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<p>1 Monday, 17 June 2019</p> <p>2 (10.02 am)</p> <p>3 MR CLAYTON: Good morning, members of the Commission.</p> <p>4 CHAIRMAN: Yes.</p> <p>5 MR CLAYTON: I think it's my first witness, Mr Yueng, who's</p> <p>6 going to give evidence in Cantonese, I think.</p> <p>7 MR YUENG WAI HUNG, RON (sworn in Cantonese)</p> <p>8 (All answers given via simultaneous interpreter</p> <p>9 except where otherwise specified)</p> <p>10 Examination-in-chief by MR CLAYTON</p> <p>11 Q. Mr Yueng, please sit down.</p> <p>12 I believe you have provided three further witness</p> <p>13 statements for the Commission of Inquiry, your second,</p> <p>14 third and fourth statements; correct?</p> <p>15 A. Correct.</p> <p>16 Q. I think you already provided your first witness</p> <p>17 statement in the earlier part of the Commission of</p> <p>18 Inquiry; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Could we then go to look at your second witness</p> <p>21 statement, at GG1, page 26, please.</p> <p>22 Is that the first page of your second witness</p> <p>23 statement?</p> <p>24 A. Correct.</p> <p>25 Q. That, I think, deals with the NAT area. Is that right?</p>	<p>1 A. Correct.</p> <p>2 Q. Could you go to GG1, page 328, please. Is that your</p> <p>3 signature on your fourth witness statement?</p> <p>4 A. Correct.</p> <p>5 Q. Is your fourth witness statement true?</p> <p>6 A. Correct.</p> <p>7 Q. Are those the witness statements -- or are those witness</p> <p>8 statements the evidence you wish to present before the</p> <p>9 Commission of Inquiry, in this part of the Commission?</p> <p>10 A. Yes.</p> <p>11 MR CLAYTON: Would you stay there, please. You will be</p> <p>12 asked questions by other people.</p> <p>13 Examination by MR PENNICOTT</p> <p>14 MR PENNICOTT: Good morning, Mr Yueng.</p> <p>15 A. Good morning.</p> <p>16 Q. Thank you, once again, for coming to give evidence to</p> <p>17 the Commission. I think you know how it works. I get</p> <p>18 to ask some questions first. I have a few but not</p> <p>19 a great many. Then, if anybody else wishes to ask you</p> <p>20 questions, they will do, and if Mr Clayton wishes to ask</p> <p>21 you any questions at the end, he can do that, and as you</p> <p>22 know at any time, either the Chairman or Prof Hansford</p> <p>23 can ask you some questions as well.</p> <p>24 Mr Yueng, what I'd like to do first is just a bit of</p> <p>25 a recap, first of all on your role at Pypun, and then,</p>
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<p>1 A. Correct.</p> <p>2 Q. Then could you go to GG1, page 50, please, or be taken</p> <p>3 to it.</p> <p>4 Is that your signature there on your second witness</p> <p>5 statement?</p> <p>6 A. Yes.</p> <p>7 Q. Is there a corrigendum to that second witness statement</p> <p>8 at GG1, pages 51.1 and 51.2?</p> <p>9 A. Correct.</p> <p>10 Q. Now, with the corrigendum, is your second witness</p> <p>11 statement true?</p> <p>12 A. Yes.</p> <p>13 Q. Right. Could you then go to GG1, page 285, please.</p> <p>14 Is that the first page of your third witness</p> <p>15 statement?</p> <p>16 A. Correct.</p> <p>17 Q. Does that deal with the SAT area?</p> <p>18 A. Correct.</p> <p>19 Q. And is your third witness statement true?</p> <p>20 A. Correct.</p> <p>21 Q. Then could you go to GG1, page 326, please. Is that the</p> <p>22 first page of your fourth witness statement?</p> <p>23 A. Correct.</p> <p>24 Q. And this witness statement deals with the HHS area; is</p> <p>25 that correct?</p>	<p>1 secondly, in relation to the contractual context in</p> <p>2 which Pypun carried out its work.</p> <p>3 A. Understood.</p> <p>4 Q. We know that you are a director of Pypun, and we know</p> <p>5 that Pypun has principally two teams, if you like, in</p> <p>6 relation to the SCL project. That is a monitoring and</p> <p>7 verification, or M&amp;V team on the one hand?</p> <p>8 A. (In English) M&amp;V team and BSRC team, right?</p> <p>9 Q. And the BSRC team on the other.</p> <p>10 And you were involved in the SCL project as the</p> <p>11 leader, as I understand it, of the BSRC team until</p> <p>12 January of this year. Is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. But you tell us that in January this year the BSRC team</p> <p>15 was reduced in size and you joined the M&amp;V team, as</p> <p>16 I understand it, although you still provide some support</p> <p>17 for the existing BSRC team. Have I got that right?</p> <p>18 A. Correct.</p> <p>19 Q. Now, although you were involved primarily with the BSRC</p> <p>20 team before January this year, your witness statements</p> <p>21 cover matters in relation to both teams, and I assume</p> <p>22 you have a general knowledge of the operation of both</p> <p>23 teams. Would that be fair?</p> <p>24 A. Yes.</p> <p>25 Q. Good. Now, can we just remind ourselves, as I indicated</p>

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<p>1 we would, about the contractual context of Pypun's 2 operations. Could we be shown, please, the contract, 3 original contract of engagement of Pypun. That requires 4 us to go back to the original files, at G9/7638. 5 We see the front sheet here, Mr Yueng. If we could 6 please go to page 7642, and scroll down, please. This 7 is the memorandum of agreement. And we remind ourselves 8 that the agreement comprises, essentially, three 9 separate parts. That is, the brief, the conditions and 10 the schedule of fees. Do you see that, Mr Yueng? 11 A. Yes. 12 Q. If we could please go to page 7646. We see this is the 13 start of the first document, that is the brief. If we 14 go to 7648, we see the table of contents set out there. 15 If we could please go to 7653, we remind ourselves 16 at clause 3.1, at the bottom of the page, under the 17 heading, "Objectives of the Assignment", that: 18 "The overall objective of the Assignment is to 19 provide monitoring and verification services in relation 20 to the work undertaken by MTR (including submissions by 21 its consultants, contractors or agent to MTR) during the 22 construction, testing and commissioning phase of the 23 project so as to provide assurance that the MTR's 24 obligations stated in the EAs for the SCL advance works 25 and construction phases have been properly fulfilled."</p>	<p>1 Q. Right. 2 Now, with that introduction, could I ask you, 3 please, to go to paragraph 16 of your second witness 4 statement. That's the first witness statement for the 5 purposes of this part of the Inquiry. That's at GG1/29. 6 Where you say: 7 "As mentioned in Mr Mak's statement, Pypun's work 8 adopted a risk-based approach (and necessarily had to, 9 because [of] the vast scope of potential work to be 10 carried out)." 11 And there's an expansion of the risk-based approach 12 set out in that paragraph. 13 Then you refer to the second paragraph of the 14 document you've referred to in paragraph 17. Then you 15 say this: 16 "Page 7 of the monitoring plan (towards bottom of 17 page) stated that the 'actual management of the SCL 18 project risks will be undertaken by MTR.'" 19 Then you make reference to a number of passages in 20 the monitoring plan. 21 Could we please look at the monitoring plan, for 22 which purpose I'm afraid we will need again to go to the 23 original files, and this time K1 at page 147. 24 This is the front sheet of the monitoring plan, 25 Mr Yueng. If we could please then go to page 156.</p>
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<p>1 Then a sentence I know is important to Pypun: 2 "The monitoring and verification shall focus on 3 cost, programme and public safety of the Project." 4 So that's the M&amp;V part of the assignment. 5 Then if we go to the top of the page, at 3.2 -- it's 6 the next page: 7 "Provision of professional services in respect of 8 the assessment of building submissions for compliance 9 with the BO and other relevant ordinances, regulations 10 and standards." 11 So that's the BSRC team referred to there. So 12 that's the context, Mr Yueng. 13 A. Yes. Understood. 14 Q. Right. If we could then just go to 7655, we have 15 a heading at number 5, "Deliverables", and if we could 16 scroll down just a bit further, please -- yes, that will 17 do for my purposes now -- the three, perhaps, most 18 relevant documents, certainly that I'm concerned about 19 this morning, Mr Yueng, although we won't be looking at 20 them in any particular detail, are number 2, the 21 inception report; number 5, the monitoring plan; and 22 number 7, the verification plan. 23 Do you see those, and no doubt you will remember all 24 of those? 25 A. Yes, I remember what they are.</p>	<p>1 Sorry, let's go back to 155, just to put this in 2 context, otherwise we are picking it up halfway through. 3 There's a heading "Approach" in the monitoring plan, 4 "General", and it says: 5 "The primary driver to focus our work on this 6 extensive project, with numerous contracts, will be to 7 identify the risks that may impact the cost, programme 8 and public safety. The fact that the project programme 9 is tight and that there are a number of interfaces with 10 the existing operating railway that need to be managed 11 will only lead to an increase in potential risks." 12 Then the important part for my purposes now is this: 13 "There are some readily identified key risks, for 14 example", and then can I draw your attention to the 15 second bullet point, which I appreciate you mention in 16 paragraph 14 of your witness statement, where it says 17 this: 18 "Contract interfaces, both internal and external, to 19 the SCL project". 20 Do you see that, Mr Yueng? 21 A. I see that. 22 Q. If we go to page 162 -- sorry, again, just to make sure 23 there's no question as to where we are, if you could go 24 back to 161, please, towards the bottom, thank you -- 25 heading, "Monitoring plan":</p>

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<p>1 "Our monitoring will be on a high level basis with 2 a focus on the following activities". 3 Then over the page, please, "Monitoring by review of 4 documents", and then there's a heading at 4.1.2, 5 "Contract documents", and if you could scroll down to 6 the end of that, please -- that's fine, thank you -- do 7 you see the last sentence of that last primary 8 paragraph, where it says: 9 "A key aspect of this project is the interfaces 10 between contractors, both internal and external to the 11 project, and we will review this aspect carefully." 12 Do you see that, Mr Yueng? 13 A. I see that. 14 Q. Right. Would you agree, in the light of those 15 provisions we've just looked at, or observations in the 16 monitoring report that we've just looked at, that the 17 contract interface between contract 1111 and 1112 is 18 a key risk? 19 A. I do not agree that that is a key risk. 20 Q. First of all, then, let's break it down: do you agree 21 it's a contract interface? 22 A. Yes, it is a contract interface. 23 Q. Right. So why is it not a key risk? 24 A. Earlier, you saw that the stitch joint was only 2 metres 25 wide or the width of a table. I think you should have</p>	<p>1 regard to civil contract interfaces, indeed there would 2 be risks. But since it is a civil contract, the MTR was 3 the project manager for the entire line; they would have 4 the knowledge or would have the steps in place to 5 exchange information. In the SCL project, the key 6 interface that might pose a risk for us would be the 7 interface between SCL and the operating railways. 8 Q. All right. You see, what I'm trying to understand, 9 Mr Yueng, is whether the conclusion, the evidence that 10 you are giving, that the stitch joints were not a key 11 issue or a key risk, is a conclusion that you have 12 reached after the event or one that you had reached 13 before the stitch joints constructed. Which is it? 14 A. Well, I had that conclusion before the stitch joint was 15 built. 16 Q. All right. Can I ask you this: are you aware that in 17 the 1112 contract, there is an interface requirements 18 specification? Were you aware of that? 19 A. I did not read the document myself, but when 20 I communicated with the design team of MTR, they said 21 that there was such a provision. 22 Q. Right. Was that, again, a document that you would have 23 seen before the stitch joints were constructed, or is 24 that something you've seen more recently? 25 A. I only recently read it. I did not read it before.</p>
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<p>1 seen a photo. The construction is simple and 2 straightforward. Also, at the risk register of the MTR 3 and the contractor, we did not think that there was any 4 risk attending the stitch joint or the construction 5 joint. Also, within the BSRC team, what we saw was that 6 for 1111 and 1112, MTR employed the same detailed design 7 consultant. So we saw that the interface risk was 8 actually quite low. 9 Further, when the stitch joint was built, with 10 regard to the part that was completed earlier for 1111, 11 Mr Fu of MTR already deployed 1112 personnel, so we 12 could see that whether it was the construction or 13 monitoring, the information was very sufficient and 14 there was no need for exchange of information because it 15 was done by the same team. 16 Therefore, I don't think there was a major risk or 17 impact. 18 Q. All right. Now, having recognised in the monitoring 19 plan, Mr Yueng, potentially at least, that contract 20 interfaces posed a key risk, did Pypun carry out 21 an exercise to determine which contract interfaces did 22 pose a key risk and which contract interfaces did not 23 pose such a key risk? Was that exercise actually 24 carried out? 25 A. Our staff did that. In such a massive project, with</p>	<p>1 Q. Right. Do you know whether Pypun itself would have 2 reviewed the 1112 contract and that specification in 3 particular? 4 A. No. Our service requirements did not include reading 5 the particular specifications of the contract, 6 particularly with regard to quality. 7 Q. You say "with regard to quality". This was an interface 8 specification, appearing in the 1112 contract and also, 9 we assume, the 1111 contract, because those are the two 10 contracts that were interfacing. So Pypun didn't play 11 a role in looking at that particular document, even 12 though the monitoring plan, as we've seen, identified 13 contract interfaces as a key issue or a key risk? Is 14 that right? 15 A. No, that's not what I meant. Earlier, we already 16 identified that in civil works, the interfaces or stitch 17 joints would pose a low risk. That is why we did not go 18 deep into the possible risk posed by stitch joints or 19 interfaces. 20 Q. All right. Understood. 21 So I think it must follow from that evidence, 22 Mr Yueng, that Pypun itself did not take any active 23 steps to consider the design and the detail of those 24 stitch joints. Is that right? 25 A. Because the risk was low, we did not feel that we should</p>

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<p>1 pay particular attention to it.</p> <p>2 Q. All right.</p> <p>3 Mr Yueng, just moving on -- in your witness</p> <p>4 statement, that's your second witness statement, at</p> <p>5 paragraph 12 -- that's at GG28 -- in the first sentence</p> <p>6 there you say:</p> <p>7 "Monitoring therefore does not relate to</p> <p>8 construction quality or construction record keeping."</p> <p>9 Then similarly in paragraph 36, under the general</p> <p>10 heading of "Verification", which we can see on page 31,</p> <p>11 you say, having reviewed a number of documents:</p> <p>12 "Such documents and risk groups are unrelated to</p> <p>13 construction quality or construction record keeping."</p> <p>14 So the same phraseology. So, in essence, both in</p> <p>15 relation to monitoring and verification -- two separate</p> <p>16 things, monitoring and verification -- you say neither</p> <p>17 of those obligations that you had related to</p> <p>18 construction quality -- and let's just pause there,</p> <p>19 construction quality. You were not engaged, as you say,</p> <p>20 in monitoring and verifying construction quality.</p> <p>21 That's my understanding of your position. Is that</p> <p>22 right?</p> <p>23 A. Yes, it's stated clearly in the brief.</p> <p>24 Q. Right. But would you agree with this proposition,</p> <p>25 Mr Yueng, that poor construction quality will lead to</p>	<p>1 something prior to their construction.</p> <p>2 Now, I've understood your position on that, but I'm</p> <p>3 just now raising, as it were, the bar, pointing out that</p> <p>4 \$50 million, apparently, was spent putting right these</p> <p>5 stitch joints, and presumably, but I don't know, there</p> <p>6 may have been programme implications as well, both of</p> <p>7 which, on the face of it, Pypun is interested in, cost</p> <p>8 and programme.</p> <p>9 A. Well, I mentioned earlier, at an early stage we saw that</p> <p>10 the risks for this stitch joint, interface joint, were</p> <p>11 lower, even though something happened and that we could</p> <p>12 not foresee.</p> <p>13 Q. All right. I've understood.</p> <p>14 Mr Yueng, so far as public safety is concerned, as</p> <p>15 I understand it -- and I think this is referred to in</p> <p>16 the inception report -- you say that it means safety to</p> <p>17 the public when the construction works for the project</p> <p>18 are being carried out and not the integrity of the</p> <p>19 permanent works.</p> <p>20 Is that it, in a nutshell?</p> <p>21 A. Yes. Correct.</p> <p>22 Q. And that definition, as I've tried to summarise, as</p> <p>23 I say, is contained in the inception report. I think</p> <p>24 you accept that. We don't need to look at it.</p> <p>25 But, as we perhaps saw earlier, the overall</p>
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<p>1 the necessity to carry out remedial works which will</p> <p>2 then have an impact on cost and programme; do you agree</p> <p>3 with that?</p> <p>4 A. Agree.</p> <p>5 Q. And so, for example, if three defectively constructed</p> <p>6 stitch joints give rise to remedial costs of</p> <p>7 \$50 million, is that not something that is a cost and</p> <p>8 something that you ought to be interested in?</p> <p>9 A. Our interest is that if something should happen, whether</p> <p>10 it's to do with quality or other aspects, then, in</p> <p>11 accordance with the contract, we are required to give</p> <p>12 advice on three aspects -- cost, programme and public</p> <p>13 safety -- to the RDO.</p> <p>14 Now, at this stitch joint, there were defective</p> <p>15 works, and on these three aspects we have already</p> <p>16 advised RDO. We do not have the obligations to find out</p> <p>17 defective works and we do not have the obligations to do</p> <p>18 quality supervision.</p> <p>19 Q. I understand that entirely, Mr Yueng, and certainly I'm</p> <p>20 not suggesting that you should have been there to spot</p> <p>21 these particular difficulties and these particular</p> <p>22 defects that arose.</p> <p>23 But what I am trying to understand is to what</p> <p>24 extent, perhaps, Pypun ought to have anticipated the</p> <p>25 stitch joints being key risks and should have done</p>	<p>1 objective of Pypun's or the high-level objective of</p> <p>2 Pypun's engagement was to provide assurance that MTR's</p> <p>3 obligations stated in the entrustment agreements for the</p> <p>4 SCL advance works and construction phases have been</p> <p>5 properly fulfilled.</p> <p>6 With your narrow definition, if I can call it that,</p> <p>7 Mr Yueng, of public safety, how is that high-level</p> <p>8 objective going to be achieved, if you are not looking</p> <p>9 at the position of the integrity of the permanent works?</p> <p>10 A. Can we go back to clause 3.1 of the brief?</p> <p>11 Q. Of course. 7653. It's in G9/7653.</p> <p>12 A. Now, in clause 3.1, line 3, in the middle, it's stated</p> <p>13 clearly:</p> <p>14 "(In English) ... during the construction, testing</p> <p>15 and commissioning phase of the Project ..."</p> <p>16 So, for our service, the scope is stated here.</p> <p>17 Q. And so you say that distinguishes the position from the</p> <p>18 finished product, is that right, the permanent works as</p> <p>19 ultimately constructed?</p> <p>20 A. Yes, correct. Yes. The finished works are the</p> <p>21 responsibility of the MTRCL.</p> <p>22 Q. Okay.</p> <p>23 RISC forms, Mr Yueng. Let's clear one thing out of</p> <p>24 the way. My understanding is that during the course of</p> <p>25 the carrying out of Pypun's works, it was never drawn to</p>

