

IN THE COMMISSION OF INQUIRY INTO THE
DIAPHRAGM WALL AND PLATFORM SLAB CONSTRUCTION WORKS
AT HUNG HOM STATION EXTENSION UNDER THE
SHATIN TO CENTRAL LINK PROJECT

WITNESS STATEMENT OF **MR. POON CHUK-HUNG, JASON**

I, POON Chuk-hung, Jason of Suite A, 15/F, Kimberley House, 35 Kimberley Road, Tsim Sha Tsui, Kowloon, Hong Kong say this:-

1. I am the managing director of China Technology Corporation Limited (“**Chinat**”).
2. On 10 July 2018, the Chief Executive in Council appointed the Commission of Inquiry into the Diaphragm Wall and Platform Slab Construction Works at the Hung Hom Station Extension under the Shatin to Central Link Project (“**the Commission**”) pursuant to s.2 of the Commissions of Inquiry Ordinance (Cap.86).
3. By a letter dated 20 July 2018, the Commission (through her legal representatives) required Chinat to provide a witness statement pertaining to matters that were set out in the terms of reference. I am duly authorized by Chinat to give this witness statement. Amongst other things, I am requested to:-
 - 3.1 Describe and explain respective roles and works of Leighton Contractors (Asia) Limited (“**Leighton**”) and Chinat in the SCL 1112 project (“**SCL 1112**”);
 - 3.2 Describe and explain the chronology of events and occasions when Chinat witnessed any shortening, cutting, or defective connection of

steel bars in the diaphragm walls and platform slabs (“**the Defective Steel Works**”);

3.3 Describe and explain the reason why Chinat poured concrete at the diaphragm walls and platform slab despite the Defective Steel Works;

3.4 To provide opinion as to how the Defective Steel Works could be rectified; and

3.5 To comment on the report prepared by the MTR Corporation Limited (“**MTRC**”) dated 15 June 2018 to the Highways Department (“**the MTRC Report**”).

4. Unless otherwise stated, the facts and matters deposed to in this witness statement are within my personal knowledge and are true. Where the facts and matters deposed are not within my own knowledge, they are based on the stated sources and are true to the best of my knowledge, information, and belief.

A. Background

A1. Background of Chinat

5. Chinat (「**中科興業有限公司**」) is a private limited company incorporated in Hong Kong on 20 March 2009. When Chinat was established, it had four shareholders, namely:-

5.1 Myself;

5.2 Madam CHU Shui-Fong, my wife;

5.3 Mr. SHEK Yiu Shing; and

5.4 Mr. KONG Cheung Kin.

6. In 2013, I and my wife purchased Mr. SHEK Yiu Shing and Mr. KONG Cheung Kin's shareholdings in Chinat. Until now, the only shareholders of Chinat are myself and my wife. There is now produced and shown to me marked exhibit "PCHJ-1", a true copy of Form NAR1 of Chinat in 2018.
7. As of now, Chinat has, including myself, approximately 100 employees. Amongst those, 17 are engineering and supervisory staff. There are also 90 other direct construction workers in different trades.
8. In 2016 and 2017, Chinat had an annual revenue of HK\$ 231 and 267 million respectively. Chinat always has a healthy cash flow and has no outstanding financial loans as at the date of this witness statement.
9. Chinat is one of the major local infrastructure and civil engineering subcontractors in the discipline of reinforced concrete structures.
 - 9.1 From 2011 to 2016, Chinat has been recognized and was awarded with the Golden Prize for the Best Subcontractor and Excellent Employer by the Construction Industry Council.
 - 9.2 In 2017/18, Chinat was awarded the Silver Prize for the best Civil Engineering Subcontractor in the category of Construction Safety, jointly organized by a group of organisations in the Construction

Industry and the Hong Kong Government (Development Bureau).

9.3 Since its incorporation, Chinat has never been convicted of any industrial safety and/or environmental summonses.

A2. *My credentials and qualifications*

10. I have a Master's degree from a recognized University and have practiced in the construction industry for the last 25 years.
11. In 1996, I participated in the Chek Lap Kok Airport Development Scheme as a section engineer managing a team that worked on the construction of the Processing Terminal Building.
12. In 2001, I was awarded as one of the top ten project managers worldwide by Hyundai Engineering and Construction in relation to the introduction and use of aluminum handset framework in high-rise buildings within Hong Kong.

A3. *The Shatin Central Link ("SCL") Project*

13. The SCL project connects existing railway lines to form an East-West Corridor ("EWL") and North-South Corridor ("NSL"). The EWL will extend the existing Ma On Shan Line from Tai Wai to Hung Hom; the NSL will extend the existing East Rail line to Exhibition Centre Station and Admiralty Station through Hung Hom.
14. To the best of my knowledge, the Highways Department and the Railway Development Office are the responsible departments in the

Government that monitor the SCL Project. The Government appointed the MTRC to be the project manager (on behalf of the Government) of the SCL Project. I understand that the MTRC has a crucial functional and management role within the SCL Project.

15. In order to cater for both the EWL and the NSL, one of the important construction projects in the SCL Projects involve expanding the Hung Hom Station. This includes constructing additional platforms in the Hung Hom Station, construction of Stabling Sidings, and the modification of the concourse at the existing Hung Hom Station. All these works form part of the package of works under SCL 1112.

