of the areas of study set out in parts I to III above, to make recommendations on how the Government can enhance the supervision of construction of new railway projects;
- (b) based on the findings of the areas of study set out in parts I to III above, to make recommendations on how the Government can strengthen the governance of the Corporation in railway projects in future; and
- (c) recommendations on any related matters.

2.5 The Select Committee decided to conduct its inquiry in three stages which are set out below:

Stage I – Preparatory work

2.6 The main work at this stage was to draw up and determine the practice and procedure of the Select Committee; to work out and decide on the areas of study; to decide on the information to be obtained from the relevant parties and analyze the relevant information; to identify witnesses to be invited to give evidence; and to decide on the order of the witnesses and the major areas of evidence to be obtained.

Stage II – Obtaining and deliberation on evidence from witnesses

2.7 The main work at this stage was to obtain evidence from witnesses in respect of the areas of study and to consider the evidence obtained. The duration of this stage might vary depending on the areas being looked into, the number of witnesses and the complexity of the issues involved.

Stage III – Preparation, discussion and finalization of the report

2.8 The main work at this stage was to deliberate on the evidence obtained; to make findings and draw conclusions; to prepare for drafting the report; to draft the report; to seek comments from persons/organizations that might be affected by the comments in the draft report; and to finalize the report.

2.9 Due to the unavailability of some of the witnesses invited to attend hearings, the Select Committee could only commence its Stage II work in March 2015 and complete it at the end of December 2015. The Stage III work commenced in January 2016 and was completed in late June 2016.

Practice and procedure

2.10 The procedure of the Select Committee is regulated by RoP of LegCo and the relevant provisions of Cap. 382 insofar as they are applicable. The Select Committee endorsed its practice and procedure at an open meeting on 9 December 2014. The practice and procedure is modelled on the practice and procedure adopted by previous select committees, in particular, the Select Committee to Inquire into Matters Relating to Mr Timothy TONG's Duty Visits, Entertainment, and Bestowing and Receipt of Gifts during his Tenure as Commissioner of the Independent Commission Against Corruption, because that select committee had also considered matters referred to it under Rule 20(6) of RoP and had not been authorized by Council to exercise the powers under section 9(1) of Cap. 382 in the conduct of its inquiry, as in the case of the Select Committee.

2.11 With reference to the practice and procedure of some of the previous select committees of Council, the Select Committee adopted the following principles in its own practice and procedure:

- (a) the practice and procedure should be fair and seen to be fair, especially to parties whose interests or reputation might be affected by the proceedings of the Select Committee;

- (b) there should be maximum transparency in its proceedings as far as practicable;
- (c) the practice and procedure should facilitate the ascertainment of the facts relevant to and within the scope of its inquiry as set out in the Select Committee's terms of reference, and should not include consideration of legal liabilities of any parties or individuals;
- (d) the proceedings should be conducted in a proper, fair and efficient manner; and
- (e) the cost of the proceedings should be kept within reasonable bounds.

A copy of the Practice and Procedure of the Select Committee is in **Appendix 5**.

The process in which the Select Committee obtained evidence

2.12 The Select Committee obtained evidence by way of written statements from relevant persons and organizations upon request and also verbal evidence from witnesses at open hearings. After the Select Committee agreed on the major areas of inquiry on 9 December 2014, a list of information to be obtained from relevant persons and organizations and a list of witnesses to be invited to attend open hearings were drawn up. The Select Committee was mindful of its scope of inquiry in that it was to look into the background of and reasons for the project delay up to April 2014, excluding any further delay that might have taken place after April 2014.

Meetings/hearings of the Select Committee

2.13 Rule 79(2) of RoP provides that meetings of the select committee shall be held in public unless the chairman otherwise orders in accordance with any decision of the select committee. The Select Committee decided that, as a general rule, testimony of witnesses should be received at open hearings. Exceptions might be made as decided by the Select Committee in light of circumstances on each occasion.

2.14 In line with the practice of previous select committees, the Select Committee decided that its internal deliberations should be held at closed meetings. The Select Committee agreed that members, including the Chairman and the Deputy Chairman, should not disclose any information relating to the internal deliberations or the documents considered at the closed meetings, and that the Chairman and the Deputy Chairman should be the only persons authorized to handle media enquiries concerning the work of the Select Committee.