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<p>1 your attention, in relation to the 1112 contract, that 2 there was a problem about RISC forms. Is that right? 3 A. Yes, correct, until at the PSC meeting. I think it was 4 in December 2017. 5 Q. Right. And as I understand -- I think it's 6 paragraph 103 of your witness statement, that's at GG46, 7 under the heading "Request for inspection/test/survey 8 check (RISC) forms", you refer in paragraph 103 to 9 a technical memorandum and code of practice. 10 Then, if we can pick it up about seven or eight 11 lines from the bottom of 103, with the word 12 "Consequently", you say: 13 "Consequently, the documents that Pypun would audit 14 for its site audits for any area which was audited 15 (because these documents would be kept on site) would be 16 the documents produced under the site supervision plan 17 in respect of those works, ie the form A and form B 18 from the code of practice." 19 Do you see that, Mr Yueng? 20 A. Yes. 21 Q. Then you go on to say this: 22 "The RISC forms were not documents Pypun would have 23 been required to look at for any audit that was carried 24 out and so, if these areas had been audited, the RISC 25 forms would not have been looked at. Further, the RISC</p>	<p>1 A. Now, we received the RDO's request for us to do 2 additional service. It is for 1112 NAT, SAT, that is 3 1112, NAT, SAT and HHS, they want us to look at the 4 status of the RISC forms. 5 Q. I understand that they've asked you to look at the 6 status of the RISC forms, and you have produced a report 7 which we'll have a quick look at in a moment. But what 8 is your understanding as to why now you have been asked 9 to do that auditing exercise? 10 A. That's because, for the RISC forms, that's not within 11 the scope of our original service. As mentioned, for 12 M&amp;V, we don't need to consider the quality. In fact, in 13 the witness statement, it's explained that the RISC form 14 is a quality document. 15 As for the BSRC team, they are to help the BO team 16 in their work, and as I mentioned earlier, RISC forms 17 are not something needed by the BO team. Rather, it's 18 the site supervision record, that is the form A and B 19 mentioned just now, those are the forms needed by the BO 20 team. 21 Q. Yes. So why is it that the BO team is now so interested 22 in RISC forms, when previously neither Pypun was 23 required to look at them and the BO -- and we know that 24 RISC forms are not part of the BO process? So what's 25 the purpose? Why are we now looking at them?</p>
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<p>1 forms, were this a private building project, were not 2 documents that would be inspected by the BD to check 3 that the supervision had been carried out properly." 4 So your position is that you, Pypun, were not 5 required to look -- would not have been required to look 6 at the RISC forms, had an audit been carried out. But, 7 as I understand it, you have now been asked by the 8 government, under a separate contract, to look at and 9 carry out an audit in relation to the RISC forms on 10 contract 1112? 11 A. I don't know if there's some misunderstanding in the 12 interpretation. Could you please repeat your question? 13 Q. Yes, of course. You tell us in your statement that, had 14 you carried out an audit or audits during the course of 15 your works, when the contract works were being carried 16 out, you would not have been required to look at RISC 17 forms? 18 A. Correct. 19 Q. But you have now, under a separate contract or 20 a supplementary contract of engagement, been asked by 21 the government to do an audit exercise on contract 1112 22 in respect of RISC forms? 23 A. Correct, yes. That's the additional service. 24 Q. So what is your understanding of why now you have been 25 asked to look at those RISC forms?</p>	<p>1 MR CLAYTON: Excuse me, but does he really know why the BO 2 team -- isn't it actually appropriate to ask the BO team 3 in relation to this? 4 MR PENNICOTT: All right, I'll ask him: do you know why you 5 are being -- in fact that was my first question -- do 6 you know why you are being asked to look at these RISC 7 forms? 8 A. RDO asked us to look at these forms, because RDO wanted 9 to know, for the RISC forms in the possession of MTRCL, 10 in relation to NAT, SAT and HHS, the RDO would like to 11 know the status. They wanted us to do an independent 12 check and report back to them. 13 Q. All right. And what you've done is essentially 14 a statistical analysis of how many RISC forms there 15 perhaps should have been in any particular area and how 16 many RISC forms there are in fact in a particular area, 17 and also you have pointed out a number of irregularities 18 in the RISC forms that do exist. Is that broadly the 19 position, Mr Yueng? 20 A. Yes, correct, and that's what RDO asked us to do. 21 Q. All right. And from Pypun's perspective, that's seen as 22 additional services or extra services, because it is 23 regarded as a matter of quality, as I understand it, 24 which you say is not part of your original contract? 25 A. Correct.</p>

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1 Q. Understood. All right. 2 Can I ask you, please, to look at paragraph 107 of 3 your witness statement, at GG47. You have a heading 4 there, Mr Yueng, "QSP checklists", and the first 5 sentence reads: 6 "These checklists relate only to installation of 7 mechanical couplers." 8 You go on to say that under the approval letters, 9 there also had to be, on completion of the works, under 10 a particular contract, submission of a QSP. 11 "The QSP checklists for the works would be included 12 in that QSR. Once the QSR had been submitted, Pypun 13 would then consider the report and the checklists 14 supplied with it. The contract 1112 works have not yet 15 been completed. Consequently, the QSR has not been 16 provided", and you will, that is Pypun, consider the QSR 17 and the QSP when they are provided. 18 As I understand it, that is an exercise that would 19 happen after the contract is completed and when the 20 relevant submissions are made? 21 MR CLAYTON: Sorry, may I just interject there? I think the 22 QSP is provided earlier. It is the QSR that is provided 23 at the completion of the works. 24 MR PENNICOTT: The QSR, correct. 25 But the QSP checklists are also provided after	1 the use of couplers; would that be right? 2 A. (In English) Will you please repeat the question? 3 Q. Yes, I will. You have not been asked by the government 4 at any point during the course of the works with which 5 we are concerned in the NAT, the SAT and the HHS, to 6 date, to look at the question of the use of couplers in 7 any of those areas. Is that right? 8 A. Well, actually, yes. It was in June/July last year, 9 when we reviewed documents with regard to EWL slab, we 10 were waiting for other documents. And with regard to 11 construction of the NAT tunnel, we actually took a look 12 at the QSP of the NAT, and we saw the QSP checklist of 13 NAT, and there was no problem with that. 14 Q. Did you say reconstruction or remedial work at the NAT? 15 Is that what you were referring to? 16 A. That is correct. 17 Q. So you looked at the question of couplers in the narrow 18 context of the remedial works that were carried out to 19 the stitch joints; is that right? 20 A. That is correct. 21 Q. I understand. Okay. But apart from that context, there 22 is no other context in which Pypun has looked at the 23 incorporation of couplers into the works in the NAT, SAT 24 and HHS, only in relation to those remedial works? 25 A. Correct.
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1 completion; is that right? The QSP itself is obviously 2 provided earlier, but the QSP checklists are provided at 3 completion? 4 A. This depends on the arrangement of the MTR. 5 You talked about the completion of the project. You 6 should be talking about the part regarding couplers 7 instead of the entire project. 8 Q. All right. Yes. Sorry, you are quite right. I was 9 trying to focus on the question of couplers which you 10 refer to in "mechanical couplers", and in relation to 11 those we know that certainly where there are ductile 12 couplers, a quality supervision plan will be submitted 13 by MTR and Leighton? 14 A. Correct. 15 Q. But then what happens, when we get to the end of the 16 project, upon completion, a QSR, quality supervision 17 report, will include within it, as we saw in the first 18 part of the Inquiry, QSP checklists, and at that point 19 Pypun will review that documentation, as I understand 20 it. Is that right? 21 A. Correct. 22 Q. So does it follow that during the course of the works 23 and in the various areas that we are concerned with in 24 this part of the Inquiry -- NAT, SAT and HHS -- Pypun 25 itself has had no involvement with the whole question of	1 Q. Okay. 2 In various paragraphs of your second, third and 3 fourth witness statements, Mr Yueng, you -- and let's 4 just look at one while we are here, paragraph 111 at 5 GG48. You refer there, in the first sentence of 111, to 6 MTRC submitting, on or about 7 September 2017, to the BO 7 team a batch of material testing records for rebars. 8 Sorry, I should have said this section of your 9 statement is dealing with rebars. There's a heading at 10 the top of the page we can see, just to -- there we are. 11 "... a batch of material testing records for rebars, 12 which were passed on to Pypun. Pypun checked such 13 records in September 2017, and found them to be in 14 order." 15 Mr Yueng, you have a similar sentence in your other 16 two statements in relation to the SAT area and in 17 relation to the HHS area. Do you recall that? 18 A. I remember that. 19 Q. All right. To save me going to all three references. 20 I don't know whether you are aware of this, 21 Mr Yueng, but recently, quite recently, we have heard 22 evidence from Leighton that there are approximately 23 7 per cent of the rebar, under contract 1112, which were 24 not tested, apparently, by the HOKLAS laboratory. Is 25 that something you are now aware of, Mr Yueng?

Page 25	Page 27
<p>1 A. I am aware of it now. They informed MTR.</p> <p>2 Q. Right. So whilst you looked at the records that you</p> <p>3 were given in the three different areas which you refer</p> <p>4 to in your witness statement, was there no means of</p> <p>5 picking up that certain rebar had not been tested, or</p> <p>6 were you just looking at the documents you were given</p> <p>7 and ticking them as being satisfactory?</p> <p>8 A. By September 2017, they submitted the rebar test</p> <p>9 records, and we found that they were in order. The 1112</p> <p>10 contract works have not been completed, and we could not</p> <p>11 come to a judgment as to whether all the rebar testing</p> <p>12 records have been submitted to us.</p> <p>13 When we said that they were in order, we were</p> <p>14 referring to those that were submitted.</p> <p>15 Q. Right. So, if that's right, as I understand it, and</p> <p>16 going back to our brief discussion about the QSR</p> <p>17 a moment ago, when completion is achieved and there is</p> <p>18 presumably, what, a final submission of all the</p> <p>19 documentation, and so the government, no doubt with your</p> <p>20 assistance, would then carry out, as it were, a final</p> <p>21 overall check of the position in relation specifically</p> <p>22 to the rebar and no doubt lots of other matters as well;</p> <p>23 is that right?</p> <p>24 A. Correct.</p> <p>25 Q. And so, if there was rebar or there is rebar that has</p>	<p>1 A. Yes. Yes. That's correct.</p> <p>2 Q. Right. And you, Pypun, assisted the RDO in</p> <p>3 investigating into the stitch joints, and was that you</p> <p>4 personally, Mr Yueng, or were there others in Pypun that</p> <p>5 did that work?</p> <p>6 A. Well, actually, Pypun did not assist in investigating</p> <p>7 into the causes. Pypun assisted RDO to assess the</p> <p>8 remedial proposal submitted by MTR and the other</p> <p>9 documents. I personally was involved in assessing the</p> <p>10 remedial proposal and also design amendments.</p> <p>11 Q. Right. And you personally didn't witness any of the</p> <p>12 original stitch joint work before it had been</p> <p>13 demolished; is that right, Mr Yueng?</p> <p>14 A. No, I didn't see that.</p> <p>15 Q. All right.</p> <p>16 And also in relation to the stitch joint remedial</p> <p>17 work, Mr Yueng, you will be aware -- because I think you</p> <p>18 possibly did the work yourself -- you were asked by the</p> <p>19 government to analyse the documentation that MTR and</p> <p>20 Leighton had submitted in relation to the stitch joint</p> <p>21 remedial works. Do you remember that?</p> <p>22 A. Yes, I remember that.</p> <p>23 Q. And you made a number of comments in a table about</p> <p>24 certain outstanding items and certain discrepancies that</p> <p>25 emerged from the documentation. Do you remember that?</p>
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<p>1 not been HOKLAS tested, you would have, what, hoped to,</p> <p>2 if it wasn't -- if it hadn't been drawn to your</p> <p>3 attention, would you be able to pick that up on that</p> <p>4 final check?</p> <p>5 A. Technically, no, because the documents would be</p> <p>6 submitted by CP of MTR, and then, if they submit</p> <p>7 a report, we will check the report. If there is no</p> <p>8 report, we cannot check any report.</p> <p>9 Under the Buildings Ordinance, there is this</p> <p>10 mechanism. You can see from my statement, in</p> <p>11 paragraph 110 on GG48, where I state that when the CP</p> <p>12 submits rebar test reports or other materials regarding</p> <p>13 testing of rebars, they must make a confirmation. And</p> <p>14 you could see the four confirmations here. At (i), it</p> <p>15 is said that all steel reinforcing bars should have been</p> <p>16 tested. And the test specimens should cover all the</p> <p>17 rebars used. This is not any confirmation. It is</p> <p>18 a confirmation to be done by the CP so it has certain</p> <p>19 status.</p> <p>20 Q. Understood. Yes. All right.</p> <p>21 Can I just ask you a few questions related to the</p> <p>22 stitch joints. As you mentioned earlier and as you</p> <p>23 mention in your witness statement, my understanding is</p> <p>24 that Pypun first became aware of the stitch joint</p> <p>25 problem probably in about March 2018. Is that right?</p>	<p>1 A. Can I please take a look at which table you're referring</p> <p>2 to?</p> <p>3 Q. Yes, of course. I think it's DD10. If we go to</p> <p>4 page 12410, this is an email from you, I think,</p> <p>5 Mr Yueng, to Lok Pui Fai of the BD, do you see that, on</p> <p>6 31 May?</p> <p>7 A. Yes, I see it.</p> <p>8 Q. If we go to page 12414 -- this is one of the tables</p> <p>9 I was referring to, Mr Yueng -- this relates to concrete</p> <p>10 cube test reports, and we can see in the "Remarks"</p> <p>11 column that those are the points that you effectively</p> <p>12 have picked up on your analysis of the documents that</p> <p>13 have been provided to you by MTR and Leighton; do you</p> <p>14 see that?</p> <p>15 A. Yes, I see it.</p> <p>16 Q. The other table starts at 12417, and again this is</p> <p>17 an analysis that you've done in relation to the steel</p> <p>18 documents, as you call them, that's the checklist for</p> <p>19 steel documents, and again you have picked up various</p> <p>20 points by referring to "O/S", which I understand is</p> <p>21 "outstanding"?</p> <p>22 A. Correct.</p> <p>23 Q. And trying to cut through this, Mr Yueng, what has</p> <p>24 happened -- I don't know if you have been keeping up --</p> <p>25 is that both MTR and Leighton have responded to your</p>

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<p>1 observations and provided some clarifications and some 2 more documents to the government and indeed to the 3 Commission -- perhaps actually just to the Commission; 4 I'm not sure if it's gone to the government -- and have 5 you had a chance to review any of that further material? 6 And I probably should say: have you been asked to review 7 that further material? 8 A. I remember it was on Friday that through our lawyer we 9 received from the MTRCL and Leighton their clarification 10 to my observations. But it was rather late in the day 11 and also I had to prepare for the hearing this morning, 12 so I only looked at it briefly. 13 Q. It's no criticism at all, Mr Yueng, at all. I just 14 wanted to make sure that you are aware of what has now 15 happened. So it may be you will be asked to look at 16 that latest material in due course and perhaps even let 17 us have your observations on it. 18 A. Yes, I received from Mr Lok of the BO team an email, 19 from him, that is. He has asked me to look at the 20 further clarification and the further documentation. 21 MR PENNICOTT: Right. That's very helpful, Mr Yueng. Thank 22 you very much. 23 COMMISSIONER HANSFORD: Is that something we've seen, 24 Mr Pennicott? What you are referring to now that 25 happened on Friday, is that something --</p>	<p>1 "It could be seen that the focus is again on cost 2 compliance, programme compliance and public safety 3 compliance, and audits would be carried out on each of 4 the one hundred contracts identified [in] the 5 verification plan. In fact, since the verification plan 6 was issued, about an additional 240 contracts have been 7 let, making in total about 340 contracts -- see 8 paragraph 80 below." 9 As I understand it from that paragraph, Mr Yueng, 10 what you are saying is your starting position under the 11 M&amp;V consultancy contract was monitoring and verifying 12 approximately 100 different contracts, is that right, 13 and that has increased to about 340? 14 A. Correct. 15 Q. Can I ask you this. Given that very significant 16 increase in the number of contracts, what happened about 17 your resources? Did you have to engage many more 18 people, recruit lots of people? How did it work, given 19 this vast increase in the number of contracts, Mr Yueng? 20 A. Now, during the M&amp;V tendering stage, as you said, we saw 21 about 100 contracts. From experience, we knew there 22 would be an increase. So, when we submitted our tender, 23 we would have anticipated that the number of contracts 24 would be more than 100. That's why we have already set 25 aside staff and resources to cope with the increase in</p>
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<p>1 MR PENNICOTT: It's in the bundle. Whether you have seen it 2 or not is a different matter. 3 COMMISSIONER HANSFORD: I shall look in the bundle. 4 MR PENNICOTT: The MTR's documents are at BB16/9774, and 5 Leighton's responses are at CC11/7088. 6 I think, in the way of these things, sir, disputes 7 and discrepancies and differences are narrowing, I hope. 8 COMMISSIONER HANSFORD: Okay. 9 MR PENNICOTT: Sir, I am told by Mr Lam that back in the 10 transcript at some point earlier this morning -- we'll 11 pick it up later -- Mr Yueng used the phrase "risk 12 register". I think he was using that in the sense of 13 R-I-S-K. 14 COMMISSIONER HANSFORD: Yes. 15 MR PENNICOTT: But of course, because we've been using RISC 16 forms and we know the MTR has a RISC, R-I-S-C, register, 17 it's come out incorrectly on the transcript. We'll get 18 that sorted out in due course. 19 COMMISSIONER HANSFORD: It's confusing. 20 MR PENNICOTT: Mr Yueng, finally from me, can I just ask you 21 to look at your corrigendum to your witness statement 22 that you were taken to earlier. So that is at page 51.1 23 in GG1. 24 Indeed, could we be shown 51.2, please. 25 In that paragraph 32, Mr Yueng, you say:</p>	<p>1 contracts at each phase. 2 Now, for some contracts, they are of a bigger scale, 3 others smaller contracts, so during different times we 4 would adjust our manpower to cope with the work. Since 5 the start of the M&amp;V contract, we were never short of 6 staff. 7 Q. I mean, was there an increase in staff, Mr Yueng, or 8 not, to cater for this very significant rise in the 9 number of contracts you had to monitor and verify? 10 A. Yes. Yes. Now, for the cost programme or safety 11 programme, we have increased staff. Some were not 12 full-time staff, some were part-time. Some contracts 13 were bigger, some were smaller. So we would deploy our 14 staff flexibly internally, to cope with the work demands 15 at each phase of the M&amp;V contract. 16 Q. And were you paid an increased fee? I don't want to 17 know what it was, but were you paid an increased amount 18 of remuneration as a consequence of all of this? 19 A. Unfortunately, no. 20 Q. I thought you would say that! 21 I said that was the last topic. There's just one 22 other thing I wanted to ask you about, Mr Yueng. We'll 23 hear from Mr Chiu in a moment, I think, but we know that 24 you've entered into, over the last year or so, a number 25 of supplementary agreements with the government to carry</p>



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1 out various tasks, and we touched on one of them  
 2 earlier, in relation to the RISC forms. Do you  
 3 remember?  
 4 A. Yes, I remember that.  
 5 Q. And in relation to those various supplementary  
 6 agreements, have you had any involvement with the expert  
 7 advisory team of the government, EAT as they are  
 8 sometimes called?  
 9 A. I had no involvement myself. My colleague, Mr Chiu, was  
 10 involved.  
 11 MR PENNICOTT: Okay. Perhaps I'll ask him.  
 12 Thank you very much, Mr Yueng.  
 13 Sir, I have no further questions.  
 14 CHAIRMAN: Thank you.  
 15 MR TSOI: I have no questions.  
 16 CHAIRMAN: Thank you.  
 17 MR CHANG: No questions from Leighton.  
 18 MR BOULDING: No questions, sir. Thank you.  
 19 CHAIRMAN: Thank you.  
 20 MR CHOW: Mr Chairman and Prof Hansford, there is  
 21 a disagreement between the government and Pypun on the  
 22 question of whether the monitoring and verification of  
 23 the quality of the works and the compliance with the  
 24 RISC form system forms part of the original scope of  
 25 Pypun under the M&V agreement.

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1 However, these issues only turn on interpretation of  
 2 the contract, and they are a matter of submission. So  
 3 we take the view that it would not be helpful for us to  
 4 cross-examine Pypun's factual witnesses on matters of  
 5 interpretation of the contract, but we reserve our right  
 6 to make submissions in the government's closing. On  
 7 that basis, we have no questions for Mr Yueng.  
 8 CHAIRMAN: Good. Yes. That's sensible, if it's a matter of  
 9 submission which clearly -- if we are looking to how you  
 10 properly interpret something. Thank you.  
 11 COMMISSIONER HANSFORD: I have one question for Mr Yueng  
 12 Mr Yueng, in paragraph 120 of your second witness  
 13 statement -- perhaps we can go to that, on GG49 -- let's  
 14 look at this paragraph. You say:  
 15 "I would further respectfully suggest that the MTRCL  
 16 establish coordination meetings and workshops to  
 17 encourage additional communication and exchange of views  
 18 between the design manager and construction manager (or  
 19 equivalent) of each of the interfacing contractors (or  
 20 interfacing teams of the same contractor) on design  
 21 assumptions, requirements as to construction,  
 22 supervision and records, as well as the responsibilities  
 23 of the different contractors (or interfacing teams of  
 24 the same contractor) in relation to interfacing works  
 25 between different works contracts. The meetings and

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1 workshops should also address topics such as handover  
 2 conditions, construction methods, sequence and materials  
 3 in respect of the works of the contractor who had  
 4 completed its works at the interface so as to properly  
 5 inform these matters to the contractor on the other side  
 6 of the interface (or in respect of the works of the team  
 7 of the contractor which had completed its works at the  
 8 interface so as to properly inform these matters to the  
 9 other team of the same contractor on the other side of  
 10 the interface)."  
 11 The Commission is grateful for that, Mr Yueng. My  
 12 question is: is this a recommendation that Pypun made to  
 13 Highways Department during the course of the projects?  
 14 A. This was from Pypun to MTR and the contractor. It was  
 15 a recommendation to MTR and the contractor.  
 16 COMMISSIONER HANSFORD: And when was this recommendation  
 17 first made?  
 18 A. This recommendation was done in response to the request  
 19 of the COI letter, because the letter asked us about  
 20 these recommendations.  
 21 COMMISSIONER HANSFORD: So this is in hindsight; this is not  
 22 a recommendation that Pypun made to Highways Department  
 23 during the course of the project? Is that correct?  
 24 A. This is correct. As I said earlier, through the design  
 25 team of the MTR, we knew about the interface meetings,

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1 but we did not know the content of the discussions.  
 2 With regard to this incident, we felt that the interface  
 3 meetings should include the areas and also the content  
 4 of our recommendations.  
 5 COMMISSIONER HANSFORD: Okay. Thank you.  
 6 MR CLAYTON: I have no re-examination, sir.  
 7 CHAIRMAN: Good. Thank you very much indeed.  
 8 Thank you, Mr Yueng.  
 9 (The witness was released)  
 10 MR CLAYTON: Do we take a mid-morning break or do we --  
 11 MR PENNICOTT: No, I think we plough on with Mr Chiu, for  
 12 reasons which will become apparent.  
 13 MR CLAYTON: Certainly.  
 14 MR PENNICOTT: I think I'll be about two minutes.  
 15 MR CHIU CHUNG LAI (sworn in Cantonese)  
 16 (All answers given via simultaneous interpreter  
 17 except where otherwise specified)  
 18 Examination-in-chief by MR CLAYTON  
 19 MR CLAYTON: Please sit down, Mr Chiu. You are going to  
 20 give your evidence in Cantonese, I understand.  
 21 You have provided one witness statement for the  
 22 Commission of Inquiry; correct?  
 23 A. (In English) Correct.  
 24 Q. Could we go to GG2, page 433, please. Is that the first  
 25 page of your witness statement?

