

Page 1	Page 3
<p>1 Friday, 11 January 2013</p> <p>2 (10.00 am)</p> <p>3 THE CHAIRMAN: Yes, Mr Beresford.</p> <p>4 MR BERESFORD: Mr Chairman, before we continue with the</p> <p>5 evidence this morning, there are one or two applications</p> <p>6 which are sought to be made before you.</p> <p>7 THE CHAIRMAN: Yes?</p> <p>8 MR BERESFORD: My learned friend Mr Mok has an application</p> <p>9 in relation to the Mardep surveyors, and behind me we</p> <p>10 are joined today by Mr Felix Pao on behalf of Cheoy Lee</p> <p>11 Shipyards, and I understand he has a short application</p> <p>12 to make as well. Perhaps I can sit down and let my</p> <p>13 learned friends make their applications.</p> <p>14 THE CHAIRMAN: Mr Mok, I would normally accord priority to</p> <p>15 leading counsel, but perhaps Mr Pao ought to come first</p> <p>16 on this occasion.</p> <p>17 MR MOK: Yes, of course.</p> <p>18 Application by MR PAO</p> <p>19 MR PAO: I'm grateful, Mr Chairman. The short application</p> <p>20 relates to a letter that my client received on</p> <p>21 3 January, inviting my client to provide a detailed</p> <p>22 statement as to certain questions relating to the design</p> <p>23 and construction of the vessel Lamma IV way back in</p> <p>24 1995. It is the retrieval and collation of the</p> <p>25 documents to be annexed to the detailed statement --</p>	<p>1 ask questions with the leave of the Commission?</p> <p>2 MR PAO: That's what I'm coming to. But if Mr Chairman is</p> <p>3 going to take that first, then we do make that</p> <p>4 application to be present.</p> <p>5 THE CHAIRMAN: And you apply to do that with legal</p> <p>6 representation?</p> <p>7 MR PAO: Yes, Mr Chairman.</p> <p>8 THE CHAIRMAN: May I have a copy of that letter of 3 January</p> <p>9 to which you refer? Someone provide me with a copy.</p> <p>10 3 January, Lo &amp; Lo to Cheoy Lee, I suspect.</p> <p>11 Has this letter been scanned? Mr Beresford, do we</p> <p>12 have a scanned version of the better?</p> <p>13 MR BERESFORD: I'm sorry, Mr Chairman. I'll find out.</p> <p>14 Not at present, Mr Chairman.</p> <p>15 THE CHAIRMAN: These being public hearings, I think it's</p> <p>16 appropriate that I invite counsel to the tribunal to</p> <p>17 read out the relevant part of the letter to Cheoy Lee</p> <p>18 which is the basis of the application that's currently</p> <p>19 before the Commission.</p> <p>20 Mr Beresford, could I invite you to read page 4 of</p> <p>21 that letter.</p> <p>22 MR BERESFORD: Certainly, Mr Chairman.</p> <p>23 THE CHAIRMAN: Given that it's going to be interpreted by</p> <p>24 simultaneous interpretation, would you do so at the</p> <p>25 appropriate speed.</p>
Page 2	Page 4
<p>1 THE CHAIRMAN: When you say your client, that is Cheoy Lee?</p> <p>2 MR PAO: Cheoy Lee Shipyards Ltd, Mr Chairman.</p> <p>3 As I was saying, it's the retrieval and the</p> <p>4 collation of these old documents to be attached to the</p> <p>5 detailed statements that's taking a bit more time than</p> <p>6 expected. So I'm asking the Commission for a time</p> <p>7 extension of about 14 days for the provision of the --</p> <p>8 THE CHAIRMAN: Before we get to that, the letter invited</p> <p>9 your lay clients to consider their position, did it</p> <p>10 not --</p> <p>11 MR PAO: Yes.</p> <p>12 THE CHAIRMAN: -- in Salmon letter terms?</p> <p>13 MR PAO: Yes.</p> <p>14 THE CHAIRMAN: That's the first matter that perhaps ought to</p> <p>15 be addressed. Is any application being made as to that,</p> <p>16 that is to say, in terms of participating or being</p> <p>17 represented in these hearings?</p> <p>18 MR PAO: Yes, we do apply to be represented when our client</p> <p>19 is going to testify, and to be present.</p> <p>20 THE CHAIRMAN: Do you apply to participate in the hearing?</p> <p>21 That is to say --</p> <p>22 MR PAO: Yes, we do.</p> <p>23 THE CHAIRMAN: Let me try and help you. That is to say, to</p> <p>24 make application from time to time if a witness's</p> <p>25 evidence is relevant to your lay client's position, to</p>	<p>1 MR BERESFORD: Certainly. The letter, Mr Chairman, as</p> <p>2 you're aware, begins with a recitation of the</p> <p>3 appointment of the Commission and its terms of</p> <p>4 reference, and details certain of the evidence that has</p> <p>5 come to light in the course of the Inquiry.</p> <p>6 On page 4, it reads as follows:</p> <p>7 "On the basis of information received to date, we</p> <p>8 consider it only fair to give you notice that the expert</p> <p>9 naval architect retained to advise the Commission</p> <p>10 (Dr Neville A Armstrong) has formed the view that it is</p> <p>11 most likely that the vessel was constructed with side</p> <p>12 plating of 4.5 mm thickness rather than the 5.0 mm</p> <p>13 required and that the thinner plating size may have</p> <p>14 contributed to the extent of the damage that was</p> <p>15 experienced, as plating of a greater thickness would</p> <p>16 have reduced the damaged hole size and provided more</p> <p>17 time for escape before the vessel sank; that the</p> <p>18 watertight bulkhead between the aft peak and the tank</p> <p>19 room contained a large access opening and although this</p> <p>20 should have been watertight, no watertight door was ever</p> <p>21 fitted to this opening; that the effect of the missing</p> <p>22 door was that there were three compartments flooded at</p> <p>23 the after end of the ship rather than the two that were</p> <p>24 holed in the collision and that this materially</p> <p>25 contributed to the fact and speed of the loss of the</p>

Page 5	Page 7
<p>1 vessel; and that the attachment of seats to the upper 2 deck was not adequate. 3 In the event that these conclusions are 4 substantiated before the Commission, your company may be 5 the subject of criticism in the Commission's official 6 report. As a matter of fairness, the Commission would 7 like to afford your company the opportunity to address 8 these issues. You will be provided with a copy of 9 Dr Armstrong's report as soon as it has been finalised. 10 We write to let you know of the above in order that you 11 may seek independent legal advice as necessary or 12 appropriate, and so that you can decide whether any (and 13 if so, what) steps need to be taken by you." 14 THE CHAIRMAN: Just to complete that picture, Mr Beresford, 15 could we have up on the screen the photograph from 16 marine bundle 1 which shows the doorway in that aft 17 compartment. It's at page 37. It's from a Marine 18 Department bundle of photographs depicting the doorway. 19 It's page 37 of the hard copy. I think the hard copy 20 begins at page 124. So 124 plus 37 may give the 21 photograph. 22 MR BERESFORD: I can provide some other references in 23 another bundle, Mr Chairman, if there's some difficulty 24 locating the soft copy of that one. 25 In the police photograph bundle --</p>	<p>1 THE CHAIRMAN: Thank you. 2 Mr Beresford, is there anything that you wish to 3 submit to the Commission that's relevant to that 4 application? 5 MR BERESFORD: No, Mr Chairman. 6 THE CHAIRMAN: I'll rule on behalf of the Commission in 7 respect of that application. 8 Ruling 9 THE CHAIRMAN: The Commission is satisfied that it is 10 appropriate to permit, pursuant to sections 6(1) and 11 6(2) of the Commissions of Inquiry Ordinance, Cap 86, 12 Cheoy Lee Shipyards Ltd to participate and be 13 represented legally in these proceedings. 14 So, having dealt with that matter, Mr Pao, what is 15 the next application you have? 16 Application by MR PAO 17 MR PAO: The next application is the extension of time, 18 Mr Chairman. It's in relation to the detailed statement 19 requested by the Commission's solicitors relating to the 20 points that Mr Beresford has just read out in the 21 3 January letter, in respect of the design and 22 construction of the vessel Lamma IV. As I was saying, 23 it is the retrieval and collation of these old documents 24 to be attached to the detailed statement from the 25 witness to be nominated by Cheoy Lee to testify before</p>
Page 6	Page 8
<p>1 THE CHAIRMAN: There is a helpful legend that's attached to 2 the Marine Department photographs. 3 MR BERESFORD: We'll try and find that one then. 4 THE CHAIRMAN: It's photograph 9. 5 Yes, that's the one. If you could zoom in on that, 6 so that the legend remains. Thank you. So that's 7 "doorway without door" in question, Mr Beresford? 8 MR BERESFORD: Yes, Mr Chairman. 9 THE CHAIRMAN: Thank you. 10 Mr Pao, back to you. Is there anything else you 11 wish to say in support of your application that Cheoy 12 Lee be permitted to participate and be legally 13 represented in the proceedings? 14 MR PAO: There is also an outstanding summons requiring 15 a Mr Cheung to appear before the Commission. 16 THE CHAIRMAN: Let's deal with one thing at a time. 17 MR PAO: It's just that we need a little bit more time to -- 18 THE CHAIRMAN: No, I'm dealing with your application to 19 participate and be represented. This is an application, 20 I take it, that relies on sections 6(1) and 6(2) of the 21 Commissions of Inquiry Ordinance? 22 MR PAO: Indeed, Mr Chairman. 23 THE CHAIRMAN: There's nothing else you wish to say about 24 that? 25 MR PAO: No.</p>	<p>1 the Commission that has taken a bit longer than 2 expected. 3 THE CHAIRMAN: Yes. 4 MR PAO: We don't know how much disruption it's going to 5 cause the Commission, because I understand that we're 6 all working on a very tight schedule, for the extension 7 of time to be granted. 8 THE CHAIRMAN: Can you help me first of all as to this 9 issue. The letter, part of which was just read out, was 10 dated 3 January? 11 MR PAO: Yes. 12 THE CHAIRMAN: Am I right in thinking that on that same day, 13 Mr Armstrong's report was provided to Cheoy Lee? 14 MR PAO: No, Mr Chairman. 15 THE CHAIRMAN: Mr Beresford, you could help me. When was 16 the report provided? 17 MR PAO: On 5 January. 18 THE CHAIRMAN: May I see the correspondence? It will be, 19 presumably, a Lo &amp; Lo letter to Cheoy Lee. 20 MR PAO: Yes. 21 THE CHAIRMAN: Thank you. Can you assist the Commission as 22 to why it is that the application to participate and be 23 legally represented is only made today? 24 MR PAO: It's -- 25 THE CHAIRMAN: I mention it for this reason. Once your</p>

<p style="text-align: right;">Page 9</p> <p>1 application has succeeded, you will be afforded access 2 to the material, the huge volume of material, that is 3 relevant to the issue facing your lay clients. 4 MR PAO: My understanding is that those instructing me were 5 only contacted late last week and they only consulted 6 with each other early Monday this week. They have, in 7 fact, worked as fast as they possibly could. 8 THE CHAIRMAN: Was it realised that once an application was 9 made, and it was granted, that you would be given access 10 to material, for example, that is highly relevant from 11 the records of the Marine Department? 12 MR PAO: Yes. 13 THE CHAIRMAN: It was realised that that would happen? 14 MR PAO: I believe it was, but I have no instructions on 15 that. But I believe that was the position. 16 THE CHAIRMAN: Would you take instructions as to that? 17 MR PAO: My instructions are simply that those instructing 18 me received their instructions late, and only received 19 the copy of the summons for Mr Cheung's attendance to 20 give evidence -- 21 THE CHAIRMAN: That's a separate issue. 22 MR PAO: That is a separate issue. 23 THE CHAIRMAN: Let's deal with them one at a time. 24 When did your instructing solicitors receive a copy 25 of the 3 January letter of Lo &amp; Lo?</p>	<p style="text-align: right;">Page 11</p> <p>1 THE CHAIRMAN: I'm asking for Lamma IV. 2 MR BERESFORD: But I believe most of those relate to 3 Lamma IV. 4 THE CHAIRMAN: My recollection is that it's about four box 5 files that relate to Lamma IV: Marine 1-4. 6 MR BERESFORD: Yes, I'm told that's right. 7 THE CHAIRMAN: What I'm going to ask, Mr Beresford, is that 8 the material that is relevant is shown to Mr Pao now, 9 because I'll then move on to deal with the other 10 application, so that Mr Pao and those instructing him, 11 and indeed his lay clients, will have some idea of the 12 wealth of material that is constituted by Mardep's 13 records. 14 MR BERESFORD: Yes, Mr Chairman. We'll arrange that. 15 THE CHAIRMAN: So that this is not constructing everything 16 from Cheoy Lee records. There may well be Cheoy Lee 17 records that are relevant. But I anticipate that he 18 will find that a very large part of the material is 19 already there. 20 MR BERESFORD: Yes. 21 THE CHAIRMAN: So could that -- and what I'm going to ask 22 you to do, Mr Pao, is to -- I'll stand down your 23 application for the extension, to give you 24 an opportunity, with your solicitors and lay clients, to 25 peruse this material.</p>
<p style="text-align: right;">Page 10</p> <p>1 MR PAO: May I have a moment. 2 I think it's on the 4th. My instructions are that 3 they received the letter on 4 January. 4 THE CHAIRMAN: And the report was received by your lay 5 clients on the 5th? 6 MR PAO: Yes. 7 THE CHAIRMAN: So an application could have been made on the 8 7th. 9 MR PAO: Those instructing me received the report on 10 7 January. 11 THE CHAIRMAN: So an application could have been made on 12 that day, the 7th, to participate and be legally 13 represented? 14 MR PAO: It could have been, Mr Chairman. That's the 15 position. 16 THE CHAIRMAN: Mr Beresford, could you assist me, and no 17 doubt Mr Pao, by indicating what volume of material the 18 Commission has, provided by Mardep, that is relevant to 19 the construction of Lamma IV and the approval and its 20 registration as a vessel to sail in Hong Kong, and the 21 annual surveys? How many box files of records relate to 22 that? 23 MR BERESFORD: Well, we have about 11 box files of records 24 from the Marine Department relating to both the Sea 25 Smooth and the Lamma IV.</p>	<p style="text-align: right;">Page 12</p> <p>1 MR PAO: I'm grateful. 2 THE CHAIRMAN: Then your lay clients will be in a better 3 position to understand how much material is actually 4 already available and would have been available to you 5 on Monday if the application had been made. 6 MR PAO: Yes. 7 THE CHAIRMAN: So I'll stand down your application for 8 an extension. 9 MR PAO: May I just make a third application in relation to 10 some outstanding summons? 11 THE CHAIRMAN: Make that in due course, if you would. But 12 I'll stand that down. 13 Mr Mok, how long do you anticipate your application 14 will take? 15 MR MOK: Maybe about 20 minutes. 16 THE CHAIRMAN: Very well. Can I suggest that the box files 17 are made available to Mr Pao, his solicitors. Is there 18 an available room upstairs for Wilkinson &amp; Grist? 19 MR BERESFORD: Yes, there is. 20 THE CHAIRMAN: In which case that material can be given to 21 you now and you can repair to that room upstairs. 22 Someone will show you where it is. 23 MR PAO: I'm grateful, Mr Chairman. 24 In the absence of MR PAO 25 THE CHAIRMAN: Mr Mok.</p>