2.15 The Select Committee held three meetings between 9 December 2014 and 26 February 2015 to carry out the preparatory work for the inquiry. The Select Committee had intended to start the Stage II work in late February 2015 and had originally invited Mr Peter LAU Ka-keung, Director of Highways, to attend the first open hearing scheduled for 26 February 2015. The Select Committee issued letters on 15 January and 23 January 2015 respectively to request Mr Peter LAU Ka-keung and the Highways Department ("HyD") to provide information by 10 February and 12 February 2015 respectively. However, their replies were only received by LegCo Secretariat in the late afternoon on Chinese New Year Eve, i.e. 18 February 2015. The date of the first hearing with Mr Peter LAU Ka-keung's attendance had been fixed on the basis that the Select Committee would receive the requested information from HyD well in advance of the open hearing scheduled for 26 February 2015, so as to allow reasonable time for proper consideration by members. In view of insufficient lead time for members to consider the information and prepare for the hearing, the first open hearing on 26 February 2015 had to be cancelled and re-scheduled to 24 March 2015 as a consequence.

2.16 This was followed by 11 open hearings between 24 March and 21 December 2015. The hearings lasted a total of about 33 hours. Before and after hearings, the Select Committee held internal meetings to consider the information received and discuss follow-up action. To discuss the evidence obtained and deliberate on the report and other matters relating to the inquiry, the Select Committee held another 15 meetings comprising a total of 39 hours.

Transparency of the inquiry

2.17 In order to enable members of the public to better follow the proceedings of the Select Committee, the written statements provided by the witnesses, once formally produced by the witnesses at the open

hearings, were uploaded onto LegCo's website for public inspection. In addition, copies of the opening remarks from witnesses, if any, were made available on request to members of the public and the media. Their attention was also drawn to the fact that the written statements or the opening remarks were made available to them for the purpose of assisting them in understanding the proceedings at the open hearings. They were reminded that the use of the contents of the written statements for other purposes was not protected under Cap. 382 and that they should obtain their own legal advice before doing so.

2.18 All the documents and/or information obtained by the Select Committee will be uploaded onto LegCo's website as appropriate after the publication of this report.

2.19 Record of the evidence, in the form of verbatim transcripts made from sound recordings of the proceedings at the open hearings where witnesses were examined, forms part of the Select Committee's report to the Council. In order that witnesses could have a fair and reasonable opportunity to consider whether their oral evidence was accurately transcribed, the Select Committee sent to all witnesses the draft verbatim transcript of their respective oral evidence so that they could have the opportunity to propose corrections, subject to their signing an undertaking that they would not make any copy of the draft and would return it to the Select Committee before a specified date. The Select Committee accepted corrections proposed so long as they did not materially alter the general sense of the evidence recorded. All 12 witnesses who attended the Select Committee's hearing were given the opportunity to have sight of their draft verbatim transcript and to propose corrections.

Reports of IBC and IEP on the Project

2.20 On 29 April 2014, the Corporation set up IBC, consisting of its own Independent Non-executive Directors, to comprehensively review the managerial approach of the Project. IBC released its first report⁴ on 16 July 2014 recommending enhancements to the Corporation's system

⁴ Link to the First Report by the Independent Board Committee on the Express Rail Link Project:
http://www.expressraillink.hk/pdf/en/report/20140716_xrl_report_eng.pdf

and processes ("the 1st IBC Report"). The second report⁵ ("the 2nd IBC Report") was released on 28 October 2014 which contains IBC's findings and conclusions, with the aid of its two independent experts, on the Corporation's project management as well as its recommendations for consideration by the Board of directors of the Corporation ("the Board").

2.21 On 16 May 2014, the Chief Executive appointed IEP to review the project management, monitoring mechanism and other matters relating to the project delay. According to the Government, IEP submitted its report to the Chief Executive on 15 December 2014 and the report⁶ was made available to the public on 30 January 2015 ("the IEP Report").

2.22 The Select Committee decided at its meeting on 24 March 2015 that members could quote from available material and findings in the abovementioned reports for the purpose of its investigation, such as for questioning the witnesses but that the Select Committee should form its own judgment based on available evidence and information.

