

**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**

Witness Statement of Chau Siu-hei

I, CHAU Siu-hei, of the Development Bureau (“**DEVB**”) of 18th Floor, West Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong, do say as follows:-

1. I am the Deputy Secretary (Works) 3 of DEVB and have held this position since April 2017. My duties include, amongst other things, management of approved lists of public works contractors, and other general functions as delegated from time to time by the Permanent Secretary for Development (Works).

2. I make this Witness Statement pursuant to the request of the Commission of Inquiry (“**Commission**”) into the Diaphragm Wall and Platform Slab Construction Works at the Hung Hom Station Extension under the Shatin to Central Link (“**SCL**”) Project, conveyed in a letter from Messrs. Lo & Lo, Solicitors for the Commission to the Secretary for Development (“**Secretary**”) and the Director of Buildings dated 6 August 2018 (“**6 August Letter**”) in which specific questions were raised in paragraphs 1 to 17 at pages 6 to 16 (“**Questions 1 to 17**”). Save where otherwise appears, the facts deposed hereto are within my personal knowledge or are derived from office files and records and sources to which I have access and are true to the best of my knowledge, information and belief. Save as otherwise specified, this Witness Statement adopts the same abbreviations and nomenclature as in the 6 August Letter.

3. This Witness Statement addresses Questions 1, 2, 7(a), 8, 9(a), 9(d), 9(e), 10(l), 11 and 14 to 17 of the 6 August Letter from the perspective of the Works Branch (“**WB**”) of DEVB. The relevant officers from the Planning and Lands Branch (“**PLB**”) of DEVB and the Buildings Department (“**BD**”) will provide witness statements addressing the other relevant Questions.

4. This statement is divided into the following parts:
- (1) Part 1 explains the organisation and functions of WB, in answer to Questions 1 and 2.
 - (2) Part 2 provides details of the Contractor Management Handbook (“**CMH**”), in answer to Question 9(a).
 - (3) Part 3 explains DEVB’s regime on regulating actions against contractors, in answer to Questions 8(a) and 9(a).
 - (4) Part 4 covers WB’s correspondence with Leighton and Intrafor in relation to DEVB’s consideration as to whether any regulating action(s) against them will be required, in answer to Questions 8(a) to (d), 9(d) and 9(e).
 - (5) Part 5 responds to the remaining Questions, namely Questions 7(a), 10(l), 11 and 14 to 17.

Part 1 - The Organisation and Functions of WB

5. The DEVB, headed by the Secretary, consists of two policy branches, namely PLB and WB. The WB, led by the Permanent Secretary for Development (Works) (“**PS(W)**”)¹, is responsible for formulating public works policies and co-ordinating and monitoring the implementation of public works projects. A copy of the Organisation Chart of the WB is at Annex CSH-1.

6. The Works Policies 4 Section of WB, managed by the Principal Assistant Secretary (Works) 4 (“**PAS(W)4**”), is responsible for, amongst other duties, the management of the approved lists of public works contractors who are eligible to submit tenders for public works contracts. The PAS(W)4 reports to me for

¹ In addition to leading WB, PS(W) was appointed by the Chief Executive of the Hong Kong Special Administrative Region as a non-executive director of MTRCL on 14 October 2014 pursuant to section 8 of the Mass Transit Railway Ordinance (Cap. 556). Subsequently, PS(W) was requested by MTRCL on 16 October 2014 to serve as a member of the Capital Works Committee as well as the Risk Committee respectively. The Deputy Secretary (Works) 2 (“**DS(W)2**”) of WB was appointed as PS(W)’s alternate director pursuant to Article 98 of the Articles of Association of MTRCL on 20 October 2014.

day-to-day operation. As elaborated below, the Chief Assistant Secretary (Works) 7 (“CAS(W)7”) and the Assistant Secretary (Works Policies) 11 (“AS(WP)11”), support PAS(W)4, amongst their other duties, to consider whether any regulating action(s) against Leighton and/or Intrafor in relation to the works under Contract 1112 will be required.

Part 2 - The Contractor Management Handbook

7. In order to safeguard the quality of the Government’s public works contracts, DEVB maintains two approved lists of public works contractors, namely: (i) the List of Approved Contractors for Public Works (“**the List**”) and (ii) the List of Approved Suppliers of Materials and Specialist Contractors for Public Works (“**the Specialist List**”). The List and the Specialist List will collectively be referred to below as “**the Approved Lists**”. The List comprises contractors who are approved for carrying out public works in one or more of the five major categories of building and civil engineering works, namely "Buildings", "Port Works", "Roads & Drainage", "Site Formation" and "Waterworks". The Specialist List comprises suppliers or specialist contractors who are approved for carrying out works in one or more of the 50 categories of specialist works.

