

LEGISLATIVE COUNCIL BRIEF

MASS TRANSIT RAILWAY BILL

INTRODUCTION

At the meeting of the Executive Council on 14 September 1999, the Council ADVISED and the Acting Chief Executive ORDERED that the Mass Transit Railway Bill at **Annex A** should be introduced into the Legislative Council, to partially privatize the Mass Transit Railway Corporation (MTRC).

BACKGROUND AND ARGUMENT

Justification for Government Ownership of MTRC

2. Established as a statutory corporation in 1975 by the Mass Transit Railway Corporation Ordinance (Cap. 270), MTRC is mandated to construct and operate a mass transit railway system having regard to the reasonable public transport requirements of Hong Kong. Cap. 270 requires MTRC to operate on prudent commercial principles.

3. At present the Government wholly owns MTRC. Over the years Government equity has helped propel the expansion of the mass transit railway network, a major infrastructure project with massive capital investment requirement and substantial initial debt. To-date, MTRC runs one of the most efficient and profitable railway systems in the world. Its solid financial performance and sound corporate management have earned MTRC credit ratings identical to the sovereign rating of HKSARG.

Benefits of Privatization of MTRC

4. On 3 March 1999, the Financial Secretary announced in his Budget Speech the intention of the Government to privatize a substantial minority share of MTRC through an Initial Public Offering.

5. MTRC has demonstrated how a Government-owned entity can be run successfully under prudent commercial principles. We believe the introduction of private ownership will reinforce MTRC's commitment to competitiveness and efficiency. Privatization will bring strengthened market discipline to the running of the railway, promoting even greater levels of efficiency. It will also broaden MTRC's access to sources of capital and financing alternatives for new railway projects. This will facilitate the development of rail transport in Hong Kong.

6. Privatization of MTRC will also provide an attractive opportunity for the people of Hong Kong to participate in the success of a solid, well-managed company with strong growth potential and which features in the daily lives of many. The listing of a high quality, heavily capitalized company like MTRC will add stability and diversity to the Hong Kong stock market. A high-profile and successful public offering will help buttress Hong Kong's status as an international financial centre. It is also a practical demonstration of the Government's commitment to a free market economy. In addition, the public offering will generate proceeds for the General Revenue and provide a useful boost to Government finance in the medium term.

Government to Retain Majority Shareholding

7. The Government intends to remain as the majority shareholder after privatization (holding not less than 51% of the shares). We believe a continuing Government shareholding will be welcomed by the commuting public and by local and overseas investors and rating agencies who will see it as our support for MTRC's continuing role in the provision and expansion of the transport infrastructure in Hong Kong. This will help MTRC to maintain its credit ratings at the same level as the Government, thus enabling it to continue to access cost-effective financing.

THE REGULATORY FRAMEWORK

Fare Regulation

8. It is important that, after privatization, MTRC should continue to retain fare autonomy which will enable it to invest in the development and maintenance of the railway system. Indeed the loss of fare autonomy may run the risk of rendering MTRC shares unmarketable and frustrate the plan for privatization. Under the existing Mass Transit Railway Corporation

Ordinance (Cap. 270), MTRC is empowered to determine its own fares. In practice, it has to have regard to affordability, acceptability, and the fare levels of its competitors. MTRC also conducts consultation with the LegCo Panel on Transport and the Transport Advisory Committee on its annual fare review. Since the commencement of operations in October 1979, MTRC's average fare increase has been 7.5% per annum, which is lower than the average increase in Consumer Price Index (A) of 8.2% for the same period. In the light of the difficult economic conditions and low inflation, MTRC has not raised its fares since 1 September 1997.

9. For its part, the Government will continue to have an important role to play in promoting healthy competition between MTRC and other public transport modes so as to ensure that market forces act as a constraint on fare increases. We are committed to maintaining a level playing field and competitive environment to ensure that the commuting public will have a choice of competing transport modes at affordable prices.

New Rail Projects

10. As urbanization intensifies, railway extensions should become increasingly preferable to road development in providing mass public transport. The former carry many more commuters, take less land and are more friendly to the environment. Privatization will reinforce the commercial practice and discipline of MTRC in taking on new rail extensions that can compete with other modes of public transport and produce reasonable financial returns.

11. In the event that public interest and transport policy require MTRC to develop commercially unviable rail projects on social and economic grounds, Government is prepared to bridge the gap so that these projects can provide a commercial return. Such support must be separately identified and justified publicly, but could take the form of property development rights or contribution to railway infrastructure.

12. The Government will continue to have a major role to play in awarding new rail projects between a partially privatized MTRC and the KCRC which will remain 100 percent Government-owned. Direct competition between them will not naturally arise in cases of extension of the existing network as whoever operates the main network will have a distinct advantage from the system integration point of view. Projects which are entirely separated from any existing networks will be awarded taking into account long term transport planning considerations, the ability of MTRC

and KCRC to undertake the new project and other relevant transport policy considerations at the time. We believe it is in the public interest to promote as far as practicable competition between the two rail operators on a completely equal footing, regardless of ownership considerations.

Land Issues

13. Property development has made an important contribution to the financial viability of MTRC's rail projects. MTRC has played a useful role in the property developments over its railway stations and has established new communities along the railway footprint. It undertakes planning for the property developments, building a substantial part of the foundations and providing other common infrastructure. The property developments also help provide early patronage to the railway system. We believe MTRC should be allowed to continue its role in integrating railway and property developments. The existing policy of granting property development rights, where appropriate, on top of stations and depots will continue.

THE OPERATING AGREEMENT

14. The Government will enter into an Operating Agreement with the privatized entity, called MTR Corporation Limited (MTRCL), which is legally binding. The Operating Agreement will provide for all the detailed terms of the franchise, including the monitoring process by the Government and fare setting process by the Corporation. MTRCL will be responsible for maintaining a proper and efficient service. The Government will have the power to request MTRCL to review its operational arrangements and suggest improvements to MTRCL where appropriate. MTRCL will be required to comply with the Government's requests for such reviews, to give due consideration to the Government's suggestions, and to advise the Government on its reasons if it decides not to adopt them. The provisions in the Operating Agreement for MTRCL to set fares will include the need for MTRCL to take into account the acceptability to the public as gauged through consultation with the LegCo Panel on Transport and the Transport Advisory Committee.

15. The Operating Agreement will stipulate the performance levels required of MTRCL and provide for the mechanism for the Government to monitor services of MTRCL on the basis of these performance levels. Substantial or persistent breaches of these performance levels might be cause for imposition of penalties, suspension or revocation of franchise. There

will also be other indicators which measure the quality of service and serve to point to areas of improvement in the delivery of service. A summary of the principal headings of the Operating Agreement is at **Annex B**.