Difficulties encountered by and limitations of the Select Committee

Obtaining information from the Government and the Corporation

2.23 At the beginning of the inquiry, the Select Committee wrote to Professor Anthony CHEUNG Bing-leung in December 2014 requesting him and the Transport and Housing Bureau ("THB") to provide information, including a list of officials involved in the Project and membership of Project Supervision Committee, for the purpose of commencing its work. Further, on 23 January 2015, the Select Committee wrote to Professor Anthony CHEUNG Bing-leung requesting him to provide a list of documents, such as the Entrustment Agreements signed between the Government and the Corporation, the major details of the concession approach and the reports submitted to THB by HyD and

⁵ Link to the Second Report by the Independent Board Committee on the Express Rail Link Project:

[http://www.expressrailink.hk/pdf/en/report/2nd%20Report_ENG\(Full\).pdf](http://www.expressrailink.hk/pdf/en/report/2nd%20Report_ENG(Full).pdf)

⁶ Link to the Report of HKS of XRL Independent Expert Panel:

<http://www.gov.hk/en/theme/iep-xrl/>

the Corporation in respect of the progress of the construction of HKS of XRL from January 2010 to April 2014.

2.24 Further, on 23 January 2015, the Select Committee wrote to HyD requesting a list of documents, including extracts of the contract, in particular the scope of service, signed between HyD and Jacobs China Limited ("Jacobs"), i.e. the M&V consultant which was engaged to advise HyD on the construction of HKS of XRL; all Progress Reports submitted by Jacobs to HyD from January 2010 to April 2014 in respect of the Project; the membership, terms of reference and minutes of and papers for the 44 meetings of Project Supervision Committee held from January 2010 to April 2014 and the membership, terms of reference, and minutes of and papers for all meetings of the Project Coordination Meeting from January 2010 to April 2014.

2.25 Similarly, in December 2014, the Select Committee wrote to the Corporation seeking information, including a list of the persons on the Board, a list of the persons on the Executive Committee ("ExCom") and a list of the persons on the Project Control Group of the Corporation to facilitate the work of the Select Committee.

2.26 On 23 January 2015, the Select Committee further wrote to the Corporation requesting all papers relating to the progress/delay of the Project presented to the Board during the period from January 2010 to April 2014; minutes of the workshop held on 17 April 2013 between the Corporation and the contractor of contract 810A to analyze the progress and the measures adopted to recover the project delay; minutes of the meeting held between the Corporation and the representatives of the Government on 21 November 2013 in respect of the project delay; recording or transcript of the telephone conversation between Mr Jay H WALDER, the former Chief Executive Officer ("CEO") of the Corporation, and Professor Anthony CHEUNG Bing-leung discussing the Project on 21 November 2013 and extracts of the work contracts, including those on the scope of work and the completion dates, signed between the Corporation and the main contractors in respect of WKT and various Approach Tunnels.

2.27 The Select Committee was only able to obtain some of the information it requested. Details are set out in the following paragraphs.

2.28 Professor Anthony CHEUNG Bing-leung replied on 6 January 2015 to the Select Committee and provided a list of the officials involved in the Project, an organization chart of the Railway Development Office ("RDO") of HyD, the membership of Project Supervision Committee and the name of the person in Jacobs responsible for the Project.

2.29 HyD replied to the Select Committee on 18 February 2015 (**Appendix 6**) and provided a copy of the scope of the service of Jacobs as defined in the Project Brief of the Consultancy Agreement in respect of the Project. The Select Committee, however, notes from the reply that HyD was only prepared to provide the Select Committee with redacted versions of the minutes of the 44 Project Supervision Committee meetings held from March 2010 to April 2014 and of the monthly Progress Report prepared by Jacobs from October 2010 to April 2014 on condition that such documents were to be provided in confidence for use by Select Committee members in closed hearings. The reason proffered was that the nature of the redacted documents was confidential and/or commercially sensitive. Subject to the Select Committee's prior agreement to such condition, HyD would provide the requested documents and information in redacted version to the Select Committee in batches.

2.30 On 18 February 2015, THB provided in its reply (**Appendix 7**) major details of the concession approach which was adopted for implementation of the Project. However, as for the Entrustment Agreements signed between the Government and the Corporation, THB stated that the Entrustment Agreements were confidential in nature and their contents involved commercially sensitive information, therefore, the two agreements had to be classified as confidential and could only be provided to the Select Committee in confidence for its use in closed hearings.

