

立法會

Legislative Council

LC Paper No. LS133/01-02

**Paper for the Subcommittee on matters relating
to the implementation of railway
development projects**

**Proposed Government's agreement to waive claims
for dividends for the Mass Transit Railway
Penny's Bay Rail Link Project**

Purpose of paper

At the meeting of the Subcommittee on matters relating to the implementation of railway development projects (the Subcommittee) on 9 July 2002, the Administration briefed members on the Government's proposed agreement to provide funding support to the MTR Corporation Limited (MTRCL) for the Penny's Bay Rail Link (PBRL) Project by waiving its claim for dividends otherwise payable by MTRCL to the Government as a shareholder. This paper provides an analysis on the legal issues relating to the proposed waiver of dividends in order to assist members in their consideration of the proposed funding support as set out in the LegCo Brief (Ref : TB CR 3/5/511/98).

Legal basis for the proposed waiver agreement

2. At the meeting of the Subcommittee on 9 July 2002, the Administration informed members that under section 39 of the Public Finance Ordinance (Cap. 2) (PFO), the Government has the power to waive its claim for dividends payable by MTRCL. The Administration also informed members that such waiver of dividends has been done in relation to dividends declared and payable by the Kowloon-Canton Railway Corporation.

3. After the meeting, we have clarified with the Administration which has confirmed that the provision they rely on should be section 38(1) of PFO instead of section 39 of that Ordinance.

Analysis

4. To determine whether there is a legal basis for the proposed waiver agreement, it would be necessary to study the relevant provisions of the Mass Transit Railway Ordinance (Cap. 556) (MTRO) and PFO. In this regard, we have studied sections 42 and 58 of MTRO and sections 38(1) of PFO. Copies of the relevant provisions are at Annex A.

Mass Transit Railway Ordinance

5. Under section 42 of MTRO, the shares issued by MTRCL to the Government are held by the Financial Secretary Incorporated (FSI) in trust on behalf of the Government. Under the Financial Secretary Incorporation Ordinance (Cap. 1015), FSI is a corporation sole constituted by the person who for the time being is performing the duties of the office of Financial Secretary (FS). The question that arises is whether section 42 of MTRO, as drafted, creates a trust with FSI being the trustee of the MTRCL shares. If FSI is a trustee, he would be under a duty to take all reasonable and proper measures to obtain possession of the trust property if it is outstanding, and to get in all debts and funds due to the trustee estate, and to preserve it and secure it from loss or risk of loss¹. A trustee is also under a duty to distribute income and capital to the right beneficiaries without demand².

6. Despite the reference to "in trust for" in a statutory provision, whether the provision creates a trust enforceable in the courts in their equitable jurisdiction is a matter of intention and construction of the provision concerned. The courts have been reluctant to hold that the Crown or a minister of the Crown is a trustee notwithstanding that a statute or other formal document contains an express reference to "in trust for the use of"³. Instead, the courts are more likely to hold that the intention of such reference is to express a governmental obligation⁴. It is not clear whether the courts would be prepared to follow the same principle in construing a provision like section 42 of MTRO when the person holding the property in trust for another is a corporation sole rather than the Government or a public officer. It could however be argued that since FS, being a public officer, will effectively be performing the duties of FSI, it is likely for the courts to hold that no trust arises under section 42

¹ *Halsbury's Laws of England*, Fourth edition (2000 Reissue), Volume 48, para. 842

² *Hawkesley v May* [1955] 3 All ER 353

³ *Halsbury's Laws of England*, Fourth edition (2000 Reissue), Volume 48, para. 515; *Tito v Waddell (No. 2)*, [1977] 3 All ER 129 at 216-228, per Megarry V-C; *Philipp Bros. Ltd v Republic of Sierra Leone and EC Commission*, Current Law Year Book [1995], Volume 1, para. 2938, CA

⁴ *Tito v Waddell (No. 2)*, [1977] 3 All ER 129 at 216-228, per Megarry V-C; *Kinloch v Secretary of State for India in Council* (1882) 7 App Cas 619, HL

of MTRO. If there is no trust, the legal effect would be that there will be no remedy in breach of trust or equitable account if FSI, in carrying out a statutory duty, is in breach of that duty. There are, instead, the remedies of judicial review, declaration, injunction and recovery of money if wrongly demanded and paid⁵.

