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<p>1 Monday, 24 September 2018 2 (10.00 am) 3 CHAIRMAN: Yes. 4 MR PENNICOTT: Good morning, sir, and good morning, 5 everybody. Sir, can I start in time-honoured fashion by 6 introducing everybody who is here this morning. 7 CHAIRMAN: Yes, thank you. 8 MR PENNICOTT: I will do that very quickly. 9 Sir, as you know, I appear on behalf of the 10 Commission, together with my learned friends Mr Calvin 11 Cheuk and Mr Solomon Lam. 12 CHAIRMAN: Yes. 13 MR PENNICOTT: Sir, for the government, in all its guises, 14 which we will be referring to a little later, they are 15 represented by my learned friends Mr Richard Khaw, SC, 16 Anthony Chow, Bonnie Cheng, and Ellen Pang -- 17 CHAIRMAN: Yes. 18 MR PENNICOTT: -- on the instructions of Department of 19 Justice. 20 For MTRC, they are represented by my learned friends 21 Mr Philip Boulding, QC, and Mr Jat Sew-tong, SC, on the 22 instructions of Mayer Brown. 23 So far as Leighton are concerned, the main 24 contractors, they are represented by my learned friends 25 Mr Sean Wilken, QC, Mr Paul Shieh, SC, and Jonathan</p>	<p>1 performance in this Inquiry, and I look forward to 2 working with both of them, as indeed I do with all the 3 other counsel involved in the Inquiry. 4 Can I also say at this stage, before I go on, that 5 if anybody wishes to take their jacket off, that will be 6 met with a sympathetic ear from me. 7 CHAIRMAN: It will be met with a sympathetic ear from me as 8 well. This is the first morning where the 9 air-conditioning is back in service, and it came on 10 a little later than normal. It's quite a crowded room 11 as well, so if anybody wants to take their jacket off, 12 that's both today and during the course of substantive 13 proceedings, please feel free to do so. 14 MR PENNICOTT: Thank you, sir. 15 What I plan to do now is to go through the recent 16 open address, which I think was handed around to various 17 representatives a little while ago this morning, and 18 I apologise that it wasn't handed around earlier, but we 19 just wanted to make sure that the opening address 20 reflected the up-to-date position as best we can at this 21 stage. 22 When I've been through the opening address, I will 23 then go through the intended rules of procedure and 24 practice. When I've done that, I will invite any of my 25 learned friends for the various parties to say anything</p>
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<p>1 Chang, on the instructions of O'Melveny & Myers. 2 For Intrafor, they are represented on the front row 3 by my learned friend Mr Cohen, on the instructions of 4 Haldanes; and China Technology are represented by 5 Mr Christopher To and Mr Simon So, and they are over on 6 that side of the room -- 7 CHAIRMAN: Yes. 8 MR PENNICOTT: -- on the instructions of Messrs Tso Au Yim & 9 Yeung. 10 Sir, the only involved party that is not represented 11 here this morning are Fang Sheung. They have written to 12 my instructing solicitors, explaining their absence 13 today, but we understand they will be fully 14 participating at the substantive hearing. And they 15 will, we understand, be represented by my learned friend 16 Ms Sezen Chong(?), on the instructions of Messrs Fung & 17 Fung. 18 Can I just add this. So far as Mr Wilken and 19 Mr Boulding are concerned, they have been granted ad hoc 20 admission to the Hong Kong Bar for the purposes of 21 representing their clients at this Inquiry. That was 22 required because this is under section 11(1) of the 23 Commissions of Inquiry Ordinance judicial proceedings, 24 and on behalf of the Commission can I both welcome 25 Mr Boulding and Mr Wilken to Hong Kong and welcome their</p>	<p>1 that they wish to do so. And could I suggest that the 2 order in which any observations or comments or 3 submissions are made is as follows: the government 4 first, MTRC second, Leighton third, China Technology 5 fourth, and Intrafor fifth. 6 Can I, however, just make this observation by way of 7 emphasis, that we are here this morning to deal with 8 procedural matters. You are sitting alone, without 9 Prof Hansford, who we know is the other Commissioner, 10 and you sitting alone can only deal with procedural 11 matters. 12 CHAIRMAN: Could I just at this juncture, just for 13 clarification, say that when the Commission was 14 appointed, it was always the intention of the Chief 15 Executive in Council to have the Commission constituting 16 not simply a judicial officer, namely myself, but also 17 to have an expert in matters of engineering, and it took 18 a while to find Prof Hansford; that is, to find the 19 person that was able to do the work, and was of required 20 seniority and expertise. 21 I say that because the fact that we are starting on 22 22 October is not in any way due to sloth on the part of 23 those who are preparing the Commission, or on my part, 24 for that matter, it's due to the fact that 25 Prof Hansford, despite all his endeavours, is simply not</p>

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<p>1 able to come here on an extended time until the 22nd.</p> <p>2 It's one of those matters we have to accept that we</p> <p>3 are starting with the substantive hearing somewhat later</p> <p>4 than would have been ideal. In addition to which, as we</p> <p>5 will see later on, there is going to be a break of</p> <p>6 a week, which probably will suit all the parties, but</p> <p>7 again, that was due to the fact that Prof Hansford had</p> <p>8 commitments that he could not avoid. Even though he is</p> <p>9 not here at the moment, I would say that he has done</p> <p>10 everything in his power to make sure that any delays</p> <p>11 have been kept to a minimum. Thank you.</p> <p>12 MR PENNICOTT: Thank you, sir.</p> <p>13 Submissions by MR PENNICOTT</p> <p>14 MR PENNICOTT: Sir, in paragraphs 1 and 2 of the opening</p> <p>15 address, I simply summarise there the appointment of the</p> <p>16 Commission and indicate obviously the point that I've</p> <p>17 already made, and you have just emphasised, that</p> <p>18 Prof Hansford is presently unable to come here today due</p> <p>19 to prior commitments, but you have decided in the</p> <p>20 interest of time to get on with this preliminary hearing</p> <p>21 and to determine the rules and procedures of the</p> <p>22 Inquiry.</p> <p>23 So far as the background to this Inquiry is</p> <p>24 concerned, since May 2018, various reports have begun to</p> <p>25 appear in the local media which suggested that certain</p>	<p>1 was purely and simply to acquaint us with the physical</p> <p>2 structures, where they were; in short, to try and get</p> <p>3 some feel. For somebody like myself, who doesn't have</p> <p>4 an engineering background, that's really important.</p> <p>5 I would also say that, to ensure that if there is</p> <p>6 any concerns as to what may have happened, conversations</p> <p>7 were recorded, and transcripts can be made available.</p> <p>8 But it was purely for us as a walk-around-and-feel</p> <p>9 visit. It wasn't intended to debate any issues of</p> <p>10 contention.</p> <p>11 Thank you.</p> <p>12 MR PENNICOTT: Sir, on 31 May of this year the Director of</p> <p>13 Highways requested MTR as project manager of the SCL</p> <p>14 Project to prepare and submit a report on the alleged</p> <p>15 non-compliant steel fixing works at, and I quote, "the</p> <p>16 joints between diaphragm walls and the platform slabs at</p> <p>17 Hung Hom Station under contract 1112".</p> <p>18 On 15 June 2018, MTR published and submitted its</p> <p>19 report to the Railway Development Office of the Highways</p> <p>20 Department, and that MTR report was limited to a review</p> <p>21 of the EWL slab. In the MTR report, and I say this for</p> <p>22 reasons which become apparent in a moment, it is</p> <p>23 apparent that the terms "EWL platform slab", "EWL</p> <p>24 platform slab works", "EWL slab", "EWL track slab" are</p> <p>25 used interchangeably.</p>