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<p>1 A. It is.</p> <p>2 Q. Could we then go to page 436, please, of the same</p> <p>3 bundle. Is that your signature?</p> <p>4 A. Yes, it is.</p> <p>5 Q. Is that witness statement true?</p> <p>6 A. It is.</p> <p>7 Q. Does your witness statement contain the evidence you</p> <p>8 wish to give before the Commission of Inquiry?</p> <p>9 A. Yes.</p> <p>10 MR CLAYTON: Could you stay there, please. You will be</p> <p>11 asked questions by other people.</p> <p>12 Examination by MR PENNICOTT</p> <p>13 MR PENNICOTT: Mr Chiu, good morning. My name is Ian</p> <p>14 Pennicott --</p> <p>15 A. Good morning.</p> <p>16 Q. -- I'm one of the counsel to the Commission. I have</p> <p>17 a few questions for you and it may be that other lawyers</p> <p>18 have as well, and the Chairman and the Commissioner may</p> <p>19 also have questions for you.</p> <p>20 Thank you very much for coming along to give</p> <p>21 evidence to the Commission this morning.</p> <p>22 Mr Chiu, you tell us that you are a director of</p> <p>23 Pypun?</p> <p>24 A. When I wrote this witness statement, yes, I was.</p> <p>25 Q. And you are no longer a director of Pypun?</p>	<p>1 addition to the original M&amp;V agreement. That's right,</p> <p>2 isn't it?</p> <p>3 A. That is correct.</p> <p>4 Q. Right. If we go to paragraph 12 of your witness</p> <p>5 statement, at GG434, you identify the five supplementary</p> <p>6 engagements; do you see that, Mr Chiu?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Right. And you tell us that the supplementary</p> <p>9 agreements that are of particular relevance to the</p> <p>10 Commission's work are the ones at 12.2, which is the</p> <p>11 "Technical and procedural review on non-conformance</p> <p>12 report submitted by MTR for SCL project (stage 1)".</p> <p>13 Pausing there. Mr Chiu, have you personally been</p> <p>14 involved in that technical and procedural review?</p> <p>15 A. Not personally, but when we discussed the details of the</p> <p>16 work with RDO, I was involved. And our staff, Mr Mak,</p> <p>17 who gave evidence here before, he was responsible to</p> <p>18 lead two engineers in this work. In our company, there</p> <p>19 were regular meetings, and so other team leaders were</p> <p>20 informed of the progress of the work.</p> <p>21 Q. Right. I understand that this is an ongoing engagement,</p> <p>22 pursuant to which Pypun are providing weekly and perhaps</p> <p>23 monthly reports to the government on the question of the</p> <p>24 NCRs. Is that right?</p> <p>25 A. That is correct.</p>
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<p>1 A. Not anymore, but I am a director of Pypun Engineering</p> <p>2 Consultant.</p> <p>3 Q. I see, a related company?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. When you -- so far as the content of your witness</p> <p>6 statement is concerned, Mr Chiu, you tell us that you</p> <p>7 were involved in the SCL project as a deputy project</p> <p>8 manager, monitoring the programme of the M&amp;V team. Is</p> <p>9 that right?</p> <p>10 A. Correct.</p> <p>11 Q. Right. Are you still fulfilling that role?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. When did you start in that role?</p> <p>14 A. It was at the beginning of July 2017.</p> <p>15 Q. Okay. You tell us also, in paragraph 5 of your</p> <p>16 statement, that you assist the cost monitoring of the</p> <p>17 M&amp;V team. Is that right?</p> <p>18 A. Correct.</p> <p>19 Q. And are you still fulfilling that role?</p> <p>20 A. Yes.</p> <p>21 Q. Right. Okay. Good.</p> <p>22 Now, Mr Chiu, the primary purpose, as I understand</p> <p>23 it, of your witness statement is to inform the</p> <p>24 Commission about a number of supplementary agreements</p> <p>25 that have been made between the government and Pypun, in</p>	<p>1 Q. Right. That is, as I say, continuing work in progress?</p> <p>2 A. That is correct. Actually, the work started at the end</p> <p>3 of February. And we will continue in the present area</p> <p>4 of the work for 12 months.</p> <p>5 Q. Understood. All right.</p> <p>6 Then the second engagement you say of particular</p> <p>7 relevance is 12.3. That is "Extended building</p> <p>8 submission review and compliance (BSRC) services for</p> <p>9 [the station extension] SCL project."</p> <p>10 As I understand it, Mr Chiu, from your witness</p> <p>11 statement, this primarily concerns Pypun's witnessing</p> <p>12 and inspecting and recording the opening-up and</p> <p>13 inspection of areas of the station extension. Is that</p> <p>14 right?</p> <p>15 A. Well, primarily, yes.</p> <p>16 Q. Right. Therefore, is this right, that that work relates</p> <p>17 primarily to the first part of the Inquiry?</p> <p>18 A. That is correct, yes. But in the brief, the work was</p> <p>19 related to NAT, SAT and also HHS.</p> <p>20 Q. All right.</p> <p>21 So it will relate to those areas if opening-up, and</p> <p>22 so forth, were to occur? Is that the position, Mr Chiu?</p> <p>23 A. Well, no. In the brief -- now, I don't remember, it was</p> <p>24 paragraph 3-point-something, the BSRC team had to send</p> <p>25 engineers to go to Hung Hom Station, including NAT, SAT</p>

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<p>1 and HHS, twice a week to do visual inspection and submit 2 reports. The primary objective of the inspections was 3 to monitor the structural aspect. 4 Q. Okay. Including the NAT, SAT and HHS? 5 A. Correct. 6 Q. Understood. Okay. 7 So am I right in thinking that at least part of that 8 or perhaps all of that work will be part of the holistic 9 proposal and the verification proposal and the reports 10 that are to be produced in due course? 11 A. Well, I'm not sure whether this will be included in the 12 final holistic report. Our staff will do the visual 13 inspection and then they will write their own reports. 14 Q. Understood. Okay. But they will write their own 15 reports to the government, and then the government can 16 choose to incorporate that material in the holistic 17 report or not, as the case may be? 18 A. Well, I believe so. 19 Q. Okay. 20 COMMISSIONER HANSFORD: Sorry, Mr Chiu. Do we know when 21 that work will be completed? 22 A. I remember it was in paragraph 3.2 where it is written 23 that we should have started the visual inspection at the 24 end of February, and then I think it would take 25 20 months, and then by that time we would stop the</p>	<p>1 that. 2 Q. I think we are all relieved! Right. 3 Then lastly, Mr Chiu, at paragraph 12.5 you refer to 4 "On-site record checking on RISC form in relation to 5 construction of North Approach Tunnel, South Approach 6 Tunnel", and so forth. And that is the report that 7 I touched upon with Mr Yueng earlier, that is the audit 8 of the RISC forms in relation to the three areas. 9 A. Yes. 10 Q. As I understand it, it was Mr Yueng that was involved in 11 that report; you weren't personally involved in the 12 preparation of that report? Is that right, Mr Chiu? 13 A. No, I was not involved in preparing that report. 14 Q. Right. Mr Chiu, can I just finally ask you this. In 15 any of the work that you may have been involved in in 16 relation to the supplementary agreements, have you had 17 any contact with or involvement with the expert advisory 18 team of the government, sometimes known as EAT? 19 A. When we carried out 12.4, item 12.4, there was an expert 20 advisory team and we had meetings with that team. 21 Q. All right. 22 In relation to the RISC form audit, did the expert 23 advisory team play any supervisory role in the 24 preparation of that audit report? 25 A. If you are referring to 12.5, no.</p>
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<p>1 visual inspections. That is clearly stated in the 2 brief. 3 CHAIRMAN: Sorry, February when? 4 MR PENNICOTT: This February -- 2019? 5 A. Yes, February 2019. Maybe we can take a look at the 6 brief? 7 CHAIRMAN: Sorry, then just so I understand -- and then 8 there will be 20 months of monitoring, so you will not 9 have completed your monitoring exercise until late 2020. 10 I mean, without being facetious, are we due back here in 11 late 2020? 12 MR PENNICOTT: You might be, sir, but you won't be seeing 13 me! 14 If you go to GG2/895, Mr Chiu, please. I'm not sure 15 you are right, Mr Chiu, I confess, but I'll be corrected 16 if I'm wrong. I'm just looking at the rest of the 17 document before taking a false point. 18 If we look at 3.2(b), it says, in the second 19 sentence: 20 "The initial duration of such inspections is 21 approximately 20 weeks", not months. 22 But perhaps I need to double-check this because 23 I confess I have not looked at this in any detail. 24 A. Yes, it is written 20 weeks here. Just now I think 25 I said it wrongly when I said 20 months. Sorry about</p>	<p>1 MR PENNICOTT: Okay. All right. 2 Sir, I have no further questions for Mr Chiu. 3 CHAIRMAN: Thank you. 4 MR TSOI: I have no questions, sir. 5 MR CHANG: Nothing from Leighton. 6 MR BOULDING: No questions. Thank you, sir. 7 MR CHOW: Mr Chairman, for the same reason and on same basis 8 as I submitted earlier, we have no questions for 9 Mr Chiu. 10 CHAIRMAN: All right. Thank you very much. 11 MR CLAYTON: I have no re-examination, sir. 12 CHAIRMAN: Thank you. 13 Mid-morning adjournment? 14 MR PENNICOTT: Yes, sir. 15 CHAIRMAN: How long would -- 16 MR PENNICOTT: 15 minutes, sir, if that's okay. 17 COMMISSIONER HANSFORD: Do you want to release the witness? 18 CHAIRMAN: A good point. 19 15 minutes, all right. 20 Mr Chiu, thank you very much. Your evidence is now 21 completed, so you can go. Thank you for your 22 assistance. 23 WITNESS: Thank you. 24 CHAIRMAN: 15 minutes. 25 (The witness was released)</p>

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<p>1 (11.35 am) 2 (A short adjournment) 3 (11.53 am) 4 MR CHOW: Good morning, Mr Li. 5 MR LI TZE WAI, RALPH (sworn in Cantonese) 6 (All answers given via simultaneous interpreter 7 except where otherwise specified) 8 Examination-in-chief by MR CHOW 9 Q. Thank you. Mr Li, I understand that you have prepared 10 three additional witness statements for the purpose of 11 this part of the Commission of Inquiry. Is that 12 correct? 13 A. Correct. 14 Q. Can I ask you to go to bundle DD3, page 1366, please. 15 Would you confirm that is the first page of your 16 second witness statement? 17 A. Correct. 18 Q. Could I ask you to go to page 1377, please. 19 Can you confirm that this is your signature? 20 A. Correct. 21 Q. I understand this is a statement you prepared in 22 relation to the works in the North Approach Tunnel. Can 23 you confirm that? 24 A. Correct. 25 Q. Can I ask you to go to your third witness statement, at</p>	<p>1 Q. Would you adopt the content of your witness statements 2 as your evidence for this part of the Commission of 3 Inquiry? 4 A. I will. 5 Q. Mr Li, what's going to happen is that counsel for the 6 Commission, Mr Pennicott, will probably ask you some 7 questions, and then he will be followed by counsel for 8 the other parties. Meanwhile, the Chairman and 9 Prof Hansford may ask you questions at any time. Then 10 after with that, at the end, I may or may not need to 11 ask you further questions by way of wrap-up. Do you 12 understand that? 13 A. I understand. 14 MR CHOW: So please remain seated and take questions from 15 various counsel. 16 Examination by MR PENNICOTT 17 MR PENNICOTT: Good morning, Mr Li. 18 A. Good morning. 19 Q. Thank you very much for coming to give evidence to the 20 Inquiry. Mr Chow has kindly explained what's going to 21 happen so I won't repeat it. 22 Mr Li, you are, as I understand it, the Chief 23 Engineer of the RDO; is that right? 24 A. Right. 25 Q. If we see on any correspondence, as you say in</p>
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<p>1 page 1378. Can you confirm that this is the first page 2 of your third witness statement? 3 A. Correct. 4 Q. This is a very short statement. 5 Please turn over the page. Can you confirm that 6 this is your signature? 7 A. Correct. 8 Q. This statement, the third statement, is prepared in 9 relation to the works in SAT, the South Approach Tunnel. 10 Can you confirm that? 11 A. Correct. 12 Q. Now I ask you to go to page 1380, your fourth witness 13 statement. This is the first page of your fourth 14 witness statement; correct? 15 A. Correct. 16 Q. And turn over the page. Can you confirm this is your 17 signature? 18 A. Correct. 19 Q. I understand that this is a statement prepared in 20 relation to the works in the HHS. Can you confirm that? 21 A. Correct. 22 Q. Do you confirm that the content of your three statements 23 are true and correct to the best of your knowledge and 24 belief? 25 A. Correct.</p>	<p>1 paragraph 1 of your second witness statement, 2 "CE/RD1-1", that's you? 3 A. Correct. 4 Q. Mr Li, I have a few questions but not many. Just really 5 for everybody's benefit, you refer in paragraph 4 of 6 your second witness statement -- so that's at DD1367 -- 7 that: 8 "To assist the Commission, the government will 9 provide a chronology of events updated up to 8 May 2019 10 setting out the involvement of Highways and relevant 11 government departments in relation to the above issues." 12 That is the issues with which the second part of the 13 Inquiry is concerned, and that you rely upon that 14 chronology in the witness statement. 15 As it happens, Mr Li, and I suspect you are aware of 16 this, that chronology has been updated, helpfully, on 17 a sort of weekly, ongoing basis. Have you been involved 18 in that process or is that something you have left to 19 the DoJ? 20 A. Well, the collection of letters and information, that 21 was done by other colleagues. So it was the 22 responsibility of other colleagues who were doing the 23 updating. 24 Q. All right. That's fine. Just to put it on the 25 transcript, the latest chronology we have is up until</p>

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<p>1 13 June, and that's at DD10/12471. There's no need to 2 get it up on the screen. 3 Now, could I ask you, please, Mr Li, then, with that 4 introduction, just to look at paragraph 11 of your 5 second witness statement. You say: 6 "While stitch joint reconstruction works were 7 reported to be completed on 18 July 2018, MTRC has yet 8 to (i) provide full explanation as to why, under MTRC's 9 PIMS, non-conformance of such nature at the stitch 10 joints could have happened ..." 11 Mr Li, what sort of explanation are you looking for 12 from MTRC in relation to the non-conformance and PIMS? 13 What are you actually looking for? What does the 14 government say is missing by way of explanation? 15 A. Primarily, the MTRCL has its own construction team to 16 monitor the progress of works. So, when we learned that 17 there was this conclusion that there were problems with 18 the stitch joints, we wanted to find out, in terms of 19 the system and the actual operation, what happened that 20 led to this case, because we want to prevent similar 21 cases from happening in future. So it's about looking 22 forward and also it's about learning more about this 23 case. 24 Q. But is the -- just to put it rather bluntly, I mean, are 25 you essentially asking the MTR to explain -- "Well, were</p>	<p>1 with or whether the RISC forms were lost. So we just 2 wanted to get to the truth of the case. 3 Q. All right. But government is now well aware that there 4 are no RISC forms in relation to the original stitch 5 joints? 6 A. Yes, now we know for sure. 7 Q. All right. 8 In paragraph 17 of your witness statement, Mr Li, 9 under the heading -- sorry, if you look at the top, just 10 to see what the context is: this is your part III -- 11 "Government's knowledge of and involvement in matters 12 relating to issue 3, ie lack of RISC forms, inspection 13 and supervisory records and deviation of NAT, SAT and 14 HHS". 15 In paragraph 17, page 1371, you say: 16 "As I will further elaborate below, whilst MTRC had 17 submitted a list of non-conformance report records (with 18 some entries of 'missing RISC forms') to HyD for 19 information in June 2018, the government had not been 20 fully or clearly informed of the real nature, extent and 21 seriousness of the problem of missing RISC forms until 22 December 2018/January 2019." 23 Now, Mr Li, why are the missing RISC forms regarded, 24 apparently, as so important by the government? 25 A. Now, we are talking about the RISC forms, I believe.</p>
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<p>1 the necessary inspections done, was the necessary 2 supervision in place" -- is it those types of questions 3 you are asking MTR to address, or is it something else? 4 A. It could be understood that we were trying to find out 5 how the supervision was done, and in accordance with the 6 system how the actual operation was done. So we wanted 7 to find out more. 8 Q. All right. Well, at least we found out a lot of 9 information during the course of the last three and 10 a half weeks or so, Mr Li. 11 Then you say this: 12 "... also, MTRC has yet to" -- and then (ii) in 13 paragraph 11 -- "provide copies of the signed RISC forms 14 and inspection records for the stitch joints ..." 15 Pausing there, do you mean the original defective 16 stitch joints? 17 A. Correct. 18 Q. But you have been told that there are no RISC forms for 19 the original stitch joints, Mr Li, so how can they be 20 provided? Why are you pressing for them when you know 21 they don't exist? 22 A. It's a matter of chronology, because earlier on they 23 were not sure. They just mentioned that there was such 24 a case. So, at that point, therefore, we wanted them to 25 make it clear whether there were no RISC forms to start</p>	<p>1 For RISC forms, we know that's a tool that helps quality 2 assurance. It's also relevant to hold-point 3 inspections. Now, for hold points, we know that there 4 must be some supervision before the construction team 5 could move on to the next stage of construction works. 6 Therefore, for the RISC forms, they are important; they 7 help us in following up on the procedure or in 8 understanding more about the process. That's why we 9 wanted to have the RISC forms. 10 Q. Why aren't the forms, that's form A and form B, 11 submitted under the site supervision plan good enough 12 for the government in relation to supervision? 13 A. For that type of information, because I'm not involved 14 in daily supervision, so I'm not fully informed about 15 the other situation. But we know that RISC forms are 16 important; they help us to find out more about the 17 issues I mentioned just now. So that's why we want to 18 ask whether there are RISC forms because they will help 19 give us a clearer picture. 20 Q. Right. I don't know whether you've had a chance to read 21 it or you were listening earlier to the evidence of 22 Mr Yueng from Pypun. In paragraph 103 of his witness 23 statement, he says that it was not part of Pypun's 24 responsibilities to look at and consider the RISC forms 25 if they were carrying out an audit.</p>