16. The Hung Hom Station Construction Site is divided into six areas, namely Area A, HKC, Area B, Area C1, Area C2, and Area C3. Each area is further subdivided into smaller areas known as “bays”.

B. SCL 1112

B1. Overall organisation of SCL 1112

17. In or about March 2013, **Leighton** was awarded SCL 1112. Under SCL 1112, Leighton was entitled to sub-let (sub-contract) part of their works and enter into further sub-contracts with sub-contractors. In this contractor-subcontractor relationship, neither the MTRC nor the Government has any contractual relationship with the subcontractors.

18. In or about February 2015, Leighton invited Chinat to tender for the formwork and concreting package of SCL 1112. Upon receiving such invitation, Chinat submitted a tender in the same month.

19. Insofar as the interested parties of this Commission of Inquiry are concerned, their respective roles under Contract 1112 are as follows:-

- 19.1 The Hong Kong Government plays three different roles under Contract 1112: owner, developer, and supervisor. Through an entrustment agreement, the Hong Kong Government delegates to the MTRC with the management of Contract 1112. Through her directorship in MTRC, the Hong Kong Government is also responsible for cost control, timely delivery, and monitoring critical adversities of the whole SCL Project.
- 19.2 MTRC, under an entrustment agreement, directly manages the main contractor in the execution of the relevant provisions under main contract of the SCL Project and, amongst other things, Contract 1112.
- 19.3 Leighton, though the main contract with MTRC, is responsible for executing and delivering works of SCL 1112 in accordance with the requirements and specifications of the contract.
- 19.4 Fang Sheung is a subcontractor of Leighton. Under her subcontract with Leighton, Fang Sheung was responsible for executing and delivering the works of rebar fixing and coupler installations in the vicinities of the Hung Hom Station and the south approaching tunnel under Contract 1112.
- 19.5 Intrafor is another subcontractor of Leighton. Under her subcontract with Leighton, Intrafor was responsible for

executing and delivering the works of diaphragm walls under Contract 1112.

19.6 Chinat is, also, a subcontractor of Leighton. Under her subcontract with Leighton, Chinat was responsible for executing and delivering the works of shear-key, grout tube, waterstop, hydrophilic strips, drainage in structure, duct in structure, formwork and falsework, access scaffold and concrete pouring in the vicinities of the Hung Hom Station and the south approaching tunnel under Contract 1112.

20 As of the date of this witness statement, Contract 1112 is yet to be completed.

21 That said, as far as Chinat is concerned, the defect liability period expired in February 2018, one year upon “degree one” [Completion of reinforced concrete structures ready for Electrical and mechanical and railway installation] completion in February 2017, viz. the date of substantial completion. Nevertheless, Leighton has not, up to the date of this witness statement issued any documentation to Chinat confirming the same.

B2. Chinat’s Role in Contract 1112

22 In or about May 2015, Chinat was awarded with the tender on the frame-working and concreting package of SCL 1112. On 20 May 2015, Chinat participated in the kick-off meeting of the awarded tender. There is now produced and shown to me marked exhibit “PCHJ-2”, a true copy of the minutes of the kick-off meeting dated 29 May 2015.

23 On 28 May 2015, Chinat agreed and signed the subcontract of SCL 1112 (H2601/SC/077) (“**Chinat’s Agreement**”), with a contract sum of HK\$ 111 million. There is now produced and shown to me marked exhibit “**PCHJ-3**”, a true copy of H2601/SC/077.

24 Amongst other things, PCHJ-3 contains the following important Schedules and/or Appendixes:-

24.1 Third Schedule of the Chinat’s Agreement¹ contains the sub-contract particulars stipulating the scope of works of Chinat;

24.2 Fourth Schedule of Chinat’s Agreement² contains the division of labour between Chinat, as the subcontractor, and Leighton, as the contractor, under Contract 1112;

24.3 Ninth Schedule of Chinat’s Agreement³ outlines the quality system that both Leighton and Chinat aim towards committing;

25 Amongst other things, pursuant to the Third Schedule of Chinat's Agreement, Chinat is responsible for the followings under SCL 1112:-

25.1 EWL slab construction of Area C, Area B and Area C;

25.2 NSL slab construction of Area A, Area B and Area C;

25.3 EWL and NSL of HKC;

25.4 The roof and base slab of NSL; and

¹ pp. 40-46 of PCHJ-3

² pp. 47-51 of PCHJ-3

³ p. 70 of PCHJ-3

25.5 Railway walls in the south approaching tunnel

26 Due to unforeseeable circumstances, Chinat only commenced works in or about late July 2015. Leighton also did not require Chinat to participate in the works of EWL slab construction of Area A and Bay 1875 of Area C1. Unfortunately, there were no written records for such arrangements.

27 There is now produced and shown to me marked exhibit “**PCHJ-4**”, a copy of two internal organisation charts of Chinat. Insofar as Chinat is concerned, the following persons are responsible for Contract 1112:-

27.1 Myself as the Project Manager of Contract 1112;

27.2 Mr. Ngai Nai Chi, Thomas (“**Mr. Thomas Ngai**”) ss the Superintendent of Contract 1112;

27.3 Mr. Leung Kin (“**Mr. Leung**”) as the South Approaching Tunnel (SAT) Foreman.

27.4 Mr. But Ho Yin (“**Mr. But**”) and Mr. Li Run Chao (“**Mr. RC Li**”) are the Foreman and Assistant Foreman of Area A, B and C respectively.