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<p>1 steel fixing works in the diaphragm walls and platform</p> <p>2 slabs at the Hung Hom Station Extension, constructed as</p> <p>3 part of the Shatin to Central Link Project under MTRC</p> <p>4 contract 1112 might be defective.</p> <p>5 Contract 1112 involves the expansion of the existing</p> <p>6 station and comprises, amongst other things, two</p> <p>7 additional platform or track slabs for the East West</p> <p>8 Corridor and the North South Corridor.</p> <p>9 Allegations have been made that an unknown number of</p> <p>10 steel bars, which were designed to be connected by</p> <p>11 couplers, embedded in the concrete of the completed</p> <p>12 diaphragm walls and the EWL slab were either</p> <p>13 deliberately shortened, or cut, or never properly</p> <p>14 connected to the couplers before concrete pouring took</p> <p>15 place.</p> <p>16 As a result of all this, and these allegations,</p> <p>17 public concern has arisen over the quality of works and</p> <p>18 the safety of the Hung Hom expanded station, which is</p> <p>19 still under construction.</p> <p>20 Sir, I will come on to this in a moment, but you,</p> <p>21 I know, and we have had a site visit, and we know that,</p> <p>22 while I say it is still under construction, it is</p> <p>23 obviously at a very advanced stage of construction.</p> <p>24 CHAIRMAN: Yes. I would mention there was a site visit</p> <p>25 conducted last Friday. The purpose of that site visit</p>	<p>1 Sir, it has apparently subsequently emerged that</p> <p>2 there are a number of inaccuracies in the MTR report</p> <p>3 which may be relevant to this Commission of Inquiry.</p> <p>4 On 21 June, MTR announced that the Capital Works</p> <p>5 Committee under the MTR board of directors would conduct</p> <p>6 a review of the processes and procedures for the SCL</p> <p>7 Project and engage external consultants to assist in the</p> <p>8 review. We now know, from information received from</p> <p>9 MTR, that those external consultants are Messrs Turner</p> <p>10 & Townsend.</p> <p>11 On 22 June, MTR submitted a preliminary load test</p> <p>12 proposal prepared by an independent expert to Highways</p> <p>13 and the Buildings Department but, as we understand it,</p> <p>14 the proposed load test has not yet been carried out. So</p> <p>15 we also now know from information received both from MTR</p> <p>16 and government that the consultant, the independent</p> <p>17 expert engaged to put together the design of a load test</p> <p>18 is Messrs CM Wong & Associates Ltd.</p> <p>19 The load test proposal is contained in a document</p> <p>20 entitled "Safety test outline proposal" and the</p> <p>21 Commission's current understanding is that the proposal</p> <p>22 has been considered by an expert engaged by the</p> <p>23 Buildings Department, namely a Prof Nethercot of</p> <p>24 Imperial College London, but as I say, the current</p> <p>25 understanding of the Commission's legal team is that the</p>

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<p>1 load test has not yet been carried out. 2 CHAIRMAN: Or commenced even. 3 MR PENNICOTT: Or indeed commenced. 4 On 10 July, as already indicated, this Commission 5 was appointed by the Chief Executive in Council, as 6 I have already indicated. 7 So far as the terms of reference is concerned, it 8 has, through the evidence of certain witnesses, been 9 drawn to the attention of the Commission that there may 10 be a technical distinction between, on the one hand, the 11 EWL/NSL platform slab, and on the other hand the EWL/NSL 12 track slab. It has been suggested that, strictly 13 speaking, the platform slabs, properly so-called, are 14 constructed on top of the track slabs. 15 The ToR, the terms of reference, use the term 16 "platform slab", as does the Director of Highways' 17 request, which I've just referred to above, and also the 18 MTR report. 19 And so whilst the Commission's legal team does not 20 believe that the terminology used in the terms of 21 reference has caused any confusion to anybody, the 22 Commission clarifies, for the avoidance of any doubt, 23 that the Inquiry is concerned with the diaphragm walls 24 and the track slabs which will be referred to as the 25 "EWL slab" and the "NSL slab".</p>	<p>1 individuals, companies, institutions or departments to 2 criticisms and make recommendations which may have 3 a long-term impact on the future conduct of such 4 entities. There is therefore a need to ensure fairness 5 to all parties who may be affected by the Commission's 6 work or criticised in the report. Consequently, at this 7 preliminary hearing and pursuant to the notice published 8 by the Secretariat on 10 September, the Commission will 9 deal with applications by individuals or entities who 10 may apply to participate in the substantive hearing and 11 also hear the involved parties on any particular 12 directions they may wish to seek. 13 With regard to the first element of that, that is 14 applications by individuals or entities who may apply to 15 participate, I am not aware of any other party than the 16 involved parties who are represented here today having 17 made any application to join, but as we will see, or 18 I think as is clear in the notice, any other entity who 19 wishes to be represented at this Inquiry may do so upon 20 notice and upon application to the Secretariat. But as 21 I say, as we sit here/stand here today, no applications 22 have been received by any other individuals or entities. 23 CHAIRMAN: I should mention there has been a document 24 submitted by -- and forgive me if I have the terminology 25 wrong -- but essentially the society of auditors in</p>
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<p>1 Sir, I then have a heading "The Commission and its 2 powers". The position is this, that the Commission has 3 wide statutory powers, that persons may be compelled to 4 disclose documents and give evidence, witnesses may be 5 examined on oath or affirmation, oral evidence of 6 witnesses will be adduced in public and in the presence 7 of the involved parties who, subject to the Commission's 8 permission, will have the opportunity to ask questions 9 of witnesses and make such submissions to the Commission 10 as may be appropriate. I will be dealing with that in 11 more detail when we look at the rules of procedure and 12 practice. 13 It should be noted that the inquisitorial procedure 14 adopted by the Commission is not the same as that 15 adopted in ordinary adversarial civil litigation or more 16 formal arbitration proceedings. The Commission may take 17 a proactive role in investigating the subject matter of 18 the terms of reference and the course of the proceedings 19 is not directed by any involved party. 20 Within the terms of reference a number of lines of 21 inquiry can be opened up and old lines of inquiry can be 22 closed down, all with short timeframes, subject, of 23 course, to procedural fairness to the parties. 24 Potentially, the Commission's final report to be 25 submitted to the chief executive could subject</p>	<p>1 Hong Kong, and they haven't, to my knowledge, asked to 2 join, but they think that their written submissions may 3 be of assistance to this Commission, and obviously those 4 submissions will be taken into account and the 5 submissions will be made available to all parties who 6 are here. I will ensure that that's done within the 7 next week or so. 8 Thank you. 9 MR PENNICOTT: Thank you, sir. 10 Before I get into just a very brief description of 11 the role of each of the involved parties, can I just say 12 this. The Commission's legal team, as it has been 13 gathering more and more information, is also pursuing 14 certain lines of inquiries with certain other entities, 15 ie not entities volunteering to come here but entities 16 we feel may be able to assist the Inquiry. It would be 17 inappropriate for me to indicate those entities at this 18 stage, and we are not suggesting for one moment we are 19 going to be adding to the involved parties, but are 20 simply entities that may be able to assist the 21 Commission with evidence. 22 Of course, if it should transpire that the 23 Commission's legal team obtains evidence from uninvolved 24 parties at this stage, of course it will be made 25 available immediately to everybody else.</p>

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<p>1 So far as the involved parties are concerned, the 2 Commission has issued letters requesting documentation 3 and witness statements and "Salmon letters", as they are 4 called, that is letters giving advanced notice to 5 entities that might be the subject of criticism to the 6 parties identified below. Those parties have been asked 7 to consider participating in and having separate legal 8 representation at the substantive hearing, and the 9 Commission's current understanding of each involved 10 party's role is described here.</p> <p>11 Sir, there are four government departments or bureau 12 involved, namely the Transport and Housing Bureau; the 13 Highways Department, which includes the Railways 14 Development Office; the Development Bureau; and the 15 Buildings Department. The first two entities performed 16 a monitoring role in the project, and the latter two 17 carried out their statutory duties and functions. The 18 four entities, as I've already mentioned, are 19 represented collectively by the Department of Justice.</p> <p>20 MTR was appointed by the Transport and Housing 21 Bureau on behalf of the Government under an entrustment 22 agreement dated 24 November 2008 to design and carry out 23 site investigation works for the project, by a further 24 entrustment agreement dated 17 May 2011 to carry out 25 certain advanced works as defined therein, and by</p>	<p>1 including blinding concrete, soffit formwork and slab 2 and side construction joint formwork, installation of 3 electrical and cast-in items, carrying out cleaning 4 prior to pouring concrete and then pouring the concrete 5 to form, amongst other things, the EWL slab and the NSL 6 slab.</p> <p>7 So that's the background to the involved parties.</p> <p>8 I turn then to the question of witness statements 9 and documents. The position currently is this, that 10 pursuant to the Commission's requests, witness 11 statements and documents of the abovementioned parties 12 have been delivered to Messrs Lo & Lo solicitors for the 13 Commission. I should say have been and continue to be 14 delivered, because this is an ongoing process, and it is 15 certainly not a process that has yet been completed.</p> <p>16 To date, the Commission has received witness 17 statements from in excess of 40 individuals. And 18 I should add that further witness statements are 19 expected, and the final number of factual witnesses is 20 currently anticipated to exceed 50. The precise number 21 is not yet ascertainable with any degree of certainty, 22 but we anticipate over 50.</p> <p>23 At this point, I say that unless notified otherwise, 24 all the individuals from whom witness statements have 25 been received will be required to give evidence at the</p>