Page 13	Page 15
<p>1 MR MOK: Yes, Mr Chairman. Before I make my application, we 2 were asked to locate some information in relation to the 3 interview of a witness from the engineering department 4 of Cheoy Lee Shipyards. Should I give that information 5 to you now? 6 THE CHAIRMAN: If you would. That was simply relevant to 7 the issue of the chronology involving Cheoy Lee. Thank 8 you for that. 9 MR MOK: Yes. The information is based on the recollection 10 of the relevant officer. He hasn't had time to check 11 his records to confirm it. The statement is one of 12 Mr Cheung Chuen-yau, and he was interviewed -- 13 THE CHAIRMAN: Do you have a reference for that? 14 MR MOK: I think this is marine 10, page 3399. 15 THE CHAIRMAN: Could we have that on the screen, please. 16 MR MOK: You'll see, Mr Chairman, that the date of this 17 statement is 27 December. 18 THE CHAIRMAN: Yes. Could you just scroll down on the 19 statement, please. Just hold it there so that we can 20 see the nature of the enquiries being made of Mr Cheung. 21 Perhaps you could usefully summarise it for me, if you 22 would, Mr Mok. What was the nature of the enquiries 23 being made of Mr Cheung? 24 MR MOK: Basically it's about the contract to build the 25 vessel Lamma IV.</p>	<p>1 THE CHAIRMAN: Now, as to the other matters that you wish to 2 raise. 3 Application by MR MOK 4 MR MOK: Yes. My application relates to the witnesses who 5 were asked or directed to give evidence today from 6 Mardep. Related to that, I would also first of all 7 mention that there is a witness who is also available 8 today. That is in response to a letter from the 9 Commission dated 4 January relating to the speed limit 10 of vessels in the harbour in general. We have a witness 11 statement of one Mr Warren Li who -- this statement will 12 be available today, this morning. 13 THE CHAIRMAN: Yes. Thank you. 14 MR MOK: I think it's in the course of being signed by him. 15 If the Commission so wishes, Mr Li can be available to 16 give evidence today. 17 THE CHAIRMAN: Thank you for that. 18 MR MOK: Maybe after lunch. So this relates also to my 19 application which I'm going to make now. 20 My application is to adjourn the hearing of the 21 witnesses from Mardep to Monday. The reasons are these. 22 We received a letter from the Commission on 23 7 January putting to the Department a number of 24 questions -- 25 THE CHAIRMAN: Just give me a moment. I think I have a copy</p>
Page 14	Page 16
<p>1 THE CHAIRMAN: And the designs, the plans, the approval? 2 MR MOK: Yes, it refers to some of the drawings and so on. 3 THE CHAIRMAN: So it's as to the construction of the vessel 4 Lamma IV? 5 MR MOK: Correct. The answers were not very detailed or 6 forthcoming, as you may see from the note, but there it 7 is. 8 THE CHAIRMAN: Yes. I've read the statement. 9 The second issue was, when was it that Cheoy Lee 10 and/or Mr Cheung were contacted and informed that Mardep 11 wished to conduct this interview under section 60 of the 12 Merchant Shipping (Local Vessels) Ordinance? 13 MR MOK: From the recollection of the officer, there was 14 an email sent to Cheoy Lee on about 20 December, and 15 then Cheoy Lee replied on about 24 December as a result 16 of which I think this interview took place on the 27th. 17 THE CHAIRMAN: Yes. Was the subject matter of the interview 18 disclosed in the email of the 20th? 19 MR MOK: I haven't seen the email, nor did we go into that 20 question at this stage. 21 THE CHAIRMAN: Does anyone have access to those records? 22 MR MOK: I think we can ask. 23 THE CHAIRMAN: Yes, if you could make those enquiries. But 24 it's very helpful, and thank you for that. 25 MR MOK: Thank you.</p>	<p>1 of that here. 2 MR MOK: Yes, of course. It is a letter dated 7 January. 3 THE CHAIRMAN: Yes, I have that. 4 MR MOK: Since receiving the letter, the witnesses from 5 Mardep have been meeting and also have been -- 6 THE CHAIRMAN: I think it would help, given the public 7 nature of these proceedings, if the first paragraph of 8 the letter is read out. If you have a copy -- can I ask 9 whether this has been scanned? 10 MR BERESFORD: I don't believe it's been scanned, but I can 11 read it out, Mr Chairman. 12 THE CHAIRMAN: Thank you. If you'd do it, Mr Beresford. 13 MR BERESFORD: "On behalf of the Commission, a copy of the 14 expert report of Dr Neville A Armstrong was provided to 15 all the involved parties on 4 January 2013. It is clear 16 from Dr Armstrong's report that the structural condition 17 of Lamma IV is highly relevant to the issues identified 18 in his report. 19 In order to assist the Commission in its Inquiry, 20 the Commission should be grateful if the Mardep (by its 21 authorised officer) would provide a witness statement 22 (the maker of the witness statement will be required to 23 testify at the hearing of the Inquiry) explaining ..." 24 THE CHAIRMAN: Just pause there. Thank you, Mr Beresford. 25 There then follows, Mr Mok, does there not, a fairly</p>

<p style="text-align: right;">Page 17</p> <p>1 lengthy shopping list of information? 2 MR MOK: 11 items, yes. 3 THE CHAIRMAN: Yes, relating to the issue of the doorway in 4 the bulkhead -- 5 MR MOK: I think three issues: the doorways, the thickness 6 of the plating and also the fixture of the seats. 7 THE CHAIRMAN: On the upper deck. 8 MR MOK: On the upper deck, yes. 9 THE CHAIRMAN: Thank you. 10 MR MOK: After receiving this letter, Mardep of course 11 looked into these specific matters and also went through 12 some of these matters with the witnesses. It was then 13 realised that in fact -- 14 THE CHAIRMAN: Just pausing there, Mr Mok. Am I right in 15 thinking that this line of enquiry did not come as 16 a surprise to Mardep, they themselves having identified 17 in the very photographs that I've taken the Commission 18 to the issue of the doorway? 19 MR MOK: Yes, Mr Chairman, but I think before receiving the 20 report and the letter attention had not been focused on 21 certain matters, for example -- 22 THE CHAIRMAN: It may not have been as far as the plating 23 was concerned -- 24 MR MOK: The plating -- 25 THE CHAIRMAN: But the Mardep photographs also were</p>	<p style="text-align: right;">Page 19</p> <p>1 statements are in the form of some notes of interviews. 2 Those questions were thought to be some of the relevant 3 questions asked by the particular interviewing officers, 4 but they do not actually deal with the specific matters 5 which are set out in this letter or indeed in the report 6 of Dr Armstrong. 7 I have had the opportunity very recently to see some 8 of the witnesses, and I realise that the evidence that 9 they will be able to provide or the information they 10 will be able to provide will be more helpful than the 11 matters which are set out in their respective 12 statements. You will recall some of the officers said 13 that they could not recall certain things. 14 THE CHAIRMAN: Yes. 15 MR MOK: But in fact, after being put in context and after 16 being addressed with certain specific matters, they are 17 able indeed to provide more helpful information than 18 simply to say that they could not recall something that 19 took place in 1995 or 1996. 20 So in view of this, I feel that -- it is certainly 21 my duty to assess what is the best way to assist the 22 Commission. 23 THE CHAIRMAN: Thank you. 24 MR MOK: My assessment is that it would greatly help the 25 Commission if, first of all, we produce an omnibus</p>
<p style="text-align: right;">Page 18</p> <p>1 particular in illustrating, depicting, the failure of 2 the fastening of the chairs on the upper deck to the 3 deck. 4 MR MOK: Yes. 5 THE CHAIRMAN: The screws themselves were photographed, and 6 the fact that there was only one chair left. 7 MR MOK: Yes, but I think the report of Dr Armstrong 8 helpfully identifies some of the particular issues, for 9 example the materials and also the standards and so on 10 and so forth, so that these are matters which have not 11 been addressed in any of the notes of the interview 12 before the Commission. 13 So far as the opening is concerned, although the 14 opening was there, but having seen the report of 15 Dr Armstrong, certain emphasis has been placed on 16 particular matters. Again, having reviewed the notes of 17 the interviews of the various witnesses, they haven't 18 actually dealt with those specific matters. 19 THE CHAIRMAN: Yes. 20 MR MOK: So it was considered, having read the report and 21 also the requests in this letter, that it would be 22 extremely helpful, and it would in fact save the 23 Commission's time, if certain witness statements could 24 be prepared first, before these witnesses were called to 25 give their evidence. At the moment the witness</p>	<p style="text-align: right;">Page 20</p> <p>1 witness statement to set out the process of the plan 2 approval; the various officers that are involved at 3 various stages from the approval of the plans, from the 4 inspections, and maybe a little bit about the relevance 5 of the annual survey which then took place after the 6 initial building of the ship; and to acquaint the 7 Commission of the background to some of the rules that 8 are applicable. Mr Chairman, you know that there are 9 two instruction booklets, one called the Blue Book, the 10 other being the 1995 instructions, the relevance of each 11 of them -- 12 THE CHAIRMAN: The latter came into force on 1 January 1995? 13 MR MOK: The 1995 instructions came into force in January 14 1996. 15 THE CHAIRMAN: 1996? 16 MR MOK: That's right. So there are certain aspects of the 17 factual background that would also be helpful both to 18 the Commission and to Dr Armstrong before he comes into 19 the box to give his expert evidence. It will help him 20 to focus his mind on the particular rules and the 21 regulations. 22 THE CHAIRMAN: Yes. 23 MR MOK: There are also some fairly complex matters, for 24 example concerning the concept of the floodable length 25 of a watertight compartment on the one hand, and also</p>

<p style="text-align: right;">Page 21</p> <p>1 damage stability on the other hand. They are related 2 concepts, but quite different. Throughout the history 3 of the practice of the Department, they have evolved 4 from one to the other. 5 THE CHAIRMAN: You're talking about the 10 per cent issue? 6 MR MOK: The 10 per cent issue -- yes, the 10 per cent issue 7 actually cuts across both. 8 THE CHAIRMAN: Yes. 9 MR MOK: Dr Armstrong, for example, has focused on the 10 damage stability aspect of it, but there is also another 11 aspect which is called the floodable length or the 12 permissible length. 13 THE CHAIRMAN: Yes. 14 MR MOK: So the 10 per cent issue relates to both of them, 15 and you may recall that in relation to damage stability, 16 there is a letter in which that part has actually been 17 crossed out. The background to that is quite important 18 for the Commission to be able to understand why the 19 plans were approved in the way that they were, and what 20 is the relevance, for example, of the opening, whether 21 or not -- with or without a watertight door, whether or 22 not the vessel would have been approved or not. 23 So these are matters which I feel are very 24 fundamental to the issues which are being addressed by 25 the Commission, but for whatever reason, these were not</p>	<p style="text-align: right;">Page 23</p> <p>1 the time which may have been used today and also the 2 efficiency which may be brought into this process, that 3 it would be responsible of me to make this application 4 today. At the same time, I think although a little time 5 may be wasted, but I think if the Commission so wishes, 6 we can fill some of the time in the afternoon with the 7 evidence of Mr Warren Li, which will be fairly 8 straightforward and not controversial. 9 THE CHAIRMAN: Thank you for your application. Certainly 10 for my part at first blush, it seems to have merit. But 11 I'll hear from Mr Beresford first. 12 MR MOK: Of course. 13 THE CHAIRMAN: Mr Beresford, what, if anything, do you have 14 to say? 15 MR BERESFORD: Mr Chairman, I don't oppose the application. 16 I'm entirely in the Commission's hands. If the 17 Commission wishes me to lead the evidence of the seven 18 surveyors, I'm happy to do so. 19 THE CHAIRMAN: The issue that I'm dealing with first and 20 foremost is whether or not there ought to be 21 an adjournment in respect of their evidence, so that, as 22 Mr Mok has said, fuller statements can be made available 23 that address the issues that are now crystallised. 24 MR BERESFORD: Well, I'm very grateful to my learned friend 25 for the offer of more detailed witness statements</p>
<p style="text-align: right;">Page 22</p> <p>1 matters that had been focused upon when the initial 2 interviews were being taken. I fear that if the 3 officers were just brought here, with Mr Beresford not 4 having the advantage of having the full aspect of the 5 various issues being canvassed at least in some 6 preliminary written form, the Commission will be at 7 a disadvantage and eventually the officers may have to 8 be recalled and time may be wasted as a result. 9 What I feel is that I and my team can very usefully 10 make use of today and this weekend to complete whatever 11 they have already started, in addressing the issues from 12 the letter, so that they could be provided, hopefully 13 before the Monday morning, so that everyone could have 14 a look at it. And if Mr Chairman and the Commissioner 15 thinks that it is helpful, I can lead some of the 16 witnesses so that Mr Beresford can then question them on 17 the specific aspects arising from the evidence of these 18 officers. 19 I feel that maybe this procedure, having read the 20 omnibus statement and also some of the maybe revised 21 statements of some of these officers, the work of the 22 Commission may be speeded up and ultimately maybe we can 23 be spared a duplication of the evidence when these 24 officers, or some of them, may have to be recalled. 25 So my assessment is, having weighed the balance of</p>	<p style="text-align: right;">Page 24</p> <p>1 dealing with these matters. I also note his offer of 2 an omnibus witness statement, which I have no doubt will 3 assist the Commission regardless of whether or not 4 evidence is taken today. 5 As to whether it would assist in relation to these 6 seven surveyors, they were asked a number of questions, 7 for example they were asked: 8 "What are the hull structure requirements in the 9 'Instructions for the Survey of Class I and Class II 10 Launches and Ferry Vessels in around 1995'?" 11 I mean, if they wish to refine or give different 12 answers now, then of course they would be free to do so. 13 THE CHAIRMAN: It seems to me, I must say, that possession 14 of an omnibus statement as to how Mardep proceed when 15 receiving the designs of a vessel, how the vessel's 16 actual construction changes as different plans are put 17 in, how it's then inspected, how it's certified and how 18 it's surveyed on an annual basis, would be of assistance 19 to the Commission. 20 MR BERESFORD: Indeed, Mr Chairman. 21 THE CHAIRMAN: It seems to me, subject to my 22 co-Commissioner's views, that what Mr Mok has to say by 23 way of his application has merit. So just give us 24 a moment, if you would. 25</p>