27.5 Mr. Chu Ka Kam (“**Mr Chu**”) as the Carpentry Foreman.

28 In order to properly supervise the whole project (Contract 1112), I frequently held internal lunch meetings with Chinat employees engaged in Contract 1112. The lunch meetings were usually held in Chinat’s temporary offices inside the Hung Hom Station Construction Site.

C. Witnessing Non-conformance Practices

29 In or about July 2015, the workers of Chinat began to commence their designated works in the construction site of the Hung Hom Station (“**the Hung Hom Station Construction Site**”). The Chinat site foreman Mr. Leung and myself would attend the Hung Hom Station Construction Site daily to do site inspection in order to supervise the work progress, and to resolve any issues at hand.

C1. Incidents in August 2015

30 In mid-August 2015, I and 12 other staff of Chinat had an internal meeting at Chinat’s temporary offices in the Hung Hom Station Construction Site. Mr. Leung reported to me orally that he saw in late July 2015 someone cutting the threaded rebars using cutting/grinding machines at Bay 2 and Bay 4 of Area C1. At the same time, Mr. Chu also corroborated with what was said by Mr. Leung and told me that he also witnessed similar incidents happening.

31 I asked Mr. Leung and Mr. Chu as to who was/were the person(s) cutting the threads. Both Mr. Leung and Mr. Chu told me that they were staff member(s) of Leighton.

32 I suggested to Mr. Leung that he should report the matter to MTRC for record purposes. Sometime later, Mr. Leung and Mr. Chu told me that they had reported the matter to MTRC.

33 In or about August 2015, I visited Area C1 of the Hung Hom Station

Construction Site for site inspection purposes. At a position between Bay 2 and Bay 3, I witnessed three male persons (“**the Persons**”) wearing reflective safety vests of Leighton using a grinding machine to cut the threaded rebars one after another. The surrounding environment was clear and bright. I was around 30 to 40 metres away from the male persons and can see them clearly without any obstructions whatsoever in front of me.

- 34 I approached the Persons who were using the grinding machine to cut the threaded rebars to install them to the couplers on the diaphragm wall. I attempted to stop them from doing what they were doing, but it was in vain as they ignored me.

C2. Reporting the Incidents to Leighton in September 2015

- 35 In or about early September 2015, Mr. But also reflected to me that similar incidents occurred. He also attempted to stop those doing what they were doing, namely cutting the threaded rebars but, again, to no avail.

- 36 In September 2015, I reported the incidents in August 2015 to Mr. So Yiu Wai (“**Mr. So**”), the then superintendent of Leighton, and Mr. So’s superior Mr. Khyle Rodgers (“**Mr. Rodgers**”), the then senior superintendent of Leighton. I indicated to Mr. So and Mr. Rodgers that staff members of Leighton were cutting the threaded rebars.

- 37 Both Mr. So and Mr. Rodgers told me that they had no knowledge of any staff members of Leighton doing such acts. They also reassured me that they would inform their staff members not to do such acts again and reassured me that no similar incidents would occur again in the future.

38 That said, in mid-September 2015, I myself again saw staff members of Leighton once again, cutting the threaded rebars.

39 Between 15 to 20 September 2015, I invited both Mr. So and Mr. Rodgers for a site inspection. During the inspection, all three of us saw one staff member of Leighton cutting the threaded rebars using a hydraulic disc cutter.

40 I immediately approached that person and tried to stop him from cutting the threaded rebars. Nonetheless, Mr. So stopped me and asked, rhetorically, *“why would it be a problem to cut the threaded rebars?”* Mr. So, in front of me, asked that staff member to continue with what he was doing, namely cutting the threaded rebars. I (secretly) took out a Huawei mobile phone, which belongs to Chinat, and took 2 photographs and a video clip of approximately 10 odd seconds.

41 On 22 September 2015, I, again, saw staff of Leighton cutting the threaded rebars with hydraulic disc cutter. I (secretly) used my personal Huawei mobile phone to take 7 photographs. Amongst those 7 photographs, 2 of which were random photographs I took in order not to alert the staff of Leighton. There is now produced and shown to me marked exhibit **“PCHJ-5”**, the 7 photographs which I took on 22 September 2015, showing the followings:-

41.1 Photographs 1, 2, and 3 of PCHJ-5 showed a person wearing a polo T-shirt of Leighton cutting a threaded rebar with a hydraulic disc cutter.

41.2 Photographs 4 and 5 of PCHJ-5 were random photographs that I

took.

41.3 Photograph 6 of PCHJ-5 showed damaged couplers at Area C1-4 and Area C1-5.

41.4 Photograph 7 of PCHJ-5 showed two persons wearing polo T-shirts of Leighton attempting to install a thread with cut rebar onto the couplers.

All 7 photographs contained in PCHJ-5 were taken by myself and, subsequently, uploaded to the cloud storage system of Chinat. These photographs (Annex 1 to 7) were included in my witness statement to the Hong Kong Police Force dated 10 July 2018.

42 In September 2015, Mr. Thomas Ngai told me that he still saw staff members of Leighton cutting the threaded rebars and/or pretending they had properly installed the threads into the couplers. Nonetheless, these practices were no longer done in the morning and/or the afternoon. Rather, they were done at night.