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<p>1 a further entrustment agreement, and perhaps the most 2 important one, dated 29 May 2012, to project manage the 3 construction and commissioning of the project. And, 4 sir, the government, of course, is the majority 5 shareholder of MTRC.</p> <p>6 Leighton Contractors (Asia) Ltd, Leighton, was the 7 main contractor engaged by MTR to construct, amongst 8 many other things, the relevant diaphragm wall and EWL 9 and NSL slab works under contract 1112 dated 7 March 10 2013. Contract 1112 was a form of contract known as 11 a target cost contract.</p> <p>12 Pursuant to a subcontract dated 6 September 2013, 13 Intrafor Hong Kong Ltd was Leighton's subcontractor 14 responsible, amongst other things, for the diaphragm 15 wall construction works including rebar preparation, 16 bending and coupler installation.</p> <p>17 Pursuant to a subcontract dated 28 August 2015, Fang 18 Sheung Construction Company was Leighton's subcontractor 19 responsible for carrying out the steel reinforcement bar 20 cutting, bending and fixing works for the slabs and 21 associated structures, as well as the south approach 22 tunnel.</p> <p>23 Finally, pursuant to a subcontract dated 8 May 2015, 24 China Technology Corporation Ltd was Leighton's 25 subcontractor responsible for erecting form work,</p>	<p>1 substantive hearing. That will remain, as I say, the 2 case, unless the Commission's legal team and the 3 Commission notifies the parties concerned to the 4 contrary.</p> <p>5 Messrs Lo & Lo are compiling the hearing bundles 6 based on the witness statements and documents received, 7 and I will deal with this in a little more detail later, 8 but parties can apply to receive the electronic version 9 of the hearing bundles once the compilation tasks have 10 been completed, which is soon.</p> <p>11 The current index of witness statements and 12 documents will be available when the witness statements' 13 documents are provided, and just to assist perhaps my 14 learned friends to some extent, although not to a great 15 extent, the following bundle lettering has been adopted 16 with the number of files compiled as of Friday, as 17 follows. We have got ten bundles from MTR, 16 Leighton, 18 China Technology is bundle D, and there are just two 19 from them; six from Fang Sheung, 34 from Intrafor, 11 20 from the Transport and Housing Bureau and HyD, and 14 21 from the Development Bureau and Buildings Department, 22 and anybody who is doing the maths, that adds up to 86 23 lever arch files at the moment. Save for those files 24 that contain A3 drawings, the files are compiled on 25 a double-sided basis.</p>

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<p>1 Sir, as we have already touched upon, last Friday 2 morning you, together with the Commission's legal team, 3 visited the station for the purpose of better 4 understanding the as-constructed condition of the 5 diaphragm wall and slabs. I won't say more about that, 6 and you have already made your observations. 7 CHAIRMAN: I would just add to that, if I may, that because 8 Prof Hansford was not here, and not available to 9 participate in that visit, arrangements are being made 10 for him, I think, to have a walk-around on the same 11 basis on the Sunday morning prior to the commencement of 12 the substantive hearing on 22 October, and I will 13 probably accompany him. 14 That's just a warning order to you. That's all. 15 Thank you. 16 MR PENNICOTT: My maths was wrong just a moment ago. It's 17 94 lever arch files, not 86. 18 I then turn to the question of the Commission's 19 experts. The Commission, as you are aware, sir, has 20 instructed the following experts for the purposes of 21 assisting this Inquiry. The first expert is Prof Don 22 McQuillan. Prof McQuillan is a director of RPS 23 Consulting Engineers. He is a chartered engineer, a 24 Royal Academy of Engineering visiting professor of 25 engineering and design at Queen's University Belfast and</p>	<p>1 On the basis of the available factual evidence, it 2 is expected that Mr Rowsell will assist the Commission 3 in providing his expert opinion on the following 4 matters: (1) the system of supervision, monitoring, 5 control and management of the project and the 6 identification of issues of non-compliances, 7 inadequacies and deficiencies, if any; and (2) the 8 provision of an opinion, with a view to promoting public 9 safety and assurance on quality of works, on how the 10 system of supervision, monitoring, control and 11 management may be strengthened and enhanced to avoid 12 future incidents of non-compliance, inadequacies and 13 deficiencies. 14 Then at paragraph 32 of this note we say this. If 15 any of the involved parties wishes to adduce expert 16 evidence, an application should be made to the 17 Commission on reasonable notice, and any such 18 application should be accompanied by a written report of 19 the proposed expert. This is again fleshed out in the 20 rules of procedure and practice which I will come to in 21 a moment. The Commission will deal with any such 22 applications as soon as possible and, in the event that 23 the application is granted, give directions as to when 24 the expert concerned is to be called to give evidence. 25 So we make these points by way of guidance for the</p>
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<p>1 vice president of the Institution of Structural 2 Engineers. 3 On the basis of the available factual evidence, it's 4 expected that Prof McQuillan will assist the Commission 5 in providing his expert opinion on the following 6 matters. Firstly, the identification, if any, of 7 matters of non-compliance which may affect the 8 structural safety and integrity of the diaphragm walls 9 and slabs, and if so, the cause or causes of such 10 defects. Secondly, the provision of an opinion on how 11 such defects may be rectified and how, if required, the 12 diaphragm walls and slabs may be strengthened to ensure 13 public safety. 14 The other expert is Mr Steve Rowsell, and Mr Rowsell 15 has worked for 40 years in the public and private 16 sectors on major transport infrastructure projects in 17 the highways and rail sectors. He is the director of 18 Rowsell Wright Ltd, a procurement consultancy providing 19 advice across a range of public sector infrastructure 20 projects. He is a chartered engineer. He was the 21 president of the Chartered Institution of Highways and 22 Transportation in the UK in 2016 and 2017, and he has 23 extensive experience and knowledge of target cost 24 contracts, having been involved in the implementation of 25 that type of contract in the UK.</p>	<p>1 involved parties. The Commission expects any expert 2 evidence to be based on the relevant factual evidence 3 from all witnesses, not just the party seeking to call 4 the expert. There should be no attempt at factual 5 analysis by the expert, although of course in the usual 6 way factual assumptions may be stated when necessary or 7 appropriate. Factual witnesses should not seek to rely 8 on, refer to, or adopt matters set out in an expert 9 report, and an expert report will not be admitted unless 10 the Commission is satisfied as to the independence of 11 the expert. 12 Sir, what we are seeking to achieve is to clearly 13 differentiate between factual evidence, on the one hand, 14 and expert opinion on the other. 15 Sir, so far as the Commission's directions are 16 concerned, which I'm going to come to shortly, at this 17 preliminary hearing, the Commission will give directions 18 on the further conduct of the proceedings, and we have 19 annexed the document entitled "Rules of procedure and 20 practice" which sets out the directions which the 21 Commission intends to make. I will come to those, as I 22 say, in detail in a moment. 23 But I draw particular attention to the following, 24 namely, first of all, paragraphs 6 and 7 which deal with 25 the procedures to be adopted by any involved party who</p>

