

立法會
Legislative Council

LC Paper No. FC227/17-18
(These minutes have been
seen by the Administration)

Ref : FC/1/1(29)

Finance Committee of the Legislative Council

Minutes of the 59th meeting
held at Conference Room 1 of the Legislative Council Complex
on Friday, 14 July 2017, at 9:00 am

Members present:

Hon CHAN Kin-por, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Tommy CHEUNG Yu-yan, GBS, JP
Prof Hon Joseph LEE Kok-long, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin, BBS
Hon Frankie YICK Chi-ming, SBS, JP
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, SBS, MH, JP

Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Dr Hon Elizabeth QUAT, BBS, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon HO Kai-ming
Hon LAM Cheuk-ting
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon Kenneth LAU Ip-keung, BBS, MH, JP
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Nathan LAW Kwun-chung
Dr Hon YIU Chung-yim
Dr Hon LAU Siu-lai

Members absent:

Hon Michael TIEN Puk-sun, BBS, JP (Deputy Chairman)
Hon Claudia MO
Dr Hon KWOK Ka-ki
Hon Dennis KWOK Wing-hang
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon CHUNG Kwok-pan
Hon SHIU Ka-chun
Hon HUI Chi-fung
Hon Jeremy TAM Man-ho

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

Public officers attending:

Mr Andrew LAI Chi-wah, JP	Acting Permanent Secretary for Financial Services and the Treasury (Treasury)
Ms Jenny CHOI Mui-fun	Acting Deputy Secretary for Financial Services and the Treasury (Treasury) 1
Mr Raistlin LAU, JP	Deputy Secretary for Financial Services and the Treasury (Treasury) 3
Mr Alfred ZHI Jian-hong	Principal Executive Officer (General), Financial Services and the Treasury Bureau (The Treasury Branch)
Ms Rebecca PUN Ting-ting, JP	Deputy Secretary for Transport and Housing (Transport) 1
Mr Raymond CHENG Nim-tai	Principal Assistant Secretary for Transport and Housing (Transport) 7
Mr Daniel CHUNG Kum-wah, JP	Director of Highways
Mr Jimmy CHAN Pai-ming, JP	Principal Government Engineer (Railway Development), Highways Department
Mr Anthony YUEN Woo-kok	Chief Engineer (Railway Development)1-3, Highways Department

Other persons attending:

Dr Philco WONG	Projects Director, MTR Corporation Limited
Mr Ken WONG	General Manager (Projects), MTR Corporation Limited
Mr Stephen YAU	Manager (Estimates, Cost Control and Logistics), MTR Corporation Limited
Ms Prudence CHAN	Senior Manager (Projects and Property Communications), MTR Corporation Limited

Clerk in attendance:

Ms Anita SIT	Assistant Secretary General 1
--------------	-------------------------------

Staff in attendance:

Mr Derek LO	Chief Council Secretary (1)5
Ms Ada LAU	Senior Council Secretary (1)7
Mr Raymond SZETO	Council Secretary (1)5
Mr Frankie WOO	Senior Legislative Assistant (1)3
Miss Yannes HO	Legislative Assistant (1)6

Action

**Item No. 1 — FCR(2017-18)13
RECOMMENDATION OF THE PUBLIC WORKS
SUBCOMMITTEE MADE ON 20 APRIL 2017**

**PWSC(2016-17)44
HEAD 706 — HIGHWAYS
Transport — Railways
56TR — South Island Line (East)—essential public infrastructure
works**

The Chairman advised that the Finance Committee ("FC") would continue with its deliberation on the funding proposal to increase the approved project estimate of 56TR — South Island Line (East) ("SIL(E))" — essential public infrastructure works ("EPIW") by \$286.2 million from \$927 million to \$1,213.2 million in money-of-the-day ("MOD") prices. The Chairman reminded members of the requirements under Rule 83A and

Rule 84 of the Rules of Procedure. He also declared that he was an independent non-executive director of The Bank of East Asia.

Calculation and presentation of on-cost

2. Mr CHU Hoi-dick considered that as the amount of additional on-cost payable to the MTR Corporation Limited ("MTRCL") stated in the discussion paper submitted by the Administration was not calculated in MOD prices, it could not truly reflect the actual amount of on-cost payable. Mr CHU pointed out that since the Public Works Subcommittee ("PWSC") commenced discussion on the proposal on 5 April 2017, the Administration had all along maintained that the additional on-cost payable to MTRCL was \$29.1 million. However, after the FC meeting held on 7 July 2017, it was revealed in the supplementary information (LC Paper No. FC224/16-17(02)) provided by the Administration that the amount of on-cost had actually been increased by \$47.8 million in MOD prices. Mr CHU alleged that the Government's presentation was misleading. If that was indeed the case, he demanded an apology from the Administration.

