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<p>1 Wednesday, 31 October 2018 2 (10.00 am) 3 (Proceedings delayed) 4 (10.45 am) 5 CHAIRMAN: Apologies for the late starting this morning, but 6 I think everybody in this room has been advised of the 7 reason why, hopefully. 8 Well, Mr Pennicott, you might just explain briefly. 9 MR PENNICOTT: Yes, of course sir. Mr Poon needs to listen 10 to this as well. 11 At around about quarter to ten or thereabouts, 12 a request was made by my learned friend Mr To that 13 Mr Poon be given an opportunity to read two recent 14 witness statements served by Leighton from Mr Zervaas 15 and Mr Mok. That seemed to me to be an entirely 16 reasonable request, and a request that was also 17 communicated to Leighton and they also wholeheartedly 18 agreed that that was a sensible course. 19 So the reason certainly for the delay until 10.30 20 was in relation to the opportunity that Mr Poon was 21 given to read those statements. 22 As for the last 15 minutes, there have obviously 23 been certain administrative matters that we've needed to 24 sort out. 25 CHAIRMAN: Yes. Mr Pennicott?</p>	<p>1 Q. Mr Poon, am I right in thinking that from your own 2 direct knowledge, you can't say that you ever saw 3 anybody connecting rebar into couplers at those joints, 4 those rebar having been cut? 5 A. Do you refer to the 36 connection joints? 6 Q. Yes, I do. 7 A. I don't have a recollection. I don't have a specific 8 recollection. 9 Q. All right. 10 You then go on, Mr Poon, in the email to refer to 11 the shear keys between the west and east diaphragm 12 walls, between the EWL slab and the diaphragm walls, and 13 I think everybody is aware of what you're talking about, 14 the shear keys, sort of indentation, if you like, into 15 the diaphragm wall? 16 A. (In English) In Chinese, "(Chinese spoken)". 17 Q. Are we going to get the translation? I don't know. 18 A. (In English) "Shear key" means "(Chinese spoken)". 19 Q. All right. I think, Mr Poon, what I'm a little bit 20 unclear about is this. As we discussed yesterday, from 21 your own personal knowledge, you said you had seen 22 certain bar cutting incidents in August and September 23 2015, and we went through that yesterday. 24 A. Mmm. 25 Q. How you got from that position to make these rather</p>
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<p>1 MR POON CHUK HUNG, JASON (on former oath in Punt) 2 (All answers given via simultaneous interpreter 3 except where otherwise specified) 4 Examination by MR PENNICOTT (continued) 5 MR PENNICOTT: Good morning, Mr Poon. 6 A. (In English) Good morning. 7 Q. When we finished last evening, we were looking at your 8 email of 6 January 2017; do you remember that? 9 A. Yes. 10 Q. In particular, we were looking at your assertion that 11 you had doubt about the safety, structural safety, of 12 the 36 transverse construction joints? 13 A. (Chinese spoken). 14 CHAIRMAN: Could we just have that email up on the screen? 15 MR PENNICOTT: Yes. It's C12/7923. 16 CHAIRMAN: Thank you. 17 MR PENNICOTT: I know Mr Poon has it in front of him already 18 because I told him that's where we were going. 19 That's the one, and we need to go down towards -- 20 that's it. 21 So, Mr Poon, you explained to us last evening, 22 yesterday afternoon, the transverse construction joints 23 that you were referring to, and we got the plan out and 24 you indicated the 36 joints that you were referring to. 25 A. (In English) Yes.</p>	<p>1 serious allegations about structural safety of the 2 whole -- all 36 construction joints, the whole of the 3 EWL track slab -- how did you get from, with respect, 4 a fairly limited personal knowledge about bar cutting to 5 such a dramatic statement in this email? 6 A. The reason is, in the email, the background of this 7 email, at the same time I had some commercial disputes 8 with Leighton. The commercial disputes, Leighton had 9 come up with different excuses to not make payment and 10 that was very recurrent; it happened all the time. 11 Back in December -- in October 2016, we already had 12 lawsuits with Leighton, and in October they admitted, 13 and on 10 October they said they owed us 17 million, and 14 Leighton had a payment schedule, it was a win-win for 15 both of us. That is, we had to make up some work 16 progress and they would pay the 17 million in phases. 17 One sum of money, we were owed 6 million in December 18 but Leighton did not pay us. When we pursued the 19 6 million, they came up with different excuses saying we 20 hadn't completed this, hadn't completed that, and the 21 majority of our staff of our company, we looked at all 22 the photo records, we tried to look for the reasons, and 23 in the process we found that their cutting of rebars, it 24 was very frequent, according to the photo records, and 25 that led to my raising these two points.</p>

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<p>1 Q. Well, you say the photographic records -- and we are 2 going to be coming back to that topic a bit later this 3 morning, Mr Poon -- that's your answer, anyway, to my 4 question? 5 A. Yes. 6 Q. Can I then ask you to go on in the bundle -- 7 CHAIRMAN: Sorry, so that I understand this. 8 MR PENNICOTT: Yes, sir. 9 CHAIRMAN: My apologies. 10 MR PENNICOTT: Not at all. 11 CHAIRMAN: What you are saying is because you had 12 a commercial dispute, it was necessary for you to go 13 back to your photographic records, which, in the 14 ordinary course of events, record day-to-day 15 construction matters, and in doing so you then noticed 16 that a good number of these photographs also showed what 17 appeared to be eliciting cutting? 18 A. Yes. 19 CHAIRMAN: So you then decided to raise the issue? 20 A. Yes. Aside from commercial emails, we also had a set of 21 technical emails. 22 MR PENNICOTT: And, Mr Poon, if you would be good enough, 23 please, to go to -- hopefully we are going to just stick 24 with this file for the next run of documents -- 7926. 25 I remind you, Mr Poon, that the previous email we</p>	<p>1 Q. Okay, so nothing in particular? 2 A. Yes. 3 Q. Can you go on, please, to 7937. This is Mr Zervaas's 4 email, again of 6 January, sent at 5.49 pm; do you see 5 that? 6 A. Mmm. 7 Q. He says: 8 "Jason, 9 We are in receipt of your email. 10 It is quite alarming" -- sorry, this is the longer 11 email that we were discussing, the 9.45 email -- "that 12 you have not brought this issue to our attention earlier 13 particularly as the alleged malpractice occurred in 14 September 2015." 15 Is it right that so far as Mr Zervaas is concerned, 16 forget about anybody else, so far as Mr Zervaas is 17 concerned, on 6 January this is the first time you 18 informed him of this incident or these incidents? 19 A. Zervaas, in the email, had just given a one-sided 20 response. This is just his way of protecting his own 21 position. After he received my email, he had 22 investigated some internal documents, because Zervaas, 23 in 2016, August and September, he was only present at 24 the site at that time. Previously, he wasn't on the 25 site. He had an overlap with Malcolm of about a month's</p>
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<p>1 looked at was at 9.35 in the morning. This is another 2 email you sent to Mr Zervaas on 6 January at 1.18. You 3 say: 4 "Dear Anthony, 5 Please kindly note that there will have several 6 reports from local media visiting our site office for 7 an interview on our company." 8 A. Yes. 9 Q. What was the purpose of this email, Mr Poon? What was 10 the message lying behind it? 11 A. The email is not relevant to the other emails, because 12 when we visit the site, the construction site, a lot of 13 people don't have passes, because the reporters, they 14 don't have the worker registrations, they have to come 15 to our office and I had to tell Anthony that we would 16 have these people at our offices. Not just this email, 17 we have other emails, we have visitors from the testing 18 labs, they also have this arrangement. 19 Q. Right. The subject matter of this email is, 20 "Arrangement on reporter visit", so am I right in 21 thinking that what was happening was a reporter from 22 some branch of the media was coming to visit you at the 23 site? 24 A. (In English) Visit me at the site without any aspect of 25 the project, by myself.</p>	<p>1 time, but I don't know when he became the PD in a formal 2 aspect. 3 So the first time I saw him in the project 4 director's room, the PD room, was between 5 September/October 2016, and Malcolm said he was leaving 6 very soon, and Anthony was not in any capacity to answer 7 the incidents between September 2015 and September 2016 8 because he was not responsible for the project. 9 Q. Mr Poon, Mr Zervaas -- have you read his witness 10 statements? 11 A. Which one are you referring to? The new one? I just 12 read the new one. 13 Q. Have you read the previous witness statement? 14 A. Yes. It's all full of lies. It's made up. 15 Q. So Mr Zervaas says he did not have any conversations 16 with you about the cutting of the bars, the incidents, 17 and the first he knew about it was when you sent him 18 this -- on that topic, of course he talked to you about 19 other things, but on this particular topic, the first he 20 knew about it was 6 January. Are you saying he is not 21 telling the truth? 22 A. He's lying. 23 Q. All right. 24 Then could you go, please, to 7940. 25 CHAIRMAN: Sorry, again, please forgive me -- so what you</p>

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<p>1 are saying, in simple terms, is that when this email was 2 sent by Mr Zervaas on the evening of 6 January, and he 3 said, "It's alarming you have not brought this issue to 4 our attention earlier", he knew that that was 5 a downright lie; he was stonewalling you? 6 A. Yes. 7 MR PENNICOTT: Now, your response to that email, Mr Poon, is 8 at 7940. Do you have that? 9 This is what you say. So you write the following 10 morning, Saturday morning, 7 January, and you say: 11 "Dear Anthony, 12 We had investigated internally and it is quite clear 13 that your site in-charge Khyle Roger was well aware and 14 directing these activities." 15 Pausing there. What you don't say in this email, 16 Mr Poon, is, "Dear Anthony, I don't understand why you 17 say this has not been brought to your attention earlier, 18 because I told you about it last October or November." 19 You don't say that, do you, Mr Poon? 20 A. I did not say that because it was mutually understood, 21 but the two of us are adults. We didn't have email 22 communication alone. We weren't conducting an exchange 23 over the air. We had met on the site. 24 Q. You've just told the Commissioner, the Chairman, that 25 what Mr Zervaas had written was a downright lie. So why</p>	<p>1 A. Yes. 2 Q. Now, I know -- we discussed it briefly yesterday -- that 3 you say you had a meeting and a site visit with 4 Mr Rodgers and Mr So back in September 2015. 5 A. Yes. 6 Q. Of course they don't accept that that happened but let's 7 assume you are right. 8 A. This is the best corroboration, because after a year or 9 so I reminded him. 10 Q. What I want to know, maybe you can help us, is upon what 11 do you rely for the rather harmful, rather personal, 12 assertion that Mr Rodgers was directing these 13 activities? What do you rely upon, Mr Poon? Help us. 14 A. Well, actually, for the Leighton hierarchy on site, it 15 may seem a huge organisation, but actually, for most of 16 those at the top, they don't do any work. All day they 17 were not seen. So even for me, who visited the site 18 every day, I didn't know that So Yiu Wai was more senior 19 than Khyle Rodgers, and what I saw at the time, Khyle 20 Rodgers -- sorry, I spelled his name wrong; it should be 21 Rodgers -- he's in charge of the whole site, especially 22 the Chinat areas. So he was the most senior person in 23 charge on site -- 24 Q. I'm sorry, Mr Poon, but at best, on your evidence, you 25 had one meeting and one site visit with Mr Rodgers, and</p>
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<p>1 didn't you point that out to him and say, "Come on, 2 Anthony, you're just not telling me the truth"? 3 A. I did not point it out at the time, it doesn't mean the 4 incident didn't occur. Put very simply, in October 2016 5 until the beginning of 2017, Leighton had promised to 6 pay back money that was due. Therefore, at the 7 beginning of the month, we stopped our work, we stopped 8 works, and because of that Anthony had invited me to go 9 visit his office and discuss how we should resolve the 10 matter. At the time, he said that MTR was not paying 11 up. That's what he alleged. And that is irrelevant to 12 me. "You owe me money, you made a promise and you 13 haven't paid up", and then Anthony said in January, when 14 we stopped work -- he then came up with the new 15 material, new information, he said we hadn't done that, 16 hadn't done this, we were late here, and he came up with 17 different excuses. 18 In our written exchanges, including letters and 19 emails, and we also had face-to-face meetings -- we did 20 not rely exclusively on email to communicate. So would 21 I repeat myself in my emails? Put simply, he knew what 22 I was talking about, so I didn't have to repeat my 23 position. 24 Q. In this, the sentence I have just read out, you mention 25 Khyle Rodgers, or "Roger"; do you see?</p>	<p>1 that's the only evidence that you're -- 2 A. No, there's not at most one. If I have to put down all 3 the evidence, that is I have to put down all our 4 conversations, then it would be more than 1,000 pages. 5 Q. I'm only focusing -- I'm sure you spoke to him about 6 lots of things, no doubt -- but I'm only focusing on 7 conversations/meetings/site visits that you had with him 8 specifically about the cutting of rebar. You have only 9 told us about one such meeting and one such site visit. 10 What I'm trying to understand is, Mr Poon, when you 11 wrote this email early on Saturday morning, 7 January, 12 whether you were shooting from the hip or whether you 13 thought this through very carefully to make this very 14 serious allegation against Mr Rodgers. Now, which was 15 it? 16 A. When I wrote the email, I relied on my best knowledge. 17 At that time, there was a Chinat internal investigation 18 and there was a judgment and I believe Khyle Rodgers was 19 the person that should be responsible for -- the person 20 in charge or responsible for the cutting of bars. He 21 knew and he didn't stop it. Instead, they just did it 22 secretly afterwards. 23 Q. All right. Can we go back to your email, please, 24 Mr Poon. You say: 25 "We take it serious especially on any subjects</p>

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<p>1 concerning public safety, when our company is part of 2 the party being engaged on the construction. However we 3 have crystal clear mission to build everything under the 4 sunlight." 5 A. Mmm. 6 Q. Then you say: 7 "Call a spade a spade, it is your unfair commercial 8 manner leading to our action on commercial review ..." 9 Now, I assume that's a reference to the commercial 10 dispute -- 11 A. (In English) Yes. 12 Q. -- that you were having with Leighton at the time? 13 A. Exactly. 14 Q. Then you say this, and I'm not going to try -- I'm 15 trying to avoid that as much as I can, Mr Poon, although 16 it is rather difficult to avoid it entirely -- you go on 17 to say: 18 "... include review on hundred thousands of site 19 record photos and videos ..." 20 So is it right that in January 2017, you had carried 21 out a review of what you describe as hundreds and 22 thousands of photographs; is that right? 23 A. Yes. 24 Q. All right. And it was on the basis of that review that 25 you made this serious allegation against Mr Rodgers; is</p>	<p>1 CHAIRMAN: And fairly important wrongdoing in the sense that 2 it put in jeopardy the structural integrity of the area 3 that you had been working at? 4 A. Yes. 5 CHAIRMAN: But, once you reached your deal on a commercial 6 basis, you were happy to dispose of them. You didn't 7 keep them up your sleeve in the event that something 8 awful should happen in the future, or anything like 9 that? 10 A. No. Let me make myself clear. The commercial deal is 11 actually the confidentiality agreement, and the reasons 12 behind the confidentiality agreement is because Karl 13 Speed personally promised me that he would work with 14 MTRC and they would do calculations and they would do 15 remedial works, like using the dowels and so on. 16 Because I thought they would do the remedial works, 17 that's why I was willing to delete the photos. 18 CHAIRMAN: I've still got a little difficulty in 19 understanding. You reach an agreement, fine. It's all 20 done in good faith. But you are aware of this area of 21 real concern. You're now dealing with the MTR and 22 Leightons on a good-faith basis. But why go away and 23 delete a large number of very important photographs, 24 which one day you may need for any number of reasons? 25 I mean, on your basis, a train could be derailed in five</p>
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<p>1 that right? 2 A. Because I remember at the time -- at the time in the 3 photos we found, we saw piles of these cut threaded 4 sections on the ground. Someone took the photos. 5 CHAIRMAN: What happened to those photographs? I think 6 you've told us already. You disposed of them, did you? 7 A. (Nodded head). Let me start from the beginning. Why 8 are there hundreds of thousands of photos? Because our 9 foreman confused all the photos from different sites -- 10 CHAIRMAN: I have that. But the fact remains, on your 11 evidence, you've said at a time, that is at about this 12 time, you started an internal review, and in the course 13 of that internal review you identified a large number of 14 photographs which, in your view, backed up an allegation 15 of elicit or wrongful conduct by persons under the 16 charge of Mr Rodgers. 17 A. Yes. 18 CHAIRMAN: Now, my question is quite simple. You had 19 identified those photographs but you later disposed of 20 them; is that right? 21 A. Yes, after 18 September 2017. After 18 September 2017. 22 CHAIRMAN: All right. So you had evidence, photographic 23 evidence, that satisfied you that there had been 24 wrongdoing? 25 A. Yes.</p>	<p>1 years' time, and there could be an inquiry, just like 2 this one, saying what happened, and you would then have 3 all these photographs and you could come forward and 4 say, "We registered our complaints at the time", but you 5 say you didn't keep them, you didn't have a record of 6 them; you just destroyed them. 7 A. Well, it's simple. I always felt that all the facts are 8 inside the structure of the station. No one could hide 9 anything there. It's not because I have a photo and 10 then I could corroborate that it's like that. It 11 doesn't matter if I have a hundred photos or a thousand 12 photos showing that Leighton was cutting bars. They 13 could have come up with any excuses. I always believe 14 it's a permanent structure, no one would just demolish 15 it and no one could hide anything in it, because the 16 facts lie in the structure. 17 CHAIRMAN: So you're saying that because the structure was 18 there, even though it might cost millions of dollars to 19 pursue this concern of yours, nevertheless the evidence 20 was there? 21 A. Well, the evidence is not just in photos, it's also in 22 the correspondences we had, including this email, that 23 would record what happened at the time. 24 CHAIRMAN: All right. 25 MR PENNICOTT: Sir, I will be returning to the question of</p>

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<p>1 the destruction of photographs and documents a little 2 later on. 3 Mr Poon is right that when he and China Technology 4 and Leighton entered into the confidentiality agreement 5 in September 2017, so nine months on from where we are 6 at the moment, it does have a clause, the 7 confidentiality agreement, regarding the destruction of 8 material. But of course one needs to see what that 9 clause says, and it's rather important to understand 10 what the clause says and the circumstances in which 11 documents or photographs may have been destroyed. But 12 we'll come back to that topic hopefully reasonably 13 shortly. 14 CHAIRMAN: I'm aware of that. Don't get me wrong. 15 MR PENNICOTT: Just to put it in context. 16 CHAIRMAN: It's been raised several times. 17 MR PENNICOTT: Yes. 18 CHAIRMAN: But I haven't read it as meaning, "Please go away 19 and destroy ..." 20 MR PENNICOTT: Precisely, sir. That is rather the point. 21 CHAIRMAN: Anyway, we will deal with that. 22 MR PENNICOTT: Where were we? I was going to take you, 23 I think -- if you could go to 7944, please, in the same 24 bundle. 25 CHAIRMAN: In any event -- sorry, please forgive me -- but</p>	<p>1 A. Yes. 2 Q. And the agreement provides for certain amounts of moneys 3 to be paid referable to those milestone dates? 4 A. Yes. Please note in particular 7944 -- you can see that 5 clearly on 7944 -- for this milestone schedule, it's 6 actually the second version. In between, there are many 7 more versions. 8 Q. Okay. But this is what was being -- a line was being 9 drawn in the sand on 23 January 2017, on the terms set 10 out in this document? 11 A. Yes. Basically, Leighton owed us money, they would pay 12 us back, and then we promised to do something, do some 13 work. 14 Q. Then -- don't put that file away, Mr Poon -- could you 15 please look at paragraph 51 of your witness statement. 16 A. Yes. 17 Q. Sorry, could we just go up to show the gap between -- 18 that's right. So there's paragraphs 50 and 51, Mr Poon. 19 A. Yes. 20 Q. You make reference to the 6 January material that we've 21 just been discussing, in paragraph 50? 22 A. Yes. 23 Q. Then, in paragraph 51, you leap forward in time to 24 15 September? 25 A. Yes.</p>
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<p>1 just as a nota bene, of no value, perhaps -- you enter 2 into an agreement, one of which is now presumably with 3 help from lawyers if you need it, because it's a complex 4 agreement involving a lot of things, and you are talking 5 now about an agreement to destroy evidence that could 6 point to criminal acts. If I was a lawyer -- and 7 mercifully that's a career long passed as far as giving 8 advice is concerned in the private sector -- I might 9 think about that being an agreement certainly against 10 public interest and being very open to question as to 11 its legality. 12 MR PENNICOTT: Indeed, sir. 13 CHAIRMAN: But there we are. 14 MR PENNICOTT: We will look at the clause shortly, I hope. 15 Mr Poon, anyway, let's try to get January 2017 out 16 of the way first, before we move on to September. At 17 7944, 7945, 7946, and I think possibly the following 18 pages as well -- there are various diagrams and plans, 19 and so forth, Mr Poon -- as I understand, this is the 20 agreement that you reached with Leighton, signed up on 21 23 January 2017; is that right? 22 A. Yes, yes, yes. 23 Q. Okay. I'm not going to read it all out, but we can look 24 at it if we need to, but you're given a series of 25 milestone dates.</p>	<p>1 Q. And you say, "On 15 September ... I further issued 2 another email to Mr Zervaas demanding a response from 3 him and/or Leighton", as I understand it, demanding 4 a response to your email of 6 January? 5 A. (In English) Yes. 6 Q. Why did you wait nine months to send a chaser? 7 A. Because, on 15 September -- actually, since the 8 beginning of September, the work for which we were 9 responsible was also completed, and that included the 10 rectification. Now, actually, at the time, I already 11 left the site myself. At the time, I think there was 12 one foreman with a few or up to ten people on site, 13 that's what's left. So it's almost time that we had to 14 leave altogether. 15 Q. Okay. 16 A. So that's why I had to, you know, tie up what's 17 outstanding, either commercially or technically. 18 Q. Okay. Let's put your witness statement away now, 19 Mr Poon, thank you, and back to the C12 file. 20 If you go to page 7984, please. As I say, Mr Poon, 21 I'm going straight to this letter that you wrote on 22 15 September, and I happen to know, and I'm sure you 23 know, that there were a number of letters and documents 24 sent by Leighton in the lead-up to you sending this 25 letter; okay? You understand that?</p>