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<p>1 wishes to gain access to the documents so far received 2 by the Commission; paragraph 17 which deals with the 3 procedure by way the Commission will receive oral 4 evidence, and paragraphs 19 to 21, which deal with the 5 timing of the substantive hearing, which you have 6 already touched upon.</p> <p>7 Sir, of perhaps some importance to those who have 8 sat in that room this morning, paragraph 34 says this. 9 With specific record to paragraph 17(1) of the rules of 10 procedure and practice, the Commission's current 11 intention is to call the factual evidence of the 12 involved parties in the order set out below. However, 13 I emphasise that the process is flexible, it is fluid, 14 and if at any stage the Commission concludes that it 15 wishes to hear from a particular witness or witnesses on 16 a particular matter or a particular issue, then it will 17 issue appropriate directions for those witnesses to come 18 and give their evidence perhaps earlier than might 19 otherwise have been anticipated.</p> <p>20 So, sir, what the intention is, is this, that 21 witnesses will be called from various involved parties 22 in the following order, namely Intrafor first, China 23 Technology second, Fang Sheung third, Leighton fourth, 24 MTRC fifth, and the government sixth.</p> <p>25 Whilst it's not possible at this stage to give even</p>	<p>1 that the less disruption to the Inquiry, the better.</p> <p>2 It is anticipated that the Commission's experts will 3 be called at the end of or at least towards the end of 4 the hearing with their reports being made available 5 a reasonable time beforehand. But again, harking back 6 to the point I emphasised earlier, if the Commission 7 concludes it would assist the efficiency of the Inquiry 8 to call the Commission's experts earlier, for example in 9 an endeavour to close out a particular issue or a line 10 of Inquiry, then again appropriate directions will be 11 issued to achieve that.</p> <p>12 CHAIRMAN: Yes. I would also mention in passing that, just 13 as it took a little while to obtain the very valuable 14 services of Prof Hansford, it has not been the smoothest 15 road to securing expert evidence, and that's taken up 16 some time, for a number of very compelling reasons, one 17 of them being a question of conflict of interest. 18 A great many experts have already been involved with the 19 MTRC, Leighton, and other parties.</p> <p>20 So, while we are satisfied experts of the required 21 level -- and obviously that's subject to anything that 22 may be brought up during the conduct of the Commission 23 itself -- they haven't been able to already fulfil their 24 obligations to prepare reports, and so that's one of the 25 reasons for the possibility of some delay there. It's</p>
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<p>1 a rough timetable of when each involved party's 2 witnesses will be called, it is hoped that the 3 indication above will at least in broad terms assist the 4 planning of the involved parties.</p> <p>5 All that can be stated, which I do with some 6 certainty at this moment, is that the witnesses for 7 Intrafor and China Technology will be required to attend 8 to give evidence in the first week of the hearing, as 9 you have intimated, the hearing starting on 22 October.</p> <p>10 Furthermore, sir, in due course, but not yet, the 11 Commission's legal team will set out the order in which 12 it would prefer each involved party's witnesses to be 13 called. If, however, any involved party wishes for good 14 reason to alter our preferred order, the Commission's 15 legal team is prepared to be flexible and accommodate 16 any reasonable alteration or request. In this regard, 17 any involved party should give reasonable notice to the 18 Commission's solicitors of any desired alteration to 19 minimise any potential disruption to the hearing.</p> <p>20 Perhaps I could add this to that observation. If 21 any of the involved parties are aware of an inability of 22 any of their witnesses to attend to give evidence to the 23 Inquiry at any particular date or dates, the greater 24 notice that the Commission's solicitors are given of 25 that problem, the better. The reason for that being</p>	<p>1 also to be borne in mind, for example, that the academic 2 year commences in England, I think at about today, and 3 a number of experts were just simply in a position where 4 they had such a load of academic obligations that they 5 just couldn't make themselves available.</p> <p>6 MR PENNICOTT: Sir, before I move on to the rules of 7 practice and procedure could I just mention two points 8 by way of putting some flesh on the bones of why we are 9 proposing to call the witnesses in the order in which we 10 are.</p> <p>11 Sir, so far as Intrafor going first is concerned, 12 there are principally two reasons for that. First of 13 all, chronologically, Intrafor being responsible for the 14 construction of the diaphragm walls, chronologically, 15 that came first, before we get on to considering the 16 slabs.</p> <p>17 Secondly, perhaps more importantly, it appears to 18 the Commission's legal team that Intrafor have become 19 an involved party principally by reason of certain 20 photographs that have been published in the press and 21 newspaper articles in respect of such photographs. And 22 whilst of course certain matters will no doubt need to 23 be explained and explored with Intrafor, the 24 impression -- it is no more than that at the moment -- 25 that the Commission's legal team has formed at the</p>

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<p>1 moment is that none of the other involved parties is 2 apparently seeking to criticise Intrafor in any material 3 respect. Consequently, it seems to us, the Commission's 4 legal team, that if that very preliminary analysis is 5 correct, it's at least possible that Intrafor has 6 a relatively limited role to play in this Inquiry. 7 That's another reason, or primary reason, why we think 8 they should go first. 9 So far as China Technology is concerned, going 10 second for their witnesses, the position is this, that 11 the allegations and assertions that principally the 12 director of China Technology has made is, on one 13 analysis, the primary reason why we are all here today 14 and will be here potentially many weeks. 15 In those circumstances, it's the Commission's legal 16 team's view that it is only right and proper that the 17 China Technology evidence is put to the test and put 18 under the microscope first. That exercise being carried 19 out by me for the Commission, and no doubt by those 20 representing Leighton, MTRC, the government, and 21 possibly other involved parties. 22 Could I then turn to the directions. Those are at 23 annex 2 of what was handed out earlier. I'm not going 24 to read all of these out, but I draw your attention to 25 under the heading "General". We know that the hearings</p>	<p>1 Commission for the purposes of this Inquiry. Any 2 involved party who wishes to gain access to such 3 documents or materials may apply in writing to the 4 Secretariat of the Commission. At its discretion, the 5 Commission shall determine whether or not, when and to 6 what extent access may be permitted, and what 7 conditions, if any, should be imposed upon the grant of 8 such access. 9 Given that access may be restricted and conditions 10 may be imposed, documents and materials provided to 11 an involved party shall not be disclosed or disseminated 12 to other involved parties or unrelated persons without 13 consent in writing of the Commission. 14 If access is permitted to any involved party, only 15 soft copies of the documents and materials will be 16 provided. 17 Paragraph 8 states perhaps what is the obvious, that 18 all materials supplied by the Commission to any of the 19 involved parties should only be used for the purposes of 20 this Inquiry. 21 Sir, I then turn to various other procedural matters 22 under the general heading "Standing". Sir, written 23 witness statements, insofar as not already provided, the 24 involved parties and other parties or individuals who 25 have been directed by the Commission to provide written</p>
