

<p style="text-align: right;">Page 5</p> <p>1 our union would like to participate in this hearing, 2 hoping that we can help the Commission to make some 3 recommendation to the Government, to make the waters of 4 Hong Kong in the future to be a safer place for our 5 passengers. 6 Amongst the experience of my federation and myself, 7 I would like to submit some more details. For example, 8 our federation has been affiliated to some international 9 trade union confederations such as the International 10 Transport Workers' Federation, and also the 11 International Trade Union Confederation. 12 As for my personal experiences, I am currently 13 a member of the Seafarers' Advisory Board in the Marine 14 Department. I am also member of the Merchant Navy 15 Training Board of the Vocational Training Centre, the 16 VTC, under the Education Bureau. 17 So I wish the Commission to consider my submission 18 to the Commission that I can participate in the future 19 hearings. Thank you very much. 20 THE CHAIRMAN: May I just clarify one or two matters, 21 Mr Lee. Is this an application made on behalf of the 22 union or on behalf of yourself in your personal 23 capacity? 24 MR LEE KWOK-KEUNG: Chairman, I am authorised by my 25 federation.</p>	<p style="text-align: right;">Page 7</p> <p>1 the Chief Executive. Of course, in discharging that 2 role, they are open to be approached, and indeed they 3 have been approached by various parties, indicating 4 areas that this Commission may make enquiries. 5 So, in the first place, may I suggest that you make 6 contact with them. Mr Paul Shieh, who sits in the front 7 row, is leading counsel for the Commission, and 8 I suggest you discuss matters with him, matters that you 9 think are relevant to the issues that this Commission 10 has to consider. 11 I should say for the record that you attached to the 12 letter that you sent to the Commission a copy of part of 13 the Merchant Shipping Seafarers (Hours of Work) 14 Regulation made under chapter 478. It may be that you 15 would like to draw his attention to that matter and 16 other matters that you consider are relevant to these 17 proceedings. 18 Let me ask you this question. Is that a course that 19 you are willing to pursue? 20 MR LEE KWOK-KEUNG: Chairman, after listening to your 21 remarks and suggestions, I want to make some supplement. 22 We still want to participate in the hearing. The reason 23 is that apart from the documents we submitted to the 24 Commission, I think this incident involves not only the 25 regulation or some documents, but directly involves some</p>
<p style="text-align: right;">Page 6</p> <p>1 THE CHAIRMAN: So it's on behalf of the federation? 2 MR LEE KWOK-KEUNG: Yes, sir. 3 THE CHAIRMAN: Secondly, can you clarify what it is you wish 4 to do? Is it that you wish, at the end of the day, 5 having heard the evidence that's laid before the 6 Commission, to assist us with some submissions? Is that 7 what you have in mind? 8 MR LEE KWOK-KEUNG: Chairman, as I mentioned before, this 9 incident involves several parties and also certain 10 regulations on the Hong Kong waters. So I think our 11 union and myself can assist the Commission to have 12 a better picture of these Hong Kong vessels or seafarers 13 working on board these vessels, what are the working 14 conditions and also what are the situations nowadays on 15 Hong Kong waters. So we would like to provide this kind 16 of information. 17 THE CHAIRMAN: As you may know -- but if you don't, let me 18 tell you -- counsel for the Commission have been 19 appointed to assist in these proceedings, and we also 20 have solicitors. It is the role of counsel for the 21 Commission, as no doubt he will be explaining in more 22 detail at a later occasion, to put before the tribunal 23 in a neutral fashion all material that helps -- the 24 Commission, I should say -- the Commission come to the 25 proper response to the questions that have been posed by</p>	<p style="text-align: right;">Page 8</p> <p>1 human beings and some seafarers and operators of the 2 vessels. So I think we can provide a different 3 perspective to the Commission. This perspective is from 4 the trade unions' point of view and from the seafarers 5 point of view. 6 I do not doubt the counsel have much experience in 7 this kind of hearing, but I myself haven't. But 8 concerning the seafaring incident, I think combining our 9 experience in the past decades, I think we can be much 10 helpful if you permit us to join this Commission. We 11 can be much helpful to the future hearings when talking 12 about the operating of the vessels, and when talking 13 about the working conditions of the seafarers. Thank 14 you. 15 THE CHAIRMAN: Do you seek to do that by the route of making 16 submissions to the Commission? Is that the role that 17 you wish to occupy? 18 MR LEE KWOK-KEUNG: Besides submitting the relevant 19 documents, I myself also wish to participate in the 20 hearings in person, Mr Chairman. 21 THE CHAIRMAN: Occupying what role? 22 MR LEE KWOK-KEUNG: I am not quite familiar with this kind 23 of hearing and what kind of roles there are in the 24 hearings. If you can specify some role to me, please. 25 THE CHAIRMAN: Certainly.</p>

<p style="text-align: right;">Page 9</p> <p>1 You see, other than making perhaps a written 2 submission, another role that parties may occupy is 3 questioning witnesses that come before the Commission, 4 with the consent of the Commission. Is it that role 5 that you're applying for as well? 6 MR LEE KWOK-KEUNG: Yes, Chairman. Yes, I think I would 7 like to play this role in the Commission, with the 8 Commission's permission. 9 Take, for example, there is the community and unions 10 also nowadays quite have a doubt whether the vessels are 11 operating in compliance with the safety regulation, and 12 also about the seafarers are working under fatigue 13 condition, that is the overtime working according to the 14 Merchant Shipping (Hours of Work) Regulations. So this 15 kind of questions I would like to have a chance to 16 question the witness if possible. 17 THE CHAIRMAN: Thank you for your application, Mr Lee. What 18 we're going to do is reserve our decision. In the 19 meantime, I'm going to ask you to discuss matters with 20 Mr Paul Shieh and his team so that you can better 21 understand how the Commission works, and then, if 22 necessary, you can continue your application. But 23 I want you to understand the role that Mr Shieh can play 24 that would be of assistance to you in any event. 25 MR LEE KWOK-KEUNG: I understand.</p>	<p style="text-align: right;">Page 11</p> <p>1 these matters to the attention of the Commission. The 2 Commission may be assisted by being aware of these 3 concerns and, depending on the decision that the 4 Commission takes, taking appropriate remedial action if 5 any is required. 6 A similar application arose in the Leveson Inquiry 7 which, Mr Chairman and Commissioner, you may be aware 8 of. 9 THE CHAIRMAN: I've read the ruling of Lord Justice Leveson. 10 MR ZERVOS: I have that here with me, and you'll know that 11 in that he had a similar application before him and in 12 the end he made a ruling that he proceed with the 13 Inquiry, notwithstanding that there were current ongoing 14 police investigations. But he also made some important 15 observations. 16 THE CHAIRMAN: The Leveson Inquiry was dealing with ongoing 17 police investigations at a different level than have 18 already taken place in Hong Kong, because the primary 19 source of the information the Commission has is 20 sybaritic in the sense that we have obtained it from the 21 Commissioner of Police, the Marine Department and the 22 Fire Services, and the product of their investigation is 23 voluminous. 24 Mr Shieh, can you help us as to how many box files 25 of material have been provided by those three</p>
<p style="text-align: right;">Page 10</p> <p>1 THE CHAIRMAN: Thank you. May I ask you to resume your seat 2 in the public gallery. 3 Mr Zervos, we were given notice a few minutes before 4 we came into the hearing room that there is a matter or 5 matters that you wish to raise with the Commission. 6 MR ZERVOS: Chairman and Commissioner, thank you for the 7 indulgence to be able to make this presentation. This 8 arose yesterday in discussion with my learned friend 9 Mr Johnny Mok, who's representing a number of parties, 10 in particular the Commissioner of Police, and as today 11 is a preliminary hearing for the purpose of determining 12 procedure and any other applications that may come 13 before the Commission, I felt it incumbent that I be 14 here today to address you in relation to a concern that 15 I have in my capacity as the Director of Public 16 Prosecutions with respect to the conduct of the Inquiry, 17 and that is any risk of prejudice that may result to the 18 current police investigation and any possible 19 prosecution action that may result therefrom. 20 I wish to be able to address you by identifying 21 a number of concerns that I can put before the 22 Commission, both in terms of conveying to the Commission 23 the concerns as the Director of Public Prosecutions 24 I have with respect in particular to any possible 25 prosecution action that may arise, and at least to bring</p>	<p style="text-align: right;">Page 12</p> <p>1 organisations? 2 MR SHIEH: About 50. 3 THE CHAIRMAN: Thank you. 4 Where is the prejudice to the investigation? 5 MR ZERVOS: The matters that I wish to address you on, 6 Mr Chairman and Commissioner, is in relation to the 7 police investigation. 8 THE CHAIRMAN: Yes? 9 MR ZERVOS: As you are aware, Mr Chairman, there have been 10 arrest actions taken against seven persons and there has 11 been fairly extensive investigation activity already 12 taken by the police. As you pointed out, you do receive 13 the material that has been gathered by the police 14 investigators. 15 As I understand, and I've had a discussion with the 16 police in relation to it, they're not far off completing 17 their investigation. They're awaiting expert reports, 18 which I've been informed should be provided by the end 19 of this month, which means that if we receive the 20 material and the file, there is a probability that 21 a decision in relation to whether or not prosecution 22 action is warranted based on assessment of the evidence 23 can be made in January of next year, 2013. 24 The matters of concern, Mr Chairman -- do you wish 25 me to address this matter now or do you --</p>

<p style="text-align: right;">Page 13</p> <p>1 THE CHAIRMAN: Well, you've sprung this on us without any 2 warning, because it was only at 9 o'clock this morning 3 I was told that there had been a communication from you 4 involving Mr Power's name, and the material that's been 5 sent, I haven't even seen. It's been placed in front of 6 me whilst you've been on your feet. 7 So what is it that you want us to do? 8 MR ZERVOS: Well, I'd like to -- and give the benefit of 9 those that are representing various interests -- provide 10 you with a brief submission. The points that I make 11 would be points that, Mr Chairman, from your experience, 12 you probably would be expecting and would be familiar 13 with. They're not lengthy, and I won't be making a very 14 lengthy submission, but identifying the particular 15 issues. To some extent, a lot will depend on how the 16 Inquiry is conducted and what particular rulings may be 17 made in the course of it, depending on the receipt of 18 evidence. It's in relation to the approach that the 19 Commission of Inquiry has with respect to the receipt of 20 evidence and to dealing with it, and the impact that 21 that may have on the current police investigation and 22 the decision as to whether or not prosecution action is 23 warranted. 24 As you've already read the ruling in the Leveson 25 Inquiry of Mr Justice Leveson, you'll see there the</p>	<p style="text-align: right;">Page 15</p> <p>1 THE CHAIRMAN: Just let me try and understand your point 2 there. The expert will be examining the vessel and the 3 radar track of the vessel? 4 MR ZERVOS: The vessels themselves. 5 THE CHAIRMAN: Yes. Is the expert a naval architect? 6 MR ZERVOS: There will be one that is. 7 THE CHAIRMAN: So that the issue of the circumstances of the 8 collision and then the circumstances of the vessel will 9 be examined separately? 10 MR ZERVOS: Yes. 11 THE CHAIRMAN: But the vessels have already been examined. 12 Nothing is going to change that. 13 MR ZERVOS: No, but -- 14 THE CHAIRMAN: And the police already have voluminous 15 documentation as to the building of the vessels and 16 their annual survey and certification. 17 MR ZERVOS: Yes. 18 THE CHAIRMAN: So what's going to change that? 19 MR ZERVOS: Mr Chairman, it's really dealing with the 20 unknown to some extent, as to -- 21 THE CHAIRMAN: The unknown unknown. 22 MR ZERVOS: I don't know how unknown unknown it is, but it 23 could very well be that matters arise. As yet, I have 24 not seen -- well, we haven't got the expert reports as 25 yet, and we don't know what is likely to be raised in</p>
<p style="text-align: right;">Page 14</p> <p>1 points that were raised with him concerned, firstly, the 2 premature release of information or material in the 3 public domain that may have an impact on the course of 4 the police investigation or operational decisions with 5 regards to the police investigation. 6 THE CHAIRMAN: I understand the issue in theory. How does 7 it impact on this case, given the state of the police 8 investigation, which you tell us is almost complete? 9 MR ZERVOS: Well, I was about to say that as a proviso to 10 that point, I do acknowledge that a substantial part of 11 it has already been done and we're awaiting expert 12 evidence, but there may be matters that do arise from 13 the report of the experts, and there may be further 14 lines of inquiry. That's a possibility. I'm not saying 15 any more than that. But I acknowledge that that 16 particular point, which was raised before the Leveson 17 Inquiry, is not so strong in the instant case because of 18 the fact that a substantial part of the investigation 19 has already taken place. In essence -- 20 THE CHAIRMAN: What remains? The expert report and what 21 might be thrown up in consequence? 22 MR ZERVOS: That's right. There's that. 23 There's the other issue, of course, in relation to 24 the obvious point with regards to this Inquiry, that 25 nothing be done to jeopardise --</p>	<p style="text-align: right;">Page 16</p> <p>1 them, and I have to at least acknowledge that sometimes 2 in cases of this type, where you're relying on expert 3 reports or the expert opinion of somebody, things may be 4 thrown up that need further enquiry or could have 5 an impact in relation to the investigation. I pitch it 6 no higher than that. I realise that this particular 7 point -- 8 THE CHAIRMAN: You acknowledge it's not very high, don't 9 you? 10 MR ZERVOS: Because of the -- yes, I do, because there has 11 been a substantial amount already done in the 12 investigation, and as I've indicated we are not far off 13 completing the investigation, and as a consequence not 14 far off making a decision in relation to it. 15 But that is a factor that needs to be also taken 16 into account, leading to the next point that I was 17 wishing to make, and that is that the -- and I know, 18 Mr Chairman, that this is something that the Commission 19 will address from time to time, but nothing is done to 20 jeopardise the fairness of any criminal prosecution if 21 it was to arise, and there is obviously the risk in 22 relation to live evidence being given with respect to 23 the cause of the collision, that there's likely to be 24 the resultant publicity that will flow from that, and 25 the disclosure of material that may not be material that</p>