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<p>1 Do you agree with that?</p> <p>2 A. As far as I understand, Pypun adopts a risk-based</p> <p>3 approach in carrying out their work. So, in the</p> <p>4 process, if they identify key risks, then on that basis</p> <p>5 they will do further investigation.</p> <p>6 I understand before they did not see that these RISC</p> <p>7 forms were a high risk or therefore warranted follow-up,</p> <p>8 and so that's how they carried out their work.</p> <p>9 Q. Yes. Because if the government regarded RISC forms as</p> <p>10 a matter of importance, presumably they could have made</p> <p>11 sure, in their contract with the M&amp;V consultant, that</p> <p>12 RISC forms did expressly form part of any audit that was</p> <p>13 carried out. But that didn't happen, did it, Mr Li?</p> <p>14 A. I am not aware that there was such a requirement</p> <p>15 specifically in the contract or agreement.</p> <p>16 Q. All right. But so far as the government is concerned,</p> <p>17 if I've understood it from your earlier answer, the RISC</p> <p>18 forms are seen as a matter of quality assurance. Is</p> <p>19 that really the nub of it, Mr Li?</p> <p>20 A. Well, actually, earlier I said the RISC forms, there are</p> <p>21 two. They help us record whether there was actual</p> <p>22 monitoring and supervision of the entire project. So</p> <p>23 the necessity of RISC forms needs not be questioned. As</p> <p>24 to how MTRCL actually carries out this task, I believe</p> <p>25 the MTRCL will do so in accordance with the PIMS.</p>	<p>1 certificate of completion of building works at NAT was</p> <p>2 likely to be seriously affected by the lack of</p> <p>3 sufficient inspection records and material testing</p> <p>4 records, and the change of steel reinforcement lapped</p> <p>5 bars into coupler connection ..."</p> <p>6 Do you see that, Mr Li? Is that the meeting that</p> <p>7 you attended on 23 January 2019?</p> <p>8 A. Well, actually, those were two separate meetings. If</p> <p>9 you go to the top of the page, you can see the</p> <p>10 attendance. THB was not present. It was just some of</p> <p>11 the departments and it was the discussion with MTRCL.</p> <p>12 It was the first time, in this meeting, there was such</p> <p>13 a case. Then, on 24 January, as I mentioned in my</p> <p>14 witness statement, there was further information, that</p> <p>15 40 per cent of the RISC forms were missing.</p> <p>16 So these were two separate meetings.</p> <p>17 Q. Understood. One problem I've had with this, Mr Li, is:</p> <p>18 are there minutes of either of those meetings?</p> <p>19 A. There were no minutes.</p> <p>20 Q. Is that unusual for government, not to keep minutes of</p> <p>21 these rather important meetings?</p> <p>22 A. It was because time was tight, so we will just record</p> <p>23 the important content of the meetings in a letter. If</p> <p>24 we were to prepare minutes, they would have to be</p> <p>25 cleared with people attending the meeting before it</p>
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<p>1 Q. All right.</p> <p>2 In paragraph 20 of your witness statement, Mr Li --</p> <p>3 that's at DD1372, that's your second witness</p> <p>4 statement -- you refer to a meeting and you say:</p> <p>5 "At a meeting among the Transport and Housing</p> <p>6 Bureau, HyD, BD and MTR held on 24 January" -- I think</p> <p>7 it was 23 January, actually, Mr Li, but it probably</p> <p>8 doesn't matter too much -- "MTR further advised that</p> <p>9 about 40 per cent of the RISC forms for NAT were</p> <p>10 missing, but failed to provide the data for SAT and</p> <p>11 HHS."</p> <p>12 Were you at that meeting, Mr Li?</p> <p>13 A. I was at the meeting, and the meeting was on 24 January.</p> <p>14 Q. Can we look at DD3/1128, please. This is the letter of</p> <p>15 24 January that you refer to further on in paragraph 20</p> <p>16 of your witness statement. Do you see that, Mr Li?</p> <p>17 A. Yes. Please ask your question.</p> <p>18 Q. If you go over the page, Mr Jonathan Leung writes -- and</p> <p>19 I see you were copied in; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. At the top of the page, on page 1129:</p> <p>22 "I am given to understand the need for NAT in</p> <p>23 option B ... However, it was only in the meeting among</p> <p>24 BD/FSD/RDO/MTR of 23 January 2019 that the Corporation</p> <p>25 reported that the preparation for application for</p>	<p>1 could become a record. But then we wanted to respond</p> <p>2 immediately to the issue, so we used letters to state</p> <p>3 what discussion took place on that day.</p> <p>4 Q. Right. All right.</p> <p>5 Now, in paragraph 22 of your witness statement, you</p> <p>6 had been dealing with the fact that NCRs had been issued</p> <p>7 by MTR to Leighton regarding missing RISC forms, and you</p> <p>8 had made the point that initially those RISC forms --</p> <p>9 sorry, the NCRs were included in the NCR registers or</p> <p>10 reports that were submitted to government. Then they</p> <p>11 were removed, as we have seen with another witness. And</p> <p>12 then they were put back in again.</p> <p>13 Do you recall all that, Mr Li?</p> <p>14 A. I can recall that.</p> <p>15 Q. Right. You then say, at paragraph 22:</p> <p>16 "On this, I should point out that by reading the</p> <p>17 MTRC's letters of 17 and 26 July 2018 together, MTR has</p> <p>18 categorised the NCRs for the missing RISC forms as 'low'</p> <p>19 risk, non-works related, and without safety impact."</p> <p>20 Now, the first point, as I think you say a bit</p> <p>21 further on in your witness statement, the government</p> <p>22 actually asked MTR, requested MTR, to categorise the</p> <p>23 NCRs into high, medium and low risk. That's right,</p> <p>24 isn't it, Mr Li?</p> <p>25 A. Correct.</p>

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<p>1 Q. And the missing RISC forms were categorised by MTR as 2 "low"? 3 A. Correct. 4 Q. Is that something, that categorisation, is that 5 something that you disagree with? 6 A. Well, I should put it this way. With regard to 7 categorisation, if you read our letters, I don't 8 remember which one, we asked in one of the letters why 9 the risk was considered that way and why they were not 10 works-related. We asked that series of questions. 11 Q. Right. But did you ever form a view as to whether they 12 had been wrongly categorised as "low"? 13 A. Well, let us analyse this. If they had done supervision 14 and all the NCRs were issued -- well, let me start 15 again. If all the RISC forms were filled out, and for 16 some reason they were not documented, then, in that 17 case, maybe that might not be directly related to the 18 works, because it might just be a kind of non-compliance 19 with regard to documentation. That was possible. 20 But, no matter what, today we know what happened, 21 that indeed supervision was not always done, or I should 22 say RISC forms were not filled out, and so there were no 23 such records. 24 Q. Yes. But, as we touched upon just a moment ago, Mr Li, 25 these RISC forms, certainly according to Pypun, were not</p>	<p>1 categorisation that MTR were requested to give, they 2 gave it a "low" categorisation. 3 It's really -- if you -- and the initial question 4 I asked was whether you agreed with that or not, and you 5 seem to be neither agreeing or disagreeing. You seem to 6 be suggesting that it depends, but I'm not sure on what. 7 A. Well, if we look at it today when we have the benefit of 8 so much background information, and if we take another 9 look today at the RISC forms, if there was no record at 10 all, I would say we would have to clarify the definition 11 of low risk, and by that I would mean whether there 12 would be an impact on structural safety. And MTR should 13 explain whether no RISC forms were ever filled out and 14 whether that would pose a problem for structural safety. 15 I think we should do some in-depth analysis into this. 16 But then, if for different reasons the structure was 17 dangerous, then it would not or could not be said to be 18 of low risk. 19 Q. Was the government -- was your thinking affected by, 20 perhaps, the number of NCRs which identified missing 21 RISC forms? 22 A. I won't rule that out, but actually, with regard to the 23 relationship between the number of NCRs and RISC 24 forms -- well, that would have to be clarified by the 25 MTR, because NCRs could include a number of RISC forms.</p>
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<p>1 even documents they were required to audit, so why would 2 one put them in anything other than the "low" category? 3 A. As I said by way of a supplement just now, it really 4 depends on the nature. Pypun decided that this was not 5 a high-risk item, but as to whether the forms were 6 really missing, in other words that they were filled 7 out, it was just that they were misplaced, or whether 8 indeed there were no RISC forms filled out -- well, we 9 should look at the actual operation in order to decide 10 the risk category. 11 COMMISSIONER HANSFORD: Sorry, I have difficulty 12 understanding that. Could you assist me, sorry. If the 13 forms were really missing, in other words that they were 14 filled out, or just that they were misplaced, or indeed 15 there were no RISC forms filled out -- if there were no 16 RISC forms or if they were misplaced, would either of 17 those two things affect their importance? 18 Sorry, I -- 19 MR PENNICOTT: Yes. 20 CHAIRMAN: -- I just have a little difficulty with that. 21 MR PENNICOTT: Let's break it down, Mr Li. On the NCR 22 reports that were sent to government initially, it said 23 "NCR [whatever number] missing RISC form", or "RISC form 24 missing". No question of misplaced, lost, destroyed -- 25 "RISC form missing", and it was on that basis that the</p>	<p>1 So it depends on different NCRs. 2 Q. The point is, Mr Li, that when they send you the NCR 3 report with all the NCRs listed, if there was just one 4 amongst many hundreds of RISC forms that just refer to 5 one missing RISC form, presumably your attitude would 6 have been very different to what actually happened, 7 which of course dozens and dozens of missing RISC forms 8 were identified by the NCRs. 9 So the question is whether the number of missing 10 RISC forms had an impact on the government's thinking. 11 A. Well, that is one of the things that may affect the 12 government's thinking. 13 Q. All right. 14 Mr Li, can I ask you to please look at paragraph 31 15 of your second witness statement. That's at DD1377. 16 You there say or make reference to the fact that: 17 "On 26 April 2019, MTR submitted to Highways a draft 18 verification proposal ..." 19 Do you see that? 1377. 20 A. I see that. 21 Q. "Highways maintains close liaison with MTR and 22 coordinates with the other government departments 23 concerned with a view to finalising the draft 24 verification proposal and its final report in relation 25 to NAT, SAT and HHS as per the agreed schedule submitted</p>

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<p>1 to the Commission on 27 April 2019."</p> <p>2 As I understand it, Mr Li, you are very much</p> <p>3 involved in the verification proposal process. Is that</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. You say in the last sentence of paragraph 31:</p> <p>7 "In this respect, a taskforce has been set up with</p> <p>8 members from the expert adviser team for the SCL</p> <p>9 project/BD/Highways/MTR to ensure smooth delivery of the</p> <p>10 verification proposal."</p> <p>11 Can I ask you, please, this: what role is the expert</p> <p>12 adviser team playing, first of all, in the verification</p> <p>13 proposal process?</p> <p>14 A. Well, actually, this taskforce that we are talking about</p> <p>15 is such that we hope there will be a final report on the</p> <p>16 verification proposal. Well, we have always hoped that</p> <p>17 we could complete this by the end of June. Actually,</p> <p>18 there are many procedures involved in the proposal.</p> <p>19 That is why we set up the taskforce. And almost on</p> <p>20 an alternate-day basis, that is every two days, we will</p> <p>21 sit down and look at the actual operation.</p> <p>22 In fact, when the MTR would come to initial</p> <p>23 conclusions with regard to the verification proposal,</p> <p>24 this would be explored into together, to see how we can</p> <p>25 complete the proposal as soon as possible and also carry</p>	<p>1 First of all, Mr Li, this is the minutes of a very</p> <p>2 recent meeting on the holistic proposal and the</p> <p>3 verification proposal. First of all, can you confirm</p> <p>4 this was a meeting of the taskforce that you make</p> <p>5 reference to your witness statement; is that right?</p> <p>6 A. No. This is not the meeting of that taskforce, because</p> <p>7 the meeting was about the actual operations of the</p> <p>8 proposal and the initial response to the proposal. So</p> <p>9 we had meetings almost every other day and I would say</p> <p>10 that's a meeting -- those were meetings at a working</p> <p>11 level. But this meeting is at a high level, to look at</p> <p>12 the matter.</p> <p>13 Q. Right. So the meetings that are happening every other</p> <p>14 day, I think you mentioned, those would be attended by</p> <p>15 a smaller number of people, is that right, but from the</p> <p>16 same organisations: the EAT team, Highways, BD and MTR?</p> <p>17 A. For the departments and units, yes, they are the same,</p> <p>18 but there would be far fewer people.</p> <p>19 Q. Right. Understood. But the representatives of the EAT</p> <p>20 would be there as well, not necessarily all of them but</p> <p>21 perhaps one or two?</p> <p>22 A. Yes, correct, far fewer people.</p> <p>23 Q. Okay. Do you happen to know whether the expert advisory</p> <p>24 team's original terms of reference have been altered and</p> <p>25 changed?</p>
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<p>1 out the work in the proposal as soon as possible.</p> <p>2 Therefore, so many people are involved and we have to</p> <p>3 see what areas are the responsibility of the different</p> <p>4 parties and then they would have to give feedback</p> <p>5 accordingly so that we can implement the proposal as</p> <p>6 soon as possible.</p> <p>7 In the proposal, there are many technical issues</p> <p>8 involved, and construction records would have to be</p> <p>9 collected as well. So, with regard to the information</p> <p>10 gathered, we would have initial discussion on that.</p> <p>11 Q. What role is the expert adviser team playing in the</p> <p>12 verification proposal process, please, Mr Li?</p> <p>13 A. The team plays the role as an adviser. For the whole</p> <p>14 discussion, it was the government department and MTRCL</p> <p>15 to undertake that. But then the team has many years of</p> <p>16 professional experience, so it would give timely advice</p> <p>17 on the direction to take or on ways to make things work</p> <p>18 better.</p> <p>19 Q. Right. I understand that the expert adviser team is</p> <p>20 playing a similar role in relation to the holistic</p> <p>21 proposal; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Right. If we could just look very briefly, please, at</p> <p>24 an example of a meeting of I think this taskforce that</p> <p>25 you have mentioned: DD10/12773, please.</p>	<p>1 A. I have no response to that because I'm not sure, you</p> <p>2 know, about that aspect.</p> <p>3 Q. Okay. Do you know whether the expert advisory team, or</p> <p>4 a member of it, is supervising the audits that are being</p> <p>5 conducted by Highways through the monitoring and</p> <p>6 verification consultants, Pypun?</p> <p>7 A. I don't know if you are referring to the work at other</p> <p>8 stations of the SCL?</p> <p>9 Q. No, I'm referring to on contract 1112.</p> <p>10 A. Could you please give me a bit more of your</p> <p>11 understanding?</p> <p>12 Q. Yes. We know, for example, that Pypun have been engaged</p> <p>13 by government to carry out an audit on the RISC forms,</p> <p>14 and they produced a report recently. You are aware of</p> <p>15 that, Mr Li?</p> <p>16 A. Yes, I'm aware of that.</p> <p>17 Q. My question was -- let's take that report, that audit</p> <p>18 report, as an example -- did the expert adviser team</p> <p>19 play any role in supervising that audit process?</p> <p>20 A. Pypun took a look at the RISC forms for NAT, SAT, HHS.</p> <p>21 They were to check whether they were complete. And it</p> <p>22 was because the Highways Department asked them to carry</p> <p>23 out an investigation. We wanted to see whether there's</p> <p>24 anything special that we needed to take note of. Then</p> <p>25 this did not involve the EAT. We just asked them to</p>



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<p>1 find out the status of the RISC forms, so we did it 2 through Pypun. 3 Q. Okay. 4 And we understand, Mr Li, that the expert advisory 5 team have not produced any formal interim reports or any 6 reports of any nature. Is that your current state of 7 understanding as well? 8 A. You mean, interim report -- I understand the EAT did 9 produce an interim report. So what are you referring 10 to? 11 Q. Sorry, my understanding was they had not produced 12 an interim report, but you think they may have done; is 13 that right? 14 A. Maybe I am wrong but I remember they did issue 15 something. But it doesn't matter. But I think -- what 16 is your point here, please? 17 Q. I'm just trying to ascertain the position as to the 18 expert advisory team. We know, when they were 19 originally engaged, they were to produce a report within 20 nine months. That nine months expired on 19 May 2019, 21 just a month or so ago. And I was trying to ascertain 22 because my information is that no report, of an interim 23 or any other nature, had been produced by the expert 24 advisory team, but perhaps I'm wrong. 25 MR CHOW: Sir, if I may assist AT this point. I understand</p>	<p>1 MR PENNICOTT: All right. 2 Sir, if I think I need to pursue that by other 3 means, I will, but I'm not going to pursue it with 4 Mr Li. 5 Sir, I have no further questions for Mr Li. 6 MR TSOI: I have no questions, sir. 7 MR CHANG: Leighton will have some questions, if I may. 8 CHAIRMAN: Yes. 9 Cross-examination by MR CHANG 10 MR CHANG: Mr Li, you accept RISC form is a quality contro 11 document; correct? 12 A. Well, within the MTRCL's PIMS, I think that's stated. 13 Q. So you accept RISC form is not the only piece of 14 evidence to show that inspection had taken place; 15 correct? 16 A. Well, yes, there is this possibility. 17 Q. Let me put it this way. RISC form is not the only piece 18 of evidence capable of showing inspection had taken 19 place? 20 A. Perhaps we can look at it this way. As to other 21 evidence could serve the purpose of the RISC form, that 22 I'm not sure. 23 Q. Now, for those areas where we do not have the RISC 24 forms, would the government accept there could be other 25 documentation or information capable of showing that</p>
<p>Page 66</p> <p>1 that the EAT has produced an interim report, although it 2 was rather primitive, and a copy of the interim report 3 has actually been included in the bundle, in the first 4 part of the hearing bundle, at bundle G -- 5 MR PENNICOTT: In that case, my apologies. 6 MR CHOW: G13, starting from page 10890. Perhaps we can 7 just take a quick look to make sure. 8 MR PENNICOTT: Sorry, is that original bundle G13? 9 MR CHOW: Yes, that's correct. 10 MR PENNICOTT: Ah, right. 11 Oh, this is way back. Right. 12 COMMISSIONER HANSFORD: This is more of an inception report, 13 is it? 14 MR PENNICOTT: Yes. We looked at this last time. 15 COMMISSIONER HANSFORD: But, Mr Chow, you weren't referring 16 to any report since this report? 17 MR CHOW: I'm not aware of any fresh report. No. 18 MR PENNICOTT: Right. Sorry, let me clarify what I was 19 asking you, Mr Li. We have just been helpfully shown 20 an interim report back in October 2018 by EAT. You're 21 not aware of any subsequent report, that is after this 22 report in October 2018? 23 A. My understanding is that in the public, it's not yet 24 seen, but I'm not in a position to talk about the work 25 of the EAT, perhaps.</p>	<p>Page 68</p> <p>1 inspection had taken place? 2 A. If there are documents capable of proving that, and they 3 are able to serve the purpose of RISC forms, we would 4 keep an open mind, but what is most important is that 5 the MTRCL is responsible for supervising the project. 6 So, first, MTRCL must be satisfied with respect to that. 7 Q. Now, I will give you a list of items and I wish to gauge 8 the government's position as to whether these items are 9 capable of showing inspection had taken place. 10 First of all, photographs? Would the government 11 accept that? 12 A. I don't think this question matters much, because it 13 depends on what's shown on the photos, and then whether 14 the photos are sufficient to show certain things. So, 15 therefore, we cannot rule out the fact that some of the 16 photos might help us to prove that supervision was done. 17 So it really depends on the accuracy and the sufficiency 18 and representativeness of the photos. So that's a wider 19 scope for us to look at certain things. 20 CHAIRMAN: Well, I presume that the question is to be 21 considered in the context of the fact that the 22 photographs are of the work that's open to inspection, 23 and that the photographs bear a date -- 24 MR CHANG: That's correct. 25 CHAIRMAN: -- or an indication as to when the photographs</p>