<p style="text-align: right;">Page 21</p> <p>1 A. Yes.</p> <p>2 Q. I'm going to leave Mr Shieh, if he wishes to, to take</p> <p>3 you to any of those documents in the lead-up to this</p> <p>4 letter. I just want to focus on this letter.</p> <p>5 A. Okay.</p> <p>6 Q. What you say is indeed you refer back to a letter from</p> <p>7 Leighton of 11 September, and then in paragraphs 1 to 6</p> <p>8 you essentially deal with commercial matters, the rights</p> <p>9 and wrongs of your dispute with Leighton; do you agree?</p> <p>10 A. (In English) Agree.</p> <p>11 Q. Then, at paragraph 7, you say:</p> <p>12 "We reiterate herewith we had already reported the</p> <p>13 matter of cheating coupler and threading since this</p> <p>14 January, and there is no action on Leighton to remedy</p> <p>15 the problem. We do not want our company or our labour</p> <p>16 being forced to involve on covering up this illegal</p> <p>17 fault."</p> <p>18 You then say in paragraph 8:</p> <p>19 "Please do not pretend nothing happen on the EWL</p> <p>20 slab, please investigate and remedy the cheating coupler</p> <p>21 and threading with immediate effect, instead of speeding</p> <p>22 up the wet trades of plasterer and painting and fitting</p> <p>23 out works include E&M and suspended ceiling installation</p> <p>24 to hide the problem."</p> <p>25 Now, Mr Poon, can I ask you this: why, in the</p>	<p style="text-align: right;">Page 23</p> <p>1 time. Money didn't matter to Chinat. Leighton owed us</p> <p>2 at that point some \$30 million.</p> <p>3 Q. Mr Poon, some people might suggest to you that the</p> <p>4 incorporation of paragraphs 7 and 8 was an attempt to</p> <p>5 put commercial pressure on Leighton. I'll give you</p> <p>6 an opportunity to say something. Do you agree with</p> <p>7 that?</p> <p>8 A. No, I totally disagree. In early December 2016, early</p> <p>9 December, it was Leighton which asked me to approach</p> <p>10 Philco Wong and ask whether MTRC had discontinued making</p> <p>11 payment to Leighton so Leighton couldn't pay me. It was</p> <p>12 in early December 2016.</p> <p>13 Then, about the conversation I had with Philco Wong,</p> <p>14 we talked about couplers as well, and I had no idea of</p> <p>15 the identity of that person called Raymond. I don't</p> <p>16 know the surname. And if Leighton continued to refuse</p> <p>17 payment to us, I could approach Raymond. So there was</p> <p>18 no need for me to exert commercial pressure. I could</p> <p>19 just ring Raymond.</p> <p>20 Q. Mr Poon, I'm just focusing on this letter --</p> <p>21 A. Your question was whether I was trying, by this letter,</p> <p>22 to create commercial pressure. My answer is no. First</p> <p>23 of all, this is a subject matter close to my heart;</p> <p>24 I therefore put them in my letter. Second, if I were to</p> <p>25 create commercial pressure, it would be so much easier,</p>
<p style="text-align: right;">Page 22</p> <p>1 context of this commercial dispute that you were having</p> <p>2 with Leighton, do you choose to include paragraphs 7</p> <p>3 and 8 in this letter? What is the connection between</p> <p>4 the dispute on the one hand and these allegations that</p> <p>5 you're making on the other?</p> <p>6 A. In fact, our company was still trying to resolve the</p> <p>7 commercial, technical and contractual liabilities. We</p> <p>8 would like to deal with them separately. However, in</p> <p>9 early or middle or even end of September, by that</p> <p>10 time -- and please let me explain -- at the time what</p> <p>11 our company situation was. We were working 24 hours on</p> <p>12 Hong Kong-Zhuhai-Macau Bridge, including the tunnel</p> <p>13 section, the bridge. Basically, we did not have the</p> <p>14 time to deal with our dispute with Leighton, but</p> <p>15 Leighton continued to send us letters, emails,</p> <p>16 et cetera, to engage us in the quarrel, whereas we would</p> <p>17 like to speed things up, to resolve the matter and to</p> <p>18 leave the site as soon as possible.</p> <p>19 This letter was written by me, and as far as I am</p> <p>20 concerned, what I emphasised wasn't money, rather our</p> <p>21 responsibility, the Chinat responsibility, our rather</p> <p>22 longstanding liability as far as this station is</p> <p>23 concerned.</p> <p>24 So I put in two more points in this letter, and in</p> <p>25 fact these were really subject matters in my mind at the</p>	<p style="text-align: right;">Page 24</p> <p>1 so much stronger and so much quicker for me to just call</p> <p>2 Raymond.</p> <p>3 Q. You didn't have the conversation with Dr Philco Wong</p> <p>4 until December.</p> <p>5 A. December 2016.</p> <p>6 Q. Okay. I'm giving you an opportunity to --</p> <p>7 A. Not 2017. It's 2016.</p> <p>8 Q. 2016, yes, a year before. There was no question --</p> <p>9 sorry, I should have said 2016 -- there was no question</p> <p>10 of you ringing Philco Wong at this stage, in 2017. The</p> <p>11 only conversation you had with him, you say, was in</p> <p>12 December 2016?</p> <p>13 A. At that stage, I did not call Philco Wong; I did not</p> <p>14 request for his help.</p> <p>15 Q. Okay. Your answer to my question is if you want to</p> <p>16 exert commercial pressure, the way you would do it would</p> <p>17 be to call Dr Wong, Dr Philco Wong; is that right?</p> <p>18 A. Yes. The reason is that at that time Leighton was the</p> <p>19 subject of attack by others, and between April and June</p> <p>20 2017, other sub-contractors at the same site protested</p> <p>21 and they even stormed into the office of Leighton at the</p> <p>22 site to make a scene. For me, if I were to exert</p> <p>23 pressure on Leighton, I would just tell MTRC directly</p> <p>24 and they would just take him to task.</p> <p>25 Q. All right.</p>

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<p>1 A. There was no need for me to write at length, wasting my 2 own time to threaten Leighton or to exert pressure. 3 I could just ring them. Just read the newspaper, what 4 happened to Leighton at the time, when it was in debt. 5 Q. I go back to an earlier question, Mr Poon: if this is 6 a matter, if this was and is a matter, close to your 7 heart, as you say, and it's got really nothing to do 8 with the commercial dispute that you had with Leighton, 9 why did you leave it for nine months to get, as you saw 10 it, an answer, a satisfactory answer, to your email of 11 6 January? If these are two separate issues and not in 12 any way related, surely waiting nine months doesn't 13 suggest it is that close to your heart? 14 A. After the email on 6 January -- well, Anthony, now that 15 I refer to documents I know he was lying, but at the 16 time he told me that Leighton and MTRC at the time were 17 studying the concerns that I raised, including the 18 remedial works, and Anthony at the time said that 19 Leighton already had an independent technical team to 20 study the matter together with MTRC. Raymond also told 21 me that. Raymond did tell me that there was something 22 like that. So I waited for a few months. It wasn't 23 a surprise. We waited for Leighton and MTRC to come up 24 with a solution, and I remember even Raymond told me 25 that the option I raised was possible.</p>	<p>1 observe that there is no remedial works being committed 2 on site in these 8 months time." 3 A. Correct. 4 Q. Then, I don't want to read all of this out but picking 5 up the last sentence of the large paragraph in this 6 email, you say: 7 "We opine all damaged and malpractice couplers, 8 including installing without torque test and cheating 9 practice by Leighton direct staff cutting away most of 10 the threads, estimating over 30,000 pieces involved, 11 must be tackled in with high respect." 12 Now, you will be unsurprised to hear that I'd like 13 to concentrate on the figure of 30,000 pieces. Could 14 you explain to the Commission how you arrived at that 15 figure? Was it by a process of careful consideration 16 and reasoning, or by some other means? 17 A. All right. Well, I've been talking about this and 18 Leighton was aware of this. About the steel bars, there 19 was also the issue of ductility, and that's about the 20 structure of the station. Apart from static load and 21 dead load and live load, it should be anti-seismic force 22 or seismic waves. 23 And as far as the design is concerned, I together 24 with many others would know that the reason couplers 25 were used was because BOSA is a supplier of these</p>
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<p>1 Q. All right. Now -- 2 CHAIRMAN: Sorry, you are saying you were told by the MTRC 3 and/or Leighton that because of your earlier complaints, 4 they had put together a technical team that was looking 5 at how best to deal with the problems and how best to 6 devise remedial measures? 7 A. Correct. And also Anthony told me -- I proposed the 8 option, that is to plant some stainless steel bars in -- 9 and it was feasible. 10 CHAIRMAN: Did you ever see a team like this in operation? 11 A. No, but there were many engineers of Leighton at their 12 office. 13 CHAIRMAN: All right. Tell me, did anybody come to you and 14 say, "Mr Poon, I'm the member of a new technical team 15 and we're investigating your concerns; perhaps you can 16 help us"? 17 A. No, no, did not. 18 MR PENNICOTT: On the same day as that letter, Mr Poon, you 19 also sent an email to Mr Zervaas. That's at 7987. 20 You respond to Mr Zervaas's email of 6 January that 21 we were looking at a short while ago, and you say: 22 "Dear Anthony, 23 It's already 8 months after our report on the 24 captioned concerns on structural safety. 25 We still unable to obtain your feedback and we</p>	<p>1 couplers, and these couplers, in relation to the tensile 2 strength, they would automatically extend to absorb the 3 seismic waves. 4 My concern all along had been that during 5 installation, I saw a lot of threads exposed and MTRC 6 had ignored that. That is, after installing the threads 7 into the couplers, we still saw threads exposed outside 8 of the couplers, and to my knowledge these threads would 9 immediately undermine the ductility, that is the 10 ductility of the ductile couplers, as far as the 11 performance is concerned. When I referred to 30,000 12 pieces, at the time our company did not have any 13 concrete figure. It was in August 2015, when Leighton 14 invited us to engage in the matter when couplers were 15 discovered to be inappropriate and I was given a chart 16 that showed some 26,000 threads in an Excel sheet, and 17 during installation, as I understand, workers installed 18 them with bare hands or with spanners. 19 And the second part is they cut part of the threads, 20 and these are two different kinds of malpractices, and 21 I reckon that some 30,000 pieces were involved. 22 Q. Can we just pause there, Mr Poon. When you say 30,000 23 pieces -- this time, let's focus on the word "pieces" -- 24 are you talking about couplers and -- are you just 25 talking about couplers, 30,000 couplers?</p>

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<p>1 A. I'll put it more directly. I mean rebar connection into 2 couplers. 3 Q. Right. So 30,000 connections? Right. Suggesting, on 4 what I think I understand you just to have said, that 5 just about every single piece of rebar had been cut. 6 A. (In English) No, no, no, no. Everybody here ... 7 (Via interpreter) ... including society, they were 8 cheated by the information disseminated by Leighton, or 9 rather MTRC. MTRC imparted information about 26,000 10 couplers, but it only referred to the couplers on the 11 EWL shear wall. It never mentioned the 36 other 12 transverse construction joints where there are some 13 10,000 to 20,000 couplers, together with many others, 14 apart from the two slabs, where such connections were 15 required. 16 So, in my mind, I believe that the rebar connections 17 into couplers amounted to more than 40,000 on the site. 18 Q. 40,000 now? 19 A. Right. 20 Q. Okay. 21 A. Please check carefully. 22 Q. This is all the connections on the east diaphragm wall 23 with the slab, all the connections between the various 24 slab bays, the construction joints that you described 25 yesterday, including the West Wall, or are we just still</p>	<p>1 30,000 which appears in this email, and it's a large 2 figure, it's got no details, no particulars, I don't 3 know whether it refers to rebar connections, couplers, 4 a mixture; I simply don't know, and I still don't know. 5 Like you, I am confused. 6 It would be helpful, Mr Poon, if -- going back to 7 some of the general questions I asked you yesterday 8 morning -- very carefully, very slowly, you explain to 9 us, explain to Prof Hansford and the Chairman, how you 10 came to be asserting that 30,000 pieces, however you 11 define that -- and it would be helpful, I think, to have 12 a definition of "pieces" first, what you're including in 13 that, and then how you do the arithmetic to get to this 14 figure of what you said was 30,000 and what you said on 15 the transcript a moment ago, 40,000. 16 I just don't -- and all of this, if I may remind 17 you, Mr Poon, all of this emerging from your evidence 18 limited to August and September 2015. That's what 19 really troubled us, I think. 20 A. (In English) Okay. 21 Q. You said something about a diagram or some reference 22 point. 23 A. (In English) I think it's better to show with a picture. 24 Q. What -- 25 A. (In English) H254, try first.</p>
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<p>1 focusing on the East Wall? How far does this go? 2 A. Let me just count them. I reckon that there are 26,000 3 pieces for east and west diaphragm walls and also EWL 4 slab and NSL slab. That is, for EWL track slab, NSL 5 track slab, together with the east and west diaphragm 6 walls. 7 For the second large quantities of threaded bars, we 8 have all along neglected this part. In fact, between 9 slabs at the construction joints, between, say, bay 2 10 and 3 or 2 and 4 of C1, we have couplers between the 11 slabs but we totally failed to count them. 12 COMMISSIONER HANSFORD: Sorry, I'm getting slightly confused 13 here. I'm getting confused between, on the one hand, 14 how many couplers there were on the whole project, and 15 on the other hand how many couplers we're being told had 16 defective connections. It seems to me these are two 17 different numbers, but the numbers seem to be all mixed 18 up here. 19 MR PENNICOTT: They do, sir, and I'm trying my best. 20 I confess I'm not getting very far. 21 A. (In English) Can I show with a picture that MTR present 22 on 2,900? 23 MR PENNICOTT: Wait a minute. Let me just try to address 24 Prof Hansford's point. 25 I'm doing my best to try to unravel the figure of</p>	<p>1 CHAIRMAN: All right. Before we do that -- 2 MR PENNICOTT: Sorry, sir. 3 CHAIRMAN: My fault -- when you talk about 30,000 pieces, as 4 Mr Pennicott was asking, to what are you referring? 5 A. (In English) Defective connections, including the 6 undoing connections of the threaded bars onto the 7 couplers, and cutting -- 8 CHAIRMAN: But in broad terms, you're referring to 30,000 9 defective connections into diaphragm walls or other 10 walls or other connections? 11 A. (In English) In the whole project. I'm saying in the 12 whole project. 13 CHAIRMAN: All right. Between couplers and rebars? 14 A. (In English) Yes. 15 CHAIRMAN: Right. So you worked out with your own 16 arithmetic that there must be at least 30,000 -- 17 A. (In English) Yes, I think so. 18 CHAIRMAN: -- such suspect -- 19 A. (In English) Questionable. 20 CHAIRMAN: If I could just ask one more question. I don't 21 have yet a full understanding of the dimensions of this 22 project vis-a-vis 30,000 couplers, but it would seem to 23 me that if you're talking about a number that big or 24 even bigger, you are not going to, if you open up the 25 slab, see six good couplings and one bad one, 20 good</p>

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1 couplings and one bad one. You are likely to see
2 a series of ineffective couplings; would that be right?
3 A. I think it would be random. Some places you would have
4 good connections and some you would have bad
5 connections.
6 Mr Chairman and Commissioner, let me show you
7 a picture.
8 CHAIRMAN: No, no, just answer my question. So you're
9 saying it would be random. But with 30,000, you're
10 going to not have much difficulty in coming across
11 numerous bad couplings, is that right, or bad
12 connections?
13 A. My understanding is that at that time, all the couplings
14 required a torque meter to install -- they required
15 a piece of equipment to install, and what I saw during
16 the whole period there, this piece of equipment never
17 appeared on the site.
18 CHAIRMAN: All right. Now this is something now. So now
19 what you're saying is it's not simply cutting threads or
20 simply leaving damaged couplers in situ, in place; it's
21 also a fact that the incorrect machinery has been used
22 to bring about the couplings? There should have been
23 a particular type of machine and that machine you never
24 saw on site; all right?
25 A. Yes.

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1 CHAIRMAN: Then, if I'm correct, by way of sweeping up,
2 you're saying also that because of the use of grinders
3 and cutting, for some reason, which I don't yet
4 understand and I will need to be educated by the
5 experts, the tensile strength of the rebars was
6 dangerously reduced?
7 A. It was reduced by 25 per cent.
8 CHAIRMAN: All right. That's significant. Okay. I just
9 want to understand where you are.
10 So you're saying, then, that as and when anybody
11 decides to open up any relevant portion of this
12 concreting, they're not going to have too much
13 difficulty in finding, either randomly or in large
14 uniform sections, entirely defective couplings; is that
15 right?
16 A. Correct.
17 Mr Chairman and Mr Commissioner, could I show you
18 a picture and it can show you, if you were to dismantle
19 the wall, roughly what you would see. It's not my
20 picture, it's an MTR picture.
21 MR PENNICOTT: Mr Poon, if you can recall approximately
22 where it is, we might be able to find it, but otherwise
23 it might be a needle in a haystack. Do you have any
24 recollection as to what picture it is you want to look
25 at?

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1 A. B25436 or 38.
2 Q. What is it a picture of?
3 A. It's 15438. Could you give me the index?
4 Q. Sure. You mean the index of the bundle?
5 A. (In English) Yes, the index of the bundle.
6 If someone could remind me, that would be good.
7 I recall someone submitting a report, a CEEK report.
8 Q. That's helpful. That's a lead.
9 A. (Chinese spoken).
10 CHAIRMAN: Perhaps we might take a mid-morning adjournment,
11 just for ten minutes.
12 MR PENNICOTT: Ten minutes, sir.
13 CHAIRMAN: That would be subject to Mr Pennicott working
14 perhaps with counsel for Mr Poon, not by way of giving
15 advice to Mr Poon in any way but to see if this
16 particular diagram can be located.
17 MR PENNICOTT: It won't take me long to find the CEEK
18 report. I know where it is, I just need to.
19 CHAIRMAN: All right. Then we'll continue.
20 MR PENNICOTT: No, if we have ten minutes, we'll find it.
21 CHAIRMAN: Good. Thank you very much.
22 (11.47 am)
23 (A short adjournment)
24 (12.06 pm)
25 MR PENNICOTT: Sir, thank you very much.

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1 Mr Poon, in the short break that we've had,
2 I understand that you have located the photograph, and
3 perhaps more than one photograph, that you wanted to
4 show the Commission.
5 Could you just yourself tell me which page you wish
6 to look at, and then I may need to introduce it to
7 explain where this has come from.
8 If you just identify the photograph first, that
9 would be helpful.
10 A. (In English) Okay.
11 (Via interpreter) B14268, the fourth photo.
12 Q. 14268?
13 A. (In English) Yes.
14 Q. Before we go there, I just need to explain to the
15 Commissioners where we are.
16 Sir, these photographs or this photograph we are
17 about to look at, if one goes to page 14253, please, are
18 attached to a report, as you can see, sir, from Atkins.
19 It's dated quite recently, 10 September 2018. Without
20 going into any detail, its introduction says:
21 "Atkins was requested by MTRC on 30 August 2018 to
22 carry out urgent inspection on the honeycomb concrete
23 defects identified at EWL slab ... between gridlines 20
24 to 40 as shown in the attached NC reports provided by
25 MTRC (see annex A)."