THE LEGAL FRAMEWORK

16. MTRC in its present form as a statutory corporation is not an appropriate vehicle for private ownership. Prior to privatization, we need to incorporate the new entity, i.e. MTR Corporation Limited as a public limited company under the Companies Ordinance (Cap. 32). All the assets and liabilities of MTRC will be vested in the new body corporate by way of the Mass Transit Railway Bill (The Bill). The Bill, once enacted, will repeal the existing Mass Transit Railway Corporation Ordinance (Cap. 270).

17. The new legislation will grant the new Corporation an exclusive franchise for running the existing MTR network for an initial term of 50 years, i.e. there will be a new franchise for the entire MTR network. We believe 50 years is appropriate as the base period for the calculation of the Internal Rate of Return for MTR projects is 40 years from commissioning whereas design and construction usually take seven to eight years. A 50-year franchise will also provide adequate incentive for MTRCL to continue to invest in the maintenance, upgrading and extension of the railway system. The Bill will provide for the extension of the franchise, and for suspension and revocation of the franchise in case of substantial breach of the franchise terms, as in the case of other public transport franchises like buses and ferries.

18. All the powers of the Hong Kong Railway Inspectorate in the existing Mass Transit Railway Corporation Ordinance (Cap. 270) which cover all aspects of monitoring of railway safety and investigation of railway incidents will be preserved in the Bill.

The Bill

19. The Bill comprises ten parts:

Part I: Preliminary

Clause 1 provides for the short title and commencement of the Bill as enacted. Clause 2 provides for the definition of certain terms used in the Bill.

Part II: Grant and Extension of Franchise

Clause 4 provides for the grant of a franchise to MTRCL to operate the railway for a term of 50 years and to construct any extension to the railway. This provision also makes reference to the Operating Agreement entered into between the Government and MTRCL which contains the terms and conditions of the franchise. Clause 5 provides for the extension of MTRCL's franchise by the Chief Executive in Council.

Part III: Performance under the Franchise

Clause 9 requires MTRCL to maintain a proper and efficient service at all times in accordance with the Bill and the Operating Agreement. The Secretary for Transport is empowered to ask for information (clause 10) and records (clause 11) to enable him to monitor MTRCL's compliance with its obligations under the Bill and the Operating Agreement. Clause 14 allows the Chief Executive in Council to impose financial penalties on MTRCL for any substantial or persistent breach of the Bill or the Operating Agreement.

Part IV: Suspension, Revocation and Expiry of Franchise

Clause 15 provides for the suspension of the franchise in the case of an emergency or substantial breakdown in the operation of the railway and for the compensation payable to MTRCL in that event. Clauses 16, 17 and 18 provide for the revocation of the franchise in the event of default by MTRCL as defined in those provisions. Clause 19 authorizes the Government to take possession of railway property kept by MTRCL upon revocation or expiry of the franchise and to use or dispose of such property as it sees fit. The purpose of this provision is to give Government the powers necessary to ensure the minimum disruption to railway services in the event of revocation or expiry of MTRCL's franchise. Clause 20 provides for the compensation payable in respect of railway property taken or used under clause 19.

Part V: Compensation

Part V provides for the determination of compensation by an arbitrator should Government and a claimant fail to agree on the amount of compensation due to the claimant, and for matters related to payment

of such compensation.

Part VI: Safety of Railway

Clauses 26 and 27 provide for the appointment, duties and powers of railway inspectors. Clause 28 provides for the Secretary for Transport to require MTRCL to remedy defects in the railway which are likely to cause a risk of injury to any person.

Part VII: Transport Interchanges

Clauses 31 and 32 provide for the delineation and management of transport interchanges by MTRCL.

Part VIII: Regulations and By-laws

Clause 33 provides for the making of subsidiary legislation by the Secretary for Transport to regulate matters under the Bill. Clause 34 provides for the making of bylaws by MTRCL to regulate the conduct of passengers using the railway.

Part IX: Vesting of Property and Transitional Arrangements

Clause 37 provides for the vesting of the whole of the property, rights and liabilities of MTRC in MTRCL. Clauses 38 to 41 provide for MTRCL to be treated, in relation to property etc. so vested, in all respects as if it were MTRC. Similar provisions are made in respect of company accounts (clause 43), taxation matters (clause 45) and interests in land (clause 47). Consistent with this approach, clause 46 exempts MTRCL from stamp duty in respect of property etc. vested under Part IX. Clause 42 provides for the holding of shares in MTRCL by the Financial Secretary Incorporated. Clause 52 provides for the dissolution of MTRC at an appropriate time.

Part X: Miscellaneous

Clause 53 provides for a right of appeal to the Chief Executive in Council against decisions of the Secretary for Transport and other public officers made under certain provisions of the Bill. Clause 54 and Schedule 2 exempt MTRCL from the operation of certain laws. Clause 58 allows for the costs related 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 the sale or listing before being paid into general revenue. Clause 59 allows MTRCL's shares and debt securities to be treated as authorized investments for the purposes of the Trustee Ordinance (Cap. 29). Clause 63 provides for the repeal of the Mass Transit Railway Corporation Ordinance (Cap. 270) and for the subsidiary legislation and notices under that Ordinance as set out in Schedules 3, 4 and 5 to be adopted as subsidiary legislation and notices under the Bill. Clause 64 and Schedule 6 provide for consequential amendments to other enactments.

Legislative Timetable

20. The legislative timetable will be :

Publication in the Gazette	24 September 1999
First Reading and Commencement of Second Reading Debate	13 October 1999
Resumption of Second Reading Debate, Committee Stage and Third Reading	To be notified

Human Rights Implications

21. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

22. We have not set any particular deadline for the Initial Public Offering, although, market conditions permitting, for budgetary reasons, we prefer that it should take place in 2000-01. For the purpose of fiscal planning, we are assuming that the Government would receive proceeds of \$ 30 billion through the sale of the stock during 2000-02. This will provide a useful boost to Government finance in the medium term. The actual proceeds will however depend on a number of factors, including valuation, market conditions and the size of the offering. We propose to deduct costs related to the sale of shares and listing from the sale proceeds of the public offering and have included a provision in the Bill to effect this.

23. At present, the Chief Inspecting Officer (Railways) is responsible for monitoring the safety of the Mass Transit Railway. Transport Department is not involved in the day-to-day monitoring of the MTR services. The Department will need to gradually expand its expertise and capability to monitor the passenger services of the privatized MTRC. Initially the Transport Department will create a small unit through internal redeployment to absorb the additional workload generated by the Bill. It will be necessary to strengthen this unit through bidding for additional resources in the usual way. There are no other additional financial and staffing implications.