3. Referring to paragraph 14 of the Administration's proposal (PWSC(2016-17)44) which stated that among the additional funding sought, the additional on-cost payable to MTRCL (i.e. \$29.1 million) was calculated in MOD prices, while the amount was said to be calculated in September 2010 prices in a subsequent paper, Dr YIU Chung-yim considered that such a discrepancy was a misrepresentation. Dr YIU asked the Administration to withdraw the paper. Mr James TO and the Chairman requested that the Administration should, for record purpose, provide members with a supplementary paper to explain the inaccurate representation in the papers.

[Post-meeting note: The Chinese version of the supplementary information provided by the Administration was circulated to members vide LC Paper No. FC246/16-17 on 24 July 2017.]

4. Dr Fernando CHEUNG and Mr LEUNG Kwok-hung also criticized the way cost overruns were calculated and presented, which made it difficult for members to monitor the financial position of EPIW. Mr CHU Hoi-dick sought an undertaking from the Administration that all costs in future funding proposals for works projects would be presented in MOD prices so as to give members a clear idea of the actual amount incurred for various cost items and facilitate their vetting and approval of funding proposals.

5. The Administration's response was as follows:

- (a) the Deputy Secretary for Transport and Housing (Transport) 1 ("DS(T)1") stressed that the Administration had not concealed the actual costs of EPIW, including the on-cost payable to MTRCL. In both the paper that sought to increase the projects estimate of the present EPIW item and subsequent supplementary papers, the Administration had, in accordance with usual practice, converted the actual and estimated future cash flows (i.e. the latest cost estimates in MOD prices) into constant prices (i.e. calculated in September 2010 prices) to facilitate members' scrutiny of the proposal by allowing an equal basis of comparison between the original estimates and the latest costs of various items;
- (b) DS(T)1 stated that the way of presentation in PWSC(2016-17)44 had followed the established practice, and stressed that Enclosure 4 to the said paper had already made it clear that the amount was calculated in September 2010 prices; and
- (c) the Deputy Secretary for Financial Services and the Treasury (Treasury) 3 ("DS(Tsy)3") noted the views expressed by members on the presentation of the costs of public works projects and undertook to conduct a review to facilitate members' understanding of the actual costs of works projects.

6. Dr YIU Chung-yim opined that the criterion of charging an on-cost (design and management fees) at 16.5% of the project base cost under the Entrustment Agreement between the Government and MTRCL for EPIW ("the Entrustment Agreement") was effectively a loophole in management as the entrusted party could resort to the provision and charge a higher on-cost in case of upward adjustments in the project base cost (including those relating to design changes and claims).

7. In response, the Director of Highways ("DHy") pointed out that the aforesaid criterion had not created any loophole in management because when the Government supervised the operation of MTRCL, in case of works variations or claims, MTRCL was required to give a detailed account of its justifications. The authorities would only endorse the expenses after rigorously scrutinizing such claims and ascertaining that the claims were reasonable and sufficiently justified.

Responsibility for cost overruns incurred by project delays

8. Mr CHAN Chi-chuen pointed out that while the contractor of the SIL(E) project had conducted ground investigations in the vicinity of the Wong Chuk Hang Nullah as early as in March 2008, MTRCL had not followed it up until 2009 when consultation was held with the Drainage Services Department ("DSD") on conducting ground investigations at the Wong Chuk Hang Nullah. As a result, the opportunity to conduct ground investigations inside the Nullah in the dry season was missed. He considered that cost overruns of EPIW arising from unforeseeable unfavourable ground conditions were due to the absence of ground investigations at the Wong Chuk Hang Nullah. Mr CHAN asked how long it would take to set up working platforms for carrying out ground investigations, and whether the preparatory work was so time-consuming that it was impossible to conduct such ground investigations. Mr LEUNG Yiu-chung also asked whether the Administration was too lenient in respect of its monitoring of MTRCL's implementation of EPIW as well as the criteria adopted for vetting and approving claims.

9. Dr Fernando CHEUNG pointed out that the delays and cost overruns of EPIW were caused by a substantial amount of uncharted underground utilities. He asked the Government when a comprehensive database on underground utilities would be established to ensure that future works projects would not be affected similarly and the safety of construction workers would not be jeopardized.