7. If it is accepted that section 42 of MTRO is to express an obligation of FSI in respect of the MTRCL shares, the question to consider is the nature and scope of this obligation under MTRO. Section 42 of MTRO is silent on this. Section 58(1) of MTRO provides that monies received by FSI as the person holding shares in MTRCL, or from the sale of or other dealing in shares in MTRCL which are held by FSI, form part of the general revenue. In our view, cash dividends, although not expressly mentioned in section 58(1), are monies which FSI would receive in his capacity as person holding the MTRCL shares. However, it is not clear from section 58(1) of MTRO whether an obligation is created for FSI to receive the dividends from MTRCL.

8. To ascertain whether an obligation is intended to be created for FSI to receive the dividends under MTRO, it may be useful to look at the legislative history of the provisions concerning dividends. Section 14A of the repealed Mass Transit Railway Corporation Ordinance (Cap. 270) provides that a dividend declared by the Corporation shall be paid into general revenue. In the Explanatory Memorandum to the Mass Transit Railway Bill, it is stated that clause 58 of the Bill (now section 58 of MTRO) is to allow costs relating to the sale of shares in MTRCL or the listing of shares in MTRCL on a stock exchange to be deducted from the proceeds of sale or listing before being paid into general revenue. In the course of scrutiny of the Bill, Members did not raise issue on the manner in which dividends paid by MTRCL were to be handled. It could therefore be said that section 58 of MTRO is not intended to introduce changes to the manner in which dividends are handled. That would mean that the intention of the provision is that all dividends declared by MTRCL shall be paid and form part of general revenue and that it has not been intended that section 38(1)(a) of PFO would be applicable. If this legislative intention is accepted, it would appear that FSI would have an obligation under MTRO to receive the dividends and pay the dividends into general revenue. Failure to pay the dividends into general revenue without justification in law may render FSI liable to judicial review.

⁵ *Halsbury's Laws of England*, Fourth edition (2000 Reissue), para. 515; *Swain v Law Society* [1982] 2 All ER 827, at 838, HL, per Lord Brightman

Public Finance Ordinance

9. The Administration purports to rely on section 38 of PFO as the legal basis for the proposed waiver of dividends. It should be noted that the English text of section 38 in its present form has a meaning different from that reflected by the Chinese text. According to the English text, FS has a general power to waive any claims by or on behalf of the Government. However, in cases involving fraud or negligence, such power can only be exercised subject to any conditions, exceptions or limitations the Finance Committee (FC) may specify. The Chinese text gives the meaning that the FS's power can only be exercised in relation to cases involving fraud or negligence. The difference in meaning between the English and Chinese texts of section 38 of PFO has been removed through enactment of section 127 of the Statute Law (Miscellaneous Provisions) Ordinance. A copy of the new section 38 of PFO is at Annex B.

10. The effect of section 38 of PFO is that FS has a discretion to waive any claims by or on behalf of the Government and it is for him to determine in the first instance the meaning and scope of the provision. However, section 38 of PFO should be construed in the context of the checks and balances put in place by PFO in regulating the expenditure from the general revenue and the handling of revenue. The general framework under PFO is that any expenditure from the general revenue requires the approval of the Legislative Council or FC. On the other hand, income received for the purposes of the Government has to be paid into the general revenue under section 3 of PFO.

11. The question is whether FS has power under section 38 of PFO to waive the Government's claim for dividends payable by MTRCL. First of all, the powers referred to in section 38 of PFO are exercisable by FS or public officers delegated by him. In our view, there may be doubt as to whether the powers under section 38 of PFO can be exercised by FSI, being a corporation sole established under Cap. 1015. Moreover, FSI, like any other entity in law, is subject to law. In relation to monies received, FSI would have to act in accordance with section 58(1) of MTRO. If he is required to act in accordance with section 58 of MTRO, it is doubtful if FS can invoke section 38 of PFO to waive the dividends payable by MTRCL.

12. In any case, there is doubt as to whether the "waiver" is within the contemplation of section 38 of PFO at all in the light of section 58 of MTRO. It would appear that if it is intended that the Government should have the power to waive the dividends and as a result the dividends need not go into the general revenue,

this should have been expressly provided in MTRO. The lack of an express empowering provision in MTRO would suggest that the dividends declared by MTRCL should be paid into the general revenue following the general requirement provided by section 3 of PFO.

Dividends declared by the Kowloon-Canton Railway Corporation

13. Although not directly relevant to the issues before the Subcommittee, since the Administration had informed the Subcommittee at the last meeting that waivers of dividends had similarly been done in previous years in respect of dividends declared by the Kowloon-Canton Railway Corporation (KCRC), we have also done research into the relevant background in order to assist Members in their consideration of the Administration's response to questions. We have studied the Annual Reports prepared by KCRC for the years 1999, 2000 and 2001. It is stated in those Annual Reports that the Government, which is KCRC's sole shareholder, decided to forego a dividend in the respective years, electing instead to allow KCRC's net profits to be deployed towards meeting the cost of building West Rail Phase I, and the East Rail Extensions. Extracts of the Annual Reports are at Annex C.

