

## **Part III      Conclusions and Recommendations**

### **Chapter 7      Conclusions**

7.1      In this Chapter, the Select Committee sets out its findings and conclusions in respect of the inquiry in accordance with its terms of reference as set out in paragraph 2.3 of Chapter 2 of this report.

7.2      The main focus of the Select Committee is to conduct an inquiry into three major areas of the project delay as announced in April 2014 by THB and the Corporation, namely:

- I.      Background of and causes for the project delay;
- II.     Performance and accountability of the Government and the Corporation relating to the project delay; and
- III.    Whether the Government and the Corporation have deliberately covered up the project delay.

#### Limitations of the Select Committee

7.3      The Select Committee would like to stress that it has experienced difficulties in obtaining information from THB, HyD and the Corporation and, as a result, was handicapped in the conduct of its inquiry, as outlined in paragraphs 2.23 to 2.52 of Chapter 2 of this report. As the Select Committee was not authorized to exercise powers under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), it could only proceed with its inquiry on the basis of limited information provided by THB, HyD and the Corporation, information contained in the reports published by IBC and IEP, information available in the public domain and the testimony of the witnesses given at the open hearings of the Select Committee. (paragraph 2.42)

7.4      The Select Committee notes that HKS of XRL is a colossal and complex project. The Project is the world's first all-underground high-speed railway project with a total length of 26 km. It requires integration with the railway system on the Mainland. The excavation work at WKT is one of the largest and deepest excavations ever done in

Hong Kong. Further, it is the first railway project undertaken by the Government under the concession approach. All of the above factors have added to the risk profile of the Project. (paragraph 4.40) In view of the risk profile, the Select Committee considers that the relevant Government bureaux/departments and the Corporation should have exercised greater care and vigilance at all stages in the implementation of the Project. The Select Committee considers that, unfortunately, both the relevant Government bureaux/departments and the Corporation have come short in this regard.

### Weaknesses in EA2 under the concession approach

7.5 The Select Committee notes that, under the concession approach, the design and construction of the Project was entrusted to the Corporation. The Government adopted the indirect "check the checker" M&V role as recommended by Lloyd's in 2008. The Select Committee notes that the role of the Corporation was not only that of a checker but also a project manager having a crucial role in the monitoring and delivery of the Project. Furthermore, it was the contracting party in the work contracts in the construction of the Project. As Professor Anthony CHEUNG Bing-leung admitted to the Select Committee, with the benefit of hindsight, the "check the checker" approach had flaws and also said at an open hearing of the Select Committee that, if the concession approach were to be adopted again in future, the content of the Entrustment Agreement should be reviewed. (paragraph 3.58)

7.6 The Select Committee observes that, unlike the ownership approach adopted for other railway projects in which the Government's role had been more passive, the concession approach adopted for the Project entails the Government owning the railway system, paying for the Project and assuming the construction risk. (paragraph 3.53) The Select Committee further observes that, at least on paper, the concession approach, EA2, the monitoring mechanism and the communication channels between the Government and the Corporation were designed to provide guidance for stakeholders to follow, and different check points at different levels were put in place to ensure delivery of the Project on time and within budget. However, HyD and, to a lesser extent, THB, who were entrusted with the responsibility to monitor the Project to completion, did not appear to have performed their task well by making the best use of the systems and the available resources at their disposal. (paragraph 3.55)

7.7 The Select Committee considers that, under the concession approach, while HyD might have overly relied on the Corporation to deliver the Project on time, the Corporation might have been taking the view that it was only required to use its best endeavours to complete the Project in accordance with the terms of EA2, without having to bear any risk in relation to construction, particularly in terms of delay and cost overrun. (paragraph 3.62) The Select Committee considers that this could be due to the lack of a master delivery strategy document clearly defining the obligations, duties and roles of all parties concerned as proposed by IEP<sup>159</sup> and the lack of indicators to gauge and measure objectively the performance of the Corporation in fulfilling its duties and obligations with respect to delivery of the Project.

7.8 The Select Committee takes the view that, although the Corporation was entrusted with the design, construction, testing and commissioning of HKS of XRL, and had the responsibility to deliver the Project in accordance with EA2, HyD should have assumed a more active role in monitoring and verifying the performance of the Corporation in the Project, regardless of the size of its staff engaged in the Project and regardless of whether or not such role was expressly spelt out in the Entrustment Agreement. The Government is the owner of HKS of XRL, a guardian of the public fund earmarked for the Project and the grantor of the operation concession in the future. Given the considerable scale and cost of the Project, and HKS of XRL was the first trial of the concession approach, HyD could and should have been more active, proactive and vigilant during the implementation of the Project, as aided by Jacobs, the external consultant. It could do that as long as it did not act in breach of EA2. The Select Committee is of the opinion that HyD should have taken more seriously its role, as the first line of defence of the Government, as the checker (the Government) of the checker (the Corporation). This is a dominant role, rather than a subservient one. In view of that role, any excessive or over reliance by HyD and THB on the Corporation's view is inappropriate, as the Corporation was supposed to be checked by HyD and THB in the "check the checker" modus operandi. (paragraph 3.63)