<p style="text-align: right;">Page 37</p> <p>1 So, sir, just to put the thing in context -- knowing 2 that both of you have visited the site indeed quite 3 recently, I have no idea whether you managed to see this 4 particular item of honeycombed concrete. 5 Anyway, with that introduction, Mr Poon, let's go to 6 14268 and you can tell us what you would like to tell 7 us. 8 A. Yes. This photo, I would like to look at the lower 9 right corner, the fourth photo, photo 4. Can we blow it 10 up, please? 11 Now, in this photo, we see this is the claimed 12 honeycomb phenomenon claimed by MTRCL. There is 13 a saying too that this photo is about spalling of 14 concrete, therefore exposing the rebars. 15 Actually, this is a good chance for us to see what 16 are the possibilities with the coupler. To the best of 17 my knowledge, let me explain this photo. On this photo, 18 we see five connections, rebar connections. On the top, 19 the first bar, unless it's been cut inside, I would 20 describe it as a pass. But if you look at the second, 21 the third and the fourth bar, it's easy to see that 22 there are still two or three threads not yet fully 23 screwed into the couplers. As for the fifth bar, it's 24 not that clear, but still it seems that it's been 25 threaded in.</p>	<p style="text-align: right;">Page 39</p> <p>1 of fatigue or breaking, then it will add to the 2 ductility of the bar. That's to absorb waves, tremors, 3 seismic waves, seismic force. 4 (In English) S-E-I-S-M-I-C. 5 (Via interpreter) To the best of my knowledge, four 6 of the five bars here are not up to standard. I don't 7 need to screw them open; I know already. Because for 8 the first one, there's been no crimping; for the second 9 one, it's not been completely screwed in; for the third 10 one, it's not been completely screwed in; the fourth 11 one, it's not been completely screwed in. For the fifth 12 one, it's up to standard, or at least I believe it's up 13 to standard. 14 Q. Can I just understand one point, Mr Poon. You are 15 saying that if you can see any thread at all, then to 16 you that's substandard; is that what you're saying to 17 the Chairman and the Commissioner? Any thread at all is 18 substandard; is that right? 19 A. Yes, though some people say that even if it's not 20 entirely screwed in, maybe there are enough threads, so 21 as long as I have screwed enough threads into the 22 couplers then it's up to standard. No. I object to 23 that. 24 The thread would harm the ductility of the bar. The 25 threads and the couplers must be completely matched.</p>
<p style="text-align: right;">Page 38</p> <p>1 So, in this photo, there are five threaded 2 connections, and to the best of my knowledge my 3 assessment is three of those five are substandard. 4 From this photo, I cannot see any cut bars, but 5 I can see another condition. This is the ductility 6 point that I've mentioning all the time. So it's the 7 ductility of the bar, and on this side, for all threaded 8 bars, there is need to do a crimping process. 9 (In English) C-R-I-M-P-I-N-G. 10 (Via interpreter) Now, this crimping procedure will 11 allow the threaded section at the point where it just 12 leaves the threaded section, and then we can see in some 13 cases the bar has been made thinner. This is very 14 obvious in the second bar. For this T40 bar, between 15 the threaded section and the main bar, there's about 16 60 -- at the point of about 60 millimetres in length, 17 you can see it's become a smaller diameter. 18 For the third bar, we could roughly see the same 19 phenomenon. For the fourth and fifth bars, because they 20 are too far away, I can't see that. For the first bar, 21 I don't see it at all, or perhaps I put it this way, for 22 the first bar. The first bar, I can see there's no 23 crimping. 24 The purpose of crimping is that when they pull -- 25 a bar is being pulled and when it's close to the point</p>	<p style="text-align: right;">Page 40</p> <p>1 Then it would reach the tensile strength as designed for 2 the coupler. 3 Mr Poon, thanks for that. At least that is 4 something that no doubt others, engineers, qualified 5 engineers, experts and so forth, can have a look at and 6 see what they can make of this photograph in due course. 7 CHAIRMAN: Sorry, can I just ask -- 8 MR PENNICOTT: Of course, sir. 9 CHAIRMAN: -- are you saying crimping, as I understand you 10 to be saying, is necessary? 11 A. (In English) Definitely. 12 CHAIRMAN: All right. So earlier you had spoken about 13 crimping having a weakness. That would be wrong, would 14 it? 15 A. For crimping, BOSA has to do the crimping on a special 16 machine. Only then it won't affect or harm the tensile 17 strength of the bar -- 18 CHAIRMAN: All right. But, on an ordinary basis, assuming 19 you're right there, BOSA will just crimp every bar as it 20 goes through? They had set up a system for that. 21 A. Yes, correct. That's clear in the submission. 22 CHAIRMAN: Does that have anything to do with this piece of 23 machinery that should be used for the coupling? 24 A. Well, that's a separate matter. For the torque, the 25 torque is to help workers to screw in all the threads</p>

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<p>1 into the coupler.</p> <p>2 CHAIRMAN: All right. So, in other words, it's not merely</p> <p>3 then the fact that people were cutting threads and/or</p> <p>4 failing to put them in; in your view, a further problem</p> <p>5 was there was no machine to ensure the correct torque</p> <p>6 strength, and in addition to which there was a failure</p> <p>7 on many occasions to actually ensure that you went right</p> <p>8 the way in so that there was a firm connection between</p> <p>9 the rebar going in and the rebar already in? Would that</p> <p>10 be right?</p> <p>11 A. Yes.</p> <p>12 MR PENNICOTT: All right.</p> <p>13 Sir, I was just trying to pinpoint the location of</p> <p>14 that photograph that we've looked at. If one goes to --</p> <p>15 if you're following this, Mr Poon -- if one goes to</p> <p>16 14267, there's a plan. The photograph Mr Poon was taken</p> <p>17 to is marked NCR258, photo 4. So that looks to me, sir,</p> <p>18 it's the brown box, left-hand side, one sees the</p> <p>19 reference NCR258, and it's pointing to a little yellow</p> <p>20 area, I think you can see that --</p> <p>21 CHAIRMAN: Yes.</p> <p>22 MR PENNICOTT: -- just to the left of gridline 30.</p> <p>23 COMMISSIONER HANSFORD: Yes.</p> <p>24 A. Gridline 30 and gridline L1, between those two.</p> <p>25 MR TO: The intersection.</p>	<p>1 A. (In English) Not only. Not only.</p> <p>2 Q. In excess of 40,000?</p> <p>3 A. (In English) 40,000-something.</p> <p>4 Q. Just on the EWL slab?</p> <p>5 A. Yes, but for EWL slab, there are other places where</p> <p>6 there are couplers. I must tell you that.</p> <p>7 Q. I'm sure, but we're just talking in rough numbers. So</p> <p>8 we're back to your figure of 30,000, and you mentioned</p> <p>9 40,000 earlier. You seem to suggest, if I have</p> <p>10 understood your answer correctly, that this was,</p> <p>11 including the EWL slab, the NSL slab, both in relation</p> <p>12 to the diaphragm wall connections and the bay</p> <p>13 connections --</p> <p>14 A. (In English) And the OTE. And the OTE connection.</p> <p>15 Q. But if one assumes -- and I make an assumption; it may</p> <p>16 be right, it may be wrong -- that there are</p> <p>17 approximately the same number of connections on the NSL</p> <p>18 slab as there are on the EWL, we're going up to 80,000</p> <p>19 to 90,000 connections?</p> <p>20 A. For NSL, there were fewer.</p> <p>21 Q. There were fewer? All right.</p> <p>22 I'm going to give you one last chance, see if we can</p> <p>23 take this a bit further. Please, Mr Poon, one more</p> <p>24 opportunity, give us your process of reasoning as to how</p> <p>25 you arrived in this email at the figure of 30,000</p>
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<p>1 MR PENNICOTT: Yes, which I think in area terms is C1-1?</p> <p>2 A. No. No. This is C1-875.</p> <p>3 MR PENNICOTT: It's right on the edge of -- I always</p> <p>4 remember that 1-875 runs down between 30 and 31 so it's</p> <p>5 right on the edge. I understand. That's right.</p> <p>6 A. (In English) That's the bay done by Leightons, that's</p> <p>7 why I point it out.</p> <p>8 Q. All right. Thank you very much, Mr Poon.</p> <p>9 Now, unfortunately, we've got to go back to the</p> <p>10 email.</p> <p>11 A. There's also a question about quantities; right?</p> <p>12 Q. Well, can we just pause there, Mr Poon, because we were</p> <p>13 focusing, before that little excursion, on the figure of</p> <p>14 30,000 that you had in your email, and we were trying to</p> <p>15 get an explanation from you as to how you calculated</p> <p>16 that.</p> <p>17 A. Mmm.</p> <p>18 Q. Let me put this to you. My understanding -- imperfect,</p> <p>19 no doubt, but no doubt to be further explained in due</p> <p>20 course by others -- is that just on the EWL slab itself,</p> <p>21 just on the EWL slab itself, if you take the number of</p> <p>22 connections to the D-wall on both the east and the west</p> <p>23 side, and you take the number of connections between the</p> <p>24 connecting slabs that you referred us to earlier, there</p> <p>25 are, just on that slab, over 40,000 connections.</p>	<p>1 pieces, which you have described in answer to the</p> <p>2 chairman as connections, as I understand it.</p> <p>3 A. Mmm.</p> <p>4 Q. So how did you get there?</p> <p>5 A. In fact, now about the connections mentioned in the</p> <p>6 email, I was referring to defective connections or</p> <p>7 suspected defective connections. The reason is based on</p> <p>8 two major matters. First, in my first statement,</p> <p>9 I mentioned that after screwing the bars in, the torque</p> <p>10 test was not completed and with my naked eyes I could</p> <p>11 see that some threads were still exposed, not yet</p> <p>12 screwed in. Under such circumstances, due to ductility</p> <p>13 consideration, I would think that these are problems,</p> <p>14 problems of suspected defective connections.</p> <p>15 For the second part, that is Leightons personnel</p> <p>16 cutting away some of the threads before screwing them</p> <p>17 in, pretending that they were properly screwed in, all</p> <p>18 along I have estimated that they accounted for some</p> <p>19 5 per cent. That is to say I estimated that for</p> <p>20 installation without torque test, that is without having</p> <p>21 the threads fully screwed into the couplers, the</p> <p>22 problematic ones, suspected problematic connections</p> <p>23 amounted to some 30,000.</p> <p>24 Q. All right, Mr Poon. If someone else wants to have</p> <p>25 a go --</p>

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<p>1 CHAIRMAN: So that's 30,000, which is made up of a small 2 minority of cut threads -- 3 A. (In English) Yes. 4 CHAIRMAN: -- about 5 per cent? 5 A. (In English) Yes. 6 CHAIRMAN: 5 per cent of what, I'm not quite sure, but 7 anyway, 5 per cent; it's quite small. 8 Then you've got ones where you can see the screws, 9 which means, as I understand it, that you're reducing 10 the torque strength; is that right? I'm not an expert 11 on torques, but anyway you're reducing the torque 12 strength. Then you've got other ones where, for some 13 reason, the tensile strength has been reduced. So all 14 of these together, including maybe some I haven't 15 mention, bring you up to a figure of about 30,000? 16 A. Correct. 17 CHAIRMAN: I mean, obviously you need to have some torque 18 strength, I'm not suggesting you don't, but I've not 19 heard anything so far to suggest that these rebars and 20 these couplers are required at the point of installation 21 to be tested for torque. 22 A. (Chinese spoken). 23 CHAIRMAN: I thought it was in the design. I may be wrong. 24 MR PENNICOTT: We will be hearing from the people who 25 actually did the work.</p>	<p>1 A. (In English) Yes. 2 CHAIRMAN: All right. So what's brought us here, 3 effectively, is an approximately 5 per cent deficiency 4 rating, on your estimation? 5 A. (In English) Yes. 6 CHAIRMAN: And that estimation is based on a series of 7 haphazard observations? By "haphazard" I mean you 8 weren't out there bird-watching, you weren't sitting 9 there all day long with binoculars looking at the people 10 working. As you walked by, from time to time, you would 11 see an instance of what appeared to you to be thread 12 cutting or something like that, and from that you come 13 to a rough estimate of 5 per cent? 14 A. (In English) Yes. 15 CHAIRMAN: All right. 16 Thank you, Mr Pennicott. 17 MR PENNICOTT: Thank you, sir. 18 Mr Poon, the evidence you gave just a moment ago 19 about the thread that you could see, and you said that 20 you could see at least two -- 21 A. (In English) Two numbers of threads. 22 Q. -- one to two threads -- if I don't take you to it, 23 someone else will, so can we just have a look, please, 24 at C10, page 7013 to start. 25 A. (In English) Yes.</p>
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<p>1 CHAIRMAN: I appreciate that. 2 You can tell me I'm wrong -- I'm wrong, am I? 3 A. (In English) No, I'm not -- I -- 4 CHAIRMAN: You can tell me I'm wrong because then I know 5 your position. 6 A. (In English) I'm listening. 7 CHAIRMAN: Your position is, "Sorry, Mr Chairman, you're 8 wrong. Those of us who understand engineering will say 9 you have to have a test for torque strength at or about 10 the point of installation"? 11 A. (In English) I would rather say in the ultimate 12 consideration on the structural integrity, we are not 13 necessary to consider the performance of torque. 14 However, the torque test itself is going to ensure and 15 secure a proper installation of the threaded bar onto 16 this mechanical coupler. 17 So I would limit the subject of torque is just 18 limited on the workmanship issue. 19 CHAIRMAN: All right. Now, if we -- the last question, then 20 I'll let Mr Pennicott proceed. Your evidence, then, on 21 consideration, is that as far as the matters that have 22 taken up the public's interest, namely cutting rebars or 23 cutting threads on rebars, or failing to properly put 24 in, or doing the cutting -- let's leave it at that -- 25 that's just 5 per cent?</p>	<p>1 Q. This is something I think from the BOSA manual or 2 similar -- I will be corrected if I'm wrong -- and you 3 can see, at the top, it says, "Visual inspection -- 4 acceptable thread tolerance"; do you see that, Mr Poon? 5 A. (In English) Yes, I see it. 6 Q. Okay. You can see that in all four situations that are 7 shown in the picture, they all get a tick, and you can 8 see, certainly on the second, third and fourth, they all 9 have either one, two or possibly three threads showing; 10 do you see? And they are all acceptable. 11 A. Yes, I see that. But my immediate response is that this 12 catalogue doesn't apply to the threads that we were 13 using. 14 Q. These are non-ductile, but if you want to see the 15 ductile ones we'll go to 7016. It's the same point, 16 Mr Poon. The ductile ones are at 7016, and the thread 17 is also shown on those. 18 So can I suggest to you that you are wrong about 19 suggesting, as you have done, that simply because you 20 have some exposed thread it is unacceptable. 21 A. For the first time -- this is the first time I read this 22 BOSA catalogue. I haven't read it before. 23 Second, I question this BOSA catalogue. Why don't 24 we put it in a simpler way? I suggest that the COI take 25 these four cases of BOSA for a test.</p>

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<p>1 Q. You can suggest that, Mr Poon. 2 If we go back to page 7010 in the same document -- 3 sorry, the previous document, 7010, another BOSA -- this 4 is a method statement for fixing a type B coupler. 5 A. (In English) Yes. 6 Q. And that gives an installation method, position 7 splice B, and the previous page, 7009, is the coupler 8 installation method for standard splice type A. 9 You can see the steps that those doing the 10 installation are required to take, and at 4, which seems 11 to be the important point from our point of view: 12 "Use a typical pipe wrench to tighten the splice. 13 No special torque amount is required." 14 Do you see that? 15 A. Yes, I see that's what's written in the catalogue. 16 Q. So all this evidence that you've been giving about 17 torque, BOSA, the specialists, the people who 18 manufacture, design and supply this material, say to us 19 that no special torque is required. 20 So have you just been making it up, Mr Poon, about 21 the torque? 22 A. That's what BOSA says. No, I'm not making it up. Very 23 simple. In due course, we'll be having Fang Sheung's 24 representatives. We can ask Fang Sheung in what site 25 torque is required for installation, or perhaps we can</p>	<p>1 reflected the matter to Leighton. In September 2017, 2 the matter remained unresolved. On the other hand, in 3 December 2016, I reflected the matter to Dr Philco Wong, 4 who was the project director of MTRC. I reflected the 5 matter to him. At the time, I mistakenly thought that 6 including Anthony Zervaas, I was told that he, together 7 with the MTRC, were looking into a solution and 8 a remedial proposal, and that was true. 9 Then, in September 2017, in this morning, when this 10 email was sent, Anthony Zervaas originally arranged to 11 discuss the matter with me at Hung Hom Station site, 12 about the exit arrangements of my company. But 13 Mr Zervaas did not show up. When I approached him, he 14 said he was in Macau. Then, over the phone, I told him 15 about my concerns, because involving commercial matters 16 and technical matters, as well as a letter sent to us 17 about certificate of substantial completion, and after 18 that I could just leave the site. 19 Mr Zervaas told me very clearly that Leighton 20 already had a very clear corporate decision. The order 21 that he received was that all previous discussions would 22 be overridden. Their standpoint was that all along 23 there was no cutting of rebars. 24 Then I asked him what I should do, and he said 25 I could do whatever, I could tell whoever, "You could</p>
<p>Page 50</p> <p>1 ask the bar fixing trade association which couplers do 2 not require torque installation before it is accepted. 3 Of course, in BOSA's catalogue, this is clearly 4 written as such, but I think the best way to go about it 5 is since we are concerned about the safety, we should 6 take some two or three samples of rebars connected into 7 couplers, without having fully screwed in, we should 8 take them for a test, and if the test result is a fail 9 we should ask BOSA why. 10 Q. Can we go back, please, to C12, to pick up the train of 11 emails. I'm sorry about this. We had looked at your 12 email at 7987 which you sent early in the morning on 13 Friday, 15 September 2017. Later on that morning, you 14 wrote an email at 7991. So this is 11.07 in the 15 morning, and this went to Frank Chan, the Secretary for 16 Transport and Housing? 17 A. Yes, yes. 18 Q. You caption this email as a "Request for a joint 19 interview on the construction works of [the station] 20 extension", and before we look at what you say, why at 21 this point in time, Mr Poon, did you feel it appropriate 22 to email the Secretary for Transport and Housing, 23 copying the email to Mr Zervaas? 24 A. Two parties are stated there. One is Leighton, the 25 other is MTRC. In September 2015, I personally</p>	<p>Page 52</p> <p>1 complain to whoever", and that is why I chose to lodge 2 the complaint directly to the Transport and Housing 3 Bureau. 4 Q. So if it were to be suggested to you, Mr Poon, that this 5 was some tactic to up the ante in your commercial 6 negotiations with Leighton, I assume you would deny it? 7 A. Not true. Not true. 8 CHAIRMAN: Sorry, just before we move on, can I just see if 9 I can understand you and we can reach agreement on what 10 I think is quite an important couple of issues; okay? 11 Please listen carefully to me. I'm not in any way 12 seeking to condemn you or anything else. I'm just 13 seeking to come to a rational understanding of the 14 thrust of your evidence. 15 A. (In English) Okay. 16 CHAIRMAN: Do you understand that? 17 A. (Nodded head). 18 CHAIRMAN: Now, for the moment, I want you to accept 19 a couple of things; okay? If, hypothetically, in 20 installing rebars into the couplers, no particular 21 torque is required -- hang on -- if no particular torque 22 is required, and if, as the BOSA diagrams appear to 23 show, the visibility of one, two or three threads itself 24 does not cause a defective coupling -- if you accept 25 those two things, is it your case that the problem</p>