<p style="text-align: right;">Page 17</p> <p>1 would necessarily be disclosed in the course of 2 a criminal trial because of rules of evidence. 3 THE CHAIRMAN: I'm sorry, what do you have in mind there? 4 MR ZERVOS: Well, if there is something that is said or 5 produced that wouldn't otherwise be said or produced in 6 the course of a criminal trial because it doesn't 7 satisfy the rules of evidence, and it's given publicity 8 or it's put in the public domain -- 9 THE CHAIRMAN: Give me an example. 10 MR ZERVOS: Well, an example of somebody saying something 11 that is hearsay, that they heard something from someone 12 else or that they're giving their opinion in the course 13 of giving live evidence, which they're not in a position 14 to do. Or they produce a document or a record, or seek 15 to do so, that they may not have been responsible for or 16 they're not the author of. 17 In the course of examination of witnesses, documents 18 that they may not be aware of or had no involvement in 19 may be produced to particular witnesses, seeking 20 comments or putting it to them. But that really relates 21 to the presentation of evidence. 22 So the point that I'm making here is in relation to 23 possibility of a fair trial being jeopardised in the 24 future, if it's to arise, is the issue of adverse 25 publicity and the disclosure --</p>	<p style="text-align: right;">Page 19</p> <p>1 by adjourning it for a period of time, giving a period 2 of time where the publicity has to some extent died down 3 in the public domain. I know that that's a remedy that 4 may be employed. But I'm making -- 5 THE CHAIRMAN: How far apart were the two trials of the Kray 6 brothers? 7 MR ZERVOS: I am familiar with the Kray brothers, but I'm 8 not -- 9 THE CHAIRMAN: I think you'll find it was five weeks, as 10 I remember it. One of the authorities on publicity. 11 MR ZERVOS: Yes, it was. It was one of the authorities that 12 was presented to Leveson. 13 I make the point in relation to the adverse 14 publicity. 15 THE CHAIRMAN: Sorry to interrupt you. This is not an issue 16 that is relevant if the trials were held in the District 17 Court, is it? 18 MR ZERVOS: No. No, that's correct. But we are looking at 19 serious offences here that, if there was a criminal 20 prosecution, could very well result in the Court of 21 First Instance. 22 THE CHAIRMAN: So the issue really arises if charges of 23 manslaughter are laid against some or others of the 24 crew, or perhaps others? 25 MR ZERVOS: Well, whoever.</p>
<p style="text-align: right;">Page 18</p> <p>1 THE CHAIRMAN: So your concern as far as evidence that would 2 be inadmissible, in your particular case, in criminal 3 proceedings, arises from section 4(1) of the Commissions 4 of Inquiry Ordinance? 5 MR ZERVOS: That's correct. 6 THE CHAIRMAN: That: 7 "The Commission may ... 8 (a) receive and consider any material whether by way 9 of oral evidence, written statements, documents or 10 otherwise, notwithstanding that such material would not 11 be admissible as evidence in civil or criminal 12 proceedings ..." 13 MR ZERVOS: Yes, I'm particularly focused on section 4. 14 That's drafted in very wide terms. 15 I know there is the safeguard that you'll find later 16 in section 15. 17 THE CHAIRMAN: It can't be used, can it? 18 MR ZERVOS: No. 19 THE CHAIRMAN: So it comes down to publicity. 20 MR ZERVOS: Yes, it does. There is, of course, the remedy 21 that with an appropriate cooling-off period before any 22 prosecution action were to be taken, but that can have 23 consequences as well. Sometimes, given the immediacy of 24 an inquiry and if something was to follow thereafter 25 that would be a criminal prosecution, it may be remedied</p>	<p style="text-align: right;">Page 20</p> <p>1 THE CHAIRMAN: Because manslaughter has to be in the Court 2 of First Instance. 3 MR ZERVOS: Yes, that's correct. 4 THE CHAIRMAN: And it has to be a jury trial. 5 MR ZERVOS: That's right. 6 The other point that I make -- I've only got four 7 that I want to raise with you. 8 THE CHAIRMAN: Well, you've identified the issue and at some 9 stage I'm going to ask you to tell me what it is you're 10 asking the Commission to do. 11 MR ZERVOS: Well, just the other two points relate to 12 matters that may be presented in the course of taking 13 evidence, which the police may not be aware of and the 14 impact that it may have on the investigation. 15 THE CHAIRMAN: Sorry, I don't follow that. 16 MR ZERVOS: In the course of the Inquiry, a matter may come 17 up or evidence may be revealed that the police were not 18 aware of, and this could have an impact on their 19 investigation, which would have been better if they were 20 able to learn about it and make their appropriate 21 enquiries in relation to -- 22 THE CHAIRMAN: So you're going back to the investigation 23 point, not the trial? 24 MR ZERVOS: Well, it has as a flow-on an impact on the 25 prosecution. But, no, you're right; it's with regard to</p>

<p style="text-align: right;">Page 21</p> <p>1 the investigation. 2 So it's the throwing up of new matters or the 3 emergence of new matters in the course of the Inquiry 4 that could have an impact on the police investigation, 5 and -- 6 THE CHAIRMAN: Of course, there might be matters thrown up 7 that would assist the police in their investigation -- 8 MR ZERVOS: There's the plus and there's the minus, yes. 9 THE CHAIRMAN: -- given the excellent team of lawyers that 10 the Commission has acting for it, and those acting for 11 the parties. 12 MR ZERVOS: I don't doubt you don't have an excellent team 13 of lawyers, Mr Chairman, in relation to the Inquiry. 14 But it's the impact that it would have on the police 15 investigation or permitting the police to be able to do 16 it themselves, and being able to then present it 17 ultimately if it's decided in a better form and in 18 better circumstances as part of a prosecution. 19 The other point is really in relation to the Inquiry 20 itself that we've just discussed, the powers that are 21 conferred on the Commission under section 4 and the 22 protection that section 7 also provides, and that you 23 have fairly wide powers, and I know that you can conduct 24 proceedings in camera. So there are mechanisms 25 available to the Inquiry to deal with evidence in</p>	<p style="text-align: right;">Page 23</p> <p>1 Commission and require such person to answer all 2 questions ..." 3 Then, as Mr Shieh points out, the protection is in 4 section 7: 5 "Evidence given by any person before the Commission 6 shall not be admissible against him in any civil or 7 criminal proceedings by or against him, except where he 8 is charged with any offence [of perjury] ..." 9 So what's the concern there? 10 MR ZERVOS: Well, the concern is the evidence can't be used 11 against him in any subsequent criminal proceedings. 12 That's the protection. So they're able to -- but the 13 impact that that -- 14 THE CHAIRMAN: Criminal and civil. 15 MR ZERVOS: And civil. I'm focusing on criminal at this 16 moment. 17 THE CHAIRMAN: Yes. 18 MR ZERVOS: And that's the protection. But the point that 19 I'm making is that the impact that this could have in 20 the course of the Inquiry itself in terms of people 21 maybe not being as full and frank, or being accurate in 22 their evidence, given (a) that protection, if it's 23 available to somebody -- 24 THE CHAIRMAN: Sorry, you're concerned about them not being 25 full and frank witnesses in the Commission?</p>
<p style="text-align: right;">Page 22</p> <p>1 a particular way. But there is the prospect with 2 possible criminal proceedings that persons giving 3 evidence, who may be also potential witnesses in 4 a criminal prosecution, may feel -- or may be the 5 subject of a criminal prosecution, this could maybe 6 impact on the way they give their evidence and could 7 have also consequences later, if any criminal 8 prosecution were to arise. 9 THE CHAIRMAN: Are you talking now about potential 10 defendants? 11 MR ZERVOS: Yes, as well as -- it could extend to potential 12 witnesses as well. The nature of an inquiry, the 13 wide-roaming powers that it has or the wide powers that 14 it has in order to ask questions -- I'm not aware as to 15 what the situation will be with the Inquiry with regards 16 to privilege against self-incrimination and any issue 17 that may arise in relation to that. 18 THE CHAIRMAN: You're aware of the provision in the 19 Ordinance? 20 MR ZERVOS: Yes, I am. I'm aware of that. 21 THE CHAIRMAN: Let's just remind ourselves about it. 22 MR SHIEH: Section 7. 23 THE CHAIRMAN: Thank you very much for that. 24 Section 4(1)(g) empowers the Commission to: 25 "examine on oath ... any person attending before the</p>	<p style="text-align: right;">Page 24</p> <p>1 MR ZERVOS: Yes, that's a possibility. And the impact that 2 could have on subsequent criminal proceedings. The 3 point that I'm seeking to make is this, that in the 4 course of an inquiry, because the rules of evidence are 5 somewhat relaxed and there is protection from the use of 6 that in any other subsequent proceedings, that that can 7 have -- that may have an impact on the criminal 8 prosecution in that witnesses who come before you, 9 giving evidence in different circumstances, and may be 10 giving evidence in a way that may not be satisfactory 11 and could have an impact on subsequent criminal 12 proceedings when they then are called to give evidence 13 in those proceedings. 14 THE CHAIRMAN: Could you cut to the chase and tell me what 15 the real concern is? 16 MR ZERVOS: Well, people may come before a Commission of 17 Inquiry where there's no consequences and -- 18 THE CHAIRMAN: And lie? 19 MR ZERVOS: Well, other than the consequences if they lie, 20 but give evidence that may not be full and frank. I'm 21 not saying -- it may not be blatant lies, but there is 22 the risk that they may be a little incomplete or 23 inaccurate in relation to the evidence that they give. 24 THE CHAIRMAN: Because? 25 MR ZERVOS: Well, firstly in relation to somebody that may</p>

<p style="text-align: right;">Page 25</p> <p>1 eventually end up being prosecuted, they can say what 2 they want to say or say what they would like to say 3 without fear it's going to be used in any subsequent 4 criminal proceedings. In relation to witnesses that may 5 come before the Inquiry, they may be concerned about the 6 fact that there could be possible criminal proceedings 7 and they will be a little bit guarded in what they say. 8 THE CHAIRMAN: So witnesses in front of the Commission of 9 Inquiry may be guarded because they are aware there 10 might be criminal proceedings? 11 MR ZERVOS: If they are in some shape or form at risk of 12 being prosecuted -- 13 THE CHAIRMAN: So you're talking about potential defendants, 14 not witnesses? 15 MR ZERVOS: Yes, who come before you -- I mean, no-one comes 16 before you as a defendant, but -- 17 THE CHAIRMAN: No, I said "potential defendants". Potential 18 defendants in criminal proceedings may be guarded in 19 what they say? 20 MR ZERVOS: Yes. It will be limited to that. 21 They're the points that I wish to make in relation 22 to the concerns that we have with regards to the impact 23 that the Inquiry may have in relation to the 24 investigation or potential prosecution. 25 It brings me to what I would request, and it's this,</p>	<p style="text-align: right;">Page 27</p> <p>1 not be persons who could be eventually the subject of 2 a criminal prosecution. 3 THE CHAIRMAN: Let me try and understand what you're saying. 4 MR ZERVOS: So you've got the seven arrested persons. 5 THE CHAIRMAN: Beyond them, is there anybody else? 6 MR ZERVOS: No, there isn't anybody else beyond the seven 7 arrested persons. 8 But I'm qualifying my comments to make the point 9 that they're arrested persons and as yet, the 10 investigation has not been completed. And this is all 11 on the proposition that once all the evidence is 12 gathered and all material is in, an assessment has to be 13 made and there could be -- and that's the highest that 14 I can put it at this stage -- a decision to prosecute 15 a person or persons. I'm not in a position to say who 16 they are, or whether there will be anybody. But that's 17 why I'm qualifying my remarks, and I apologise if you 18 feel that I may be a bit repetitious about that, but 19 I want to be very careful in my address to you that it's 20 not being taken that a decision as yet has been made 21 with regards to the criminality or prosecution of this 22 case. 23 So it's with respect to the possibility of 24 prosecution action, with the possibility that it's going 25 to involve very serious offence or offences of</p>
<p style="text-align: right;">Page 26</p> <p>1 that the first term of reference provides that you 2 ascertain the causes of the incident and make 3 appropriate findings, and that will require that you 4 will need to examine the incident itself and call 5 witnesses, the very people and the very evidence that 6 may ultimately need to be relied upon if there is 7 a criminal prosecution. 8 THE CHAIRMAN: Which witnesses do you have in mind as being 9 involved in this issue? 10 MR ZERVOS: Well, it would probably -- it would be the 11 experts, first and foremost. 12 THE CHAIRMAN: Yes. The forensic evidence? 13 MR ZERVOS: The forensic evidence. 14 THE CHAIRMAN: The radar tracks? 15 MR ZERVOS: It may be some live evidence as well, some of 16 the passengers. In relation to other parties that may 17 come into the category of either persons that have been 18 arrested or potential suspects, they would give 19 evidence, but it may be that as yet the status of these 20 people, because we have to carry out a proper assessment 21 of the evidence and consider the material, need to 22 determine whether there is a case against somebody for 23 prosecution action. 24 So I'm just making the point that with regard to 25 a category of persons, their status is they may or may</p>	<p style="text-align: right;">Page 28</p> <p>1 manslaughter, and the possibility that it could result 2 in a trial in the Court of First Instance before judge 3 and jury, and that the evidence that you are to receive 4 and to consider in relation to the causes of the 5 incident could be the very same evidence that is going 6 to be presented as part of the prosecution case if it 7 arises. 8 It's the examination of this evidence, not in the 9 strict confines of a criminal court and according to the 10 strictures of a criminal trial, and the fact that it's 11 not far off, we're not far off from the decision in 12 relation to whether or not to prosecute, and that the 13 evidence relating to the cause of the incident may be 14 best, in the circumstances of the Inquiry, put off for 15 the moment as there are other terms of reference. 16 THE CHAIRMAN: So what's the application? 17 MR ZERVOS: It's to consider -- 18 THE CHAIRMAN: To adjourn considering term of reference 1? 19 MR ZERVOS: I'm not asking you not to consider term of 20 reference (a). 21 THE CHAIRMAN: All I want is an application, Mr Zervos. 22 Tell me what you're asking for. 23 MR ZERVOS: The application is to put off the calling of 24 evidence or adjourn the calling of evidence in relation 25 to the cause of the collision until the end of January</p>