7.9 The Select Committee considers that the lack of initiatives and over reliance on the Corporation on the part of HyD in monitoring the

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<sup>159</sup> Report of HKS of XRL Independent Expert Panel, paragraph 7.2.

implementation of the Project might have been brought about by the good track record of the Corporation in delivering railway projects. Further, a lack of practical experience and expertise within HyD/RDO itself in the building of railway systems might have contributed to the lack of confidence among its staff in assuming a more active and proactive monitoring role over the performance of the Corporation. Mr Henry CHAN Chi-yan suggested at a hearing that, as the work contracts were signed between the Corporation and the contractors, it would be difficult for the Government to interfere with the management of the contractors. The Select Committee considers that he has missed the point. The point was not to interfere with the management of the contractors, but was rather the effective M&V of the work and performance of the Corporation, which was the responsibility of the Government. (paragraph 3.64) The Select Committee considers that the combined effect of the above factors has rendered the "check the checker" role of the Government in the Project much less effective than it should have been.<sup>160</sup>

#### The Entrustment Programme is unrealistic

7.10 The Select Committee finds that both the Government and the Corporation had been aware that the timetable of the entrustment programme with target completion by August 2015 was tight, and they had known about this even before EA2 was signed on 26 January 2010. (paragraphs 4.27 to 4.33) Nevertheless, 4 August 2015 was still adopted as the target date for completion.

7.11 On the other hand, the Select Committee finds that, when FC approved funding for the construction of HKS of XRL and when EA2 was signed, the site investigation work had not yet been completed, as a full site investigation could not be carried out at the location of the former City Golf Club and Jordan Road. (paragraph 3.41) Notwithstanding this, the Select Committee finds that the Government and the Corporation had been aware of the underground conditions and the complex underground utilities at the WKT site before June 2010. (paragraph 3.43)

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<sup>160</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.9. The proposal was defeated (please refer to paragraphs 67 and 68 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

7.12 The Select Committee considers the adoption of a tight time frame for the Project unwise. The Corporation should have allowed a longer contingency period to cater for unforeseen ground conditions as site investigation is known to have its limitations. (paragraph 3.51) The Select Committee also considers that the Corporation was over-optimistic in accepting the target completion date. The Select Committee considers that if the risk of cost increase were the responsibility of the Corporation under a different arrangement, the Corporation might have been more cautious in agreeing to work with such a tight time schedule given the numerous uncertain factors. (paragraph 4.42)<sup>161, 162</sup>

7.13 The Select Committee was surprised, to say the least, when Mr Lincoln LEONG Kwok-kuen, CEO of the Corporation, informed it in his statement that *"the EA2 does not impose an absolute obligation [on the Corporation] to complete the project by 4 August 2015 considering that, with a project as challenging and complex as the XRL, there is always a risk of delays."* (paragraph 4.46) Whilst the Select Committee acknowledges that delay associated with construction projects is not uncommon, it takes the view that, once an agreement is signed, the target completion date contained in it ought to be adhered to as much as possible. Otherwise, target completion date in contract is meaningless and nugatory.

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<sup>161</sup> Members voted on Mr LEE Cheuk-yan's proposal to amend paragraph 7.12. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 73 to 75 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

<sup>162</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.12. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. Mr Michael TIEN Puk-sun abstained from voting. As the votes were equally divided, the Chairman exercised his casting vote in the negative according to paragraph 8 of the Practice and Procedure of the Select Committee. The proposal was defeated (please refer to paragraphs 76 to 78 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

7.14 The Select Committee takes the view that the Government at the time chose, at the planning stage, to rely on the Corporation to deliver the Project by the August 2015 timeline. The Select Committee considers that as the time frame in the Entrustment Programme was set too tight against a background of great uncertainties, delay is almost inevitable. (paragraph 4.48) Notwithstanding this, the Select Committee considers that both HyD and THB have been found wanting in their mission in the implementation of the Project.<sup>163, 164</sup>