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<p>1 concerning safety lies in the fact that approximately</p> <p>2 5 per cent of the couplings were defective in the sense</p> <p>3 that there was rebar cutting?</p> <p>4 A. This is how I would respond. Mr Hartmann is also</p> <p>5 a member of the COI on the High Speed Rail, and during</p> <p>6 that period the construction industry received some news</p> <p>7 that there were also coupling problems in that</p> <p>8 project --</p> <p>9 CHAIRMAN: No, no, I just want to see if I can understand</p> <p>10 you because it would help me a great deal.</p> <p>11 What I'm saying is if -- you don't have to accept</p> <p>12 it; you can be bitterly opposed to it -- but if, for the</p> <p>13 sake of the conclusion I'm seeking to reach, the showing</p> <p>14 of one, two or three threads was not a problem or is not</p> <p>15 a problem, and if no particular torque is required,</p> <p>16 then, on your estimation, the defective couplers would</p> <p>17 be about 5 per cent? It seems to me that has to be the</p> <p>18 case. "Yes" or "no"?</p> <p>19 A. (In English) Yes, yes, yes.</p> <p>20 CHAIRMAN: Thank you. Hang on. And if it's 5 per cent,</p> <p>21 then, on your estimate -- it appears at different</p> <p>22 times -- those 5 per cent of defective couplers would</p> <p>23 have to be random, essentially random, not all</p> <p>24 concentrated in one little area?</p> <p>25 A. We didn't ever observe that in area C3.</p>	<p>1 or whatever, there is in essence no danger to the</p> <p>2 structural integrity of the matters that you had been</p> <p>3 working on?</p> <p>4 A. I will disagree, because you have isolated a series of</p> <p>5 structural issues. You are just looking at one issue</p> <p>6 now.</p> <p>7 CHAIRMAN: No, I'm not. I'm saying, and I don't want to go</p> <p>8 on too long because I think I have your answer and it's</p> <p>9 quite clear to me, but I appreciate all of these things</p> <p>10 work together, but if in fact no particular torque</p> <p>11 strength is required, and if in fact one or two or three</p> <p>12 threads showing doesn't make any difference, then we're</p> <p>13 looking solely at the wrongful acts of cutting rebars or</p> <p>14 of not putting them in at all. And all I want to find</p> <p>15 out is -- and you appear to agree with me -- if that is</p> <p>16 in fact the case, if that is the case, and we will have</p> <p>17 expert evidence on that, then safety is not a compelling</p> <p>18 issue?</p> <p>19 A. No.</p> <p>20 CHAIRMAN: All right. Very briefly, tell me why; where have</p> <p>21 I got it wrong?</p> <p>22 A. This is a combinational issue. The issue is not</p> <p>23 isolated to the bar cutting alone. Cutting of bars, it</p> <p>24 amounts to some 5 per cent. It's about 1,300 pieces.</p> <p>25 Then there are also other couplers that have fallen off,</p>
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<p>1 (In English) C3, we didn't observe anything in C3.</p> <p>2 CHAIRMAN: Okay. So you agree with me; essentially random.</p> <p>3 Then my question is if we're looking at</p> <p>4 approximately 5 per cent of couplers, reasonably</p> <p>5 randomly dispersed, being defective, in your view would</p> <p>6 that undermine the essential structural integrity of the</p> <p>7 diaphragm walls and/or the platforms?</p> <p>8 A. Well, if we just look at the 5 per cent, then it won't.</p> <p>9 CHAIRMAN: Okay. Thank you very much. So my understanding</p> <p>10 then -- and I'll be corrected, no doubt, by counsel who</p> <p>11 represent you -- is this, that if the showing of those</p> <p>12 threads that we looked at this morning is not of itself</p> <p>13 an indication of a materially defective coupling, and if</p> <p>14 no torque is required for this particular type of</p> <p>15 coupling supplied by BOSA, then what you have seen over</p> <p>16 a period of time are wrongful acts of cutting threads,</p> <p>17 and you would estimate that this wrongful form of</p> <p>18 behaviour results in about 5 per cent defective</p> <p>19 coupling, randomly placed, and you would agree, on that</p> <p>20 basis, that there is no danger to the structural</p> <p>21 integrity.</p> <p>22 So if experts were to come in and say, "Don't worry</p> <p>23 about the threads, don't worry about the torque", then</p> <p>24 you would accept, despite your concerns about wrongful</p> <p>25 acts, about negligence or malfeasance, about corruption</p>	<p>1 they were installed back by hand, or Leighton drilled</p> <p>2 a hole and re-installed it. We haven't even touched on</p> <p>3 that.</p> <p>4 CHAIRMAN: All right. This is another issue, now, that</p> <p>5 we're coming up against. This other issue is -- okay,</p> <p>6 you've just described it to me -- how much of</p> <p>7 a percentage would they take up?</p> <p>8 A. It cannot be estimated, because in the beginning</p> <p>9 photograph that we have shown Mr Shieh and where he</p> <p>10 objected, we wanted to show that those holes made up</p> <p>11 a large percentage.</p> <p>12 CHAIRMAN: All right. Thank you very much.</p> <p>13 MR SHIEH: I wish to just emphasise that it was Mr Poon who</p> <p>14 withdrew the application.</p> <p>15 CHAIRMAN: Thank you. Yes.</p> <p>16 A. Mr Shieh had obstructed, had blocked that move.</p> <p>17 MR PENNICOTT: Sir, I was going to come to a passage in</p> <p>18 Mr Poon's witness statement a little later.</p> <p>19 CHAIRMAN: Yes.</p> <p>20 MR PENNICOTT: But in light of some of the questions that</p> <p>21 you've just put to Mr Poon and the answers that you've</p> <p>22 received, perhaps I could, as it were, omit some of the</p> <p>23 emails that I was going to look at, and just go straight</p> <p>24 to this point, because I think it probably bears on the</p> <p>25 sort of questions that you've been asking.</p>

<p style="text-align: right;">Page 57</p> <p>1 CHAIRMAN: Thank you. 2 MR PENNICOTT: Mr Poon, could I ask you -- don't lose C12, 3 but go to your witness statement, starting at 4 paragraph 83. That's at D1/36. 5 A. (In English) Okay. I have it. 6 Q. You have a heading there, "D4. The investigation"; do 7 you see that? 8 A. Yes. 9 Q. This is the infamous interview on 13 June that you are 10 dealing with; do you see that? 11 A. Yes. 12 Q. Now, the paragraph I'm interested in is over the page at 13 paragraph 87. You say -- and this is you reporting 14 because you were asked to tell us what happened at that 15 interview: 16 "I was asked by representatives of the MTRC how many 17 threaded rebars were actually cut. I told them that 18 I estimated that each bay of EWL slab (except C3-3 19 northward to C3-6) should have 30 to 100 problematic 20 connections. On average, that would be around 21 50 problematic steel bars at each bay. I therefore 22 estimated (by sole arithmetic means) that there would be 23 approximately 1,000 threaded rebars being cut. 24 I emphasised that the figure mentioned were only a rough 25 estimation."</p>	<p style="text-align: right;">Page 59</p> <p>1 which is 1,000-plus, were cut, that is very clear. 2 These are two different figures. They are totally 3 different. 4 Q. Right. So the Chairman is right that if you just take 5 the threaded rebar on its own, it's a very, very small 6 percentage of your very large figure that you mentioned 7 back in September? 8 A. I have always been saying 5 per cent, 1,000-plus bars. 9 Q. All right. 10 CHAIRMAN: You see, I accept -- and I don't want you to 11 think that I'm drawing an absolute conclusion from what 12 you've said -- I'm not, far from it -- but what I'm 13 saying is you accept yourself that the initial problem 14 that aroused your concerns was cutting of threads on 15 rebars. You've said that that makes up about 5 per cent 16 only of the defective couplings, and what I have put to 17 you is that if -- and you may well be supported, I do 18 not know -- but if experts were to come in here and 19 satisfy us conclusively that the issue of torque is not 20 that relevant, and the issue of some threads showing is 21 not that relevant, then what we're left with, if we 22 accept that evidence, is about 5 per cent problems. 23 A. (In English) No. No. 24 CHAIRMAN: Okay. We add a percentage or two for holes that 25 have been left empty or that sort of thing; is that</p>
<p style="text-align: right;">Page 58</p> <p>1 Then you say in paragraph 88: 2 "In the course of my explanation, I emphasised that 3 Mr Philco Wong's allegation that there were only 4 20 threaded rebars being cut deviated seriously from the 5 facts that I was aware. Nonetheless, I also told those 6 at the meeting that I was of the opinion the estimation 7 of 5,000 threaded rebars seemed to be slightly large 8 a figure." 9 So, Mr Poon, the point we appear to have got to -- 10 and I don't know whether this is connected with the sort 11 of questions that the chairman very perceptively has 12 been asking you -- is that we've gone from 30,000 13 connections, which is what you said "pieces" meant. 14 You've now got a figure of 1,000 threaded rebars being 15 cut, according to you, and we don't understand how 16 you've got there, I think. 17 How did you arrive at a situation where at one time, 18 in September 2017, you were throwing around the figure 19 of 30,000 connections, and now you are telling the MTR 20 that you don't think it was any more than 1,000? 21 A. (In English) No, you are totally wrong. 22 Q. That's what you're telling them, "I therefore estimated 23 ... that there would be approximately 1,000 threaded 24 rebars being cut". Where does that come from? 25 A. 30,000 connections are problematic, and 5 per cent,</p>	<p style="text-align: right;">Page 60</p> <p>1 right? 2 A. Mm-hmm. 3 CHAIRMAN: So let's make it 6 per cent, 7 per cent. 4 A. Well, the drilled holes, that is something I heard 5 about. I haven't read all the documents. Just Leighton 6 alone, where they submitted an NCR to Intrafor, they 7 mentioned in one area they had missed some -- there were 8 some 200-plus pieces of couplers that were missing. 9 That's just one NCR. 10 CHAIRMAN: All right. Okay. We'll leave those out at the 11 moment. 12 A. That means this quantity could be very large. 13 MR PENNICOTT: All right. 14 CHAIRMAN: You see, what I'm trying to do, for the benefit 15 of the public, Mr Poon, is to be able to say, subject 16 effectively to some expert evidence here on the make-up 17 of couplers and their engineering dynamics, if we can be 18 satisfied on that, as per the BOSA set of 19 instructions -- and I would imagine those set of 20 instructions have been thought out with some care -- if 21 we can come to that, then all of us are in a much better 22 place, because all of us can say we really don't have to 23 have the same worries that we might have had at some 24 stage as to the integrity of the structures. 25 A. No. This I'll have to reserve for the Buildings</p>

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<p>1 Department to respond. Between 2010 and 2013, there was 2 a large infrastructure in Hong Kong where the couplers, 3 they complied with inspection procedures, they were 4 installed properly, and then ultimately we found that 5 a lot of them were unsatisfactory or dissatisfactory. 6 CHAIRMAN: All right. 7 A. I can reserve that for the Buildings Department to 8 provide information to the Commission. 9 So, as a responsible contractor, responsible 10 sub-contractor, if I see the BOSA manual, I don't think 11 the BOSA catalogues are that reliable, unless the BOSA 12 catalogues have supporting evidence saying that the bars 13 don't have to be threaded in all the way and it still 14 has a sufficient tensile strength, and they have tensile 15 strength reports to support that statement. 16 I repeat once again, I hope the Commissioner and the 17 Chairman can thoroughly consider the structural safety 18 that we're looking at. It's not just 1 June 2018 up to 19 now, what the media have exposed. I said in the 20 beginning, because of the confidentiality requirements, 21 I have not disclosed all the problems that I observed. 22 I have only taken material that has been exposed by the 23 media and give my interpretation of that material. 24 I have even stated clearly that I am targeting 25 MTRCL's lies and I'm reporting the truth to the public.</p>	<p>1 confidentiality meeting. 2 CHAIRMAN: All right. But with the greatest of respect, 3 we're now halfway through his evidence. It seems to me 4 that if he was under any impression that he was being 5 shackled by erudite legal language in an agreement, he 6 would have been disavowed that some time before he came 7 to give evidence, with respect. But there we are. 8 All right. It's 1 o'clock. We will return at 2.15. 9 MR PENNICOTT: Thank you. 10 CHAIRMAN: Thank you. 11 (1.00pm) 12 (The luncheon adjournment) 13 (2.15 pm) 14 MR PENNICOTT: Sir, good afternoon. 15 Good afternoon, Mr Poon. 16 A. (In English) Good afternoon. 17 Q. Before lunch, the last document that we had looked at 18 I think was the email that you had sent to Mr Chan, the 19 Secretary for Transport and Housing. That's the last 20 email we looked at, not the last document. 21 A. Yes. 22 Q. And the answer you got to that email, Mr Poon, is at 23 C12, if you've still got C12, at 8006. It's the one at 24 the bottom of the page, Mr Poon. 25 In fact you had a response from the Assistant</p>
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<p>1 But 5 per cent of couplers that were cut, or threads 2 that have been cut, that is just one of the combination 3 of the structural safety issues. We cannot just look at 4 one area. If there are experts, let's say BOSA is 5 correct, that you don't have to install the threads all 6 the way in and it's still safe, if they accept that, 7 then do we rely on just one or two technical points and 8 take their explanation, and is that a sufficient 9 response to the public? 10 I repeat once more -- 11 CHAIRMAN: Thank you very much. There's just one thing 12 I would mention, and that is that you speak of this 13 confidentiality agreement, but of course I'm sure your 14 counsel will have told you that the Ordinance that 15 provides for this Commission provides that anything that 16 you may say before the Commission for the purposes of 17 the Commission's Inquiry protect you from civil and/or 18 criminal proceedings. You're aware of that? 19 A. (In English) Yes. 20 MR TO: Mr Chairman and Commissioner, we did write to the 21 Commission in terms of asking the Commission -- I even 22 told Mr Pennicott, my learned friend, that we should 23 advise the client about this point, and we have written 24 a letter this morning emphasising this point so this 25 client can freely speak out on what happened at the</p>	<p>1 Secretary, thanking you for your email, informing you 2 that because this was a technical matter it had been 3 referred to Highways, and therefore "By copy of the 4 email ... Mr Vincent Chu, who is a senior engineer of 5 Highways ... looking after [the] project, will approach 6 you shortly". Okay? 7 A. (Chinese spoken). 8 Q. That's just to get the thing in sequence. Then what 9 happened -- 10 A. Yes. 11 Q. -- was late in the afternoon on 15 September 2017, you 12 had a meeting with Mr Zervaas and Mr Speed? 13 A. Yes. 14 Q. And at that meeting you discussed the commercial 15 situation between you. 16 A. On the 15th, at that meeting there was no discussion. 17 There was only fight and argument. 18 Q. All right. That's what you say, Mr Poon. I'm trying to 19 deal with this as quickly as I can. I'll leave 20 Mr Shieh, if he wants to, to get into the detail. 21 But you say on the 15th you had a meeting with 22 Mr Zervaas and Mr Speed, you obviously discussed your 23 commercial situation but you didn't reach agreement on 24 that day? 25 A. It's not just about the commercial situation. It's also</p>

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<p>1 about cut couplers, about watching the video. It's 2 about Karl Speed, that he will do everything to get us 3 out of business. 4 Q. All right. That's your version of that meeting on the 5 15th. 6 You then say, on the 18th, you had another meeting, 7 I think with Mr Zervaas and Mr Speed, and it's at that 8 meeting that you settled your commercial differences? 9 A. It's not just commercial differences. There are five or 10 six other things. 11 Q. All right, but one of the things you did was reach 12 a commercial settlement with Mr Zervaas and Mr Speed, 13 you say on the 18th? 14 A. Yes, one of the things, yes. There were other things. 15 Q. All right. Now, I don't know whether you've had the 16 opportunity of reading the witness statements of 17 Mr Zervaas and Mr Speed about this particular situation 18 on 15 September, but essentially, if I can summarise it, 19 they say there was just one meeting, on the 15th, and 20 that is when you did the deal, and the agreement was 21 then subsequently signed, and there was no second 22 meeting, certainly with Mr Speed. There was another 23 meeting a couple of days later with Mr Zervaas. All 24 right? 25 But Mr Speed is telling the Commission, in his</p>	<p>1 usually, in the main contract, there would be many 2 hidden clauses or other clauses that address 3 confidentiality. 4 Q. All right. So obviously, we see this document is headed 5 "Confidentiality agreement" -- 6 MR BOULDING: Sir, could I just point out the document has 7 not come up. 8 MR PENNICOTT: I'm so sorry. I wasn't paying attention. 9 I've got the hard copy. 10 CHAIRMAN: Thanks. That's better. 11 MR PENNICOTT: Thanks for that. 12 We are all now on the same page, as it were. 13 So, Mr Poon, there's a definition of "Confidential 14 Information" in clause 1, and I'm not going to trouble 15 you with it and go through it, but the important clause 16 for current purposes I think, Mr Poon, is at 8002, where 17 we have a heading just above 3.5 which says "Return or 18 destruction"; do you see that? 19 A. (Nodded head). 20 Q. It says: 21 "At any time upon demand by" -- and I'm going to use 22 the word "Leighton" rather than "LCAL" -- "Leighton, the 23 Subcontractor must promptly deliver up to Leighton or 24 destroy (at the option of Leighton), all copies of any 25 Confidential Information (including any information that</p>
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<p>1 witness statement, that the only time he met you in this 2 context was on 15 September. 3 A. No. 4 Q. All right. Anyway, what happened was you reached 5 a settlement agreement, and that agreement is at 7993. 6 That's right, is it, Mr Poon? 7 A. It's one of the agreements. 8 Q. Yes. So far as the final account statement is 9 concerned, we see that at 7995, the details of it, and 10 the final amount payable is \$1.6 million; do you see 11 that? 12 A. Yes, I see it. 13 Q. Then the other agreement that was reached, and is dated 14 18 September, was the confidentiality agreement, and 15 that you will find starting at 8000. 16 A. Yes. 17 Q. Had you ever been asked to enter into one of these 18 confidentiality agreements on any other sub-contract 19 before, Mr Poon, or was this the first time you were 20 ever asked to enter into this type of agreement? 21 A. In the past, I think it was -- I think in my 20 years of 22 business, this is the second one. 23 Q. The second one? 24 A. (In English) Second one only. 25 (Via interpreter) This is the second one. But</p>	<p>1 is derived from Confidential Information) as may be in 2 the Subcontractor's control or possession (including 3 copies in the control or possession of the 4 Subcontractor's Affiliates, agents, consultants or 5 subcontractors), provided that the Subcontractor may 6 retain a copy of the Confidential Information as 7 required: 8 (1) for accounting purposes; 9 (2) by any court, law or regulation; or 10 (3) by the rules of any relevant stock exchange." 11 Therefore, do you agree with this general 12 proposition, Mr Poon, that you are only required to 13 destroy confidential information if you are requested to 14 do so by Leighton? 15 A. (In English) Yes. 16 Q. Now, as I understand it, you say you were requested by 17 Leighton -- 18 A. (In English) Yes. 19 Q. Firstly, can you inform me, or inform the Commission, 20 rather, who requested you to destroy information? 21 A. (In English) Karl Speed. 22 Q. When did Mr Speed make that request or demand? 23 A. On 18 September, he was in the meeting room for a short 24 time, as far as I remember. At that time, he asked me 25 to destroy photos that I showed him before on my phone</p>

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<p>1 about cutting of bars.</p> <p>2 Q. Okay. You perhaps anticipated my next question. So</p> <p>3 we've got Mr Speed, 18 September, at a meeting. The</p> <p>4 next question is: what information did he ask you to</p> <p>5 destroy?</p> <p>6 A. About cutting the threaded bars.</p> <p>7 Q. So let me just understand, please. Try to recollect, if</p> <p>8 you can, the precise words that you say Mr Speed</p> <p>9 uttered. Do you say he told you to destroy any</p> <p>10 information you had about bar cutting? Is that what</p> <p>11 you're saying?</p> <p>12 A. Karl Speed said -- he asked me to destroy at once the</p> <p>13 photos that I showed him, on the phone, because on</p> <p>14 15 September I showed him the photos and videos on my</p> <p>15 phone. I was arguing with him. He said there was no</p> <p>16 bar cutting. I showed him that there were photos and</p> <p>17 videos showing that bars were cut.</p> <p>18 Q. Okay. So my understanding is that he asked you to just</p> <p>19 destroy -- how many photographs had you shown him? Two</p> <p>20 photographs?</p> <p>21 A. About two photos plus one video.</p> <p>22 Q. Plus one video? Okay. That was the only request he</p> <p>23 made to you, just those two photographs and the video;</p> <p>24 is that right?</p> <p>25 A. Yes, that's the case for Karl Speed, but for Anthony</p>	<p>1 (Via interpreter) Yes, Manning came, and then we</p> <p>2 signed the account and then he left and after that it</p> <p>3 was just me and Anthony who were in the room, continuing</p> <p>4 with our discussion, and we also were still waiting for</p> <p>5 the confidentiality agreement.</p> <p>6 We waited about half an hour, and during that half</p> <p>7 an hour we talked about Lian Tang as well. And then</p> <p>8 there was a young man from Leighton, a Chinese, I don't</p> <p>9 know him. He brought in the confidentiality agreement,</p> <p>10 this one shown here, and then I read it in front of</p> <p>11 Anthony, so I read all the clauses. We had</p> <p>12 a discussion.</p> <p>13 Anthony then said I must follow -- he actually said</p> <p>14 a lot, but on 3.5 he said that in accordance with 3.5,</p> <p>15 apart from my phone, he knew that with regard to photos</p> <p>16 or records on bar cutting issue in my company, he asked</p> <p>17 me that I must destroy all of them, in accordance with</p> <p>18 this clause.</p> <p>19 He mentioned particularly that my wife must also</p> <p>20 sign the agreement, because Leighton knows that it's not</p> <p>21 just me holding our property; some of the properties</p> <p>22 were held by my wife.</p> <p>23 Q. Yes, I understand, and your wife did indeed sign the</p> <p>24 agreement as well.</p> <p>25 What I'm first of all trying to focus on is your</p>
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<p>1 there are other requests.</p> <p>2 Q. Hang on a minute. Let's just take this in stages. So,</p> <p>3 so far as Mr Speed is concerned, we are just limited to</p> <p>4 the two photographs and the video that you showed him?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. That's clear. Did anybody else at Leighton ask</p> <p>7 you to destroy information?</p> <p>8 A. Subsequently, I remember we waited a long time at the</p> <p>9 meeting room. Mark Manning came in for a while. Mark</p> <p>10 Manning, he was only responsible for the final account</p> <p>11 part. After we signed Mark Manning's final accounts</p> <p>12 documents, I think we waited another half an hour or</p> <p>13 40 minutes at the time.</p> <p>14 Q. Sorry, I'm hesitating because the transcript has two</p> <p>15 names now. Can you spell the surname of the person you</p> <p>16 are referring to? Is it Manning?</p> <p>17 A. (In English) Manning, M-A-N-N-I-N-G.</p> <p>18 Q. Thank you. All right. So Mr Manning --</p> <p>19 A. He's only responsible for the final account.</p> <p>20 Q. You're not suggesting that Mr Manning asked you to</p> <p>21 destroy any documents?</p> <p>22 A. (In English) No. He never.</p> <p>23 Q. That's fine. Okay. My question was: did anybody else</p> <p>24 at Leighton ask you to destroy documents?</p> <p>25 A. (In English) Okay.</p>	<p>1 evidence that Mr Zervaas asked you to destroy -- I think</p> <p>2 this is what you're saying -- photos or records on bar</p> <p>3 cutting. Is that right?</p> <p>4 A. Yes.</p> <p>5 Q. Now, I don't think -- I will be corrected if I am</p> <p>6 wrong -- you mention that in any of your five witness</p> <p>7 statements. Would I be right about that?</p> <p>8 A. I think I did mention that in the police statements.</p> <p>9 Q. You certainly mentioned about Mr Speed, I have no</p> <p>10 problem with that, and you think you might have</p> <p>11 mentioned it in one of your witness statements. We can</p> <p>12 check that if necessary.</p> <p>13 A. The details were as I've just described.</p> <p>14 CHAIRMAN: Sorry, could I just ask one thing?</p> <p>15 MR PENNICOTT: Of course, sir.</p> <p>16 CHAIRMAN: What made you think that these photographs</p> <p>17 constituted confidential information?</p> <p>18 A. I argued about that, actually, because the definition of</p> <p>19 "Confidential Information" did not specify anything.</p> <p>20 That's page C8000, point 1(a).</p> <p>21 MR PENNICOTT: Sorry, let me intervene, Mr Poon, just one</p> <p>22 moment.</p> <p>23 Sir, I didn't, and I'm sorry, read out in detail</p> <p>24 this definition, but it does bear looking at, I confess.</p> <p>25 Mr Poon is perhaps quite right:</p>