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<p>1 will be held in public. Sir, there is a prohibition on 2 photography, audio, video recordings without the 3 authorisation of the Commission within this building. 4 Unlike certain other Inquiries in the past, these 5 proceedings will be conducted in English, although of 6 course witnesses may give their evidence in any language 7 or dialect of their own choice and testimony given in 8 a language other than English will be translated into 9 English and the Commission will provide simultaneous 10 interpretation services when appropriate. 11 Sir, the position is that, at the moment, we have 12 received a number of witness statements in Chinese. 13 They either have been or are in the course of 14 translation. We will make the assumption that those 15 witnesses who have given their written witness 16 statements in Chinese will be giving their evidence in 17 Cantonese, but if there are any other witnesses whose 18 evidence in fact is being given to us in English in 19 their statements but in fact they want to give evidence, 20 their oral evidence in Cantonese, notice of that would 21 be appreciated. 22 Sir, I then turn to the question of access to 23 documents. As indicated earlier, the Secretariat of the 24 Commission has compiled and will update regularly 25 an index of documents and materials provided to</p>	<p>1 statements shall provide such statements by the date 2 specified by the Commission, subject to applications for 3 extension of time as approved by the Commission. 4 Sir, importantly, paragraph 10 perhaps needs to be 5 carefully reviewed by all the parties' legal 6 representatives. 7 Any involved party who wishes to provide responsive 8 written statements to a statement provided by another 9 involved party shall apply in writing to the Commission 10 within 14 days from the date when soft copies of the 11 documents and materials are provided to them. When they 12 make that application, a draft of its proposed 13 responsive written statement or statements shall be 14 provided to the Commission with the application. And, 15 sir, we emphasise that unless directed by the 16 Commission, any further written statements which is not 17 responsive in nature will not be permitted. In other 18 words, we invite those parties -- the involved parties 19 to clearly take on board the point that the responsive 20 written statement -- responsive statements should be 21 truly responsive and not deal with new matters. 22 Then, sir, paragraph 11, of importance, and picking 23 up a point that I mentioned earlier, any involved party 24 who wishes to adduce expert evidence on any issue 25 relevant to the Inquiry must make an application to do</p>

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<p>1 so on reasonable notice to the Commission and any such 2 application shall be made to the Commission through its 3 solicitors and accompanied by the provision of three 4 copies of the written report signed by the expert 5 concerned together with a soft copy. If the Commission 6 grants any such application, it will give directions as 7 to when the expert is required to be called to give 8 evidence at the substantive hearing. The Commission 9 will not grant any such application if it is not 10 satisfied that the evidence to be tendered is that of 11 an independent expert.</p> <p>12 Sir, paragraphs 12 and 13 deal with the 13 participation of legal representation of other parties 14 apart from the involved parties. I won't propose to 15 read those two paragraphs out. I have already made the 16 point earlier that if anybody else wishes to join this 17 particular party, then they are entitled to make 18 an application to do so.</p> <p>19 Sir, so far as the hearing procedure is concerned, 20 I deal first of all with the question of opening 21 addresses. First of all, counsel for the Commission, 22 us, may make a written and oral opening address. 23 Likewise, counsel for the involved parties may make 24 their own opening addresses, provided an application to 25 do so enclosing a written opening address which should</p>	<p>1 entity to give evidence, but also indicated that we will 2 be giving notice of the order in which each of the 3 individual witnesses should give evidence in due course.</p> <p>4 Sir, counsel for the Commission will lead the 5 evidence of witnesses called by the Commission, and then 6 counsel for any involved party may apply to the 7 Commission for leave to question a particular witness 8 and the Commission will determine the sequence of 9 cross-examination by those counsel whose application for 10 cross-examination has been granted. And then counsel 11 for the Commission may re-examine the witnesses.</p> <p>12 At the moment, the Commission doesn't have any 13 witnesses, factual witnesses of its own, but of course 14 if it in due course does, then the involved parties will 15 be duly notified.</p> <p>16 Then, perhaps more importantly and relevantly, 17 unless otherwise directed by the Commission, counsel for 18 an involved party may lead the evidence of witnesses who 19 testify on behalf of such party, after which counsel for 20 the Commission may question such witness. Thereafter, 21 counsel for other involved parties may apply to the 22 Commission for leave to question such witness and the 23 Commission will determine the sequence of 24 cross-examination by those counsel whose application for 25 cross-examination has been granted.</p>
<p>Page 30</p> <p>1 not be longer than 20 pages and provided in font size 14 2 with single spacing and no footnotes, other than for 3 document references, has been made within 21 days from 4 today. That is by Monday, 15 October 2018.</p> <p>5 In other words, we are inviting all our learned 6 friends, if they wish to make an opening address, to 7 provide 20 pages one week before the hearing is due to 8 commence, that is on 15 October, one week before 9 22 October.</p> <p>10 If the Commission accedes to the application to make 11 an oral address, those addresses will be made 12 immediately after my address, and then the Commission 13 itself will determine the sequence and length of such 14 oral addresses.</p> <p>15 Sir, I turn to the evidence. We have set out 16 section 4(1) of the Commissions of Inquiry Ordinance. 17 I won't read that out.</p> <p>18 So far as the examination of witnesses is concerned, 19 oral evidence will be given under oath or affirmation.</p> <p>20 The procedure by which the Commission will receive 21 oral evidence is as follows. First of all, the 22 Commission shall determine the sequence in which oral 23 evidence be given in the Inquiry. Of course I have 24 already indicated in general terms the order in which 25 each entity will be giving -- or we would wish each</p>	<p>Page 32</p> <p>1 Finally, counsel for the involved party leading the 2 evidence may re-examine the witness.</p> <p>3 Unless otherwise directed by the Commission, insofar 4 as any witness wishes to adopt his or her witness 5 statement as his or her evidence, with or without 6 modification or elaboration, the contents of his or her 7 witness statement are to be read out either by the 8 witness or by his or her counsel.</p> <p>9 CHAIRMAN: I should say that, in that regard, this 10 Commission of Inquiry is a public inquiry, and certain 11 of the things I have said to you already this morning 12 will indicate that I am aware of the fact that the 13 public have an entitlement to understand why, for 14 example, expert evidence is not being called until 15 a particular time; and, equally, they are entitled to 16 know what witnesses will say. So it can be an arduous 17 process listening to a witness statement being read out. 18 You have as much experience of that, I'm sure, as I do, 19 but it is very necessary. And so that decision was 20 made. Thank you.</p> <p>21 MR PENNICOTT: Thank you, sir. Of course, at any stage of 22 Inquiry, the Commission may make questions of any 23 witness, the Commission may give directions to each 24 party limiting the length of examination of witnesses 25 and submissions.</p>

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<p>1 Just on that point, my understanding of the 2 Commission's position is that there is to be no formal 3 chess clock-type procedure certainly to start with in 4 the Commission, but a view is going to be taken on 5 a witness-by-witness basis as to how long each party 6 should be given to cross examine any particular witness. 7 Direction (7) makes the point that the Commission 8 shall inform all involved parties as and when the 9 witness statements and/or expert reports of the 10 witnesses to be called by the Commission become 11 available. 12 The Commission may recall any person who has given 13 oral evidence to answer further questions. 14 Paragraph 18 deals with closing addresses. Sir, the 15 position there is that counsel for the Commission and 16 counsel for the involved parties may make written oral 17 addresses. The Commission may determine the sequence 18 and length, both written and oral, of such addresses. 19 That direction has been left, rather deliberately, 20 general, unlike the position with the opening 21 submissions. That is because, as I understand it, it 22 would be premature at this stage, for example, to 23 determine the length of any written closing submissions. 24 An informed and better view will be available on that 25 particular topic, for example, after or towards the end</p>	<p>1 continuing with the evidence after the Christmas break. 2 So I think all parties and their legal 3 representatives do need to make some provisional plans 4 for returning to give evidence, or rather to be involved 5 in the giving of evidence after Christmas or, hopefully, 6 perhaps simply to be able to give their closing 7 submissions after Christmas. 8 So if we are able, for example, to finish all the 9 evidence before Christmas, then it may be the best way 10 forward to come back afterwards to give closing 11 submissions and to be asked questions by the Commission 12 in regard to those closing submissions. But everything 13 is very provisional at the moment, obviously. 14 MR PENNICOTT: Thank you, sir. 15 Sir, we then deal with the precise timing of the 16 days of the Commission. We put in a caveat about 17 Saturday mornings. Nobody is too keen about that, 18 I anticipate, but it's there anyway, and will only be 19 taken up on a Saturday morning if absolutely necessary. 20 CHAIRMAN: Let me just say here that we are obviously 21 running against a timeframe. The Commission was given 22 six months within which to complete its work, and that 23 includes submission of a report. If it's necessary to 24 be flexible with finishing at the end of the day, we 25 will. If, for example, we have a witness and it</p>