### Shortcomings of the Government

#### *Judgment of the Government*

7.15 The Select Committee notes that THB had contemplated reporting the project delay to Railways Subcommittee at its meeting scheduled for 22 November 2013. However, the telephone conversation between Mr Jay H WALDER and Professor Anthony CHEUNG Bing-leung and the subsequent meeting between THB/HyD and the Corporation on 21 November 2013 had caused a change of mind. (paragraph 6.34) Mr Joseph LAI Yee-tak informed the Select Committee that the Government officers had decided at the meeting on 21 November 2013 to give the Corporation the benefit of the doubt. (paragraph 6.39) Finally, under the direction of Professor Anthony CHEUNG Bing-leung, Mr YAU Shing-mu, in a carefully worded presentation, reported to Railways Subcommittee at its meeting on 22 November 2013 that the construction of HKS of XRL could be "*completed within 2015 plus six to nine months for testing and trial runs*". (paragraph 6.40)

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<sup>163</sup> Members voted on Ms Claudia MO's proposal to amend paragraph 7.14. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 81 to 83 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

<sup>164</sup> Members voted on Mr WU Chi-wai's proposal to amend paragraph 7.14. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 84 to 86 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

7.16 According to Professor Anthony CHEUNG Bing-leung, the statement made by the Government at the Railways Subcommittee meeting on 22 November 2013 reflected the respective views of THB (and HyD) and the Corporation on the progress of the construction. In particular, THB sought to convey the message that, while the major works could be completed within 2015, the date of commissioning had yet to be confirmed. The statement also took into account the consideration canvassed by the Corporation that, by not giving up on the 2015 completion target, the Corporation could press the contractors to give the Project a further push, thereby giving the Corporation a chance to catch up with the programme. (paragraph 6.42)

7.17 Nevertheless, Professor Anthony CHEUNG Bing-leung admitted in evidence that, with the benefit of hindsight, THB and HyD had reposed too much trust in the Corporation. The Select Committee shares Professor CHEUNG's view that the Government should have made known to Railways Subcommittee on 22 November 2013 the difference of views between the Government and the Corporation on delay. (paragraph 6.43)<sup>165, 166, 167</sup>

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<sup>165</sup> Members voted on Ms Claudia MO's proposal to amend paragraph 7.17. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 95 to 97 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

<sup>166</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.17. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 98 and 99 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

<sup>167</sup> Members voted on Mr LEE Cheuk-yan's proposal to amend paragraph 7.17. Mr LEE Cheuk-yan, Ms Claudia MO, Mr WU Chi-wai, Mr Gary FAN Kwok-wai and Mr Charles Peter MOK voted in favour of the proposal. Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 100 to 102 of the Minutes of Proceedings of the meeting held on 10 June 2016 in this Report).

7.18 The Select Committee considers that in the construction industry it is possible that contractors may lose incentive to meet a target date for completion if it is postponed. The Select Committee takes the view that the public was entitled to know the true situation as soon as the target completion date of the Project had become impossible or nearly impossible to achieve and this entitlement should not be sacrificed for the sake of commercial expediency. The relevant parties should have accepted reality more readily and come up with contingency plans and a revised schedule at the earliest opportunity. (paragraph 6.45)

*Performance of the Government in monitoring the Project*

7.19 The Select Committee notes that, at the Project Supervision Committee meetings, the Corporation reported monthly the percentages of the actual progress against the planned progress in the Project. (paragraph 6.46) As there was a widening gap between the planned and actual progress of the Project despite the implementation of DRMs from January 2013 onwards, together with the repeated warnings from Jacobs on the continuous slippage since December 2011 and on the ineffective DRMs, the Select Committee finds it incomprehensible why the Government would still have accepted the repeated assurances from the Corporation in addressing the project delay which had been building up and worsening since late 2011. (paragraph 6.47) The sentiment in giving the Corporation "the benefit of the doubt" is perhaps understandable, the wisdom is questionable.<sup>168</sup>

7.20 The Select Committee considers that although the officers in THB were mostly generalists by training, they should have adopted various common management tools such as "management by exception" or "management by result" to ensure that their judgment was soundly based on the key performance indicators and the information available to them. (paragraph 6.47)

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<sup>168</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.19. Mr Gary FAN Kwok-wai voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming, Mr TANG Ka-piu and Ir Dr LO Wai-kiwok voted against the proposal. The proposal was defeated (please refer to paragraphs 3 to 5 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).