ECONOMIC IMPLICATIONS

24. The privatization of MTRC will reinforce the Government's commitment to a free market economy and competition. MTRCL's access to equity from the market will mean that Government resources which would otherwise go into funding of railway projects can be diverted to other priority areas of investment. The listing of MTRCL will help diversify the local stock market, which in turn will help enhance the attraction of Hong Kong as an international financial centre. World-wide experience suggests that privatization improves corporate efficiency and enhances productivity.

PUBLIC CONSULTATION

25. The Transport Advisory Committee (TAC) and the LegCo Panel on Transport have been consulted on the privatization of MTRC on 22 June 1999 and 25 June 1999 respectively.

PUBLICITY

26. A press release on the publication of the Mass Transit Railway Bill will be issued on 24 September 1999. A spokesman will be available to answer media enquiries.

INQUIRY

27. All inquiries on the contents of this Brief should be directed to Mr Roy TANG, Principal Assistant Secretary, Transport Bureau at Tel: 2189 2183 or by fax at 2573 5246.

Transport Bureau
24 September 1999

LEGISLATIVE COUNCIL BRIEF
MASS TRANSIT RAILWAY BILL

List of Annexes

Annex A - Mass Transit Railway Bill

Annex B - A summary of the principal headings of the Operating Agreement

MASS TRANSIT RAILWAY BILL

CONTENTS

Clause Page

**PART I
PRELIMINARY**

1.	Short title and commencement	1
2.	Interpretation	2
3.	Appointed day	3

PART II

GRANT AND EXTENSION OF FRANCHISE

4.	Grant of franchise to Corporation to operate railway	4
5.	Extension of franchise	4
6.	Restriction on transfer of franchise	5
7.	Directors of Corporation	5
8.	Chief Executive may appoint additional directors	5

PART III

PERFORMANCE UNDER FRANCHISE

9.	Corporation to maintain proper and efficient service	6
10.	Secretary may obtain information	6

Clause		Page
11.	Records	7
12.	Limitation on powers under sections 10 and 11	9
13.	Chief Executive in Council may give directions	9
14.	Chief Executive in Council may impose financial penalty	10

PART IV

SUSPENSION, REVOCATION AND EXPIRY OF FRANCHISE, ETC.

15.	Suspension of franchise	12
16.	Default under franchise	14
17.	Defaults capable of remedy	14
18.	Revocation of franchise	15
19.	Use of railway property by Government	18
20.	Compensation for use of railway property under section 19	19
21.	Government may be required to take possession of railway property	20
22.	Power of entry	21

PART V

COMPENSATION

23.	Settlement or determination of claim for compensation	22
24.	Provisional payment pending determination of compensation	22
25.	Interest on compensation	23

Clause		Page
--------	--	------

PART VI

SAFETY OF RAILWAY

26.	Appointment of inspectors	24
27.	General powers of inspectors	24
28.	Secretary may require Corporation to carry out works in interest of safety	26
29.	Offence of negligent act or omission by employee	27
30.	Offence of wilfully endangering safety	28

PART VII

TRANSPORT INTERCHANGES

31.	Transport interchanges	28
32.	Application of other Ordinances	29

PART VIII

REGULATIONS AND BYLAWS

33.	Regulations	30
34.	Bylaws	33
35.	Further powers in relation to regulations and bylaws	36

PART IX

VESTING PROVISIONS AND TRANSITIONAL ARRANGEMENTS

36.	Interpretation	38
-----	----------------	----

Clause		Page
Vesting		
37.	Property, etc. of MTRC to vest in Corporation	38
38.	Agreements, transactions, etc. affecting MTRC	39
39.	Security	41
40.	Miscellaneous supplementary provisions	41
41.	Employment-related matters	42
Matters relating to Corporation as a company		
42.	Share capital	43
43.	Accounts	44
44.	Distribution of dividend	46
Taxation and revenue matters		
45.	Taxation	47
46.	Stamp duty	48
Miscellaneous		
47.	Interests in land	48
48.	Perfection of vesting of foreign property, rights and liabilities	49
49.	Evidence of vesting	50
50.	Waiver of prohibition of vesting	51
51.	Evidence: books and documents	51
52.	MTRC to continue in existence until dissolved	51

Clause		Page
PART X		
MISCELLANEOUS		
53.	Appeal to Chief Executive in Council	52
54.	Application of certain laws to Corporation	53
55.	Railway premises are public places	54
56.	Corporation may prosecute in its name	54
57.	No civil liability for breach of statutory duty	54
58.	Proceeds from sale, etc. of Government's shares in Corporation	54
59.	Securities of Corporation as authorized investment	55
60.	Corporation not a public body	56
61.	Requirement for Secretary to consult Corporation	56
62.	Whether a notice, etc. is subsidiary legislation	56
63.	Repeal, etc.	57
64.	Consequential amendments	58
Schedule 1	Sections 4 and 9 of the repealed Ordinance	
Schedule 2	Provisions of Public Health and Municipal Services Ordinance disapplied	
Schedule 3	Regulations, etc. adopted under section 63(2) of this Ordinance	
Schedule 4	Bylaws adopted under section 63(3) of this Ordinance	
Schedule 5	Notices adopted under section 63(4) of this Ordinance	
Schedule 6	Consequential amendments	

A BILL

TO

Provide for -

- (a) the granting of a franchise to the MTR Corporation Limited, a company incorporated under the Companies Ordinance (Cap. 32), to operate the Mass Transit Railway and to construct and operate any extension;
- (b) the regulation of the operation of the Mass Transit Railway under the franchise, including all aspects of safety on the railway;
- (c) the repeal of the Mass Transit Railway Corporation Ordinance (Cap. 270), the dissolution of the Mass Transit Railway Corporation incorporated under that Ordinance and the vesting of the property, rights and liabilities of the Mass Transit Railway Corporation in the MTR Corporation Limited;
- (d) matters relating to the incorporation of the MTR Corporation Limited, the allotment of shares of the company and the application of various enactments in relation to the company,

and for connected purposes.

Enacted by the Legislative Council.