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1 of next year --
2 THE CHAIRMAN: Just a moment. And how do you fix upon that
3 date?
4 MR ZERVOS: Well, as I explained at the outset, that's been
5 the discussion that I've had. I had a briefing with the
6 police. I'm not concerned in the progress of the
7 investigation and the assurances I've been given with
8 respect to it. It's anticipated that by January, we'll
9 be in a position to be able to make a determination,
10 having all the evidence submitted to us for
11 consideration.
12 THE CHAIRMAN: At an earlier stage, you told me when you
13 expected your expert's report, did you not?
14 MR ZERVOS: Yes: by the end of December. I was told that we
15 should be getting it very shortly. They are reports.
16 THE CHAIRMAN: But you're dealing here with the issue of
17 collision?
18 MR ZERVOS: Yes.
19 THE CHAIRMAN: When do you expect the collision expert
20 report?
21 MR ZERVOS: By the end of this month. By the end of
22 December. Before the end of the month. That's what
23 I've been informed.
24 THE CHAIRMAN: Is there any reason why there's been delay?
25 MR ZERVOS: I understand it's being attended to as we speak.

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1 It may be earlier; I don't know. I'm just giving the
2 extreme date. But it could come earlier than -- it's
3 within that period.
4 THE CHAIRMAN: And if you anticipate receipt of an expert's
5 report as to the causes of the collision by the end of
6 December, what's the reason for the one-month delay
7 until the end of January?
8 MR ZERVOS: Well, it's just in case other material or other
9 matters need to be addressed. It could be earlier. It
10 could be much earlier than that we could make
11 a decision. I would anticipate that we're in a position
12 to then assess the material fairly promptly, because
13 we're keeping constant contact with the police in
14 relation to the Inquiry and those involved in advising
15 the police have got involved at a very early stage.
16 THE CHAIRMAN: Very well.
17 MR ZERVOS: There's another aspect, though. Given the
18 points that I've made, Mr Chairman, it may be that you
19 will as an alternative consider that it's a question of
20 sequence of evidence as opposed to putting off the issue
21 of the evidence with respect to (a) until January. As
22 an alternative, it could be just a question then of
23 sequence of evidence.
24 THE CHAIRMAN: Well, as is perfectly obvious from reading
25 the terms of reference, (a) is specific and narrow,

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1 potentially at least, whereas (b) and (c) are
2 encyclopaedic in their requests.
3 MR ZERVOS: Yes, I did pick that up. Although "ascertain
4 the causes of the incident and make appropriate
5 findings" are terms which fall squarely in relation to
6 the investigation that is being conducted by the police.
7 THE CHAIRMAN: So that's your application as far as (a) is
8 concerned?
9 MR ZERVOS: That's my application.
10 THE CHAIRMAN: Do you have any other application?
11 MR ZERVOS: No, that's all I wish to bring to the
12 Commission's attention. Thank you.
13 THE CHAIRMAN: Thank you.
14 No doubt the parties, including counsel for the
15 Commission, have been taken by surprise by this
16 application and may need time to consider their
17 positions. I see Mr Grossman shaking his head, and I'll
18 come to you in a moment.
19 I'll come to Mr Shieh first. Would you need some
20 time to consider the position?
21 MR SHIEH: Mr Chairman, I've made some notes and if pressed,
22 I can address the Commission on the points.
23 THE CHAIRMAN: No, when someone is ambushed, we never call
24 upon people to be pressed to respond.
25 MR SHIEH: No. In an ideal world, I would wish perhaps,

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1 let's say, an early mid-morning break to consider my
2 thoughts.
3 THE CHAIRMAN: Yes.
4 Mr Grossman, your position?
5 MR GROSSMAN: I think I can deal with it quite quickly.
6 Obviously we didn't know about this. I wasn't aware of
7 it. But one aspect of it does strike a chord with us,
8 because we were going to ask for the matter not to
9 commence on the 12th but to commence in January.
10 I think we've written a letter saying mid-January,
11 but --
12 THE CHAIRMAN: It's not a letter that has reached me.
13 MR GROSSMAN: I'm sorry. I apologise. I think it's gone to
14 the solicitors. In any event, this was going to be the
15 application.
16 THE CHAIRMAN: Mid-January?
17 MR GROSSMAN: Yes.
18 THE CHAIRMAN: On what grounds?
19 MR GROSSMAN: Well, on the grounds that, having heard that
20 there are some 50 box files of information --
21 MR SHIEH: I'm corrected. Actually 30-ish, not 50.
22 THE CHAIRMAN: I think I can assuage your concerns there.
23 The orders against the police and the fire services and
24 marine were omnibus orders, and for example the police
25 were involved, and the fire services and the ambulance

<p style="text-align: right;">Page 33</p> <p>1 people, in setting up triage points and getting people 2 to ambulances. There are box files of material that 3 relate to that that are irrelevant to our Inquiry. 4 MR GROSSMAN: However much it is, we have nothing. When 5 I say "nothing", we've got about this much (indicates), 6 about a centimetre of documents. There's a vast amount 7 of documentation that is -- 8 THE CHAIRMAN: So just let me get your point on this. Given 9 that you were already going to ask for an adjournment to 10 mid-January, you don't oppose what Mr Zervos is asking 11 for? 12 MR GROSSMAN: No, I don't oppose it. 13 THE CHAIRMAN: Thank you. 14 MR GROSSMAN: But understand this. Of course you have to 15 give your report by early April. 16 THE CHAIRMAN: 22nd. 17 MR GROSSMAN: Yes, 22nd. There's a lot of evidence to be 18 led, and I can well see there will be time for your to 19 reflect on submissions, et cetera, and it may well be 20 that that would be unrealistic, say the beginning of 21 February. So I don't oppose what he says; I simply say 22 there may be room for making it a little earlier. 23 There are two reasons. The first is, of course, 24 that we've had nothing. We've asked for the VTC 25 reports; we've got nothing. That's been refused. We</p>	<p style="text-align: right;">Page 35</p> <p>1 a great deal of the information which is currently in 2 the possession of the Commission and the Department of 3 Justice, notably the VTC reports which are in the 4 possession of Mardep; the records of the radar plots; 5 the digital radar surveillance records of the marine 6 police, which will obviously assist in determining the 7 course and speed of the vessels immediately prior to the 8 collision; and whatever additional evidence has been 9 available to the Commission's expert. We haven't seen 10 any of that. We've requested it. It's so far been 11 refused on the grounds that disclosure might prejudice 12 ongoing inquiries. 13 THE CHAIRMAN: When you say you've been refused it, of whom 14 have you made the request? 15 MR SUSSEX: We've made the request of the Marine Department, 16 and the Marine Department have replied, putting us off, 17 and then the Department of Justice have more recently 18 replied on behalf of the Marine Department, refusing on 19 the grounds of potential prejudice to ongoing 20 investigations. 21 I can't say that I don't oppose Mr Zervos's 22 application, because I'm not quite sure the extent to 23 which he would suggest that release to me now of this 24 material would be premature release and therefore caught 25 by his application to adjourn everything. I infer, but</p>
<p style="text-align: right;">Page 34</p> <p>1 have no idea -- there's witness statements. We've got 2 no idea what's going to happen whatsoever. Whatever is 3 given to us -- if you make a ruling today that various 4 documents are to be given to us, we need to study them 5 with our experts, and given the time available -- 6 THE CHAIRMAN: I've got your point. I'm not asking you to 7 deal with your application for an adjournment to 8 mid-January. I'm just asking you to deal with 9 Mr Zervos's application. You don't oppose it -- 10 MR GROSSMAN: Don't oppose it. 11 THE CHAIRMAN: -- but you think it could be earlier? 12 MR GROSSMAN: Could be a bit earlier. 13 Can I just add one other aspect in regard to what he 14 said, it seems to me, with respect, that if the 15 Government in its wisdom decides that there should be 16 a commission of inquiry before the criminal trial, then 17 it must take the consequences if it turns out that 18 there's publicity which affects the trial and it can't 19 go ahead. 20 THE CHAIRMAN: Thank you. 21 Mr Sussex? 22 MR SUSSEX: Mr Chairman, I would ask for some time to 23 consider the application which Mr Zervos is making. 24 I shall be echoing the submissions made by 25 Mr Grossman insofar as we are without the benefit of</p>	<p style="text-align: right;">Page 36</p> <p>1 I may have got that wrong, that he may be asking that 2 all of this be deferred beyond his date of the end of 3 January. I need time to work on it. 4 THE CHAIRMAN: As I have noted his application, it is to 5 adjourn the calling of evidence in relation to the first 6 term of reference, that is "the causes of the incident 7 and make appropriate findings thereof", until the end of 8 January. That's the application I have. 9 MR SUSSEX: That's right. What I don't know is whether that 10 includes a deferral of any release to me of information 11 which has so far been refused such as I've identified. 12 THE CHAIRMAN: We'll find out. 13 Mr Zervos, does it include that? 14 MR ZERVOS: That's a matter for the Commission, as to the 15 material it decides should be provided to the parties 16 for the purpose of the Inquiry. It would, as I said, be 17 in relation to the giving of evidence and whatever may 18 be produced by that witness in the course of the giving 19 of the evidence. What you provide the parties 20 separately for the purpose of facilitating the Inquiry 21 is a matter for the Commission. 22 THE CHAIRMAN: So it's the calling of evidence that is the 23 nub of your objection? 24 MR ZERVOS: That's the main concern, yes. 25 I should add that in relation to individual pieces</p>