7.21 The Select Committee finds that both THB and HyD have queried the Corporation regarding the progress of the Project. In response, the Corporation routinely assured the Government that the delay in individual contracts could be recovered through DRMs and that the original project completion date would still be intact. (paragraph 6.49) The Select Committee considers the approach taken by HyD in assessing the completion date of the Project highly unsatisfactory. Whilst the role of HyD might have been confined to M&V under EA2, it had nonetheless failed to make the best use of Jacobs, the M&V consultant in the Project, who have sounded repeated warnings but apparently in vain. This indicates that HyD has unreasonably reposed trust in the Corporation. (paragraphs 6.44 and 6.54) The Select Committee considers HyD's assertion of having limited manpower in the Department, compared to that of the Corporation, no more than an excuse. When information was presented to HyD, it showed, more often than not, that the progress of the construction work was seriously lagging behind schedule. Based on IEP's factual findings, the Select Committee agrees with IEP that HyD could have done more to validate the Corporation's opinions by demanding regular updates on the forecast for the overall Project completion and the effectiveness of the DRMs. (paragraph 6.54)<sup>169</sup>

7.22 The Select Committee also finds that Jacobs had encountered difficulties in obtaining PMP from the Corporation. (paragraphs 4.59 and 4.60) The Select Committee notes that Jacobs had requested PMP on at least 17 occasions from April 2011 to April 2014 through Monthly Progress Reports to HyD. Although HyD did take up the requests of Jacobs with the Corporation through the Issue List, it had failed to follow up on the matter in a diligent and effective manner. HyD should have made more effort to pursue the matter with the Corporation to provide PMP as requested by Jacobs. (Details are given in paragraphs 4.61 to 4.63 of Chapter 4 of this report.)

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<sup>169</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend paragraph 7.21. Mr Gary FAN Kwok-wai and Mr TANG Ka-piu voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Michael TIEN Puk-sun, Mr Frankie YICK Chi-ming and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 10 to 12 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

7.23 Upon an enquiry made by a member of the Select Committee, Professor Anthony CHEUNG Bing-leung confirmed in evidence that he agreed with the contents of the reports submitted by IBC and IEP. On a similar question put by the same member of the Select Committee with respect to the IEP Report, Dr Philco WONG Nai-keung indicated that the view of the Corporation differed from that of IEP on the integrated master programme and commented that parts of the IEP Report were similar to the reports submitted by IBC. Dr WONG also confirmed that the Corporation agreed with the facts set out in the IEP Report.

### Shortcomings of the Corporation

#### *Deficiencies in project management by the Corporation*

7.24 The Select Committee notes that it is common practice in the construction industry to maintain an integrated master programme which should mark up the critical paths to overall project completion for large scale and complex capital projects. The Select Committee further notes that there were different views of the Corporation, the Government and Jacobs as to whether the Corporation had an integrated master programme covering the entire Project as a baseline for progress monitoring and reporting. (paragraphs 4.54 to 4.68) The Select Committee finds no evidence to show that the Corporation had "*a fully integrated, whole-project master programme*" but there is some evidence to show that a master plan of "*a collection of individual contract programmes for Civil and E&M works*" existed. The Select Committee shares the observation of IEP that the effect of the lack of an integrated master programme was that the Corporation was late to recognize and forecast delays on individual contracts and their impact on the overall target completion date. (paragraph 4.69)

7.25 The Select Committee notes that when Mr CHEW Tai-chong, the then Projects Director of the Corporation, was questioned by some independent non-executive directors at the Board meetings on 22 August and 10 December 2013 on the progress of the Project, he responded persistently that the Project would be delivered on time and within budget.<sup>170</sup> He did not disclose to the Board that the cumulative effect of

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<sup>170</sup> First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 1.42.

various contract delays was making the original timetable impossible or at least unrealistic. Apart from this, he did not report fully and accurately to the then CEO, ExCom, the Audit Committee or the Board the information presented by the Project Team indicating their concerns about the delivery of the Project on time. (paragraph 5.40)

7.26 The Select Committee notes that Mr Jay H WALDER informed IBC that he had accepted and relied upon the assurances given by Mr CHEW Tai-chong that, despite delay, the Project would still be completed by the end of 2015 on a partial opening basis. The Select Committee finds such judgment of Mr Jay H WALDER questionable. The Select Committee considers that, as head of the executive arm of the Corporation, he could not have relied upon the assurances made by Mr CHEW Tai-chong alone, without question and without credible and verifiable evidence to show how the project delay could be effectively mitigated. Mr Jay H WALDER should have made his own enquiries, raised queries and sought clarification and corroboration of such assurances, and should have made his own judgment on the situation as CEO. (paragraph 5.42)

7.27 The Select Committee also finds it difficult to believe that during the implementation of such a large scale project spanning several years, the Corporation would merely rely on the then CEO and ExCom, who would in turn be merely relying upon the information and views fed by Mr CHEW Tai-chong alone. In reality, therefore, it would seem that one person was effectively making all the important decisions relating to the construction work of the Project, at least as to time and cost. (paragraph 5.44)<sup>171</sup>

*Some DRMs not so effective*

7.28 The Select Committee observes that, when the Project encountered delay, the Corporation would make an effort to speed up