43 From June 2016 onwards, I no longer heard from anyone that the threaded rebars were being cut by anyone.

44 Probably due to Chinat's reporting of the incidents in August 2015, I recall that Mr. Aidan Ronney ("Mr. Rooney"), the then General Manager of MTRC, had asked me on 3 occasions in September 2015 if I or any other staff member of Chinat witnessed the practice of cutting the threaded rebars in the Hung Hom Station Construction Site. These questions were asked of me when both of us were participating in the joint site inspection on Monday mornings. On all occasions, I reported

to him, that I saw and heard, that such practices were continuing.

C3. Incidents in late 2016 and early 2017

- 45 Between September 2016 to January 2017, I had a discussion with Mr. Anthony Zervaas (“**Mr. Zervaas**”) of Leighton about the possibility of drilling and plating steel dowels in the shear zones between the EWL slab and the diaphragm wall. I urged him to find a solution to rectify the Defective Steel Works. On each occasion, Mr. Zervaas did not give me any affirmative answer.
- 46 Until in or about late November 2016, Mr. Zervaas orally admitted to me that there were practices of cutting of the threaded rebars in the Hung Hom Station Construction Site. Mr. Zervaas also, on behalf of Leighton, agreed to find a solution to settle the Defective Steel Works.
- 47 That said, in or about December 2016, Mr. Zervaas, all of a sudden, became reluctant and started to deny the occurrence of the cutting of the threaded rebars in the Hung Hom Station Construction Site. Further, he told me that “*this was none of Chinat’s business*”.
- 48 On or about 9 December 2016, I reported the incidents in August 2015 to Mr. Philco Wong, the then Project Director of MTRC. Mr. Philco Wong said he would handle the matter. He expressly asked me not to be outspoken on this matter. He also asked me to keep him informed on the matter of the Defective Steel Works through his subordinate, a person called “Raymond” (“**Raymond**”).
- 49 On 6 January 2017 at 0944 hours, I sent an email to Mr. Zervaas, formally reporting to Leighton that Chinat has records proofing staff

members of Leighton were cutting the threaded rebars (“6 January 2017 Email”). There is now produced and shown to me marked exhibit “PCHJ-6”, a copy of the 6 January 2017 email. The email was also carbon copied to Mr. Joe Tam, the then Construction Manager of Leighton:-

“Dear Joe,

During our review on progress photos and videos, we found plenty of records concerning malpractice use of coupler in this project SCL1112 observing as follow:

- 1. Along the shear face of the EWL Track Slab, it is quite normal that the embedded couplers in the DWall were not able to accommodate the correct installation of the threaded lapping bars due to possible reasons of damage on the couplers' internal threading or tilted embedment of the couplers leading to failure on the threaded lapping bar installation, Leighton labour had cut away the threading section of the threaded lapping bar and pretended secured installation on these important tensile and shear taking bars. These malpractice activities of Leighton staff was deliberately taken at the intersection period between MTRC dayshift and nightshift supervisory for vacant supervision.*
- 2. Along the shear face of the transverse construction joints between pour bays on the whole EWL Track Slab, same malpractice abovementioned was also witnessed and recorded.*
- 3. We witnessed that there is no propose inspection to the use of coupler on site.*

We attach herewith two of the found photos taken at 18:18 to 18:19 of Sept 22, 2015 showing two Leighton labour cut away the threading section of the threaded lapping bars and installed them onto the west shear face on the diaphragm wall, while MTRC didn't discover such malpractice and even unable to inspect the coupler installation due to access problem. The pour had been poured without finding on such malpractice finally.

We doubt the structural safety and life time of the EWL Track Slab, especially on the following structurally critical vicinities:

- 1. The 36 nrs of face on transverse construction joints between the pour bays on whole 400m long EWL Track Slab.*
- 2. The shear keys between the west and east diaphragm walls between the EWL Slab and Diaphragm Walls.*

If the EWL Track Slab fails due to the failure on these critical structural key construction in future, it will be a big big crisis on public life when heavy trains will carrying hundred of life travelling on it both up and down tracks in every minutes.

We demand a feedback by end of today including records proofing the certainty on structural safe, or we will report this finding directly to the LEGCO Panel on Transport and ask for public investigation tomorrow morning.

*best regards
Jason poon
for & on behalf of
China Technology Corp Ltd”*

- 50 Following the 6 January 2017 Email, Raymond contacted me by telephone. Raymond asked me to “*stop pushing Leighton*”. I am therefore aware that Leighton had informed the senior management of MTRC even though the 6 January 2017 Email was never carbon copied to any staff member of MTRC.
- 51 On 15 September 2017 at 0853 hours, I further issued another email to Mr. Zervaas demanding a response from him and/or Leighton. There is now produced and shown to me marked exhibit “PCHJ-7” a copy of the email I sent to Mr. Zervaas dated 15 September 2017 at 0853 hours:-

“Dear Anthony,

It is already 8mths after our report on the captioned concerns on structural safety.

We still unable to obtain your feedback and we observe that there is no remedial works being committed on site in these 8 mths time.