Page 73	1 "In this agreement [it says], unless the context 2 otherwise requires: 3 'Confidential Information' means all information of 4 any description and in any form, which has been 5 disclosed by Leighton or has otherwise come to the 6 knowledge of the Subcontractor through its involvement 7 in the Project, including ...", and then we get (a), 8 (b), (c) and (d). 9 Without wishing to make any submissions at the 10 moment -- 11 CHAIRMAN: No. 12 MR PENNICOTT: -- that's a pretty broad definition of 13 "Confidential Information", if I may say, "or has 14 otherwise come to the knowledge of the Subcontractor 15 through its involvement in the Project" -- it's either 16 very broad or actually very difficult to discern 17 precisely what it's getting at, one or the other or 18 possibly both. 19 COMMISSIONER HANSFORD: It makes me wonder what information 20 wouldn't be confidential. 21 MR PENNICOTT: Quite. 22 COMMISSIONER HANSFORD: Thank you. 23 CHAIRMAN: Thank you very much. 24 MR PENNICOTT: Mr Poon, we've not been able to find, albeit 25 on a very quick check, any reference in any of your	Page 75	1 Then you thank the Assistant Secretary for his 2 attention, and so forth. 3 Mr Poon, when you say that you believed it was 4 a full and final end of the issue, what did you mean by 5 that? 6 A. Because at the time, at the meeting, we discussed a lot 7 of subjects. Some subjects remained unresolved, but 8 regarding Hung Hom Station, the structural problem, at 9 the time, some affirmations were obtained, some 10 undertaking. The first one is that Leighton would admit 11 that the cutting of rebars took place. I was asked what 12 the percentage was, in my view, regarding the cutting of 13 rebars and then -- 14 Q. So you asked by whom and when? 15 A. Karl Speed and Anthony both mentioned it. Karl Speed 16 spoke very quickly and broadly, and Anthony carried more 17 details. 18 Q. All right. 19 A. Then, in terms of cutting of rebars and defective 20 connections, Karl Speed personally undertook that they 21 would run a proposal with MTRCL to properly resolve this 22 technical problem and the proposal would be based on my 23 request, and that is for stainless steel bars to be 24 added. He also stressed, on the 16th, when I brought 25 Anthony to the site for a visit, at the time -- I mean,
Page 74	1 police statements to Mr Zervaas. 2 A. Mmm. 3 Q. Yes, Mr Speed, but not Mr Zervaas. Although perhaps 4 Mr Zervaas was, you say, with Mr Speed when you were 5 asked you to delete the two photographs and the video. 6 A. Yes. 7 Q. All right. If you go back, on to page 8006, on 8 18 September, this is at the top of the page this time, 9 Mr Poon, 7.22 in the evening, you write another email, 10 back to the Assistant Secretary at the Department of 11 Transport and Housing, and what you say, presumably 12 having signed up to the final account agreement and the 13 confidentiality agreement: 14 "During these few days we are working tight and hard 15 on the suspecting technical issue with Messrs Leighton 16 and had reached satisfactory understanding and full 17 clarification, ie the suspecting subject had been 18 cleared now and no significant impact is retained. 19 In order to avoid any unwanted impact and due to the 20 good progress observed, we thus kept silent on the 21 investigation from Messrs Highways Department and we had 22 did our best endeavour on our act of non-disclosure. 23 We believe it is a full and final end of the issue 24 and may we invite to close all relevant files 25 accordingly."	Page 76	1 I was looking at the west retaining wall and it was 2 still exposed. That is, for EWL track slab, within the 3 3-metre area, we could walk outside the retaining wall. 4 So it was simple to install steel bars. And we 5 reckoned it would just be a project costing several 6 million dollars. Based on this undertaking, and also it 7 appeared that Leighton, on this occasion, would not go 8 back on its words, together with the fact that even Karl 9 Speed was aware that this remedial option wasn't really 10 difficult, I chose to believe him. 11 Q. Okay. You do realise that of course both Mr Zervaas and 12 Mr Speed don't accept a word of that; you're aware of 13 that, are you? 14 A. Well, I understand that they are going back on their 15 words now. 16 Q. Did you never think about putting that in writing, given 17 its apparent importance? 18 A. Yes, I did. 19 Q. Did you? 20 A. (In English) I try. 21 Q. What do you mean, you tried? 22 A. I requested Chinat and Leighton to sign an agreement 23 writing out all these points. The confidentiality 24 agreement, before it was signed, I expected, I had 25 expected, that these points would be included. In the

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1 end, they weren't included. That is why there was
2 a hassle for some time before we finally signed it.
3 Q. Again, Mr Poon, do I find that in any of your witness
4 statements?
5 A. I didn't write it out in detail.
6 Q. Well, you didn't write it out at all.
7 A. Let me say once again. In the confidentiality
8 agreement, Leighton had the absolute authority to say
9 anything; that would become part of what the
10 confidentiality agreement was to cover. In fact, before
11 the COI started, in fact in front of the public,
12 I already reiterated that I would not give the full
13 picture; I would only tell about what the public know
14 and I would save it to the COI stage. That is why,
15 during the first day of my giving evidence, I kept
16 providing new information, and also that includes this
17 email on page 8006.
18 This wasn't my original intention. It was towards
19 the end, when Anthony was about to leave the room, that
20 Anthony requested me to write to the Transport and
21 Housing Bureau to close the matter. Before the email,
22 I heard that Anthony received a phone call, and then the
23 email was sent from one of my phones, but we did have
24 dispute over the content of the email. I mean,
25 I prepared a simple version, and then Anthony edited,

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1 which I believe to be a version in favour of Leighton,
2 and then we did some further editing until we reached
3 the content that we see now.
4 Q. The problem we've got, Mr Poon, is that, as I suggest,
5 all of this that you are now telling us, telling the
6 Commission, is not in your witness statements, and as
7 far as I can recall is not in any of your police
8 statements.
9 So what we're getting now, for the first time,
10 despite the Commission having asked you to provide
11 a detailed witness statement or witness statements, with
12 everything you want to say in it, we're now getting some
13 of this material for the first time.
14 What that does, Mr Poon, potentially, is prejudice
15 other parties, because they haven't yet had
16 an opportunity of hearing what you're now saying and
17 trying to address it, and that's harmful to them and
18 frankly, Mr Poon, to the process that we are engaged in.
19 So why is it that you are now saying these things
20 for the first time?
21 A. As I said all along, that at the COI stage I would give
22 every detail.
23 I would like to especially respond to the point that
24 you questioned me why I am only giving these details
25 now. This morning, I received two witness statements

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1 from Leighton, one from Anthony, and this is exactly the
2 content that you just referred to. I, Jason Poon, am
3 giving evidence on the third day as a witness, and
4 Leighton only submitted this document relating to
5 commercial disputes on the third day of my giving
6 evidence, in the form of a witness statement. So how
7 should I respond?
8 Q. Mr Poon, with respect, that's not entirely fair. What
9 Mr Zervaas and Mr Mok were responding to were witness
10 statements, your fourth witness statement, and the
11 photographs you produced last Friday. That's what they
12 are responding to.
13 A. My fourth witness statement was referring to the
14 indiscriminate remarks made by Mr Paul Shieh out of
15 context during his opening remarks that Chinat
16 threatened to get \$6 million, and that's because of the
17 unfounded accusations Mr Paul Shieh made against Chinat.
18 Before that, there was nothing mentioned about
19 commercial matters.
20 Q. I understand.
21 A. Is it fair to Chinat?
22 Q. We're trying to be fair to everybody here, not just you,
23 Mr Poon, but everybody, and you produced a fairly late
24 witness statement and you produced some photographs that
25 nobody had seen before --

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1 A. (In English) Thank you.
2 Q. -- on Friday, and they were simply addressing those
3 matters. Your lawyers this morning asked for you to be
4 given -- your lawyers this morning asked me whether you
5 could be given an opportunity to read the two
6 statements, and you were given that opportunity before
7 we started this morning, and I imagine that you did take
8 that opportunity to read those statements.
9 A. There was another colleague who approached me. He asked
10 me, after reading the witness statements, what request
11 I had, and I said something, and in the witness
12 statements again they refer to some of the commercial
13 disputes we had in broad terms, and if I were to respond
14 to the witness statements I really have to go back and
15 trace back to all the commercial disputes. It takes
16 three days at least. If I am to submit another witness
17 statement --
18 CHAIRMAN: Sorry, Mr Poon, but what we're talking about,
19 essentially, now, is your agreement to destroy --
20 MR PENNICOTT: Indeed.
21 CHAIRMAN: -- and/or dispose of what you say would have been
22 critical evidence to prove what you had seen. So that's
23 the subject that we're looking at.
24 You have said that the reason you did it was because
25 of an obligation in terms of this agreement, but with

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<p>1 respect you must have known some time ago how important 2 these bits of evidence that you say you destroyed were, 3 and one would perhaps have expected you to canvass that 4 with your lawyers, so that, in accordance with the rules 5 of this Commission, there could be a written summary of 6 what you intended to say, so that it would be known to 7 everybody and nobody would be taken by surprise. Do you 8 see? 9 So we are not actually just talking about commercial 10 terms. We are talking about your supposed destruction 11 of important evidence going to defective coupling and 12 defective construction. 13 Sorry, it was a bit long-winded. I just wanted you 14 to understand entirely. I'm not particularly interested 15 in the niceties of the commercial agreement, other than 16 insofar as it relates to why you will have destroyed 17 evidence. 18 MR PENNICOTT: Yes. And, Mr Poon, can I just follow that 19 up, because I'm not clear in my own mind about what you 20 have in fact destroyed. Other than the two photographs 21 and the video, which you mentioned earlier -- I think we 22 know about those -- you say that Mr Zervaas made another 23 request, I think, for you to destroy 24 material/photographs relating to bar cutting. 25 A. Yes.</p>	<p>1 terms of reference of the COI and the subject matter of 2 investigation of which I personally had knowledge. In 3 terms of destruction of materials, at the time I did not 4 consider it carried any significant weight. I also 5 considered that an irreversible matter. 6 And in paragraph 3.5 of the agreement it was clear 7 that Leighton did ask me to destroy information, and 8 Leighton at first refused it. At the opening speech, 9 the counsel representing Leighton said they never asked 10 me to destroy information; it was just an ordinary 11 confidentiality agreement. 12 Now, from what I've heard, the counsel for COI is 13 putting questions to me, and I don't think this line of 14 questions is consistent. I reiterate that I am giving 15 all I know. When the COI puts questions to me, I just 16 do my best endeavour in answering the questions. So 17 please do not question me whether they are included in 18 the witness statements. If you want me to relate only 19 to what's contained in the witness statements, please do 20 tell me so that I won't say any extra words, not even 21 an extra word. 22 If this is in the public's interest, to help the 23 public understand whether Leighton and MTRC, in the 24 Hung Hom Station project, their work, leading to the 25 point when the CE-in-Council appointed the COI under the</p>
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<p>1 Q. So can you give us some help: when did you destroy this 2 material? How did you go about destroying this 3 material? How did you decide whether it was related to 4 the bar cutting or not? And -- try that for starters. 5 A. First of all, I would like to respond to Mr Chairman's 6 point. I really understand Mr Chairman's point, but 7 I hope the COI would also understand that for the 8 counsel representing COI to issue a letter requesting 9 Chinat to give evidence, we only had about ten days. We 10 were required to answer questions pages long, and we are 11 not like MTR or Leighton. We did not engage counsel at 12 a very early stage to prepare documentation. We 13 utilised our own resources in Chinat, we had four 14 colleagues in the office digging up materials. At the 15 same time we need to engage counsel. 16 CHAIRMAN: Mr Poon, I appreciate you have been under 17 considerable pressure. 18 A. (In English) Just let me finish. 19 (Via interpreter) I want to prepare my witness 20 statement as detailed as possible. And let me 21 reiterate, if I could recall from my memory, in 22 preparing the whole statement, I could say that one 23 witness statement would consist of 100 pages, but we 24 didn't have the time and that is why we only included 25 the salient points, especially those related to the</p>	<p>1 Ordinance to initiate an investigation -- if you think 2 that this could satisfy the terms of reference, then 3 I definitely respect the COI's direction. 4 MR PENNICOTT: Mr Poon, park what's in your witness 5 statement on one side for the moment. Can you please 6 explain to the Commission what information -- whether it 7 was documents, whether it was photographs -- that you 8 actually recall destroying. And, if you can, please try 9 to be as specific as possible as to what was destroyed. 10 A. In fact, we did a number of things. First, after going 11 back, we asked the administration department to format 12 all computers relating to the Hung Hom Station project. 13 Then, in my office, I mean part of the site office in 14 Hung Hom was relocated to Tai Po, where we had another 15 site office, and another part, the smaller part, was 16 relocated to Lian Tang. 17 Before relocating the office, we formatted all the 18 computers once, and that's the first point. And the 19 second -- let me just elaborate on the first point. 20 Because in Hung Hom Station, some of the photos uploaded 21 to the Dropbox account were done through the computer. 22 After formatting the computers, some of the photos were 23 gone. As for the content of the Dropbox, I personally 24 spent about a month or so to go through them, roughly, 25 and then deleted them roughly. By "roughly" I mean that</p>

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<p>1 if I were to pick every single file, it would take too 2 much time, so if I saw photos relating to the vicinity, 3 I would just use a mouse to highlight the whole row to 4 delete them. That's it. 5 As for other kinds of materials, we operate in 6 a paperless manner. We do not have a lot of documents. 7 We would not print emails. As for email records, we 8 have not deleted them. 9 Q. Okay. 10 CHAIRMAN: All right. So you're saying that in light of 11 what you understood to be your obligation, you went 12 back, you looked at your Dropbox, and any line of 13 photographs or box of photographs that appeared to focus 14 on the Hung Hom Station you simply deleted en masse? 15 A. That is correct. 16 MR PENNICOTT: All right. But, Mr Poon, when you gave your 17 first police statement on 4 July, you took along a USB 18 stick, we know, which, as I understand it, from the 19 discussion we had yesterday, had about 40,000 20 photographs on it; yes? Am I right? 21 A. Correct. 22 Q. And those are 40,000 photographs, as I understand it, 23 that do relate to the SCL1112 project? 24 A. Yes. 25 Q. So you clearly didn't destroy everything or, if you had</p>	<p>1 police USB you can see in the beginning of July had the 2 whole file structure of our server. 3 Q. So -- I'm just trying to understand this, genuinely, 4 Mr Poon -- are you saying that you managed to recover 5 all of which you had deleted or just some of that 6 material that you had deleted? 7 A. Well, actually, the Dropbox recovery, that went from 8 June to July, and I didn't see what was recoverable. 9 So, anyway, I saw in Dropbox directories related to 10 1112, and that was recovered, and I didn't really care 11 what was being recovered. Because in the Dropbox 12 recovery, I couldn't see what the file was. I just saw 13 the file name. And after recovery I copied that for the 14 police. 15 Q. Mr Poon, I think it's come out on the transcript as 16 "2011 and 2012". I think what you mean is 17 contract 1112; is that right? 18 A. Yes. 19 Q. You see, what I'm coming to a bit later is back to the 20 topic of photographs, a little later on, I hope fairly 21 soon. What I'm trying to find out from you, Mr Poon, is 22 whether, when you turned up -- you may not know the 23 answer -- when you turned up to the police station on 24 4 July with your USB stick and you passed it over, 25 clearly it had a large quantity of photographs on it;</p>
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<p>1 destroyed it, you managed to recover it somehow. What's 2 the situation, Mr Poon? 3 A. Let me go in detail again. When I said I deleted 4 material, it's when I saw the videos or photos, it might 5 have involved cutting of bars, then I would use the 6 mouse and highlight the relevant photos or videos, and 7 then I would delete them. I use a Macintosh, an Apple 8 system. The way we highlight files, you can do it 9 horizontally or vertically, as long as the mouse or 10 cursor is in the vicinity. It's different from Windows. 11 So after you delete it -- since I was dragging the 12 mouse, the cursor, some of the directories, they were 13 overlapped into other directories, so subsequently, 14 after I did those actions, then in October/November 2017 15 the database in our server got contaminated. I had 16 contaminated my database. Then I never touched it 17 again. 18 So we had attempted, under the police request, to 19 retrieve the information, but we were not successful. 20 Then we took a snapshot of the server, not just the 21 photos, our photos were -- in 05, we have also 04, 03, 22 01, we have diagrams, we have contracts, worker records, 23 we have commercial documents, and then subsequently we 24 also have safety documents or commercial documents. We 25 copied the whole thing for the police. That's why the</p>	<p>1 yes? 2 A. Let me clarify. At that time, the police said they 3 wanted to make it easy, and they came to my offices. 4 Q. All right. But when you gave them a USB stick, it had 5 a large quantity of photographs on it, about 40,000, you 6 told the police; yes? 7 A. Correct. 8 Q. Let's try to put it around the other way. Do you know 9 whether any photographs that you had taken were missing, 10 ie had been destroyed forever? 11 A. I didn't know at the time. Not at the time. 12 Q. What about now; do you know? 13 A. I'm aware now that at least regarding area A, there was 14 a lot of rubbish and those photographs are not 15 recoverable. Because I wanted to give a statement of 16 that but I couldn't find the photographs and we could 17 not -- I had seen many pictures where there were a lot 18 of cut threaded bars and I have seen a lot of those 19 before. Then we also had a lot of couplers that were 20 removed and I couldn't find those pictures either. 21 Q. Okay. 22 A. I have a clear recollection of seeing those, but 23 I cannot recover them. 24 Q. Okay. So your evidence, in summary, therefore, is that, 25 yes, you did destroy photographs; you recall that some</p>