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<sup>171</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend this paragraph. Ms Claudia MO, Mr Michael TIEN Puk-sun and Mr Gary FAN Kwok-wai voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming and Ir Dr LO Wai-kiwok voted against the proposal. Mr CHAN Han-pan abstained from voting. The proposal was defeated (please refer to paragraphs 29 to 31 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

progress through the use of DRMs. However, the Select Committee also observes that, even with the use of DRMs, there were still signs of a widening gap between the actual and the planned progress of the Project as shown by the regular reports made to Project Supervision Committee from June 2010 to April 2014. (paragraph 5.69) Owing to significant labour shortage in some trades and the ageing of workers in the construction industry, the Select Committee considers that "additional labour", which was proposed as one of the DRMs by the Corporation, was unlikely to be effective. (paragraph 5.82)

7.29 The Select Committee considers that the Corporation and the Government should have predicted acute labour shortage in the construction process back in 2009 before the signing of EA2, and should have taken early measures to deal with the problem, such as stepping up training of the local workforce to increase the supply of skilled labour, and streamlining official procedures required by the Supplementary Labour Scheme in order to expedite the import of labour if and when necessary to meet the manpower demand of the Project. Since the Government had the overall picture of labour supply through the Construction Workers Registration System and was involved in all the major infrastructure projects in Hong Kong, the Government bore a greater responsibility than the Corporation for the lack of foresight as to the impact of labour shortage on the construction of HKS of XRL. This is particularly so when the Government had decided to undertake five railway projects in parallel with construction commencing between 2009 and 2012 and completing between 2014 and 2020. (paragraph 5.83)

*Progress of the Project not fully reported to the Government by the Corporation*

7.30 The Select Committee finds it unacceptable that the Corporation has not reported fully to the Government on the progress of the Project. For example, Professor Anthony CHEUNG Bing-leung informed the Select Committee in his statement that "*Now, from [the Corporation's] own submission to [Railways Subcommittee] in May 2014 and from its Independent Board Committee (IBC) Report of October 2014 that: ...by December 2013, [the Corporation] 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 from December 2013 onwards, [the Corporation's] 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..."* (paragraph 6.30)

7.31 The Select Committee considers that if the Project Team and/or Mr CHEW Tai-chong had properly and timeously reported the actual progress to the Government, the situation might have been different as the Government might have been able to make better judgment as to how the Project should be proceeded with at a much earlier time. (paragraph 6.33)

#### Corporate governance of the Corporation

7.32 The Select Committee notes that the Project Team of the Corporation first began in March 2013 to consider a partial opening plan which was formulated and proposed as a solution for achieving an opening of HKS of XRL in 2015 on a diminished scope.<sup>172</sup> It could be inferred from such a plan that there existed a serious concern within the Project Team on the overall delay in the Project as early as March 2013. Yet the Partial Opening Plan was restricted to ExCom only and not brought to the attention of the Board until more than a year later in mid-April 2014. (paragraph 5.33) The Select Committee considers that the failure to report in good time the Partial Opening Plan by ExCom to the Board (to whom it was accountable) reflected poor judgment on the part of ExCom as a whole. (paragraph 5.34)

7.33 The Select Committee also considers the Board's governance over the Corporation's affairs in the context of the Project's management less than satisfactory. It notes that the Board was only informed of the project delay and the reasons therefor for the first time at a Special Board Meeting held on 16 April 2014. The Select Committee also notes that it was at this time that the Board, including the Chairman, first learnt of the Partial Opening Plan. This speaks volumes of the governance, or the lack of it, in the Corporation. The Select Committee finds this startling from a corporate governance perspective. (paragraph 5.36)

7.34 The Select Committee observes<sup>173</sup> that, within the Corporation, there were a number of matters delegated by the Board to be dealt with by

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<sup>172</sup> First Report by the Independent Board Committee on the Express Rail Link Project, paragraph 4.27.

<sup>173</sup> First Report by the Independent Board Committee on the Express Rail Link Project, paragraphs 1.40 to 1.47.

ExCom without the need to refer back to the Board for approval. The Select Committee considers such delegation arrangement without a proper corresponding mechanism for reporting back to the Board unacceptable. (paragraph 5.37) A proper check and balance is missing.