Concerning the public safety and durability of the structural critical 3m Thick EWL Slab, which accommodate all the East-West Lane’s railways of the Shatin-Central Line, we propose ALL transverse [sic] shear keys interfacing the diaphragm wall panels and ALL longitudinal [sic]

construction joints between construction bays must be 100% inspected and assured for structural safety. We opine all damaged and malpractice couplers, include installing without torque test and cheating practice [by] Leighton direct staffs cutting away most of the threads, estimating over 30,000 pcs involved, must be tackled in with high respect.

We demand your feedback in your soonest possible when your wet trades and fitting out works are covering these problematic areas currently.

best regards

jason poon"

- 52 For the sake of completeness, up till the date of making this witness statement, neither Chinat nor myself have received any written reply from MTRC and/or Leighton on matters associated with the 6 January 2017 Email.

C4. Incidents in September 2017

- 53 On 15 September 2017 at 0900 hours, I made an appointment with Mr. Zervaas to do a joint inspection of the Hung Hom Station Construction Site. Nonetheless, Mr. Zervaas did not show up as per our prior agreement. I then contacted Mr. Zervaas by telephone.
- 54 During the telephone conversation, Mr. Zervaas informed me that his schedule was re-adjusted and he was in Macau. He also indicated that Leighton was of the stance that the cutting of threaded rebars was never an issue.
- 55 At 1106 hours, I sent an email to Mr. Frank Chan, Secretary for Transport and Housing, indicating, *inter alia*, that Chinat has an urgent matter to report which is of public interest. There is now produced and shown to me marked exhibit "PCHJ-8", the email I sent to Mr Frank

Chan on 15 September 2017 at 1106 hours. This email was also carbon copied to Mr. Zervaas:-

“Dear Mr Frank Chan/Secretary for Transport & Housing,

It is our knowledge that you are also the non-executive director of MTRC and hence committing twin roles on ensuring delivery of the Shatin-Central Line Development in timely and good orders.

We are a subcontractor responsible for the works of formwork and concreting to the extension works of MTRC Project SCL 1112 Hung Hom Station while Messrs Leighton is the Main Contractor. We would like to invite a joint interview in presence of the senior representative of the Bureau, MTRC, Leighton and our company reviewing and discussing an important issue that we found and reported in this January 2017 on the execution of the works, which is much related to the interest of the Public.

We sincerely hope the meeting shall be held tomorrow morning at the venue decided by the Bureau as a matter of urgency.

best regards

*Jason Poon
for & on behalf of
China Technology Corp Ltd”*

- 56 At or about 1300 hours, I received a telephone call from Mr. Leung Sai Ho (“**Mr. SH Leung**”), Assistant Secretary of the Transport and Housing Bureau. I briefly explained the matter to Mr. SH Leung. Due to the technical nature of the matter, Mr. SH Leung told me that a Mr. Vincent Chu (“**Mr. V Chu**”), who is a Senior Engineer of the Highways Department, would contact me shortly on the matter.
- 57 At 1608 hours, Mr. SH Leung replied to my email confirming our conversation in the telephone call. There is now produced and shown to me marked exhibit “**PCHJ-9**”, a copy of the email which Mr. SH Leung sent to me on 15 September at 1608 hours:-

“Dear Mr Poon,

Thank you for your e-mail this morning and our telephone conversation this afternoon. According to your information provided over the phone, your concerns would be technical in nature about the site works of Contract No. 1112 and you agreed to have a discussion with professional staff of Highways Department, which is the technical department closely monitoring the MTRCL and the works of Shatin to Central Link.

By copy of this e-mail, my colleague, Mr Vincent Chu, who is a Senior Engineer of Highways Department looking after SCL project, will approach you shortly.

*Regards
Leung Sai-ho
Assistant Secretary (Transport) 7B”*

- 58 In the afternoon, Mr. Zervaas telephoned me to ask me to attend a meeting at the Wanchai offices of Leighton. I agreed to such arrangement.
- 59 At or about 1700 hours, I attended a meeting with both Mr. Zervaas and Mr. Karl Speed (“**Mr. Speed**”) at the Wanchai offices of Leighton. Mr. Speed has threatened myself (and Chinat) with the view of damaging Chinat’s reputation because Chinat was uncooperative in SCL 1112. The atmosphere of the meeting was intense with both myself and Mr. Speed having a heated quarrel between ourselves. In the meeting, I showed Mr. Speed photographs and a video clip on my mobile phone indicating that there were cutting of the threaded rebars in the Hung Hom Station Construction Site.
- 60 Mr. Speed, nonetheless, accused me of fabricating the whole incident and that I was “lying”. He also blackmailed Chinat in stating that both Leighton and MTRC will badmouth Chinat and they would together end Chinat’s business. Nonetheless, Mr. Zervaas seldom responded in the meeting and remained silent throughout the majority of the meeting.