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<p>1 of those photographs showed incidents of cutting, and 2 also couplers, you recollect those photographs, and they 3 are no longer available to us because of the destruction 4 process? They have not been recovered? 5 A. Correct. Let me also repeat, when I tried to recover 6 these photographs, I had made many attempts to do so. 7 The police had also assisted me. Right now, I can say 8 that after going through the pictures one by one and 9 when I reviewed this material, I had been doing this all 10 the way up to November 2015. 11 Q. Okay. 12 A. And I still haven't finished going through all the 13 pictures. 14 Q. Right. Mr Poon, in view of the time, I'm going to try 15 my best just to shortcut the next bit of the 16 examination that I had for you. I don't know whether 17 I will succeed. 18 Having signed up to the confidentiality agreement 19 and the final account agreement on 18 September 2017, 20 am I right in thinking that in terms of your commercial 21 dealings with Leighton, the next part of the story 22 commences in essentially March of this year, 2018? 23 A. No. No. It had never stopped. 24 Q. It never stopped? All right. Let me try to speed it 25 up. It probably isn't the right way of doing it, but</p>	<p>1 Anthony had promised that they would rent other 2 companies' formwork to replace our material, so we could 3 remove the material as soon as possible. 4 But ultimately that did not occur. We were chasing 5 them, we were WhatsApping them, emailing them; we were 6 trying to recover our material. We didn't recover 7 100 per cent but we did recover 10 per cent. So by 8 March, I recall I went to the construction site, I met 9 with Jon Kitching and Jayden and I had a meeting with 10 them. At the time, they told me there was no way they 11 could return the material, they were still using the 12 material, so why not write up an invoice, and I told my 13 colleagues. That's why we used 18 September 2017 to use 14 that as a start date for our invoice and we used the 15 market rate and issued an invoice to Leighton. 16 Q. In the sum of about \$14 million? 17 A. Yes, roughly that amount. 18 Q. And, as I understand it, Mr Poon -- correct me if I am 19 wrong -- that invoice wasn't paid? 20 A. It was never paid. It was a typical Leighton practice. 21 Q. All right. In parallel with the events of sending that 22 invoice and discussing about your materials, you were 23 also involved in a joint venture with another company -- 24 A. Yes. 25 Q. -- at Lian Tang, if I've got that pronounced correctly.</p>
<p>Page 90</p> <p>1 let's see. 2 In March 2018, you sent an invoice to Leighton for 3 approximately \$14 million. 4 A. Yes, according to the agreement, Leighton had to pay 5 back 14 million worth of money, so that was overdue. 6 Q. As I understand it, Mr Poon, from the documents that 7 I've had access to and that I've read, what you say 8 is -- although you don't mention this in your witness 9 statement -- is that when you had entered into this 10 deal, the settlement agreement, the final account 11 agreement in September 2017, you had left a quantity of 12 materials, scaffolding, formwork, and so forth, on the 13 site, which you say Leighton used for a period of time, 14 maybe five, six or seven months, and therefore you wish 15 to be paid for either the depreciation in those 16 materials or essentially some form of hire charge for 17 those materials. Is that broadly what happened? 18 A. Actually, what happened was on 18 September 2017 we had 19 a discussion regarding the whole, all the six/seven 20 agreements, and one point was that we had completed the 21 works and Leighton had used a lot of our scaffolding and 22 framework for other contractors or for their own use, 23 and all these are our company's resources. 24 Q. I understand that. I'm trying to help you. 25 A. At page 7995, line 12, C7995, line 12, at that time</p>	<p>Page 92</p> <p>1 A. Yes. 2 Q. And we know that on 24 April this year, your joint 3 venture agreement with Leighton in relation to that 4 project was terminated? 5 A. Yes. 6 Q. That's saved me looking at about half a dozen emails. 7 It might have taken a few minutes, but it's quicker. 8 Now, Mr Poon, I want to come back, I think, to the 9 question of photographs. 10 For this purpose, I need to give you a document, 11 indeed I need to give everybody a document. The 12 Commissioners too. 13 A. I'd like to make a request while you are handing out the 14 documents. During lunch, the chairman had asked me 15 a question regarding if the steel bars, according to 16 page 7000-odd as stated by Leighton, where they didn't 17 have to screw the threads in all the way, are we only 18 left with the question of cutting the threaded bars? 19 During lunch I had reviewed some of the documents and 20 I feel it is very helpful to the Commission, and I would 21 like to wish to give you the document numbers, so in 22 your subsequent questions we can go back and visit these 23 documents. 24 CHAIRMAN: All right. What are the numbers? 25 A. In the MTRCL submission to the government regarding</p>

<p style="text-align: right;">Page 93</p> <p>1 Hung Hom Station report, bundle B1, page B28, it talks 2 about the mechanical couplers, they require BD approval. 3 They talk about mechanical couplers and Leighton applied 4 to use BOSA spliced pieces, ductility couplers. They 5 also refer to a document, QSP, and you can see at the 6 bottom of this screen: 7 "(In English) ... a QSP for the couplers for the 8 diaphragm wall reinforcement cage and slab construction 9 at Hung Hom Station was submitted to BD on 12 August 10 2013." 11 (Via interpreter) I attempted to dig up this QSP and 12 in Leighton's document, C20, the beginning of C20 13 I found that; bundle C1 and page C20 in Leighton's 14 bundle. 15 This is Leighton's report to the government, 16 including the Works Branch, the Development Bureau, and 17 it explains, after the media exposure document regarding 18 the cutting of bars, including cutting bars -- it was in 19 response to that media report. 20 So I won't read out the whole thing, it's very 21 lengthy, but at the end of the document there's 22 an attachment. The attachment H is on page C31. 23 MR PENNICOTT: So you're in bundle C1. 24 A. (In English) C1, C31. Okay. You can see appendix H. 25 (Via interpreter) That is the QSP.</p>	<p style="text-align: right;">Page 95</p> <p>1 is their guidance document, and I've gone through the 2 document once and I don't see Leighton's submission 3 where they say that the coupler can have a few threads 4 missing and it's still acceptable. I don't see that. 5 On the other hand, I see C164, some specific 6 evidence. On C164, we can see three diagrams. The 7 third one, that is the lowest diagram, we can see that 8 the threaded section is T. The length of coupler is 2T. 9 In this diagram, it tells us that we shouldn't see any 10 threadings being exposed outside the couplers after the 11 completion of installation. T plus T equals 2T. 12 CHAIRMAN: Mr Poon, I don't want you to misinterpret the 13 question I put this morning. I made it quite clear to 14 you that if the two issues that I had spoken to were 15 proved not to be issues by the experts, would you then 16 agree that the only issue remaining was one of the cut 17 rebars. So it may well be, when the experts come in -- 18 I've not read a single expert report yet; I think 19 they're still going about their good work -- that they 20 will agree entirely with you, and they may say, "We 21 can't understand how BOSA could possibly have done this 22 or agreed to that." 23 So I'm not jumping to any conclusion. All right? 24 I appreciate that there are a lot of brochures, there's 25 a lot of technical guidance, there are no doubt a lot of</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. Yes. 2 A. The document is lengthy. I don't want you to spend time 3 on it. Let me skip through a few documents. We're on 4 C96. 5 (In English) Page C96. 6 (Via interpreter) This is the Buildings Department, 7 approving the mechanical coupler regarding ductility, 8 and they have some specifications. 9 I want to say that on page C96, paragraph (b), they 10 talk about the -- we are on paragraph (b), the fifth 11 line in paragraph (b): 12 "(In English) The minimum qualifications and 13 experience of the quality control supervisor is to be 14 the same as the grade T3 technically competent person, 15 as stipulated in the Code of Practice for Site 16 Supervision 2009." 17 CHAIRMAN: Sorry, are you saying that there was not 18 a competent person with those qualifications? 19 A. There was such a person. 20 (In English) Let me develop. 21 (Via interpreter) Then we move on to page C150. 22 C148, that's very clear. That is appendix H. That is 23 a quality supervision plan, and the Buildings 24 Department, their approval of the project, their 25 approval for using the ductility coupler from BOSA, that</p>	<p style="text-align: right;">Page 96</p> <p>1 opinions, and no doubt the experts will give their 2 opinions in due course. All of that is open to the 3 Commission to look at. All right? I was asking you 4 a question within a very limited structure; okay? 5 A. (In English) Okay. 6 (Via interpreter) Thank you, Mr Chairman. 7 Let me rephrase what I said. Perhaps I would just 8 respond on a point. The first time I saw this 9 submission from Leighton to the Commission claiming that 10 BOSA believes that even if the threaded sections are not 11 fully screwed into the coupler, it's acceptable, and 12 I just want to refer you to the relevant documents. 13 I will finish very soon. 14 We can now go to C176. 15 MR PENNICOTT: Before you do that, Mr Poon, can we just go 16 back to the page that you were on, at C165. 17 A. (In English) Okay. 18 Q. What you need to do, if you're being careful about 19 reading this page, is not just look at the diagrams but 20 look at the boxes above. There is one box which says, 21 "Tolerance external thread (millimetres)", and if you 22 have a 40 millimetre bar, the tolerance for external 23 thread is 4 millimetres; a 50 millimetre bar is 24 6 millimetres. Do you see that? 25 So to say that this shows no thread should be</p>

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<p>1 showing, with respect, is wrong. There is still 2 a tolerance by reference to this document. 3 A. Now, I don't want to go into a technical debate with 4 you, but since you've raised it, I will talk to you 5 about it. Mr Ian Pennicott, you are wrong. 6 Q. I'm not sure it's appropriate. I'm just pointing out 7 what's on this -- 8 A. Let me explain that to you. For T40 table, above that 9 T40 table, it's clear, external thread tolerance is 4mm, 10 right, and metric thread per pitch, that means for every 11 thread, every circle of thread, the distance is 12 40.5 metric times 4 millimetres. That means this table 13 already tells you -- this is the table approved by BD, 14 it's telling you that in the other paper of BOSA, to say 15 that we could leave out two or three threads and that's 16 already outside the tolerance limit, if the tolerance 17 limit is just one thread or no more than one thread, the 18 pitch, crest to crest, that is. 19 Q. Mr Poon, as the chairman has indicated to you on more 20 than one occasion, we are grateful for your input and 21 your views, but this is a matter for the experts that 22 will be considered in due course, and I accept that they 23 will look at this document and they will look at the 24 other document that we looked at this morning, they will 25 put it all together and they will come up with</p>	<p>1 Let's go to page 426. This is Wong Chi Chiu's 2 explanation to you. That is, for couplers used on this 3 site, he refers to the technical parameters known to 4 him. 5 Let's go further down. I'm not going to interpret 6 too much more on the table. 7 Paragraph 28.3. In this paragraph, there are a few 8 pieces of information. I won't refer to the other 9 pieces. I'd just like you to look at line 3, the last 10 part of line 3: 11 "(In English) ... and then use a pipe wrench to 12 screw the rebar fully into the coupler." 13 (In English) "Fully". 14 (Via interpreter) That's all for my interpretation 15 here. I hope, when the media look at Leighton, 16 especially when you look at submissions from Leighton, 17 you must look wider at other documents. 18 That's all I would like to say. 19 Q. All right. 20 CHAIRMAN: Sorry, with respect, when you say "the media", 21 while I have the greatest faith in the media, indeed 22 I started life as a cub reporter, myself, I would like 23 to say nevertheless that -- 24 A. I did not say "media". 25 MR TO: He did not say "media".</p>
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<p>1 a conclusion. But we can't, again -- and I accept 2 this -- just look in isolation at one document. We've 3 got to look at all of the documents. So there are lots 4 of pieces of jigsaw to this particular puzzle, and 5 I accept that the experts will need to look at every 6 relevant piece of paper that bears on this particular 7 point, and you've drawn our attention to this, for which 8 I'm grateful. 9 A. In the building sector, there are procedures. For 10 what's approved by BD, if we want to amend it, that 11 means we need to do resubmission to BD and seek 12 approval, we cannot overrule the BD's approval and then 13 go back and find an expert to say this is safer. 14 Q. All right. 15 A. Anyway, I'm about to finish. I just want to mention two 16 other documents. 17 176, please. At 176 we see T3, the person T3, Wong 18 Chi Chiu, T3. His name is Wong Chi Chiu. It's the last 19 row in the table, "T3: Wong Chi Chiu". 20 Next, we should go to B426, B for boy, not this 21 bundle, another bundle, B. 22 Perhaps I pause here. This is the witness statement 23 of Wong Chi Chiu to the Commission. 24 Q. Yes. 25 A. T3's witness statement to the Commission.</p>	<p>1 CHAIRMAN: All right. Thank you very much. But insofar as 2 it's relevant, submissions are made to this tribunal. 3 They are not made directly to the media. Thank you. 4 MR PENNICOTT: Mr Poon, I'm not going to pursue -- 5 A. (In English) I never, ever said the word of "media". 6 MR PENNICOTT: I've no idea what you said. Mr Poon, I'm not 7 going to pursue that anymore. Perhaps Mr Boulding will, 8 because we've actually read on in the statement and seen 9 what he says later. 10 CHAIRMAN: Mr Poon, you have given us those references. 11 You're completed on that, are you? 12 MR PENNICOTT: Yes. 13 CHAIRMAN: Thank you very much. 14 MR SHIEH: He may not have said the English word "media", 15 but he said "(Chinese spoken)", which is "media". 16 MR PENNICOTT: All right. Let's all calm down. 17 MR SHIEH: Maybe playing with words -- obviously he didn't 18 say the word "media", M-E-D-I-A. 19 CHAIRMAN: I read the translation as "media". 20 MR SHIEH: Yes. Obviously he didn't say "media", the word 21 "media". 22 WITNESS: Mr Shieh, where did I say the word "media"? 23 CHAIRMAN: Mr Poon, thank you very much. The matter has 24 been resolved. It was a clarification. It was no more 25 than that. Thank you very much.</p>

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<p>1 MR PENNICOTT: Mr Poon, my last topic, and I apologise for 2 returning to it, but I'm a bit concerned about the whole 3 photograph situation with regard to China Technology, 4 about which you've given evidence on a number of 5 occasions, both in your witness statements and police 6 statements, and indeed orally. If you'll be patient 7 with me just for one moment, Mr Poon, and turn to the 8 first page of this, I will explain to you what it is. 9 Last evening -- this is a document that the 10 Commission's solicitors have prepared, working late into 11 the evening last night, and for which I'm very grateful 12 to them for doing. What I'm going to tell you is simply 13 this, and for everybody else's benefit, should it be 14 helpful to them, what this is is an attempt to identify 15 all photographs that you have provided to the Commission 16 at any given time. 17 And, if I can summarise it, looking at the first 18 page, what you see we've done is to put the photographs, 19 firstly, in chronological order. We decided that that 20 perhaps was the best approach. We could have tried 21 subject matter but it got a bit messy. 22 What we've then done is provided a bundle reference 23 to each of the photographs. Where you have said, either 24 in your witness statement, a police statement or 25 an observation on a photograph, we have identified the</p>	<p>1 every single one that we've managed to find that you 2 provided. 3 Now, you can see, just glancing down the "Bundle 4 reference" column, that of course there are lots of 5 duplicates. 6 A. (In English) Yes. 7 Q. So look at number 4; we will find it in three different 8 places. Sort of going through the bundle, one gets the 9 impression that there are loads and loads of 10 photographs, but in fact, when one boils it down, what 11 you have helpfully provided to the Commission are 12 39 photographs, 39 different photographs. You see that 13 at the end. All right? 14 A. Mmm. 15 Q. Of course, it's open to anybody to go through this 16 schedule and find out whether -- where or whether we've 17 gone wrong. But can I just -- I'm not going to go 18 through each of these with you, Mr Poon, but can I just 19 ask you first of all to look at the front sheet, the 20 first page. It's quite clear, I think, that if you look 21 at item numbers 1 and 3 by way of example, those are 22 photographs that show, you say, the chiselling of the 23 retaining walls; yes? 24 A. Yes. 25 Q. As I understand it, and you can see from the right-hand</p>
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<p>1 area that you, Mr Poon, have indicated, and where you've 2 identified more than one area we've identified all of 3 them. You can see that in the "Area" column. 4 Sorry, I should have said that the red asterisk is 5 explained right at the end, and if it has a red asterisk 6 it means you have helpfully provided us with the 7 original digital photo. So if there's a red asterisk, 8 we've got the original digital; okay? Do you 9 understand? 10 A. Yes. 11 Q. Then in the next column, we've got the subject matter, 12 and again we've tried to use the words that you've used 13 in each occasion, although we have, I accept, added the 14 word "alleged" in certain of them. 15 Then what we've done, under the "Other comments" 16 column, is to indicate where one will find each of the 17 photographs. Do you see that, Mr Poon? 18 So, as I say, whether you exhibited it formally to 19 your witness statement, the seven photographs that we 20 looked at yesterday, whether they are photographs that 21 were attached to any of your police statements, whether 22 they were photographs that you provided to us in the 23 bundle that came with your witness statement, or whether 24 they indeed were the photographs that you provided with 25 your witness statement on Sunday, they are all here,</p>	<p>1 column, those photographs were attached to two of your 2 police statements; do you see? 3 A. Yes. 4 Q. So I infer that the police asked you whether you had any 5 photographs about the chiselling, or you volunteered 6 that information to the police, one or the other. In 7 any event -- 8 A. The police wanted to know why the couplers were damaged, 9 why the bars couldn't be screwed in. 10 Q. I see. 11 A. And these photos showed that Leighton workers were using 12 the heavy-duty breakers to chisel on the couplers or to 13 hit the couplers. 14 Q. All right. That's fine. That's your explanation for 15 those. 16 Then if you go, please, to items 24 to 27, the 17 subject matter there recorded, you will see, Mr Poon, is 18 "Through-bars"; do you see that? 19 A. Yes. 20 Q. Again, those are either photographs that came in the 21 bundle with your witness statement, or they were, as we 22 can see, attached to your police statement of 9 August, 23 your last police statement; do you see that? 24 A. Yes, I see it. 25 Q. So did the police ask you to provide some photographs of</p>

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<p>1 through-bars or did you volunteer those photographs? 2 What happened about through-bars? 3 A. I haven't finished giving a statement to the police. 4 I actually arranged with the police to give a statement 5 every week. At that time, for the list of structural 6 problems for the Hung Hom Station, I remember 7 I identified five to seven, and I gave a separate 8 statement for each problem. The first one was on bar 9 cutting. The second one was on indiscriminate revision 10 of drawings. And these photos were after we submitted 11 the indiscriminately revised drawings and then the 12 police had to find evidence to show that they did not do 13 the works in accordance with the drawings. 14 Q. Okay. Understood. 15 Then, from number 39 to the end, we have put in 16 chronological order the 11 photographs that you supplied 17 with your witness statement on Sunday, last Sunday, four 18 photographs of which we had obviously received on the 19 Friday, and that's what we've done. 20 So this is a record of all the photographs that you 21 have supplied to the Commission to date. 22 Now, Mr Poon -- 23 A. So there are 39 photos; right? 24 Q. That's right. There they all are, all here, recorded 25 here, and they are all part of the evidence, the</p>	<p>1 might be stuck here, but there's no reason why 2 presumably you can't, with my permission, instruct your 3 employees to start looking again, if that's what you 4 want them to do. 5 But I give you the opportunity to provide the 6 Commission with any other photograph that is about bar 7 cutting or shortening. 8 With that, Mr Poon -- you can comment if you want -- 9 A. Why should there be a limit? Why should there be a 10 limit? 11 Q. Because, Mr Poon, this process has got to be brought to 12 an end at some point, and two and a half weeks seems to 13 me, as we stand here today, a fairly generous period, 14 given the opportunities that we know that you have had, 15 and indeed have taken historically over the last few 16 months. 17 A. Then I quite disagree. If you allow me to submit all 18 the photos relating to structural problems which 19 I discovered during my review, I will do so, even if it 20 means working overnight. If you limit me to only 21 cutting of rebars and if there are problems identified 22 which I cannot submit to the Commission, then I object. 23 Q. You can object if you like. The offer I'm making you, 24 Mr Poon, is in relation to photographs relating to bar 25 cutting and shortening, which is frankly the primary</p>
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<p>1 documents that have been submitted to the Commission. 2 What weight one pays to any particular photograph will 3 be a matter for debate in due course, but they are all 4 recorded here; they are all in the documents. 5 Now, let me tell you this. I'm going to invite 6 you -- we are going to be here for a number of weeks. 7 I'm going to invite you, Mr Poon, if you wish -- you 8 don't have to accept the offer -- 9 CHAIRMAN: I'm sorry, I do apologise. Something has gone 10 wrong here. There we are. 11 I can't hear you, sorry. 12 MR PENNICOTT: I'll start again. Mr Poon, we are going to 13 be here for a number of weeks, and I'm going to invite 14 you to do this. If you wish -- you don't have to take 15 up my invitation, but if you would like you -- in the 16 next two weeks, approximately, let's say to 16 November, 17 which is the date we are going to have a short break 18 from this hearing -- up to 16 November, we give you the 19 opportunity to go away, look at your photographs again, 20 if you wish, and provide us with any photograph which is 21 to do with bar cutting, no other subject, just bar 22 cutting; all right? That's an invitation I grant to 23 you, I give to you, if you wish to take it up. 24 So you've got two and a half weeks to think about 25 that. I appreciate that the next couple of days you</p>	<p>1 reason we are all here. 2 CHAIRMAN: I would also add, Mr Poon, that this is an open 3 invitation from counsel for the Commission. It means 4 you don't have to seek permission. You can put them all 5 together. You can explain their provenance in the 6 correct way, as will be directed by counsel, and they 7 come before us for consideration. 8 If you should find other photographs which you 9 consider to be compelling, then no doubt your counsel 10 can make an application to put them before the 11 Commission, and the Commission will consider its 12 position. But those other photographs would have to be 13 compelling. 14 WITNESS: I will consider it. 15 MR PENNICOTT: Okay. You do that, and of course that may 16 require you to come back. 17 CHAIRMAN: You can consider it, Mr Poon. This is not 18 a bargaining shop; all right? You've been told what is 19 open to you, and that ends it, on that particular 20 matter. 21 MR PENNICOTT: Thank you, sir. 22 CHAIRMAN: Those are directions from counsel, supported by 23 this Commission. 24 Yes, you have completed now, Mr Pennicott? 25 MR PENNICOTT: I have, sir. That will be an appropriate</p>