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<p>1 were taken.</p> <p>2 A. I'm not sure about the purpose of this question. Well,</p> <p>3 the analysis is if you want to see whether photos can</p> <p>4 prove that supervision has been done -- well, it depends</p> <p>5 whether the photos can exercise that function. The</p> <p>6 photos should not just show any snapshot, because it</p> <p>7 really depends on what the photos can do.</p> <p>8 MR CHANG: Yes, but as the Chairman pointed out, we are not</p> <p>9 just talking about random photographs, like taking</p> <p>10 a picture of yourself here. We are talking about</p> <p>11 photographs that bear a date and show the actual works</p> <p>12 that were inspected. Would the government accept that</p> <p>13 as capable of showing inspection had taken place?</p> <p>14 A. This question is very general. To me, when I look at</p> <p>15 this, it depends what we want to know from a certain</p> <p>16 hold point. That is the first point we have to look at.</p> <p>17 And secondly, should we just show that there is</p> <p>18 supervision or whether the supervision is done at</p> <p>19 a level required by the RISC forms? If this can be</p> <p>20 shown, then we would have an open attitude, an open mind</p> <p>21 towards this.</p> <p>22 Q. So, if I understand correctly, the government in</p> <p>23 principle will not reject these other documentation or</p> <p>24 information; it depends on the quality, correct?</p> <p>25 A. To a certain extent, yes.</p>	<p>1 A. As I was saying, if it is objective evidence that is</p> <p>2 submitted, we will look at it. But as to whether that</p> <p>3 item will achieve the required effectiveness, then it</p> <p>4 really depends on the result of our looking at it.</p> <p>5 Q. I understand. Subject to the quality of the</p> <p>6 information, that's what my caveat is, subject to the</p> <p>7 quality of the information in this document, this other</p> <p>8 documentation, would the government, for example,</p> <p>9 consider coupler checklists or pre-pour checklists?</p> <p>10 A. As I was saying, whatever the MTR shows us in terms of</p> <p>11 objective evidence showing us that supervision is done,</p> <p>12 all that will be looked at by us, whatever is submitted</p> <p>13 will be looked at by us. But, as you were saying,</p> <p>14 whether that item will achieve the intended purpose and</p> <p>15 effectiveness, it depends on the quality of that</p> <p>16 so-called evidence.</p> <p>17 Q. And finally, of course, if we have an inspector or</p> <p>18 a ConE giving evidence that they did certain</p> <p>19 inspections, the government would also take that into</p> <p>20 account as showing inspection did take place; correct?</p> <p>21 A. I'd like to ask you: what is the actual operation that</p> <p>22 you are talking about? Is it that all the documentation</p> <p>23 had been filled out with hindsight, or is it just oral</p> <p>24 evidence, or is anything specific shown?</p> <p>25 Q. Now, for areas where we do not have a RISC form, if</p>
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<p>1 Q. Now, a few other items. WhatsApp messages between, say,</p> <p>2 ConEs and IOWs referring to inspections -- would the</p> <p>3 government accept that as capable of showing the</p> <p>4 inspections have taken place?</p> <p>5 A. I really have difficulty in responding to this question.</p> <p>6 When we look at anything, the record should show</p> <p>7 that the right people have done something, and also the</p> <p>8 basis for doing it. If it is just a WhatsApp message --</p> <p>9 well, I really have difficulty in answering this</p> <p>10 question here and now, sorry.</p> <p>11 Q. Of course, it's all dependent on the quality of the</p> <p>12 documentation and information, but what I'm trying to</p> <p>13 get from the government is whether the government has</p> <p>14 any in-principle objection to these other sources of</p> <p>15 information or documentation to show site inspections</p> <p>16 have taken place.</p> <p>17 A. Well, I should put it this way. The MTR will collect</p> <p>18 information and it will be shown to us. We will take</p> <p>19 a comprehensive look at the information and, as</p> <p>20 I said -- and whether "evidence" is sufficient, that</p> <p>21 would depend on whether this will achieve the intended</p> <p>22 purpose. But whatever information is provided will be</p> <p>23 looked at by us.</p> <p>24 Q. Just to quickly go through other items in my list. Site</p> <p>25 diary entries -- will the government consider that?</p>	<p>1 an engineer subsequently comes out and makes a statement</p> <p>2 to say he or she did the inspection on a particular date</p> <p>3 in a particular area, would the government accept that</p> <p>4 as capable of showing inspection had taken place, in</p> <p>5 principle? Subject to the quality of the evidence,</p> <p>6 of course, as you will say.</p> <p>7 A. Should I respond or --</p> <p>8 Q. Yes.</p> <p>9 A. As I was saying, anything, any information, that is</p> <p>10 submitted by the MTR will be considered by us and will</p> <p>11 be looked at by us. But as to whether it will achieve</p> <p>12 the purpose, it really depends on what it is.</p> <p>13 Now, you gave us an example, saying that a person</p> <p>14 who is responsible for that hold point or for that area</p> <p>15 of the project, if that person would come forward to</p> <p>16 say, "I actually did that supervision", is that the</p> <p>17 situation you are talking about?</p> <p>18 Q. Now, the point I'm really trying to get at is this. If</p> <p>19 we have other sources of information and documentation</p> <p>20 capable of showing inspection had taken place, why do we</p> <p>21 still need a RISC form?</p> <p>22 A. Well, should I be asked to respond to that question?</p> <p>23 Because the RISC form is a requirement of PIMS. This is</p> <p>24 not a requirement I have set down. We just follow that</p> <p>25 requirement. We all agree that it is a tool that can</p>

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<p>1 show us that there is quality assurance. This is 2 already in PIMS, and in fact it is a convenient way to 3 do it. And as we said, without a RISC form, we would 4 have to do many other things to achieve the same result. 5 So shouldn't we go for the simple way, 6 a well-established way, to do it? Wouldn't that be more 7 simple? 8 Q. Perhaps I haven't made myself clear. I mean, for public 9 safety compliance, insofar as public safety is 10 concerned, if we have other sources of information and 11 documentation showing site inspection, do you agree 12 a RISC form is not really necessary for that purpose? 13 A. As I said many times just now, whether other sorts of 14 information can achieve the same function and 15 effectiveness of RISC forms, it really depends. But 16 RISC forms have their own function. I would therefore 17 feel that RISC forms are very useful under the present 18 mechanism. 19 Q. Now, can we show you Mr Yueng's second witness 20 statement, Mr Yueng of Pypun. Bundle GG1, page 29, 21 paragraph 15. Mr Yueng says the focal points of Pypun's 22 work set out in the brief are cost, programming and 23 public safety. That accords with your understanding; 24 correct? 25 A. Yes.</p>	<p>1 to carry out audit under three areas: cost, programming 2 and public safety. And one of these areas is public 3 safety. But Pypun was not asked for the purposes of 4 public safety compliance to look at the RISC forms. So 5 what I'm trying to get at is this. Would at least Pypun 6 appear to accept it was not part of their duty to look 7 at RISC forms to ensure public safety compliance? 8 A. Well, I can only say that that was what was done. 9 Q. And the government did not specifically mandate Pypun 10 must look at the RISC forms to ensure public safety 11 compliance; correct? 12 A. As I was saying, we did not mention each and every 13 thing. The approach was a risk-based approach to 14 identify risks, because many things are involved in 15 a project, and there may be special circumstances 16 attending a special project contract. So the actual 17 operation, in this case, did not pinpoint RISC forms as 18 a high-risk item. 19 Q. Now, would you therefore accept that the presence or 20 absence of RISC forms by itself would not give rise to 21 any public safety concern? 22 A. Now, I think this question is too open-ended. As if to 23 say -- so what is the implication behind the absence of 24 RISC forms? 25 Q. That's why I focus on "by itself"; the simple fact that</p>
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<p>1 Q. If we can go to paragraph 103 on page 46, the last 2 sentence which Mr Pennicott has already alluded to: 3 "... the RISC forms, were this a private building 4 project, were not documents that would be inspected by 5 the BD to check that the supervision had been carried 6 out properly." 7 In fact, if we go one sentence before that: 8 "The RISC forms were not documents Pypun would have 9 been required to look at for any audit that was carried 10 out and so, if these areas had been audited, the RISC 11 forms would not have been looked at." 12 You can see that? 13 A. I have just seen them now. 14 Q. In other words, in the government's mandate to Pypun, 15 the government did not specifically ask Pypun to audit 16 RISC forms to ensure public safety compliance; correct? 17 A. Well, in any project, safety relates to many different 18 factors. Pypun has adopted a risk-based approach and 19 they have considered many different things 20 comprehensively. Their conclusion is to work on the 21 basis of risk identification and also to do audit. 22 Well, they would do it according to this method, but at 23 that time it was not said that they should look at RISC 24 forms. 25 Q. I will try to put it in a simple way. Pypun was asked</p>	<p>1 there may or may not be RISC forms by itself would not 2 create any public safety concerns. You need to go 3 behind to ask why. So you can't just look at the fact 4 that RISC forms were not there. Do you agree? 5 A. I agree because you mention "concerns". We do need more 6 information and more specifics to talk about concerns. 7 MR CHANG: Mr Chairman, I note the time. I have only one 8 other short topic, which will take less than five 9 minutes. 10 CHAIRMAN: Please continue. 11 MR CHANG: The final topic is this, still on RISC forms. 12 You probably would hear from the evidence last week from 13 Mr Kit Chan -- if we can quickly show you the relevant 14 transcript. It's Day 13, page 130, line 10 onwards. 15 Can you see that, "I mentioned to you" -- Mr Li; can 16 you see that? 17 "... the RISC forms are very time-consuming and 18 labour-intensive, and it was there some 40 years ago 19 when the industry was totally different from now ... and 20 now the construction is so complicated, and the 21 expectations from society are so high." 22 Then we move to line 20: 23 "But the system is still there. Four parts. If you 24 look, every RISC forms has four parts, have to sign off 25 by four different people. It takes a long, long time.</p>

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<p>1 It's not practical. I think the industry got to start 2 thinking to revise the system to more user-friendly, 3 with the help of new technology." 4 Just to complete Mr Kit Chan's evidence, if you go 5 to page 131, lines 1 to 14: 6 "And also one very important thing is RISC form is 7 a contractual requirement. It's an administrative 8 procedure, not a statutory requirement. The contractor 9 normally don't pay high attention to that. Unless, if 10 the government wants to make it a big deal -- 'Okay, 11 it's a statutory requirement' -- then the whole thing 12 would be different. 13 I'm not trying to defend but this is the reality in 14 the construction industry. 15 It's the normal practice ..." 16 Then he referred to the Macau-Zhuhai Bridge. 17 Two points here. First, we have a highly 18 experienced engineer who has worked in the industry for 19 over 40 years, saying that RISC forms are time-consuming 20 and not user-friendly. And we have also seen or at 21 least I tried to get you to agree that the presence or 22 absence of RISC form by itself will not give rise to 23 public safety concerns. 24 So, in that case, would you agree that the 25 government should simply do away completely with the</p>	<p>1 to see where we are? 2 MR BOULDING: Yes, sir. I have a few questions. I won't be 3 very long. I would propose starting after lunch, if 4 that's convenient to you. 5 CHAIRMAN: That's fine. Good. 6 Mr Clayton? 7 MR CLAYTON: No questions at the moment, sir. 8 CHAIRMAN: Thank you very much. 9 Mr Li, we are going to have lunch now, the luncheon 10 adjournment. We will return after that. There will 11 still be some questions for you, so it will be necessary 12 to come back after lunch. 13 As you are in the middle of giving your evidence, 14 it's a standard requirement that you're not entitled to 15 discuss your evidence with anybody else until it is 16 completed. Okay? 17 WITNESS: I understand. 18 CHAIRMAN: Good. Thank you very much. It's now 1.07 or 19 1.08. 20 MR PENNICOTT: 2.20? 21 CHAIRMAN: 2.20. Thank you. 22 (1.06 pm) 23 (The luncheon adjournment) 24 (2.22 pm) 25 MR BOULDING: Good afternoon, sir. Good afternoon,</p>
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<p>1 RISC form requirement and replace it with something 2 that's more user-friendly and less time-consuming? 3 MR CHOW: Sir, I recall it was Mr Li's earlier evidence that 4 the requirements of RISC form is actually the 5 requirement of MTRC under PIMS, so perhaps this is not 6 a very appropriate question to be asked of Mr Li. 7 CHAIRMAN: Perhaps it might be rephrased. 8 MR CHANG: Perhaps if I try to get the government's position 9 on this. 10 Do you agree that the RISC form requirement should 11 be revisited and be replaced with something that's less 12 time-consuming and more user-friendly, from the 13 government's perspective? 14 A. On this point, I don't think I can speak on behalf of 15 the government, but from my understanding and from the 16 discussion we had just now, supervision or proper 17 supervision -- now, no one denies the importance of 18 that. But then the MTRCL formulated its own PIMS and 19 how things could be done more effectively -- well, these 20 days we have much more technology available, so there is 21 room for the MTRCL to improve their whole system. 22 So I think that's all I can say. 23 MR CHANG: Mr Chairman, these are our questions. Thank you 24 very much. 25 CHAIRMAN: Good. Thank you very much. Can I just ask, just</p>	<p>1 Professor. 2 CHAIRMAN: Yes. 3 MR BOULDING: We have checked the transcript and upon 4 reflection the matter I was going to discuss with Mr Li 5 has been adequately covered. 6 So I apologise, Mr Li, if I have kept you in purdah 7 over the luncheon adjournment through my indecision. 8 Thank you very much. 9 CHAIRMAN: Thank you. 10 MR CHOW: No re-examination. 11 CHAIRMAN: Good. There we are. 12 Questioning by THE TRIBUNAL 13 COMMISSIONER HANSFORD: Actually, I have a couple of 14 questions, so I'm grateful to you, Mr Boulding, for 15 keeping our witness so he can answer my two questions. 16 Mr Li, just picking up on something you said 17 earlier -- I don't quite understand -- why does 18 a missing RISC form mean that the structure is 19 necessarily dangerous? I think you used the word 20 "dangerous". Why would that be the case because of 21 a missing RISC form? 22 A. Let me try to respond like this. Without the RISC form, 23 it may represent that no supervision is done. If we are 24 talking about rebar fixing, pouring, then the question 25 is: is the rebar fixed in accordance with the drawings</p>

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<p>1 and the specs in the contract? Well, it's doubtful</p> <p>2 then. In an extreme case, if it is not inspected, some</p> <p>3 rebars are missing or not properly connected, then the</p> <p>4 structure could pose some risk or so-called danger.</p> <p>5 That's what I want to say.</p> <p>6 COMMISSIONER HANSFORD: Okay. And my other question is: how</p> <p>7 long would you expect RISC forms to be retained?</p> <p>8 A. If we are talking about the MTRC's system, that's for</p> <p>9 them to respond. But if you look at it from</p> <p>10 an engineer's perspective, then the RISC form contains</p> <p>11 a signature; it represents that someone has done the</p> <p>12 inspection. Someone has taken a look at the conditions</p> <p>13 at the time of inspection, and in the future, if there's</p> <p>14 a problem in the future, obviously there will be</p> <p>15 an investigation and information will be dug out, and</p> <p>16 the first thing to look for, it will be whether the work</p> <p>17 was carried out in accordance with the drawings and the</p> <p>18 inspection done accordingly. So the form would give us</p> <p>19 very valuable information.</p> <p>20 As to the question how long the form should be kept,</p> <p>21 I would say a reasonable period of time. It shouldn't</p> <p>22 be too short, because some problems may not surface</p> <p>23 right away. So, to me personally, it should be</p> <p>24 a reasonably long period.</p> <p>25 COMMISSIONER HANSFORD: And, in your experience, Mr Li, is</p>	<p>1 correct?</p> <p>2 A. That's correct, yes.</p> <p>3 Q. Could I ask you to go to bundle DD3, page 1355, please.</p> <p>4 This is the first page of your second witness</p> <p>5 statement; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Could I ask you to go to page 1361, please. Do you</p> <p>8 confirm that is your signature?</p> <p>9 A. Yes, correct.</p> <p>10 Q. Then can I move on to your third witness statement at</p> <p>11 page 1362.</p> <p>12 Can you confirm this is the first page of your third</p> <p>13 statement, please?</p> <p>14 A. Yes.</p> <p>15 Q. Turn over the page. Would you confirm that this is your</p> <p>16 signature?</p> <p>17 A. I confirm that.</p> <p>18 Q. We can move on to your fourth witness statement at</p> <p>19 page 1364. Is this the first page of your fourth</p> <p>20 witness statement?</p> <p>21 A. I confirm that.</p> <p>22 Q. Turn over the page. 1365. Do you confirm that this is</p> <p>23 your signature; right?</p> <p>24 A. I confirm that.</p> <p>25 Q. Would you confirm that the contents of these statements</p>
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<p>1 that the case on other projects, that RISC forms are</p> <p>2 retained for a reasonable period of time? Is that your</p> <p>3 experience?</p> <p>4 A. For government projects, yes, the period will be quite</p> <p>5 long.</p> <p>6 COMMISSIONER HANSFORD: What does "quite long" mean? Is it</p> <p>7 sort of two years, five years, ten years; roughly?</p> <p>8 A. 12 years.</p> <p>9 COMMISSIONER HANSFORD: 12 years? That's pretty precise.</p> <p>10 Okay. Thank you.</p> <p>11 CHAIRMAN: Is there anything arising? Good.</p> <p>12 Mr Li, thank you very much indeed for your</p> <p>13 assistance today. Your evidence is now completed.</p> <p>14 Thank you.</p> <p>15 WITNESS: (In English) Thank you.</p> <p>16 (The witness was released)</p> <p>17 MR CHOW: Mr Chairman, the government's next witness is</p> <p>18 Mr Leung Man Ho.</p> <p>19 MR LEUNG MAN HO, JONATHAN (affirmed in Cantonese)</p> <p>20 (All answers given via simultaneous interpreter</p> <p>21 except where otherwise specified)</p> <p>22 Examination-in-chief by MR CHOW</p> <p>23 Q. Good afternoon, Mr Leung. I understand that you have</p> <p>24 prepared three more witness statements for the purpose</p> <p>25 of this part of the Commission of Inquiry. Is that</p>	<p>1 are true and accurate to the best of your knowledge and</p> <p>2 belief?</p> <p>3 A. I confirm that.</p> <p>4 Q. Would you adopt the contents of these statements as your</p> <p>5 evidence for this part of the Commission of Inquiry?</p> <p>6 A. Yes.</p> <p>7 Q. Mr Leung, what is going to happen is that Mr Pennicott,</p> <p>8 counsel for the Commission, will probably have some</p> <p>9 questions for you, and it will be followed by counsel</p> <p>10 for the various parties. Meanwhile, the Chairman and</p> <p>11 Prof Hansford may have questions for you as well, and at</p> <p>12 the end I may need to have a few more questions by way</p> <p>13 of wrap-up. Do you understand that?</p> <p>14 A. I understand.</p> <p>15 MR CHOW: Please remain seated and take questions, please.</p> <p>16 Thank you.</p> <p>17 Examination by MR PENNICOTT</p> <p>18 MR PENNICOTT: Mr Leung, good afternoon, again.</p> <p>19 A. Good afternoon.</p> <p>20 Q. Thank you very much for coming along to give evidence to</p> <p>21 the Commission. Mr Chow has explained what's going to</p> <p>22 happen and so I'll ask a few questions. I don't have</p> <p>23 many.</p> <p>24 Mr Leung, first of all, at paragraph 9 of your</p> <p>25 second witness statement, so that's at page 1357, you</p>

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<p>1 say:</p> <p>2 "The construction of stitch joints (issue 1) and</p> <p>3 shunt neck (issue 2) ..."</p> <p>4 We can miss out the next bit about RISC forms for</p> <p>5 the moment.</p> <p>6 "... were not considered by MTR and Pypun as</p> <p>7 high-risk items when compared with other more</p> <p>8 challenging and onerous tasks in contract no. 1112 at</p> <p>9 that time."</p> <p>10 Mr Leung, is that a view that you share or do you</p> <p>11 not have any view on the subject?</p> <p>12 A. Well, I can say that the contract, when it was</p> <p>13 formulated, we had different views, and of course today,</p> <p>14 in hindsight, we see MTR and Leighton's checking</p> <p>15 results, we cannot take the position that it is</p> <p>16 a low-risk item.</p> <p>17 Q. Yes. So, with the benefit of hindsight --</p> <p>18 A. (In English) Exactly.</p> <p>19 Q. -- it was perhaps an error to treat this, the stitch</p> <p>20 joints that is, as a low-risk item, or at least not</p> <p>21 a high-risk item? Is that right, is that what you're</p> <p>22 saying?</p> <p>23 A. Well, I would like everybody to review the whole</p> <p>24 incident. At that time, when we had the contract,</p> <p>25 Pypun, they had to face -- and I'm just talking about</p>	<p>1 between contractors, both internal and external to the</p> <p>2 project, and we will review" -- that's Pypun will</p> <p>3 review -- "this aspect carefully."</p> <p>4 We now know that despite those words, the stitch</p> <p>5 joints between contract 1111 and 1112 were not regarded</p> <p>6 as a "key risk" item. And I assume, Mr Leung, the</p> <p>7 government having engaged Pypun, simply relied upon</p> <p>8 Pypun's judgment as to what was a key risk and what was</p> <p>9 not a key risk, in the context of contract interfaces.</p> <p>10 Would that be right?</p> <p>11 A. The government had engaged Pypun to do M&amp;V monitoring,</p> <p>12 and we are applying the check the checker principle. So</p> <p>13 the government had also spent more than -- close to</p> <p>14 8 billion to MTRCL to do monitoring at the construction</p> <p>15 site.</p> <p>16 So the government has spent 180 million on Pypun to</p> <p>17 monitor the works, it does not mean that it will be</p> <p>18 doing all the MTR's work. So it has to be according to</p> <p>19 a risk-based approach. So, given these conditions, they</p> <p>20 had to oversee so many contracts and projects, they did</p> <p>21 not place stitch joints at a high-risk category. That</p> <p>22 is a fact.</p> <p>23 Q. Right. And, as I understand it, you personally, or the</p> <p>24 government perhaps collectively, does not criticise</p> <p>25 Pypun for that decision. Is that right?</p>
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<p>1 large projects -- they had to deal with projects worth</p> <p>2 more than 50 million and they had 60 of those contracts</p> <p>3 and this is one of those contracts, and in the contract</p> <p>4 we have to identify high-risk items and what that would</p> <p>5 include. For example, in 1112, we see, for example, we</p> <p>6 had to take a bridge that was in existence, we had to</p> <p>7 divert the traffic, we had to do underpinning work, and</p> <p>8 we have to suspend cables. All these are high-risk</p> <p>9 works.</p> <p>10 So over 60 contracts, Pypun had to identify all the</p> <p>11 high-risk items and had to focus its effort, its time</p> <p>12 and resources. So that is a matter of fact, at that</p> <p>13 time we did not take stitch joints and place it in</p> <p>14 a high-risk category.</p> <p>15 Q. Yes. I don't know whether you heard any of the</p> <p>16 questions that I asked Mr Yueng of Pypun this morning</p> <p>17 regarding the monitoring plan that Pypun produced, in</p> <p>18 which there are references to contract interfaces, both</p> <p>19 internal and external to the SCL project, being</p> <p>20 identified as a key risk.</p> <p>21 Did you hear any of that, Mr Leung?</p> <p>22 A. Yes.</p> <p>23 Q. What one of the paragraphs or subparagraphs reads, in</p> <p>24 part, is that:</p> <p>25 "A key aspect of this project is the interfaces</p>	<p>1 A. Well, you can say that at that time, when the contract</p> <p>2 was drafted, in the analysis of risk registry, this was</p> <p>3 not included. You can say it was not placed at a high</p> <p>4 priority. That is a fact.</p> <p>5 Q. Right. In the light of what's happened on this</p> <p>6 particular project, on this particular contract, and</p> <p>7 specifically in relation to the stitch joints, is the</p> <p>8 government, going forward, likely to take a different</p> <p>9 view about the risk category that a stitch joint might</p> <p>10 fall into in the future?</p> <p>11 A. Well, it would depend on how much resources we have to</p> <p>12 deploy with our M&amp;V consultants. The main</p> <p>13 responsibility, as I said from the beginning, it was</p> <p>14 given to MTRC and they were required to do the</p> <p>15 supervision role. The M&amp;V, you can see in the</p> <p>16 documents, it requires the MTRC to do its job under the</p> <p>17 EA conditions. In the entrustment agreement, there are</p> <p>18 a lot of works, a lot of categories, so how much</p> <p>19 resources do we have to spend? In the future, we will</p> <p>20 have a very clear review, that is the RISC forms or</p> <p>21 these interfaces, should they be included, how much</p> <p>22 resources do we need to place with the M&amp;V consultants</p> <p>23 such that they can see what the MTRCL has to do?</p> <p>24 I also need to clarify the fact that in 2012, when</p> <p>25 we drafted this contract. When the MTRC took on this</p>