14. Section 8(5) of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (KCRCO) provides that all KCRC shares allotted to Government under KCRCO shall be registered in the books of KCRC in the name of FSI and held by him in trust on behalf of the Government. Under section 14 of KCRCO, any dividends declared by KCRC shall be paid into general revenue. Copies of the relevant sections are at Annex D.

15. As there are specific provisions in KCRCO dealing with payment of dividends into general revenue, members may wish to ask the Administration to explain why the Government has not acted in accordance with those provisions by foregoing the dividends payable by KCRC in 1999 to 2001.

Previous discussion by LegCo Panel

16. In response to the request of members of the Panel on Financial Affairs for information on investment incomes of the Government, the then Secretary for the Treasury, in her letter of 16 May 2002, informed members of the Panel that dividends from certain organizations including KCRC and MTRCL are credited into the General Revenue Account in accordance with KCRCO and MTRO which provide that

dividends paid to the Government shall become part of the general revenue. According to the letter, these moneys are managed in accordance with the provisions concerning general revenue as set out in PFO. Copy of the said letter is at Annex E.

17. The proposed waiver of dividends payable by MTRCL and the waiver of dividends payable by KCRC would amount to a departure from what has been stated in the letter mentioned in paragraph 16 above. Members may wish to ask the Administration to account for this departure.

Conclusion

18. In the light of the above analysis, there may be doubt as to whether section 38 of PFO can be relied upon as the legal basis for the proposed waiver of dividends for the PBRL Project and indeed for the waiver of dividends payable by KCRC. We are of the view that any dividends declared and payable by MTRCL and KCRC should be dealt with in the manner specified in the relevant specific provisions in KCRCO and MTRO and should accordingly be managed in accordance with the relevant provisions concerning general revenue under PFO.

Encl.

Prepared by
Legal Service Division
Legislative Council Secretariat
15 July 2002

第 VI 部
雜項

38. 放棄申索等及公幣及物料的贖權

- (1) 在不損害第 39A 條的規定的原則下，遇有涉及欺詐或疏忽的情況，財政司司長可在符合財務委員會指明的任何條件、例外情況或限制下——(由 1993 年第 89 號第 29 條修訂)
- (a) 放棄、免除或寬免政府所提出的或由他人代政府所提出的申索；
 - (b) 將逾期未收的收入贖權；
 - (c) 將遺失或短缺的公幣、印花、證券或物料贖權；及
 - (d) 將屬於政府或政府所提供的而且已報廢的、不能使用的或廢棄的物料或其他財產贖權。
- (2) 財政司司長可將第 (1) 款賦予他的任何權力以書面轉授任何公職人員，但所轉授的權力須受授權書所指明的條件、例外情況及限制所規限。
(由 1997 年第 362 號法律公告修訂)

PART VI
MISCELLANEOUS

38. Abandonment of claims, etc. and write-off of public moneys and stores

- (1) Without prejudice to section 39A, the Financial Secretary, subject to, in any case involving fraud or negligence, any conditions, exceptions or limitations specified by the Finance Committee, may— (Amended 89 of 1993 s. 29)
- (a) abandon, remit or waive any claims by or on behalf of the Government;
 - (b) write off arrears of revenue;
 - (c) write off losses or deficiencies of public moneys, stamps, securities or stores; and
 - (d) write off condemned, unserviceable or obsolete stores or other movable property belonging to or provided by the Government.
- (2) The Financial Secretary may in writing delegate to any public officer any of the powers conferred upon him by subsection (1) subject to such conditions, exceptions and limitations as are specified in the delegation.