PART I

PRELIMINARY

1. Short title and commencement

- (1) This Ordinance may be cited as the Mass Transit Railway Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Transport by notice in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context requires otherwise -

“appointed day”(指定日期) means the day designated as the appointed day under section 3;

“Commissioner”(署長) means the Commissioner for Transport;

“Corporation”(地鐵公司) means the MTR Corporation Limited;

“extension”(延長部分) means, in relation to the railway, an extension to the railway provided for in a scheme authorized under the Railways Ordinance (Cap. 519);

“franchise”(專營權) means the franchise granted under section 4;

“franchise period”(專營期) means the period for which the franchise is granted under section 4, as extended under this Ordinance;

“inspector”(視察主任) means a person appointed as an inspector under section 26;

“Mass Transit Railway”(地下鐵路) means the railway system known as the Mass Transit Railway and indicated on plans endorsed by the Secretary and deposited by the Corporation with the Land Registry from time to time, or any part of that system;

“Mass Transit Railway Corporation”(地下鐵路公司) means the entity of that name established by section 3(1) of the repealed Ordinance;

“MTR Corporation Limited” (地鐵有限公司) means the entity of that name incorporated under the Companies Ordinance (Cap. 32);

“MTRC” means the Mass Transit Railway Corporation;

“operating agreement” (營運協議) means the agreement or agreements specified in section 4(2) as having effect from time to time;

“railway” (鐵路) means the Mass Transit Railway;

“railway premises” (鐵路處所) means -

- (a) any area, space or building occupied by the Corporation which is designed, equipped or set apart for the carriage of passengers by train or for affording facilities incidental to the carriage of passengers by train; and
- (b) any train on premises specified in paragraph (a);

“repealed Ordinance” (已廢除條例) means the Mass Transit Railway Corporation Ordinance (Cap. 270);

“Secretary” (局長) means the Secretary for Transport;

“service” (服務) means railway service;

“transport interchange” (運輸交匯處) means any area, space or building delineated in plans certified by the Commissioner and deposited by the Corporation in the Land Registry under section 31.

(2) Reference in this Ordinance to construction of the railway is a reference to undertaking every stage of the process beginning with its design and planning and ending when the railway is brought into operation.

3. Appointed day

The Secretary may, by notice in the Gazette, designate a day to be the appointed day for the purposes of this Ordinance.

PART II

GRANT AND EXTENSION OF FRANCHISE

4. Grant of franchise to Corporation to operate railway

(1) Subject to this Ordinance, the Corporation is granted the franchise, for a period of 50 years from the appointed day -

- (a) to operate the Mass Transit Railway, including any extension;
- (b) to construct any extension.

(2) The terms and conditions agreed between the Government and the Corporation as having effect with respect to the franchise granted under this section are those set out in one or more agreements entered into between the Government and the Corporation which are declared by their terms to be an operating agreement for the purposes of this Ordinance or to be an agreement amending or supplementing such an agreement.

5. Extension of franchise

(1) At any time or times during the franchise period, but not later than 5 years before the expiry of that period, the Corporation may apply to the Chief Executive in Council for an extension of the franchise.

(2) An application for extension of the franchise under this section -

- (a) shall be made by notice to the Secretary; and
- (b) shall be accompanied by all materials that the

Corporation wishes to put forward in support of the application.

(3) The Secretary shall submit to the Chief Executive in Council a report setting out his recommendation as to whether, having regard to all relevant considerations (including any provision of the operating agreement relating to the extension of the franchise), the Corporation's franchise should be extended.

(4) The Chief Executive in Council may approve an extension of the franchise, but shall only do so if he is satisfied that the Corporation is capable of maintaining a proper and efficient service under this Ordinance and the operating agreement.

(5) Notice of any extension of the franchise granted under this section shall be published in the Gazette.

6. Restriction on transfer of franchise

The Corporation shall not transfer the franchise or any part of it without the approval of the Chief Executive in Council.

7. Directors of Corporation

Unless the Chief Executive in Council otherwise permits, a majority of those directors of the Corporation who are not additional directors appointed under section 8 must be persons ordinarily resident in Hong Kong.

8. Chief Executive may appoint additional directors

(1) The Chief Executive may appoint, for a period he directs, not more than 3 persons to be additional directors of the Corporation (in this section referred to as "additional

director”).

(2) An additional director may not be removed from office except by the Chief Executive.

(3) Subject to this Part, an additional director shall be treated for all purposes as if he had been appointed at a general meeting of the Corporation as a director of the Corporation.

(4) Without affecting the generality of subsection (3), an additional director shall, in the same manner and to the same extent as any other director of the Corporation, be entitled

-

(a) to participate in meetings of the Corporation and the board of directors of the Corporation;

(b) to have access to all material concerning the affairs of the Corporation; and

(c) to be furnished with such information with respect to the affairs of the Corporation as he may specify.

(5) The Companies Ordinance (Cap. 32) and any other law, and any document, shall be construed subject to this section.

PART III

PERFORMANCE UNDER FRANCHISE

9. Corporation to maintain proper and efficient service

The Corporation shall maintain a proper and efficient service at all times during the franchise period in accordance with this Ordinance and the operating agreement.

10. Secretary may obtain information

(1) The Secretary may, by notice in writing to the Corporation, require the Corporation -

- (a) to afford the Secretary sufficient facilities for obtaining information with respect to the business and affairs of the Corporation in connection with the franchise; and
- (b) in the manner and at the reasonable times specified in the notice, to furnish the Secretary with information with respect to the matters specified in paragraph (a) and afford to him facilities for the verification of that information,

and to do so within a period specified in the notice, being a period that is reasonable in the circumstances.

(2) In subsection (1), reference to information is a reference to information which the Secretary may reasonably require for verifying that the Corporation has complied with the provisions of this Ordinance, the operating agreement and any direction, specification or requirement given under this Ordinance or the operating agreement.

(3) If the Corporation, without reasonable excuse, fails to comply with a notice given under this section the Corporation commits an offence and is liable to a fine at level 4.

11. Records

(1) The Corporation shall keep, to the satisfaction of the Secretary, records in respect of the following matters relating to the railway -

- (a) the number and carrying capacity of trains in use or under maintenance;

- (b) the number of journeys undertaken and the total distance travelled;
- (c) the number of passengers carried;
- (d) the receipts;
- (e) details of any incident causing a service breakdown of 20 minutes or more;
- (f) the maintenance of trains;
- (g) the number and types of trains, and their carrying capacity, on order or under construction together with details of the likely availability of such trains for use in the operation of the railway.

(2) The Secretary may, by notice in writing to the Corporation, require the Corporation -

- (a) to furnish to the Secretary, at the reasonable times and in the form specified in the notice, copies of the records kept by the Corporation in accordance with subsection (1);
- (b) to permit the Secretary, or any other person authorized in writing by him, to inspect at any reasonable time all records kept by the Corporation in accordance with subsection (1),

and to do so within a period specified in the notice, being a period that is reasonable in the circumstances.

(3) The Secretary or other person authorized by the Secretary may make copies of records inspected under subsection (2) (b).

(4) If the Corporation, without reasonable excuse, fails to comply with subsection (1), or with a notice given under subsection (2), the Corporation commits an offence and is liable

to a fine at level 4.

12. Limitation on powers under sections 10 and 11

- (1) Nothing in section 10 or 11 requires the Corporation or any other person -
 - (a) to produce any document which the Corporation or that other person could not be compelled to produce in civil proceedings in the High Court; or
 - (b) in complying with any requirement for the furnishing of information, to provide any information which the Corporation or that other person could not be compelled to provide in evidence in civil proceedings in the High Court.