- 61 In the end, the meeting concluded without any consensus. Mr. Zervaas proposed to call the meeting to an end and attempted to resolve the problems again at the Hung Hom Station Construction Site, the next day.
- 62 On the next day, viz., 16 September 2017, I conducted a joint site inspection with Mr. Zervaas at the Hung Hom Station Construction Site. Mr. Zervaas told me that he would try to convince Mr. Speed to be cooperative on the matter of rectifying the cuttings of the threaded rebars. In light of this undertaking by Mr. Zervaas (and solely because of such undertaking), I agreed not to disclose the details of this matter to the public and/or the government until we meet again on 18 September 2017.
- 63 On 18 September 2017 at or about 1500 hours, I, again, attended a meeting with Mr. Zervaas and Mr. Speed in Leighton's offices in Wanchai. In the meeting, Mr. Speed expressed his willingness to re-build a mutually cooperative relationship between Leighton and Chinat. Upon discussion, Mr. Speed agreed that Leighton would be responsible for working directly with MTRC as to drill and plant steel dowels to stabilize the structure, which was a proposal that I made to Leighton in order to rectify the Defective Steel Works. In light of this progress, I agreed that Chinat would not disclose the matter to the Hong Kong Government.
- 64 Eventually, I, on behalf of Chinat, signed a confidentiality agreement on 18 September 2017 ("**Confidentiality Agreement**"). There is now produced and shown to me marked exhibit "**PCHJ-10**", a copy of the confidentiality agreement that I and Karl Speed signed on behalf of Chinat and Leighton respectively. Amongst other things, Chinat is

obliged to:-

“3.1 [Chinat] must keep in strict confidence and must ensure its employees, agents, consultants and subcontractors must keep in strict confidence all Confidential Information, except in the following circumstances:

- (a) the Subcontractor is authorized in writing so to do by [Leighton]; or*
- (b) such disclosure is required by law or by any rule of a stock exchange or for the purpose of obtaining legal or accounting advice, but only to the extent of the required disclosure.”*

65 In light of the developments, I wrote an email to Mr. SH Leung at 1922 hours, which was carbon copied to Mr. Frank Chan, Mr. V Chu, and Mr. Zervaas stating that the matter had been resolved. There is now produced and shown to me marked exhibit “PCHJ-11”, a copy of the email I sent on 18 September 2018 at 1922 hours:-

“Dear Mr Leung/AS (Transport) 7B,

During these few days we are working tight and hard on the suspecting technical issue with Messrs Leighton and had reached satisfactory understanding and full clarification. ie the suspecting subject had been cleared now and no significant impact is retained.

In order to avoid any unwanted impact and due to the good progress observed, we thus keep silent on the investigation from Messrs HyD and we had did our best endeavor on our act of non-disclosure.

We believe it is a full and final end of the issue and may we invite to close all relevant files accordingly.

Thank you for your kind attention

Best Regards

jason poon

by copy of this email, may I express my sincere acknowledgement on the prompt and professional services being maintained by both Mr S H Leung of THD and Mr Vincent Chu of HyD.”

C5. *Pouring of concrete*

C5.1 Inspection and testing system prior to pouring of concrete

- 66 After Chinat's commencement of works in or about late July 2015, Leighton issued an Inspection & Test Plan Ref H2601-ITP-LCA-CON-174-00 Rev 1 dated Jun 24, 2013 (CSF Ref 1112-CSF-LCA-CS-000266) to Chinat through a transmittal of the method statements of construction works on the EWL Slab, which indicated the framework of inspection and hold point concepts showing the basis Leighton and MTRC may accept the works in Contract 1112.
- 67 MTRC System of Request for Inspection, Survey & Check [RISC] Form is a multi-ply document involving multi parties to endorse in multi steps of inspection. One RISC Form shall be used on one hold point inspection in the Inspection and Test Plan, which shall be initiated by relevant responsible subcontractor(s) upon completion of her relevant hold point works. Leighton and MTRC will then take next steps of inspection. Finally, when all parties are satisfied with all inspections, the RISC Forms shall be fully endorsed and passed to the responsible engineer of Leighton. The engineer of Leighton shall then past them to the Leighton concrete coordinator to generate a code authorizing Leighton's foreman to call off concrete from the batching plant.
- 68 Each bay of EWL Slab involves at or about 5 to 6 numbers of RISC Forms covering the inspections on shear key, rebar fixing, formwork and falsework, cast-in items, pre-concreting cleaning and survey check and other areas at different times and with different parties. As such, Chinat would only be able to control the process of inspections of the

- scopes on shear key (corrosion inhibitor paint), formwork and falsework and pre-concreting inspection, while other inspections including coupler, rebar fixing and survey are all outside Chinat's scope of responsibility.
- 69 Whenever Leighton's engineer and/or foreman accumulates adequate approvals on all designated hold point inspections, *viz.*, the endorsed RISC Forms, the results will be passed to the Leighton concrete coordinator who will, in turn, generate a code and send the same to Leighton's foreman, authorizing him to call off concrete for pouring.
- 70 Thereafter, Chinat's concreting team will be informed by Leighton's foreman when concrete has been called off and the only option of Chinat is to proceed with the pouring when concrete arrives, because it represents the whole process of Inspection & Test Plan having satisfactorily passed the inspection requirements.
- 71 Whenever concrete is called off by Leighton's foreman, it implies that inspections by both Leighton and MTRC have been conducted and the structural integrity of the same are accepted by both Leighton and MTRC. There will therefore be no basis for Chinat to refuse to pour the concrete. Specifically, Chinat cannot ascertain whether Leighton and MTRC have agreed on any changes pertaining to the drawings, namely, reduction of the required number of coupler connections. If Chinat refuses to pour concrete, Chinat will breach her obligations under the subcontract with Leighton and will have to compensate Leighton.

C5.2 Actual pouring of concrete

- 72 Against, and solely against, such background, Chinat, in or about late July 2015 to late 2016, poured concrete to Area A, Area B, HKC, and

Area C of the EWL Slab.