7.35 The Select Committee also finds it unacceptable that for a public company being the sole provider of railway service to more than 5 million passenger rides per day<sup>174</sup> in Hong Kong, having vast experience in construction of railways in Hong Kong and elsewhere and being entrusted with the task of building the world's first underground high-speed rail, Mr CHEW Tai-chong, the former Projects Director, appeared to be the only person within the Corporation having overall knowledge of the Project's progress, and the Board and the senior management simply relied on his assessment of the status of the Project, without more. The Select Committee does not see any effective check and balance in practice in this respect. (paragraph 5.50) Further, the Select Committee notes that Mr Jay H WALDER, being both an ExCom member and a Board member at the material time, should have had full knowledge of the serious delay in the Project. However, he did not appear to have reported the progress of the Project to the Board fully and accurately when asked by Board members at their meeting on 10 December 2013. (paragraphs 6.14 and 6.15)

7.36 The Select Committee finds that the Board should take a measure of criticism for failing to supervise ExCom and the senior management effectively in delivering the Project according to EA2. (paragraph 5.50) The Select Committee considers that both the Board and the senior management of the Corporation should have coordinated various aspects of the Project at a higher level and made adequate enquiries on the progress of the Project at different stages instead of relying solely on the report and assurances made by the Project Team headed by Mr CHEW Tai-chong. (paragraph 5.59)

#### Whether there was deliberate cover-up of the project delay

7.37 The Select Committee considers that it is not uncommon to experience delay in large-scale construction projects. However, it is a serious matter if the parties concerned have deliberately covered up the

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<sup>174</sup> Source: <http://www.mtr.com.hk/en/corporate/investor/patronage.php>

project delay when the target completion date of the Project was in jeopardy, bearing in mind at all times that the Project was publicly funded (also see paragraph 7.18).

7.38 In considering whether the Government and the Corporation had deliberately covered up the project delay, the Select Committee has carefully considered the meaning of the word "deliberate" in its terms of reference and agreed that the word should carry its ordinary dictionary meaning of "intentional, done on purpose"<sup>175</sup>. This meaning is adopted in this report.

7.39 Referring to paragraph 6.68, the Select Committee finds that HyD and THB have failed to report in sufficient detail information on the project delay to Railways Subcommittee, and through Railways Subcommittee, the public. For example, Railways Subcommittee was not informed of the worsening situation and of the accruing slippage in the overall programme in the half-yearly progress reports. (paragraph 6.67) The progress at WKT, in particular, the fact that a large quantity of bedrock had to be removed, was not reported to Railways Subcommittee as outlined in paragraphs 6.69 to 6.72 above. As a result, it has conveyed to Railways Subcommittee before April 2014 an erroneous impression that the target of completing the Project by 2015 was achievable.

7.40 The Select Committee finds unanimously that there was non-disclosure on the part of both HyD/THB and the Corporation regarding the project delay to Railways Subcommittee and the public before April 2014. The project delay and information evidencing such delay were conspicuously absent in THB's half-yearly reports, which were prepared jointly by THB/HyD and the Corporation, to Railways Subcommittee before April 2014. There was also no public announcement of the project delay before April 2014.

7.41 The Select Committee considers that THB/HyD and the Corporation should have made known the project delay at a time when there were signs indicating that such delay might jeopardize the target completion date in 2015. The Select Committee is of the view that the right time would be August/September 2013 when the Corporation gave a

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<sup>175</sup> The Shorter Oxford English Dictionary Sixth Edition 2007.

presentation of the Partial Opening Plan to RDO and Director of Highways. (paragraph 5.21) If this was done, the project delay might not have provoked so much public concern and anxiety.<sup>176, 177</sup>

7.42 Some members of the Select Committee consider that, whilst there was non-disclosure, the fact that THB/HyD and the Corporation did not provide important information about delay to Railways Subcommittee before April 2014 does not necessarily mean that they had deliberately covered up the project delay. Such members find no or no sufficient evidence to lead to a conclusion that THB/HyD and the Corporation had deliberately covered up the project delay.

7.43 Some members of the Select Committee consider that it could be inferred from the conduct of Mr CHEW Tai-chong and Mr Jay H WALDER of the Corporation and the selective presentation of information in the reports submitted to Railways Subcommittee that there had been some degree of deliberate cover-up of the project delay on the part of the Corporation and THB/HyD.

7.44 After deliberation, a majority of the Select Committee finds that by virtue of the matters set out in paragraphs 4.17, 4.19, 4.20, 4.23, 4.24, 5.6, 5.12, 5.14, 5.16, 5.17, 5.18, 5.19, 5.25, 5.31, 5.32, 5.33, 5.34, 5.38, 5.39, 5.40, 5.41, 5.42, 5.57, 6.2, 6.4, 6.5, 6.6, 6.9, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.29, 6.30, 6.31, 6.32, 6.34, 6.37, 6.39, 7.25 and 7.35 of this report, there was deliberate cover-up of the project delay on the part of Mr CHEW Tai-chong and Mr Jay H WALDER. In the opinion of the majority, the Corporation is responsible for such cover-up to the extent

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<sup>176</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend this paragraph. Mr LEE Cheuk-yan and Mr Gary FAN Kwok-wai voted in favour of the proposal. Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. Mr Tony TSE Wai-chuen abstained from voting. The proposal was defeated (please refer to paragraphs 38 to 40 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