<p style="text-align: right;">Page 37</p> <p>1 of evidence -- it's not for me to be making 2 a submission, that's probably a matter for counsel 3 representing the Commissioner of Police, Fire Services, 4 and the Marine Department. 5 THE CHAIRMAN: Yes. 6 MR ZERVOS: But it may be, in the course of this Inquiry or 7 before the Inquiry gets underway into public hearings, 8 issues regarding specific pieces of evidence. But 9 that's not why I'm here. 10 THE CHAIRMAN: Yes. 11 MR ZERVOS: That's a matter for the Commission to deal with. 12 THE CHAIRMAN: Thank you. 13 Mr Mok? 14 MR MOK: Yes, Mr Chairman. 15 THE CHAIRMAN: I'm interested in your response, if any, to 16 Mr Zervos's application that the Commission adjourn the 17 calling of evidence in relation to the first term of 18 reference until the end of January. 19 MR MOK: I don't oppose that. Speaking for myself, I would 20 like very much to be able to see the police expert 21 report first, and it may be that there may be matters 22 that those who I represent may wish to supplement by way 23 of further expert evidence if necessary. 24 But at the moment I don't know the scope of the 25 expert evidence to be produced, so I'm not in a position</p>	<p style="text-align: right;">Page 39</p> <p>1 safety unrelated to the cause of the accident. It is 2 the cause of accident and how the event occurred that 3 should be the focus of the Inquiry, and any question of 4 maritime safety should be focused on that for 5 consideration and suggestion of any future improvement. 6 Otherwise we will be actually conducting some sort of 7 law reform exercise in general without any focus. 8 So, speaking for myself, I would find it very 9 difficult to know how to deal with (b) and (c) apart 10 from the situation or the findings or the causes of the 11 incident itself. 12 Secondly, as far as -- 13 THE CHAIRMAN: As a consequence of that, are you suggesting 14 that, since you don't oppose Mr Zervos's application, 15 you wouldn't oppose an adjournment of the whole 16 proceedings until the end of January? 17 MR MOK: Maybe not the end of January. Perhaps I can lead 18 on to that by making a few more points. 19 The second point is, as far as I'm aware, there 20 isn't any witness statement dealing with (b) or (c) 21 directly. All the witness statements that I have seen 22 have to do with (a), and to a large extent or certain 23 extent dealing with the rescue operation as well. So 24 I'm not sure how much assistance the Commission can 25 obtain by looking at (b) and (c) as segregated subject</p>
<p style="text-align: right;">Page 38</p> <p>1 to comment on whether or not we need to supplement it 2 yet. 3 So, in short, I don't oppose Mr Zervos's 4 application. 5 THE CHAIRMAN: Thank you. 6 Well, Mr Shieh, we'll give you 20 minutes to 7 consider your position. Do not feel pressed to respond 8 then, if you want to have more time to think about it. 9 But we'll take 20 minutes in the first instance. 10 (11.16 am) 11 (A short break) 12 (11.44 am) 13 MR MOK: Mr Chairman, perhaps before my learned friend 14 speaks, may I flag up a number of matters that I have 15 had the opportunity of reflecting -- 16 THE CHAIRMAN: Before you do that, just let me explain why 17 we started five minutes late. It's because Mr Shieh 18 asked, through my clerk, for extra time. Otherwise we 19 sit on appointed times. 20 Yes. 21 MR MOK: Thank you, Mr Chairman. 22 First of all, having reflected on the matter, I feel 23 that perhaps it would be impossible to segregate (b) and 24 (c) of the terms of reference from (a), because you 25 can't really look into the general condition of maritime</p>	<p style="text-align: right;">Page 40</p> <p>1 matters apart from (a). 2 THE CHAIRMAN: Thank you. 3 MR MOK: The third point -- and this is a point that I would 4 seek the Commission's direction. Mr Chairman, you 5 mentioned, of all the witness statements that have been 6 produced, some of it you regard as being irrelevant. 7 A lot of it, of course, relates to the rescue operation. 8 As I read the terms of reference, it is a bit ambiguous 9 as to whether or not the subsequent events, like how you 10 save the people from the vessel and where you take them 11 to -- 12 THE CHAIRMAN: Well, where you take them to is certainly 13 outside the issues. 14 MR MOK: Yes. And the grey area which I am not certain of 15 is the rescue aspect of it, how much it is -- I don't 16 know whether the Commission has had a chance of glancing 17 through some of the witness statements to see whether or 18 not we need to go -- 19 THE CHAIRMAN: Certainly, subject to any submissions to the 20 contrary, we regard the rescue of people, the attempted 21 rescue by divers, the rescue of people from the sea by 22 firemen and policemen, the use or otherwise of life 23 jackets and life buoys, as falling within our remit. 24 MR MOK: Yes. I take that very well. I just need that 25 clarification in view of what, Mr Chairman, you said</p>

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<p>1 a moment ago.</p> <p>2 The next point I wish to make is that a big issue in</p> <p>3 this case, and this has also to do with the question of</p> <p>4 adjournment, is whether or not the arrested persons or</p> <p>5 suspects can be compelled to give evidence before the</p> <p>6 Commission.</p> <p>7 I know, Mr Chairman, you have pointed out there is</p> <p>8 express provision in section 4(1)(g), and there is</p> <p>9 protection under section 7. But at the same time there</p> <p>10 is also the Hong Kong Bill of Rights article 11, which</p> <p>11 also expressly provides for certain privilege against</p> <p>12 self-incrimination in criminal proceedings, and the</p> <p>13 question then arises as to when criminal proceedings</p> <p>14 start for the purposes of article 11 of the Hong Kong</p> <p>15 Bill of Rights?</p> <p>16 I say that this question has an important bearing on</p> <p>17 the investigation in a number of ways. First of all,</p> <p>18 speaking for myself, I've received instructions, for</p> <p>19 example from the Commissioner of Police, that he wishes</p> <p>20 to withhold certain information, for example the VTC</p> <p>21 records and the radar plotting evidence, until the</p> <p>22 concerned persons or parties have had the opportunity of</p> <p>23 being examined in the Inquiry.</p> <p>24 The reason is that it's normal police procedure that</p> <p>25 they would not reveal everything to a suspect until they</p>	<p>1 MR SUSSEX: That is correct.</p> <p>2 MR MOK: That of course has an impact on the timetable as</p> <p>3 well, because if the Commission is going to make</p> <p>4 a ruling --</p> <p>5 THE CHAIRMAN: Just let me understand what you are saying</p> <p>6 the police are requesting: that the radar records of how</p> <p>7 the vessels came to collide should not be disclosed</p> <p>8 until the crew of the vessels are compelled to give</p> <p>9 testimony and have given an account, at which point they</p> <p>10 are to be confronted with the video records? Is that</p> <p>11 what you're asking?</p> <p>12 MR MOK: Well, maybe not at that point. I think the --</p> <p>13 THE CHAIRMAN: Think about it. Isn't that really what</p> <p>14 you're asking for?</p> <p>15 MR MOK: I think what the police are asking is if that</p> <p>16 evidence can be withheld until the concerned witnesses</p> <p>17 have had the chance of giving their side of the --</p> <p>18 THE CHAIRMAN: Compelled to give an account by this Inquiry.</p> <p>19 MR MOK: Mr Chairman, I don't say -- it is not my position</p> <p>20 that they can be so compelled. All I am saying is that</p> <p>21 there is an issue whether or not they can be compelled.</p> <p>22 THE CHAIRMAN: You've made that clear. I'm sorry if</p> <p>23 I didn't acknowledge that. I understand your point.</p> <p>24 MR MOK: Yes, and that leads --</p> <p>25 THE CHAIRMAN: Forgive me for digressing. Is there not</p>
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<p>1 have had the chance of hearing the concerned parties.</p> <p>2 Of course, they can choose in the normal way to remain</p> <p>3 silent, but whether or not they will or may remain</p> <p>4 silent in this Commission is a point which has yet to be</p> <p>5 determined.</p> <p>6 So assuming that the Commission is to compel certain</p> <p>7 witnesses to give evidence, what the police would like</p> <p>8 to see is for some of that evidence to be withheld until</p> <p>9 those concerned persons have had the opportunity of</p> <p>10 giving their version of the incident before the</p> <p>11 Commission.</p> <p>12 THE CHAIRMAN: So we all understand what you're talking</p> <p>13 about, you're talking about the potential defendants?</p> <p>14 MR MOK: Potential defendants. The arrested persons.</p> <p>15 THE CHAIRMAN: Yes.</p> <p>16 MR MOK: The police do not want premature disclosure of</p> <p>17 certain evidence, so that the evidence given by such</p> <p>18 persons, they may tailor their own evidence to what they</p> <p>19 may see from the police.</p> <p>20 THE CHAIRMAN: Accounts have been given by the crew of</p> <p>21 Lamma IV, have they not?</p> <p>22 MR MOK: Not some of the parties. Some of the parties --</p> <p>23 MR GROSSMAN: Yes.</p> <p>24 THE CHAIRMAN: But no accounts have been given, am I right,</p> <p>25 Mr Sussex, by the crew of Sea Smooth?</p>	<p>1 a case before the Court of Final Appeal where judgment</p> <p>2 might be expected shortly on this issue of compelled</p> <p>3 testimony, involving section 14 of -- an ICAC</p> <p>4 legislation --</p> <p>5 MR MOK: There was a hearing very recently before the CFA</p> <p>6 and --</p> <p>7 MR ZERVOS: It's been handed down.</p> <p>8 THE CHAIRMAN: Perhaps counsel for the Commission could</p> <p>9 provide that to us.</p> <p>10 MR MOK: This leads then to the question of timetable.</p> <p>11 I would have thought that the question of compellability</p> <p>12 is an issue which should be determined as early as</p> <p>13 possible, because assuming --</p> <p>14 THE CHAIRMAN: Compellability of the potential defendants?</p> <p>15 MR MOK: Correct. If the Commission decides that they can</p> <p>16 be compelled, I think there is a possibility that those</p> <p>17 persons may wish to take up this matter by way of</p> <p>18 judicial review and some time, of course, may have to be</p> <p>19 taken for that course to be done.</p> <p>20 Assuming, on the other hand, that they are going to</p> <p>21 give evidence, then that may impact on the issue that</p> <p>22 I just outlined to the Commission earlier on, about the</p> <p>23 premature release of certain evidence. But that</p> <p>24 question I think would only arise if they are indeed</p> <p>25 going to give evidence. If they are not going to give</p>

<p style="text-align: right;">Page 45</p> <p>1 evidence and cannot be compelled to give evidence, then 2 I think that issue probably would not arise. 3 So I think in summary, I would suggest that the best 4 way to proceed would be to adjourn all three 5 questions, if Mr Zervos's point is accepted, until, say, 6 sometime in January. Maybe not the end of January, but 7 maybe the early part of January, so that everyone can 8 take stock, including the prosecution authorities and 9 the police. And certainly I would hope that (b) and (c) 10 would not be segregated from question (a), and that we 11 do embark on the Inquiry on question (a) first before we 12 come to (b) and (c). 13 THE CHAIRMAN: Thank you. 14 MR MOK: In the meantime, finally, I think we can make use 15 of the time to sort out some of the legal issues, for 16 example, relating to compellability, as soon as 17 possible. 18 THE CHAIRMAN: Thank you. 19 MR MOK: Thank you. 20 THE CHAIRMAN: What's your position on compellability of 21 people you don't represent? 22 MR MOK: I haven't actually looked deeply into the question. 23 But my first impression, having noted the provision in 24 the Hong Kong Bill of Rights, is that it may well have 25 an impact and that the Ordinance may well have to be</p>	<p style="text-align: right;">Page 47</p> <p>1 jeopardise the ongoing criminal investigation. On that, 2 the short point is that, realistically, the 3 evidence-gathering exercise in terms of collecting 4 statements from, let's say, passengers and various 5 persons involved has largely been completed. We are 6 told that the only outstanding matter on the horizon is 7 the expert report or reports that are expected to come 8 in the very near future. 9 The highest that Mr Zervos can put it, whether 10 something may come up, which may possibly require some 11 further inquiry or further evidence-taking, which may 12 possibly be affected by the evidence-taking exercise in 13 this Inquiry, in my submission that is not a good enough 14 a reason for deferring the evidence-taking exercise. 15 One could perhaps say anything is possible under the 16 sun, but the mere fact that anything is possible is not 17 enough. We would respectfully submit that Mr Zervos 18 really has to articulate something more concrete, which 19 he hasn't. 20 Secondly, Mr Zervos made the point that even though 21 witnesses are protected under section 7 in respect of 22 evidence that they give in this Inquiry, they are 23 protected from the evidence being used against them in 24 civil and criminal proceedings; nonetheless there is 25 still a risk that persons who come here may well give</p>
<p style="text-align: right;">Page 46</p> <p>1 read in a way which is consistent with the Bill of 2 Rights. I don't think I can be -- 3 THE CHAIRMAN: But these aren't criminal proceedings. 4 MR MOK: They are not. They are not. 5 THE CHAIRMAN: Lee Ming-tee decided that a company inspector 6 has the power to compel somebody to answer his question. 7 MR MOK: Yes. Mr Chairman, as I said, I'm not prepared to 8 make a submission on this point or even to give you what 9 my position is prematurely. I have to look into this, 10 including the CFA decision you have referred to. 11 THE CHAIRMAN: Thank you. 12 Mr Shieh? 13 MR SHIEH: Mr Chairman and Commissioner, I have four short 14 points in response to what has been said. These points 15 are made separately from the other point about the crew 16 and the owners wanting perhaps more time to consider the 17 evidence, because that, I understand, would be the 18 subject of perhaps separate applications. 19 THE CHAIRMAN: Correct. 20 MR SHIEH: I'm now responding to Mr Zervos's submissions in 21 relation to the potential impact of the Inquiry on 22 criminal investigation and prosecution. 23 The first point I wish to deal with is Mr Zervos's 24 point that the continuation of the Inquiry, and more 25 particularly the hearing or the taking of evidence might</p>	<p style="text-align: right;">Page 48</p> <p>1 evidence that is less than full and frank. But in my 2 submission, if that is the case, then it has nothing to 3 do with any criminal prosecution or investigation 4 because if people in their mind think they may have 5 something to hide, and if people distrust the protection 6 given to them by section 7 of the Ordinance, then that 7 is a consideration which applies across the board to any 8 witness, whether or not there is a pending investigation 9 against them or not. Because if there isn't any pending 10 investigation, they may still fear whatever they say 11 would, despite section 7, still be used against them. 12 So that is a non-point, in our submission. 13 The point which perhaps merits deeper consideration 14 by the Commission is the point about evidence given in 15 this Inquiry possibly affecting the course of any actual 16 prosecution in the future. 17 THE CHAIRMAN: By way of prejudicial publicity; is that what 18 you have in mind? 19 MR SHIEH: That's what I understand Mr Zervos to be saying. 20 THE CHAIRMAN: As he accepted in argument, that of course is 21 irrelevant to a trial in the District Court. It's 22 only -- 23 MR SHIEH: I was about to say, that is only relevant if 24 charges are laid which would end up in a trial before 25 a jury in the Court of First Instance.</p>