8. Only contractors on the Approved Lists are in general eligible to tender for public works contracts. In order to be included on the Approved Lists, contractors are required to meet the financial, technical and management criteria for admission and retention on the Approved Lists. Rules and procedures pertaining to administration and monitoring of the performance of contractors on the Approved Lists are included in the CMH promulgated by DEVB.

9. Specifically, Section 2 of the CMH provides for the rules for administration of the List (as defined in paragraph 7 above). Under paragraph 2.1.6 of the CMH, applying to be placed on the List under any category shall mean the contractor unconditionally accepts the rules set out in the CMH and any future amendments or additions thereto. A copy of Section 2 of the CMH is at Annex CSH-2. The full text of the latest version of the CMH is available at https://www.devb.gov.hk/en/construction_sector_matters/contractors/contractor_management_handbook_revision_b/index.html

Part 3 – Regime on Regulating Actions

10. Section 5 of the CMH provides for regulating actions that DEVB may take against the contractors. Under paragraph 5.1.2 of the CMH, DEVB has the right to remove any contractor from the Approved Lists or to take other regulating action against a contractor, including suspension, downgrading to probationary status or demotion to a lower group, in respect of all or any of the works categories it is in. The circumstances which may lead to the taking of regulating actions include those set out in paragraph 5.1.3 of the CMH. A copy of Section 5 of the CMH is at Annex CSH-3.

11. Normally, regulating actions are initiated by the Managing Department of the relevant category of the List and/or the Specialist List, who would recommend to DEVB that a certain contractor on the List and/or the Specialist List should be removed, suspended, downgraded or demoted (see paragraph 5.2.3 of the CMH). The Managing Department for the five categories of works under the List are (see paragraph 2.1.1 of the CMH):

<u>Category</u>	<u>Managing Department</u>
Buildings	Architectural Services Department
Port Works	Civil Engineering and Development Department
Roads and Drainage	Highways Department
Site Formation	Civil Engineering and Development Department
Waterworks	Water Supplies Department

12. Where appropriate, DEVB would initiate regulating actions against contractors on the Approved Lists (see paragraphs 5.1.2 to 5.1.4 of the CMH) [Question 8(b)].

13. According to paragraph 5.1.2 of the CMH, before deciding on any regulating action, a contractor will be given adequate warning of the action proposed and advised of the reasons for it and given the opportunity to present its views of the matter.

14. The SCL Project has been entrusted to MTRCL. The framework and procedures for public works contracts are not applicable to the SCL Project.

15. However, DEVB's right to take regulating actions is not limited to public works contracts. Under paragraph 5.1.3 (xvi) of the CMH, circumstances which may lead to the taking of regulating actions include "*serious or suspected serious poor performance or other serious causes in any public or private sector works contract*" (emphasis added).

16. Accordingly, DEVB may take regulating action(s) in respect of Contract 1112 if there is serious or suspected serious poor performance involved in the works.

Part 4 - Correspondence with and any potential regulating action(s) against Leighton and/or Intrafor

17. Leighton is registered in the works categories of "Buildings (Group C)", "Port Works (Group C)", "Roads and Drainage (Group C)", "Site Formation (Group C)" and "Waterworks (Group C)" on the List (as defined in paragraph 7 above). Intrafor is an approved contractor under the works categories of "Ground Investigation Field Work (Group II)" and "Land Piling (Group II) – Barrette Pile" of the Specialist List (as defined in paragraph 7 above).

18. In light of the widespread media reports since late May 2018 on the allegations of Defective Steel Works, WB of DEVB decided to write to Leighton and Intrafor to seek information from them for DEVB to consider whether any regulation action(s) should be taken [Question 8(a) and (c)].

19. In relation to DEVB's consideration as to whether any regulating action against Leighton will be required, the correspondence and communication between WB and Leighton are as follows:

- (1) Letter from WB to Leighton dated 6 June 2018;
- (2) Letter from WB to Leighton dated 20 June 2018;
- (3) Letter from Leighton to WB dated 26 June 2018 in response to DEVB's letter dated 6 June 2018;
- (4) Letter from Leighton to WB dated 26 June 2018 in response to DEVB's letter dated 20 June 2018;
- (5) Letter from WB to Leighton dated 6 July 2018;

- (6) Letter from Leighton to WB dated 16 July 2018;
- (7) Letter from Leighton to WB dated 20 July 2018;
- (8) Letter from WB to Leighton dated 27 July 2018;
- (9) Letter from WB to Leighton dated 30 July 2018;
- (10) Letter from WB to Leighton dated 8 August 2018;
- (11) Letter from Leighton to WB dated 9 August 2018;
- (12) Letter from Leighton to WB dated 14 August 2018;
- (13) Letter from WB to Leighton dated 17 August 2018; and
- (14) Letter from Leighton to WB dated 24 August 2018.