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<p>1 project, our trust or faith in the MTR, the quality it 2 could provide, it is not the same now, because in the 3 past the MTRC had done a lot of railways, domestic 4 railways, so -- this is not their first project. We had 5 more faith in them in the past. For example, the 6 Tsuen Wan Line, the Hong Kong Island line. It is also 7 a very experienced contractor.</p> <p>8 Q. Okay.</p> <p>9 Mr Leung, just try to focus on the question, please, 10 going forward. All right. Let's move on.</p> <p>11 A. Yes.</p> <p>12 Q. Mr Yueng of Pypun also says, both in his witness 13 statement and repeated this morning, that Pypun were 14 focused on costs, or cost, programme and public safety. 15 Those are the words that are used in the M&amp;V agreement 16 or brief. And he says that Pypun's responsibilities do 17 not extend to construction quality or construction 18 record-keeping. Do you agree with that?</p> <p>19 A. I have questions regarding those comments. Quality is 20 part and parcel of all the work that they are supposed 21 to do. The cost, programme, public safety, they all 22 have quality elements. It's not just because you are 23 doing public safety and if you identify quality issues 24 and you say that you can ignore them. That's 25 impossible.</p>	<p>1 an audit in relation to the RISC forms on contract 1112.</p> <p>2 Why was a separate supplemental agreement entered 3 into, Mr Leung, if -- if I've understood your evidence 4 correctly -- it was part of Pypun's responsibilities to 5 look at those RISC forms anyway?</p> <p>6 A. I want to explain two things. What we have signed is 7 not a supplementary agreement. It's an agreement for 8 additional services. We engaged additional services for 9 M&amp;V. When some works or processes were not anticipated 10 or impossible to anticipate at the time of signing the 11 contract, even if we are talking about very experienced 12 contractor, for example it was not every stage that 13 there would be such major problems with Hung Hom 14 Station, then we have looked at whether we are asking 15 them to do very simple auditing or we are asking them to 16 retrieve each and every RISC form to look at the form. 17 It's not something very simple, a sampling check under 18 the check the checker approach. So we must regard this 19 exercise as additional services.</p> <p>20 Then we also look into whether they need to deploy 21 additional resources and whether it would be envisaged 22 by the original contractor in the original contract.</p> <p>23 Q. Yes, I see. So this was seen as a genuine additional 24 service outside of the scope of whatever they were 25 required to do initially; yes?</p>
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<p>1 Q. Okay. So as reflected in something that government's 2 counsel mentioned this morning, it's certainly your 3 position, Mr Leung, as I understand it, that Pypun was 4 very much involved in quality, in addition to or as part 5 of cost, programming and public safety?</p> <p>6 MR CLAYTON: Excuse me, that's not what the witness said. 7 He didn't say it was -- he obviously qualified what he 8 said but he didn't say he was very much involved in 9 quality.</p> <p>10 MR PENNICOTT: All right.</p> <p>11 Mr Leung, is it your position that Pypun, as part of 12 cost, programme and public safety, also had to take into 13 account quality matters?</p> <p>14 A. When quality issues are involved in those areas, 15 of course they have to consider them.</p> <p>16 Q. And Mr Yueng also told us, in his witness statement and 17 again this morning, that so far as construction 18 record-keeping is concerned, if Pypun were to carry out 19 an audit, that would not extend to looking at RISC 20 forms. Do you agree with that?</p> <p>21 A. Just now, I said I disagree, because I said just now, if 22 it involves quality issues, they have to be involved.</p> <p>23 Q. All right.</p> <p>24 The government entered into a separate supplementary 25 agreement fairly recently with Pypun to carry out</p>	<p>1 A. Correct.</p> <p>2 Q. Understood. All right.</p> <p>3 We heard also from Mr Yueng earlier, Mr Leung, that 4 the number of contracts within the SCL project, and 5 therefore the number of contracts for which Pypun was 6 required to monitor and verify, increased very 7 substantially, and I assume you don't dispute that?</p> <p>8 A. I just want to point out the fact Pypun is a very 9 experienced contractor. They understand how many major 10 contracts have been awarded to the MTRC, what was the 11 total work. If I have to pinpoint the number, of course 12 it's a big number. As I've said, for Pypun, it would be 13 60 projects worth 50 million or more. As an experienced 14 contractor, they know this is a substantial contract 15 with such worth, they should come up with a reasonable 16 estimation of their input. Of course, if they give us 17 further justifications, we will consider them, but at 18 this moment we don't think we should award the 19 additional services to them.</p> <p>20 Q. Right. So Mr Yueng was obviously right that under the 21 original agreement, leaving aside all the arrangements 22 for additional services, the sum of money payable to 23 Pypun has remained the same, for the original services, 24 despite the increase in the number of contracts?</p> <p>25 A. Yes. Correct.</p>

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<p>1 Q. Okay. Did you ever have occasion to discuss with Pypun 2 their resources, as the number of contracts increased, 3 and whether they had sufficient resources? 4 A. In my current position, I have seldom talked to Pypun 5 over this. But the Chief Engineer would hold regular 6 monthly meetings with them when they would discuss such 7 issues as resources. 8 MR PENNICOTT: All right. Thank you very much, Mr Leung. 9 Sir, I have no further questions. 10 MR TSOI: I have no questions, sir. 11 CHAIRMAN: Thank you. 12 MR CHANG: No questions. 13 MR BOULDING: No questions, sir. 14 MR CLAYTON: No questions. 15 CHAIRMAN: Thank you very much. Is there any 16 re-examination? 17 MR CHOW: Can I have a moment, because I have just received 18 some instructions. 19 No re-examination. 20 CHAIRMAN: Thank you. 21 Thank you very much indeed, Mr Leung. Thank you for 22 assisting us. Your evidence is now completed. 23 WITNESS: (In English) Thank you. 24 (The witness was released) 25 MR CHOW: Mr Chairman, with your permission, we will call</p>	<p>1 Q. Your fourth witness statement at page 10292, please. 2 This is the first page of your fourth witness statement; 3 correct? 4 A. Correct. 5 Q. Could I ask you to go to 10296. Do you confirm the 6 signature that we see is your signature; right? 7 A. Correct. 8 Q. Your fifth witness statement is made in response to 9 various matters raised by other witnesses that you 10 noticed; right? 11 A. Correct. 12 Q. Start at bundle DD9, page 12276. This is the first page 13 of your fifth witness statement; correct? 14 A. Correct. 15 Q. If we can go to page 12284, would you confirm that this 16 is your signature? 17 A. Yes. 18 Q. Would you confirm that the matters that you set out in 19 the said four witness statements are true and correct to 20 the best of your knowledge, information and belief? 21 A. Yes. 22 Q. Would you adopt the content in those statements as your 23 evidence in this part of the Inquiry? 24 A. Yes. 25 Q. Mr Lok, what is going to happen is counsel for the</p>
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<p>1 the government's third witness, also the last witness, 2 Mr Lok Pui Fai. 3 Good afternoon, Mr Lok. 4 MR LOK PUI FAI, ANDREW (sworn in Cantonese) 5 (All answers given via simultaneous interpreter 6 except where otherwise specified) 7 Examination-in-chief by MR CHOW 8 Q. Mr Lok, you have prepared altogether four additional 9 witness statements for the purpose of this part of the 10 Inquiry. 11 A. Yes. 12 Q. Correct? Can I ask you to go to bundle DD7, page 10270. 13 Would you confirm that this is the first page of your 14 second witness statement? 15 A. Yes, I confirm that. 16 Q. Would you go to page 10285, please. The signature is 17 your signature; correct? 18 A. Correct. 19 Q. Would you go to the same bundle, page 10286, please. 20 This is the first page of your third witness statement; 21 correct? 22 A. Correct. 23 Q. On page 10289, on the top of the page is your signature. 24 Do you confirm that? 25 A. Correct.</p>	<p>1 Commission, Mr Pennicott, will probably have some 2 questions for you, and it will be followed by counsel 3 for the other parties, and Mr Chairman and Prof Hansford 4 may have further questions for you at any time. At the 5 end, I may or may not need to ask you further questions 6 by way of wrap-up. Do you understand that? 7 A. Understood. 8 MR CHOW: Please remain seated and take questions from 9 various counsel, please. 10 Examination by MR PENNICOTT 11 MR PENNICOTT: Mr Lok, good afternoon. 12 A. (In English) Good afternoon. 13 Q. Thank you very much for coming to give evidence to the 14 Commission. I can almost guarantee that the questions 15 I have to ask you will last shorter than your 16 examination-in-chief. 17 Can I ask you, however, just two points. In 18 paragraph 13 of your second witness statement, you make 19 reference to the fact that: 20 "MTR submitted to BO team a remedial proposal for 21 stitch joint at EWL trough, ie joint 3 [as we know it], 22 a revised SSP on 22 March 2018 and an updated quality 23 supervision plan for installation of couplers on 24 26 March, which include enhanced site supervision and 25 quality control by deploying an independent quality</p>



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<p>1 control team" -- about which we have heard -- "to ensure 2 all the remedial works are carried out satisfactorily. 3 BO team and BSRC team vetted the remedial proposal and 4 discussed with MTR on 23 March 2018. MTR then submitted 5 to BO team a revised remedial proposal for joint 3 on 6 26 March 2018 and BO team issued an acceptance letter 7 with imposed requirements to MTR on the remedial 8 proposal for joint 3 on 27 March 2018." 9 So that's the EWL stitch joint, stitch joint 3. 10 Then if I could ask you, please, to go to 11 paragraph 17 of your witness statement, and this time 12 I'm not going to read it all out, again the government, 13 through a series of letters, has vetted the submissions 14 in relation to the other two stitch joints, that's 15 joints 1 and 2 in the NSL, and albeit somewhat belatedly 16 have accepted the MTR's submissions. That's right, is 17 it not, Mr Lok? 18 A. Yes. 19 Q. The government, as I understand it, has accepted those 20 remedial proposals, as we've seen, and the government 21 has, as I understand it, no doubt, has no reason to 22 doubt, that the remedial work has been carried out in 23 accordance with those proposals. Is that right? 24 A. We thought they would act in accordance with the 25 remedial proposals.</p>	<p>1 outstanding, and we will then ask them to submit and 2 clear up the facts and to see whether all the documents 3 are complete. 4 Q. Right. Now, so far as the shunt neck joint is 5 concerned, Mr Lok, I think that probably during the 6 course of the various witness statements that you've 7 prepared, and indeed somewhere between the fourth one 8 and the fifth one, the government has approved, subject 9 to conditions, the remedial proposal in relation to the 10 shunt neck joint. Is that right? 11 A. Yes, we have issued a letter telling them that we have 12 accepted the remedial proposal, but we have imposed some 13 conditions and requirements. 14 Q. Yes. Just for the sake of completeness, if we could 15 look at DD9, page 12254. That's a letter of 28 May, 16 which I think, if we turn over the page, was signed by 17 you, Mr Lok. 18 A. Yes. 19 Q. This is the letter confirming government's approval of 20 the remedial proposal for the shunt neck, subject to the 21 conditions that have been annexed to the letter? 22 A. Yes. 23 Q. Right. Not only have you sent that letter, you have 24 subsequently suggested to the MTR that they might like 25 to get on with it as well, and Leightons?</p>
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<p>1 Q. Right. What was outstanding until recently, I think, 2 were various documents relating to the materials that 3 were used in the remedial works in the stitch joints, 4 that is documents in relation to concrete, rebar and 5 couplers -- that documentation has been supplied one way 6 or another, perhaps through the Commission, and has been 7 analysed by Pypun and there's been a bit of toing and 8 froing between the government, Pypun, Leighton and MTR, 9 and that I think you would agree is nearly resolved; is 10 that right? 11 A. For the stitch joints in question, they haven't reported 12 completion. On the part of Leighton and MTRC, they have 13 given some material submissions to COI, and on 27 May 14 the MTRC also submitted a material submission to the BO 15 team. 16 We have asked the BSRC team to do audit checking 17 after receiving these documents. After the check, the 18 team found something was outstanding and they also had 19 to clarify some of the discrepancies. 20 Q. Right. And, I think as we've seen, those are sought to 21 be addressed by MTR and Leighton and I think the ball is 22 back in the court of Pypun or the government, just to 23 see whether they are now satisfied that all the 24 outstanding matters have been dealt with? 25 A. Yes, we have to wait for Pypun to see what is still</p>	<p>1 A. Of course, they can undertake the work ASAP, but we told 2 them that they need to read the contents of the letter. 3 For example, we said they need to submit a site 4 supervision plan. They have to tell us what personnel 5 they will be deploying to do supervision. And there's 6 also another item I remember, that in the location, in 7 the shunt neck tunnel, there's mud obstructing the way. 8 They have to tell us how to excavate and how people can 9 do the works carefully, safely. They have to comply 10 with these conditions. 11 Q. Indeed, but I think if we look at page, in the same 12 bundle, 12268, another letter from the government, sent 13 a couple of days after the letter that we've just been 14 looking at in relation to all three areas, and if we 15 just go on to the next page, 12269, what Mr Chan says 16 there, if we can just look up, please -- scroll down: 17 "For the shunt neck tunnel remedial proposal, the 18 Corporation [that's the MTR] should expedite the 19 commencement of the remedial works concerned." 20 So it sounds to me as though the government is keen 21 that this work should be completed as quickly as 22 possible? Subject to the conditions, of course. 23 A. Yes, they have to comply with the conditions, and if you 24 read the whole letter -- I didn't draft the letter, so 25 I don't know what -- they might want it to be completed</p>

<p style="text-align: right;">Page 101</p> <p>1 as soon as possible. You will have to read the whole 2 letter. 3 MR PENNICOTT: All right, which can be done. 4 Thank you very much, Mr Lok. I have no further 5 questions. 6 MR TSOI: Sir, I have no questions. Thank you. 7 MR CHANG: Leighton has no questions, but we wish to lay 8 down a marker, as we did in part 1 of the Inquiry. In 9 the fifth witness statement of Mr Lok, he expressed his 10 views as to whether the QSP applies to any part of the 11 project. For part 1 of the Inquiry, we have decided not 12 to debate with Mr Lok in the box, because we do not 13 think this would help the Commission, but suffice it to 14 say that we do not accept Mr Lok's evidence but we will 15 leave it for submissions. 16 With that caveat, we have no questions. 17 CHAIRMAN: Thank you. 18 Cross-examination by MR BOULDING 19 MR BOULDING: Good afternoon, Mr Lok. I represent MTR in 20 this matter and I do have a few questions for you. Good 21 afternoon. 22 You tell us, do you not, in paragraph 1 of your 23 fourth witness statement that you are a senior 24 structural engineer in government's Buildings 25 Department; that's correct, is it not?</p>	<p style="text-align: right;">Page 103</p> <p>1 that be a fair description of it? 2 A. Mostly, I'll be dealing -- I'll be vetting building 3 submissions for consultation and I also need to make 4 sure the works comply with the building safety 5 standards. So these are the two major areas of duties. 6 And regarding site visits, we'll do visits when 7 necessary. 8 Q. That's right. And the vetting of the building 9 submissions that you refer to, making sure the works 10 comply with the building safety standards, those jobs 11 take place in your office, do they not? 12 A. If necessary, if we need to check the site, if we have 13 to deal with inspection forms or checklists, then 14 usually we will send the BSRC team to assist us or our 15 buildings team will also assist us in visits, the BO 16 team. 17 Q. And, as you say, you carry out site visits when it's 18 necessary for you to do so, to leave the office and go 19 and see the site; correct? 20 A. Yes, when necessary I will send people or I might go 21 personally. 22 Q. Okay. And before you joined the BD back in 2001, what 23 did you do before that, before 2001? 24 A. Previously, I was working with consultants, that is 25 design consultants.</p>
<p style="text-align: right;">Page 102</p> <p>1 A. Yes. 2 Q. You also tell us that you have been seconded to the 3 Railway Development Office of the Highways Department; 4 correct? 5 A. Yes. 6 Q. I think that occurred in January 2016, did it not? 7 A. Yes. 8 Q. In your first statement filed for part 1 of the 9 Commission of Inquiry, you told the learned 10 Commissioners, did you not, that you joined the 11 Buildings Department in 2001; right? 12 A. Yes. 13 Q. So what's that -- that's about 18 years ago? 14 A. I joined the Buildings Department in 2001 and have been 15 working there, undertaking my duties in the Buildings 16 Department, up till 2016, and I was promoted to senior 17 engineer, senior structural engineer post. 18 Subsequently, in January 2016, at the time, Mr Wong 19 Wing Keung had retired so I took up his post and I was 20 seconded to RDO. 21 So January 2016, I was seconded to RDO as senior 22 structural engineer for Railway Development post. 23 Q. Thank you very much for that explanation. And, as 24 I understand it, your job is essentially office-based, 25 is it not, but on occasions you make site visits; would</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Who were they? 2 A. Those companies were civil engineering/structural 3 engineering design consultants. 4 Q. Right. So it follows from that, does it not, that you 5 have never worked for a contractor? You never worked 6 directly for a contractor? 7 A. Yes, I have not worked for contractor firms. 8 Q. Okay. 9 Now, presumably you would accept, would you not, 10 that during the course of a civil engineering project, 11 particularly a complex project such as this, 12 coordination and sequencing issues, such as access 13 problems, can and do arise? 14 A. I think, in any engineering project coordination, and 15 other matters such as documentation, coordination and 16 the programme, everything is important. 17 Q. Well, I accept that, but can I go back to my question, 18 please. You would accept, would you not, that during 19 the course of a civil engineering project, particularly 20 a complex project such as this, coordination and 21 sequencing issues such as access problems can and do 22 arise? What's your answer to that question? 23 A. I agree because each project has its complexities, 24 actually each detail is important. 25 Q. Well, of course. And these coordination and sequencing</p>