<p style="text-align: right;">Page 49</p> <p>1 Of course, what charges are laid and the venue for 2 the trial is entirely a matter for the prosecution. But 3 I only make the point that questions about potentially 4 influencing the fact-finding tribunal would only apply 5 in relation to charges in the Court of First Instance in 6 the High Court. 7 As I understand Mr Zervos's concern, he's not 8 concerned that any conclusion or recommendation or 9 opinion made by the Commission would filter back to the 10 jury, because the Commission is not tasked with making 11 findings about criminal conduct. So the Commission is 12 not going to make any findings which could be used in 13 relation to particular ingredients of criminal charge. 14 It's going to be inadmissible anyway, being an opinion 15 of the Commission. 16 I do not understand Mr Zervos to be suggesting or 17 submitting as a general proposition that whenever there 18 are criminal proceedings which go on in parallel with 19 either civil proceedings or an inquiry, then civil 20 proceedings or the inquiry has to give way until the 21 criminal trial has concluded. I do not think Mr Zervos 22 is going too far, because the law is full of examples 23 whereby civil proceedings or inquiries are completed 24 before a criminal trial is completed. The matter has to 25 be decided on a case-by-case basis.</p>	<p style="text-align: right;">Page 51</p> <p>1 evidence in an inquiry would as a matter of practical 2 reality have a tendency to interfere with the due course 3 of justice in a particular case." 4 Of course, this Commission now is not faced with 5 an application to stay criminal proceedings because of 6 pre-trial publicity. That may or may not come in due 7 course, and we won't know. But obviously the Commission 8 would have to take that risk seriously, and the last 9 thing the Commission would wish to do is really to 10 jeopardise, realistically, any future prosecution. But 11 that is something that the Commission has to form a view 12 on now, based on the materials that the Commission has 13 seen, whether or not, as things now stand, on the basis 14 of the nature of the materials, whether or not if this 15 evidence -- and we know, broadly speaking, what the 16 evidence would be because there will be witnesses 17 from -- let's say, the passengers, telling the 18 Commission about what happened that evening. There may 19 be evidence from the crew members about what happened on 20 the bridge, for example. There will be technical 21 evidence, there will be radar plotting, what one may 22 call rather dry evidence, there may be expert evidence. 23 Looking at the totality of these matters, with the 24 revelation of these matters, let's say if they were to 25 come back to the mind of a juror in the near future in</p>
<p style="text-align: right;">Page 50</p> <p>1 Now, we do not pretend that there can't be cases 2 where adverse publicity given to revolting evidential 3 materials during the course of a criminal trial could 4 well have an impact on -- revolting evidence given in 5 some other venue could well have an impact on the 6 potential fairness of criminal proceedings and therefore 7 the Commission would have to -- 8 THE CHAIRMAN: Before a jury. 9 MR SHIEH: Before a jury. And that is something which we 10 would urge the Commission to be cautious about. But the 11 mere possibility, the mere possibility of the jury in 12 a future criminal trial being influenced is, in our 13 submission, not enough. One has to look at the case in 14 hand. 15 One can perhaps have a case where the evidence is 16 particularly revolting or the evidence is particularly 17 sensational, that one would be able to form a view that 18 it is likely -- that's a matter of practical reality. 19 In fact I was reminded that there is a New Zealand 20 authority which uses the test whether or not -- I'm 21 simply reading it into the record. It's a case called 22 Thompson v Commission of Inquiry in New Zealand, 1983 23 NZLR, page 98 at 109: 24 "The question about whether or not an inquiry should 25 be halted or stayed is whether or not revelation of</p>	<p style="text-align: right;">Page 52</p> <p>1 a criminal trial, whether or not the risk of an unfair 2 trial exists which cannot be alleviated by the 3 well-known devices known to the law. As Mr Chairman 4 would know, the law is full of weapons or ammunition to 5 deal with applications based on pre-trial publicity: 6 suitable warnings or cautions to the jury. Hong Kong 7 being so small, if everyone can actually say there's 8 a risk that the jurors have seen the newspapers about 9 this notorious incident therefore the criminal trial 10 should not proceed, there won't be any criminal trials 11 in Hong Kong. These matters are well-known to this 12 Commission, especially to Mr Chairman. 13 Of course, what the Commission now rules to be the 14 risk of a successful stay application, or what this 15 Commission rules to be the degree of risk of 16 interference with the administration of justice, may or 17 may not be binding on any future criminal judge who 18 actually is faced with an application for stay. But 19 this is a task which this Commission has to undertake at 20 this moment in time. 21 THE CHAIRMAN: Of course, one difference that Lord Justice 22 Leveson was concerned with in his inquiry was that, 23 realistically, any trial that was going to flow from the 24 investigations that the police were making in respect of 25 the surrounding events was going to be a jury trial.</p>

<p style="text-align: right;">Page 53</p> <p>1 Whereas in Hong Kong, we have a District Court that has 2 a jurisdiction of seven years' imprisonment. 3 MR SHIEH: Yes. 4 THE CHAIRMAN: So it deals with matters that would be in 5 tier 3 and 4 Crown Court jury trials. 6 MR SHIEH: Yes. But obviously that would be a matter really 7 within the province of the prosecuting authorities as to 8 decision of venue for trial. 9 THE CHAIRMAN: Just help me as to this. The Commission was 10 appointed on 22 October. 11 MR SHIEH: Yes. 12 THE CHAIRMAN: Am I right in being reminded that the crew 13 members were all arrested on 2 October? 14 MR SHIEH: I believe so, in the immediate aftermath of 15 the -- 16 THE CHAIRMAN: And some of them on suspicion of manslaughter 17 and some of them on suspicion of endangering safety at 18 sea? 19 MR SHIEH: Yes. Numerous different offences were actually 20 mentioned at the time of the arrest. Those two are the 21 offences -- 22 THE CHAIRMAN: Yes. So these matters were known to the 23 Chief Executive in Council when this Commission was 24 appointed? 25 MR SHIEH: Yes. And it is our respectful submission that,</p>	<p style="text-align: right;">Page 55</p> <p>1 exercise. 2 As to Mr Mok's last point which he only made after 3 the mid-morning adjournment, I had difficulties in 4 understanding the point because he was articulating 5 a position about compellability of witnesses which had 6 so far not been raised by anybody. 7 THE CHAIRMAN: Not raised by those that might be concerned 8 by it. 9 MR SHIEH: Yes. Yes, and Mr Mok actually acknowledged that 10 he actually had not -- maybe I'm putting words into his 11 mouth, I hope I'm not -- thought through the point and 12 articulated the point about how a Bill of Rights point 13 can be taken on the face of section 7 of the Ordinance. 14 THE CHAIRMAN: Or in the face of the Court of Final Appeal's 15 decision in Lee Ming-tee. 16 MR SHIEH: Yes. In relation to the attitude of the police, 17 that perhaps the police would not actually want to 18 reveal materials to potential defendants until such time 19 as they can be compelled, if they are indeed compelled, 20 to give evidence. I must confess, that's the first time 21 I've ever heard of such a matter, that potential accused 22 in a criminal trial, despite their right of silence, 23 could have the police withholding what obviously must be 24 relevant information from them. Therefore perhaps I can 25 only respond to it by saying that I actually don't</p>
<p style="text-align: right;">Page 54</p> <p>1 looking at the nature of the evidence as it now stands, 2 this Commission cannot form the view that as a matter of 3 practical reality, the administration of justice would 4 be interfered with by continuing to hear the evidence. 5 Because on Mr Zervos's argument, if one takes it to 6 a logical extreme, simply deferring the taking of 7 evidence won't help because on his argument, if 8 a decision is then taken to prosecute, he would then 9 have to come before the Commission and say, "Now that 10 there is a decision to prosecute, the whole thing should 11 be held off until after the result of the prosecution is 12 known." That would have to be the logical extreme of 13 his submission, and not simply by deferring the 14 evidence-taking exercise until the end of January. 15 My fourth point is a point which Mr Mok briefly 16 touched on. We agree with Mr Mok that it is not 17 practical or feasible to somehow tinker with the 18 sequence of witnesses so that we defer the witnesses on 19 terms of reference paragraph 1, and simply deal with the 20 terms of reference 2 and 3, matters of, let's say, 21 harbour management and all the rest of it, for the 22 simple reason that witnesses can't give evidence in the 23 abstract about harbour management without actually first 24 the Commission seeing or hearing evidence as to what 25 exactly had happened. Otherwise it would be an abstract</p>	<p style="text-align: right;">Page 56</p> <p>1 understand the purport of that submission. 2 THE CHAIRMAN: I'm bound to say for my own part that it's 3 a strange submission to be making on behalf of the 4 police, in the circumstances that obtain. But there we 5 are. 6 MR SHIEH: Yes. It goes against one's inherent sense of 7 justice in the case of persons who potentially would be 8 facing criminal charges. 9 THE CHAIRMAN: Yes. Thank you, Mr Shieh. 10 MR SHIEH: These are my submissions. 11 THE CHAIRMAN: Thank you. 12 Mr Zervos? 13 MR ZERVOS: Well, I've carefully considered the submissions 14 that have been made to the Commission. The object of 15 being before you today at the very least is to ensure 16 that fairly obvious concerns that would be apparent to 17 the Commission are expressed before this hearing and 18 considered by the relevant parties, and basically marked 19 and at least acknowledged, because these are things that 20 will, maybe, crop up or come up again in the course of 21 the Inquiry itself. 22 So from that perspective, and given the 23 responsibility that I have of ensuring, if and when 24 a prosecution takes place, that it be done fairly and 25 properly, and that it not be in any way jeopardised,</p>

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1 I've made the points that I need to make.
2 I've acknowledged that there are appropriate
3 remedial devices available to the Commission to deal
4 with some of those. The response --
5 THE CHAIRMAN: I'm sorry, remedial devices available to the
6 Commission or available to a trial judge?
7 MR ZERVOS: No, to the Commission itself in relation to the
8 way it receives its evidence --
9 THE CHAIRMAN: What are these remedial devices?
10 MR ZERVOS: Well, as I said, you could, if you wanted to,
11 conduct or receive some evidence in camera, if you felt
12 that was necessary. It depends on the nature of the
13 evidence.
14 THE CHAIRMAN: In a case where 39 citizens of Hong Kong have
15 been drowned?
16 MR ZERVOS: I'm not suggesting that you do. I'm just saying
17 it could be -- I don't know what sort of evidence will
18 come before you, but you may consider in the
19 circumstances that's the way to receive it. It's
20 a remedy that's available to you to deal with it,
21 without in any way taking away the objective of the
22 Inquiry or the purpose of it.
23 You may need to consider that when you're dealing
24 with persons that have been arrested, you may have to
25 consider whether appropriate warning or whether the

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1 matter has to be in some way addressed before they
2 give --
3 THE CHAIRMAN: Warning of what?
4 MR ZERVOS: Well, at least the acknowledgment when somebody
5 does come before you that has been arrested, and they
6 are compelled to give evidence, they may want to make
7 representations to you with respect to their position,
8 as yet undetermined, and you may feel that it would be
9 appropriate to acknowledge to them that they at least
10 consider whether they should be represented on that
11 particular issue. I mean, the point that --
12 THE CHAIRMAN: But they're represented on all issues.
13 I have two leading counsel representing them.
14 MR ZERVOS: The difficulty I have in articulating it is
15 I don't want to be putting forward any arguments or
16 suggestions. I'm just raising the possibility that in
17 somebody that's come in before you in relation to this
18 Inquiry, depending on the nature of the evidence, the
19 circumstances in which they're giving it, the Inquiry
20 has the flexibility to address issues or to deal with
21 the particular witness in an appropriate way that it
22 sees fit. It has that flexibility.
23 There is the issue that a witness is going to come
24 before you, will be compelled to give evidence --
25 I acknowledge there is the protection. The point that

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1 Mr Johnny Mok was making was not -- it's a matter for
2 the parties themselves. I don't know what they're going
3 to raise, what arguments they're going to put before
4 you. But the Inquiry has the ability of being able to
5 determine its procedure and to deal with issues in
6 relation to possibility of adverse publicity if that was
7 to arise, and consider whether any appropriate orders
8 are necessary.
9 THE CHAIRMAN: Any?
10 MR ZERVOS: Any orders may be necessary in relation to
11 publication. There's a range of things that are
12 available. You have that flexibility. I can't
13 anticipate what they may be and the circumstances in
14 which they arise. But if they do, this Commission of
15 Inquiry has the means, and I'm only acknowledging the
16 fact that you do have the means to deal with problems of
17 this type as they may crop up.
18 So I acknowledge that. I do that recognising that
19 the point that I'm making before this Commission is that
20 we're simply concerned that we have a police
21 investigation that is near completion, and dealing with
22 very serious charges the subject of that investigation,
23 that as I've pointed out could result in a person or
24 persons facing the serious charge of manslaughter and
25 before a court in the Court of First Instance before

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1 judge and jury.
2 The traversing of evidence that is likely to be the
3 evidence that the prosecution may rely on in a criminal
4 trial before this Inquiry will naturally have
5 consequences, will naturally have some impact, and it's
6 that that I'm duty-bound to come before this Commission
7 to raise and to mention, (a) either to seek the
8 objective of ensuring no impact is going to take place
9 by asking that the live evidence be put off for a period
10 of time, or (b) at least having it appropriately
11 acknowledged, and necessarily addressed, if and when it
12 ever comes up, if any of these matters were to arise.
13 So they're the points that I wish to make and my
14 response to what has been submitted.
15 As to the time period, I did ask end of January, but
16 would be prepared to, if the Commission of Inquiry was
17 to consider this application favourably, make it much
18 earlier than that.
19 THE CHAIRMAN: By that, you mean what date?
20 MR ZERVOS: By probably the second week of January.
21 THE CHAIRMAN: Mr Shieh posed a rhetorical question, but let
22 me put it directly to you. If the prosecution were to
23 determine to charge one or more persons who have been
24 arrested, or anyone else concerned in these events, and
25 the case was to be taken to the Court of First Instance,