<p style="text-align: right;">Page 25</p> <p>1 Ruling 2 Very well. Mr Mok, we grant your application for 3 an adjournment. In all the circumstances, it seems 4 eminently sensible. We thank the Marine Department and 5 your own team for the work that they are doing to 6 achieve what you have indicated they will be achieving. 7 So the seven marine surveyors will not now be called 8 today; they can be called on Monday, by which date, as 9 I understand what you have said, further witness 10 statements from them will be filed with the Commission. 11 MR MOK: Mr Chairman, let me just inform you in relation to 12 one of the witnesses, Mr Ho -- 13 THE CHAIRMAN: Before you do that, just let me deal with 14 what is effectively the ruling. 15 MR MOK: Yes. 16 THE CHAIRMAN: The issue of by whom the evidence is to be 17 led in-chief can be addressed after the receipt of the 18 statements. That can be done on Monday or at some other 19 occasion, but we don't need to deal with that now. 20 MR MOK: No. 21 THE CHAIRMAN: Now, Mr Ho? 22 MR MOK: Yes. Mr Ho is in fact a retired person. We 23 haven't been able to reach him yet. So as soon as he is 24 reached then he will be informed of the requirement for 25 him to come before the Commission to give evidence. So</p>	<p style="text-align: right;">Page 27</p> <p>1 the Marine Department goes about approving the 2 construction of vessels to be certified for use in Hong 3 Kong? 4 MR MOK: It will not be very long. I estimate it would be 5 about maybe 10-20 pages. 6 THE CHAIRMAN: Thank you. And the amplified or additional 7 supplemental statements of these various surveyors? How 8 voluminous? 9 MR MOK: They won't be long. They would basically be 10 dealing with several things. One is the specific 11 responsibilities which each of them had in relation to 12 the subject matter of these proceedings. Secondly, how 13 they went about discharging those duties, and also some 14 specific issues arising which they may be able to deal 15 with which are not already dealt with in the omnibus 16 statement. 17 THE CHAIRMAN: In addition to these seven surveyors who 18 happen to have been interviewed by the Marine 19 Department, are there likely to be other witnesses whose 20 oral testimony, from the Marine Department, is likely to 21 be relevant? 22 MR MOK: There are, of course, annual surveys of the vessel 23 and my understanding is that the annual survey basically 24 is to follow up matters which arose in the subsequent 25 years. So they may be less relevant to the -- at least</p>
<p style="text-align: right;">Page 26</p> <p>1 we haven't been able to obtain any further information 2 from him. 3 THE CHAIRMAN: Yes. 4 MR MOK: One Mr Philip Yu has just returned to Hong Kong 5 today so we will proceed to take the matter further with 6 him if possible. 7 THE CHAIRMAN: Both of these gentlemen are amongst the seven 8 surveyors, are they? 9 MR MOK: They are amongst the seven, yes. 10 THE CHAIRMAN: Thank you. 11 MR MOK: One final point is that if the Commission feels 12 that Mr Warren Li is required today to deal with the 13 speed limits, he will be available. 14 THE CHAIRMAN: If, as you say, the issue is likely not to be 15 controversial, it may be we ought to receive his 16 statement first to see whether or not we need to call 17 him. 18 MR MOK: It will be ready before the morning break this 19 morning. 20 THE CHAIRMAN: Very well. Thank you for that. 21 MR MOK: May I be excused so I can coordinate my team 22 members on these matters for the rest of the day? 23 THE CHAIRMAN: Yes. Could you assist us, because no doubt 24 Mr Pao may want this information. What is the likely 25 volume of this omnibus statement which will set out how</p>	<p style="text-align: right;">Page 28</p> <p>1 from what I have seen from Dr Armstrong's evidence. So 2 even if the other officers' involvement may be relevant, 3 my feeling is that they may be much less relevant than 4 the initial exercise. 5 THE CHAIRMAN: Thank you for that. 6 I appreciate this is difficult. Can you hazard any 7 estimate as to how much time is likely to be absorbed in 8 taking this tranche of the evidence; that is, the Marine 9 Department dealing with the approval of the plans and so 10 on of Lamma IV? 11 MR MOK: My estimate is between two to three days. 12 THE CHAIRMAN: Thank you. 13 Mr Beresford? 14 MR BERESFORD: Mr Chairman, may I just observe that 15 Dr Armstrong in his report refers to two specific annual 16 surveys: the 2005 annual survey and the 2011 annual 17 survey. 18 THE CHAIRMAN: Yes. 19 MR BERESFORD: These were the two annual surveys when 20 a measurement was taken of the hull thickness. So if 21 I may just draw attention to the fact that those 22 particular annual surveys are of particular interest in 23 that respect. 24 THE CHAIRMAN: So you're intimating to Mr Mok that the 25 people involved in those two surveys are likely to be</p>

Page 29	Page 31
<p>1 witnesses that the Commission would wish to hear from? 2 MR BERESFORD: Indeed. 3 MR MOK: We'll look into that, Mr Chairman. 4 THE CHAIRMAN: Thank you. 5 MR BERESFORD: Just on the matter of timetabling, I just 6 remind you, Mr Chairman, that Mr Francis Cheng of 7 Hongkong Electric is expected to give evidence at 8 10 o'clock on Monday morning. 9 THE CHAIRMAN: Yes. Thank you for that reminder. 10 Can you help me as to how many witnesses you 11 understand are likely to have been involved in those two 12 surveys, 2005 and 2011? 13 MR BERESFORD: No, I'm not in a position to help you with 14 that now, Mr Chairman. 15 THE CHAIRMAN: Thank you. 16 That's relevant to the measurement of the plate 17 thickness? 18 MR BERESFORD: Yes. I understand it was measured by 19 an ultrasound measurement. The documents are quite 20 short, but I don't know how many surveyors were 21 involved. 22 THE CHAIRMAN: Thank you. 23 Mr Grossman? 24 In the presence of MR PAO 25 MR GROSSMAN: Mr Chairman, may I raise one housekeeping</p>	<p>1 statements from seven surveyors who have been 2 interviewed hitherto by the Marine Department will be 3 provided to the Commission. That will be done, 4 I anticipate, before Monday, but if not before Monday, 5 on Monday. I mention that to give you a better idea of 6 where the Commission is now going and the timetable. 7 The other relevant factor is this. Doing the best 8 he can, Mr Mok has hazarded an estimate that the Marine 9 Department evidence itself would likely take two to 10 three days. The tribunal has evidence to take from 11 an officer of Hongkong Electric as well on Monday. So 12 that gives you some timeframe as to where we are. 13 I mention it in this context, because you ought to know 14 this, that the Commission is addressing these matters in 15 this order. It is taking the evidence which will 16 establish the factual and legal framework relating to 17 the construction of the ships first. Then it proposes 18 to call Dr Armstrong, who is the expert whose report 19 you've been provided with. The Marine Department 20 evidence is going first, and we have in mind that 21 evidence from Cheoy Lee would then follow. So that's 22 next week. 23 MR PAO: I'm grateful for Mr Chairman's indication. I have 24 been provided with a brief glimpse of the box files of 25 the documents from the Marine Department, and obviously</p>
Page 30	Page 32
<p>1 matter. On Monday, as you know, it's the opening of the 2 legal year -- 3 THE CHAIRMAN: I'll deal with the opening of the legal year 4 later, Mr Grossman. 5 MR GROSSMAN: I just wanted to know what time you were going 6 to sit until. 7 THE CHAIRMAN: Yes. I'll deal with it later. But thank you 8 for reminding me, and if I don't deal with it later, 9 please remind me again. 10 Mr Pao, in your absence we have acceded to 11 an application by Mr Mok on behalf of the Marine 12 Department that the testimony that was to have been led 13 today in respect of seven marine surveyors be adjourned 14 until Monday. 15 MR PAO: Yes. 16 THE CHAIRMAN: One basis upon which we acceded to that 17 request was Mr Mok intimating to the Commission that he 18 and those assisting him, and the Marine Department, are 19 in the process of producing an omnibus statement which 20 will address the processes by which the Marine 21 Department accept applications for approval for the 22 construction of vessels and how they are modified, how 23 they are registered and how they are then surveyed 24 subsequently. 25 In addition to that omnibus statement, more detailed</p>	<p>1 some of those are documents that we do have in our 2 possession. 3 What I would apply to the Commission for is soft 4 copies of the documents referred to in an index annexed 5 to the 3 January letter to be provided to those 6 instructing me. 7 THE CHAIRMAN: Just a moment while I ask to be provided with 8 that index. 9 Yes, I'm looking at the index now. This is headed 10 "Documents seized by Marpol [presumably Marine Police] 11 from Cheoy Lee Shipyards Ltd"? 12 MR PAO: That's the first two pages, and then from the third 13 page onwards, "Documents provided by the Marine 14 Department to the Commission (in relation to Lamma IV)". 15 THE CHAIRMAN: Yes. 16 MR PAO: May I apply to the Commission for soft copies of 17 these documents to be provided to us -- 18 THE CHAIRMAN: Both categories? 19 MR PAO: Both categories. 20 THE CHAIRMAN: Mr Beresford? 21 MR BERESFORD: Yes, I have no objection. They're in fact in 22 the process of preparation. 23 MR PAO: The reason for that, Mr Chairman, is so we can 24 correspond our pile fo -- 25 THE CHAIRMAN: I readily follow the logic.</p>

Page 33	Page 35
<p>1 MR PAO: Because just comparing our documents against the 2 index, we don't know whether that document is actually 3 the one described in the index. 4 THE CHAIRMAN: You're pushing against an open door. 5 MR PAO: Yes. Thank you. 6 THE CHAIRMAN: Can that be done this morning? 7 MR BERESFORD: We'll do it as soon as possible. I'm not 8 quite sure what the timing is. 9 MR PAO: In that timeframe, I would expect that a draft 10 statement of the witness from Cheoy Lee could be ready 11 by this time next week. 12 THE CHAIRMAN: No. Wednesday is when we need it. 13 MR PAO: That is pushing it a bit. 14 THE CHAIRMAN: Wednesday, Mr Pao. That's the extension 15 you're being given. 16 MR PAO: The reason for that is that Cheoy Lee has nominated 17 a director to give the evidence, instead of Mr Cheung. 18 THE CHAIRMAN: Yes. 19 MR PAO: The reason for that is, Mr Chairman -- you may have 20 read from the statement of Mr Cheung given to the Marine 21 Department -- that he was not actually in Hong Kong when 22 the vessel was constructed, that material period of 23 1995. 24 THE CHAIRMAN: This is the Mr Cheung who was an employee of 25 Cheoy Lee for 50 years?</p>	<p>1 America on -- 2 THE CHAIRMAN: Perhaps he ought to give thought as to 3 postponing that trip. Cheoy Lee is a reputable, very 4 well-known shipbuilder in Hong Kong. 5 MR PAO: Indeed. 6 THE CHAIRMAN: It has an international reputation. This 7 Commission is inquiring into the tragic death of 39 Hong 8 Kong people. 9 MR PAO: I fully appreciate that, Mr Chairman. 10 THE CHAIRMAN: That's the context of the importance. 11 Application by MR PAO 12 MR PAO: Mr Chairman, there's a third application relating 13 to the outstanding summons requiring Mr Cheung to appear 14 before the Commission to testify today. I would apply 15 for Mr Cheung to be released. 16 THE CHAIRMAN: I had understood that you had been informed 17 that Mr Cheung was not required today. 18 MR PAO: Not required today? 19 THE CHAIRMAN: Yes. 20 MR PAO: But maybe after the Commission has read the 21 statement of Mr Lo, then the Commission can decide -- 22 THE CHAIRMAN: I think that's probably the time to make the 23 application. For the moment, the summons is extant. 24 He'll be informed if and when he's required, and if you 25 wish to ask for the summons in due course to be</p>
Page 34	Page 36
<p>1 MR PAO: Yes. I suppose he was caught up in the wave of 2 emigration, pre-1997 emigration, at the time, and he was 3 not actually present. 4 THE CHAIRMAN: Right. And the witness that you are going to 5 provide a statement from was in Hong Kong? 6 MR PAO: Was in Hong Kong. He is a director of Cheoy Lee 7 and just so happened to be a marine engineer as well. 8 It's a Mr Lo. 9 THE CHAIRMAN: Mr Pao, this is the way in which we invite 10 you to address matters. This is how we've tried to deal 11 with other parties. Do what you can. Produce what you 12 can by Wednesday. 13 MR PAO: We will certainly do that, Mr Chairman. 14 THE CHAIRMAN: But that is our target. Now, it may be that 15 for one reason or another there will be an extra day 16 that you have. But press ahead. Mr Mok is working over 17 the weekend to provide the material. 18 MR PAO: So are we all, Mr Chairman. The thing is, I have 19 to inform the Commission that Mr Lo will be leaving 20 Hong Kong on Tuesday on a business trip. So the 21 statement may be in a draft form that needs to be 22 endorsed by -- 23 THE CHAIRMAN: Where is he going and for how long? 24 MR PAO: He will be back on the 25th of this month. My 25 instructions are that he will be leaving for South</p>	<p>1 withdrawn and it's appropriate to do so, of course we'll 2 accede to your application. 3 MR PAO: I'm grateful, Mr Chairman. 4 May we be excused so we can push on? 5 THE CHAIRMAN: Yes, of course. You obviously have work to 6 do. 7 MR PAO: Thank you. 8 MR MOK: Our more accurate information about the contacts 9 with Cheoy Lee's witness, we can check the record -- 10 THE CHAIRMAN: Mr Pao, before you go, just let me explain to 11 you -- the Commission has received, as you know, 12 Mr Cheung's statement; that's dated 27 December. We're 13 trying to put in a timeframe when it is that Cheoy Lee 14 must have been alerted that matters involving their role 15 in events were going to be examined at some stage by the 16 Commission. Mr Mok is about to tell me when it was that 17 Cheoy Lee was first contacted by Marine Department. 18 MR MOK: Yes. We checked the records and there appears to 19 be an earlier contact with Cheoy Lee, starting on 20 12 December 2012, when an email was sent relating to 21 some of these matters, and then Cheoy Lee replied on 22 about 20 December. It was on 24 December that 23 an appointment was confirmed to take place on the 27th. 24 THE CHAIRMAN: Thank you. 25 MR PAO: Yes, Mr Chairman, I can confirm that that is the</p>