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<p>1 moment for ten minutes.</p> <p>2 CHAIRMAN: Is this an opportune moment?</p> <p>3 MR PENNICOTT: Yes.</p> <p>4 CHAIRMAN: Ten minutes. Thank you.</p> <p>5 (3.39 pm)</p> <p>6 (A short adjournment)</p> <p>7 (3.56 pm)</p> <p>8 MR PENNICOTT: Sir, I've completed the questions that</p> <p>9 I wanted to ask Mr Poon, certainly at this stage.</p> <p>10 I don't know whether anything else will arise.</p> <p>11 I understand from the interested parties that,</p> <p>12 having discussed matters, Mr Shieh is going to go first.</p> <p>13 CHAIRMAN: All right. Good. Thank you, Mr Shieh.</p> <p>14 Cross-examination by MR SHIEH</p> <p>15 MR SHIEH: Mr Poon, you will know I represent Leighton.</p> <p>16 Good afternoon.</p> <p>17 A. (In English) Good afternoon.</p> <p>18 Q. Can I ask you to look at the transcript of yesterday's</p> <p>19 hearing page 16, line 20. Just to explain to you the</p> <p>20 background of this exchange, this is at a point in time</p> <p>21 of yesterday's hearing when the subject matter of</p> <p>22 mistakes or errors or inaccuracies in your witness</p> <p>23 statements, and how they should be dealt with. Okay?</p> <p>24 This is the background against which this passage came</p> <p>25 about.</p>	<p>1 early as July, I mean early July 2018. As far as I'm</p> <p>2 concerned, it was very intensive. At least I would</p> <p>3 spend one day every week to assist in police</p> <p>4 investigation.</p> <p>5 At that time, my schedule got even more compressed.</p> <p>6 When I found out, in relation to witness statements</p> <p>7 given to the Commission of Inquiry, that there were</p> <p>8 quite important mistakes made, especially in relation to</p> <p>9 the month, I would need to correct this mistake, as well</p> <p>10 as the same mistake which I identified in the statement</p> <p>11 given to the police. But in fact even the police was</p> <p>12 aware of this.</p> <p>13 In the middle of August 2018, I already refused --</p> <p>14 I mean starting from the end of August 2018, I already</p> <p>15 refused spending one day each week working with the</p> <p>16 police and assisting them in their criminal</p> <p>17 investigation, because whenever I make a fresh witness</p> <p>18 statement, I needed to submit it to the Commission of</p> <p>19 Inquiry as well.</p> <p>20 Now, in relation to the subject of the</p> <p>21 investigation, it's actually benefitting them, and that</p> <p>22 is why I suspended this approach. And after discussing</p> <p>23 with the lawyer, I would rather clarify the matters</p> <p>24 during the Inquiry."</p> <p>25 Now, Mr Poon, from this passage, does it mean that</p>
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<p>1 I want you to look at page 16, line 20, when</p> <p>2 Mr Chairman said:</p> <p>3 "Sorry, Mr Poon, are you saying that you've</p> <p>4 identified, in your copious statements, mistakes which</p> <p>5 are of some materiality, discussed it with your lawyers</p> <p>6 -- that's your evidence; it's not for me to impinge on</p> <p>7 lawyer confidentiality -- but you've made a decision, in</p> <p>8 the light of advice received, that you wouldn't put</p> <p>9 anything in writing to identify the errors and explain</p> <p>10 them and correct them, so that we're left with known</p> <p>11 errors floating in the various statements that you've</p> <p>12 put forward as being correct?"</p> <p>13 Then came your answer:</p> <p>14 "In fact, let me explain. For the witness</p> <p>15 statements, basically they went in parallel with the</p> <p>16 statements given to the police, and the Commission of</p> <p>17 Inquiry requested us to provide not only statements</p> <p>18 given to the police but also the statements relating to</p> <p>19 other personnel of China Tech given to the police for</p> <p>20 the purpose of criminal investigation, and over this</p> <p>21 matter there was an internal dispute in my company.</p> <p>22 For the criminal investigation work of the police,</p> <p>23 if we disclose the relevant information to the other</p> <p>24 parties, it wouldn't be fair to the police's</p> <p>25 investigation. And the police investigation started as</p>	<p>1 when you affirmed your evidence in the witness box on</p> <p>2 oath, you were knowingly affirming, on oath, witness</p> <p>3 statements prepared for this Inquiry which you knew to</p> <p>4 contain inaccurate evidence?</p> <p>5 A. (In English) It depends on how is the accuracy.</p> <p>6 Q. I'm sorry, can you repeat it? It depends on what?</p> <p>7 A. It depends on the accuracy. If you use a magnifying</p> <p>8 glass, if a typo is an error, if the month is wrong, if</p> <p>9 the year, a typo, if there's a typo, 6 or 7 is typed</p> <p>10 wrong, then perhaps you are correct.</p> <p>11 Q. Well, those are not my words, Mr Poon. Look at page 17,</p> <p>12 line 22:</p> <p>13 "When I found out, in relation to witness statements</p> <p>14 given to the COI, that there were quite important</p> <p>15 mistakes made, especially in relation to the month, I</p> <p>16 would need to correct this mistake, as well as the same</p> <p>17 mistake which I identified in the statement given to the</p> <p>18 police. But in fact even the police was aware of this."</p> <p>19 So let's not talk about which specific mistakes or</p> <p>20 inaccuracy. I'm talking about the approach in principle</p> <p>21 that you have adopted to the question of how you would</p> <p>22 address inaccuracies known to you in your witness</p> <p>23 statement. Right? Let's not talk about examples of how</p> <p>24 important. Those are your words, "important mistakes</p> <p>25 made". Are you suggesting that even if you are aware of</p>

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<p>1 mistakes which you regard to be important, for some 2 reason you would not put in a corrective witness 3 statement, but you would affirm the witness statement 4 which contained whatever important mistakes there were, 5 and wait until people ask you questions before 6 correcting those mistakes? 7 A. I think Mr Shieh is distorting my words. When I was 8 under oath -- 9 CHAIRMAN: Sorry, I really don't think that it's necessary 10 for the advancement of the Inquiry that matters be 11 reduced down to a personal level. If I think a question 12 constitutes a distortion of the facts, I will say so. 13 But what you should attempt to do, as best you can, 14 Mr Poon -- and all other witnesses will be put to 15 testing questions too -- you should attempt to answer 16 the question to the best of your ability. 17 A. I did not say "distort". I mean he put it in 18 a different order. 19 Now I'm in the witness stand. I had taken an oath 20 and I'm telling you I will be telling the truth. And in 21 the beginning of the questioning I had told everybody 22 that I see in the witness statements there are areas 23 that need to be amended, and I told everybody I will do 24 so orally and I'll make these amendments. 25 MR SHIEH: Only when those inaccuracies were put to you or</p>	<p>1 forgets about the question. 2 My question is, when you took the oath in 3 evidence-in-chief, you did not take the opportunity to 4 say, "I have the following errors that I have spotted in 5 my witness statement and I want to correct them before 6 I formally affirm the correctness of my statement." You 7 did not do that; correct? 8 A. (In English) I did. 9 Q. You did? Okay. But let me give you examples. In the 10 course of your examination by Mr Pennicott, you remember 11 that the question about the brand of the telephone that 12 you used to take the photographs on 22 September was 13 raised. You said "Huawei" in your witness statement, 14 and you then corrected it in the witness box? 15 A. I had said in the police statement, the second phone, it 16 was also made very clear. In the witness statement, 17 "Huawei" is wrong. It was an Xperia Z2. 18 Q. You did not correct that in your evidence-in-chief; 19 correct? 20 You did not correct that when Mr To, China Tech's 21 counsel, asked you to affirm your witness statements? 22 A. I explain once again. In my examination-in-chief, in 23 the examination-in-chief, we had prepared an explanation 24 where there were areas that we need to amend in the 25 witness statement, but in examination-in-chief, when</p>
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<p>1 shown to you, before you would amend them; correct? 2 A. (In English) No, you are incorrect . 3 Q. When your counsel asked you to affirm your witness 4 statements on oath in the witness box in 5 evidence-in-chief, you did not then take the opportunity 6 to say, "I have the following inaccuracies in 7 paragraphs X/Y/Z of my witness statement which I now 8 want to amend before I affirm my statements on oath"? 9 You did not do that, correct, Mr Poon? 10 A. I was obstructed by Mr Shieh on that day. Mr Shieh 11 stood up three times and gave a long speech and 12 prevented my examination-in-chief to proceed, and that's 13 what happened. Mr Shieh, is that correct? 14 CHAIRMAN: Mr Shieh doesn't have to answer any questions. 15 The system works on the basis that questions that are 16 rational and relevant will be put to you, in a polite 17 manner, as they are, and you will do your best to answer 18 in a rational, concise way, and politely too, and then 19 we move ahead. Okay? 20 MR SHIEH: What was my question? Don't look at the screen. 21 What was my question? 22 A. (In English) Please repeat. 23 Q. Thank you. You see, from time to time a witness 24 actually takes a long time to answer a question, to the 25 extent that counsel forgets about -- sorry, the witness</p>	<p>1 they discussed the first problem, when they were 2 discussing the first/second/third pictures, then we 3 encountered the lawyers present, they stood up and 4 objected. After a while, we had an adjournment. 5 Because of that, my explanation, the flow was disturbed. 6 Actually, I was going to give at least two explanations. 7 The first was regarding the month, and in fact the 8 sentence wasn't correct, the difference between 9 September and October. And the second was regarding the 10 second telephone, that is the first Huawei phone and the 11 second Huawei phone. 12 Q. Can I ask you to look at the transcript of Monday, 13 that's Day 6, page 115. 14 A. (In English) Yes. 15 Q. Line 2. That is during your examination-in-chief. The 16 question was posed by your counsel: 17 "Mr Poon, do you wish to adopt these witness 18 statements, the five of them, including the last one, 19 the amended one" -- so you knew how to amend 20 statements -- "as part of your evidence?" 21 Your answer: 22 "Yes, correct." 23 Then came numerous Qs and As, leading on to, 24 page 116, Mr Pennicott raising the question of "don't 25 give a prepared speech", et cetera.</p>

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<p>1 So, Mr Poon, it appears from this transcript that</p> <p>2 you had already affirmed, adopted the witness statement</p> <p>3 as your evidence, without qualification, before Mr To</p> <p>4 asked you questions about photographs which led to</p> <p>5 subsequent exchanges, correct or not correct, according</p> <p>6 to this transcript?</p> <p>7 A. (In English) As part of my evidence, yes.</p> <p>8 Q. You were obviously then going to give additional</p> <p>9 evidence. Are you suggesting that what you had intended</p> <p>10 to do was actually to say, "Hang on, paragraph X</p> <p>11 contains an error and I want to correct it"? Is that</p> <p>12 what you say you were intending to do?</p> <p>13 A. The intention at that time was to wait until the end,</p> <p>14 when our examination-in-chief lawyer wanted to ask did</p> <p>15 I have any supplement information and I would add</p> <p>16 further, I would elaborate.</p> <p>17 Q. So your lawyer forgot to ask you whether you had</p> <p>18 anything to add?</p> <p>19 A. I do not wish to answer a speculative question.</p> <p>20 Q. Very well. Can I suggest to you that you had not taken</p> <p>21 the opportunity, in your evidence-in-chief, to amend or</p> <p>22 correct any inaccuracies, not because you forgot or</p> <p>23 somehow were disrupted, but because you wanted to take</p> <p>24 your chance to see whether anyone could spot the</p> <p>25 loopholes or gaps in your evidence and put to you,</p>	<p>1 English version. I don't believe anything should turn</p> <p>2 on niceties of translation.</p> <p>3 "I carried out site inspection of Hung Hom Station</p> <p>4 starting at 4 pm on 22 September 2015. At around</p> <p>5 6.17 pm during this inspection, I again saw two Chinese</p> <p>6 men (about 30 to 40 years old, medium built, I believe</p> <p>7 they were staff responsible for carrying out welding</p> <p>8 process, other details could not provided) wearing royal</p> <p>9 blue [et cetera] bearing the logo of Leighton using</p> <p>10 hydraulic cutter to cut short the threaded heads of</p> <p>11 rebars in bay C1-4 and bay C1-5 ... They used hydraulic</p> <p>12 cutter to cut short threaded heads of rebars, each time</p> <p>13 cutting short either one rebar or a bundle of 10 or more</p> <p>14 rebars wrapped together. I asked the 3 persons to stop,</p> <p>15 but the 3 persons ignored me, and hence I use my own</p> <p>16 Huawei mobile phone [which was defined here as phone 2]</p> <p>17 to take 3 photos ..."</p> <p>18 Do you see that?</p> <p>19 A. Yes, I see it.</p> <p>20 Q. So it looks as though, even in your police statement,</p> <p>21 you have already identified the second phone used to</p> <p>22 take these pictures on 22 September as a Huawei brand</p> <p>23 telephone. Do you accept that?</p> <p>24 A. At the time, it was the statement I gave in July -- at</p> <p>25 the time, I thought it was it.</p>
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<p>1 before you could say, "I'm sorry, that's a mistake"? Do</p> <p>2 you accept that?</p> <p>3 A. I don't accept.</p> <p>4 Q. And if no one spotted a mistake or an error, you would</p> <p>5 just let it lie as if nothing had happened? Is that</p> <p>6 your state of mind when you gave your evidence-in-chief?</p> <p>7 A. Of course not. If I was doing that, if I intended to do</p> <p>8 that, I would be insulting Mr Shieh.</p> <p>9 Q. All right. Can I just follow up: by not amending or</p> <p>10 correcting any inaccuracies, you are keeping to yourself</p> <p>11 the advantage of not alerting other people of first of</p> <p>12 all gaps you have spotted in your evidence and also you</p> <p>13 preserve to yourself the opportunity to make things up</p> <p>14 as you go along, without having to commit them in</p> <p>15 writing; do you accept that?</p> <p>16 A. Of course I disagree.</p> <p>17 Q. Very well. Let us move on.</p> <p>18 Please look at bundle D, page 765.4, paragraph 10.</p> <p>19 That's the English version of a police interview. The</p> <p>20 Chinese version is at 762. The date of the interview is</p> <p>21 10 July this year.</p> <p>22 A. Yes.</p> <p>23 Q. I want to direct your attention to paragraph 10.</p> <p>24 A. Yes.</p> <p>25 Q. It's up to you whether you look at the Chinese or the</p>	<p>1 Q. So are you saying that not only were you mistaken when</p> <p>2 you signed your witness statement for the Commission of</p> <p>3 Inquiry, the mistake about the brand of the telephone</p> <p>4 was made also at the time of your police interview?</p> <p>5 A. Yes, because at the police interview I made a mistake.</p> <p>6 In my other witness statement, that is the one I gave to</p> <p>7 the Commission in September, much of it is based on the</p> <p>8 police statement. Almost it's copying words by words.</p> <p>9 Q. So a mistake made in the police interview record got</p> <p>10 carried over to the witness statement which was prepared</p> <p>11 for the purpose of this Commission of Inquiry?</p> <p>12 A. Yes, and you can see it, when I gave a statement to the</p> <p>13 police, I remember definitely I was carrying another</p> <p>14 phone, so that's why I said "another phone".</p> <p>15 Q. Yes, because in the previous paragraph in the police</p> <p>16 statement, you talked about using a Huawei mobile phone</p> <p>17 of your company, which was defined as "phone 1", which</p> <p>18 took two photos and took a video clip.</p> <p>19 A. Mmm.</p> <p>20 Q. So, yes, we know you are talking about a second or</p> <p>21 different telephone being used on the 22nd.</p> <p>22 A. Mmm.</p> <p>23 Q. But my question is a simple one. I hope there's no</p> <p>24 difference between us. I understand you to be saying</p> <p>25 you made a mistake in your police interview as to the</p>

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<p>1 brand of the telephone?</p> <p>2 A. (In English) Yes.</p> <p>3 Q. And that mistake got carried over to the Commission of</p> <p>4 Inquiry witness statement. Is that a fair way of</p> <p>5 putting your evidence?</p> <p>6 A. (In English) Yes.</p> <p>7 Q. Can I ask you to look at the transcript of yesterday,</p> <p>8 page 114, line 16.</p> <p>9 The question, that's by Mr Pennicott, I think:</p> <p>10 "Can you explain the position? What is your</p> <p>11 explanation?"</p> <p>12 That is, for your help, after the metadata analysis</p> <p>13 of the various photographs of the 22nd had been shown to</p> <p>14 you, after they showed that the photograph of the 22nd</p> <p>15 was taken on a Sony camera.</p> <p>16 The question at line 16:</p> <p>17 "Can you explain the position? What is your</p> <p>18 explanation?"</p> <p>19 You said:</p> <p>20 "This instrument is different from my Huawei mobile</p> <p>21 phone. I already told the police that it was from</p> <p>22 a second -- another device. We can take a look at the</p> <p>23 statement given to the police. I explained to the</p> <p>24 police, when the statement was taken, that at first</p> <p>25 I took the photos with my Huawei phone" -- I believe</p>	<p>1 was not with a Huawei phone but with a Sony Z2? This is</p> <p>2 what the transcript says.</p> <p>3 A. At the time I told the police -- now, let's talk about</p> <p>4 the police statement. At the time the police asked</p> <p>5 about the first Huawei phone, and then in another</p> <p>6 paragraph the police asked about the other seven</p> <p>7 photos -- it's D762, that's the Chinese version; English</p> <p>8 version 765.4, that's the page number, and paragraph 10.</p> <p>9 I told the police clearly that I recalled that I did not</p> <p>10 use the first phone to take the other seven photos;</p> <p>11 I used the site phone. So it's the other phone. That's</p> <p>12 why.</p> <p>13 Then, in the police statement, the Chinese version,</p> <p>14 paragraph 10, line 6, it's put down very clearly. So</p> <p>15 I used my other Huawei mobile phone, in brackets</p> <p>16 "(hereinafter referred to as phone 2)", and so I took</p> <p>17 three photos and then later on there's a fourth photo.</p> <p>18 Of course, when I signed the statement, I did not notice</p> <p>19 the mention of Huawei here. But actually, from the</p> <p>20 beginning, I told the police that I used another phone,</p> <p>21 and the police knew it was phone 2.</p> <p>22 Q. In case it is thought why we are interested in the</p> <p>23 brand, it will become clear very soon, Mr Chairman and</p> <p>24 Mr Commissioner.</p> <p>25 But my question to you is this. You told this</p>
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<p>1 that is a reference to what you call "phone 1" in</p> <p>2 paragraph 9 of your witness statement -- "and then</p> <p>3 I took seven photos with another device, not with my</p> <p>4 Huawei phone."</p> <p>5 Mr Pennicott then asked:</p> <p>6 "Mr Poon, all I can do, struggle with, is your</p> <p>7 witness statement. The second sentence says:</p> <p>8 'I -- this is on 22 September, paragraph 41 --</p> <p>9 'used my personal Huawei mobile phone to take</p> <p>10 7 photographs', and then you produce the seven</p> <p>11 photographs, the first one of which we've just been to.</p> <p>12 That's what it says in your witness statement.</p> <p>13 If you wish to correct that, please tell us how you</p> <p>14 would like to correct it.</p> <p>15 Answer: It's a second device. I told the police</p> <p>16 that it was not a Huawei phone, it was the Z2 kept in</p> <p>17 the site office."</p> <p>18 So there you were telling us that you told the</p> <p>19 police it was not a Huawei phone. Do you have any</p> <p>20 reason to doubt the accuracy of the transcription</p> <p>21 service as to what you said?</p> <p>22 A. Now, you've been speaking for a long, long, long time.</p> <p>23 Can you please repeat?</p> <p>24 Q. Did you say to this Commission that you told the police</p> <p>25 that when you took the photos on 22 September, that it</p>	<p>1 Commission that you told the police it was not a Huawei</p> <p>2 phone, but in fact, according to the police statement,</p> <p>3 you did tell the police that it was a Huawei phone,</p> <p>4 albeit a different one. Do you accept that? Or are you</p> <p>5 saying the police actually got it wrong; they should not</p> <p>6 have written the word "Huawei" in the statement?</p> <p>7 A. I think we were taking statements too long, it was</p> <p>8 a whole day on that occasion. Perhaps the police and</p> <p>9 I were both tired.</p> <p>10 On the second phone, for phone 2, the word "Huawei"</p> <p>11 was not necessary.</p> <p>12 Q. So the police maybe make a mistake when they transcribed</p> <p>13 your interview into written form and you missed out that</p> <p>14 mistake when you signed the police interview record? Is</p> <p>15 that what you are trying to say?</p> <p>16 A. Yes. Yes.</p> <p>17 Q. So that is actually a double mistake, a mistake made at</p> <p>18 the stage of signing the police interview record, and</p> <p>19 a mistake made at the time when you signed your witness</p> <p>20 statement; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Was it your intention to correct that in your</p> <p>23 evidence-in-chief, before you say you were unfortunately</p> <p>24 disrupted?</p> <p>25 A. Yes.</p>