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<p>1 of the live evidence. So it would be wrong perhaps to 2 say, well, it would be 40, 50 or 60 pages at this stage. 3 Let's see how things go. 4 No doubt, sir, you and Prof Hansford will give 5 directions in due course as to the length of closing 6 addresses you would like each party to provide. 7 So far as the substantive hearing is concerned, as 8 you have already indicated, the substantive hearing of 9 this Inquiry will commence on the morning of 22 October 10 at 10 o'clock in this building. The substantive 11 hearing, again you have indicated this, shall, subject 12 to any adjournments the Commission may consider 13 necessary from time to time will continue until 14 16 November. That's a four-week period. We will then 15 have a one-week adjournment, and we will resume on 16 26 November 2018 and run for another period of four 17 weeks until 21 December 2018 on a provisional basis, at 18 least. 19 CHAIRMAN: I should mention here that the words in brackets 20 in the written document "on a provisional basis" does 21 not apply to 21 December. I think you can work on the 22 basis that we will finish evidence on 21 December. The 23 term "provisional basis" goes to what I think is 24 self-evident, namely will we be able to complete all the 25 evidence by that time? If not, we will have to look at</p>	<p>1 transpires that given an extra half hour we can complete 2 that witness's evidence, we will sit for the extra half 3 hour. 4 As far as Saturdays are concerned, I am fully aware 5 of the fact that weekends are required by counsel not 6 merely to recover from the week but also to get on with 7 all the work that's required to be presented in the 8 forthcoming week, but there is that balance, and if 9 Saturdays are necessary, I would anticipate running 10 through to lunch time only; if they are necessary to get 11 on with the job at hand, then we will use those 12 Saturdays. 13 MR PENNICOTT: Thank you very much, sir. 14 Coming towards the end of this now. There is and 15 will be a realtime transcription streaming, Transcend, 16 of the substantive hearing. The Secretariat has 17 indicated that any applications for subscriptions should 18 be made in writing to the Secretariat of the Commission 19 within 14 days of today, that is by Monday, 8 October, 20 stating how many subscriptions are required and 21 undertaking to pay the costs. I have no idea what the 22 costs are, but no doubt the Secretariat can tell anybody 23 who is interested. To view the realtime transcript 24 during the substantive hearing, however, subscribers 25 will need to use their own laptops, notebook computers</p>

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<p>1 and to make arrangements with the service provider 2 directly. 3 At paragraph 23, an electronic bundle has been and 4 continues to be prepared for use at the substantive 5 hearing, and at the substantive hearing, this will be 6 managed by the Secretariat, and all involved parties 7 should be able to read pages in the electronic bundle 8 during the course of the hearing on the monitors that 9 everybody's got in front of them today. So I should say 10 that, going back to the point about access to documents, 11 those who are given permission to have access to 12 documents will essentially be given the electronic 13 bundle in its full form, the bundles, the paginated 14 version. So essentially what you will get, if you ask 15 and receive, is in fact the electronic bundle. 16 Sir, perhaps importantly, for good order, 17 paragraph 24 deals with the seating arrangements in this 18 room. Sir, what it says here is that seating 19 arrangements in the hearing room during the course of 20 the substantive hearing will be determined by the 21 Secretariat on a day-to-day basis. So please, 22 colleagues, don't come complaining to me. 23 Seating for counsel and solicitors for the 24 Commission, that's myself, Mr Cheuk, and Mr Solomon Lam 25 and my solicitors who are mostly over to my left, will</p>	<p>1 relation to seating and other arrangements, hearing 2 arrangements during the course of the substantive 3 hearing. 4 Sir, finally, I think, at the discretion and 5 determination of the Commission, each involved party 6 may, subject to availability, be allocated a lockable 7 room within the building for its use for the duration of 8 the substantive hearing. 9 It may be, I'm not quite sure what the position is, 10 that each of the involved parties have been shown the 11 proposed allocation of rooms this morning. If not, then 12 I think there will be representatives of the Secretariat 13 available after we conclude to show each of the involved 14 parties the rooms that have provisionally been set aside 15 for them for the purposes of the substantive hearing. 16 Again, please, chaps, don't come complaining to me. 17 CHAIRMAN: I would say there that we have obviously done our 18 best to try and ensure that those with the bigger teams 19 have the bigger rooms. 20 While I'm on the subject, it's a matter de minimis 21 in many respects but it often turns out to be of much 22 greater impact when the hearings commence, and that is 23 morning coffee times. Normally in Hong Kong one works 24 on the basis that you are 20 floors above the ground. 25 We are not here and you've got your own rooms, so when</p>
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<p>1 be fixed throughout the substantive hearing. So they 2 will be in these three seats. But the representatives 3 of the involved parties will be allocated seats 4 depending upon the witness giving evidence, those 5 parties who have been granted leave to cross-examine the 6 witness, and any other factors that the Secretariat 7 deems appropriate. 8 Sir, for the avoidance of doubt, for example, if 9 Intrafor's witnesses, as indicated, are going first, 10 I would expected Mr Cohen for Intrafor to be sat where 11 he is now, and then for anybody who wants to 12 cross-examine Mr Cohen's witnesses to be nearer the 13 front rather than the back. But I emphasise that the 14 Commission expects the parties' representatives to fully 15 co-operate with each other in respect of the seating 16 arrangements in the hearing room and, as it were, to 17 give priority to those whose witnesses are being 18 cross-examined and to those counsel who are doing the 19 cross-examination. 20 In that regard, within seven days of today, we 21 invite each involved party to nominate a single contact 22 person and send his or her name, post title, name of 23 firm, telephone number and email address to the 24 Secretariat. The Secretariat will compile a contact 25 list and use the list for disseminating messages in</p>	<p>1 I say 15 minutes, I will expect that the parties will be 2 able to retire to their rooms, coffee will be waiting 3 for them, or they will be able to boil it up very, very 4 quickly, and come back. If you do a time and motion 5 study on it, all too often, when you've got big lifts to 6 get into, your 15 minutes becomes 45 minutes every day, 7 and that can be a mortal wound to those of us like me 8 who prefer to get on with it and look to timing. 9 So there will be coffee breaks in the morning and 10 the afternoon and 15 minutes will be it. Thank you. 11 MR PENNICOTT: Sir, thank you for that. 12 Sir, so far as I am concerned, that's all I wish to 13 say, unless there is anything else. If any of my 14 learned friends wish to make any observations, of course 15 they may do. I don't encourage it, but of course they 16 can. 17 The order which I suggested was perhaps Mr Khaw can 18 go first, if he's got anything he wishes to raise. 19 MR KHAW: On behalf of the government we only wish to raise 20 two points for the Commission's consideration at this 21 stage. The first point we look to, paragraph 6 of the 22 intend rules of procedure and practice, line 3 of this 23 paragraph says: 24 "Any involved party who wishes to gain access to 25 such documents or materials may apply in writing to the</p>