2.31 As regards the reports submitted to Secretary for Transport and Housing by HyD and by the Corporation regarding the progress of the Project from January 2010 to April 2014, THB replied that *"the Corporation is required to submit a monthly progress report setting out the latest progress and financial position of the project to the [Project Supervision Committee] (PSC reports). For the period from February 2010 to April 2014, there were 51 PSC reports submitted by the Corporation ... Due to the confidential and commercially sensitive nature of the PSC reports, we will provide the Select Committee with redacted*

versions of these documents (same as the copies placed in the Corporation's XRL Project Data Room) in confidence for use by the Select Committee members at closed hearings." Whereas for the report from Director of Highways to Secretary for Transport and Housing, the Select Committee notes from the letter that *"Head of Department (HoD) meetings are held regularly for DHy to update STH on various major aspects of the work of the Highways Department (HyD), including the project progress of the XRL. While there are no formal notes of such HoD meetings, briefing notes are prepared by the HyD for discussion at the meetings. In view of the confidential nature of the HoD meetings, these briefing notes are normally for Government's internal reference only. To facilitate the work of the Select Committee, we are prepared to provide a set of key points of those parts of the briefing notes in relation to XRL in confidence for reference by the Select Committee members at closed hearings."*

2.32 On 5 January 2015, the Corporation provided in reply a list of the Board members and members of ExCom (**Appendix 8**). As for the membership of Project Control Group, only the job titles of its members were given. In respect of the further requests made by the Select Committee on 23 January 2015, the Corporation replied on 5 February 2015 (**Appendix 9**) expressing their commitment to working with the Select Committee in a cooperative manner to enable the Select Committee to perform the functions for which it had been established. However, the Corporation stated in their letter that, in providing documentary information and witness evidence to the Select Committee, the Corporation was bound to take into account their contractual, legal and regulatory obligations, that since the Corporation anticipated that there might be information and documents requested by the Select Committee that were confidential or commercially sensitive, it might be necessary for the Corporation to request that such information and documents should not be disclosed to the public and should be kept under strict control in a designated location.

2.33 Further to their reply on 5 February 2015, the Corporation sent to the Select Committee another letter on 12 February 2015 (**Appendix 10**), responding to requests made by the Select Committee. In brief, the Corporation was still considering the request for documents relating to the progress/delay of the Project presented to the Board during the period from January 2010 to April 2014. The letter further stated that there were no formal minutes of the 17 April 2013 workshop held

between the Corporation and the contractor of contract 810A and no contemporaneous written record of the telephone conversation between Mr Jay H WALDER and Professor Anthony CHEUNG Bing-leung and the meeting held on 21 November 2013.

2.34 As for extracts of the work contracts, including those on the scope of works and the completion dates, signed between the Corporation and the main contractors in respect of WKT and various Approach Tunnels, the Corporation indicated in its reply of 12 February 2015 that such documents would be provided if the Select Committee agreed to keep them and their contents confidential by securing them in a designated location within LegCo Complex and not to be removed from that location, photocopied or disclosed to any third party. Further, the Corporation stated that the documents and their contents might only be used by the Select Committee in closed hearings.

2.35 Since it was not authorized by Council to exercise powers under section 9(1) of Cap. 382, the Select Committee had no power to compel any person to produce any paper, book, record or document. The Select Committee deliberated on 26 February 2015 and 19 January 2016 on the responses from the parties in connection with the request for information. The Select Committee considered it inappropriate to enter into agreement with any of the parties as a condition precedent for the provision of information and documents. Whilst the Select Committee would consider conducting its proceedings in closed meetings upon a proper request from the parties, it was not prepared to make such decision based on unilateral assertions of confidentiality or commercial sensitivity, without even sight of the information asserted to be confidential or commercially sensitive. The Select Committee further considered it undesirable for the Select Committee to conduct examination of facts with the Government and the Corporation behind closed doors, unless there were strong and compelling reasons to do so. The Select Committee considered the requests of the Government and of the Corporation for holding closed hearings inappropriate or, at least, premature. Such a practice would be against the principle of the Select Committee that there should be transparency in its proceedings as far as practicable. The objective of the Select Committee was not to disclose confidential or commercially sensitive information but to ascertain the factual basis for the reasons of delay. The Select Committee would request only the relevant information to facilitate its inquiry.