第 556 章 地下鐵路條例

42. 股本

- (1) 地鐵公司須於指定日期向財政司司長發售股份，該等股份須由財政司司長法團以信託方式代政府持有。
- (2) 依據本條發行的股份——
- (a) 每股的面值須為財政司司長所指示的款額，並須附有他所決定的權利；
 - (b) 須按面值並作為已繳足股款的股份發行，並須視為已按面值以現金繳足股款的股份；及
 - (c) 總面值不得大於緊接指定日期前地下鐵路公司的已發行股份的總面值。
- (3) 《公司條例》(第 32 章) 第 43(1) 條並不就依據本條分配股份而適用。

58. 將政府在地鐵公司中的股份出售等所得的收益

- (1) 除第 (2) 款另有規定外，財政司司長法團以地鐵公司股份持有人身分收到的款項，或將其持有的地鐵公司股份出售或作其他方式的交易而獲得的款項，均構成政府一般收入的一部分。
- (2) 財政司司長法團就以下事項所招致的開支，可從第 (1) 款指明的款項中撥款支付——
- (a) 收購地鐵公司股份；
 - (b) 持有地鐵公司股份或將財政司司長法團持有的地鐵公司股份出售或作其他方式的交易；
 - (c) 將任何地鐵公司股份在聯合交易所(即根據《證券交易所合併條例》(第 361 章) 第 27 條設立的證券市場)或在《財政資源規則》(第 24 章，附屬法例) 附表 2 指明的證券市場上市。
- 而就《公共財政條例》(第 2 章) 第 3 條而言，為上述目的而運用或保留的任何款額並不構成政府一般收入的一部分。

Annex A(ii)

CAP. 556 *Mass Transit Railway*

42. Share capital

- (1) The Corporation shall, on the appointed day, issue shares to the Financial Secretary Incorporated which shall be held by the Financial Secretary Incorporated in trust on behalf of the Government.
- (2) Shares issued in pursuance of this section—
- (a) shall each be of a par value of an amount that the Financial Secretary directs and shall carry such rights as he determines;
 - (b) shall be issued at par as fully paid and shall be treated as if they had been paid up in cash as to the par value; and
 - (c) shall have an aggregate par value of not more than the aggregate par value of the issued shares of MTRC immediately before the appointed day.
- (3) Section 43(1) of the Companies Ordinance (Cap. 32) does not apply in relation to an allotment of shares pursuant to this section.

58. Proceeds from sale, etc. of Government's shares in Corporation

- (1) Except as provided in subsection (2), monies received by the Financial Secretary Incorporated as the person holding shares in the Corporation, or from the sale of or other dealing in shares in the Corporation which are held by the Financial Secretary Incorporated, form part of the general revenue.
- (2) Expenses incurred by the Financial Secretary Incorporated in connection with—
- (a) the acquisition of shares in the Corporation;
 - (b) the holding of shares in the Corporation, or the sale of or other dealing in shares in the Corporation held by the Financial Secretary Incorporated;
 - (c) the listing of any shares in the Corporation on the Unified Exchange (being the stock market established under section 27 of the Stock Exchanges Unification Ordinance (Cap. 361)) or on a stock market specified in Schedule 2 to the Financial Resources Rules (Cap. 24 sub. leg.),
- may be defrayed from the monies specified in subsection (1), and any amount applied or retained for that purpose does not form part of the general revenue for the purposes of section 3 of the Public Finance Ordinance (Cap. 2).

Section 38 of Public Finance Ordinance, as amended by the Statute Law (Miscellaneous Provisions) Ordinance

PART XV

MISCELLANEOUS AMENDMENTS

CAP. 2 Public Finance

38. Abandonment of claims, etc. and write-off of public moneys and stores

(1) Without prejudice to section 39A, the Financial Secretary ~~subject to, in any case involving fraud or negligence, any conditions, exceptions or limitations specified by the Finance Committee, may~~ (Amended 89 of 1993 s. 29)

- (a) abandon, remit or waive any claims by or on behalf of the Government;
- (b) write off arrears of revenue;
- (c) write off losses or deficiencies of public moneys, stamps, securities or stores; and
- (d) write off condemned, unserviceable or obsolete stores or other movable property belonging to or provided by the Government.

(2) The Financial Secretary may in writing delegate to any public officer any of the powers conferred upon him by subsection (1) subject to such conditions, exceptions and limitations as are specified in the delegation.

* (1A) In any case involving fraud or negligence, the Financial Secretary may only exercise the powers under subsection (1) subject to any conditions, exceptions or limitations the Finance Committee may specify.

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Extract from the Kowloon-Canton Railway Corporation Annual Report 1999

Financial Results

As a result of the overall increase in ridership, from 384.4 million in 1998 to 391.4 million in 1999, total recurrent revenue in 1999 rose 7% to \$4,426 million, which was faster than the growth rate of 3.4% in operating costs excluding depreciation. At \$1,551 million, operating profit registered a growth rate of 5.9% over that in 1998. Net profit for 1999, at \$1,903 million, reflects an increase of 16% over net profit for 1998, when was \$1,639 million. As in 1998, the Government, which is the Corporation's sole shareholder, decided to forego a dividend in 1999, electing instead to allow the Corporation's net profits to be deployed towards meeting the cost of building West Rail, Phase I, and the East Rail Extensions.