<p style="text-align: right;">Page 37</p> <p>1 position.</p> <p>2 THE CHAIRMAN: Thank you for that. That is the context in</p> <p>3 which we approach your application to extend time. That</p> <p>4 is to say, Cheoy Lee have had notice that these matters</p> <p>5 have been relevant from that date in December.</p> <p>6 MR PAO: It may be at the time that they did not appreciate</p> <p>7 the extent of the enquiry into their involvement.</p> <p>8 THE CHAIRMAN: It's difficult to understand how</p> <p>9 a shipbuilder whose vessel has been lost in the</p> <p>10 circumstances in which Lamma IV was lost would not know</p> <p>11 that their assistance at some stage would be required.</p> <p>12 MR PAO: Yes. I think I will have more to say to the</p> <p>13 Commission after we have prepared the statement and the</p> <p>14 documents.</p> <p>15 THE CHAIRMAN: Thank you, Mr Pao.</p> <p>16 MR MOK: Mr Chairman, may I also be excused so I can get on</p> <p>17 with the matters?</p> <p>18 THE CHAIRMAN: Yes, of course. You too have matters to</p> <p>19 attend to.</p> <p>20 Before counsel do leave, Mr Grossman, you were</p> <p>21 raising the issue of Monday's sitting hours because</p> <p>22 Monday is the opening of the legal year.</p> <p>23 MR GROSSMAN: Yes, that's correct.</p> <p>24 THE CHAIRMAN: What we had in mind to do was to rise shortly</p> <p>25 before 4 o'clock.</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. And do you have any amendment you wish to make?</p> <p>2 A. No.</p> <p>3 Q. So are the contents of this statement true?</p> <p>4 A. (In English) Yes.</p> <p>5 Q. Thank you. Officer, on 1 October 2012 you were on duty</p> <p>6 as the engine operator of Speedboat 52, were you not?</p> <p>7 A. (In English) Yes.</p> <p>8 Q. At about 20:45, your vessel was ordered to attend the</p> <p>9 scene of a vessel collision at Lamma Island?</p> <p>10 A. Yes.</p> <p>11 Q. At about 20:53 hours, you and two others boarded FB52</p> <p>12 and went to the scene of the incident, about 1 nautical</p> <p>13 mile from Yung Shue Wan?</p> <p>14 A. Yes.</p> <p>15 Q. You saw several life jackets and other articles afloat</p> <p>16 about 1 nautical mile away from the scene, but no</p> <p>17 casualties?</p> <p>18 A. (In English) Yes.</p> <p>19 Q. Then, at around 21:27 hours, Fireboat 52 arrived at the</p> <p>20 scene?</p> <p>21 A. Yes.</p> <p>22 Q. Your divisional officer ordered you to conduct</p> <p>23 an investigation around and about, and you noted</p> <p>24 visibility range of approximately 2 nautical miles, and</p> <p>25 you described this as "dim".</p>
<p style="text-align: right;">Page 38</p> <p>1 MR GROSSMAN: Thank you very much.</p> <p>2 In the absence of MR PAO and MR MOK</p> <p>3 THE CHAIRMAN: Mr Beresford?</p> <p>4 MR BERESFORD: Mr Chairman, we have two more witnesses to</p> <p>5 deal with today before we were going to come to the</p> <p>6 surveyors. The next witness is Fireman Lo Chi-ho.</p> <p>7 OFFICER LO CHI-HO (affirmed in Puntì)</p> <p>8 (All answers via interpreter unless otherwise indicated)</p> <p>9 Examination by MR BERESFORD</p> <p>10 MR BERESFORD: Good morning, Officer. Thank you very much</p> <p>11 for coming to assist this Inquiry. I have some</p> <p>12 questions to ask you on behalf of the Commission.</p> <p>13 You have previously made a statement, which may be</p> <p>14 found in our FSD bundle 2 at pages 350 to 351.</p> <p>15 The translation, Mr Chairman, is at pages 351-1</p> <p>16 to 351-3.</p> <p>17 THE CHAIRMAN: Thank you.</p> <p>18 MR BERESFORD: Do you have a copy of your statement in front</p> <p>19 of you?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recognise it as yours?</p> <p>22 A. Yes.</p> <p>23 Q. Have you had an opportunity to review it today and</p> <p>24 remind yourself of what it says?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. Now, I'm going to read from the English translation of</p> <p>3 your statement. You can follow the Chinese on the</p> <p>4 screen.</p> <p>5 A. (In English) Yes.</p> <p>6 Q. "The vessel Lamma IV was positioned with the hull</p> <p>7 perpendicularly about 80 degrees sunken into the sea.</p> <p>8 A life raft of Lamma IV was located nearby. A lot of</p> <p>9 people were in the water in between Lamma IV and the</p> <p>10 life raft, waving their hands and shouting for help.</p> <p>11 Under the circumstances, Divisional Officer Chan Wai-ho</p> <p>12 ordered me to throw all the life jackets and lifebuoys</p> <p>13 on FB52 to the immersed people immediately. At that</p> <p>14 time, FB52 was berthed along the life raft Lamma IV and</p> <p>15 Principal Fireman 9883 straddled on the life raft for</p> <p>16 stabilising FB52. Divisional Officer shouted to me to</p> <p>17 assist him to rescue a conscious woman (wearing</p> <p>18 a lifebuoy but did not know how to swim) to board FB52.</p> <p>19 Later on, myself and Divisional Officer rescued</p> <p>20 an unconscious woman who did not have a life jacket on</p> <p>21 and with her face immersed in sea. Divisional Officer</p> <p>22 then asked me to assist him to rescue a man with his</p> <p>23 forehead injured who was floating at sea to board FB52.</p> <p>24 Thus I placed that unconscious woman on FB52 aside and</p> <p>25 assisted Divisional Officer to rescue that injured man</p>

<p style="text-align: right;">Page 41</p> <p>1 to board FB52. After settling that injured man, 2 Principal Fireman 9883 ordered me to board the life raft 3 of Lamma IV to render ambulance aid to the injured 4 people therein. 5 When I got onto the life raft, I saw there were 6 about 10 persons inside with 1 girl and 1 woman who were 7 both unconscious. As I was the only FS crew on the life 8 raft, I asked the persons over there to see anyone who 9 knew cardiopulmonary resuscitation or ambulance aid to 10 offer assistance to me but no response was noted. I 11 performed quick assessment to the 2 unconscious female 12 and found that they had stopped breathing and [had] no 13 pulse. Then I rendered CPR to the woman next to be 14 immediately. At the same time, I asked the persons 15 onboard the life raft to assist the person immersed in 16 the sea awaiting for rescue to get onto the life raft 17 but no assistance was offered. Meanwhile I felt the 18 life raft of Lamma IV was moving [later knew that 19 Fireboat 7 pulled the painter of the raft which was 20 passed by diver to Fireboat 7]. Shortly, the crews of 21 Fireboat 7 transferred all persons onboard the life 22 raft, including the 2 unconscious ones, to Fireboat 7 23 and handed over to ambulance crews for further ambulance 24 care and treatment." 25 Now, Officer, I think I can stop there as I believe</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. I see. Thank you. 2 "As I was about 20 metres away from the Lamma IV, 3 Principal Fireman 9883 ordered me to swim towards 4 Lamma IV to search and to see if there were any 5 casualties still trapped inside the affected vessel. 6 The rough sea state resulted from the movements of the 7 vessel nearby hindered me from swimming towards 8 Lamma IV. When I swam to the starboard side of 9 Lamma IV, I met Diver Hui Ka-chun. Following the source 10 of the whistle sound, we swam to a window opening about 11 2 metres above sea level. Diver Hui and I climbed up 12 the window with bare hands and to see if there was any 13 response from inside the dark passenger compartment. It 14 was ascertained that someone was trapped inside as a 15 response was heard from inside. Since we did not have 16 any break-in equipment as we had to swim to Lamma IV, we 17 tried to break the window by our bare hands but in vain. 18 However, due to hitting the window [hard], a gap was 19 opened at the rim of the window frame. We lifted the 20 window upward and successfully open it with an opening 21 of about 1.5 feet in width. I saw 3 persons wearing 22 life jackets were inside passenger compartment 23 (2 children and 1 woman, all conscious). 24 We reassured the trapped persons, asked for their 25 condition and asked them whether any other people were</p>
<p style="text-align: right;">Page 42</p> <p>1 that the remaining part of your statement is duplicated. 2 You have mentioned one girl and one woman who were 3 both -- 4 THE CHAIRMAN: Whilst it might be duplicated, I think the 5 officer ought to give us his account of seeing 6 passengers -- I'm looking at the second paragraph on 7 page 351-2 -- trapped inside the vessel, and their 8 attempts to break in and out. Perhaps you could read 9 that. 10 MR BERESFORD: Very well, Mr Chairman. I'll continue 11 reading: 12 "Thereafter Principal Fireman 9883 on FB52 came to 13 Fireboat 7 and picked me back to the scene near Lamma IV 14 for conducting searching with Senior Fireman 10913 and 15 Fireman 11760 onboard FB52. When the FB52 got closer to 16 me, I heard whistling from the inside of Lamma IV. 17 I reported the circumstances to Principal Fireman 9883 18 and he said he also heard the whistle sound. As I was 19 about ..." 20 Sorry, can I just pause there. 21 Officer, can you just give us some more detail about 22 the whistle sound that you heard? Was that the type of 23 whistle that is found on a life jacket, or was it 24 a ship's whistle, or some other whistle? 25 A. It is the whistle from the life jacket.</p>	<p style="text-align: right;">Page 44</p> <p>1 trapped inside. They responded that they were not 2 injured but did not reveal whether there were any other 3 persons inside the compartment. Accounting for the huge 4 amount of miscellaneous articles afloat inside the 5 passenger compartment, seawater running into the 6 passenger compartment with the water level rising, dark 7 working environment and the imminent danger of sinking 8 of the vessel, we decided to conduct swift rescue to the 9 3 person through the 1.5 feet window opening. Since the 10 window was perpendicular to the sea level and was about 11 2 metres away from the trapped persons, I had to lean my 12 upper body so as to enter the compartment. 13 I successfully pulled a boy and a girl next to me out of 14 the passenger compartment and passed them to a boat 15 nearby. When we tried to pull out the last woman, she 16 was weak and emotionally unstable. Her body was of 17 a similar size with the window opening and we tried to 18 pull her out several times but in vain. The inner part 19 of my right arm and my right chest chafed against the 20 window frame so I felt very painful. Due to the 21 prevailing unsafe environment, I and Diver Hui decided 22 that we had to enter the passenger compartment of the 23 unstable Lamma IV in order to rescue the woman. As 24 Diver Hui was geared in diving suit and was shorter than 25 me, we decided to let him enter the passenger</p>

<p style="text-align: right;">Page 45</p> <p>1 compartment with me at the outside for risk assessment 2 and to rescue the woman out of the sinking passenger 3 compartment from outside through the window opening. 4 Firstly, we took off the life jacket from the woman, 5 then Diver Hui entered the water inside the passenger 6 compartment and pushed the woman up whereas I leaned 7 through the window opening into the compartment for 8 pulling. The woman was eventually removed from the 9 passenger compartment successfully. Hence, we passed 10 the woman to a police speedboat nearby for conveying her 11 ashore. 12 At the time of rescuing the woman, the inner part of 13 my right arm and my right chest were painful and 14 slightly injured. Nevertheless, as the rescue operation 15 at scene was in progress and the pain did not affect 16 mobility, I did not leave for medical consultation and 17 decided to remain at scene for the rescue operation. At 18 08:30 hours on 2 October 2012, we informed FSCC for 19 returning to fire station upon receiving instruction 20 from the incident commander." 21 So, Officer, that's your statement. 22 A. (In English) Thank you. 23 Q. You mentioned in your statement that when you got onto 24 the life raft, you saw about 10 people inside, with one 25 girl and one woman who were both unconscious.</p>	<p style="text-align: right;">Page 47</p> <p>1 MR ZIMMERN: Neither do I, Mr Chairman. 2 MS LOK: Yes, Mr Chairman, I do have a few questions on the 3 area of the identification of deceased 1. 4 THE CHAIRMAN: Yes, very well. 5 MS LOK: Just a point of information first. I received 6 instructions that in fact this officer has conducted 7 an ID exercise subsequently in which he confirmed the 8 identity of both deceased 31 and 1. I'm in the process 9 of locating that particular statement. 10 THE CHAIRMAN: Yes. You provided us with the statement of 11 Officer Yuen this morning, another Officer in a similar 12 category, correcting the identification of -- 13 MS LOK: I think that was deceased 21, Mr Lam, as to his 14 gender. 15 THE CHAIRMAN: Yes. 16 MS LOK: That was clarified yesterday. 17 THE CHAIRMAN: So you have another statement dealing with 18 this? 19 MS LOK: That's correct, and that is specific to deceased 1. 20 I wonder whether Mr Chairman would like to take the 21 morning break now so that this statement can be located 22 first? 23 THE CHAIRMAN: If it can be done in that timeframe, 24 certainly. 25 MS LOK: Yes.</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Yes. 2 Q. Do you have any further information to give about those 3 people? 4 A. No. 5 MR BERESFORD: Thank you. 6 Mr Chairman, we believe the woman is deceased 31 in 7 the table attached to Mr Yau's witness statement. 8 THE CHAIRMAN: Thank you. 9 MR BERESFORD: That is Madam Wong Lai-chun, aged 73. And we 10 believe that the girl may be deceased 1. 11 THE CHAIRMAN: And the cause of death of Madam Wong? 12 MR BERESFORD: Drowning. 13 THE CHAIRMAN: Thank you. 14 MR BERESFORD: And the same for deceased 1. 15 Officer, the record here indicates that the adult, 16 the unconscious adult woman, was aged 73. Does that 17 accord with your recollection? 18 A. Yes. 19 Q. And it indicates that the girl that I just mentioned was 20 aged 7. Is that consistent with your recollection as 21 well? 22 A. Yes, more or less. 23 MR BERESFORD: Thank you, Officer. Please wait there. 24 THE CHAIRMAN: Do counsel have any applications? 25 MR GROSSMAN: I do not, thank you, Mr Chairman.</p>	<p style="text-align: right;">Page 48</p> <p>1 THE CHAIRMAN: Very well. 2 Officer, we're going to take an adjournment now in 3 the hope that in the meantime, we can locate the witness 4 statement that you gave in which you identified the two 5 females involved. So we'll take a break for 20 minutes 6 and at resume at 11.40. 7 (11.20 am) 8 (A short break) 9 (11.40 am) 10 THE CHAIRMAN: Yes? 11 MS LOK: Yes, Mr Chairman. The supplemental statement has 12 been located during the break. It is in fact a two-line 13 statement confirming the identity of -- 14 THE CHAIRMAN: Two-page or two-line? 15 MS LOK: Two-line, in fact. Well, a Chinese copy has been 16 produced to the Commission. In fact there are three 17 pages in total but the first two pages are repetition of 18 the original statement. The only material bit starts at 19 the third page, the lower half of the page. 20 THE CHAIRMAN: Yes. 21 MS LOK: So if I have permission from the Commission, I will 22 deal with this. 23 THE CHAIRMAN: Please do. 24 MS LOK: And I apologise for not locating this earlier. 25 Officer, do you remember attending an identification</p>