2.36 In this connection, the Select Committee wrote to THB, HyD and the Corporation on 3 March 2015 to express its view that the Select Committee considered it inappropriate to enter into agreement with THB/HyD/the Corporation as a condition precedent for the provision of information and documents requested and found the demand for closed hearings in their respective letters unacceptable.

2.37 Further, the Select Committee indicated in the letter that it appreciated the concern of THB/HyD on the issue of confidentiality and commercial sensitivity, that the Select Committee would therefore not release to the media and the public any document provided by THB/HyD or place such document on the website of LegCo before it came to a decision on confidentiality under the Practice and Procedure of the Select Committee, in particular paragraph 21, upon request made by them.

2.38 In response to the Select Committee's letter of 3 March 2015, THB replied on 17 March 2015 (**Appendix 11**) that *"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 [the Corporation], and their contents involve sensitive commercial information ... 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 ... We have consulted [the Corporation] 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."* Subsequently and in contrast to such position, Professor Anthony CHEUNG Bing-leung disclosed the two Entrustment Agreements on 4 January 2016 as mentioned in paragraph 2.43 below.

2.39 In response to the Select Committee's letter of 3 March 2015, the Corporation replied on 17 March 2015 that "*... given the commercially sensitive nature of the documents [i.e. relevant works contracts and supplemental agreements] requested, the public disclosure of which may prejudice the legitimate interest of both the Corporation and the Government in their dealings with third parties, the Corporation reiterates the need for an agreement to maintain confidentiality on the terms set out in the Corporation's letter of 12 February 2015 before the documents can be provided to the Select Committee.*"

2.40 The Select Committee wrote again to the Corporation on 24 April 2015 expressing its disappointment with the Corporation's response and pointing out the fact that the Select Committee was appointed by LegCo to conduct inquiry on a matter of public concern and it was therefore also in the public interest for the Select Committee to have the requested information/documents for the purposes of its inquiry and that without prior access to these information/documents to enable an informed decision, the Select Committee could not form a view on the confidentiality or otherwise of the requested documents or any part thereof. In the letter, the Select Committee reiterated its position in its letter of 3 March 2015 to the Corporation and asked the Corporation to reconsider the matter carefully, in particular, the request for all papers presented to the Board during the period from January 2010 to April 2014, which still remained under consideration by the Corporation according to its letter of 17 March 2015.

2.41 The Corporation replied on 8 May 2015 that it maintained its position that there must be an agreement to maintain confidentiality on the terms set out in its letter of 12 February 2015 before the documents could be provided to the Select Committee. It was also stressed that full copies of the requested work contracts had been placed in their Data Room and were available for viewing by any LegCo Member. Up to this day, the Corporation has not provided any papers presented to the Board relating to the progress/delay on the Project during the period from January 2010 to April 2014 as requested in the Select Committee's letter of 23 January 2015.

2.42 In view of the fact that the work of the Select Committee must be completed before the commencement of the period of prorogation of the Fifth Term of LegCo, the Select Committee decided on 26 February 2015 to commence its inquiry as soon as possible, based on available

information provided by the Government and the Corporation, information contained in the reports published by IBC and IEP, available information in the public domain and the testimony of the witnesses given at the open hearings of the Select Committee.

2.43 At the hearing held on 21 December 2015, Professor Anthony CHEUNG Bing-leung made a remark at the end of his opening speech that the Government would actively consider the requests made by members of the Select Committee in early 2015 for copies of EA1 and EA2. In the evening of 4 January 2016, THB sent to the Clerk to the Select Committee copies of EA1 and EA2. THB's cover letter to the Select Committee (**Appendix 12**) stated that in view of the fact that the Government and the Corporation had disclosed a substantial portion of the material content of the Entrustment Agreements when announcing to the public the revised construction cost and the work progress of HKS of XRL on 30 November 2015, after careful consideration and consultation with the Corporation, they decided to provide copies of the two Entrustment Agreements to the Select Committee for reference.