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<p>1 issues such as access problems could arise, for example, 2 due to changing site conditions, could they not? Such 3 as the site getting more congested. You would accept 4 that, would you? 5 A. If the problem arises, it would need a resolution. 6 Q. Again, Mr Lok, I've got to take you back to my question. 7 You're not answering my question. What I put to you is 8 that these coordination and sequencing issues, such as 9 access problems, could arise, for example, due to 10 changing site conditions, could they not? That was my 11 question. What is your answer? 12 A. Could you repeat your question? 13 Q. For the third time, yes. 14 These coordination and sequencing issues, such as 15 access conditions, could arise due to changing site 16 conditions; that's correct, is it not? 17 A. I agree, yes. 18 Q. Thank you. And this problem, the problem we've talked 19 about, can arise in the sense that in order to keep the 20 works going efficiently, and to assist progress, 21 a particular vehicular access might have to be created 22 or retained; you would accept that, wouldn't you? 23 A. I agree. 24 Q. And presumably you would also accept, would you not, 25 that the need to retain or create such a vehicular</p>	<p>1 Q. It's in the transcript. Take it from me that that's 2 what they said. 3 A. (Chinese spoken). 4 Q. No doubt if my learned friend Mr Chow disagrees, he will 5 re-examine you on it. 6 So proceeding on that basis, that that's what they 7 said, presumably you'd agree with them that these sort 8 of vehicular access problems are the sort of things that 9 have to be sorted out on site. Would you agree with 10 that proposition? 11 A. If there are site constraints, problems that have to be 12 resolved on the site, then I agree that they should be 13 resolved. 14 Q. Thank you. We've also heard evidence, and I assume 15 you've read it, that just this sort of problem, the need 16 to retain vehicular access to progress the works 17 efficiently and to programme, arose on the North 18 Approach Tunnel, the South Approach Tunnel and the 19 Hung Hom Sidings. Presumably you've read that evidence 20 as well, have you, Mr Lok? 21 A. Part of it. 22 Q. And again the part you've read, the part you've read 23 stated, did it not, that these problems arose due to 24 site conditions? Do you remember reading that? 25 A. I've heard you. I have no problem with that.</p>
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<p>1 access can affect the way in which the works were 2 originally planned and agreed to be carried out; that 3 would be right, wouldn't it? 4 A. I don't object. 5 Q. Does that mean you agree? 6 A. Do I have to -- I want to say the construction sequence, 7 it's not part of my duties. I'm just responding out of 8 common sense. Well, if necessary, of course it's yes. 9 You have to follow the sequence, I don't object to that. 10 Q. So you're agreeing with me? 11 A. Well, I agree. 12 Q. Thank you. I don't know whether you've been following 13 the evidence in this Commission of Inquiry, but if you 14 have did you hear or read the evidence given by both 15 Mr Chris Chan and Mr Kit Chan of MTR? Did you hear or 16 read that evidence? 17 A. I have read some of the evidence, not all of it. 18 Q. And did you read their evidence when they told the 19 learned Commissioners that these sort of access 20 problems, these coordination problems, are the sort of 21 things that have to be sorted out on the site by the 22 contractor? 23 Did you read that evidence? 24 A. Could you please show me the evidence that you have been 25 talking about? I can't really recall now.</p>	<p>1 Q. Thank you. 2 A. If they have something that they need to resolve, it's 3 okay. 4 Q. Good. And you will know, won't you, that to provide the 5 necessary access, Leightons used couplers instead of 6 lapped rebars in certain locations? That's something 7 you know, isn't it, Mr Lok? 8 A. I think, in my statement, it's January 2019 and it was 9 at a meeting, I think it should be 23 January, MTRC 10 there and then reported a design change, including the 11 change of lapped bars to couplers for NAT, SAT and HHS. 12 I was only informed there and then. 13 Q. So I think the answer so my question, Mr Lok, is, "Yes, 14 that is something I know"? 15 A. Yes, in January. 16 Q. And you will also know, won't you, that this use of 17 couplers instead of lapped bars meant that there was no 18 barrier -- no barrier -- of lapped bars in such 19 locations to prevent the contractor's vehicles from 20 getting where they needed to be on site? You know that, 21 don't you? 22 A. I understand that. 23 Q. You will also know and indeed understand, I venture to 24 suggest, that once there was no longer any need for the 25 vehicular access to be retained, the rebar works were</p>

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<p>1 then completed but using couplers. That's something you 2 also know and understand, is it not? 3 A. The most important thing is to see if they have acted in 4 accordance with the accepted plan. If it's a plan 5 involving rebars without couplers, what they had to do 6 is to submit a consultation to the BO team, and the BO 7 team will look at the technical details, and then the BO 8 team might impose conditions. If they use couplers, and 9 also the couplers might have to be tested, they can just 10 proceed. 11 Q. Mr Lok, unless you concentrate and answer my questions, 12 this process is going to take a lot longer would 13 otherwise be the case. You understand that, don't you? 14 A. (In English) Okay. 15 Q. I'll put the question again. You will also know and 16 indeed understand, I venture to suggest, that once there 17 was no longer any need for the vehicular access to be 18 retained, the rebar works were then completed but using 19 couplers. That's something you also know and 20 understand, is it not? 21 A. When they didn't use -- well, that's the case if the 22 rebar works had been completed and the concrete pouring 23 had been completed. That's what I would see as 24 completion. 25 Q. I'll take that as a "yes".</p>	<p>1 again, as a statement of fact, that is correct, is it 2 not, Mr Lok? 3 A. Forgive me for saying this. If you want me to confirm 4 that Kit Chan has said that the spacing should not be 5 changed, I don't think that I can say that -- kit Chan 6 said there's no need to change the spacing, I didn't 7 witness that. I can't say whether it's true or not. 8 Q. You can take it from me -- 9 A. (In English) Okay. 10 Q. -- Mr Lok, that that's what Mr Chan told this Commission 11 of Inquiry, on oath, and if he said that -- let's look 12 at it from another perspective -- you're not in 13 a position to dispute that evidence, are you? You are 14 not in a position to dispute his evidence? 15 A. No. I didn't dispute his evidence, Mr Chan's evidence. 16 Q. Thank you. 17 A. So you can just take it from me that I heard that's what 18 he said. 19 Q. And are you aware of the Code of Practice for Structural 20 Use of Concrete 2013 as produced I think by the 21 Buildings Department; is that something you're aware of, 22 Mr Lok? 23 A. Yes. 24 Q. I wonder whether we can just remind ourselves of its 25 terms. It can be found in bundle C at 8348. This is</p>
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<p>1 And you will know, won't you, that Mr Chris Chan of 2 MTR told the learned Commissioners that there was 3 general consensus on site between both MTR and Leighton 4 that the change from lapped bars to couplers to suit 5 site conditions was acceptable? 6 A. It was a consensus between Kit Chan and Leighton. 7 I have no information to say anything about it. I was 8 not involved. 9 Q. I didn't say you were. And as Chris Chan also told the 10 Commission of Inquiry, the change from lapped bars to 11 couplers involved no change to the diameter of the 12 rebars that were used in the works as shown in the 13 accepted or working drawings. That's correct, isn't it, 14 as a statement of fact? 15 A. If we are talking just about the diameter, the answer is 16 yes. But for the lapping details, it's not the same 17 answer. 18 Q. I know that you want to go off and make a little speech 19 of your own, Mr Lok, but please concentrate on my 20 question, to which you answered "yes". Thank you. 21 So far as the spacing of the rebars was concerned, 22 you will know, won't you, that Mr Chris Chan of MTR also 23 told the Commission of Inquiry that there was no change 24 to the spacing of the rebars that were used in the works 25 as shown in the accepted or working drawings. And</p>	<p>1 the document we are talking about, is it not, Mr Lok? 2 A. I see it. 3 Q. I take it that because of what you've done in your 4 career, it's a document that you are quite familiar 5 with. Is that fair comment? 6 A. I know this. 7 Q. Good. So let's go on to page 8478, if we can. If we 8 could blow up clause 8.7. Yes, thank you very much. 9 Do you see clause 8.7 there emboldened and entitled 10 "Laps and mechanical couplers"? Do you see that? 11 A. Yes. 12 Q. And presumably this is a clause that you've had occasion 13 to read before? 14 A. Are you talking about 8.7.1(a), (b) and (c)? 15 Q. Absolutely. 16 A. Yes. 17 Q. Thank you. We can see 8.7.1, "General": 18 "Forces are transmitted from one bar to another by: 19 (a) lapping of bars, with or without bends or hooks; 20 (b) welding; or 21 (c) mechanical devices assuring load transfer in 22 tension and/or compression." 23 Then lastly: 24 "In joints where imposed loading is predominantly 25 cyclical bars should not be joined by welding."</p>

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<p>1 Indeed, this is a provision which you refer to in 2 your second, third and fourth witness statements, is it 3 not? 4 A. Yes. 5 Q. You will know, if you've read the transcript, Day 14, 6 page 46, that MTR's Mr Kit Chan told the learned 7 Commissioners that a coupler is a mechanical device of 8 the kind referred to in subparagraph (c) of this clause. 9 Did you read that evidence, Mr Lok? 10 A. I heard it just now, as you described it. 11 Q. Indeed, he's right, is he not, clause 8.7 is referring 12 to laps and mechanical couplers, and (c), mechanical 13 devices assuring load transfer in tension and/or 14 compression? So you would agree, would you not, with 15 what Mr Kit Chan told the learned Commissioners? 16 A. I don't know what he said in evidence. Is it his 17 evidence that mechanical devices such as couplers are 18 used in the Code of Practice for Structural Use of 19 Concrete, whether it is an acceptable method? If that 20 is his evidence, then I have no problem with it. 21 Q. Mr Lok, listen to my question. What I put to you -- we 22 can look at it if necessary but I didn't think it was 23 going to be a useful use of time -- Mr Kit Chan told the 24 Commission of Inquiry that a coupler is a mechanical 25 device of the kind referred to in subparagraph (c). As</p>	<p>1 Commissioners in paragraph 11 of his statement, BB5236. 2 That's correct as a statement of fact, isn't it? 3 A. Well, if he used BOSA couplers, then it is okay. 4 Q. Thank you. 5 A. If he didn't tell me which couplers were being used, 6 then I wouldn't know whether the coupler was 7 an acceptable coupler. 8 Q. And if it be the case that BOSA couplers were used, and 9 we've got evidence on that -- I'll repeat my question -- 10 it's the sort of change from lapped bars to BOSA 11 couplers that would not require any supporting 12 calculations to be carried out, would it? That's 13 correct as a statement of fact, isn't it? 14 A. Yes, from a structural point of view, you are correct. 15 Q. Thank you. And what I suggest to you is that Kit Chan 16 was also correct when he told the learned 17 Commissioners -- this is paragraph 54 of his witness 18 statement, bundle BB5204 -- that the change from lapped 19 bars to couplers was a minor change. That's correct as 20 a description, is it not, Mr Lok? 21 A. From a structural point of view, it is correct. 22 Q. Thank you very much. 23 Now, in paragraph 12 of your fifth witness 24 statement, which is at -- it starts at DD12276, and 25 paragraph 12 can be found at page DD12279; splendid,</p>
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<p>1 a statement, that is correct, is it not? 2 A. His evidence, if it is as described in 8.7.1(c), that is 3 correct. 4 Q. Thank you very much. It is also right, is it not, that 5 lapped bars and couplers serve the same purpose, do they 6 not? Lapped bars and couplers serve the same purpose? 7 A. Both of them serve the same purpose. 8 Q. Thank you. And if you were to change lapped bars to 9 couplers, it's not the sort of change, is it, that would 10 require any supporting calculations to be carried out? 11 That's correct, isn't it? 12 A. That is incorrect. 13 Q. Oh, why's that? 14 A. Because, first of all, the couplers, it has to serve the 15 rebar function. Because we have requirements of 16 couplers, they have to undergo testing, they need mill 17 certificate. That is if your coupler, if it is not 18 accepted under the BO requirements, if there's no 19 quality control, then we don't know what kind of 20 couplers are being used and we don't know whether it can 21 fulfil the rebar requirement. 22 Q. Come, come, Mr Lok. Don't make difficulties where there 23 are none. We know that the couplers used here, BOSA 24 couplers, had already been approved for use elsewhere on 25 the project, as Chris Chan told the learned</p>	<p>1 we're already there -- now, here you refer, do you not, 2 to the 2015 incident report for the change in 3 reinforcement details in the diaphragm wall. That's 4 what you're referring to here, is it not? 5 A. Yes. 6 Q. Thank you. And what you say is that the contents of 7 this report reinforce the need for an amendment 8 submission. That's the tenor of your evidence, is it 9 not, Mr Lok? 10 A. This has presented my views. 11 Q. I think you're agreeing with me so I'll proceed on that 12 basis. 13 If we have a look at that report -- fortunately, we 14 don't have to go to it all but I hope we'll find it at 15 bundle H11/H5538. This, is it not, is the letter from 16 MTR way back at the end of July 2015 whereby they send 17 to the Buildings Department the incident report which 18 you are referring to in paragraph 12 of your statement? 19 That's correct, is it not, Mr Lok? 20 A. Yes. 21 Q. As I've said, we don't have to look at it all, but for 22 my purposes I would take you to H5542, and there we see, 23 do we not, the background to the report set out; that's 24 correct, is it not? 25 A. Yes.</p>

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<p>1 Q. Then for my purposes I go to paragraph 1.4, which 2 states: 3 "There are ... 282 numbers of diaphragm wall panels 4 in contract 1112 and their construction was started in 5 mid-2013. The contractor had made changes to the 6 diaphragm wall reinforcement details at connection with 7 the EWL slab during construction." 8 Then you point out correctly: 9 "... this amended detail was not submitted to BD for 10 acceptance in accordance with the consultation process 11 of IoE for SCL." 12 So that's indeed a correct summary, is it not, of 13 the change in detail which was the subject of this 14 report? 15 A. Yes. According to the report, these are the facts that 16 have been described. 17 Q. As we've seen summarised there, it's right, is it not, 18 that the incident report contemplated design changes 19 which involve significant changes in the reinforcement 20 arrangements relating to the EWL slab, the eastern 21 D-wall and the OTE slab? As a proposition, that is 22 correct from a factual point of view, is it not? 23 A. Well, according to the MTRC's report, I understood that 24 that was what had occurred. 25 Q. And those changes involved, amongst other things, the</p>	<p>1 Q. I've got to put it to you again, Mr Lok, the sort of 2 changes you've agreed with me that occurred and which 3 were the subject of this incident report are on 4 a completely different scale from the change from lapped 5 bars to couplers at the construction joints in the NAT, 6 the SAT and the HHS. That's correct, is it not? 7 A. I'd like to point out that up till now, I'm not very 8 clear -- the NAT, the SAT, the HHS, the MTR have not 9 listed all the design changes in that area, and when I'm 10 not clear on all the details and if you want me to draw 11 a comparison, I don't think that is appropriate. 12 Q. Well, I can see that you want to wriggle, Mr Lok, but 13 the comparison, I suggest to you -- and I really didn't 14 think there would be any dispute over this -- is a 15 change from lapped bars to couplers. As you deal with 16 in your report, the comparison is between lapped bars to 17 couplers, and at least those three changes that you just 18 agreed with me on the diaphragm wall and which are 19 referred to in the 2015 incident report. I'll give you 20 another opportunity, and what I'm going to suggest is 21 that there's absolutely no comparison between the two. 22 There's no comparison between the two; that's correct, 23 isn't it? 24 A. I can only say that from a structural point of view, you 25 cannot make the same comparison.</p>
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<p>1 following, did they not? Firstly, the reconfiguration 2 of layers of rebar and couplers. That was the first 3 change, wasn't it? The reconfiguration of layers of 4 rebar and couplers. That's correct as a fact, is it 5 not? 6 A. Yes, yes, that's what the report says. 7 Q. Yes. Secondly -- I'm not trying to trick you -- there 8 was a change to the anchorage and the lapping lengths. 9 That's correct, isn't it? 10 A. Yes. 11 Q. Thirdly, there was, was there not, the omission of 12 U-bars within the diaphragm wall steel cages; that's 13 correct? 14 A. Yes. 15 Q. Thank you. Can I suggest that the changes that you've 16 just agreed with me there are on a completely different 17 scale from the use of couplers instead of lapped bars at 18 the construction joints in the North Approach Tunnel, 19 the South Approach Tunnel and the Hung Hom Sidings. 20 They are of completely different scale, are they not? 21 A. Actually, from a structural point of view, the lapped 22 bars and couplers, we do make a distinction. There are 23 ductility zones and non-ductility zones. So it depends 24 on the structure, how and whether you can use one or the 25 other. So you cannot draw a blanket statement.</p>	<p>1 Q. Thank you. 2 Right, Mr Lok. You also deal with your view as to 3 the meaning and effect of appendices 7 and 9 of the PMP 4 in your witness statement. Like my learned friend 5 Mr Chang, who acts for Leightons, we are proposing to 6 deal with that by way of submissions, because we 7 consider it to be a legal matter, but I just want to put 8 a marker down that we do not accept what you say. You 9 understand that, do you, Mr Lok? 10 A. Understand. 11 MR BOULDING: Thank you very much. Thank you very much, 12 Mr Lok. 13 I have no further questions, sir. 14 MR CLAYTON: I have no questions, sir. 15 MR CHOW: No re-examination. 16 CHAIRMAN: I have no questions. 17 Thank you very much indeed, Mr Lok. Your evidence 18 is now completed. 19 WITNESS: Thank you. 20 (The witness was released) 21 MR CHOW: Mr Chairman, that concludes the government's 22 evidence. 23 CHAIRMAN: Thank you very much. 24 Mr Pennicott? 25 MR PENNICOTT: I was slightly concerned Mr Boulding was</p>

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<p>1 trying to take us into tomorrow then, but never mind.</p> <p>2 Sir, that does indeed complete the evidence of all</p> <p>3 the involved parties, so with two days to spare, as it</p> <p>4 were, we have completed the evidence.</p> <p>5 CHAIRMAN: Good. That's -- just for those who may be</p> <p>6 listening in, this is the factual evidence only --</p> <p>7 MR PENNICOTT: Indeed.</p> <p>8 CHAIRMAN: -- that relates to these matters, but of course</p> <p>9 we still have important expert evidence, once certain</p> <p>10 government-sponsored reports are ready, and the expert</p> <p>11 evidence will also encompass issues under the Original</p> <p>12 Inquiry.</p> <p>13 MR PENNICOTT: Yes, sir.</p> <p>14 HOUSEKEEPING</p> <p>15 CHAIRMAN: When is it that we are due to commence our</p> <p>16 hearings with the expert evidence?</p> <p>17 MR PENNICOTT: Sir, my current understanding is that we have</p> <p>18 a week starting on 23 September --</p> <p>19 CHAIRMAN: Good.</p> <p>20 MR PENNICOTT: -- which I think is earmarked for any</p> <p>21 structural engineering technical evidence.</p> <p>22 CHAIRMAN: Yes.</p> <p>23 MR PENNICOTT: Then we have a number of days which I don't</p> <p>24 I'm afraid, have right in my head at the moment, at the</p> <p>25 beginning of October, for any further project management</p>	<p>1 confirmation from the government and MTRC as to whether</p> <p>2 or not there is likely to be any delay to the milestone</p> <p>3 date of 30 June. I was hoping that we would have heard</p> <p>4 something by now, and I think we have invited government</p> <p>5 and MTRC to tell us the position by 5 o'clock this</p> <p>6 afternoon.</p> <p>7 So, sir, I don't know whether we have received</p> <p>8 anything while we've been sitting here this afternoon.</p> <p>9 I just don't know. But obviously that is very important</p> <p>10 because once those reports are in, that will probably</p> <p>11 need to trigger directions by the Commission about the</p> <p>12 dates by which structural engineering reports, for</p> <p>13 example, should be submitted to the Commission. So</p> <p>14 that's obviously a very important milestone date.</p> <p>15 CHAIRMAN: Yes, of course.</p> <p>16 MR PENNICOTT: And we obviously need to know what is</p> <p>17 happening.</p> <p>18 CHAIRMAN: Yes. Good. Is there anything further arising?</p> <p>19 MR PENNICOTT: I have nothing further, sir. Thank you very</p> <p>20 much for the last ...</p> <p>21 (Tribunal conferring)</p> <p>22 CHAIRMAN: Yes. I mean, from our perspective, obviously we</p> <p>23 would like to know if everything -- from the MTR and the</p> <p>24 government's perspective at the moment, represented by</p> <p>25 counsel here, everything appears to be working towards</p>
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<p>1 expert evidence as well.</p> <p>2 CHAIRMAN: Of course, yes, which could be of importance in</p> <p>3 the light of matters that have arisen here.</p> <p>4 MR PENNICOTT: Yes, sir, indeed.</p> <p>5 COMMISSIONER HANSFORD: And I understand we also have</p> <p>6 evidence about steel sampling.</p> <p>7 MR PENNICOTT: Well, sir, we may be the answer to that.</p> <p>8 I think the position, as I understand it, is the</p> <p>9 directions for written closing submissions on what we've</p> <p>10 been dealing with over the last couple of weeks are to</p> <p>11 be submitted by the involved parties by 19 July, and our</p> <p>12 submissions will follow on a week later than that.</p> <p>13 I was hoping that any party who wishes to submit to the</p> <p>14 Commission any expert evidence in relation to what we've</p> <p>15 been dealing with over the last few weeks, whether it's</p> <p>16 project management expert evidence or whether it's the</p> <p>17 steel evidence that Prof Hansford has just referred to,</p> <p>18 or indeed any other expert evidence that may have</p> <p>19 escaped me, will flag that up in their written closing</p> <p>20 submissions so that appropriate directions can be made</p> <p>21 for the submission of that expert evidence.</p> <p>22 CHAIRMAN: Good.</p> <p>23 MR PENNICOTT: Sir, with regard to particularly the</p> <p>24 structural engineering expert evidence, the Commission</p> <p>25 is obviously waiting with a degree of anxiety for</p>	<p>1 30 June.</p> <p>2 MR PENNICOTT: Yes. Sir, I'm not going to press anybody</p> <p>3 myself, but if you feel it appropriate to ask the</p> <p>4 question, obviously I can't stop you. We have, as</p> <p>5 I say, asked for a response by 5 o'clock this afternoon,</p> <p>6 but if you wish to take the opportunity, it only being</p> <p>7 one hour approximately from 5 o'clock, obviously we will</p> <p>8 see what Mr Chow and Mr Boulding say respectively.</p> <p>9 CHAIRMAN: Mr Chow?</p> <p>10 MR CHOW: Mr Chairman, the most up-to-date information that</p> <p>11 I have in relation to this is we, the government,</p> <p>12 understands that MTRC would write to the government</p> <p>13 about the extent of extension that MTRC would require.</p> <p>14 It has been a few days that the government has been</p> <p>15 waiting for this formal notice from MTRC, and we are</p> <p>16 conscious of the deadline of 5 o'clock today and we have</p> <p>17 been wondering as to when we will receive such a formal</p> <p>18 request from MTRC. So I'm actually in roughly the same</p> <p>19 position as Mr Pennicott and we have been wondering as</p> <p>20 to when we will receive that request from MTRC.</p> <p>21 MR BOULDING: Sir, you will have just seen I have just taken</p> <p>22 my instructions from my partner in charge, and my</p> <p>23 instructions are that we will seek instructions</p> <p>24 immediately and revert by the deadline of 5 o'clock with</p> <p>25 anything constructive we've got to say. I hope that's</p>