<p style="text-align: right;">Page 49</p> <p>1 on 30 November 2012 in Ngong Shuen Chau?</p> <p>2 A. Yes.</p> <p>3 Q. And you were shown paragraphs of deceased by police</p> <p>4 identification numbers 1 and 31 in that process?</p> <p>5 A. Yes.</p> <p>6 Q. Can you confirm that you identified from the photographs</p> <p>7 that those two were the two you saved on the night of</p> <p>8 collision?</p> <p>9 A. Yes.</p> <p>10 Q. In the life raft, I mean, when you located -- referred</p> <p>11 to in your statement.</p> <p>12 A. Okay, yes, on the life raft.</p> <p>13 MS LOK: Mr Chairman, I have no further questions.</p> <p>14 THE CHAIRMAN: Thank you. Mr Beresford?</p> <p>15 MR BERESFORD: Mr Chairman, I have no further questions, but</p> <p>16 in the light of that positive identification I should</p> <p>17 give you the name of deceased 1, which is Yan Tsz-ki,</p> <p>18 a girl aged 7.</p> <p>19 THE CHAIRMAN: Thank you.</p> <p>20 Questions by THE COMMISSION</p> <p>21 THE CHAIRMAN: Officer, you described having seen people in</p> <p>22 the sea and having assisted in rescuing them. One of</p> <p>23 them was a male, and he had an injured forehead.</p> <p>24 A. Yes.</p> <p>25 THE CHAIRMAN: Was he wearing a life jacket or not?</p>	<p style="text-align: right;">Page 51</p> <p>1 (The witness withdrew)</p> <p>2 MR BERESFORD: Mr Chairman, the next witness is Fireman</p> <p>3 Ko Wing-ki.</p> <p>4 OFFICER KO WING-KI (affirmed in Puntì)</p> <p>5 (All answers via interpreter unless otherwise indicated)</p> <p>6 Examination by MR BERESFORD</p> <p>7 MR BERESFORD: Good morning, Officer. Thank you very much</p> <p>8 for coming this morning to assist with this Inquiry.</p> <p>9 I have some questions to ask you on behalf of the</p> <p>10 Commission.</p> <p>11 Officer, you've previously made two statements to</p> <p>12 the Director of Fire Services, have you not, one dated</p> <p>13 11 October 2012 and one dated 6 November 2012?</p> <p>14 These are to be found in FS bundle 27 at pages 312</p> <p>15 to 313; and at page 313-3. The translations are at</p> <p>16 pages 313-1 and 313-2.</p> <p>17 Officer, do you have a copy of your statements</p> <p>18 before you?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recognise them as yours?</p> <p>21 A. Yes.</p> <p>22 Q. Have you had an opportunity to remind yourself of what</p> <p>23 they say today?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have any amendment to make?</p>
<p style="text-align: right;">Page 50</p> <p>1 A. No.</p> <p>2 THE CHAIRMAN: You've then described encountering the two</p> <p>3 children and the woman who had attracted your attention,</p> <p>4 and you and your colleague were able to force open the</p> <p>5 window. You told us that it was necessary to remove the</p> <p>6 woman's life jacket to get her out of the window.</p> <p>7 A. Yes.</p> <p>8 THE CHAIRMAN: What about the two children; were they</p> <p>9 wearing life jackets or not?</p> <p>10 A. Yes, the children had life jackets on.</p> <p>11 THE CHAIRMAN: Were they attached properly?</p> <p>12 A. Yes.</p> <p>13 THE CHAIRMAN: Thank you. Your evidence is now complete.</p> <p>14 Thank you for coming along to assist us by giving that</p> <p>15 evidence.</p> <p>16 A. (In English) Thank you.</p> <p>17 THE CHAIRMAN: In a moment you'll be free to leave, but</p> <p>18 before you do so, on behalf of the Commission may</p> <p>19 I commend you and your colleague, Diver Hui Ka-chun, for</p> <p>20 the rescue mission that you embarked upon that night,</p> <p>21 and your successful saving of the two children and the</p> <p>22 woman.</p> <p>23 Thank you. You are free to go, but if you wish you</p> <p>24 may remain in the back of the hearing room.</p> <p>25 A. Thank you.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes.</p> <p>2 Q. What is that, please?</p> <p>3 A. In line 7, paragraph 3, page 1, it says "on the side of</p> <p>4 the red light". In fact it should read "green light".</p> <p>5 Also, on page 2, paragraph 1, line 1, it says "red</p> <p>6 fire". It should also be changed to "green fire". In</p> <p>7 the same page, paragraph 1, line 2, where it says "green</p> <p>8 fire" should be changed to "red fire" also.</p> <p>9 That is all.</p> <p>10 Q. Thank you, Officer. I'm having some difficulty locating</p> <p>11 those in the translation just at the moment. I think</p> <p>12 it's been translated to "port". Perhaps we'll deal with</p> <p>13 those amendments as we go through your statement.</p> <p>14 A. (In English) Thank you.</p> <p>15 Q. Subject to those amendments, are the contents of these</p> <p>16 statements true?</p> <p>17 A. Yes.</p> <p>18 Q. I'm going to read your statement from the English</p> <p>19 translation. You can follow the Chinese on the screen.</p> <p>20 If you hear or see anything inaccurate, then please stop</p> <p>21 me and tell me. In particular, if I don't make the</p> <p>22 amendments that you've just made, then please stop me</p> <p>23 and we'll make them as we go along.</p> <p>24 A. Noted.</p> <p>25 Q. Thank you. First of all you set out your diving</p>

<p style="text-align: right;">Page 53</p> <p>1 qualifications: 2 "... (1) advanced diver, (2) compression chamber 3 operator, (3) swift water rescue, (4) bronze medallion, 4 (5) first responder, (6) 2 years in Fire Services 5 Department diving unit." 6 On 1 October 2012, you were on duty, were you not, 7 in Tung Lo Wan diving tender section A? 8 A. Yes. 9 Q. At about 21:30, your diving tender was instructed to 10 attend a vessel collision near Lamma Island? 11 A. Yes. 12 Q. You arrived at the scene at about 22:10? 13 A. Yes. 14 Q. I'm going to read from the English: 15 "Upon arrival, Tung Lo Wan diving tender was 16 instructed to perform diving rescue to the wreck. I was 17 ordered by Senior Station Officer Chan Man-fai to break 18 a lower deck window on the port side of the wreck." 19 Is that one of the amendments you wish to make? 20 Should that be "the starboard side of the wreck"? 21 A. Yes. 22 THE INTERPRETER: Mr Beresford, in the statement in Chinese 23 mentioned "red light" and "green light", but I think in 24 English it is the port side. 25 (Chinese spoken).</p>	<p style="text-align: right;">Page 55</p> <p>1 about 20 minutes, diver Senior Fireman Yuen Ka-wai found 2 the second victim and backed to the surface. I took 3 over the victim and used the rescue tube to tow the 4 victim to a police small boat. Afterward, it was diver 5 Fireman Lam Yim-lung's turn to search the upper deck, 6 and I returned to DV2 to prepare my next turn diving. 7 Later, diver Fireman Lam Yim-lung found three victims 8 (3rd, 4th &amp; 5th) and all handed over to the police small 9 boat. 10 Then, it is my turn to be a diver and performed the 11 underwater searching to the upper deck cabin at 12 00:40 hours on 2 October 2012. According to the order 13 by Senior Station Officer Chan Man-fai, I needed to 14 search the upper deck cabin and I totally found four 15 victims in my dive. The 6th and 7th victims are located 16 in the upper deck cabin port side near the window ..." 17 Is that another one of your amendments, please? 18 Should that be the green side or the red side? 19 A. Green. 20 Q. Thank you. 21 "... they are stacked together and shackled by wires 22 from the ceiling. The 8th and 9th victims are located 23 in the upper deck cabin starboard side near the 24 window ..." 25 Should that be green or red side?</p>
<p style="text-align: right;">Page 54</p> <p>1 MR BERESFORD: Please give us the colours, Madam 2 Interpreter. What is the correct colour? 3 A. (In English) Green. 4 A. The colour should read "green". 5 MR BERESFORD: Yes. Could we have a look at the window 6 plan, please, for the starboard side of the Lamma IV. 7 You tell us in your statement that you then used 8 a 10 kg shot to hit the corner to break the window. Are 9 you able to identify from the plan, by reference to the 10 number, which window it was that you broke? 11 A. G13. 12 Q. Thank you. I'm going to continue reading: 13 "Later, I was ordered to stay in the windows and act 14 as an attendant for the diver -- Senior Fireman Kwong 15 Chi-keung. When diver Senior Fireman Kwong Chi-keung 16 found the 1st victim in the cabin, I assisted the diver 17 [to surface] and took over the body. Then the 1st 18 victim was transferred to Fireman Lam Yim-lung. 19 I continued my attendant job until Senior Fireman Kwong 20 Chi-keung finished his searching. Then the underwater 21 searching job was [taken] up by Senior Fireman Yuen 22 Ka-wai with senior fireman Kwong Chi-keung as his 23 attendant. 24 I was ordered to [take] a rescue tube from DV2 and 25 standby with this rescue tube for any assistance. After</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Should be red fire. 2 Q. Thank you. So the 8th and 9th victims were located in 3 the upper deck cabin, red side, near the window. 4 "... they told the hand of each other." 5 A. Yes. 6 Q. "I cleared the obstacles from them and took the victims 7 out of water one by one. I finished my diving search at 8 01:05 hours on 2 October 2012. Then, Acting Divisional 9 Officer Yang Kin-sang ordered the Tung Lo Wan diving 10 tender crews to stand by on Fireboat 7 except Senior 11 Station Officer Chan Man-fai who needed to stay in DV2." 12 Then in your supplemental statement, you say that 13 you have been shown photographs of the deceased and 14 you've provided additional information. You said: 15 "The 6th victim described in line 14 of 4th 16 paragraph [was] wearing t-shirt with red horizontal 17 stripes and trousers in dark colour. 18 The 8th victim ... [was] wearing black blouse and 19 trousers. Her body size is big." 20 Officer, the four victims that you found in your 21 dive, were any of them wearing life jackets? 22 A. None of them. 23 Q. Thank you. 24 Could we please have a look at FS bundle 3, 25 page 658.</p>

Page 57	Page 59
<p>1 THE CHAIRMAN: Page 658A or page 658? 2 MR BERESFORD: Page 658A, thank you, Mr Chairman. 3 I believe, Officer, that the victims that you 4 recovered are those marked here in the green boxes for 5 dive 4; is that right? 6 A. Yes. 7 Q. Does this show them on the correct sides for where you 8 found them? 9 A. Correct. 10 Q. The diagram is correct and takes account of your 11 amendments; is that right? 12 A. Yes, correct. 13 Q. Thank you. 14 So, Mr Chairman, you see from the diagram that we 15 are dealing with the deceased numbered 14, 24, 34 16 and 37. 17 Officer, you see on the diagram it's marked that 18 deceased 14 and deceased 37 are said to have been 19 holding a life jacket and trapped. 20 A. The life jackets were nearby and not being held by them, 21 but they were entangled in the neck and the arms and 22 hands. 23 THE INTERPRETER: Sorry, "hands and feet". 24 MR BERESFORD: Yes, I want to ask you about that. Were they 25 entangled by the straps of the life jacket? Were they</p>	<p>1 MR BERESFORD: At page 662-7, both of those are marked on 2 Mr Yau's table as having been trapped by electric 3 wiring. 4 THE CHAIRMAN: Yes. 5 MR BERESFORD: Then the two that were recovered from the 6 other side: 24 is Madam Cheung Yuet-mei, aged 30; and 34 7 is Madam Li Shui-lan, aged 52. 8 THE CHAIRMAN: Thank you. 9 MR BERESFORD: Thank you, Officer. Please wait there. 10 THE CHAIRMAN: And the cause of death? 11 MR BERESFORD: Drowning, in each case, Mr Chairman. 12 THE CHAIRMAN: Thank you. 13 Do counsel have any applications? 14 MR GROSSMAN: I don't, thank you, Mr Chairman. 15 MR ZIMMERN: We have no questions, thank you. 16 MS LOK: No, thank you. 17 THE CHAIRMAN: Thank you. 18 Questions by THE COMMISSION 19 THE CHAIRMAN: Officer, when you used the shot, the 10 kg 20 shot, to break the window G13, how far away was the 21 water from that window at that time? 22 A. The water level outside and inside of the vessel was the 23 same. 24 THE CHAIRMAN: I appreciate that. But have a look, if you 25 would, at the depiction of the vessel from the starboard</p>
Page 58	Page 60
<p>1 connected to the life jacket in some way? 2 A. No. 3 THE CHAIRMAN: They weren't holding these life jackets, but 4 some of the tapes from the life jackets were attached to 5 them; is that the evidence? 6 A. The situation that I saw was that the life jackets were 7 floating near them. 8 THE CHAIRMAN: But not attached to them in any way? 9 A. No. 10 THE CHAIRMAN: Were these persons trapped in any way by 11 obstacles? 12 A. They were trapped by the wires from the ceiling and also 13 the plastic false ceiling, as well as some articles. 14 THE CHAIRMAN: As you described in your statement? 15 A. Yes. 16 MR BERESFORD: Mr Chairman, deceased 14 is Madam Wu Po-tim, 17 aged 60. Deceased 24 is Madam Cheung Yuet-mei, aged 30. 18 THE CHAIRMAN: Dealing with the two on the starboard side 19 that you were dealing with, that's deceased 14 next, is 20 it not? 21 MR BERESFORD: The two on the starboard side, deceased 14 22 and deceased 37. 23 THE CHAIRMAN: Yes. And 37 is? 24 MR BERESFORD: 37 is Madam Ng Choi-ha, aged 57. 25 THE CHAIRMAN: Just give me a moment. Thank you.</p>	<p>1 side, where you've pointed out G13. 2 Could we have that on the screen. 3 At the time that you broke the window, the vessel 4 was at an angle to the seawater, was it not, with the 5 bow pointing up, or upwards? 6 THE INTERPRETER: I was asked to repeat the question. 7 THE CHAIRMAN: Yes. Let me demonstrate it to you. The 8 vessel wasn't like that, horizontal, was it (indicates); 9 it was up at some angle when you broke the window? 10 A. (Witness nods). 11 THE CHAIRMAN: So perhaps you can answer the question in 12 this way. To what other window had the water reached 13 when you broke window 13, green 13? 14 A. It has reached the bottom of G13. When the ship was 15 vertical, the water level was at the bottom of G13. 16 THE CHAIRMAN: The very window that you broke? 17 A. Yes. 18 THE CHAIRMAN: Thank you. 19 MR BERESFORD: Mr Chairman, you may wish to start with 20 page 653, which is at 22:03. Page 654 is at 22:15. 21 THE CHAIRMAN: Yes. Do you see these two depictions of the 22 vessel at particular times? Page 653. Could we have 23 the title. 24 That's said to be the position of the vessel at 25 21:03.</p>