- (2) Neither the Secretary nor any other person shall disclose any information obtained pursuant to section 10 or 11 unless he has consulted the Corporation regarding his intention to do so.

13. Chief Executive in Council may

give directions

- (1) The Chief Executive in Council may, if he considers the public interest so requires, and after consultation between the Secretary and the Corporation, give directions in writing to the Corporation in relation to any matter concerning the franchise.

- (2) The directions may be of a general character or related to a specific obligation of the Corporation under the franchise.

- (3) The Corporation shall comply with any direction given, unless the direction is inconsistent with this Ordinance.

- (4) The Government is liable to pay compensation to the

Corporation for loss or damage of any kind (including consequential loss) sustained by the Corporation and in any way arising from or attributable to the Corporation's compliance with a direction under this section.

(5) Reference in subsection (4) to loss or damage includes reference to loss or damage arising from or attributable to the Corporation's compliance with a direction under this section that is contrary to prudent commercial principles.

14. Chief Executive in Council may impose

financial penalty

(1) The Chief Executive in Council may, on a reference by the Secretary, by notice in writing impose on the Corporation a financial penalty specified in the notice for any failure by the Corporation to comply with any provision of this Ordinance or the operating agreement, or with any direction, specification or requirement given under this Ordinance or the operating agreement.

(2) The Corporation shall not be found liable to the imposition of a penalty under subsection (1) unless -

(a) the Corporation has been given an opportunity to make representations to the Chief Executive in Council; and

(b) the Chief Executive in Council is satisfied -

(i) that the failure is substantial or is persistent in nature; and

(ii) where the obligation is one of a continuing nature, that the Corporation has had a reasonable opportunity of remedying the failure.

(3) A financial penalty imposed under this section shall not exceed -

(a) in respect of any failure -

(i) in the case of a first imposition of such a penalty, an amount equal to a fine at level 3;

(ii) in the case of a second imposition of such a penalty, an amount equal to a fine at level 4;

(iii) in the case of a third or subsequent imposition of such a penalty, an amount equal to a fine at level 5; and

(b) in respect of any failure which is of a continuing nature, \$10,000 for each day on which the failure continues,

and in this subsection, reference to an amount equal to a fine at a certain level is a reference to the amount shown in Schedule 8 to the Criminal Procedure Ordinance (Cap. 221) as the amount of a fine of that level for an offence under an Ordinance.

(4) A financial penalty imposed under this section is recoverable by the Government as a civil debt.

(5) Where the Chief Executive in Council is considering the imposition of a penalty on the Corporation under this section, he shall not take into account any failure of the Corporation which was considered for the purposes of a previous imposition of a penalty on the Corporation under this section, unless the Corporation has failed to pay that previous penalty or to rectify any default that gave rise to the failure in question.

(6) This section does not apply to any provision of this

Ordinance the contravention of which is an offence under this Ordinance.

PART IV

SUSPENSION, REVOCATION AND EXPIRY OF FRANCHISE, ETC.

15. Suspension of franchise

(1) If, on a reference by the Secretary, the Chief Executive in Council considers that -

(a) an emergency exists or is likely to come into existence; or

(b) there is or is likely to be for any reason a substantial breakdown in the operation of the railway, other than a breakdown that appears to be capable of being remedied within a reasonable period,

and if he considers that it is in the public interest to do so, the Chief Executive in Council may order that the franchise be suspended either wholly or in part.

(2) Before making any reference to the Chief Executive in Council under subsection

(1) (b) the Secretary shall, as far as is practicable in the circumstances, consult the Corporation in relation to the proposed reference.

(3) An order for suspension under subsection (1) remains in effect until the Chief Executive in Council orders the suspension terminated.

(4) Notice in writing of any order made under subsection (1) or (3) shall be given to the Corporation.

(5) Where the franchise is suspended under subsection

(1) (whether wholly or in part), the Government, its nominee or a third party designated by the Government -

(a) may take possession of any property used or kept by the Corporation for the purposes of or in connection with the suspended part of the franchise;

(b) during the course of the suspension, may retain any property taken possession of under paragraph (a) and may use that property in the operation of the railway as it thinks fit.

(6) The Government is liable to pay compensation -

(a) for the use of, loss of or damage to any property taken possession of under subsection (5); and

(b) except where a franchise is revoked under section 18, for loss or damage of any kind (including consequential loss) sustained by the Corporation and in any way arising from or attributable to the suspension of the franchise under subsection (1).

(7) The right conferred under subsection (5) to take possession of property and to use that property in the operation of the railway includes the right to keep or maintain the property in whatever condition, or to alter the property in whatever manner, is considered appropriate for that purpose and, without affecting any entitlement to compensation under subsection (6), nothing in this Ordinance or any other law imposes on the Government any obligation in relation to the condition in which property taken under subsection (5) is to be kept or returned.

16. Default under franchise

For the purposes of sections 17 and 18, the Corporation is in default under the franchise if -

- (a) either of the following occurs -
 - (i) there has been a substantial failure by the Corporation to discharge an obligation under the operating agreement; or
 - (ii) the Corporation has failed or there is a likelihood of its failing substantially to operate the railway in accordance with this Ordinance,

and the failure (or likely failure) results in or is likely to result in -

- (A) a substantial breakdown of the service;
 - (B) the safety of persons travelling on the railway or being on the railway premises being endangered in a manner likely to result in serious injury to those persons; or
 - (C) serious injury to or the death of persons travelling on the railway or being on the railway premises; or
- (b) a voluntary winding up of the Corporation is commenced or a winding up order in respect of the Corporation is made,

and the expression “default” shall be construed accordingly.

17. Defaults capable of remedy

(1) Where it appears to the Secretary that the Corporation is in default, and that the default is one which is capable of being remedied, the Secretary may serve on the Corporation a notice calling upon the Corporation -

- (a) to remedy the default or to take measures or make arrangements to the satisfaction of the Secretary to ensure that the default is remedied; and
- (b) to do so within the period specified in the notice, being a period that is reasonable in the circumstances, or within a further period as the Secretary may allow.

(2) Unless the circumstances require otherwise, the period specified in a notice served under subsection (1) shall be a period of 28 days or more.

18. Revocation of franchise

(1) Where -

- (a) the Secretary reports to the Chief Executive in Council that the Corporation has failed to comply with a notice served under section 17; or
- (b) it appears to the Chief Executive in Council that the Corporation is in default, and the Secretary has reported to the Chief Executive in Council that the default is not one which is capable of being remedied,

the Chief Executive in Council may direct the Secretary to serve on the Corporation a notice requiring the Corporation to show cause why an order should not be made under subsection (5).

