

立法會
Legislative Council

LC Paper No. ESC39/15-16
(These minutes have been
seen by the Administration)

Ref : CB1/F/3/2

Establishment Subcommittee of the Finance Committee

Minutes of the 4th meeting
held in Conference Room 1 of Legislative Council Complex
on Wednesday, 2 December 2015, at 8:30 am

Members present:

Hon Mrs Regina IP LAU Suk-ye, GBS, JP (Chairman)
Hon WONG Kwok-kin, SBS (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon CHAN Hak-kan, JP
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP

Hon LEUNG Che-cheung, BBS, MH, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kwong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

Members absent:

Hon WONG Kwok-hing, BBS, MH
Dr Hon Kenneth CHAN Ka-lok
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung
Hon Dennis KWOK
Dr Hon Helena WONG Pik-wan
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan

Public Officers attending:

Ms Esther LEUNG, JP	Deputy Secretary for Financial Services and the Treasury (Treasury)1
Mr Eddie MAK Tak-wai, JP	Deputy Secretary for the Civil Service (1)
Mr YAU Shing-mu, JP	Under Secretary for Transport and Housing
Miss Winnie WONG	Principal Assistant Secretary for Transport and Housing (Transport)3
Mr Peter LAU, JP	Director of Highways
Mr TAM Hon-choi	Government Engineer (Railway Development 2), Highways Department

Clerk in attendance:

Ms Connie SZETO	Chief Council Secretary (1)4
-----------------	------------------------------

Staff in attendance:

Ms Anita SIT	Assistant Secretary General 1
Miss Sharon LO	Senior Council Secretary (1)9
Mr Jason KONG	Council Secretary (1)4
Ms Alice CHEUNG	Senior Legislative Assistant (1)1
Ms Haley CHEUNG	Legislative Assistant (1)9
Miss Yannes HO	Legislative Assistant (1)6

Action

The Chairman drew members' attention to the two information papers provided by the Administration before the meeting. ECI(2015-16)12 provided an update on the overall directorate establishment position and forecast of possible proposals for creation and extension of directorate posts in the 2015-2016 legislative session. ECI(2015-16)13 set out the latest changes in the directorate establishment approved since 2002. She then reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP"), they should disclose the nature of any direct or indirect pecuniary interest relating to the funding proposals under discussion at the meeting before they spoke on the items. She also drew members' attention to RoP 84 on voting in case of direct pecuniary interest.

EC(2015-16)9 Proposed creation of a supernumerary post of Chief Engineer (D1) for around four years with immediate effect upon approval of the Finance Committee to 31 December 2019 in the Railway Development Office of Highways Department to continue providing dedicated support to and monitoring the completion of the Hong Kong section of Guangzhou-Shenzhen-Hong Kong Express Rail Link project by the MTR Corporation Limited

2. The Chairman remarked that the establishment proposal was to create a supernumerary post of Chief Engineer (to be designated as Chief Engineer/Railway Development 2-3 ("CE/RD2-3")) for around four years in the Railway Development Office ("RDO") of the Highways Department ("HyD") to provide dedicated support to and monitor the completion of the Hong Kong section ("HKS") of Guangzhou-Shenzhen-Hong Kong Express Rail Link ("XRL") project by the MTR Corporation Limited ("MTRCL").

3. The Chairman said that the Panel on Transport was consulted on the establishment proposal on 16 January 2015. The Establishment Subcommittee discussed the proposal on 27 May and 10 June 2015 during the previous legislative session. At the meeting on 10 June 2015, the

Action

Subcommittee passed a motion to adjourn the discussion of the proposal. The Administration had now re-submitted the proposal for the Subcommittee's consideration.

4. Upon invitation of the Chairman, the Under Secretary for Transport and Housing ("USTH") said that the post in question was initially created in 2008 and lapsed on 7 July 2015 as approval for retaining the post was not granted by the Finance Committee ("FC") in time. As a temporary measure, the duties of CE/RD2-3 were currently shared among other CEs in RDO. Given that CE/RD2-3 was responsible for a wide spectrum of duties relating to the HKS of XRL project, and other CEs in RDO were already fully loaded with their existing duties, the above interim arrangement was not sustainable. There was an urgent need to re-create the post in order to lead the dedicated division (i.e. Railway Development Division 2-3 ("RDD2-3")) in overseeing MTRCL in the implementation of the HKS of XRL project.