10. The responses of MTRCL and the Administration were as follows:

- (a) General Manager (Projects), MTR Corporation Limited pointed out that when preliminary design for SIL(E) was carried out in 2008, ground investigations had been conducted at the Wong Chuk Hang Nullah for the purpose of collecting information to draw up SIL(E)'s alignment. As the project entered the detailed design stage in 2009 and more geotechnical data were required, MTRCL contacted DSD for conducting ground investigations. Having regard to DSD's reply, ground investigation was eventually not conducted inside the Wong Chuk Hang Nullah given that the time needed for the contractor to design and erect drilling platforms inside the nullah would made it impossible to conduct the investigations in the dry season of the same year;

- (b) Projects Director, MTR Corporation Limited added that the claims had already been vetted by professional engineers and progress analysts of MTRCL, and it was found that the delays and cost overruns were all caused by unforeseeable circumstances;
- (c) DHy responded that the same criteria were adopted by the Administration for monitoring MTRCL and for implementing works projects of the Government. There were multiple reasons that led to project delays and cost overruns. When monitoring the work of MTRCL, the Government would require MTRCL to justify each and every claim for cost overrun. After vetting, the Administration would endorse those claims that were justified. There had been previous cases in which such claims were rejected by the Administration; and
- (d) DHy replied that the Administration had consulted the industry and the Legislative Council before 2004 on whether a comprehensive database on underground utilities should be set up. At that time, the general view was that it would be more desirable to have an electronic data platform for the sharing of utilities records by public utilities companies and relevant government departments. Public utilities companies and relevant government departments would furnish information on underground utilities to the best of their knowledge as far as possible, so as to minimize project delays that might be caused by incomplete or unclear records during the construction stage. However, old underground utilities in early development areas might not necessarily be accurately reflected in the existing records.

11. Ms Starry LEE declared that the accounting firm she worked for was the auditor of MTRCL, but she had not participated in the relevant auditing work. Ms LEE asked whether the conduct of a review that aimed to forestall cost overruns of works projects would be included into the agenda of the new Government. DS(T)1 responded that the Government would take into account the views expressed by members when planning for future railway development projects.

MTRCL's expected return on capital for SIL(E)

12. Pointing out that as EPIW could help increase SIL(E)'s patronage to the benefit of MTRCL, Dr Fernando CHEUNG and Ms Tanya CHAN did not agree with the Government's claim that the two projects were unrelated. As MTRCL's expected return on capital for SIL(E) (including the weighted average cost of capital ("WACC") and its rate of increase) was funded by public moneys, Dr CHEUNG questioned whether the Government and MTRCL could justifiably refuse disclosure on the ground of such being commercially sensitive financial data. Ms CHAN opined that it was unreasonable that under the "Rail-plus-Property" model, land premium payable by MTRCL to the Government for property development was assessed on a green field basis (i.e. ignoring the presence of railway), and requested that such an approach be reviewed by the Government.

13. The responses of the Administration and MTRCL were as follows:

- (a) DS(T)1 pointed out that as SIL(E) was not viable financially, the Government must provide \$9.9 billion (in December 2010 prices) of funding support to MTRCL in order to fill the funding gap for taking forward the SIL(E) project. When calculating the funding gap of the project, the Government had already taken into consideration MTRCL's expected return on capital; and
- (b) Senior Manager (Projects and Property Communications), MTR Corporation Limited supplemented that WACC was commercially sensitive data for a business organization, given its relationship with the internal rate of return. MTRCL, as a listed company, would enter into business negotiations with outside parties on investment projects from time to time. Disclosure of MTRCL's WACC would affect its negotiations in future commercial projects, thereby subjecting MTRCL to higher investment risks and unfavourable bargaining position. In view of this, MTRCL could not provide the information requested by members.

Motion to adjourn the discussion on the item

14. At 10:29 am, Dr YIU Chung-yim moved a motion without notice to adjourn the discussion on the item under paragraph 39 of the Finance Committee Procedure. At the invitation of the Chairman, Dr YIU spoke on his motion. Alleging that the Administration's presentation of on-cost in PWSC (2016-17)⁴⁴ and its subsequent replies to members' questions was a misrepresentation, Dr YIU queried whether the provision for price adjustments had been used properly.

15. The Chairman directed that each member might speak once for not more than three minutes on the motion to adjourn the discussion on the item. Mr Nathan LAW, Mr CHAN Chi-chuen, Mr LEUNG Kwok-hung and Dr Fernando CHEUNG spoke on the motion.

16. Mr Nathan LAW and Dr Fernando CHEUNG pointed out that while the Administration and MTRCL had agreed to develop the SIL(E) project under the "Rail-plus-Property" model, it was unreasonable that the land premium payable by MTRCL to the Government for property development was assessed on a green field basis (i.e. ignoring the presence of railway). Furthermore, given the lack of transparency under the "Rail-plus-Property" model, it was difficult for members to monitor a project implemented under such an approach. Mr CHAN Chi-chuen and Mr LEUNG Kwok-hung considered that the Administration had not properly monitored MTRCL in respect of the costs of EPIW, while the relevant mechanism also made it difficult for the Legislative Council to exercise effective oversight.

17. Dr YIU Chung-yim spoke in reply in respect of his motion. The Chairman put the motion to vote. At the request of members, the Chairman ordered a division. The Chairman declared that the motion was negated. The votes of individual members were set out in the **Annex**.