Page 61	Page 63
<p>1 If you then have a look at the depiction of the 2 vessel a little more than an hour later, 22:15, do you 3 see how the vessel had sunk some more? And you had 4 arrived at the scene at 22:10, had you not? 5 A. (Witness nods). 6 THE CHAIRMAN: If one compares the sketch with the window 7 numbers with this designation, that's the same window, 8 is it not, G13? 9 A. (In English) Yes. 10 THE CHAIRMAN: Thank you. 11 A. I would like to add something. 12 THE CHAIRMAN: Yes? 13 A. In fact when our vessels approached Lamma IV, the water 14 level at 22:15 hours was at the bottom of G13 and not on 15 top of G13 as shown in this diagram. 16 THE CHAIRMAN: Yes. Thank you for that. We have your 17 evidence. This is an attempt to present the best 18 picture that we can get from the overall evidence, but 19 you were actually there; we understand that. 20 Thank you, Officer, for coming to testify today to 21 assist the Commission in its duties. Your evidence is 22 now finished and in a moment, you will be free to leave, 23 or remain in the hearing if you wish. 24 Before you leave, the Commission wishes to commend 25 you for your role in this attempted rescue and the</p>	<p>1 afraid that the appendices might be a little bit 2 voluminous. 3 THE CHAIRMAN: Yes. Is there a copy of the statement for 4 the Commission to look at now? 5 MS LOK: I'm afraid that the print-outs are not available 6 yet, but they are available in soft copies. 7 THE CHAIRMAN: How voluminous is this statement? 8 MS LOK: I am given to understand that they are being 9 printed right now. 10 THE CHAIRMAN: When can it reach our hands, is all I'm 11 asking. It's a practical question. 12 MS LOK: Yes, I know, Mr Chairman. 13 Several minutes, I'm given to understand. 14 THE CHAIRMAN: What we'll do is we'll rise and I'd ask that 15 it be made available as soon as possible. If you've got 16 a soft copy, provide us with a soft copy, and then we 17 can see where we are with the evidence, and Mr Beresford 18 can do the same. We'll adjourn in the first instance 19 for, say, 15 minutes and see where we are then. 20 (12.19 pm) 21 (A short break) 22 (12.36 am) 23 THE CHAIRMAN: We thank those that provided the documents. 24 We've had a chance to have a quick look through them, 25 and if you wish to have -- and other counsel wish to</p>
Page 62	Page 64
<p>1 retrieval of the bodies. 2 A. Thank you, Mr Chairman. 3 (The witness withdrew) 4 MR BERESFORD: Mr Chairman, subject to one witness, that 5 completes the divers' evidence. The witness that is 6 remaining is Mr Terence Fung from Marpol who is due to 7 give evidence I believe on Wednesday. He is the one 8 that gives the overview of the police diving operation. 9 THE CHAIRMAN: Yes. 10 MR BERESFORD: But subject to that, the divers are 11 completed. 12 THE CHAIRMAN: Thank you. 13 MR BERESFORD: I've made enquiries as to whether Mr Li can 14 come before lunch, but it seems that that's not 15 possible, so -- 16 THE CHAIRMAN: Do we have his statement? 17 MR BERESFORD: I understand that it's been provide, but 18 I haven't seen it yet. So I'm proposing to review that 19 over lunch, and we'll hear from him at 2.30, if that's 20 all right. 21 THE CHAIRMAN: No. I'd like to see the statement now, if 22 it's available. 23 MS LOK: Yes, Mr Chairman. I'm given to understand that 24 Mr Li has signed the statement. The statement, together 25 with the appendices, has been provided to Lo &amp; Lo. I'm</p>	<p>1 have -- the time over lunch, then we'll adjourn now and 2 come back at 2.30. 3 MR BERESFORD: Thank you, Mr Chairman. 4 THE CHAIRMAN: So, 2.30 it is. 5 (12.36 pm) 6 (The luncheon adjournment) 7 (2.30 pm) 8 THE CHAIRMAN: Mr Beresford. 9 MR BERESFORD: Mr Chairman, the next witness is Officer Li 10 Kin-pong. 11 OFFICER LI KIN-PONG (affirmed in Punti) 12 (All answers via interpreter unless otherwise indicated) 13 Examination by MR BERESFORD 14 MR BERESFORD: Officer, thank you very much for coming along 15 this afternoon to assist this Inquiry. I have some 16 questions to ask you on behalf of the Commission. 17 You have just made a statement, I understand, dated 18 today, 11 January, and it's in English. Its bundle 19 reference is marine bundle 11, page 3758. 20 Do you have a copy of your statement, Officer? 21 A. Yes. 22 Q. Is there any amendment you wish to make? 23 A. No. 24 Q. So are the contents of this statement true? 25 A. Yes.</p>

Page 65	Page 67
<p>1 Q. Officer, you've been asked to explain to the Commission 2 the regime and system currently in place for the 3 regulation of speed limits of vessels such as the Sea 4 Smooth and the Lamma IV while travelling in the waters 5 of Hong Kong. You have kindly set those out for us. 6 You've referred to Cap 548F, and in particular sections 7 9(1) and 9(2). 8 "Section 9(1) stipulates the maximum permitted speed 9 for local vessels underway in the Victoria Harbour and 10 its adjacent waters ..." 11 These waters are defined, I believe, in schedule 2 12 to Cap 548F, and you've produced this in diagrammatic 13 form in your exhibit LKP-1. 14 Could you please just have a look at that. 15 You've helpfully provided us with a copy of 16 schedule 2 to Cap 548F, at page 3770, for those that 17 want to look at it. But if we can keep the chart still 18 on the screen. 19 If I've understood this correctly, Officer, 20 paragraph 2(a) of schedule 2 is the eastern zone B on 21 the plan; is that right? 22 A. Yes, correct. 23 Q. And zone A is defined in paragraph 2(b)? 24 A. Yes, correct. 25 Q. And the western zone B is defined in paragraph 2(c)?</p>	<p>1 to Sea Smooth in the present case? 2 THE INTERPRETER: I was asked to repeat the question. 3 MR BERESFORD: Yes. 4 Apart from any exemption of the Director, which 5 we'll come to in a minute, section 9(2) would have 6 applied in the present case, would it not? 7 A. Section 9(2) has been exempted. 8 Q. Yes, but apart from the exemption -- 9 THE CHAIRMAN: I think he's agreed with you, Mr Beresford. 10 MR BERESFORD: Sea Smooth was a local vessel; yes? 11 A. Correct. 12 Q. It was a high-speed craft? 13 A. As far as I knew, that's not the case. 14 Q. Oh, it's not a high-speed craft? 15 A. No. 16 THE CHAIRMAN: Can we show the witness a document that helps 17 him in that regard? 18 MR BERESFORD: The definition of "high-speed craft" is in 19 section 9(8) and it refers to section 2(1) of the 20 Merchant Shipping (Safety) (High Speed Craft) 21 Regulation, which is a very technical definition, 22 Mr Chairman. I don't know if the -- 23 THE CHAIRMAN: Is there a licence that says what Sea Smooth 24 is? Perhaps the officer can help us. 25 If we try and find a licence, will it tell us</p>
Page 66	Page 68
<p>1 A. Yes, correct. 2 Q. Then we have the fairways marked C, which are defined in 3 paragraph 2(d)? 4 A. Yes. 5 Q. In addition, we can see on the plan a number of other 6 speed-restricted zones which are mainly pleasure boating 7 areas and which we're not really concerned with today. 8 A. Yes. 9 Q. If we turn to your exhibit 3, that shows that the 10 location of the collision was just outside of zone B. 11 A. Yes, correct. 12 Q. So it's within the waters of Hong Kong, but outside of 13 the areas defined in schedule 2? 14 A. Yes, correct. 15 Q. So it's not within the speed limit in section 9(1) of 16 Cap 548F; is that right? 17 A. Correct. 18 Q. Now, section 9(2) of Cap 548F stipulates 15 knots as the 19 maximum permitted speed for high-speed craft underway 20 anywhere in the waters of Hong Kong during the hours of 21 darkness, except with the permission of the Director of 22 Marine; is that right? 23 A. Correct. 24 Q. So, subject to the exemption of the Director, prima 25 facie this section 9(2) speed limit would have applied</p>	<p>1 whether or not it's a high-speed vessel or not? 2 MS LOK: "If we find a licence". 3 THE INTERPRETER: That's coming up. 4 A. As far as I know, it doesn't mention in the licence 5 whether it is a high-speed vessel or not. 6 THE CHAIRMAN: Is there anywhere else we can look to find 7 out whether it's designated as a high-speed vessel? 8 A. I think if you want to find out whether or not it is 9 a high-speed craft, then you have to ask our colleague 10 who was responsible for this area. He is a surveyor of 11 this subject matter. But as far as I know, 12 section 9(2), whether it is exempted or not, it doesn't 13 affect this case, the speed limit doesn't affect this 14 case. 15 THE CHAIRMAN: That's as may be. 16 A. It has no significance in this case. 17 THE CHAIRMAN: That's as may be, but is there a document, 18 category of document, that says Sea Smooth is 19 a high-speed vessel or not? 20 A. I'm not in possession of such a document. 21 THE CHAIRMAN: You can't suggest one that we would look for? 22 A. I think you should ask our surveyors, and it should be 23 for them to answer your question in this area. 24 THE CHAIRMAN: This must be a lawyer's dream world. 25 Yes?</p>

<p style="text-align: right;">Page 69</p> <p>1 MR ZIMMERN: Mr Chairman, we are taking instructions to 2 assist the Inquiry. 3 THE CHAIRMAN: Thank you. 4 MR BERESFORD: The definition, Mr Chairman, is in Cap 369AW. 5 THE CHAIRMAN: Page? 6 MR BERESFORD: This is not in the exhibit. It says: 7 "... 'high speed craft' means a craft capable of a 8 maximum speed in metres per second equal to or exceeding 9 3.7 [symbol to the power of 0.1667]" -- I'm afraid 10 I don't know the word for the symbol. The symbol is 11 said to be equal to the displacement corresponding to 12 the design waterline in metres cubed. 13 THE CHAIRMAN: So I was right about dream world? 14 MR BERESFORD: Yes. 15 So if section 9(2) is not applicable, then the 16 exemptions will not be relevant. But in case it should 17 turn out to be applicable, perhaps we can just look 18 quickly at the factors you've informed us. 19 You were asked to let us know the considerations to 20 which the Director of Marine has regard when granting 21 permissions under sections 9(1) and 9(2), particularly 22 when granting an exemption for waters of Hong Kong 23 outside the Port of Victoria. 24 Q. Just with reference to the Port of Victoria, could we 25 please have a look at the exemption in the miscellaneous</p>	<p style="text-align: right;">Page 71</p> <p>1 A. As far as I know, it should include the part of B on the 2 rightmost, A, and part of B in Tsing Yi island. And as 3 far as I know, C is not included. 4 Q. I see. 5 THE CHAIRMAN: Do we have the definition in 313J, 6 section 56? 7 MR BERESFORD: Yes, we can show it on the screen, from the 8 Laws of Hong Kong on the internet, Mr Chairman. 9 A. (Chinese spoken). 10 THE CHAIRMAN: Just pause there. 11 MS LOK: In the miscellaneous bundle, page 19, it shows the 12 delineation of Victoria Harbour. 13 THE CHAIRMAN: Victoria Port, being the same thing? Yes, 14 very well. 15 MR BERESFORD: With respect, Mr Chairman, as far as I know 16 it doesn't actually relate necessarily to this legal 17 definition. I'm just trying to establish if there's any 18 legal basis for this definition of "Victoria Port". 19 THE CHAIRMAN: Very well. Take us to this definition then. 20 MR BERESFORD: I understand the witness said something which 21 is yet to be translated. 22 A. If we have a Hong Kong Harbour and Facility Plan, then 23 it will be shown on this plan. But I haven't got it 24 with me here. 25 THE CHAIRMAN: We do have that plan somewhere, do we not?</p>
<p style="text-align: right;">Page 70</p> <p>1 permit at LKP-4, your exhibit to your statement, which 2 is page 3819 of the bundle. We see the details of the 3 exemption in part C in the square box: 4 "The vessel named above is permitted to proceed at 5 a speed exceeding the maximum permitted speed stipulated 6 in section 9(1) and (2) of ... Cap 548F, provided that 7 the vessel named above shall not, when underway within 8 the Victoria port, proceed at a speed exceeding 15 knots 9 except while proceeding along and within the boundaries 10 of the Southern, Northern and North Green Island 11 Fairways where the maximum permitted speed is 35 knots." 12 A. Yes. 13 Q. Victoria Port is not defined in Cap 548 or the 14 sublegislation, Cap 548F, is it? 15 A. Yes. 16 Q. But the Director of Marine does have power to declare 17 ports under section 56 of Cap 313, and he has in fact 18 declared a Victoria Port in 313J; is that right? 19 A. Yes. 20 Q. So do we take it that, as a matter of custom and usage, 21 the definition in 313J is the "Victoria Port" referred 22 to here? 23 A. Yes. 24 Q. Does it more or less correspond to the areas shaded B, C 25 and A in your exhibit LKP-1?</p>	<p style="text-align: right;">Page 72</p> <p>1 MR BERESFORD: Yes, we do. It's in the bundle. I think 2 it's miscellaneous bundle, page 19. 3 THE CHAIRMAN: Yes. Thank you. And there's a green line 4 that goes up from Green Island to Tsing Yi which is 5 marked "Harbour limit", is it not? 6 MR BERESFORD: Where is the definition? Can we have it 7 back? 8 THE CHAIRMAN: Yes, you can see it from the western side of 9 Green Island on this chart. 10 MR BERESFORD: And from the north-west of Tsing Yi to Ting 11 Kau. 12 So, Officer, is it your evidence that the blue 13 dotted lines marked "Harbour limit" on this plan 14 correspond to the definition in 313J? 15 A. Yes, correct. 16 THE CHAIRMAN: So as you go out of Sulphur Channel, out of 17 the harbour, you pass out of the Victoria Harbour? 18 A. When you sail, pass out of Victoria Harbour, you will 19 pass by the boundary of the -- you will pass by the 20 harbour limit. 21 THE CHAIRMAN: But the boundary is not painted on the sea, 22 is it? So you know you've reached the boundary when you 23 pass with Green Island to starboard as you're going west 24 and south? 25 A. (In English) May I? In simple terms, the boundary is</p>