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<p>1 Secretariat of the Commission." 2 Mr Chairman, we have absolutely no problem with 3 that, but as stated in our letter which was sent to 4 Messrs Lo & Lo last Friday, we only hope that the 5 Commission will consider notifying the party which may 6 be affected by such application and giving that party an 7 opportunity to make representations in writing, if 8 necessary. That is the only observation we have in 9 relation to this paragraph. 10 Mr Chairman, the second point that we wish to raise 11 relates to paragraph 11 of the intended rules which 12 deals with the question of expert evidence. We had 13 initially wished to flag that the government may seek 14 expert evidence for the purpose of the Inquiry; however, 15 in view of what is stated in paragraph 11 now, we 16 understand that the Commission has actually considered 17 that potential applications by the involved parties may 18 be necessary in relation to expert evidence. So we 19 don't intend to say much in that case, save and except 20 that we may be in a better position to confirm whether 21 it is in fact necessary for us to make an application to 22 adduce expert evidence once we have a chance to study 23 all the materials, and pursuant to paragraph 11, we will 24 certainly, if necessary, make the application upon 25 a reasonable notice being given to the Commission.</p>	<p>1 been put down about a particular document that the party 2 would prefer it not to be disseminated and disclosed to 3 everybody, of course that will be respected, but I'm not 4 sure that I can take it much further than that. 5 CHAIRMAN: I may have misunderstood Mr Khaw. I thought you 6 were saying that if there was an application for 7 particular documents the party who has some standing in 8 respect of those documents should be entitled to know. 9 MR KHAW: Yes. 10 CHAIRMAN: Just to ensure openness of the proceedings. 11 MR PENNICOTT: That's right. If it's in relation to 12 documents that we don't have, if somebody makes 13 an application that the government gives disclosure of 14 documents that we, the Commission, does not have, of 15 course that will be a contested application perhaps that 16 both parties and us, the Commission, will be heard on, 17 yes. 18 MR KHAW: Mr Chairman, we envisage that application under 19 paragraph 6 will only be necessary if there are 20 documents which have been supplied to the Commission 21 which have been left out of the hearing bundles, for 22 example, on the basis that they contain irrelevant 23 materials or, as Mr Pennicott has just pointed out, they 24 contain sensitive information. That is the only context 25 where an application may be required. But in that case,</p>
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<p>1 These are the only two points I wish to raise for 2 the purpose of today. 3 CHAIRMAN: Yes. Thank you very much. 4 Mr Pennicott, on the first point? 5 MR PENNICOTT: I think I have understood the point that 6 Mr Khaw is making, but I'm not entirely sure. The 7 position at the moment, as you're aware, is all the 8 parties have been giving us witness statements, 9 documents and they have all been put into files, and my 10 understanding is that if an application is made for 11 access to those documents, then the involved parties 12 will be given evidence to all of those documents. 13 However, I do know, from my own reading of what has been 14 happening is that, for example, certain documents, 15 perhaps sensitive documents, have had redactions in 16 them, and the Commission at the moment, as far as I'm 17 aware, is quite satisfied that those redactions are 18 properly made, and therefore the other involved parties 19 will only get access to redacted documents in that 20 context. 21 But if one party wants to see everything, then they 22 will see everything, as far as I'm concerned. There 23 will be no basis upon which anybody can object to that. 24 But I do emphasis of course if any documents have been 25 given to us, either redacted or a particular mark has</p>	<p>1 we say that it would be prudent if a party which may be 2 affected by this application will be given a chance to 3 actually state its position. 4 MR PENNICOTT: And I agree with that. That must be right 5 CHAIRMAN: Yes. Good. Thank you. 6 MR PENNICOTT: I don't think I need to say anything about 7 the expert evidence point. 8 CHAIRMAN: Then we move next to -- 9 MR PENNICOTT: To MTRC. 10 MR BOULDING: May it please you, sir. First of all I thank 11 Mr Pennicott for his very warm welcome. Indeed, I, 12 together with my team, Mr Jat Sew-tong and Mr Kaiser 13 Leung look forward to working with counsel for the 14 Commission in order to assist the Commission to comply 15 as efficiently and as cost-effectively as possible with 16 its terms of reference. As one who expect, a body like 17 the MTR is here to provide you with all possible 18 assistance so far as the Inquiry is concerned. 19 I came here today with all sorts of queries, but 20 I am happy to say that whilst we are grappling with the 21 fine detail of my learned friend's opening, most of my 22 queries have been satisfactorily resolved, 23 notwithstanding I would like to make just one or two 24 observations. 25 I have heard what's been said about the resumption</p>

<p style="text-align: right;">Page 45</p> <p>1 after Christmas, and obviously arrangements would be 2 made. It would be useful at some stage to be given the 3 date when we will resume, if indeed we are going to 4 resume. There is no need for that to be given today, 5 but for obvious reasons it would be nice to know when 6 we've got to come back, if indeed we come back at all. 7 CHAIRMAN: Yes. 8 MR BOULDING: So far as openings are concerned, we have read 9 what's been said about that. We anticipate that we will 10 be making an application for an opening statement to be 11 delivered on the part of MTR. 12 What we would like to emphasise, and it appears to 13 be dealt with in paragraph 25 of the opening statement, 14 is that obviously the sooner we -- and I suspect all of 15 the other parties -- can get hold of the other witness 16 statements or the relevant documentation that's been 17 served the better, because so much is utterly dependent 18 upon what's contained in that. I see that there's 19 a reference to an electronic bundle, which I assume will 20 contain all of the other witness statements. We served 21 17. We hear now that there is over 40 witness 22 statements, so we have got something like 23 or 24 23 additional witness statements to read. The sooner we 24 get hold of that, the sooner we can make the necessary 25 applications in terms of responsive witness statements.</p>	<p style="text-align: right;">Page 47</p> <p>1 again, that emphasises the urgency of the matter, and it 2 may well be that Mr Pennicott is taking instructions on 3 that now. 4 Finally, sir, it's a practical matter. I've been 5 asked by my instructing solicitors, that assuming we 6 need to work early and late, which so often is the case, 7 will necessary arrangements be made for access to this 8 building? 9 CHAIRMAN: Yes. I haven't spoken to anybody about that, but 10 the answer is yes, because there are staff here, and 11 I certainly came earlier this morning and we will make 12 arrangements for that, with air-conditioning and access. 13 MR BOULDING: I'm much obliged. 14 CHAIRMAN: It's part and parcel of any Inquiry in any 15 judicial proceedings that you've got to have the ability 16 to prepare and to deal with matters later in the day, if 17 necessary. So that will be arranged. 18 MR BOULDING: Unless I can assist you further at this stage, 19 sir, they are my observations. 20 CHAIRMAN: Thank you. 21 As far as the time of the hearing is concerned, I've 22 already spoken with Mr Pennicott and the solicitors to 23 the Inquiry, and I have already been in touch with the 24 Office of the Chief Executive simply to explain that we 25 have a fairly tight schedule, we have a large amount of</p>
<p style="text-align: right;">Page 46</p> <p>1 We note it's got to be responsive. Expert reports, and 2 the like. 3 CHAIRMAN: Yes. 4 MR BOULDING: That's obviously going to be a very, very big 5 task. You can rest assured that people are working 24/7 6 on our team and will continue to do so, but we would 7 like to know quite what we have to deal with. If my 8 learned friend could possibly give us some indication as 9 to when that would be available, it would be very, very 10 helpful indeed. 11 We already have a chart, so far as our factual 12 witness availability is concerned, and I would be 13 prepared to share that with my learned friend 14 Mr Pennicott as soon as possible if he thought that 15 would be helpful. 16 Expert evidence: we anticipate that we are likely to 17 make an application to call expert evidence on behalf of 18 MTR, independent expert evidence, but obviously to 19 assist you, and we have seen what's been said about 20 that. Clearly, I've been in contact with these experts 21 already, together with my team, and they emphasise once 22 again that the sooner they get access to outstanding 23 documentation, outstanding witness statements and the 24 like, the sooner they can do what we've been told they 25 have to do, which is to prepare a report. So once</p>	<p style="text-align: right;">Page 48</p> <p>1 evidence to look at. We will keep you informed as early 2 as is practical as to any extensions that may be 3 required relating to your presence before the 4 Commission, and we will work together on that to make 5 sure that we are all ad idem. We are not going to catch 6 you by surprise. 7 MR BOULDING: I very much appreciate it. Thank you very 8 much. 9 CHAIRMAN: Mr Pennicott, on the other matters. 10 MR PENNICOTT: Just on that matter, I thought that what 11 Mr Boulding was perhaps driving at was if we get into 12 a position of having to go into January, whether 13 a not-before date could be given, ie if we go into 14 January, we will not start, for example, before 15 7 January, or something of that order. 16 CHAIRMAN: Yes, that's certainly one of the issues. Thank 17 you very much. We are finishing I think on 21 December. 18 That's, insofar as anything is set in stone, there 19 because other people have commitments, including myself. 20 I imagine that we have already worked provisionally on 21 a not-before date in early January. We need to firm 22 that up, and we will come back to you before the hearing 23 commences on 22 October. 24 MR BOULDING: Very much appreciated, sir. 25 MR PENNICOTT: Sir, you have dealt with the point about</p>