Analysis of Performance

Despite the recession of the past two years, we decided to hold fare levels steady. Nevertheless we were able to earn increased profits even though expenditure continued to rise. This was due in large part to the substantial investment we have been making to enhance our productivity, by completing both refurbishment of our entire East Rail fleet of trains and

installation of an Automatic Train Protection signalling system on the same line. These measures not only improved passenger comfort, convenience and safety, but will also increase East Rail's passenger carrying capacity by a combined total of 38%. There were other factors, however, which contributed to our success but which are, perhaps, not so well known or so widely publicised.

Our continuing success as a Corporation does not rely simply on demographics. Rather, it is based on our ability to maximise earnings and the use of our assets. During the year, we clamped down on fare evasion. Due to a determined effort on our part, the evasion rate was reduced from 0.43% at the beginning of the year to 0.06% in December. That rate is continuing to come down.

By successfully persuading the Government to permit in-bound duty free sales of dutiable commodities, the Corporation took the opportunity to enable its duty free concessionaire to increase its earnings both on board our intercity Ktt train, as well as in a new in-bound duty free shop in the arrivals hall of Lo Wu Station. This has increased the revenue earning potential of the Corporation's duty free concession.

Extract from the Kowloon-Canton Railway Corporation Annual Report 2000

FINANCIAL RESULTS → I am pleased to report that we had another good year in 2000, the sixteenth consecutive year of profitability. Net profit after tax was \$2,288 million, representing a growth rate of 20.2% over that in 1999, when net profit was \$1,903 million. For the first time since the Corporation became profitable, net recurrent profit surpassed the \$2,000 million mark, leaving aside property development profit.

With increasing ridership on our railway systems, transport revenue at \$4,089 million was 7.1% up on the preceding year, when it was \$3,817 million. At \$642 million recurrent revenue from rents, royalties, advertising, leveraged-leasing deals and other commercial transactions registered a growth rate of 5.4%.

Operating profit increased to \$1,901 million by 22.6% from \$1,551 million in 1999. In contrast operating costs declined from \$2,875 million in 1999 by 1.6% to \$2,830 million in 2000. The operating margin thus increased from 35.1% in 1999 to 40.2% in 2000.

The Government as sole shareholder, has once again decided to forego a dividend, in line with its declared policy of allowing accumulated profit to be deployed as a means of funding West Rail, Phase I, and the East Rail Extensions.

The Corporation's project agreement with the Government provides for West Rail, Phase I, and the East Rail extensions to be funded partly from equity, partly from accumulated profit and partly from borrowings. The US\$1,000 million Eurodollar bond issued in July 1999 was followed, in March 2000, by a further US\$1,000 million global bond. This was the largest fixed income issue to come out of Hong Kong during 2000 and it was received, having been over-subscribed by 25%. With these two bonds the Corporation has successfully met its financing obligations through timely pre-funding, and the gearing at the end of the year stood at some 33%.

One other transaction having an impact on the Corporation's financial health deserves mention. Until the end of 1999, the 3,746 members of staff on superannuable terms of service subscribed to a provident fund in which the Corporation guaranteed the size of their retirement benefit, regardless of the provident fund's investment earnings. A generous offer to convert to a new defined contributions scheme was made to the staff in January 2000. It is gratifying to note that this offer was taken up by 3,709 employees, representing 99.0% of eligible staff. The conversion also had the effect of removing a very large contingent liability for the Corporation.

BUSINESS DEVELOPMENT → The Corporation is required by law to operate in accordance with prudent commercial principles. In general terms, this requires the Corporation to invest in capital projects which would produce a healthy rate of return while maintaining the viability of its core and ancillary services. Despite the recovery of the economy, the Corporation has not been able to raise

| LOSS AFTER DEPRECIATION | | | |
|--------------------------------|------|------|------|
| (HK\$m) | 2000 | 1999 | 1988 |
| East Rail domestic service | 17 | 83 | 22 |
| Light Rail service | 116 | 159 | 143 |
| Bus service | 11 | 11 | 11 |
| Freight service | 33 | 17 | 24 |

CROSS-BOUNDARY (LO WU)

DAILY AVERAGE PASSANGER TRIPS

| | Passenger trips | Year on year Growth(%) |
|------|--------------------|---------------------------|
| 1995 | 117,863 | 6.6 |
| 1996 | 130,157 | 10.4 |
| 1997 | 152,228 | 16.9 |
| 1998 | 178,802 | 17.4 |
| 1999 | 206,481 | 15.5 |
| 2000 | 229,120 | 10.9 |

its fare levels since 1997. As a result, losses were sustained by the service centres shown in the table to the left for the past three years.