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<p>1 Q. So you did want to correct that but it's my fault in 2 disrupting you so that you failed to correct it; is that 3 what you are saying? 4 A. If you would respect other counsel on that day, perhaps 5 we wouldn't have to spend another 15 to 20 minutes to 6 dwell on this point. 7 Q. Can I ask you to look at bundle D, page 766. Just to 8 tell you what these photographs are, in your interview 9 with the police, 765.4, paragraph 10, you referred to 10 a number of photos that you had taken with "phone 2", 11 and you numbered them "photo 4", "photo 5", "photo 6" 12 and then "photo 7". 13 A. Are you talking about 766 or other photos? 14 Q. At 765.4, where you introduced various photographs; do 15 you see? 16 A. Yes. 17 Q. Sorry, my mistake, because after you mentioned phone 2, 18 in the middle of paragraph 10, you said "to take 3 19 photos (referred to as 'photos 1 to 3' below)", so 20 I want you to look at "photos 1 to 3 below", three 21 photos taken with your own phone. Forget about what 22 brand: 23 "Photos 1-3 showed a Chinese man wearing royal blue, 24 orange and yellow coloured polo T-shirts", et cetera. 25 So can I ask you to look at 766.</p>	<p>1 A. Yes. 2 Q. Then we move down, and then photo 7, you talked about 3 photo 7. Photo 7 is 772; that is right? 4 A. (In English) Yes. 5 Q. Okay. So we have now identified the seven photographs. 6 Incidentally -- let me see. You remember 7 Mr Pennicott took you to the site in/out record of 8 Leighton? 9 A. (In English) Yes. 10 Q. Can we look at bundle C8, page 5720. 11 A. (In English) Yes. 12 Q. Do you remember Mr Pennicott took you to the second-last 13 row at the bottom, with your name? 14 A. (In English) Yes. 15 Q. And when he showed you, from 19 September 2015, all the 16 way down to 28 September 2015, there's no in or out 17 record of your goodself at the site; do you remember 18 that? 19 A. (In English) Yes. 20 Q. You then gave some evidence that the system was 21 unreliable; do you remember that? 22 A. (In English) Yes. 23 Q. And you then gave some examples, such as you rarely, if 24 ever, left after midnight -- 25 A. (In English) Yes.</p>
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<p>1 A. Yes. 2 Q. 767. 3 A. Yes. 4 Q. 768. 5 A. Yes. 6 Q. These are photos 1 to 3; correct? 7 A. Correct. 8 Q. You then said: 9 "Afterwards that Chinese man expressed his 10 resentment to me taking photo of him ..." 11 A. Yes. 12 Q. "... and hence I pretended to take photos of other 13 locations, as a result of which I took 3 additional 14 photos (referred to as 'photo 4', 'photo 5' and 15 'photo 6' below)." 16 Now, 4, 5 and 6 would be 769, 770 and 771? 17 A. Yes. 18 Q. Then you said: 19 "Photo 4 and photo 5 do not serve any meaningful 20 purpose." 21 And you said: 22 "Photo 6 coincidentally took photo of the retaining 23 wall ... After examining photo 6, I discovered that 24 photo 6 showed some damaged couplers." 25 Do you see that?</p>	<p>1 Q. -- so how come there's one entry that shows you left 2 after midnight; do you remember that? Yes? 3 A. (In English) Yes. 4 Q. We don't need to turn up the transcript because I think 5 it should be uncontroversial. 6 You also talked about 29 September, when you said, 7 unless you're a ghost, how come you left without 8 entering; do you remember that? 9 A. (In English) Yes, yes. 10 Q. I suggest to you that it's one thing for there to be 11 an odd glitch here or there, about not recording 12 a traffic in one particular direction. It is another 13 thing for there to be a whole chunk of days when there 14 is no in/out entry at all. Do you accept that? 15 A. No, I do not agree. You can read the fourth-last column 16 or row, the fourth-last column, "Work day". So it 17 counted the days where there were in and out records. 18 We can look at the first row, "Man Chung Kwan", from the 19 1st to the 30th, almost -- he was there full day, so it 20 counted 26.5 work days, so it's more or less right. And 21 look at me, 5097, the second-last row, the 1st I was 22 there, the 4th, the 5th, the 7th, the 8th, that's what 23 the system said. So we can count, 1, 2, 3, 4, 6, 5, 7, 24 8, 9, 10 and 9.5 -- 15.5, it should be. Why is it 9.5 25 here?</p>

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1 Q. It could well have to do with whether or not on
 2 a certain day you attended for such a short time that it
 3 counted as a half-day.
 4 A. But it seems -- it's only on the 5th that I left at
 5 noon. The 8th I left in the morning. That's all. No
 6 more. Otherwise it's normal. Every day it's 7 or 8
 7 that I appear, one day it was 9, and another day it was
 8 3, so it's only four days where it's not normal.
 9 Q. 18th, you were there only a couple of hours?
 10 A. Mmm. Mmm. No, no what I would like to tell Mr Shieh is
 11 this. Mr Shieh, of course you have to believe in the
 12 information supplied to you by your client. But our
 13 company, we have been dealing with such in/out records
 14 for so many years, we know it's not reliable. If it's
 15 reliable, it won't be such a tough job for us to work
 16 out the pay.
 17 Q. So what you are saying, Mr Poon, is that when the in/out
 18 records show you are not in, you could be in; yes?
 19 A. That's right.
 20 Q. When the in/out record shows that you had left at
 21 a particular hour, you could have left earlier,
 22 correct -- about the midnight thing, you say you rarely
 23 left at midnight, so when it says you left at midnight,
 24 you say you must have left earlier. Is that what you
 25 say?

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1 A. For that day, about midnight, I definitely would not
 2 leave until midnight --
 3 Q. I know. So that is exactly what I --
 4 A. Please, let me explain. I sort of believe that the 9.5
 5 work days were correct, because I truly didn't always
 6 clock in or out, so I believe that. I, on the contrary,
 7 believe that for some days there was a manual input of
 8 information, and equally, for some days, manually
 9 information was removed, such that, as the record shows,
 10 no clock-in/clock-out record between the period of the
 11 19th and the 28th.
 12 So, simply put, I just don't believe this record.
 13 Q. Thank you. So, to answer me, when it says you left at
 14 midnight, you are saying that you were not there at
 15 midnight; you have left sometime before midnight
 16 already?
 17 A. Usually, I would leave before dinner, I would go home
 18 for dinner.
 19 Q. Thank you. So what it says about not being there is
 20 unreliable; correct?
 21 A. When I said 12.26, that is on 2 September -- sorry,
 22 that's the 7th, a Monday, 0026 hours, the time of
 23 leaving the site, definitely that isn't reliable. I'm
 24 not a worker. There is no need for me to stay all the
 25 way to 12.26 midnight at the site.

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1 Q. And if you look at yesterday's transcript at page 44.
 2 A. Yes.
 3 Q. Let me tell you. This is when Mr Pennicott asked you
 4 questions about the personnel chart attached to your
 5 witness statement; you remember that?
 6 A. Yes.
 7 Q. There is a question over when Mr Leung, the man whom you
 8 say left under some controversial circumstances -- and
 9 you were asked at line 6:
 10 "Find Mr Leung and tell me when he started.
 11 Answer: 18 August 2015 --
 12 Question: Precisely."
 13 And then you say:
 14 "That's records retrieved from the sign-in/sign-out
 15 records by our HR staff.
 16 Mr Leung is a special case, as I said, because it
 17 was until the stage when the police was called, we never
 18 tried to contact Mr Leung. Mr Leung left our company
 19 because of embezzlement.
 20 Question: So are you saying now that -- let's take
 21 this in stages -- the Leighton sign-in/sign-out record
 22 for China Technology which they have given to the
 23 Commission, and which we have been looking at from time
 24 to time with the other witnesses -- first of all, were
 25 you, China Technology, given a copy of those documents

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1 by Leighton?
 2 Answer: Yes, because we relied on this document as
 3 one of the documents for payroll."
 4 Do you see that?
 5 A. (In English) Yes.
 6 Q. So are you saying there that China Technology relied on
 7 these in/out records for the purpose of preparing its
 8 payroll to its workers?
 9 A. (In English) One of the documents.
 10 Q. But if it's unreliable then what use does it have?
 11 A. Let me say it one more time. First of all, I suspect
 12 that for the records submitted to the COI by Leighton --
 13 and I'm referring to this version of the document -- in
 14 relation to my 20-odd entries, I suspect that there is
 15 a deliberate change.
 16 Second, let me say in advance that after I finished
 17 giving evidence, I am going to give my sixth witness
 18 statement. In my witness statement, it is going to
 19 include the minutes of meetings between Leighton and its
 20 sub-contractors every week, and I am specifically
 21 referring to 1 February 2016, when Leighton and all the
 22 sub-contractors, not only our company, and the minutes
 23 of that meeting, 6.1, 6.2 -- I stand to be corrected but
 24 from my memory it should be 6.1, 6.2 -- again, Leighton
 25 instructed the sub-contractors' workers to attend

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<p>1 classes and also the sign-in/sign-out records, they were 2 inconsistent, and the document clearly shows us that in 3 fact, ever since the works began at the site, until the 4 diaphragm wall was completed, that is in around May 5 2015, when there were more workers involved, more 6 contractors, sub-contractors, including Chinat and 7 Fang Sheung, Leighton was under so much pressure because 8 at that time it wasn't possible to arrange for large 9 classes for the workers of sub-contractors in Kwai Chung 10 and the sub-contractors' workers had to line up for the 11 classes and each worker was charged \$400. 12 So as far as -- 13 Q. Can you look at the Chairman and Commissioner -- 14 A. (In English) Okay, sorry. 15 Q. -- when you give your evidence, because they have to 16 assess the veracity of your evidence. 17 Go ahead, continue. 18 A. Let me just say, on 1 February 2016, when Leighton had 19 a meeting with sub-contractors, according to the minutes 20 of the meeting, paragraphs 6.1 and 6.2, Leighton 21 complained that the sub-contractors did not comply with 22 the sign-in/sign-out records and did not attend classes. 23 Q. Have you finished? 24 A. (In English) Yes. 25 Q. What was my question?</p>	<p>1 witness statement but somehow you inserted the wrong 2 one -- 3 A. (In English) Yes. 4 Q. -- of 4 September? 5 A. (In English) Exactly. 6 Q. I'm not so horrible; I'm trying to help you, you see, 7 Mr Poon. 8 A. (In English) I don't think horrible. 9 Q. Can I ask you to look at certain correspondence or 10 letters, first of all a letter from Lo & Lo to your 11 solicitors, in bundle D2, page 1018. 12 A. (In English) Yes, I got it. 13 Q. Now, that is a letter from Lo & Lo -- 14 A. (In English) Yes. 15 Q. -- asking for information concerning certain 16 photographs, and it says: 17 "We refer to the photographs produced by your 18 client", and then "listed below". 19 Then let me tell you: D1/226 to 232 are the seven 20 photographs that you exhibited as exhibit 5 to your 21 Commission witness statement; right? Take it from me. 22 I've checked. 23 A. (In English) Okay. 24 Q. Because 226 to 232, there are seven, right, seven 25 numbers?</p>
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<p>1 A. (In English) Please repeat. 2 Q. My question was, if it was unreliable, what use does it 3 have for the purpose of preparing your payroll? 4 A. (In English) One of the documents. 5 Q. Thank you. Can I move on? 6 Remember yesterday, when Mr Pennicott took you 7 through the seven photographs that you exhibited to your 8 witness statement, he pointed out that one of them was 9 actually taken on 4 September. 10 A. Mmm. 11 Q. And you said, "Oh, it was inserted by mistake." 12 A. (In English) Yes. 13 Q. So in fact that one of 4 September was not actually 14 given to the police either. 15 A. At that time, what I said was that photograph belonged 16 to another series of photographs. 17 Q. I know, but I'm trying to help because I suspect what 18 happened was you say you mistakenly put in the 19 4 September photograph as your exhibit in your witness 20 statement. I suspect that if you look at D1/767 -- 21 A. (In English) Yes. 22 Q. Now, this one was not attached to your Commission 23 witness statement, but was among the seven that was 24 given to the police. So could it be that you actually 25 had wanted to include this one in your Commission</p>	<p>1 A. (In English) Okay. 2 Q. So there are seven photographs in your Commission 3 witness statement? 4 A. Mmm. Mmm. 5 Q. D1/766 to 775 were the seven photographs attached to the 6 police interview record. Do you follow me? 7 A. (In English) Okay. 8 Q. Now, these two batches of photographs, six of them 9 coincide. Do you understand? 10 A. (In English) Yes. 11 Q. Then, of course, in D1/226 to 232, there is one, the odd 12 one out, which was 4 September. 13 A. (In English) The second one. 14 Q. Then 766 and 775, we have identified what we suspect to 15 have been what you intended to be the correct 16 photograph. 17 A. (In English) A series of photos. 18 Q. Right. Thank you. 19 The questions asked were -- you were asked: 20 "Original digital version of the photographs have 21 been provided. With reference to the relevant pages in 22 bundle D1, please provide the information requested 23 below: 24 (1) Identify the person(s) who took each of the 25 photographs.</p>

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<p>1 (2) Identify the device(s) used to take each of the 2 photographs. 3 (3) Identify the owner of the device(s) listed under 4 (2) above. 5 (4) Confirm whether the device(s) may be made 6 available for inspection by other involved parties ...", 7 et cetera. 8 Do you see that? 9 A. (In English) Yes. 10 Q. So they were asking for who took which photograph and 11 what device. 12 Can you turn to D2/1054. 1053 actually is the 13 starting page. It talks about Dropbox and your 14 company's system of keeping photos on Dropbox. 15 But the answer actually came at the next page. 16 Sorry, can we look back at 1053: 17 "In the Hung Hom ... project, our client discovered 18 duplicate files in mid-September 2018 to early October 19 2018, which we subsequently deleted from our server. 20 The remaining number of photos and videos ... are 21 approximately 21,718." 22 Do you see that? 23 A. (In English) Yes. 24 Q. I'll come back to that later, but at 1054, paragraph 5: 25 "At the time the photographs were taken (September</p>	<p>1 4 September letter, it was taken by a Huawei phone, the 2 metadata analysis showed that; yes? 3 A. Mmm. Mmm. 4 Q. But your solicitors did not actually then list out any 5 of the other photographs supposed to have been taken on 6 22 September -- 7 A. Mmm. 8 Q. -- as having been taken by you on your Sony phone. 9 A. Mmm. 10 Q. Right? 11 A. Mmm. 12 Q. Paragraph 8 is the sum total of your solicitors' 13 response in relation to who took what photos. And your 14 solicitor, among the two clips that we are interested 15 in, the seven in your Commission witness statement and 16 the seven in your police statement, only identified the 17 one taken on the 4th. 18 So does it mean that you did not take any 19 photographs, among those that we have looked at, on the 20 22nd, because your solicitor did not identify any? 21 A. I did. 22 Q. But your solicitor did not identify any in this letter. 23 A. (In English) No, no, no. It is a status as of 24 24 October. 25 (Via interpreter) In fact, about identifying photos,</p>
<p>Page 138</p> <p>1 2015), our client had around 20 managerial engineering 2 staff members ... Only 9 were currently working ... 3 unable to identify each individual responsible for 4 uploading the photographs. 5 6. Our client's existing 9 staff members all 6 confirmed that the smartphones they were using in 7 September 2015 had been traded in second-hand shops for 8 new phones. This was only a natural process. Some of 9 them have even changed their phones for 2 to 3 times 10 already since September 2015. 11 7. As such, our client is unable to provide the 12 original smartphones for inspection. Nevertheless, to 13 check whether the photographs are genuine, one can 14 easily check the metadata of the original files which 15 has been provided to the Commission. 16 8. Upon investigation, our client is able to 17 identify, out of the photographs, those that have been 18 taken by Mr Poon, using his Huawei Ascend Mate 7. They 19 are ..." 20 Then we see a series of page numbers. D227 is the 21 one dated 4 September -- 22 A. Mmm. 23 Q. -- which the metadata analysis showed to have been taken 24 by a Huawei telephone. 25 Do you remember we looked at that yesterday? The</p>	<p>Page 140</p> <p>1 the investigation is still going on. Why, on the 24th, 2 we all of a sudden replied by way of this letter -- 3 that's because, at the time when we were listening into 4 the hearing, we heard you accuse us of refusing to 5 provide this information. So, at the time, we provided 6 the most updated information. In fact, when I explained 7 the Xperia Z2 camera, that camera was placed at the 8 site. Not just me but several others in the office 9 could use this camera phone to take pictures, and there 10 were a lot of photos taken on the phone. 11 I could not really identify three years ago who took 12 which photos, but I recall, in particular, Joe tried to 13 stop me from taking these seven photographs. I also 14 told Mr Ian Pennicott. That is why I could tell that 15 these seven photos were taken by me. 16 Q. But none of those dated the 22nd were listed in 17 paragraph 8 of your letter. 18 A. In fact, after 24 October, we could confirm that, but 19 before 24 October we were still trying to deal with the 20 41 photos in one go, with some duplications. We were 21 trying to give a response in one go. We were trying to 22 respond that we are unable to identify this and that, 23 and this could be certain photos taken by certain 24 people, and these are the photos we can confirm. But 25 because of the questions put to us, that we did not</p>

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<p>1 reply in writing, we then provided what we could confirm</p> <p>2 in this letter, but we never said that these photos were</p> <p>3 taken by another person or anything else. In fact,</p> <p>4 I was still looking into the matter.</p> <p>5 Q. But, Mr Poon, 227 is one of -- 227 is right in the</p> <p>6 middle of -- well, not in the middle -- 227 is somewhere</p> <p>7 between 226 and 232, correct, numerically, on a number</p> <p>8 line; yes?</p> <p>9 A. Yes, yes.</p> <p>10 Q. To identify 227, you've got to have gone through 226,</p> <p>11 227, 228, 229, all the way down to 232; correct?</p> <p>12 A. Right. Correct.</p> <p>13 Q. If you have indeed taken photographs on 22 September,</p> <p>14 you would have seen 226, 228, 229, and then said in this</p> <p>15 letter, "226 was Huawei on the 4th, the others were Sony</p> <p>16 Xperia on the 22nd"?</p> <p>17 A. Apart from Sony Xperia, there were other phones, not</p> <p>18 just that one, but for 227 and other photos, at the time</p> <p>19 I discovered that they came from a totally different</p> <p>20 series, capturing different places.</p> <p>21 For 227, we were shooting the vertical couplers in</p> <p>22 particular. For 222, 226, 232, for that series,</p> <p>23 originally it was supposed to capture the couplers</p> <p>24 between the retaining wall and the track slab, and it</p> <p>25 also showed how clearly we distinguish these photos.</p>	<p>1 Then they said I was late 76 minutes.</p> <p>2 MR SHIEH: It's quite late in the day to chase down a number</p> <p>3 point like this, and I can move on to the next topic,</p> <p>4 but the next topic would take a little bit of time, so</p> <p>5 perhaps it's time for us to call it a day, Mr Chairman.</p> <p>6 CHAIRMAN: Yes. It's just one minute to 5 o'clock, so</p> <p>7 that's fine. Thanks very much indeed.</p> <p>8 Mr Poon, again, the normal reminder. You are in the</p> <p>9 middle of giving your evidence. All right? Thank you</p> <p>10 very much.</p> <p>11 Tomorrow morning, normal time. Thank you.</p> <p>12 (5.00 pm)</p> <p>13 (The hearing adjourned until 10.00 am the following day)</p>
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<p>1 Q. Well, Mr Poon, could it be that you did not take the</p> <p>2 Sony photographs on the 22nd; your mind was fixated with</p> <p>3 your story that you took photos on the 22nd with</p> <p>4 a Huawei, so that when you gave instructions to your</p> <p>5 solicitors to list out photographs, you simply had not</p> <p>6 told them, "Oh, hang on, I actually used a Sony phone to</p> <p>7 take photographs"? Is that what happened, and that's</p> <p>8 why your solicitors simply did not count any photographs</p> <p>9 using Sony?</p> <p>10 A. In our discussions with --</p> <p>11 Q. You don't need to tell us actually what transpired</p> <p>12 between you and your lawyers.</p> <p>13 A. (In English) No.</p> <p>14 Q. It's privileged, I have to say that.</p> <p>15 A. (In English) No. No.</p> <p>16 Q. So you're not answering?</p> <p>17 A. (In English) I said your allegation is not -- it's not</p> <p>18 true.</p> <p>19 Q. It's not true? Okay. Fine.</p> <p>20 Could we come back to one small point about the</p> <p>21 sign-in/sign-out records. C8/5720.</p> <p>22 A. Yes.</p> <p>23 Q. You said that in the entire month of September you</p> <p>24 worked for 10.5 days, and it only showed 9.5 here?</p> <p>25 A. I said I worked 15.5 days, and now they indicate 9.5.</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 MR POON CHUK HUNG, JASON (on former oath in Punt) ...2</p> <p>4 Examination by MR PENNICOTT (continued)2</p> <p>5 Cross-examination by MR SHIEH109</p>