(2) A notice served under subsection (1) shall specify

whether it is given in relation to subsection (1) (a) or subsection (1) (b) and shall, in addition -

(a) if given in relation to subsection (1) (a), give particulars of the notice referred to in that paragraph and brief particulars of the report of the Secretary;

(b) if given in relation to subsection (1) (b), specify the nature of the default.

(3) The Corporation may, within the period of 28 days from the date of service of the notice under subsection (1), or within a further period as the Chief Executive in Council may allow, make representations in writing to the Chief Executive in Council showing cause why an order should not be made under subsection (5).

(4) Before making an order under subsection (5) the Chief Executive in Council shall consider any representations made under subsection (3) and, if applicable, any matter referred to in subsection (6).

(5) Where the Chief Executive in Council is of the opinion that sufficient cause has not been shown as to why an order under this subsection should not be made, he may, by order -

(a) if it appears to him that the default is one which was capable of being remedied and that -

(i) a notice should have been served under section 17 and was not served, or that the terms of any notice served were unreasonable;

and

(ii) the default is still capable of being remedied,

direct the Secretary to serve a notice, or a further notice, under section 17, in terms determined by the Chief Executive in Council; or

(b) in any other case, if it appears to him just and reasonable to do so, but subject to subsection (8), revoke the franchise.

(6) In exercising his powers under subsection (5), the Chief Executive in Council shall take into consideration the extent to which the default was or is occasioned by circumstances beyond the control of the Corporation.

(7) An order made -

(a) under subsection (5) (a) shall be sent to the Secretary and a copy of the order shall be attached to the Secretary's notice under section 17;

(b) under subsection (5) (b) shall be served on the Corporation and shall be published in the Gazette, as soon as practicable after that service.

(8) Where the proceedings described in this section relate to a matter which is the subject of an appeal under section 53(1), the Chief Executive in Council shall not make an order under subsection (5) (b) until the appeal has been determined or abandoned.

(9) The Government is not liable to pay any compensation in respect of the revocation of the franchise under this section, except for any compensation payable under section 20.

19. Use of railway property by Government

(1) Where the franchise is revoked under section 18 or has expired and has not been extended under section 5, the Government, its nominee or a third party designated by the Government may take possession of any property used or kept by the Corporation for the purposes of or in connection with the franchise and may use that property in the operation of the railway as it thinks fit.

(2) Property taken possession of under subsection (1) may be retained -

(a) for an initial period not exceeding 2 years, as may be determined by the Chief Executive in Council; and

(b) for such further successive periods not exceeding 6 months each as the Chief Executive in Council may determine,

and notice of any such determination shall be published in the Gazette.

(3) Subject to subsections (4) and (5), at any time during or upon the expiry of a period of retention under this section, property taken possession of under this section may be returned to the Corporation or may be otherwise disposed of in a manner and upon terms the Chief Executive in Council may think fit.

(4) At any time during the period for which any property is retained under subsection (2), the Corporation may by notice in writing to the Government inform the Government that the Corporation does not wish the property to be returned to the Corporation, and in that case the Government shall not return the property to the Corporation.

(5) The right conferred under subsection (1) to take possession of property and to use that property in the operation of the railway includes the right to keep or maintain the property in whatever condition, or to alter the property in whatever manner, is considered appropriate for that purpose and, without affecting any entitlement to compensation under section 20, nothing in this Ordinance or any other law imposes on the Government any obligation in relation to the condition in which property taken under subsection (1) is to be kept or returned.

(6) For the purpose of, and to the extent necessary to effect, the disposal under subsection (3) of any property taken possession of under this section (and for that purpose and to that extent only), title in the property is deemed to be vested in the Government.

20. Compensation for use of railway property

under section 19

(1) The Government is liable to pay compensation for the use of, loss of or damage to any property taken possession of under section 19.

(2) If property taken possession of under section 19 is disposed of under section 19(3) otherwise than by being returned to the Corporation, compensation is payable in accordance with subsection (1) to the extent that the property is not replaced or its loss compensated for in some other manner.

(3) Where property taken possession of under section 19 is property that is already in the possession of the Government, its nominee or a third party designated by the Government by virtue of the exercise of powers conferred under section 15(5), the amount

of any compensation payable under section 15(6) shall be deducted from the amount of compensation that would otherwise be payable under this section.

(4) Notice given by the Corporation under section 19(4) does not affect the Corporation's entitlement to compensation under this section and, accordingly, the amount of any compensation payable under this section shall be calculated as if the Government had disposed of the property under section 19(3).

(5) The amount of any compensation payable to the Corporation under this section, shall be calculated in accordance with the provisions of the operating agreement relating to the calculation of compensation payable under this section.

21. Government may be required to take possession

of railway property

(1) Where there is any exercise of the power conferred under section 19(1) to take possession of any property used or kept by the Corporation for the purposes of or in connection with the franchise, the Corporation may as regards any such property not so taken on that occasion, by notice to the Government, request the Government to take possession of that property.

(2) A notice under subsection (1) shall be given within a period of 6 months from the date on which the power under section 19(1) was exercised and shall -

- (a) specify the property and its location;
- (b) contain information, or be accompanied by documents, verifying that the property was, at the time of the taking of possession by the Government under section 19(1), used or kept by the

Corporation for the purposes of or in connection with the franchise; and

(c) contain all information necessary for the Government to gain access to and take possession of the property.

(3) Unless there is some legal impediment to its doing so, or it is unable to gain access to the property, the Government shall take possession of the property specified in the notice.

(4) A taking of possession of property by the Government under this section shall be treated for the purposes of section 20 (1) and (2) as if it were a taking of possession of that property under section 19(1).

(5) For the purpose of, and to the extent necessary to effect, the disposal of any property taken possession of under subsection (3) (and for that purpose and to that extent only), title in the property is deemed to be vested in the Government.

(6) No action lies against the Government, in respect of any property taken possession of under this section, on the ground that the property was not property which the Government was entitled to take possession of under this section.

22. Power of entry

The Government, its nominee or a third party designated by the Government may, for the purpose of taking possession of property under this Part, enter upon any premises where it is reasonably necessary to do so for that purpose.

PART V

COMPENSATION

23. Settlement or determination of claim for compensation

(1) The Government may compromise or settle any claim for compensation under this Ordinance.

(2) In default of an agreement between the Government and a claimant as regards the amount of compensation, if any, payable to the claimant under this Ordinance, the compensation shall be determined by arbitration under the Arbitration Ordinance (Cap. 341).

(3) For the purposes of an arbitration under subsection (2), the Government and the claimant shall be regarded as having made an arbitration agreement within the meaning of the Arbitration Ordinance (Cap. 341) the terms of which include a provision that the compensation shall, in the absence of an agreement, be determined by a single arbitrator.

24. Provisional payment pending determination of compensation

(1) Pending any determination of compensation by an arbitrator as provided in section 23, the Government may pay to a claimant an amount as a provisional payment of the amount, if any, payable under the arbitrator's determination.