In reality, therefore, what has been carrying the Corporation in terms of profitability lies partly in rapid growth of its cross-boundary markets and partly in the earnings of its non-transport business. It would not be out of place for me to sound the warning that over-dependence on the cross-boundary market is not without its risks.

Looking ahead, therefore, there is no room for complacency. Fare levels and structures will have to be reviewed. Other sources of income - for example, the extension of leveraged leasing operations to

include buildings and land, and the extension of advertising to include railway structures other than stations - must be explored. The scope of KCR Freight must be expanded beyond pure cargo haulage to include freight forwarding on an extensive scale. On the expenditure side, economies of scale should continue to be pursued vigorously. Although West Rail, Phase I, was planned as a stand-alone operation, there is no reason why it could not incorporate Light Rail as a future feeder service.

Extract from the Kowloon-Canton Railway Corporation Annual Report 2001

FINANCIAL RESULTS

For the 17th year running since 1985, the Corporation had yet another year of profitability in 2001. Net profit after tax was \$2,436 million, or 6.5% higher than the previous year.

Despite the Managing Board's decision to freeze fares for the fourth year in a row, we earned transport revenues of \$4,139 million, an increase of 1.2% over the revenues of \$4,089 million in the previous year. Other recurrent revenue, which is derived from property rents and other sources such as

telecommunications increased by 2.5% to \$658 million.

Operating profit increased by 0.6% to \$1,912 million in 2001, compared with \$1,901 million in 2000. At the same time, operating costs grew 1.9% to \$2,885 million. Such growth is to be expected as we expand in preparation for the opening of West Rail in 2003 and two of the East Rail Extensions in 2004. As a result of increased expenditure, the operating margin decreased slightly from 40.2% in 2000 to 39.9% during the year.

As in previous years in Government, which is the sole shareholder of KCRC, decided to forego a dividend in 2001. This allows the Corporation's net profits to be deployed towards the cost of building West Rail, Phase I, the East Rail Extension and other new railway projects.

Although the Corporation's profits grew to their highest level in six years, we recognise the danger of being overly reliant on fares, especially cross-boundary fares, as our primary source of revenue and profits. We are therefore looking at the opportunities for revenue diversification, such as from advertising in tunnels and on embankments, and an expansion of the leveraged leasing deals that have been so successful for us thus far.

We have also looked at the potential to reduce the longer-term growth of recurrent expenditure. Significant savings have already been identified and acted upon. For example,

although West Rail, Phase I, was planned as a standalone operation, we will save over 600 permanent posts by merging Light Rail into the future West Rail when it opens in 2003. Similar economies of scale are being examined in the context of planning the future staffing and maintenance of East Rail and the East Rail Extensions, by leveraging on the long-established East Rail organisation.

8. Capital of Corporation

(1) The authorized capital of the Corporation shall be an amount specified by the Financial Secretary under subsection (2) and shall be divided into shares of \$100,000 each.

(2) The Financial Secretary shall, on the day this section comes into operation, specify the amount of authorized capital of the Corporation based on the book value of all assets vested in the Corporation, rounded to the nearest \$100,000, and shall publish a notice in the Gazette specifying such amount.

(3) The Financial Secretary may, after consulting the Corporation, increase the authorized capital of the Corporation by order published in the Gazette.

(4) Shares in the authorized capital of the Corporation shall be allotted to the Government at par as required in writing by the Financial Secretary.

(5) All shares allotted to the Government under this section shall be registered in the books of the Corporation in the name of The Financial Secretary incorporated and held by him in trust on behalf of the Government.

(6) The Corporation shall not issue shares otherwise than under this section.

14. Dividends

(1) Subject to subsection (2), the Corporation may declare and pay dividends to the Government on the shares allotted to it under section 8 in the amount of the whole or part of the profits of the Corporation in any financial year.

(2) The Financial Secretary may, after consultation with the Corporation, and after taking into account the loan obligations and other debt of the Corporation, direct the Corporation to declare a dividend in the amount of the whole or part of the profits of the Corporation in any financial year after making allowance for—

(a) any sums carried to the credit of a reserve fund under section 13; and

(b) any accumulated loss disclosed in the balance sheet of the Corporation at the end of the financial year prior to the year in which the dividend is declared.