Duties and performance of the proposed post and the Highways Department

5. Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Albert HO, Dr Fernando CHEUNG and Mr LEUNG Kwok-hung criticized that the Government's oversight of the HKS of XRL project was ineffective, and were unconvinced of the need to re-create the CE/RD2-3 post. Mr HO, Mr LEUNG and Dr CHEUNG queried whether the post was provided with sufficient power for effective discharge of the oversight function, including accessing relevant information on the project and giving directions to MTRCL for taking certain actions. Given that MTRCL should deliver the project in accordance with the terms and conditions in the Entrustment Agreement for the Construction and Commissioning of XRL ("Entrustment Agreement") and the Government could pursue MTRCL's liability if MTRCL failed to fulfil its contractual obligations, Mr HO was of the view that the proposed post did not serve any practical purpose. The above members considered that the Government should explain: (a) the main reasons for the project delay and cost overrun; (b) whether there was dereliction of duty on the part of CE/RD2-3 or the Government in monitoring the work of MTRCL; (c) whether the Government had conducted a comprehensive review to identify the loopholes in the present monitoring system for infrastructure projects; and (d) measures for enhancing the monitoring system for the HKS of XRL project and the functions of CE/RD2-3 to prevent recurrence of the problems of delay and cost overrun.

6. Mr CHAN Han-pan and Mr YIU Si-wing supported the establishment proposal as they considered that CE/RD2-3 performed an important role in the Government's monitoring work over the HKS of XRL project. They enquired how the Administration would enhance the role and accountability of CE/RD2-3 in monitoring the project and ensure that the post

Action

holder would discharge the duties in an effective manner.

7. USTH responded that prior to MTRCL's announcement in April 2014 on the delay of the completion of the HKS of XRL project, RDO was aware of the delay in individual contracts under the project. The Government had conducted a comprehensive review on the project implementation process and the monitoring system, and considered that MTRCL, being the project manager of XRL, bore the greatest responsibility and duty to control project cost and manage risks. At the same time, numerous external factors and unexpected circumstances were encountered at various parts of the project, including the ground investigations and cross-boundary tunnelling works. To reduce the risk of further cost overrun, the Government reached an agreement, i.e. XRL Agreement, with MTRCL on 30 November 2015, which would cap the Government's total financial commitment for the project to the latest Cost to Complete ("CTC") at \$84.42 billion. Any further cost overrun would be borne by MTRCL.

8. As regards the project monitoring system, USTH and Director of Highways ("DH_y") said that, taking into account the recommendations of the Independent Expert Panel and views of other stakeholders, the relevant monitoring work and procedures had been improved. The improvement measures included: (a) strengthening MTRCL's corporate oversight of the project through the establishment of two new committees under its Board of Directors and the appointment of new directors (including a Government representative) to the Board; (b) enhancement in the provision of information by MTRCL in the project monthly reports; (c) adoption of quantified metrics (such as red, amber, green light indicators) in progress reports to enhance understanding of the project status by stakeholders; (d) requirement for the monitoring and verification ("M&V") consultant to participate in the monthly meetings of the Project Supervision Committee; and (e) establishment of a new working group comprising members from HyD, MTRCL and the M&V consultant to strengthen the monitoring of the project programme and progress.

9. On the filling of the CE/RD2-3 post, DH_y said that it was envisaged that the post would be filled by the former incumbent recognizing the person's in-depth knowledge and rich experience in public works projects as well as the HKS of XRL project, which would be essential in leading the work of RDD2-3. HyD was mindful of the public concern over the project and expectation on the Government's monitoring work. Staff of HyD would make their best endeavours to ensure timely delivery of the project by MTRCL in meeting the revised Programme to Complete. HyD would also seek to strengthen the manpower of RDD2-3 to support CE/RD2-3 where necessary. USTH stressed that it was necessary to maintain a dedicated division to perform the "check the checker" role in monitoring the

Action

implementation of the HKS of XRL project by MTRCL. Moreover, the proposed post was vital for the effective discharge of the Government's oversight function and coordinating between HyD and MTRCL.