18. DS(Tsy)3 stressed that the Government would not deliberately make misleading statements or misrepresentations when preparing its papers or answering members' questions. All papers were prepared according to established specifications. That said, the Administration would take into account members' views and improve or update the presentation of project costs and relevant data in government papers to ensure that members could have a better understanding of the use of the projects costs.

19. The meeting ended at 10:58 am.

Legislative Council Secretariat

12 April 2018

點名表決 DIVISION: 1
日期 DATE: 14/07/2017
時間 TIME: 10:51:34 上午 AM

動議 MOTION: 動議中止議程文件 FCR(2017-18)13 - PWSC(2016-17)44 的討論
Motion that discussion on FCR(2017-18)13 - PWSC(2016-17)44 be now adjourned

動議人 MOVED BY:

出席 Present : 52
投票 Vote : 51
贊成 Yes : 20
反對 No : 31
棄權 Abstain : 0
結果 Result : 否決 Negatived

個別表決如下 THE INDIVIDUAL VOTES WERE AS FOLLOWS:

議員	MEMBER	投票	VOTE	議員	MEMBER	投票	VOTE
陳健波	CHAN Kin-por	出席	PRESENT	葉建源	IP Kin-yuen	贊成	YES
涂謹申	James TO	贊成	YES	葛珮帆	Dr Elizabeth QUAT	反對	NO
梁耀忠	LEUNG Yiu-chung	贊成	YES	廖長江	Martin LIAO		
石禮謙	Abraham SHEK			潘兆平	POON Siu-ping	反對	NO
張宇人	Tommy CHEUNG	反對	NO	蔣麗芸	Dr CHIANG Lai-wan	反對	NO
李國麟	Prof Joseph LEE	贊成	YES	盧偉國	Ir Dr LO Wai-kwok	反對	NO
林健鋒	Jeffrey LAM	反對	NO	鍾國斌	CHUNG Kwok-pan		
黃定光	WONG Ting-kwong	反對	NO	楊岳橋	Alvin YEUNG	贊成	YES
李慧琼	Starry LEE	反對	NO	尹兆堅	Andrew WAN	贊成	YES
陳克勤	CHAN Hak-kan			朱凱迪	CHU Hoi-dick		
梁美芬	Dr Priscilla LEUNG	反對	NO	吳永嘉	Jimmy NG	反對	NO
黃國健	WONG Kwok-kin	反對	NO	何君堯	Dr Junius HO	反對	NO
葉劉淑儀	Mrs Regina IP	反對	NO	何啟明	HO Kai-ming	反對	NO
謝偉俊	Paul TSE	反對	NO	林卓廷	LAM Cheuk-ting	贊成	YES
梁國雄	LEUNG Kwok-hung	贊成	YES	周浩鼎	Holden CHOW	反對	NO
毛孟靜	Claudia MO			邵家輝	SHIU Ka-fai	反對	NO
田北辰	Michael TIEN			邵家臻	SHIU Ka-chun		
何俊賢	Steven HO	反對	NO	柯創盛	Wilson OR	反對	NO
易志明	Frankie YICK	反對	NO	容海恩	YUNG Hoi-yan	反對	NO
胡志偉	WU Chi-wai	贊成	YES	陳沛然	Dr Pierre CHAN		
姚思榮	YIU Si-wing	反對	NO	陳振英	CHAN Chun-ying	反對	NO
馬逢國	MA Fung-kwok	反對	NO	陳淑莊	Tanya CHAN	贊成	YES
莫乃光	Charles Peter MOK	贊成	YES	張國鈞	CHEUNG Kwok-kwan	反對	NO
陳志全	CHAN Chi-chuen	贊成	YES	許智峯	HUI Chi-fung		
陳恒鑾	CHAN Han-pan	反對	NO	陸頌雄	LUK Chung-hung	反對	NO
梁志祥	LEUNG Che-cheung			劉國勳	LAU Kwok-fan	反對	NO
梁繼昌	Kenneth LEUNG	贊成	YES	劉業強	Kenneth LAU	反對	NO
麥美娟	Alice MAK	反對	NO	鄭松泰	Dr CHENG Chung-tai	贊成	YES
郭家麒	Dr KWOK Ka-ki			鄭俊宇	KWONG Chun-yu	贊成	YES
郭偉強	KWOK Wai-keung	反對	NO	鄭文豪	Jeremy TAM		
郭榮鏗	Dennis KWOK			羅冠聰	Nathan LAW	贊成	YES
張華峰	Christopher CHEUNG			姚松炎	Dr YIU Chung-yim	贊成	YES
張超雄	Dr Fernando CHEUNG	贊成	YES	劉小麗	Dr LAU Siu-lai	贊成	YES
黃碧雲	Dr Helena WONG	贊成	YES				

秘書 CLERK