<p style="text-align: right;">Page 61</p> <p>1 would the prosecution come back to this Commission and 2 ask for a stay of all proceedings? 3 MR ZERVOS: If it was decided to prosecute somebody for 4 a serious charge such as manslaughter, that would then 5 take its natural course. Obviously, if they've either 6 given evidence or they're about to give evidence, they 7 would then have the status of being somebody who's been 8 charged and then facing criminal proceedings. 9 As an application that I would make as Director 10 of Public Prosecutions, I would not make an application 11 for a stay. But I would appropriately bring it to the 12 attention of the Commission that somebody has been 13 charged. 14 THE CHAIRMAN: Well, you've been asked in correspondence 15 already to provide that information. 16 MR ZERVOS: Yes, we would -- clearly -- 17 THE CHAIRMAN: And for that matter, if it's determined not 18 to charge someone, that the Commission be informed. 19 MR ZERVOS: Well, as you're aware, there are seven persons 20 that have been arrested. 21 THE CHAIRMAN: Yes. 22 MR ZERVOS: But in relation to the role that I as DPP would 23 play, it would be to make a decision in relation to the 24 status of that particular person or persons with regard 25 to criminal prosecutions, and advising you accordingly</p>	<p style="text-align: right;">Page 63</p> <p>1 I simply say that that is a reason why we would like to 2 put it off also. 3 But the main point -- understand that's secondary. 4 The main point, before the trial, we simply can't be 5 ready. Simple as that. 6 THE CHAIRMAN: Mr Sussex? 7 MR SUSSEX: Mr Chairman, I've got no personal problems but 8 our matter is really a matter of procedural fairness. 9 We just do not have the materials. Although it may be 10 that these 30 box files are not all relevant, there's 11 a substantial body of material that we haven't as yet 12 seen. I've already indicated they include the radar 13 plots in the VTS system, the digital radar surveillance 14 records which the marine police maintain, which will 15 show course and speed, documents or information in 16 relation to the fact of the collision. 17 What I'm referring to really is the evidence that is 18 referred to in Messrs Lo & Lo's letter of 29 November. 19 It's a Salmon letter from Lo & Lo indicating that 20 an expert appointed by the Commission has formed a view, 21 and that certain evidence has been before him. My Lord, 22 none of that material has been available to us. 23 My Lord, the other problem, of course, is that we 24 haven't had unrestricted -- 25 THE CHAIRMAN: It's only today, earlier this morning, that</p>
<p style="text-align: right;">Page 62</p> <p>1 with regard to that, because then the criminal 2 proceedings will take its course. But I wouldn't take 3 it further than that. 4 THE CHAIRMAN: Thank you. 5 I think it's sensible next we move to the other 6 applications that I think you indicated first of all 7 that you have, Mr Grossman; that is, for an adjournment 8 of proceedings. 9 MR GROSSMAN: Mr Chairman, insofar as it's relevant, 10 I accept what Mr Zervos has said and I just pray it in 11 aid; that is, to adjourn the matter to sometime early in 12 January. 13 I can repeat to a large extent -- and I'll be very 14 short because there are two points and they are simple. 15 The first one is this. We have nothing. 16 THE CHAIRMAN: You've made this point already, Mr Grossman. 17 We understand your position. 18 MR GROSSMAN: We simply can't be ready. But I think I must 19 be full and frank with you, and it's for purely personal 20 reasons also that I would like the matter put off. 21 I understand the Commission takes precedence, but I have 22 a matter overseas that I must deal with, leaving Friday. 23 When I say "must" -- 24 THE CHAIRMAN: You have junior counsel. 25 MR GROSSMAN: Yes, I've got very able junior counsel.</p>	<p style="text-align: right;">Page 64</p> <p>1 you were determined to be an involved party. 2 MR SUSSEX: I suppose that's true. 3 THE CHAIRMAN: That's a factor in the dissemination of 4 material. 5 MR SUSSEX: That may well be right. But it affects the 6 lead-in time for the purposes of being prepared. 7 Because obviously we have to be afforded a reasonable 8 opportunity to prepare our position. 9 The other problem is that we haven't had 10 unrestricted access to the vessels, and whether or not 11 this Commission determines that it will hear expert 12 evidence from us, I do need to be assisted by experts in 13 relation to the cause of the collision. 14 My Lord, we have seen the vessels, we've been 15 entitled to take photographs. But I would ask that the 16 Commission orders that a joint survey of both vessels by 17 all parties should be allowed to be conducted by their 18 respective appointed experts. 19 THE CHAIRMAN: By that do you mean inspection? 20 MR SUSSEX: Yes. 21 So the thrust of this is that we are severely 22 hampered at the moment by -- 23 THE CHAIRMAN: Let me deal with that right away. 24 Mr Shieh, there's no objection to that taking place, 25 is it?</p>

<p style="text-align: right;">Page 65</p> <p>1 MR SHIEH: I can't see any objection. 2 THE CHAIRMAN: No. In which case we'll make such an order, 3 that you be permitted, by way of liaising through 4 counsel for the Commission, to make arrangements for you 5 to inspect the vessel jointly, all involved parties. 6 MR SUSSEX: My Lord, I'm very grateful. 7 And obviously there is a lead-in time in relation to 8 the information which is gleaned on that occasion. 9 THE CHAIRMAN: Yes. 10 MR SUSSEX: But that equally applies to the other 11 information that I've sought, other reference I've 12 sought. 13 THE CHAIRMAN: Thank you. 14 Mr Mok, is there anything you wish to say on that 15 issue? 16 MR MOK: No, I have nothing to say on that issue. 17 THE CHAIRMAN: Thank you. 18 Mr Shieh? 19 MR SHIEH: Mr Chairman, Commissioner. Perhaps this is as 20 good a time as any to outline the shape of the 21 preparation of evidence so far, perhaps to alleviate the 22 fears and concerns on the part of -- 23 THE CHAIRMAN: Yes, I think it probably is, and if you would 24 do so, I'd be grateful. 25 MR SHIEH: Yes.</p>	<p style="text-align: right;">Page 67</p> <p>1 relevant radar plots and track reports, et cetera. 2 These would basically set the scene. 3 The second category of witnesses consists of the 4 expert of the Commission, who is Captain Nigel Pryke, 5 which the involved parties would be aware of. He is 6 an expert appointed by the Commission to assist in its 7 investigative duties. He has had regard to the raw 8 materials which the first category of witnesses will be 9 speaking to, and he has prepared a written report in 10 which he gives his opinion on matters relevant to the 11 terms of the reference for the Commission, certainly the 12 first part of the terms of reference. No doubt that 13 report will, on application, have to be made available 14 to the involved parties. 15 I understand it's available. 16 THE CHAIRMAN: It's Mr Mok that apparently opposes it being 17 given to the involved parties unless and until the 18 compelled parties who might be defendants are questioned 19 by the Inquiry first. 20 MR SHIEH: I understand that's what he's saying, but as 21 a matter of fairness, we believe that if an expert is 22 going to be called, then time should be allowed for 23 people at least to consider what questions to ask and to 24 ask their experts. Even if they may not be able 25 immediately to cross-examine, they ought to be given enough</p>
<p style="text-align: right;">Page 66</p> <p>1 Ever since the Commission has been established, the 2 solicitors and counsel for the Commission and 3 secretariat have been receiving a good deal of 4 materials. The state of affairs up to today is that 5 a list of witnesses has been compiled and in fact it is 6 ready to be distributed to the involved parties today. 7 Perhaps I will explain what's in the list of 8 witnesses -- 9 THE CHAIRMAN: If you would. 10 MR SHIEH: We are still in the course of reviewing all the 11 materials, but from the materials reviewed so far, 12 I think we can present a reasonably clear structure of 13 the presentation of evidence that at the moment strikes 14 us as being a sensible one. 15 The current list consists of three categories of 16 witnesses. The first category would consist of 17 witnesses who would deal with and also present the 18 collection of what may be called the raw data concerning 19 the collision, the matters such as the VTS recording, 20 the radar plots, et cetera. These would come from 21 witnesses from the Marine Department as well as from the 22 police. From the Marine Department, there will be two 23 witnesses working at the Vessel Traffic Centre, and 24 there's one witness from the police as well, who will 25 testify as to the record-keeping system and produce the</p>	<p style="text-align: right;">Page 68</p> <p>1 time to consider the matter. 2 THE CHAIRMAN: Yes. The expert report, is it signed off and 3 in the hearing room? 4 MR SHIEH: We are checking whether we have enough copies. 5 THE CHAIRMAN: But it's signed off by Captain Pryke? 6 MR SHIEH: It's been signed off, so it now bears a signature 7 rather than being one in draft. 8 THE CHAIRMAN: Yes. 9 MR SHIEH: It is envisaged that Captain Pryke will be giving 10 his oral evidence in two parts. Because of various 11 considerations, Captain Pryke compiled his report on 12 what one may call part 1, namely interpreting the 13 various raw materials. 14 THE CHAIRMAN: He was directed by the Commission to do it in 15 that sequence because that was the material immediately 16 available. 17 MR SHIEH: Yes. Now, that part of his evidence, it is 18 contemplated that he will be giving within this year. 19 The reports are ready, I think. Yes, they are over 20 there on the shelf. 21 THE CHAIRMAN: I better hear from Mr Mok first, if he still 22 persists in -- 23 MR SHIEH: Yes. 24 THE CHAIRMAN: -- declining to provide the material to those 25 that are involved parties.</p>

<p style="text-align: right;">Page 69</p> <p>1 MR SHIEH: Yes, but in terms of availability of the report, 2 they're all there on the shelf. 3 THE CHAIRMAN: It's there. Thank you for that. 4 MR SHIEH: It's ready to distribute. 5 It is envisaged that Captain Pryke will give 6 evidence in two parts. In relation to the evidence 7 contained in his current report, it is contemplated that 8 he should give evidence immediately after the first 9 category witnesses. 10 THE CHAIRMAN: So radar and VTS evidence first, followed by 11 Captain Pryke? 12 MR SHIEH: That's right. It is contemplated that Captain 13 Pryke will return next year to deal with issues arising 14 out of terms of reference items 2 and 3, issues about 15 ship management, harbour management, safety measures, 16 et cetera, but that would be the subject matter of 17 a separate report to be compiled and no doubt 18 distribute, as a matter of fairness, in good time. 19 The third category of witnesses would consist of 20 passengers on board the Lamma IV and the Sea Smooth that 21 evening, as well as passengers on board another vessel 22 owned by Hongkong Electric, known as Lamma II, which, at 23 the time of the collision, was following the Lamma IV. 24 The passengers on these vessels are expected to 25 provide first-hand direct testimony of the collision and</p>	<p style="text-align: right;">Page 71</p> <p>1 a particular fact. Insofar as people may have felt 2 different things, we would have a representative sample. 3 THE CHAIRMAN: Thank you. 4 MR SHIEH: In terms of timing, it is contemplated that at 5 least the first two categories of witnesses, namely the 6 VTS and technical, the raw data witnesses as well as 7 Captain Pryke can be completed in December, plus some 8 witnesses in the third category. 9 The passengers, the third category, may not be able 10 to be completed in December, in which case they would 11 overflow into January next year. But there are further 12 categories of witnesses outside of the passengers which 13 are still under review, and these extra categories of 14 witnesses will be the subject of some further updated 15 list of witnesses. These categories of witnesses are, 16 and I simply put them forward -- 17 THE CHAIRMAN: Yes, broad brush will do. 18 MR SHIEH: Yes. The personnel involved in the rescue 19 mission, Marine Police and Fire Services, being Hong 20 Kong Government departments. There will be a naval 21 architectural expert, Dr Armstrong, who has just been 22 nominated and appointed by the Commission, Dr Tony 23 Armstrong, who will be giving assistance on issues of 24 naval architecture and ship construction and the like, 25 which are relevant to the terms of evidence, in</p>
<p style="text-align: right;">Page 70</p> <p>1 its immediate aftermath, what they saw and felt and 2 experienced during that period. Of course, not all the 3 passengers on board these vessels will be called, but 4 every reasonable attempt will be made to ensure that 5 a fair and balanced picture is presented of the events 6 as they unfolded. 7 We are lucky in this particular case, in this 8 Inquiry, because we have ready-made statements taken by 9 the police, therefore insofar as prior disclosure of 10 materials is concerned, certainly the police statements 11 of those which counsel have decided to call would be 12 disclosed to the parties. It may well be that the 13 involved parties may also wish to see statements of 14 other witnesses, because they may well form the view 15 that other witnesses may also be able to contribute and 16 it may well be that applications could well then be made 17 and the matter can then take its natural course. 18 THE CHAIRMAN: Of course, in discharging your role as 19 counsel for the Commission, you will wish to identify 20 the whole gamut of evidence that is relevant -- 21 MR SHIEH: There will be representative features, for 22 example depending on where they are seated, what matters 23 they had felt or not felt. We hope to have achieved 24 a sensible balance of various matters, not obviously 25 gilded towards proving one particular fact or disproving</p>	<p style="text-align: right;">Page 72</p> <p>1 particular in relation to the reason why Lamma IV sank 2 so fast and in the manner it did. 3 Then, as I alluded to earlier, Captain Pryke will 4 return next year to deal with part 2 of his evidence. 5 Lastly, there will be witnesses from the involved 6 parties, namely the crew members and also perhaps the 7 management of the two ship-owning companies. And of 8 course, witnesses from the Marine Department who are 9 particularly relevant to terms of reference items 2 10 and 3. 11 I understand there are concerns about having time to 12 consider various matters, but insofar as the statements 13 of the passengers are concerned, the list, I understand, 14 is available and can be given today. In terms of 15 witness statements, they are ready, they have been 16 scanned, they can be easily sent over. Captain Pryke's 17 report is over there. 18 Insofar as time is needed, and I do recognise that 19 time is needed to digest the materials, lay witnesses 20 perhaps do not take on as much significance because the 21 statements, as I understand, are relatively short and 22 I do not contemplate there being what one might call 23 adversarial style of cross-examination, though of course 24 there is a right to ask the Commission for permission to 25 question insofar as they can identify areas where they</p>