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<p>1 satisfactory in the circumstances. It's not ideal but 2 it's satisfactory, I hope. 3 CHAIRMAN: Yes. Because we would quite like to know that 4 these reports are coming in. Certainly both myself and 5 my co-Commissioner, and I'm sure everybody does this, 6 have travel arrangements over the summer and that sort 7 of thing. We would like to be in a position to at least 8 receive these reports and understand what they are about 9 and consider making directions as to other expert 10 evidence that may arise out of those reports and the 11 like -- 12 MR BOULDING: Yes. 13 CHAIRMAN: -- sooner rather than later. I don't want 14 a situation where I'm trying to contact Prof Hansford in 15 some bleak part of the world while he's trekking around 16 on holiday. 17 MR BOULDING: Sir, both parties, I'm sure, understand the 18 urgency of the situation and the need for these reports, 19 and I'm sure that those instructing Mr Chow and myself 20 are probably witnessing what you are saying at this very 21 moment on the transcript. But you can rest assured that 22 I will pass it on. 23 CHAIRMAN: Fine. Yes. 24 I would mention one other thing, somewhat more 25 important than our own travel plans, and that is that</p>	<p>1 That we adjourn now and we allow the MTR and the 2 government, as necessary, to put their heads together or 3 at least exchange letters on a more formal basis, and 4 then perhaps when they've got something positive to tell 5 us, perhaps the Commission can be told and we can then 6 re-convene for hopefully a very short time and then 7 we'll know where we are. 8 CHAIRMAN: Yes. I think so. I'm sorry if I'm keeping 9 people, but the evidence may have gone on a little later 10 this afternoon as it is and we would rather wrap things 11 up this afternoon, if that is possible. 12 MR PENNICOTT: Yes. 13 CHAIRMAN: So we will adjourn. Please let us know as and 14 when you are in a position to give us some news, be it 15 negative or constructive. 16 (3.57 pm) 17 (A short adjournment) 18 (5.47 pm) 19 CHAIRMAN: Yes, Mr Pennicott. 20 MR PENNICOTT: Sir, first of all, thank you very much for 21 the adjournment. 22 CHAIRMAN: I'm sorry if I kept you waiting. 23 MR PENNICOTT: Not at all. 24 CHAIRMAN: I was on a telephone call with another matter and 25 I just couldn't dump it, if I can put it that way.</p>
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<p>1 the Chief Executive's Office does require confirmation 2 of any delay, because we are asking for the report to be 3 put in at a later date. It was always, I think, 4 anticipated, but we weren't sure exactly earlier on of 5 what the actual timing would be, and we took a shorter 6 time rather than a longer time, but now we hope we may 7 be given a longer time, and obviously an integral part 8 of that is any delay occasioned in the receipt of these 9 expert reports, the holistic report and the verification 10 report. 11 If we are talking about 5 o'clock, if we were to 12 come back at 5.00? 13 MR PENNICOTT: Why not? 14 CHAIRMAN: I mean, it's an hour, that's all. 15 MR CHOW: Mr Chairman, I've just been informed that the 16 government has received a draft letter from MTRC which 17 is supposed to be formally issued to the Highways 18 Department, but we haven't received a formal letter from 19 the Highways Department. 20 MR PENNICOTT: Sir, could I suggest then -- that sounds at 21 least an advance on where we were a few minutes ago -- 22 we adjourn now? 23 CHAIRMAN: I had good advice from my Commissioner saying 24 exactly that. 25 MR PENNICOTT: I honestly didn't hear him!</p>	<p>1 MR PENNICOTT: Not at all, sir. Thank you for the 2 adjournment. During the course of the adjournment, 3 I have been handed a letter, which I think you have now 4 also seen a copy of, from the MTR to Highways, 5 indicating an intention to write to the Commission to 6 seek a short extension of time to the 30 June date to 7 12 July 2019, so a deferment of 12 days or so. 8 Sir, I understand that, having spoken to counsel for 9 the government, in principle that date is agreed, but 10 that there is, as it were, a condition that the 11 government would wish to have inserted, as it were, to 12 that date. Perhaps I can ask Mr Chow to explain what 13 that is. 14 MR CHOW: First of all, I apologise on behalf of the 15 government to have kept the Commission waiting for 16 almost an hour. 17 The position is this. The government's 18 understanding is that when the date of 30 June was 19 provided, the report submitted at that stage has to be 20 a report endorsed by the government, so when the date 21 was agreed, there was a discussion between MTRC and the 22 government on a number of dates before 30 June on which 23 the government would receive an advance copy of the 24 report so that the government would have time to look at 25 and consider and then go through the required</p>



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<p>1 formalities.</p> <p>2 So, when MTRC indicated that they would need</p> <p>3 an extension of time up to 12 July, we have been</p> <p>4 working -- as I understand it, the government is working</p> <p>5 with the relevant personnel of MTRC to work out the date</p> <p>6 before 12 July on which the government would receive</p> <p>7 an advance copy of the final report.</p> <p>8 My understanding of the latest position is that the</p> <p>9 government requires four clear days before whatever date</p> <p>10 is the new date to receive an advance copy of the report</p> <p>11 for them to consider and endorse it and go through the</p> <p>12 formalities.</p> <p>13 My understanding is, up to present, all that MTRC</p> <p>14 would be able to do is to provide the final report for</p> <p>15 the verification proposal on 8 July if we stick to</p> <p>16 12 July, in other words four days before. Whereas the</p> <p>17 final report for the holistic proposal will be on the</p> <p>18 10th, in other words just two days before the new date.</p> <p>19 The government, having due consideration of this new</p> <p>20 date, can -- well, actually, having considered the</p> <p>21 constraint of the government, within the government</p> <p>22 organisation, the latest date the government would</p> <p>23 require the advance copy of this report would be 8 July.</p> <p>24 In other words, we have no problem with the proposed</p> <p>25 date for the verification proposal. The problem is with</p>	<p>1 to receiving an advance copy of the holistic proposal by</p> <p>2 tomorrow.</p> <p>3 CHAIRMAN: And the verification?</p> <p>4 MR BOULDING: Well, the verification proposal, we sent one</p> <p>5 last week for comment and we understand that they are</p> <p>6 considering it at the moment.</p> <p>7 CHAIRMAN: All right. So I am slightly puzzled --</p> <p>8 COMMISSIONER HANSFORD: Me too.</p> <p>9 CHAIRMAN: -- as to why, if you are going to get the</p> <p>10 holistic proposal tomorrow, we are arguing about the</p> <p>11 difference between 10 and 12 July.</p> <p>12 MR CHOW: Chairman, I am also puzzled. If the MTR is ready</p> <p>13 to give an advance copy, why would they need</p> <p>14 an extension? They are supposed to serve the final</p> <p>15 report by 30 June. We are happy to receive an advance</p> <p>16 copy of the final report tomorrow and get ready to</p> <p>17 endorse it by 30 June, but this is an application of</p> <p>18 MTRC for an extension up to 12 July.</p> <p>19 CHAIRMAN: Mr Boulding?</p> <p>20 MR BOULDING: Sir, I'm slightly confused because Mr Chow is</p> <p>21 seemingly suggesting that he'd not heard of any of this</p> <p>22 before. You can imagine, over the course of the last</p> <p>23 two hours, there have been various exchanges, and what</p> <p>24 he has been told is that we are serving the draft</p> <p>25 holistic proposal by close of business tomorrow at the</p>
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<p>1 the advance copy of the final report for the holistic</p> <p>2 proposal, the government wants to receive it on the 8th</p> <p>3 whereas MTRC only commits to the 10th. So there's two</p> <p>4 days' difference.</p> <p>5 We have been trying to further liaise, arrange --</p> <p>6 encourage further discussion, but in the time that we</p> <p>7 have ...</p> <p>8 CHAIRMAN: Well, Prof Hansford has a suggestion, and</p> <p>9 I endorse it, actually. It seems to me to be entirely</p> <p>10 correct.</p> <p>11 COMMISSIONER HANSFORD: I think the Commission would be</p> <p>12 happy to receive the report on Monday, 15 July.</p> <p>13 MR CHOW: I have taken instructions on that as a possible</p> <p>14 alternative solution and my instructions are it is</p> <p>15 acceptable to the government, but now I have to hear</p> <p>16 from my learned friend Mr Boulding.</p> <p>17 MR BOULDING: Okay. Yes, may it please you, sir. The</p> <p>18 situation is that we would be happy with the 15th. We</p> <p>19 want to make it clear that we have undertaken to</p> <p>20 government, and my learned friend knows this, to serve</p> <p>21 our holistic proposal by close of business tomorrow --</p> <p>22 tomorrow -- at the very latest.</p> <p>23 So, yes, 15 July, but we are serving our proposal</p> <p>24 latest close of business tomorrow.</p> <p>25 MR CHOW: I am glad to hear that. So we are looking forward</p>	<p>1 latest, and obviously then how long we need or he needs</p> <p>2 in order to agree it or presumably come back with yet</p> <p>3 further qualifications will affect the date, the cut-off</p> <p>4 date, by which you can be given the final agreed</p> <p>5 version, if indeed it can be agreed.</p> <p>6 CHAIRMAN: Why don't we do it on this basis, again with</p> <p>7 the -- thank you to my co-Commissioner. We've said</p> <p>8 15 July. Providing we get it by 15 July, we're happy</p> <p>9 for you to reach whatever arrangements you can within</p> <p>10 that extended time period.</p> <p>11 MR BOULDING: Okay.</p> <p>12 CHAIRMAN: How does that sound?</p> <p>13 MR BOULDING: We're content with that, sir. Thank you very</p> <p>14 much.</p> <p>15 COMMISSIONER HANSFORD: If, of course, it happens to be</p> <p>16 available earlier than that, we'd be happy to receive it</p> <p>17 earlier.</p> <p>18 MR BOULDING: Of course, and you will.</p> <p>19 CHAIRMAN: But we've given you now an extended period until</p> <p>20 15 July from what we had earlier worked on as being</p> <p>21 30 June.</p> <p>22 MR PENNICOTT: Yes. Sir, I --</p> <p>23 CHAIRMAN: Sorry, Mr Pennicott we haven't taken your advice.</p> <p>24 Apologies.</p> <p>25 MR PENNICOTT: No, sir, in a sense, not at all. What I am</p>

<p style="text-align: right;">Page 133</p> <p>1 keen to achieve is as much certainty as possible. So 2 15 July, as Prof Hansford suggests, seems to me to be 3 an extremely sensible option or deadline. And if one 4 spins the discussion back a bit, and the MTR were 5 prepared to provide the advance copy of the holistic 6 proposal on the 10th and the verification proposal on 7 the 8th, then it seems to me there is no difference 8 between the MTR and the government on that score. 9 What I'm slightly puzzled by, I have to say, is what 10 amounts to be a distinction between the MTR providing 11 what was just described as a draft verification 12 proposal/holistic proposal on the one hand and providing 13 what has been described as an advance copy on the other, 14 because it may be that those are two completely 15 different animals. 16 If I may say so, I suggest perhaps from what I've 17 heard, they are, in the sense that an advance copy is 18 something that the government has received or will be 19 very soon receiving of the holistic proposal and the 20 verification proposal, and they have now a period of 21 time to pore over that document with a view to providing 22 presumably any observations/comments which the MTR then 23 takes on board. And then, at that point, the MTR 24 provides the advance copy, in the sense that what they 25 have been providing so far is a draft, not an advance</p>	<p style="text-align: right;">Page 135</p> <p>1 that it's something ready to be accepted by the 2 government, if it is acceptable to the government. 3 MR BOULDING: Well, sir, it seems to me that these terms are 4 somewhat misconceived. Let me be clear. What we are 5 serving tomorrow is a report that we are prepared to 6 sign off tomorrow night. That's going to be our 7 position. Obviously, if government do not agree with 8 what's in it, then there may have to be some further 9 negotiations. But our position is that what we serve 10 tomorrow is, so far as we are concerned, our final 11 position, and government could simply sign it off 12 midnight tomorrow; deal done. 13 MR PENNICOTT: That's clear enough to me. 14 CHAIRMAN: That's good, and then if government doesn't like 15 it, then you've got a period of time within which to 16 negotiate? 17 MR BOULDING: Yes. 18 CHAIRMAN: And if by 15 July, or shall we say Friday, 19 12 July, you are still at a distance from each other, 20 then it's a matter for you as to how you wish to present 21 the proposal. You may present two different proposals 22 or reports. You may present a single report with 23 certain reservations. That would seem to be a matter 24 for the two of you, as you are instructed by those who 25 instruct you.</p>
<p style="text-align: right;">Page 134</p> <p>1 copy. 2 Then, I would have thought -- Mr Chow will be able 3 to tell me otherwise -- that the government then just 4 has this period of seven days and five days 5 respectively, if there are absolutely any very 6 small/minor points that just need tidying up, but 7 nothing of any great substance. 8 That's the way I see it. There was the draft and 9 then there was the advance copy. It may be I have 10 misunderstood but I would like to know precisely what 11 the intentions are because I am concerned that there is 12 this distinction between a draft on the one hand and 13 an advance copy on the other. 14 MR CHOW: Mr Chairman and Prof Hansford, I have been very 15 careful in the use of my language, by using the word 16 "advance copy" instead of "draft", because a draft of 17 the report, we have been talking about this even between 18 the two parties for quite some time. I don't want to 19 waste time in talking about what was contained in the 20 various drafts that the government has received, but 21 I want to make sure, by using -- when we expect 22 an advance copy, we expect that it is the final form of 23 the final report, of course subject to some minor 24 changes in terms of perhaps typos, then that's fine, but 25 not major changes. We expect really the final form, so</p>	<p style="text-align: right;">Page 136</p> <p>1 MR BOULDING: Yes, absolutely. 2 CHAIRMAN: How does that sound? 3 MR PENNICOTT: Yes, sir. 4 CHAIRMAN: I think that's the best way. So what we are 5 really after is a final date for matters to be actually 6 lodged with Mr Pennicott and his team, that is lodged 7 with the tribunal, and that's 15 July. 8 MR BOULDING: So be it. 9 CHAIRMAN: Hopefully, it will be a final, agreed report 10 between the MTR and the government, but if there are 11 reservations or if there are reasons why you cannot 12 reach agreement entirely -- well, that will be explained 13 in whatever documentation we receive. 14 MR BOULDING: Yes. 15 COMMISSIONER HANSFORD: But we will still get it. 16 MR BOULDING: Yes. All noted, sir and Professor. All 17 noted. 18 CHAIRMAN: Good. 19 Can I ask just one thing -- you don't have to answer 20 this, by the way -- but the report that will come in, 21 because obviously, from the Commission's point of view, 22 we would then be interested in the matter being 23 considered by experts, you know, within that small ambit 24 we have -- have your experts also played a role, the 25 experts that have given evidence? You don't have to</p>

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<p>1 answer that. You can simply say, "We'd rather not 2 discuss it at this stage; we will deal with it later." 3 MR BOULDING: Sir, I would have to go back for specific 4 instructions on that. I'm sorry. I'm at a loss to 5 answer your question. I'm sorry. 6 CHAIRMAN: No, no. It's just that the question then becomes 7 one of how much time is perhaps going to be required 8 later for the expert evidence, if your own experts are 9 already -- and they are the ones that we know because 10 they've already given evidence and they are already on 11 board with what you're putting before us -- it makes 12 what comes later perhaps much more limited. 13 MR CHOW: Mr Chairman, as I already mentioned it during my 14 oral opening, Prof Au was involved in a continuous 15 discussion, so Prof Au's views and opinions were passed 16 to the consultants engaged by MTRC. 17 CHAIRMAN: All right. 18 MR CHOW: But how much of that view or opinion is accepted, 19 we don't know yet. We have to yet to see the next round 20 of the draft report. I think that's all we can say. 21 CHAIRMAN: Thank you. It was only just a question. 22 I didn't want to delay matters on it. 23 Excellent. So that's where we stand. 15 July. 24 Then we have directions which have been given -- 25 Mr Pennicott --</p>	<p>1 CHAIRMAN: Good. Thank you very much indeed. I wish you 2 a good summer. 3 (6.05 pm) 4 (The hearing adjourned until 10.00 am 5 on Monday, 23 September 2019) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 MR PENNICOTT: Yes, sir. They were emailed to all the 2 involved parties last Friday afternoon, and unless 3 somebody is really interested in you reading it onto the 4 transcript -- I mean, the headlines are -- 5 CHAIRMAN: No. It follows. 6 MR PENNICOTT: Yes. 7 CHAIRMAN: You haven't had a war party after your scalp in 8 regard to these directions? 9 MR PENNICOTT: I have not, sir, no. 10 CHAIRMAN: Good, in which case we can then assume that -- 11 all right, apart from the written submission from the 12 Commission's counsel, all parties will submit a soft 13 copy of their written submission on the factual 14 evidence, and they will submit this to the Commission's 15 solicitors by 4 pm on Friday, 19 July. And written 16 submissions from the Commission's counsel will then be 17 submitted by 4 pm on Friday, 26 July. 18 MR PENNICOTT: Yes, sir. 19 CHAIRMAN: The other directions really follow what came 20 before and relate to matters such as font size and that 21 kind of thing. 22 MR PENNICOTT: Yes, sir, and number of pages. 23 CHAIRMAN: And the number of pages. Good. Excellent. 24 Anything further, gentlemen or gentleladies? 25 MR PENNICOTT: No, sir.</p>	<p>1 INDEX 2 PAGE 3 MR YUENG WAI HUNG, RON (sworn in Cantonese) .....1 4 Examination-in-chief by MR CLAYTON .....1 5 Examination by MR PENNICOTT .....3 6 (The witness was released) .....36 7 MR CHIU CHUNG LAI (sworn in Cantonese) .....36 8 Examination-in-chief by MR CLAYTON .....36 9 Examination by MR PENNICOTT .....37 10 (The witness was released) .....44 11 MR LI TZE WAI, RALPH (sworn in Cantonese) .....45 12 Examination-in-chief by MR CHOW .....45 13 Examination by MR PENNICOTT .....47 14 Cross-examination by MR CHANG .....67 15 Questioning by THE TRIBUNAL .....80 16 (The witness was released) .....82 17 MR LEUNG MAN HO, JONATHAN (affirmed in Cantonese) ...82 18 Examination-in-chief by MR CHOW .....82 19 Examination by MR PENNICOTT .....84 20 (The witness was released) .....93 21 MR LOK PUI FAI, ANDREW (sworn in Cantonese) .....94 22 Examination-in-chief by MR CHOW .....94 23 Examination by MR PENNICOTT .....96 24 Cross-examination by MR BOULDING .....101 25 (The witness was released) .....120</p>

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