<p style="text-align: right;">Page 73</p> <p>1 more or less on the east side, when you pass Lei Yue 2 Mun. 3 THE CHAIRMAN: But we're interested in Green Island. Leave 4 Lei Yue Mun out of this. 5 A. (In English) Okay. The green -- 6 THE CHAIRMAN: Because we have a vessel that is leaving the 7 harbour and is going past Green Island. That's Sea 8 Smooth. When it goes past Green Island, it's then left 9 the harbour. 10 A. (In English) I see, sir. 11 THE CHAIRMAN: Is that correct? 12 A. (In English) Exactly. 13 THE CHAIRMAN: Thank you. 14 A. (In English) If a vessel goes past Green Island, you 15 know more or less you are leaving the Victoria port. 16 THE CHAIRMAN: Thank you. 17 MR BERESFORD: So in relation to your chart at LKP-3, Sea 18 Smooth would have been exempted from the speed limits in 19 area B to the west of the Western Fairway; is that 20 correct? 21 A. Yes. 22 Q. Thank you. You've then helped us with the 23 considerations which the Director of Marine has regard 24 to when granting exemptions in sections 9(1) and 9(2) at 25 paragraph 13 of your statement, and you've set them out</p>	<p style="text-align: right;">Page 75</p> <p>1 deployed for its fleet had over two years' experience in 2 sailing the vessels. 3 Going back to paragraph 13(b)(v), you say that the 4 condition here is that the coxswain must have two years' 5 experience in operating high-speed vessels, or he must 6 be in possession of a valid type rating certificate, but 7 you've told us that Sea Smooth wasn't a high-speed 8 vessel, so that's not relevant. But you don't say 9 anything about type rating certificates. 10 THE CHAIRMAN: I don't think the witness has said either way 11 as to whether or not it's a high-speed craft. 12 MR BERESFORD: He said earlier -- 13 THE CHAIRMAN: We were directed to ask some surveyor. He 14 doesn't know either way, apparently. 15 MR BERESFORD: Yes, you're right, of course, Mr Chairman. 16 But is it your understanding, when you said that the 17 coxswain had certified that all 16 coxswains had over 18 two years' experience in sailing the vessels -- is that 19 experience in sailing high-speed vessels that was 20 certified? 21 A. No. 22 Q. So is it two years' experience with a valid type rating 23 certificate? 24 A. It's not experience in sailing high-speed vessels. 25 Q. I'm looking at your condition in paragraph 13(b)(v) of</p>
<p style="text-align: right;">Page 74</p> <p>1 in relation to dynamically supported craft and 2 non-dynamically supported craft. 3 Officer, the Sea Smooth was a non-dynamically 4 supported craft; is that right? 5 A. Yes, it is a non-dynamically supported craft, as I have 6 mentioned. 7 Q. Right, so the requirements are set out in 8 paragraph 13(b): namely that the vessels is operated on 9 a specified route; that it possesses a valid operating 10 licence; that it's equipped with radar in accordance 11 with the Marine Department's performance specification; 12 that it's equipped with automatic identification system; 13 that the coxswain has at least two years' experience in 14 operating high-speed vessels, or in the possession of 15 a valid type rating certificate; and at least one crew 16 member serving on the vessel possesses a valid radar 17 observer certificate. 18 Then you've told us in paragraph 18 that the Sea 19 Smooth was operating on a specified route and it was so 20 licensed; that it was equipped with a radar, which 21 you've identified as brand JRC, model JMA3253, serial 22 number LX54724, which you say was in accordance with 23 Mardep's performance requirement. 24 In (d), you say that Hong Kong &amp; Kowloon Ferry 25 Holdings Ltd had certified that all 16 coxswains to be</p>	<p style="text-align: right;">Page 76</p> <p>1 your statement. Could you please direct your attention 2 to that. I'm trying to clarify what you mean by that. 3 You see that there is the word "or" in the second line 4 of that condition. I'm trying to understand what the 5 coxswain of the vessel must have in order to satisfy 6 this condition. Is it either two years' experience in 7 operating high-speed vessels, or possession of a valid 8 type rating certificate, or what? 9 A. Here, "high-speed vessel" is only a generic term. It 10 doesn't mean "high-speed craft". It only referred to 11 the high-speed vessels that are similar to it. 12 Q. Yes, I see. Thank you very much for clarifying that. 13 You then say that the applicant, Hong Kong &amp; Kowloon 14 Ferry Holdings Ltd, provided documentary proof that all 15 the 16 coxswains to be deployed for its fleet had 16 attended the radar operator basic training course 17 organised by the Vocational Training Council/Hongkong 18 &amp; Yaumati Ferry Co Ltd. 19 A. Yes, correct. 20 Q. Then you go on to point out that the Sea Smooth was 21 equipped with AIS. 22 A. Yes, correct. 23 Q. So in this case, it was sufficient for, in each case, 24 the coxswain to have the relevant radar training and 25 no-one else was required to have radar training; is that</p>

<p style="text-align: right;">Page 77</p> <p>1 right?</p> <p>2 A. This is the minimum requirement.</p> <p>3 MR BERESFORD: Yes. Thank you very much, Mr Li.</p> <p>4 I have no further questions, Mr Chairman.</p> <p>5 THE CHAIRMAN: Do counsel have any applications?</p> <p>6 MR GROSSMAN: I do. There's just one area I'd like to ask</p> <p>7 a question or two on, and that is in regard to the</p> <p>8 method of obtaining the radar observer certificate.</p> <p>9 THE CHAIRMAN: Yes, please do.</p> <p>10 MR GROSSMAN: Thank you.</p> <p>11 Examination by MR GROSSMAN</p> <p>12 MR GROSSMAN: Mr Li, you were asked a few moments ago about</p> <p>13 the requirement that at least one of the crew members</p> <p>14 serving on the vessel possessed a valid radar observer</p> <p>15 certificate. This is in your paragraph 13(b)(vi). In</p> <p>16 paragraph 18(e), you say that you had documentary proof</p> <p>17 that all 16 coxswains had attended a radar operator</p> <p>18 basic training course.</p> <p>19 The question I wanted to ask you is this. Is</p> <p>20 attendance at a radar operator basic training course</p> <p>21 equivalent to possessing a radar observer certificate?</p> <p>22 A. Both of them are recognised by the Marine Department.</p> <p>23 Q. Yes, I understand that. But your requirement for</p> <p>24 exemption, you state that there must be a valid radar</p> <p>25 observer certificate. I simply ask you, is that exactly</p>	<p style="text-align: right;">Page 79</p> <p>1 a particular day the ferry has someone who has attended</p> <p>2 the basic training course but doesn't have a radar</p> <p>3 observer certificate, are you telling us the exemption</p> <p>4 still exists or still applies?</p> <p>5 A. Yes, it is still exempted.</p> <p>6 A. (In English) Because that one is approved by the</p> <p>7 Director of Marine.</p> <p>8 Q. I see. So then when you state in paragraph 13(b)(vi)</p> <p>9 that at least one of the crew members needed to have</p> <p>10 a radar observer certificate, that's not necessarily</p> <p>11 correct; am I right?</p> <p>12 A. It should be okay, as long as it has been approved by</p> <p>13 the Director of Marine.</p> <p>14 Q. What has been approved?</p> <p>15 A. (In English) For example, the course run by the Hongkong</p> <p>16 &amp; Yaumati.</p> <p>17 Q. Just go back. I'll ask you one more time. When you</p> <p>18 state here that for a vessel such as the Sea Smooth,</p> <p>19 that it must have at least one crew member possessing</p> <p>20 a valid radar observer certificate, that's not</p> <p>21 necessarily correct?</p> <p>22 A. I would like to reiterate that as long as they possess</p> <p>23 a certificate of a course run by either the Vocational</p> <p>24 Training School or the Yaumati Ltd, then they would be</p> <p>25 regarded as approved.</p>
<p style="text-align: right;">Page 78</p> <p>1 the same as having attended the radar operator basic</p> <p>2 training course?</p> <p>3 A. I repeat, this is recognised by the Director of Marine</p> <p>4 Department. But you can put it that way in a general</p> <p>5 interpretation.</p> <p>6 Q. Let me just ask you another way, then. Is it possible</p> <p>7 that at any given time, particularly on the night of the</p> <p>8 accident, there was no crew member who had a valid radar</p> <p>9 observer certificate on the Sea Smooth?</p> <p>10 THE CHAIRMAN: Obviously that's possible, but how does that</p> <p>11 help us? The witness would need to know who was</p> <p>12 involved.</p> <p>13 MR GROSSMAN: I'm not asking him that. I'm merely saying,</p> <p>14 were they still exempt?</p> <p>15 THE CHAIRMAN: Were they compliant, although nobody on board</p> <p>16 had a certificate? Is that it?</p> <p>17 MR GROSSMAN: Thank you, that's a better way of putting it,</p> <p>18 yes.</p> <p>19 Would the Sea Smooth have been compliant with its</p> <p>20 exemption if there was no-one on board who possessed</p> <p>21 a valid radar observer certificate?</p> <p>22 A. It is exempted if it possessed a certificate.</p> <p>23 Q. A radar observer certificate?</p> <p>24 A. Yes, correct.</p> <p>25 Q. Then just to make sure I understand it, if on</p>	<p style="text-align: right;">Page 80</p> <p>1 THE CHAIRMAN: So the provision at paragraph 13(b)(vi) that</p> <p>2 says "at least one of the crew members serving on the</p> <p>3 vessel possesses a valid radar observer certificate"</p> <p>4 should carry on and say "or has attended a radar</p> <p>5 operator basic training course organised by the</p> <p>6 Vocational Training Council and Hongkong &amp; Yaumati Ferry</p> <p>7 Company Ltd which has been approved by the Director of</p> <p>8 Marine; is that the position?</p> <p>9 A. (In English) That's correct.</p> <p>10 MR GROSSMAN: Thank you very much.</p> <p>11 MR ZIMMERN: Mr Chairman, I do have an application to make</p> <p>12 regarding adequate manning.</p> <p>13 THE CHAIRMAN: Yes, certainly. Please ask your question.</p> <p>14 Examination by MR ZIMMERN</p> <p>15 MR ZIMMERN: Thank you, Officer.</p> <p>16 As the senior marine officer of the Harbour Patrol</p> <p>17 Section, you say that you're responsible to enforce</p> <p>18 marine legislation and regulations, and to ensure</p> <p>19 navigational safety; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Do you consider adequate manning on ships to be a safety</p> <p>22 issue within your or your department's remit?</p> <p>23 A. Of course.</p> <p>24 Q. So would I be correct to say that in terms of enforcing</p> <p>25 legislation, one of those legislations would be the</p>

<p style="text-align: right;">Page 81</p> <p>1 Marine Shipping (Safety) Ordinance, Cap 369? 2 A. Correct. 3 Q. Thank you. You've given evidence that you joined Mardep 4 in 1992 and were promoted and posted to the Harbour 5 Patrol Section as senior officer on 31 January 2012. 6 When was your first posting to the Harbour Patrol 7 Section? 8 A. I have been posted to the Harbour Patrol Section in 2004 9 as a marine officer, and worked there for two years. 10 Q. And have you worked there since? 11 A. (In English) No. 12 Q. Thank you. In any event, Officer, in your experience, 13 would you consider an undermanned vessel to be 14 seaworthy? 15 A. In that circumstance, they should be sufficiently 16 manned. 17 Q. Maybe I'll put it another way. If a vessel has less 18 manning than is permitted by its operating licence, 19 would it be considered seaworthy? 20 A. I can only say that it has violated the regulation in 21 respect of manning. 22 THE CHAIRMAN: And what is that regulation? Where do we 23 find it in the Ordinances? 24 MR ZIMMERN: If I may assist, I was just about to take the 25 witness there.</p>	<p style="text-align: right;">Page 83</p> <p>1 with the Chinese. 2 That's for you, Madam Interpreter. Does that help 3 you interpret? 4 THE INTERPRETER: Yes. Thank you, sir. 5 MR ZIMMERN: So the first point of reference is, is it not, 6 Officer, that the ship is in Hong Kong? 7 A. (In English) I doubt whether this regulation is 8 applicable to local vessels which is certified, 9 certificate and licence, under Cap 548 of the Merchant 10 Shipping (Local Vessels) Ordinance. 11 Q. I'm grateful. So what is this applicable to? 12 I think there may have been a misunderstanding 13 there. What I wanted a little bit of assistance on -- 14 THE CHAIRMAN: It seemed to me that it was perfectly clear. 15 You're doubting whether this applies to local 16 vessels, where a separate regime would apply? 17 Perhaps I could intervene and ask you this. Is 18 there a regulation for local vessels that makes it 19 an offence to not have manning levels that are specified 20 by the Marine Department? 21 A. (In English) Yes. 22 THE CHAIRMAN: Yes? 23 A. (In English) Yes. 24 THE CHAIRMAN: Are you able to help us where we find that? 25 MR ZIMMERN: If I may be of assistance?</p>
<p style="text-align: right;">Page 82</p> <p>1 If the secretariat could be kind enough to put up 2 a particular section of Cap 369, and it's section 67 of 3 that Ordinance. 4 Officer, if you could have a look at this section. 5 Are you familiar with this particular provision? 6 A. I know about this regulation. 7 Q. I don't know if you'd be able to assist, but I just have 8 one or two questions. One is this. Subsection (1) 9 states: 10 "If -- 11 (a) a ship in Hong Kong ... is, having regard to the 12 nature of the service for which the ship is intended, 13 unfit ... by reason of undermanning ... the master and 14 the owner shall each commit an offence ..." 15 THE CHAIRMAN: I think you've missed a rather important bit 16 out: "to go to sea without serious danger to human 17 life". 18 MR ZIMMERN: Yes. I'm grateful. I'll read that again: 19 "... by reason of undermanning or by reason of 20 overloading or improper loading to go to sea without 21 serious danger to human life, then, subject to 22 subsection (2) [which I'll come to], the master and the 23 owner shall each commit an offence ..." 24 THE CHAIRMAN: Do we have the Chinese version of that 25 section? Just pause a moment. We'll try and help you</p>	<p style="text-align: right;">Page 84</p> <p>1 THE CHAIRMAN: Yes, by all means. 2 MR ZIMMERN: If we turn to section 3 of the same 3 Ordinance -- it may be of assistance to the witness -- 4 it says: 5 "... this Ordinance shall apply to all ships 6 except -- 7 ... 8 (d) local vessels within the meaning of the ... 9 (Local Vessels) Ordinance ..." 10 I think the witness may have been correct there. 11 THE CHAIRMAN: Yes. So to answer my question, can you help 12 us as to where we look for the regulation that deals 13 with the need to comply with a stipulated manning level 14 for local vessels? 15 A. (In English) Yes, but actually you can refer to the 16 operating licence of issue to the vessel. 17 THE CHAIRMAN: Yes. 18 A. (In English) It's mentioned there what is the manning 19 required for that particular vessel. 20 THE CHAIRMAN: Yes. Minimum crew number; is that what you 21 have in mind? 22 A. (In English) Yes. 23 THE CHAIRMAN: May we see the licence for the Lamma IV, 24 please. 25 MR ZIMMERN: It's in marine bundle 1 --</p>