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<p>1 wish to explore.</p> <p>2 But one wouldn't envisage that over-elaborate</p> <p>3 questioning of the passenger witnesses would be</p> <p>4 necessary, nor would one envisage over-elaborate</p> <p>5 questioning of the witnesses from, let's say, the VTC,</p> <p>6 the Vessel Traffic Centre, being a Government</p> <p>7 department -- which I understand the VTS recordings have</p> <p>8 been previously accepted in courts and commissions in</p> <p>9 Hong Kong as being generally reliable. But of course</p> <p>10 this Commission has to form its own view. But, again,</p> <p>11 speaking as matters now stand, it is unlikely, in my</p> <p>12 suggestion and submission, that that should really</p> <p>13 envisage a good deal of reading.</p> <p>14 The only point really that may cause the Commission</p> <p>15 to think about timing is Captain Pryke's report. At the</p> <p>16 moment, they haven't actually seen Captain Pryke's</p> <p>17 report and, therefore, in a way we are debating in the</p> <p>18 abstract as to whether or not any prayer for more time</p> <p>19 is or is not justified, or how much time can</p> <p>20 legitimately be given. Therefore, could I simply raise</p> <p>21 one possible point for consideration, and that is to</p> <p>22 say, Captain Pryke still comes over, because</p> <p>23 I understand Captain Pryke is available next week but</p> <p>24 not available thereafter, to at least complete that part</p> <p>25 of his evidence which involves him testifying, if one</p>	<p>1 it, in-chief first, and then followed by the passenger</p> <p>2 witnesses. And then resuming next year.</p> <p>3 THE CHAIRMAN: Yes. Thank you, Mr Shieh.</p> <p>4 MR SHIEH: When I refer to "cross-examine", I'm obviously</p> <p>5 using litigation language but this is a Commission of</p> <p>6 Inquiry, so therefore I would perhaps need to say</p> <p>7 whenever I say "cross-examination", it should really be</p> <p>8 "questioning".</p> <p>9 THE CHAIRMAN: Yes. Thank you for that.</p> <p>10 Mr Grossman, do you want to say anything to that?</p> <p>11 MR GROSSMAN: Can I just mention one point that I should</p> <p>12 have mentioned earlier. It may be a matter of interest</p> <p>13 to you, Mr Chairman. You will recall the matter in</p> <p>14 which you were involved, the Kulemesin and Naftogaz and</p> <p>15 Yao Hai.</p> <p>16 THE CHAIRMAN: Yes, and you were involved as well, if</p> <p>17 I recall.</p> <p>18 MR GROSSMAN: Yes, but I'm not involved in the CFA appeal.</p> <p>19 I'll just tell you the dates. They're 15-18 January.</p> <p>20 THE CHAIRMAN: Yes. I was aware it's in January.</p> <p>21 MR GROSSMAN: Yes. What I'd understood is, to a very large</p> <p>22 extent it's going to be a question of the determination</p> <p>23 of the collision regulations and whatever the Court of</p> <p>24 Final Appeal says may have an impact on this case.</p> <p>25 THE CHAIRMAN: What do you suggest we do about that? What's</p>
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<p>1 may call it, speaking to his expert report.</p> <p>2 If, following the disclosure of the evidence, my</p> <p>3 learned friends are ready, they may not actually have</p> <p>4 their own expert report ready, they may or may not be</p> <p>5 able to even compile a report or seek permission to</p> <p>6 adduce a report in due course, but if they feel ready to</p> <p>7 cross-examine, they can cross-examine. But if they</p> <p>8 don't, it may well be something the Commission can</p> <p>9 consider, namely to defer any questioning of Captain</p> <p>10 Pryke until he comes back next time.</p> <p>11 Of course, given that there is no general right to</p> <p>12 question, because everything is I think under the</p> <p>13 control of the Commission, then if, for example, in due</p> <p>14 course my learned friends can produce their own report</p> <p>15 or can identify areas that they want to actually put to</p> <p>16 or question Captain Pryke which they could not have</p> <p>17 sensibly compiled within the next week or so, then they</p> <p>18 could by all means make submissions to the Commission</p> <p>19 and the Commission can consider that as and when the</p> <p>20 matter arises.</p> <p>21 THE CHAIRMAN: Yes.</p> <p>22 MR SHIEH: But given the time constraints, that is something</p> <p>23 which I would suggest that the Commission should</p> <p>24 consider, namely the Mardep, police evidence, Captain</p> <p>25 Pryke -- Captain Pryke, if can't cross-examine, so be</p>	<p>1 your application or submission?</p> <p>2 MR GROSSMAN: My submission in this regard is that you may</p> <p>3 wish to wait, before commencing this case, until after</p> <p>4 the hearing on 18 January.</p> <p>5 THE CHAIRMAN: Until after the judgment?</p> <p>6 MR GROSSMAN: No, not necessarily the judgment.</p> <p>7 THE CHAIRMAN: Well, how are we going to be better informed</p> <p>8 after the hearing?</p> <p>9 MR GROSSMAN: Well, all I'm saying is that is when it's</p> <p>10 taking place. I don't know when the judgment obviously</p> <p>11 is going to be heard.</p> <p>12 THE CHAIRMAN: Normally the Court of Final Appeal are able</p> <p>13 to deliver their judgments, unlike the Court of Appeal,</p> <p>14 in about a month or so.</p> <p>15 MR GROSSMAN: Or less than that, as a rule.</p> <p>16 THE CHAIRMAN: Or even less. So you're inviting us to delay</p> <p>17 proceedings until the middle or so of February?</p> <p>18 MR GROSSMAN: No, Mr Chairman, I'm not doing that. That</p> <p>19 that would be a ridiculous submission and I wouldn't</p> <p>20 make it.</p> <p>21 THE CHAIRMAN: Well, I'm asking what your submission is, in</p> <p>22 giving me the information.</p> <p>23 MR GROSSMAN: I'm simply saying to you that that is when the</p> <p>24 hearing will be held, and it may be they give their</p> <p>25 judgments immediately. I don't know. It may be,</p>

<p style="text-align: right;">Page 77</p> <p>1 though, that when we're talking -- if you are talking 2 about having the matter heard in January, commencing in 3 January, that may be a time to start, after the case is 4 heard in the CFA. That's a matter for you. 5 THE CHAIRMAN: You're suggesting we may wait until the 6 hearing? 7 MR GROSSMAN: Yes. 8 THE CHAIRMAN: Thank you. 9 MR GROSSMAN: I'm not saying the matter should go to the end 10 of January. I can understand the time constraints. 11 We're quite happy with it in the early part of January. 12 But I heard my learned friend Mr Shieh's submissions. 13 Of course, it's still up to you to decide the order in 14 which witnesses will be called. We made a suggestion, 15 and, I'd like to make it perfectly clear, that was no 16 more than a suggestion. 17 THE CHAIRMAN: No, we invited suggestions and all the 18 parties have very helpfully given us suggestions. 19 MR GROSSMAN: Yes. So the way in which you do it really is 20 a matter still for you. But even on the basis that my 21 learned friend Mr Shieh says, it's still far too short 22 a time for us to gather in all the information and be 23 ready next week. It's simply far too short a time. 24 I would suggest that a proper approach would be to 25 give us enough leeway so that we can do the right thing</p>	<p style="text-align: right;">Page 79</p> <p>1 interested parties should be given an adequate 2 opportunity of preparing their cases. It's all very 3 well for Mr Shieh to suggest that it's inconceivable 4 that any particularly delving questions will be asked of 5 particular categories of witnesses. But frankly, it's 6 impossible to say until such stage as we see the 7 material. What we don't have are the witness 8 statements, we don't have any of the raw data, we 9 haven't conducted the inspection which the Chairman has 10 indicated will now be allowed. 11 In our submission, to put this off to the beginning 12 of January effectively sets this back two weeks. 13 Because you're intending to start, as I understand it, 14 on Wednesday of next week. We've got the Christmas 15 break. I don't know how long the Commission would 16 intend to rise for Christmas. But in order to give us 17 that reasonable opportunity to prepare our case, an 18 adequate opportunity, it is necessary that not only 19 counsel and solicitors, but also their appointed 20 experts, be given the opportunity to consider the 21 material, to consider what implications it has in terms 22 of questioning, to consider what implications it has in 23 terms of further evidence that we would wish to adduce 24 before the Commission. And that's not something which 25 can be done between today and next Wednesday. I'm</p>
<p style="text-align: right;">Page 78</p> <p>1 by our clients and be fully prepared, and we won't be 2 prepared by next week. It's as simple as that. 3 Whenever these documents are received. And simply to 4 have the evidence brought before us and say, "Well, you 5 can cross-examine at a later stage", I understand it's 6 a constructive suggestion but, nevertheless, it's not 7 good enough. 8 We simply need to know in advance, consider it, talk 9 to our experts about it, talk to our clients about it, 10 before the evidence is actually led. It's 11 an unsatisfactory situation to have evidence led which 12 you're not prepared for, inquiry, litigation or 13 whatever. And that would be the situation. It simply 14 would be wrong. 15 My instructions are, let me say this clearly, to 16 co-operate fully. My clients wish to co-operate fully 17 with the Commission. But we can't do so if we've got 18 one hand tied behind our back. We really need time to 19 look at these matters. Our suggestion is the matter 20 starts in the early part of January, which would seem to 21 be the best solution. That's the application. 22 THE CHAIRMAN: Thank you. 23 Mr Sussex? 24 MR SUSSEX: Mr Chairman, I echo that application. In our 25 submission, procedural fairness dictates that the</p>	<p style="text-align: right;">Page 80</p> <p>1 merely asking for an adequate period of time to achieve 2 that. 3 THE CHAIRMAN: Yes. Thank you. 4 Mr Mok, is there anything you wish to say? 5 MR MOK: Yes. 6 THE CHAIRMAN: Let me come back -- 7 MR MOK: I'm coming back to the question of documents. 8 I received the instructions, I have ventilated the point 9 with the Commission and I have heard what you have said, 10 and I would certainly advise those who have expressed 11 those concerns that it would be proper in the 12 circumstances to disclose the materials to the other 13 side. I shall do so as soon as possible after the 14 hearing today. 15 THE CHAIRMAN: If I may say so, on reflection, that is 16 a sensible course to take. 17 MR MOK: Yes. And on the timing, I leave it entirely in the 18 Commission's hands as to what is the most appropriate 19 time to start. 20 THE CHAIRMAN: Thank you. 21 What the Commission proposes to do and will do is to 22 adjourn rulings on the various applications that have 23 been made; that is, Mr Zervos's application that the 24 proceedings be adjourned for the reasons that he has 25 articulated until mid-January I think was his last</p>