(2) A payment by the Government under subsection (1) in respect of a claim does not prejudice the claim or the submission of the claim to, or its determination by, the arbitrator under this Part; but the amount of compensation payable under the arbitrator's determination in respect of the claim shall be reduced by the amount of the payment made.

(3) Where the amount of compensation payable under a

determination of the arbitrator is reduced under subsection (2) by the amount of any payment made under subsection (1), only the amount of the compensation as so reduced bears interest for the purpose of section 25(1).

(4) Where the amount of a payment made by the Government under subsection (1) in respect of a claim exceeds the amount of the compensation determined by the arbitrator in respect of the claim, the amount of the excess is recoverable by the Government as a civil debt.

25. Interest on compensation

(1) Subject to this section and to section 24(3), a sum of money payable as compensation under this Ordinance bears interest as from the date on which the sum becomes payable until payment of the sum, calculated at a rate equal to the rate fixed by the Hong Kong Monetary Authority and known as the base rate, less 100 basis points.

(2) At any time after agreement or determination by an arbitrator of an amount of compensation to be paid under this Ordinance, the Government may, by notice published in the Gazette, require the claimant to collect the amount within the time and at the place specified in the notice, and in such case no interest is payable under this Ordinance in respect of the period after the expiry of the time so specified.

(3) No interest is payable under this Ordinance on any costs or remuneration in connection with the arbitration proceedings.

PART VI

SAFETY OF RAILWAY

26. Appointment of inspectors

(1) The Secretary may in writing appoint any person as an inspector for the purposes of this Part.

(2) An inspector who is not a public officer may be paid, as a fee for his services, an amount determined by the Financial Secretary, and that amount shall be paid out of moneys provided for the purpose by the Legislative Council.

(3) When exercising any power, an inspector shall produce evidence of his identity, and of his appointment, to any person who requests him to do so.

(4) An inspector may take with him other persons whom he reasonably requires to assist him in the exercise of his powers.

27. General powers of inspectors

(1) An inspector may -

- (a) at all reasonable times enter upon premises to which this subsection applies;
- (b) carry out on premises to which this subsection applies, or on any machinery, plant or equipment used in connection with the franchise, any test or inspection he considers expedient;
- (c) require a person to whom this subsection applies -
 - (i) to do anything which the inspector reasonably considers to be necessary for facilitating any test or inspection;
 - (ii) to provide the inspector with information which the inspector specifies relating to the railway or any machinery, plant or

equipment connected with the railway, and to answer any question or produce for inspection any document which is necessary for that purpose; and

(iii) to provide a copy of any document which the inspector may require to be produced for inspection under subparagraph (ii).

(2) Subsection (1) applies to -

(a) the railway, the railway premises and the premises of any contractor or subcontractor who is carrying out or has carried out any work on the railway; and

(b) any employee of the Corporation and any contractor or subcontractor mentioned in paragraph (a) and his employees.

(3) The powers conferred by this section or by regulations made under section 33 may be exercised by an inspector only for the purpose of -

(a) ensuring the safety of the railway or railway premises; or

(b) investigating an accident which involved the railway or which occurred on the railway or on railway premises, when the inspector is directed to do so pursuant to those regulations,

and are exercisable in relation to an extension only if the extension has been brought into operation for public use.

(4) Nothing in this section requires any person -

(a) to produce any document which he could not be compelled to produce in civil proceedings in the High Court; or

(b) in complying with any requirement for the furnishing of information, to provide any information which he could not be compelled to provide in evidence in civil proceedings in the High Court.

(5) An inspector shall not disclose any information obtained pursuant to this section unless he has given reasonable notice to the Corporation beforehand.

(6) Any person who -

(a) without reasonable excuse, fails to comply with a requirement under subsection (1) (c);

(b) knowingly furnishes to an inspector acting under subsection (1) (c) information that is false or misleading in a material particular; or

(c) obstructs an inspector in the exercise of his powers under subsection (1),

commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months.

28. Secretary may require Corporation to carry out

works in interest of safety

(1) Where in the opinion of the Secretary -

(a) the condition of a part of the railway which has been brought into operation, or of any machinery, plant or equipment of such part; or

(b) the manner in which the railway or a part of it is being operated,

is such as to cause, or to be likely to cause, a risk of injury to any person, the Secretary may require the Corporation to carry out

work or to take steps to ensure that the condition or manner of operation in question will cease to cause or to be likely to cause any such risk.

(2) A requirement under subsection (1) shall be effected by notice in writing delivered to the Corporation, and the notice -

- (a) shall specify the work or steps required to be carried out or taken;
- (b) may specify the time before which the Corporation shall commence to carry out the work or take the steps and the time by which the work or steps must be completed.

(3) If the Corporation fails without reasonable excuse to comply with a notice given under this section the Corporation commits an offence and is liable to a fine at level 6 and to a further fine of \$10,000 for each day during which it is proved that the failure to comply with the notice has continued without reasonable excuse.

(4) A copy of a document which purports to be a notice signed by the Secretary for the purposes of this section -

- (a) is admissible in evidence in proceedings for an offence under subsection (3) on its production without further proof; and
- (b) is sufficient evidence of the opinion of the Secretary and of the other matters contained in the document.

29. Offence of negligent act or omission by employee

(1) If -

- (a) in connection with his duty, an employee of the Corporation negligently does or omits to do anything in relation to the condition or operation of a part of the railway or railway premises after that part has come into operation; and
- (b) by that act or omission, the safety of a person being on the railway or on railway premises is endangered, or is likely to be endangered,

the employee commits an offence and is liable to a fine at level 2 and to imprisonment for 6 months.

(2) For the purposes of this section, negligence is the failure to exercise the care or skill that a reasonable employee in the situation would exercise.

30. Offence of wilfully endangering safety

If -

- (a) a person wilfully does or omits to do anything in relation to the railway or railway premises; and
- (b) by that act or omission, the safety of a person being on the railway or on railway premises is endangered, or is likely to be endangered,

the person commits an offence and is liable to a fine at level 6 and to imprisonment for 3 years.

PART VII

TRANSPORT INTERCHANGES

31. Transport interchanges

- (1) The Corporation shall set apart as a transport

interchange the whole or a part of any area, space or building, as the Corporation thinks necessary or expedient for the purpose of effecting and facilitating interchange between the railway and any other mode of transport.

(2) The Corporation shall, with the agreement of the Commissioner, prepare plans delineating the boundaries of every transport interchange.

(3) The Corporation may, with the agreement of the Commissioner, vary the boundaries of a transport interchange from time to time.