10. Mr YIU Si-wing and Ms Emily LAU requested the Administration to provide supplementary information to elaborate on how the monitoring system and processes for the HKS of XRL project, in particular the project governance, reporting and communications framework, would be improved in the coming four years, and the role of the CE/RD2-3 post in this regard.

[*Post-meeting note:* The supplementary information submitted by the Administration was circulated to members on 15 December 2015, vide LC Paper No. ESC30/15-16(01).]

11. Mr Albert CHAN queried whether DHy had fulfilled his responsibility in alerting the Government about the potential delay and cost overrun of the HKS of XRL project. Mr WU Chi-wai considered that the Government had failed to act promptly on warnings raised by the M&V consultant regarding delays in individual construction contracts, and enquired how it would ensure prompt follow-up actions in future. He also asked if RDD2-3's work would cover vetting and approving the delay recovery measures involving changes in the construction designs or methods.

12. DHy clarified that HyD had provided the Transport and Housing Bureau ("THB") with regular reports on various aspects of the HKS of XRL project, including information on the delay of individual construction contracts. HyD had also taken proactive actions taking into account advice given by the M&V consultant. For example, in mid 2012, when HyD was aware of the potential delay in the delivery of the project due to the cumulative delay of the cross-boundary tunnelling works, it had reported the matter to THB and promptly discussed with the relevant Mainland authorities with a view to expediting the works process. HyD had also requested MTRCL to submit quarterly reports on such works in conjunction with its Mainland counterpart. DHy added that according to the Entrustment Agreement, design changes which resulted in additional costs were reviewed by HyD, whose comments were passed to MTRCL for consideration.

Temporary staffing arrangement

13. Ir Dr LO Wai-kwok expressed support for the establishment proposal and enquired about the temporary staffing arrangement in HyD pending FC's approval of the proposal.

14. DHy responded that Chief Engineer/Railway Development 2-1 ("CE/RD2-1") had stepped in to provide temporary directorate support for the

Action

HKS of XRL Project. The existing workload of CE/RD2-1 was in turn shared among other CEs in RDO. He stressed that the temporary staffing arrangement was not sustainable and had adversely affected the initiatives for new railway projects taken forward by RDO, including the planning and implementation of railway projects recommended under the Railway Development Strategy 2014.

Liability of MTR Corporation Limited

15. Mr James TO was concerned that due to the complexities involved in pursuing MTRCL's liability for works delay and cost overrun in the HKS of XRL project, possible mistakes committed by CE/RD2-3 might disadvantage the Government's position in future legal disputes with MTRCL relating to the project. As such, he considered that there were risks in recreating the CE/RD2-3 post.

16. DHy explained that the institutional arrangements and monitoring mechanism for the HKS of XRL project had been developed taking into account the recommendations of a consultancy commissioned by HyD in 2008. The "check the checker" mode of monitoring was adopted having regard to the sound project management procedures of MTRCL. DHy reiterated that under the Entrustment Agreement, MTRCL, as the project manager, had the greatest responsibility and duty to control project cost and manage risks. It was out of the question that the work of RDD2-3 would reduce the liability of MTRCL.

Financial situation of and financial arrangements for the HKS of XRL project

17. Mr CHAN Chi-chuen, Mr LEUNG Kwok-hung, Mr Albert CHAN, Ms Emily LAU and Dr Fernando CHEUNG expressed grave concern about the further revision of CTC and the XRL Agreement signed between the Government and MTRCL on 30 November 2015, in particular the proposed new funding arrangement for the cost overrun. They considered it inappropriate for the Government to bear the project cost overrun using public funds. While the XRL Agreement would provide a special dividend to shareholders of MTRCL, Ms LAU was concerned that MTRCL might transfer the relevant cost to passengers. Mr CHAN Chi-chuen said that the Government should not pursue the establishment proposal until the way forward of the HKS of XRL project was made clear and the issue about the future funding had been resolved. He also expressed strong dissatisfaction that the Government had not provided the relevant information on the XRL Agreement and the latest financial arrangements for the project to the Subcommittee, which he considered necessary in facilitating its consideration on the establishment proposal.