<p style="text-align: right;">Page 81</p> <p>1 position, and I think it's early January that 2 Mr Grossman and Mr Sussex are asking for. We propose 3 delivering our rulings on that at 10 o'clock on Friday. 4 MR GROSSMAN: I hear what you say. It was my intention, if 5 the matter was put off, to go away for two weeks on 6 Friday morning. 7 THE CHAIRMAN: Hear me out, if you would, Mr Grossman. I'm 8 going to deal with other matters as well. 9 What I'm going to deal with are the directions that 10 the Commission will give as to procedure. 11 Directions 12 At the request of the Commission, Messrs Reed Smith 13 Richards Butler, Holman Fenwick Willan and the 14 Department of Justice provided the Commission with 15 written submissions as to the procedures to obtain in 16 the prospective substantive hearings and related 17 matters. We thank them, as I have done already, for 18 those submissions. 19 Having considered them, the Commission gives the 20 following directions: 21 1. Unless otherwise directed, the hearings of the 22 Inquiry will be open to the public. 23 2. Without the authorisation of the Commission, no 24 photographs may be taken or audio or video recordings 25 made in the hearing room, that is here, the overflow</p>	<p style="text-align: right;">Page 83</p> <p>1 address. 2 Counsel for the parties permitted to participate and 3 be legally represented ("the involved parties") may 4 apply to the Commission to make their own opening 5 addresses. If the Commission accedes to such 6 an application, the addresses will be made immediately 7 after the address of counsel for the Commission. The 8 Commission may determine the sequence and length of such 9 addresses. 10 The Commission notes that section 4(1) of the 11 Commissions of Inquiry Ordinance Cap 86 provides that in 12 conducting the Inquiry, it may: 13 "(a) receive and consider any material whether by 14 way of oral evidence, written statements, documents or 15 otherwise, notwithstanding that such material would not 16 be admissible as evidence in civil or criminal 17 proceedings ..." 18 Oral evidence will be given under oath or 19 affirmation. 20 The procedure by which the Commission will receive 21 oral evidence is as follows: 22 1. Counsel for the Commission will lead the 23 evidence of witnesses called by the Commission. Counsel 24 for the involved parties by apply to the Commission for 25 leave to question a particular witness or witnesses.</p>
<p style="text-align: right;">Page 82</p> <p>1 room, which is upstairs and has the CCTV link, or the 2 other rooms in the Main Wing of Central Government 3 Offices used for the purposes of this Inquiry. 4 3. The proceedings will be conducted in English, 5 although witnesses may give their evidence in any 6 language or dialect that they wish to do so. Then the 7 testimony will be translated into English. 8 The articulation or stipulation of the hearing dates 9 that I am about to give are of course subject to the 10 ruling that will be made on Friday, but they are these 11 for current purposes: 12 The Commission will commence the substantive hearing 13 of the Inquiry of 12 December 2012 and will continue on 14 weekdays until 21 December 2012. The hearings will 15 resume on 7 January and continue until 8 February 2013. 16 Then the hearings will resume on 18 February 2013 and 17 continue until completion. 18 The hearing time each day will be from 10 am to 19 1 pm, and from 2.30 to 4.30 pm. 20 On 17 December 2012, the hearing will be from 2 pm 21 to 6 pm, and that is to accommodate my co-commissioner, 22 who has difficulties in sitting the other times on that 23 date. 24 The hearing procedure. 25 Counsel for the Commission may make an opening</p>	<p style="text-align: right;">Page 84</p> <p>1 The Commission will determine the sequence in which 2 counsel representing different parties may question 3 a witness. 4 2. Counsel for an involved party, who is not 5 a corporate entity, an individual involved party, may 6 lead his evidence after which counsel for the other 7 involved parties may apply to the Commission for leave 8 to question such witness. 9 The Commission will determine the sequence in which 10 evidence is led from the involved parties, and in which 11 counsel representing other involved parties may question 12 such person. Thereafter, counsel for the Inquiry may 13 question such person. Finally, counsel for that 14 involved party may re-examine him. 15 3. Counsel for an individual involved party may 16 apply to the Commission to call other oral witnesses or 17 to receive any other material. If the Commission 18 permits oral evidence to be led on behalf of that party, 19 it will be received by the Commission in the same manner 20 set out at 2. 21 4. Counsel for an involved party who is a corporate 22 entity ("a corporate involved party") may apply to the 23 Commission to call oral witnesses or to receive any 24 other material on behalf of that party. If the 25 Commission permits oral evidence to be led on behalf of</p>

<p style="text-align: right;">Page 85</p> <p>1 the corporate involved party, it will be received by the 2 Commission in the same manner as set out at 2. 3 5. At any stage in the receipt of oral evidence, 4 the Commission may ask questions of the witness. 5 6. The Commission may recall any person who has 6 given oral evidence to answer further questions. 7 7. All involved parties shall provide to the 8 Commission written witness statements addressing the 9 subject matter of their testimony and of all witnesses 10 they are permitted to call at least seven clear days 11 before the testimony is to be received. 12 9. Counsel for the Commission and counsel for the 13 involved parties may make closing addresses. The 14 Commission may determine the sequence and length of such 15 addresses. At any stage in the hearings, the Commission 16 may determine to permit the participation and legal 17 representation of other parties in the hearings. 18 11. The Commission secretariat has compiled and 19 will update regularly an index of all documents and 20 material provided to the Commission for the purpose of 21 the Inquiry. Any involved party who wishes to gain 22 access to such documents or material may apply in 23 writing to the Commission secretariat. At its 24 discretion, the Commission shall determine whether or 25 not and to what extent access may be permitted.</p>	<p style="text-align: right;">Page 87</p> <p>1 Commission and all the involved parties with a skeleton 2 of their opening speech by noon on Tuesday, 11 December 3 2012. 4 Counsel for the Department of Justice, representing 5 the Director of Marine, the Director of Fire Services, 6 and the Commissioner of Police, has raised in his 7 written submissions the issue of claims for 8 confidentiality and privilege, albeit that no other 9 party has identified that as an issue. So we ask that 10 Mr Mok and those helping him file any specific claim 11 that they may wish to make, if any, by 5 pm on Friday, 12 7 December 2012. If the Commission receives such 13 a claim, of course, it may be necessary to make 14 consequential orders. 15 Dealing then with practical matters that arise as 16 the hearing will be adjourned. 17 Mr Shieh, you are in a position, are you, to provide 18 a copy of Captain Pryke's report to each of the involved 19 parties, that is the groups, the three groups, as soon 20 as we rise? 21 MR SHIEH: Yes. 22 THE CHAIRMAN: And you'll be in a position to provide them 23 with a list of witnesses, and scanned copies of the 24 witness statements of the people that -- 25 MR SHIEH: With personal data redacted.</p>
<p style="text-align: right;">Page 86</p> <p>1 Any involved party who wishes to obtain copies of 2 documents to which access has been permitted by the 3 Commission may apply to the Commission secretariat to be 4 provided with such copies. At its discretion, the 5 Commission shall determine whether or not such copies 6 are to be provided. The cost of obtaining such copies 7 shall be borne by the party obtaining such copy. 8 Those, then, are the directions that we give today 9 as to the conduct of these proceedings. It may, of 10 course, in the nature of things be necessary to give 11 other directions, and of course the Commission is 12 receptive to submissions made by counsel. 13 Giving effect to some of those directions, we make 14 the following orders: 15 1. The opening speech of counsel for the Commission 16 shall be no longer than one hour in length. 17 2. If any involved party applies to make an opening 18 speech and is permitted to do so, the speech of all 19 those parties represented by Reed Smith Richards Butler, 20 Holman Fenwick Willan and the Department of Justice 21 shall be no longer than 30 minutes for each of the 22 respective group of parties, so that in the result the 23 maximum total length of opening speeches is to be 24 2.5 hours. 25 Counsel for the Commission are to provide the</p>	<p style="text-align: right;">Page 88</p> <p>1 THE CHAIRMAN: With personal data redacted. Again, within 2 today? 3 MR SHIEH: Yes. 4 THE CHAIRMAN: Are there any other matters that we ought to 5 deal with at this stage? 6 MR SHIEH: Not that I can think of, obviously subject to any 7 requests. 8 THE CHAIRMAN: Mr Grossman? 9 MR GROSSMAN: I was going to ask this. If we do proceed 10 next week, is it intended that the order of witnesses 11 and evidence will be on the basis that Mr Shieh has 12 suggested? 13 THE CHAIRMAN: It's not only Mr Shieh's suggestion; it was 14 from the outset the direction of the Commission that the 15 evidence be prepared in that way. That is to say, that 16 the radar track evidence, together with an explanation 17 of how it is prepared, and the expert evidence, be led 18 first. That's the direction of the Commission. 19 MR GROSSMAN: Can I just raise two other points. They're 20 housekeeping, really. I apologise if you dealt with it. 21 I wasn't too certain if you indicated at what stage 22 interested parties could call their evidence. Would 23 that be after all the Commission's evidence? 24 THE CHAIRMAN: The Commission will go first, and then 25 involved parties who are persons first and then</p>

<p style="text-align: right;">Page 89</p> <p>1 corporates. That's what we have in mind. 2 MR GROSSMAN: Very well. 3 THE CHAIRMAN: The directions we've given will be on our 4 website today. 5 MR GROSSMAN: I'm sure they will. The last point is, will 6 we be receiving copies of the LiveNote that's being 7 taken, or is it just for the Commission? 8 THE CHAIRMAN: That's a matter I'd ask you to discuss with 9 the Commission for the Inquiry, but as I understand it, 10 yes. But please take that up with counsel. 11 MR SUSSEX: Mr Chairman, could I just raise these points. 12 Obviously I don't know as yet what is appended to 13 Captain Pryke's report. But am I to be given access to 14 the VTS radar plots and digital radar surveillance 15 records or is that something -- 16 THE CHAIRMAN: That's a given. That must be provided. 17 MR SHIEH: Yes. When I said it's subject to any 18 application, this is perhaps one of the applications 19 I have missed. Obviously they should be given the 20 underlying data, the VTS records -- 21 THE CHAIRMAN: Because that is the basis of the report, the 22 short report that it is. 23 MR SUSSEX: Thank you very much. 24 THE CHAIRMAN: Mr Mok? 25 MR MOK: A point of clarification. We will be given a list</p>	<p style="text-align: right;">Page 91</p> <p>1 MR SHIEH: Mr Chairman, perhaps I've omitted to say that 2 obviously a good deal of the order of the passenger 3 witnesses would depend on their availability and many 4 other matters. Therefore, when in the list the 5 witnesses appear in a particular order, that is not to 6 be taken as indicating the actual order in which they 7 are going to be called. 8 THE CHAIRMAN: But as I understand it, Mr Shieh -- correct 9 me if I'm wrong -- for example, the Lamma IV passenger 10 witnesses have made statements that by and large are 11 short in nature, in the sense that they are three or 12 four pages, the kernel of which is perhaps one or two 13 paragraphs? 14 MR SHIEH: That's correct. 15 THE CHAIRMAN: Very well. 16 MR SHIEH: Mr Chairman, perhaps there's one extra point that 17 in fairness I should deal with. 18 THE CHAIRMAN: Yes? 19 MR SHIEH: Mr Sussex mentioned the VTS, the radar tracks. 20 In fact I think as a matter of completeness, I don't 21 know about the eventual format of Captain Pryke's 22 report, because if the materials that he has had regard 23 to in compiling his report are actually not attached as 24 attachments but simply described in some kind of 25 an appendix, then I would have thought as a matter of</p>
<p style="text-align: right;">Page 90</p> <p>1 of witnesses. Do we take it that all those witnesses on 2 the list will be the Commission's witnesses -- 3 THE CHAIRMAN: Yes. 4 MR MOK: -- and therefore fall within the direction on that 5 basis? 6 THE CHAIRMAN: All of these will be Commission witnesses. 7 I think what counsel for the Commission are trying to do 8 is to establish the availability of the witnesses to 9 start with. It's one thing to have their name and 10 address. It's another thing to know whether or not they 11 are in Hong Kong at the time. So that is an issue that 12 is being addressed, and obviously it's a matter that 13 might well be affected if the rulings on Friday were to 14 result in proceedings being delayed. 15 MR MOK: Yes. 16 THE CHAIRMAN: But what counsel for the Commission is doing, 17 at our urging, is making material available to you so 18 that you can best understand the sequence of the 19 evidence that is coming. 20 MR MOK: That would be very helpful. 21 THE CHAIRMAN: It inevitably will be the case that the 22 batting order may not necessarily be followed. We might 23 need a nightwatchman. But we ask everyone to understand 24 that counsel are trying to accommodate their needs. 25 MR MOK: Thank you.</p>	<p style="text-align: right;">Page 92</p> <p>1 fairness those which are listed as having been relied 2 upon and considered by Captain Pryke in compiling his 3 report should also be made available. 4 So apart from the passenger witness statements, the 5 VTS and the police witness statements speaking to those 6 matters and the actual physical recording, any other 7 documents Captain Pryke says he has had regard to and 8 which he has listed ought to be given to them as well. 9 THE CHAIRMAN: That must be right, Mr Shieh. If there are 10 any discrepancies, we hope that counsel, in the spirit 11 of co-operation, will liaise with one another so that 12 these matters can be remedied without loss of time. 13 Are there any other matters anyone wishes to raise? 14 MR SHIEH: Some of those matters may take time to burn on to 15 a disc, but some of those can be given readily, such as 16 the underlying witness statements and also the factual 17 reports. 18 THE CHAIRMAN: Thank you. 19 MR GROSSMAN: Can I just remind you of one point. Insofar 20 as we, Mr Sussex and I, file an opening, you said within 21 seven days. If we're going to start on the 12th -- 22 THE CHAIRMAN: No, that's for witness statements. The 23 opening, the only order we've made is you get the 24 advantage of knowing in skeleton form what it is that 25 Mr Shieh is going to outline in his opening. We've made</p>

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1 no order that you provide anything.
2 MR GROSSMAN: No. Then at what stage would we apply? On
3 the day?
4 THE CHAIRMAN: You can apply now if you wish. To make
5 an opening speech?
6 MR GROSSMAN: I don't know – I just simply –
7 THE CHAIRMAN: Apply whenever you like.
8 MR GROSSMAN: Thank you.
9 THE CHAIRMAN: That applies, of course, to you, Mr Sussex.
10 MR SUSSEX: Mr Chairman, thank you.
11 THE CHAIRMAN: And to you, Mr Mok.
12 MR MOK: Yes, thank you.
13 THE CHAIRMAN: In which case we're adjourned until
14 10 o'clock on Friday. Thank you.
15 (1.03 pm)
16 (The hearing adjourned until 10 am
17 on Friday, 7 December 2012)
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