20. Apart from the letters mentioned in the preceding paragraph, there is no other correspondence between WB and Leighton up to 31 August 2018. With reference to Question 8(d) of the 6 August Letter and DOJ's letter to the Commission dated 13 August 2018, I understand that items (1) to (11) set out in the preceding paragraph have been provided to the Commission and I shall not enclose the same to avoid duplication. Copies of letters under items (12) to (14) are enclosed at Annex CSH-4.

21. As with Leighton, WB has made various enquiries with and requests for information from Intrafor via the following correspondence:

- (1) Letter from WB to Intrafor dated 18 July 2018;
- (2) Letter from Intrafor to WB dated 26 July 2018;
- (3) Letter from Intrafor to WB dated 6 August 2018;
- (4) Letter from WB to Intrafor dated 13 August 2018; and
- (5) Letter from Intrafor to WB dated 24 August 2018.

22. I understand that copies of items (1) to (4) referred to in the preceding paragraph have already been provided to the Commission by DOJ's letter dated 13 August 2018 and I shall not enclose the same to avoid duplication. A copy of the letter dated 24 August 2018 is at Annex CSH-5.

23. I confirm that, other than the letters mentioned in paragraphs 19 and 21 above, there is no other communication or correspondence between WB and Leighton and Intrafor in relation to DEVB's consideration as to whether any regulating action(s) against them will be required.

24. I also confirm that WB has not interviewed any site engineers of

Leighton and has not obtained their evidence on matters described in Question 9(d).

25. DEVB is still in the process of considering whether any regulating action(s) against Leighton and/or Intrafor will be required [Question 9(e)].

26. As to the remaining contractors among the Main Parties (viz. Fang Sheung Construction Company and China Technology Corporation Limited), they are not contractors on the Approved Lists. Therefore, DEVB has no right to take any regulating actions against them under the CMH [Question 8(b)].

27. For the avoidance of doubt, WB also has no right to take enforcement actions or seek other remedies against the relevant infringing parties and/or persons in case of breach of the Requirements, Standards and Practice [Question 8(b)].

Part 5 – The Remaining Questions

28. As WB is not overseeing the SCL Project, it is not in a position to advise/comment on the methods to ascertain the existence or extent of Defective Steel Work or rectification measures and the associated common practice in the construction industry [Questions 10(d), (g), (h), (i), (m), (n) and (o)]. In relation to Question 10(d), prior to the media reports on the present incident since late May 2018, WB was not aware of difficulties or issues experienced by workers in relation to steel fixing works.

29. Save and except what has been stated above, WB is unable to provide any further response to Questions 9(b), 9(c), 9(f), 10(a), 10(b), 10(c), 10(e), 10(f), 10(j) and 10(k). Further, in answer to Question 10(a), DEVB's correspondence with Leighton and Intrafor as referred to in paragraphs 19 and 21 above does not confine our enquiries to the steel fixing works for EWL platform slab only.

30. As to Question 11, apart from the correspondence with Leighton and Intrafor referred to in paragraphs 19 and 21 above, I confirm that WB did not communicate with the BD, Transport and Housing Bureau, HyD, MTRCL, or the other Main Parties on HyD's report to the Police on 15 June 2018 in relation to Defective Steel Works. I confirm that WB did not make any report to the Police in this regard.

31. WB has no knowledge of the Defective Steel Works except from media reports since late May 2018, the MTRCL's incident report dated 15 June 2018 and the representations from Leighton and Intrafor as referred to in paragraphs 19 and 21 above [Question 7(a)]. Neither does WB have any knowledge that the steel bars were being allegedly shortened or cut by hydraulic cutters except from the same sources mentioned above [Question 10(l)].

32. To the best of WB's knowledge, we are not aware of any other works which raise concerns about public safety in respect of the diaphragm wall and platform slab construction works at the Hung Hom Station Extension under Contract 1112 [Question 14].

33. Given WB's limited role in the SCL Project as stated above, it would be more appropriate for the representatives from HyD and/or BD to comment on the technical and logistical details in relation to quality of works [Questions 3 to 6, 7(b), 9(b), 9(c), 9(f), 10, 12 and 13].

34. WB has no comment on sub-paragraphs (i) and (ii) of paragraph (b) of the Terms of Reference [Question 15].

35. WB will welcome all the recommendations the Commission may make in this Inquiry with a view to continuously improving our system [Questions 16 and 17].

Dated this 31st day of August 2018



Chau Siu-hei
Deputy Secretary (Works) 3
Development Bureau