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<p>1 access to the building early in the evening -- I won't 2 say more about that. So far as access to the documents 3 is concerned, I just had to double-check the position, 4 but my understanding, my instructions are that the USB 5 sticks are ready to go, upon application -- so get your 6 letters in this afternoon -- and subject, and I make 7 this important caveat in relation to one or two parties, 8 to certain conditions that the Commission's legal team 9 might advise the Commission about, that bundle is ready 10 and ready to go to the parties, and the sort of 11 conditions I'm afraid we may need to think about -- it's 12 not yet been fully thought through -- is that we are 13 waiting for certain witness statements, outstanding 14 witness statements from certain parties, and it may be 15 that there will be conditions or limitations put upon 16 access to the documents in relation to those parties who 17 have not yet given us all their witness statements, 18 because we don't feel at the moment, and it may be 19 a matter we will have to consider in more detail, that 20 parties who have not provided all their witness 21 statements should be given the advantage of seeing 22 everybody else's witness statements before they produce 23 their primary witness statements. 24 Of course they are going to get the ability to 25 respond, but that's a different point. We are waiting</p>	<p>1 advising the parties. 2 The difficulty will arise if we have matters 3 relating to merits and you are looking to having oral 4 argument. If that happens -- unfortunately, 5 Prof Hansford can't get here until 22 October. What we 6 may have to do is have a hearing heard at the end of the 7 first or second day after normal hours, if that comes to 8 that, but I don't think it necessarily will. 9 MR BOULDING: Thank you for that clarification, sir. One 10 hopes it will not come to that. 11 CHAIRMAN: If it does, that's the way it will be. So 12 hopefully we can deal with everything on paper if it 13 goes to merits. If it's purely related to procedure, 14 I will deal with it on my own. If there any matter of 15 oral argument on a particular issue, and it has to be by 16 the two of us, it will be done out of normal court hours 17 on the first, second or third day of the hearing. 18 MR BOULDING: Thank you. 19 CHAIRMAN: So we get the whole thing out of the way as 20 quickly as possible. 21 MR PENNICOTT: Sir, I emphasise, so there's no 22 misunderstanding, of course myself and my colleagues for 23 the Commission are here to assist and advise the 24 Commission, but any decisions on contentious matters 25 such as the admissibility of evidence and so forth is</p>
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<p>1 for certain primary first witness statements which we've 2 not yet got. But for everybody else, the USB sticks are 3 ready to go. 4 MR BOULDING: That's very helpful, and I'm sure a letter 5 will be winging its way to Messrs Lo & Lo this 6 afternoon, but can I just enquire how, assuming an 7 objection is taken that a party wants to resist, that is 8 going to be dealt with? Is it anticipated that we come 9 back before you, or is it going to be left to 10 Messrs Lo & Lo to have the final word on that? I just 11 enquire. One hopes it's not going to happen. But I 12 just enquire as to any procedure. 13 CHAIRMAN: That was a matter dealt with this morning. I can 14 say that my view of it is that Messrs Lo & Lo, as with 15 Mr Pennicott, are at the service of the Commission and 16 final decisions in that regard, if they are procedural 17 only, are made by myself, in the event of there being 18 any concern. 19 If they are going to matters of merit, they will 20 have to be dealt with by myself and Prof Hansford 21 together, prior to the Commission commencing the 22 substantive hearing on 22 October. There is no reason 23 why, in this electronic age, Prof Hansford and I can't 24 come to a decision and make it by either speaking over 25 the telephone or sending emails to each other and then</p>	<p>1 not dealt with by me or Messrs Lo & Lo, but it's dealt 2 with by you, sir. 3 CHAIRMAN: I would say this is a Commission of Inquiry. 4 Freedom of access to documentation as early as possible 5 is as a general principle of central importance to me. 6 Even if it does perhaps cause some concerns among 7 certain parties, that would normally be the overriding 8 consideration, subject always to issues of fairness. 9 MR BOULDING: Thank you, sir. That's very clear. 10 MR PENNICOTT: I think that means we go to Leighton. 11 MR SHIEH: Thank you for Mr Pennicott's indication in 12 relation to the documentary position. Could I just 13 clarify that paragraph 25 of the note, not the 14 directions, of the note, suggests that the hearing 15 bundles and the index is being prepared and will be 16 available when the documents are provided, but I just 17 heard Mr Pennicott say the USB is actually ready to go. 18 MR PENNICOTT: Yes, that's right. My understanding is that 19 up until the position -- all the documents, everything 20 we have received by Friday is now on a USB stick and 21 ready to go. The position, as I understand it, is 22 this -- in relation to further documentation that may 23 come in this week, next week or the week after and so 24 on, what will happen is depending upon the nature and 25 extent of the additional documentation is this. If it's</p>

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<p>1 a relatively modest amount of paper, relatively modest 2 amount of documentation, then all those parties who have 3 been given access generally to the documentation will 4 then be emailed with the additional documentation soon 5 to be paginated and so forth. 6 If the documentation is such that it is not sensibly 7 to be emailed, it will be put onto another USB stick or 8 DVD or some form of electronic form and then will be 9 sent to the parties in that form rather than by way of 10 email. So we are up to date until Friday but there is 11 obviously an ongoing process which either the 12 Secretariat or Lo & Lo will manage as we go forward. 13 CHAIRMAN: Mr Shieh, in simple terms, you are not going to 14 have to go inquiring of Messrs Lo & Lo whether they have 15 received any more evidence; they will be supplying it to 16 you. 17 MR SHIEH: Grateful for that indication. And in relation to 18 expert evidence, I understand those instructing me have 19 been in communication with the Commission's solicitors. 20 I have now read and heard the Commission's position on 21 expert evidence and those matters will continue to be 22 liaised between those instructing me and the 23 Commission's solicitors in relation to possible expert 24 evidence. I say no more about that. 25 CHAIRMAN: Yes.</p>	<p>1 MR COHEN: I did. I managed to defeat the security system. 2 CHAIRMAN: It's been reported to me with some concern, but 3 all matters have been settled, and welcome. 4 MR COHEN: I promise to behave properly next time. 5 MR PENNICOTT: Thank you, sir. Unless you have any other 6 matters that you wish to mention, I think that probably 7 concludes -- 8 CHAIRMAN: Ms Cabrelli, I hope somebody has come and spoken 9 to you. You haven't been ignored, and no rudeness is 10 intended. You are representing one individual. 11 MS CABRELLI: On the basis of a watching brief. 12 CHAIRMAN: Yes, exactly. So we didn't think it was 13 necessary to over-egg the pudding in this regard, if 14 I can put it that way. 15 MS CABRELLI: Thank you, sir. 16 CHAIRMAN: You are happy with that? 17 MS CABRELLI: Yes. 18 CHAIRMAN: Thank you very much. 19 Anything further? Good. Thank you very much 20 indeed. 21 (11.25 am) 22 (The hearing adjourned until 10.00 am 23 on Monday 22 October 2018) 24 25</p>
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