(3) Any dividend declared under this section shall be paid into general revenue.

(4) No dividend shall bear interest against the Corporation.

(5) Where a direction is given under this section, the Corporation shall comply with the direction and such a direction may require the moneys payable on account of the relevant dividend to be paid within a period and in a manner so specified in the direction.

8. 公司的資本

(1) 公司的法定資本為財政司司長根據第(2)款所指明的款額，並須分為若干股，每股 \$100,000。

(2) 財政司司長須在本條實施當日，根據歸屬公司的所有資產的帳面價值，指明公司的法定資本款額（計至最接近的 \$100,000 整數），並須在憲報刊登公告，指明該款額。

(3) 財政司司長可在諮詢公司後，藉在憲報刊登的命令增加公司的法定資本。

(4) 公司法定資本的股份須按財政司司長的書面規定，照票面值分配給政府。

(5) 根據本條分配給政府的所有股份，須以財政司司長的名義登記在公司的簿冊上，並由財政司司長以信託方式代表政府持有。

(6) 公司除根據本條外不得發行股份。

司長

14. 股息

(1) 在符合第(2)款的規定下，公司可就根據第8條分配予政府的股份，宣布股息，並派發款額為公司在任何財政年度的全部或部分利潤的股息予政府。

(2) 財政司司長在諮詢公司和考慮公司的債務負擔及其他債項後，可指示公司宣布款額為公司在任何財政年度扣除下列款項後的全部或部分利潤的股息——

(a) 根據第13條轉入儲備基金帳貸方的任何款項；及

(b) 宣布股息年度的前一財政年度完結時公司資產負債表上所披露的任何累積虧損。

(3) 根據本條宣布的任何股息，須撥入政府一般收入。

(4) 所有股息均不得生須由公司支付的利息。

(5) 凡有指示根據本條作出，公司須遵從該指示，而該指示可規定任何由派發有關股息而須支付的款項，須在該指示所指明的期間內，按照該指示所指明的方式支付。

16 May 2002

Ms Anita Sit
Clerk to Panel
LegCo Panel on Financial Affairs
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Anita,

LegCo Panel on Financial Affairs
Investment incomes of the Government

I refer to your letter of 11 April 2002 and provide at **Annex A** information on other various sources of investment incomes of the Government. Details are as follows -

- (a) Section I of Annex A shows the ongoing investment items (including Government's shareholding in public and private companies) of the Government as at end-March 2001. These investment items are reproduced from the Statement of Investments under the Capital Investment Fund (CIF) of the Annual Accounts of the Government. For details of these investment items, you may wish to look up page 342 of the Accounts of the Government for the year ended 31 March 2001. Section II of Annex A shows the investment items disposed of during the past five years (between 1996 and 2001). These items were the Sewage Services Trading Fund in 1998-99 and the Hong Kong IPM Manpower International Ltd. in 1999-2000.
- (b) Incomes generated from the investment items shown in Annex A are all in the form of dividends.
- (c) Dividends received over the years 1996-97 to 2000-01 from the investments mentioned in (a) above amounted to \$1,269 million in

1996-97, \$3,043 million in 1997-98, \$3,281 million in 1998-99, \$850 million in 1999-2000 and \$1,181 million in 2000-01, and are set out in detail in Section I of Annex A. Amounts of investment written off in respect of the two investment items disposed of as highlighted in Section II of Annex A are shown in the footnotes therein.

- (d) Dividends from Airport Authority, Hong Kong Science and Technology Parks Corporation, Kowloon-Canton Railway Corporation and MTR Corporation Limited are credited into the General Revenue Account (GRA) in accordance with the Airport Authority Ordinance, the Hong Kong Science and Technology Parks Corporation Ordinance, the Kowloon-Canton Railway Corporation Ordinance and the Mass Transit Railway Ordinance respectively, which provide that dividends paid to the Government shall become part of the general revenue. These moneys are managed in accordance with the provisions concerning general revenue as set out in the Public Finance Ordinance (Cap 2). Dividends from other investment items in Annex A are credited into the CIF. These moneys are managed as part of the moneys of the CIF in accordance with the provisions in the LegCo Resolution establishing the CIF.

I would also like to advise that the investment return to the fiscal reserves for the period from 1991-92 to 2001-02 shown on page 41 of your research report "Practices of Overseas Jurisdictions in Building up or Maintaining their Fiscal Reserves" only covers the portion classified as operating revenue. I have provided at **Annex B** showing the total investment income, including the capital portion, on the fiscal reserves for your reference.