<sup>177</sup> Members voted on Mr CHAN Kam-lam's proposal to amend this paragraph. Mr CHAN Kam-lam and Mr Frankie YICK Chi-ming voted in favour of the proposal. Mr LEE Cheuk-yan, Mr Gary FAN Kwok-wai and Mr TANG Ka-piu voted against the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Han-pan and Ir Dr LO Wai-kwok abstained from voting. The proposal was defeated (please refer to paragraphs 44 to 46 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).



that it is responsible for the conduct of Mr CHEW Tai-chong and Mr Jay H WALDER, being its senior management staff.<sup>178</sup>

7.45 After deliberation, a majority of the Select Committee finds that there was no deliberate cover-up of the project delay on the part of THB, HyD or any of their officers.<sup>179</sup>

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<sup>178</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend this paragraph. Mr Gary FAN Kwok-wai and Mr TANG Ka-piu voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming, Mr CHAN Han-pan and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 55 to 57 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

<sup>179</sup> Members voted on Mr Gary FAN Kwok-wai's proposal to amend this paragraph. Mr LEE Cheuk-yan and Mr Gary FAN Kwok-wai voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam, Mr CHAN Han-pan, Mr TANG Ka-piu and Ir Dr LO Wai-kwok voted against the proposal. The proposal was defeated (please refer to paragraphs 59 to 61 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

## **Part III      Conclusions and Recommendations**

### **Chapter 8      Recommendations**

8.1      The Select Committee makes the following recommendations on how the Government can enhance supervision of construction of railway projects and strengthen the control mechanism of the Corporation in delivering railway projects in future based on its findings and conclusions set out in Chapters 3 to 7.

#### **Recommendation 1: To improve institutional arrangements under the concession approach**

8.2      The Select Committee is of the view that although the Corporation was entrusted with the design, construction, testing and commissioning of HKS of XRL and the delivery of the Project, HyD, as the professional department carrying the responsibility of the Government, should have played a more active and proactive role in monitoring the Project and tried its best to ensure the completion of the Project on time and within budget. The Select Committee recommends that, if the concession approach were to be adopted again for large scale railway projects in future, the Government would require a major and comprehensive review of the approach in general and in detail. To better protect public interest and use of public money, the Government, as the ultimate owner of the projects, must take a more active and proactive role in monitoring more closely the execution of the projects with the aid of expert and independent advice. (paragraphs 3.62, 3.63, 7.7 and 7.8)<sup>180</sup>

8.3      While the Government may have good justification for adopting the concession approach, particularly in commercially not viable projects required for the public good, the Government should review and study in

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<sup>180</sup> Members voted on Ms Claudia MO's proposal to amend paragraph 8.2. Ms Claudia MO voted in favour of the proposal. Mr CHAN Kam-lam, Mr Frankie YICK Chi-ming and Mr CHAN Han-pan voted against the proposal. The proposal was defeated (please refer to paragraphs 64 to 66 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

detail ways to improve the work mechanisms of the concession approach, including matters such as setting up the necessary institutional arrangements for effective M&V, defining clearly the roles and responsibilities of the parties concerned, putting in place objective measurement of performance and means of intervention and replacement. For example, for effective M&V, the Government should require explicitly the project manager to develop and maintain adequate management tools, such as an integrated PMP with specified project milestones, as a baseline to facilitate monitoring.

## **Recommendation 2: To improve the corporate governance of the Corporation**

8.4 The Select Committee considers that the Board's governance over the Corporation's affairs is less than satisfactory. (paragraphs 5.36, 5.37, 7.33 and 7.34) The Select Committee notes as facts that the Government is the majority shareholder of the Corporation and that the Corporation is one of the most important public transport providers in Hong Kong holding a de facto monopoly in rail transport which touches on the daily life of many Hong Kong citizens.

8.5 The Select Committee notes that one of the recommendations in the 1<sup>st</sup> IBC report was that the Board should establish a Capital Works Committee to oversee in future any project involving design and construction of a significant capital value as assessed by the Board. The Select Committee supports this recommendation and is pleased to see that the Corporation has set up two new committees under the Board, namely the Capital Works Committee and the Risks Committee, in August 2014 to facilitate more in-depth and focused monitoring of the construction progress of the Project and overall risk management of the Corporation. Further, the Select Committee welcomes the Government's initiatives, as announced in the 2015 Policy Address, to enhance monitoring of the Corporation in tandem with railway development to ensure that the Corporation can maintain an overall high standard of corporate governance.