C6. Summary

73 Throughout the whole process, according to what was reported to me by employees of Chinat or what I saw myself on the Hung Hom Station Construction Site, it was staff members of Leighton who were cutting the threaded rebars.

74 On page 36 of the MTRC Report, representatives from Fang Sheung reported that “*on some occasions and as requested by Leighton, [Fang Sheung] would carry out cutting of threaded steel bars to meet the required threaded length. On other occasions and as requested by Leighton, the threaded steel bars could be cut and screwed into the couplers with the understanding that rectification measures would be carried out by Leighton*”. As far as I am concerned, I have never seen any staff member of Fang Sheung cutting the threaded rebars. Employees of Chinat also did not report to me of any staff members of Fang Sheung having cut the threaded rebars.

D. The Investigation with the parties and the MTRC Report

75 I noticed on page 36 of the MTRC Report that “[*n*]o information in relation to the interview with [Chinat] is included here”. For the sake of completeness, I furnish herewith the details of my meeting with the representatives of MTRC.

D1. Notification of Investigation in the evening of 12 June 2018

76 On 12 June 2018 at 1714 hour, I received a telephone call from Mr.

Terry Wong (“**Mr. T Wong**”) of MTRC asking whether I am willing to give evidence for the MTRC Report which would be submitted to the Highways Department. I agreed to such an arrangement. Nevertheless I explained to Mr. T Wong, my obligations under the Confidential Agreement.

77 At or about 2057 hours, I received a second telephone call from Mr. T Wong. I was told to attend an interview of investigation at 0900 hours on 13 June 2018 (i.e. approximately 24 hours after the telephone call) (“**the Investigation**”).

78 At or about 2300 hours, I had the opportunity to check my email account. I read an email inviting me to attend the Investigation. The email was sent to me at 1943 hours by Leighton. I told Mr. Colmaan Wong, Operation Manager of Leighton via WhatsApp about the Investigation.

D2. Investigation on 13 June 2018

79 On 13 June 2018, I arrived at the Hung Hom Station information desk at 0900 hours. Subsequently, staff of MTRC, including Mr. T Wong, arrived thereafter. I was told by those staff that staff of Leighton may also attend the Investigation and would waive (on condition) their rights under the Confidentiality Agreement.

80 At or about 0930 hours, I was brought to a meeting room of MTRC Hung Hom Station Office. There were a total of 10 persons present, which included:-

80.1 Mr. Jean-Paul Wallace, General Counsel of CPB Contractor (Australia) (“**Mr Wallace**”);

- 80.2 Mr. Preston Lee, Legal Counsel of Leighton;
- 80.3 Mr. T Wong of MTRC;
- 80.4 Mr. Brian Downie, General Manager (Legal) of MTRC;
- 80.5 Mr. Neil Ng, Project Manager SCL (Civil);
- 80.6 Mr. Ian Pennicott SC;
- 80.7 A Chinese man who was said to be from Des Voeux Chambers;
- 80.8 Myself; and
- 80.9 Two other persons (a male and a female) which I could not identify.

D3. Conditional waiver of the Confidentiality Agreement

- 81 Just prior to the meeting, Mr. T Wong vacated the meeting room, leaving myself and the two representatives of Leighton to discuss the terms of the conditional waiver of the Confidentiality Agreement.
- 82 Mr. Wallace made offers for a special and conditional waiver to myself (and Chinat) for the Investigation on 13 June 2018. Upon my agreement to those terms, Mr. P Lee emailed the same to Chinat's email address. There is now produced and shown to me marked exhibit "PCHJ-12", a copy of the email on 13 June 2018:-

"1. The waiver is solely for matters to be discussed in the MTR interviews

tomorrow and Jason Poon is not to discuss the subject matter of the interviews to any person afterwards;

2. An LCAL representative can also attend the interview tomorrow as an observer (with an interpreter if the interview is to be in Chinese). Please let us know;

3. The waiver relates only to the technical issue of the couplers and not to any commercial discussions or settlement.”

D4. The Investigation

83 At or about 0935 hours, the Investigation officially commenced. Due to prior commitments, I requested the Investigation to be completed by 1030 hours. The Investigation was conducted in English, with MTRC representatives asking questions and requesting myself to answer. Legal representatives from the Des Voeux Chambers did not ask me any questions.

84 Prior to or in the course of the Investigation, I did not produce any witness statements. I was also not given the opportunity to present or produce any documentations. Similarly, no one gave me any documents to identify or sign on.

85 In the course of the Investigation, representatives of the MTRC asked me who cut the threaded rebars. I told them (according to what I saw and heard) that it was staff members of the Leighton who were cutting the threaded section of the rebar firstly with the grinding machine and, then, by a hydraulic disc cutter.

86 Representatives of the MTRC then asked me if I may produce any further information proving that those persons involved in the cutting of the threaded rebars were staff members of Leighton. I told them that staff members of Leighton can easily be identified from staff of other

sub-contractors by their uniforms. As staff members of Leighton were all dressed with Leighton T-shirts and reflective vests. On the other hand, staff of Fang Sheung were all rebar fixers and their uniforms were heavily contaminated by sweat and rust in dark brown colour.