Action

18. Mr TAM Yiu-chung said that the Democratic Alliance for the Betterment and Progress of Hong Kong supported the implementation of the HKS of XRL project and the establishment proposal. Mr TAM, Mr YIU Si-wing and Ir Dr LO Wai-kwok remarked that other issues pertaining to the project, such as the delivery timetable and financial arrangements, should be followed up by the relevant committees of the Legislative Council ("LegCo").

19. USTH responded that the HKS of XRL project was still ongoing and RDD2-3 was responsible for discharging various related tasks. There was an urgent need to re-create the CE/RD2-3 post to provide dedicated directorate support for RDD2-3. Matters relating to other aspects of the HKS of XRL project, including CTC and the financial arrangements, should be considered on other occasions, such as meetings of the LegCo Subcommittee on Matters Relating to Railways ("Railways Subcommittee"). USTH clarified that papers on the proposed arrangements for taking forward the HKS of XRL project and the latest financial situation of and proposed financial arrangements for the project had been provided to the Railways Subcommittee. The matter would be discussed at the coming meeting of the Railways Subcommittee. The Chairman remarked that the papers referred to by the Government had been copied to all Members of LegCo.

20. Mr CHAN Chi-chuen expressed concern that the CE/RD2-3 post would become redundant if the HKS of XRL project were suspended or even terminated in the event that LegCo did not approve the additional funding or the XRL Agreement was not approved by the independent shareholders of MTRCL. USTH responded that even in the unfortunate event that the XRL construction works were to be suspended or the entire project terminated, the Government would need to take follow-up actions, including monitoring the claims assessment for the project. Such follow-up actions would still require the dedicated support of CE/RD2-3.

21. Mr CHAN Chi-chuen requested the Administration to provide supplementary information to explain the arrangement for the CE/RD2-3 post if the HKS of XRL project was not taken forward.

[Post-meeting note: The supplementary information submitted by the Administration was circulated to members on 15 December 2015, vide LC Paper No. ESC30/15-16(01).]

22. Ms Cyd HO asked whether the revised CTC had taken into account the unresolved claims of over \$20 billion from XRL contractors mentioned in paragraph 15 of EC(2015-16)9. She enquired about the number of claims submitted by the contractors in respect of the major construction contracts awarded under the project, and whether CE/RD2-3 would be involved in resolving the claims.

23. DHy responded that the revised CTC already included allowances for all submitted and future claims. According to the latest information provided by MTRCL, the total amount of claims with some substantiation was approximately \$26.21 billion. Some 130 claims had already been resolved with about \$1.47 billion awarded to contractors. For the unresolved claims, MTRCL had made interim award amounting to about \$4 billion. DHy clarified that it was MTRCL's duty to assess and resolve the claims made by contractors. HyD would oversee the claims assessment by MTRCL.

24. Ms Cyd HO requested the Administration to provide details on the position of claims made by contractors of the HKS of XRL project, including the number of claims submitted, their respective amounts, whether they had been resolved, and the amounts paid by MTRCL to the contractors concerned.

[Post-meeting note: The supplementary information submitted by the Administration was circulated to members on 15 December 2015, vide LC Paper No. ESC30/15-16(01).]

25. Ms Emily LAU enquired whether the Entrustment Agreement had set out MTRCL's liability for the cost overrun of the HKS of XRL project and whether the Government would pursue MTRCL's liability. She also expressed concern about the high legal cost to be borne by the Government in this regard. USTH explained that according to the Entrustment Agreement, the project was to be financed by the Government. Notwithstanding that the Government had entered into a new XRL Agreement with MTRCL, it reserved all the rights to pursue MTRCL's liability in respect of the current cost overrun (e.g. through arbitration) after the commissioning of XRL.

26. Ms Emily LAU urged that the Government should disclose the entire Entrustment Agreement to facilitate relevant committees of LegCo in discussing matters including the financial situation of and proposed financial arrangements for the HKS of XRL project. USTH pointed out that the Entrustment Agreement contained sensitive commercial information and it would be inappropriate to disclose the entire document to the public. The Government would consider providing the Entrustment Agreement to Members of the relevant committees of LegCo in closed sessions if so requested by Members. The Administration would provide written response on this aspect.

[Post-meeting note: The Administration's written response was circulated to members on 15 December 2015, vide LC Paper No. ESC30/15-16(01).]

Action

27. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
13 January 2016