<p style="text-align: right;">Page 85</p> <p>1 MR BERESFORD: Page 822. 2 MR ZIMMERN: At page 114, Commissioner. 3 Thank you, Mr Secretary. 4 THE CHAIRMAN: Keep scrolling down. Yes. 5 MR ZIMMERN: I hope, Officer, you can render some 6 assistance. Here you can see at part 2 that the minimum 7 number of crew for the operation of this particular 8 vessel is stated as four. What I was trying to find 9 out -- 10 THE CHAIRMAN: Do you see that? 11 A. (In English) Yes, sir. 12 MR ZIMMERN: I was trying to find out from you is whether, 13 if the vessel was manned with less than four people 14 whilst at sea, it would be considered either unfit or 15 unseaworthy. Are you able to assist us there? 16 A. (In English) It's perfectly clear, stipulated that the 17 minimum manning for that vessel -- 18 THE CHAIRMAN: What counsel is asking is this: is there 19 a consequence if you are undermanned, and if so, where 20 do we find it? 21 A. (In English) I can only say it is undermanned. 22 THE CHAIRMAN: Well, no doubt we have enough lawyers who 23 will be able to find it. 24 We ought to also look at the definition of "crew" in 25 this particular Ordinance.</p>	<p style="text-align: right;">Page 87</p> <p>1 capacity on board a local vessel on the business of the 2 vessel"? 3 MR BERESFORD: Well, I suppose "on the business of the 4 vessel" might be construed narrowly, in which case it 5 would be three people. 6 Mr Chairman, while I'm on my feet, I don't know if 7 it's of assistance to the witness but section 32 of 8 Cap 548 makes it an offence to endanger the safety of 9 others by any unlawful act. 10 THE CHAIRMAN: Is there a provision that makes not complying 11 with a minimum manning stipulation an offence? 12 MR BERESFORD: We will double-check, but I don't believe 13 that there's a comparable provision to the Cap 369 14 provision specifying manning in particular. 15 THE CHAIRMAN: Have you done any research on that phrase 16 "otherwise engaged on the business of the vessel"? 17 MR BERESFORD: No, Mr Chairman. 18 THE CHAIRMAN: I invite you to do so. 19 MR BERESFORD: I will. 20 THE CHAIRMAN: Mr Zimmern, I apologise, we've taken over 21 your questioning. Please proceed. 22 MR ZIMMERN: Not at all. We were simply questioning to 23 assist the Commission. We have no further questions for 24 this witness. Thank you very much. 25 MS LOK: I have no questions, thank you.</p>
<p style="text-align: right;">Page 86</p> <p>1 MR ZIMMERN: Yes, I will certainly do that. 2 THE CHAIRMAN: Are we coming to that? 3 MR ZIMMERN: No, we're not coming to that. It's just that 4 we saw that this particular witness was from 5 a particular section and we weren't sure whether we 6 would get any other witnesses from this section, so we 7 took the opportunity. 8 THE CHAIRMAN: I'd like the definition of "crew". 9 Mr Beresford, can you help? 10 MR BERESFORD: It's in Cap 548, section (2) and it's defined 11 to mean: 12 "The coxswain and any other person employed or 13 engaged in any capacity on board a local vessel on the 14 business of the vessel." 15 THE CHAIRMAN: That's the definition I had in mind. Let's 16 have it on the screen. So the minimum crew for the 17 Lamma IV was four. 18 MR BERESFORD: Four. 19 THE CHAIRMAN: And how many were on board, "crew"? 20 MR BERESFORD: It depends how you define "crew", 21 Mr Chairman. But there was the coxswain, there were the 22 engineer, a sailor, and there were other people that 23 might be submitted to have been on the business of the 24 vessel. 25 THE CHAIRMAN: In respect of that phrase "or engaged in any</p>	<p style="text-align: right;">Page 88</p> <p>1 THE CHAIRMAN: Are you able to help us as to how Sea Smooth 2 is defined? Is she a high-speed craft? 3 MR ZIMMERN: I should have finished. We've taken 4 instructions, and according to the clients, they do not 5 know of any categorisation other than "ferry vessel" of 6 the Sea Smooth. 7 THE CHAIRMAN: Thank you. 8 Are you able to assist, Ms Lok? 9 MS LOK: I have taken some initial instructions. I believe 10 that some of those that will give evidence next week 11 will be able to assist. So I suggest that we deal with 12 that question then, Mr Chairman. 13 THE CHAIRMAN: Very well. Thank you. 14 Mr Beresford? 15 MR BERESFORD: Mr Chairman, just two areas of questioning, 16 one in relation to the radar observer certificate and 17 the other in relation to the manning levels. 18 THE CHAIRMAN: Yes. 19 Further examination by MR BERESFORD 20 MR BERESFORD: Officer, can I draw your attention to your 21 exhibit LKP-4 at page 3820. In fact this section starts 22 on the previous page under letter E, heading 23 "Conditions", and we see condition 5: 24 "At least one of the crew members serving on the 25 vessel shall have a valid radar observer certificate."</p>

<p style="text-align: right;">Page 89</p> <p>1 So it seems in this case, at least, that this was 2 a condition of compliance but not a condition of the 3 grant of the exemption. Do you follow my distinction? 4 A. (In English) Will you repeat, sir? 5 Q. Yes. It seems in this case, at least, that this was 6 a condition of compliance, in other words to comply with 7 the certificate of exemption, to comply with the 8 exemption, you had to have at least one crew member 9 serving on the vessel who would have a valid radar 10 observer certificate, but it does not appear to have 11 been a condition of the grant of the miscellaneous 12 permit in the first place. 13 My question is this, Officer. If a policeman were 14 to stop a vessel in possession of one of these 15 certificates, and I notice that one of the conditions 16 requires -- condition 8 -- that this permit be kept on 17 board the vessel and produced for inspection at any 18 time. If a policeman stops a vessel travelling at 19 25 knots and asks them if they're in possession of 20 a valid exemption, how is he to know whether one of the 21 crew members has a valid radar observer certificate? 22 Does he ring up the Director of Marine and say, "Has he 23 completed a satisfactory course?" 24 A. (In English) In that case that will violate the 25 condition of the permit, and the permit will be</p>	<p style="text-align: right;">Page 91</p> <p>1 MS LOK: I will do so. 2 THE CHAIRMAN: Thank you. 3 Before we move on, the crew of Sea Smooth, in 4 exhibit LKP-5 -- do we have the certificates of perhaps 5 the coxswain? Mr Lai, is it not? 6 MR BERESFORD: There is a certificate. I've got it in my 7 unnumbered copy. 8 THE CHAIRMAN: Lai Sai-ming. 9 MR BERESFORD: At page 3854, there is an example. I think 10 all of the crew had a radar operator certificate in the 11 present case. The one at page 3854 is in the name of 12 Kwok Wai-sing. 13 THE CHAIRMAN: I'm looking for the coxswain of Sea Smooth. 14 Is he not Mr Lai? 15 A. (In English) 3856. 16 MR BERESFORD: 3858, Lai Sai-ming. 17 THE CHAIRMAN: Thank you. 18 MR BERESFORD: Mr Chairman, I wonder if the difficulty was 19 caused by a language difficulty, and in fact there is 20 a certificate showing satisfactory completion of the 21 course. 22 THE CHAIRMAN: Well, pursue it with the witness, if you 23 would. 24 The document that we're looking at at page 3858 25 is -- how do you describe this document? Can you help</p>
<p style="text-align: right;">Page 90</p> <p>1 suspended. 2 Q. So he'd have to have a certificate? 3 A. (In English) Yes. 4 Q. My second question -- I don't know if you'll be able to 5 help -- 6 THE CHAIRMAN: Before you move away from that area. 7 When you say that the Director of Marine has 8 designated the attendance at the radar course operated 9 by the Vocational Training Council and Hongkong 10 &amp; Yaumati Ferry as being the equivalent, has that been 11 done by some gazetted notice? Has it been published? 12 A. (In English) I'm not sure, sir. But as far as 13 I understand, I was told that if the certificate is 14 approved by the Director of Marine, it is a valid one 15 because there is a history of this training course. 16 THE CHAIRMAN: Yes. 17 A. (In English) In the old days, there was no Vocational 18 Training Centre or other reasons. And these companies, 19 they run the course and is examined by our department 20 and approved by the Director of Marine, and that is the 21 case. 22 THE CHAIRMAN: So does this fall under one of the Director's 23 discretionary powers? 24 Perhaps I could ask Ms Lok to address this issue, as 25 to the legal basis for what appears to be the practice.</p>	<p style="text-align: right;">Page 92</p> <p>1 us? Page 3858. 2 MR BERESFORD: This is headed "Vocational Training Centre, 3 Certificate No: 000001", and it certifies that Lai 4 Sai-ming "has completed a radar operator basic training 5 (Hong Kong waters) course and passed the assessment at 6 the Seamen's Training Centre and is hereby awarded this 7 certificate", and it's stated that "The course is 8 approved by the Director of Marine". 9 THE CHAIRMAN: Is that a radar observer certificate or not? 10 A. (In English) I would say yes. 11 THE CHAIRMAN: Yes, or the equivalent of a radar observer 12 certificate? Which one? 13 A. (In English) This one, showing the issue by the 14 Vocational Training Centre, radar operator basic 15 training. 16 THE CHAIRMAN: Is it the equivalent of a radar observer 17 certificate, or is it the same thing? 18 A. (In English) Honestly, sir, I am not in a position to 19 tell. But I was told -- 20 THE CHAIRMAN: Thank you for telling us. Don't speculate. 21 Honesty is a good thing in a witness. If you don't 22 know, say so. 23 Yes, Mr Beresford. 24 MR BERESFORD: A quick look through that exhibit doesn't 25 disclose anything else called a radar observer</p>

Page 93	Page 95
<p>1 certificate in terms. 2 You were asked about manning levels. I believe in 3 answer to my learned friend's question, you said that if 4 a vessel was manned with fewer than the number specified 5 on the certificate, on the licence, it would be in 6 breach of its licence conditions but it wouldn't 7 necessarily be undermanned or unseaworthy. 8 We have seen certificates of survey in respect of 9 both the Lamma IV and Lamma II. Lamma IV specifies the 10 minimum safe manning of crew as being four, the same as 11 on its operator's licence. We've also seen 12 a certificate of survey in relation to a similar vessel, 13 the Lamma II. That specifies the minimum number of crew 14 as being two. Do you have any idea why there would be 15 such a difference? 16 A. (In English) I am not in a position to say the manning 17 requirement in this aspect. 18 MR BERESFORD: All right. Thank you, Officer. 19 No further questions. 20 THE CHAIRMAN: Ms Lok, will one of the witnesses that the 21 Marine Department will be providing statements from be 22 addressing this issue, namely why two vessels that are 23 broadly similar in length, 28 metres, and passenger 24 capacity, 230, why the one is required to have one level 25 of crew and the other another?</p>	<p style="text-align: center;">I N D E X</p> <p>1 Application by MR PAO .....1 2 Ruling .....7 3 Application by MR PAO .....7 4 Application by MR MOK .....15 5 Ruling .....25 6 Application by MR PAO .....35 7 OFFICER LO CHI-HO (affirmed in Punti) .....38 8 Examination by MR BERESFORD .....38 9 Questions by THE COMMISSION .....49 10 (The witness withdrew) .....51 11 OFFICER KO WING-KI (affirmed in Punti) .....51 12 Examination by MR BERESFORD .....51 13 Questions by THE COMMISSION .....59 14 (The witness withdrew) .....62 15 OFFICER LI KIN-PONG (affirmed in Punti) .....64 16 Examination by MR BERESFORD .....64 17 Examination by MR GROSSMAN .....77 18 Examination by MR ZIMMERN .....80 19 Further examination by MR BERESFORD .....88 20 (The witness withdrew) .....94 21 22 23 24 25</p>
Page 94	
<p>1 MS LOK: Well, so far as I know -- 2 THE CHAIRMAN: I'm not asking you for an answer. Will you 3 be addressing that issue in the evidence that you're 4 going to be assisting us with? 5 MS LOK: This is a new issue, but I will look into this with 6 my colleague. 7 THE CHAIRMAN: Thank you. 8 Mr Li, thank you for coming to assist the Commission 9 with your evidence. Your evidence is complete, and 10 you're free to go if you wish. Thank you. 11 A. (In English) Thank you, sir. 12 (The witness withdrew) 13 THE CHAIRMAN: Are there any matters that counsel wish to 14 raise before we adjourn? 15 MR BERESFORD: Not from me, Mr Chairman. 16 MR GROSSMAN: No, thank you, Mr Chairman. 17 MR ZIMMERN: No, thank you. 18 THE CHAIRMAN: Very well. We'll adjourn then and resume at 19 10 o'clock on Monday. Let me remind everyone that we 20 will rise shortly before 4 o'clock on Monday so that 21 counsel and I can attend the ceremonies involved in the 22 opening of the legal year. 23 (3.49 pm) 24 (The hearing adjourned until 10 am 25 on Monday, 14 January 2013)</p>	