2.44 At the open hearing on 21 December 2015, Professor Anthony CHEUNG Bing-leung informed the Select Committee that the then CEO of the Corporation wrote to him in July 2012 stating that the Corporation maintained their target date in 2015 to complete all works to enable the successful opening of HKS of XRL as planned. Professor Anthony CHEUNG Bing-leung was then requested to provide a copy of the aforementioned letter to the Select Committee. On 15 January 2016, Professor Anthony CHEUNG Bing-leung responded that the letter was for the internal reference of the Government only, and that to facilitate the work of the Select Committee, the Government was prepared to provide a redacted version of the letter in confidence for use by the Select committee members in closed hearings. On 19 January 2016, the Select Committee, after discussion, decided to write to Professor Anthony CHEUNG Bing-leung again, indicating that in order to address his concerns on the issue of confidentiality, the Select Committee would not release to the media and the public the requested information or place such document on the website of LegCo before it came to a decision on its confidentiality under paragraph 21 of the Practice and Procedure of the Select Committee. On 3 February 2016, the Select Committee was given a copy of a redacted version of the letter on a confidential basis.

Response to invitation to attend before the Select Committee at a hearing

2.45 Having considered the information provided by the Government and the Corporation on persons involved in the Project, the Select Committee decided to invite the following persons to attend the Select Committee at open hearings to give evidence regarding the reasons for the project delay and to assist the Select Committee with its inquiry:

From the Government

- (a) Mr Peter LAU Ka-keung
Director of Highways
- (b) Mr WAI Chi-sing
Former Director of Highways
- (c) Mr Henry CHAN Chi-yan
Principal Government Engineer/Railway Development
Highways Department
- (d) Mr TAM Hon-choi
Government Engineer/Railway Development 2
Highways Department
- (e) Mr Joseph LAI Yee-tak
Permanent Secretary for Transport and Housing (Transport)
- (f) Mr YAU Shing-mu
Under Secretary for Transport and Housing
- (g) Professor Anthony CHEUNG Bing-leung
Secretary for Transport and Housing
- (h) Ms Eva CHENG
Former Secretary for Transport and Housing

From the Corporation

- (i) Mr Lincoln LEONG Kwok-kuen
Acting Chief Executive Officer

- (j) Mr CHEW Tai-chong
Former Projects Director
- (k) Mr Jay H WALDER
Former Chief Executive Officer
- (l) Dr Raymond CH'EN Kuo-fung
Non-executive Chairman of the Board

From M&V consultant

- (m) Mr Richard KO Kwai-nin
Project Director
Jacobs China Limited

2.46 The Select Committee decided to invite the above persons to attend hearings and give each of them a reasonable period of time to prepare and submit a written statement in advance. As already stated, since the Select Committee had not been authorized by the Council to exercise powers under section 9(1) of Cap. 382, the Select Committee could only invite a person to attend to give evidence but it had no power to order attendance.

2.47 Towards the end of December 2015, the Select Committee decided to invite the former Secretary for Transport and Housing, Ms Eva CHENG, to attend the Select Committee to give evidence on the project delay.

2.48 Eventually, all the seven Government officials named in paragraph 2.45 (a) to (g) accepted the invitation to attend before the Select Committee. While the invitations were verbally accepted in August 2015 by a representative of the Corporation on behalf of Mr Lincoln LEONG Kwok-kuen, who had become CEO of the Corporation in March 2015, and Dr Raymond CH'EN Kuo-fung, the non-executive Chairman of the Board, the Select Committee was notified by the Corporation that Mr CHEW Tai-chong and Mr Jay H WALDER had either left or retired from the Corporation. In response to the Select Committee's invitation, Mr Jay H WALDER replied by e-mail that he had already provided full information to IBC. Mr CHEW Tai-chong also replied to the Select Committee via the Corporation that *"I have retired from MTR Corporation since October 2014. I do not possess any*

relevant documents, papers and records to support any investigation on XRL. Respectfully, it is not appropriate for me to return back and attend the Select Committee to talk about the past events. I have already spoken to the experts of the IBC and IEP investigation openly and frankly during the investigation. IEP and IBC reports provide a very clear account of the facts, the decision taken and judgement made by all concern. I really do not have anymore to add and do not wish to waste the valuable time of the Select Committee."