8.6 The Select Committee recommends that the Corporation should itself ensure that its corporate governance is maintained at a high standard commensurate with a company of such size and reputation. When undertaking railway projects in future, the Corporation should work on an

appropriate and effective internal mechanism so that important matters relating to the railway projects under construction would be brought to the attention of the Project Team, the CEO, the relevant supervisory committees such as the Capital Works Committee, the Risks Committee and the Audit Committee and, ultimately, the Board itself. It should also ensure that reporting of such important matters is made to the Government timeously, fully and frankly in projects which involve public interest and/or require public funding or public resources.

### **Recommendation 3: To enhance communication with LegCo and the public**

8.7 The Select Committee finds that the information provided in the seven half-yearly reports before April 2014 was not comprehensive, precise or timely enough to provide a full picture of the Project's progress to Railways Subcommittee. The Select Committee considers that THB and the Corporation should have reported progress of railway projects to LegCo in a more transparent, comprehensive and timely manner with a view to keeping LegCo Members informed of the latest status and progress of railway construction.

8.8 The Government should also communicate with the public in a more transparent manner in order to address any possible public concern at the earliest opportunity.<sup>181</sup>

8.9 The Select Committee notes that THB has strengthened its reporting to Railways Subcommittee on the latest progress of the Project. Since the fourth quarter of 2014, THB has been providing reports to Railways Subcommittee on a quarterly basis instead of a half-yearly basis on the progress and the financial situation of the Project. In addition, the quarterly reports were also appended with the Corporation's progress

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<sup>181</sup> Members voted on Ms Claudia MO's proposal to amend this paragraph. Ms Claudia MO, Mr Gary FAN Kwok-wai and Mr CHAN Han-pan voted in favour of the proposal. Mr Tony TSE Wai-chuen, Mr CHAN Kam-lam and Mr Frankie YICK Chi-ming voted against the proposal. As the votes were equally divided, the Chairman exercised his casting vote in the negative according to paragraph 8 of the Practice and Procedure of the Select Committee. The proposal was defeated (please refer to paragraphs 73 to 75 of the Minutes of Proceedings of the meeting held on 14 June 2016 in this Report).

report on the Project. The Select Committee recommends that the Government should adopt this reporting arrangement in other railway projects to better facilitate LegCo in fulfilling its role and function.

**Recommendation 4: To emphasize the spirit of cooperation and trust between the contracting parties in the Government work contracts**

8.10 The Select Committee notes that, as required by EA2, the Corporation should have provided all the necessary information relating to the Project to the Government such as the financial situation and expenditure forecast. However, the Select Committee observes that both HyD and Jacobs encountered difficulties in obtaining information from the Corporation, despite requests. For example, the Corporation did not provide an accurate picture to Project Supervision Committee of the prognosis for the Project as a whole. Jacobs also had difficulty in obtaining first-hand information and some of the documents in a timely manner. (paragraphs 4.59 and 6.30 (iii))

8.11 In this respect, the Select Committee agrees with Mr WAI Chi-sing, the former Director of Highways, that a lack of cooperation and trust amongst the stakeholders might have led to the project delay. The Select Committee recommends that the spirit of cooperation and the level of trust between the contracting parties should be emphasized in Government contracts in future. (paragraph 3.61)

**Recommendation 5: To recruit professionals/experts and train professionals within the Government**

8.12 The Select Committee is of the opinion that the lack of practical experience in implementing railway projects within the Government might have affected the confidence of HyD/RDO staff in fulfilling the Government's monitoring role over the work of the Corporation. The Select Committee recommends that the Government should consider recruiting local and overseas professionals and experts in railway construction to assist the Government in carrying out its monitoring work when implementing railway projects in future. (paragraphs 3.64 and 7.9)

8.13 In view of a dearth of experienced personnel within the Government in railway construction, the Select Committee also

recommends that the Government should consider training professionals within the Government by way of secondment or "revolving door" arrangements to attract talent and gain experience and knowledge within the Government, with a view to enhancing the Government's capacity in monitoring railway projects.

**Recommendation 6: To ensure a steady supply of manpower throughout the implementation of future railway projects**

8.14 As observed in paragraphs 5.83 and 7.28 of this report, labour shortage has contributed to the delay in the Project.

8.15 The Select Committee recommends that the Government should seek to undertake railway and other major public work projects in an even and orderly spread and avoid rolling out major projects within a short span of time. The Government should have better coordination in future to ensure that the labour supply in the construction industry in Hong Kong corresponds largely with the labour demand for major public work projects while keeping a close watch on the demand in the private sector.

8.16 The Select Committee also recommends that in implementing new railway projects in future, the Government should have careful and thorough consideration of manpower resources required for delivery of projects, in particular the maintenance of an adequate supply of core skilled and experienced workforce and frontline supervisors. The Government should also introduce effective measures to ensure a continuous and steady supply of labour throughout construction projects in both public and private sectors. (paragraph 5.84)