- 87 I was asked by representatives of the MTRC how many threaded rebars were actually cut. I told them that I estimated that each bay of EWL Slab (except C3-3 northward to C3-6) should have 30 to 100 problematic connections. On average, that would be around 50 problematic steel bars at each bay. I therefore estimated (by sole arithmetic means) that there would be approximately 1000 threaded rebars being cut. I emphasized that the figure mentioned were only a rough estimation.
- 88 In the course of my explanation, I emphasized that Mr. Philco Wong's allegation that there were only 20 threaded rebars being cut deviated seriously from the facts that I was aware. Nonetheless, I also told those at the meeting that I was of the opinion the estimation of 5,000 threaded rebars seem to be slightly large a figure.
- 89 I also told the representatives of the MTRC that the cutting of the threaded rebars was clearly a planned activity and not just poor workmanship. In particular, I emphasized that Leighton had upgraded their cutting tools in 2015 from a grinding machine to, later, a hydraulic disc cutter.
- 90 I told the representatives of MTRC that I observed the cutting from late July 2015 until June 2016.
- 91 In the course of the Investigation, I was asked who actually saw the cutting of the threaded rebars. I told the representatives of the MTRC that I saw it myself. I also told them that Chinat's frontline foreman

gangers also saw the cutting of the threaded rebars. Nonetheless, I did not disclose the names of those involved in the Investigation.

- 92 Representatives of the MTRC also asked me if I had ever reported the matter to Leighton and/or MTRC. I confirmed that Chinat had notified MTRC's inspectors since August 2015 in order to stop the cutting of the threaded rebars. I also told the representatives of MTRC that I had reported the matter to Mr. So and Mr. Rodgers in September 2015. At that juncture, Mr. Wallace stopped me, claiming that this matter involved commercial elements which are covered under the Confidentiality Agreement.
- 93 Representatives of the MTRC inquired as to why I did not disclose matters in the weekly progress meetings. I told the representatives of MTRC that Chinat, unfortunately, was the only subcontractor attending the meetings and was not a stakeholder of that stage of the project. Strictly speaking, the progress meetings was purely a matter between MTRC and Leighton. I told them that it would be difficult, if not impossible, for Chinat to raise such matters in the progress meetings.
- 94 I was asked by representatives of MTRC to explain why did Chinat only report the matter to Leighton in January 2017, which was approximately 8 months after the occurrence of the Defective Steel Works. I explained that there were plenty examples where MTRC accepted Leighton's changes in design in the contract drawings. One of the many examples would be in Area Plenum where Chinat saw a formal Instruction of Drawing Amendments [DAMS] being issued for the change. Yet, at that juncture, Mr. Wallace, again, stopped me, claiming that this matter involved commercial content, that is covered under the Confidentiality Agreement.

- 95 I became annoyed and criticised Mr. Wallace for using “commercial” as an excuse to truncate me from answering questions in the Investigation.
- 96 I emphasized to the representatives of the MTRC that it was still possible for rectification by post-drilling stainless dowels into the EWL Slab through the diaphragm wall. I also added that both sides of the diaphragm wall exterior areas were still vacant and in progress of open excavation. It was therefore very convenient to carry out rectification by way of post-drilling dowels.
- 97 Representatives of the MTRC then inquired into what happened after I had emailed Mr. Frank Chan, the Secretary for the Transport and Housing on 15 September 2017⁴ and what agreements had been reached between Chinat and Leighton. I reported that the discussion at Leighton’s offices was initially a bad experience where I and Mr. Speed had a lot of disagreements and were arguing throughout. Eventually, an agreement was reached where Leighton, *inter alia*, agreed to carry out rectification works with MTRC.. When I was reporting what had happened at the Leighton Offices to the MTRC representatives, Mr. Wallace, yet again, tried to stop me on multiple occasions. I, nonetheless, ignored his attempt and continued to explain matters to those at the Investigation meeting.
- 98 Representatives of the MTRC asked whether I had taken any steps to confirm whether Leighton had completed the rectification works. I told them that in or about late January to middle mid-February 2018, I met Mr. Speed at a building site of Lian Tang which Chinat had another unrelated ongoing project with Leighton. On that occasion, Mr. Speed

⁴ PCHJ-8

confirmed that the rectification works had been done to MTRC's satisfaction. Again, Mr. Wallace attempted to stop me from commenting on multiple occasions. Again, I insisted to finish answering the question.

99 During the course of the Investigation, no representatives of Leighton and/or MTRC denied what I had said. Equally, no one put to me that what I saw and/or heard was untrue.

100 The Investigation ended at or about 1040 hours. As aforementioned, I left the meeting room first as I had other commitments. I was the only person leaving the meeting room at that stage.

F. Opinion as to how to rectify the Defective Steel Works

101 I am of the opinion that to rectify the Defective Steel Works, dowel penetrations should be used between the diaphragm wall and the EWL slab.

102 I opine that a destructive investigation should be done by removing sampling concrete at the soffit of the EWL slab and determining the percentage and locations of the defective connections. By structural analysis, it could be determined how many post-drill dowels would be needed in order to rectify the problem.

I believe that the facts stated in this witness statement are true.

Dated this the 3rd day of September 2018.



(POON, Chuk-hung, Jason)

Statement of Truth

I, Poon Chuk-Hung, Jason, believe that the facts stated in this witness statement are true and the opinion expressed in it (if any) are honestly held by me.



(POON, Chuk-hung, Jason)