2.49 Having noted the above response, the Select Committee decided to invite Mr Simon TANG, General Manager–XRL, and Mr Mark LOMAS, Project Manager–Technical Support, and the then Project Manager–XRL Terminus (Controls) of the Corporation to give evidence at a hearing. The Select Committee decided to invite Mr Mark LOMAS because he had previously worked as Project Manager–XRL Terminus (Controls) and met the Railways Subcommittee members during a site visit on 28 April 2014 although he had been assigned to another position in the Corporation since mid-2015. To these invitations, the Corporation responded that Mr Simon TANG, who replaced Mr Antonio CHOI Fung-chung as the General Manager–XRL, had only second-hand information and that Dr Philco WONG Nai-keung, who replaced Mr CHEW Tai-chong as the Projects Director, was a more senior management officer who should be able to represent the project team. Both Dr Philco WONG Nai-keung and Mr Mark LOMAS attended a hearing of the Select Committee.

2.50 Dr Raymond CH'IEN Kuo-fung advised the Select Committee on 16 October 2015 that he would not be available on the proposed date of hearing on 16 November 2015 and would be out of town for a period of time (**Appendix 13**). Given his reply, the Select Committee wrote to Dr Raymond CH'IEN Kuo-fung on 26 October 2015 again inviting him to propose two alternative timeslots of three hours each from November 2015 to January 2016 to attend before the Select Committee. As the Select Committee had not received any response from Dr Raymond CH'IEN Kuo-fung, the Clerk to the Select Committee on 3 December 2015 contacted the Corporation. The Corporation informed the Clerk to the Select Committee that Dr Raymond CH'IEN Kuo-fung would not be able to attend any hearing between December 2015 and January 2016. In this connection, the Select Committee wrote to Dr Raymond CH'IEN Kuo-fung again on 9 December 2015 expressing its disappointment as well as inviting the Board to nominate one of their directors who was

familiar with the Project to attend a hearing on a date in January 2016 to be mutually agreed. It was also indicated in the letter that since the Select Committee would soon proceed to deliberate on the evidence, if the invitation was declined, the Select Committee would have to make findings in the absence of any testimony from a member of the Board. Ultimately, the Corporation replied on 21 December 2015 (**Appendix 14**) that no nomination of a director would be made to attend a hearing of the Select Committee. Ms Eva CHENG also declined the invitation, giving reasons similar to those given by Dr Raymond CH'EN Kuo-fung (**Appendix 15**).

2.51 As for Mr Richard KO Kwai-nin of Jacobs, HyD's M&V consultant, the Select Committee noted in mid-2015 that he had left his position as Project Director of Jacobs. Instead, Mr Anthony J W KING, the then Project Director, and Mr William NG Siu-kee, Project Manager, were invited to attend the hearing, which they did.

2.52 The Select Committee expresses its disappointment with Mr CHEW Tai-chong, Mr Jay H WALDER, Dr Raymond CH'EN Kuo-fung and Ms Eva CHENG for declining its invitation to attend to give evidence. The Select Committee also expresses disappointment with the Board of the Corporation for their failure in nominating one of its members to give evidence from the Board's perspective due to the unavailability of its Chairman to do the same. A list of the witnesses who attended the Select Committee to give evidence is in **Appendix 16**.

Presentation of the report

2.53 In order to ensure that the procedure was fair to the people whose interests or reputation might be affected by the proceedings, any party, person or organization who might be so affected in the report of the Select Committee was given an opportunity to comment on the relevant parts of the draft findings and observations in the report. The comments received have been carefully considered by the Select Committee before its report was finalized.

2.54 The report of the Select Committee consists of the main report, lists of the written evidence and the relevant documents, the minutes of proceedings, as well as the minutes of evidence in the form of verbatim transcripts in the original language used at the open hearings. The main

report comprises three parts. Part I (Chapters 1 and 2) is mainly an introduction to the background of the establishment of the Select Committee as well as matters relating to the work of the Select Committee. Part II (Chapters 3 to 6) gives an account of the relevant information and the evidence obtained by the Select Committee on matters relating to the background of and the reasons for the project delay, the performance and the accountability of the Government and the Corporation relating to the project delay, and the question of whether the Government and the Corporation have deliberately covered up the project delay at different stages of the implementation of the Project. Part III (Chapters 7 and 8) sets out the conclusions and the recommendations of the Select Committee on how the Government can enhance the supervision of construction of new railway projects and strengthen the governance of the Corporation in delivering railway projects in future.

2.55 For environmental protection purposes, the minutes of evidence in the form of verbatim transcripts are available on LegCo's website only. This report is also available on LegCo's website at www.legco.gov.hk.