Yours sincerely,

(Miss Denise Yue)
Secretary for the Treasury

Encls.

c.c. Hon Ambrose Lau Hon-chuen, GBS, JP
(Chairman of the LegCo Panel on Financial Affairs)

List of Investment Items

| Investment Items | Investment Income | | | | |
|--|-------------------|-------------------|-------------------|---------------------|-------------------|
| | 1996-97 \$'000 | 1997-98 \$'000 | 1998-99 \$'000 | 1999-2000 \$'000 | 2000-01 \$'000 |
| I. Ongoing Investment Items | | | | | |
| <i>Equity Holdings</i> | | | | | |
| 1. Airport Authority | - | - | - | - | - |
| 2. Asian Development Bank | - | - | - | - | - |
| 3. Hong Kong Industrial Technology Centre Corporation (became the Hong Kong Science and Technology Parks Corporation as from 7 May 2001) | - | - | - | - | - |
| 4. Hongkong International Theme Parks Ltd. | - | - | - | - | - |
| 5. Kowloon-Canton Railway Corporation | - | 300,000 | - | - | - |
| 6. MTR Corporation Ltd. (known as Mass Transit Railway Corporation before 2000-01) | - | 647,000 | 1,252,000 | - | - |
| 7. New Hong Kong Tunnel Company Ltd. | 6,750 | 6,244 | 18,113 | 2,250 | 16,031 |
| 8. The Applied Research Council | - | - | - | - | - |
| 9. Tradelink Electronic Commerce Ltd. | - | - | - | - | - |
| <i>Other Capital Investments</i> | | | | | |
| 10. Hong Kong Housing Authority | 1,151,101 | 1,418,106 | 1,228,421 | 659,957 | 980,854 |
| 11. Hong Kong Export Credit Insurance | - | - | - | - | - |
| 12. Companies Registry Trading Fund | 2,972 | 20,142 | 16,923 | 21,786 | 14,880 |
| 13. Electrical and Mechanical Services Trading | - | 44,735 | 78,462 | 98,287 | 100,815 |
| 14. Land Registry Trading Fund | 13,873 | 39,430 | 56,010 | 18,899 | 28,714 |
| 15. Office of the Telecommunications Authority Trading Fund | 26,658 | 27,115 | 35,402 | 30,512 | 30,474 |
| 16. Post Office Trading Fund | 67,576 | 539,964 | 595,178 | 17,904 | 8,834 |
| II. Investment Items Already Disposed of | | | | | |
| 1. Hong Kong IPM Manpower International Ltd. (Note) | - | - | - | - | - |
| 2. Sewage Services Trading Fund (Note) | - | - | - | - | - |
| Total Investment Income | 1,268,930 | 3,042,736 | 3,280,509 | 849,595 | 1,180,602 |

Note : The costs of investment written off in respect of the investment items disposed of are -

- (i) Hong Kong IPM Manpower International Ltd (disposed of in 1999-2000) : \$1.5 million
- (ii) Sewage Services Trading Fund (disposed of in 1998-99) : \$5,191 million

Investment Return to the Fiscal Reserves

| | Investment Return to Fiscal Reserves | | |
|----------------------------|--------------------------------------|----------------|------------|
| | Operating (Note) | Capital (Note) | Total |
| Year | \$ billion | \$ billion | \$ billion |
| 1991-92 | 3.0 | 1.1 | 4.1 |
| 1992-93 | 1.8 | 0.7 | 2.5 |
| 1993-94 | 3.4 | 1.2 | 4.6 |
| 1994-95 | 4.9 | 1.7 | 6.6 |
| 1995-96 | 5.9 | 2.4 | 8.3 |
| 1996-97 | 5.6 | 2.4 | 8.0 |
| 1997-98 | 15.0 | 2.9 | 17.9 |
| 1998-99 | 31.6 | 7.7 | 39.3 |
| 1999-2000 | 36.8 | 5.1 | 41.9 |
| 2000-01 | 19.5 | 4.0 | 23.5 |
| 2001-02 (revised estimate) | 0.2 | 0.4 | 0.6 |

Note : Investment income is classified into operating revenue and capital revenue as per the definition set out in the Medium Range Forecast. The relevant figures can be found from the Annual Accounts of the Government and the printed Estimates under the following Account/Funds -

- (a) Operating revenue - the investment earnings of the balance of the General Revenue Account (which is credited to revenue head Properties and Investments) and the investment earnings of the Land Fund
- (b) Capital revenue - the investment earnings of the balances of the Funds other than the Land Fund