(4) Where the boundaries of a transport interchange are varied under subsection (3), the Corporation shall prepare plans delineating the boundaries of the transport interchange as varied and those plans shall supersede any previous plans as from the day on which a notice relating to those plans is published under subsection (6), or as from any later date that may be specified in the notice.

(5) Plans prepared under subsection (2) or (4) shall be numbered, dated and signed and certified by the Commissioner as being plans of the transport interchange to which they relate, and shall be deposited by the Corporation in the Land Registry.

(6) The Corporation shall cause a notice of the deposit of plans under subsection (5) to be published in the Gazette.

32. Application of other Ordinances

(1) Subject to subsection (2), the Public Bus Services Ordinance (Cap. 230) and the Road Traffic Ordinance (Cap. 374) as it applies to private roads apply to and in relation to transport interchanges and roads in transport interchanges respectively.

(2) If there is any inconsistency between a regulation or bylaw made under this Ordinance in relation to a transport interchange and a provision of a law specified in subsection (1) then, to the extent of that inconsistency, the regulation or bylaw prevails.

PART VIII

REGULATIONS AND BYLAWS

33. Regulations

(1) The Secretary may make regulations for anything that is necessary for the effective carrying out of this Ordinance, including but not limited to regulations for the purpose of any or all of the following -

- (a) controlling and regulating -
 - (i) the maintenance and operation of the railway by the Corporation;
and
 - (ii) the use of the railway by members of the public and their conduct while on railway premises;
- (b) providing for the obtaining of information from the Corporation for the purpose of section 10;
- (c) providing for the keeping of records by the Corporation for the purpose of section 11;
- (d) providing for the safety of persons being on the railway or on railway premises;
- (e) providing for the investigation of accidents on the railway or on railway premises, or in which the railway is involved;

- (f) controlling and regulating the use of transport interchanges;
- (g) regulating the disposal of lost property on the railway; and
- (h) providing for anything which under this Ordinance is to be or may be prescribed.

(2) Regulations made for the purpose of subsection (1) (e) -

- (a) may confer powers upon an inspector to compel the giving of information concerning accidents, including power to summon a person to attend before him for the purpose, and may make provision for the payment of persons so summoned; and
- (b) may require compliance with a summons or requirement made by an inspector, and may prohibit the obstruction of an inspector, or the giving of false or misleading information.

(3) Regulations made for the purpose of subsection (1) (f) may, in relation to transport interchanges and their use -

- (a) confer powers upon the Commissioner to give directions to the Corporation in respect of the control and regulation of vehicular and pedestrian traffic and the operation of public transport services, car parks and parking spaces;
- (b) confer powers upon the Commissioner to do any act, or cause any act to be done, which the Corporation is required or directed to do under the regulations but has failed to do, and to recover any costs incurred by or incidental to such act from the Corporation as a civil debt;

- (c) control and regulate the provision by the Corporation, subject to the approval of the Commissioner, of adequate, efficient, safe and continuous roads and facilities for -
 - (i) the use of transport interchanges by vehicles and members of the public;
 - (ii) the operation of public transport services;
 - (iii) the parking of vehicles;
- (d) confer powers upon the Corporation -
 - (i) to erect or place traffic signs, road markings and light signals;
 - (ii) to establish zebra crossings and light signal crossings;
 - (iii) to alter, suspend or cancel anything done under regulations made for the purposes of this paragraph,or to do so subject to the approval of the Commissioner;
- (e) confer powers upon the Corporation -
 - (i) to designate bus stops, light bus stands, taxi ranks, restricted and prohibited zones, car parks and parking spaces;
 - (ii) to impose speed limits;
 - (iii) to alter, suspend or cancel anything done under regulations made for the purposes of this paragraph,or to do so subject to the approval of the Commissioner;

- (f) confer powers upon the Corporation or any person authorized by the Corporation in that behalf to issue permits, authorizations, passes and tickets for traffic control or parking purposes;
- (g) provide for access to any transport interchange by vehicles and members of the public;
- (h) in any case where the prior approval of the Commissioner is required under this Ordinance for the doing of any act, authorize the Corporation to do that act without obtaining that prior approval where it is impracticable to do so;
- (i) provide for the powers of the employees of the Corporation, or other persons authorized by the Corporation in that regard, in controlling and regulating vehicular and pedestrian traffic; and
- (j) provide that no compensation is payable to the Corporation for anything done or required to be done under or by virtue of those regulations which are for the benefit of the operation of the transport interchanges in serving the railway.

34. Bylaws

(1) The Corporation may, under its common seal, make bylaws for any or all of the following purposes -

- (a) prescribing the terms and conditions relating to the use of its service;
- (b) controlling and regulating -
 - (i) the conduct of members of the public using the railway or on railway premises;

- (ii) a system for evidencing (whether by the issue of tickets or otherwise) the payment of fares on the railway and any contract of carriage of passengers on the railway;
 - (iii) advertising on railway premises; and
 - (iv) the custody and disposal of property found on railway premises;
- (c) protecting the property of the Corporation on railway premises;
- (d) in relation to a transport interchange -
 - (i) controlling and regulating classes of vehicular and pedestrian traffic as may be approved by the Commissioner;
 - (ii) controlling and regulating vehicles and the conduct of members of the public at bus stops, light bus stands and taxi ranks;
 - (iii) controlling and regulating vehicles and the conduct of members of the public in car parks and at parking spaces;
 - (iv) controlling and regulating the conduct of members of the public at other parts of a transport interchange;
 - (v) providing for any of the following things to be done subject to the approval of the Commissioner -
 - (A) erecting or placing traffic signs, road markings and light signals;

- (B) establishing zebra crossings and light signal crossings;
 - (C) altering, suspending or cancelling anything done under bylaws made for the purposes of this subparagraph;
- (vi) providing for the following things to be done subject to the approval of the Commissioner -
- (A) designating bus stops, light bus stands, taxi ranks, restricted and prohibited zones, car parks and parking spaces;
 - (B) imposing speed limits;
 - (C) altering, suspending or cancelling anything done under bylaws made for the purposes of this subparagraph;
- (vii) providing for the issuing of permits, authorizations, passes and tickets for traffic control or parking purposes and the imposing and collecting of charges for parking;
- (viii) providing for -
- (A) the towing away, impounding, removal and disposal of any vehicle or thing causing obstruction in a transport interchange;
 - (B) the imposition and collection of charges as approved by the Commissioner in respect of any such

towage or removal and of any impounding, storage, detention or service of such vehicle or thing;

- (ix) providing for the limitation or exclusion of liabilities of the Corporation in respect of any loss or damage to property;
- (x) authorizing any person to act on its behalf for the purposes of this paragraph.

(2) Bylaws shall not be made under this section which are inconsistent with this Ordinance or regulations made under this Ordinance.

(3) Bylaws made under this section are subject to the approval of the Legislative Council.

(4) The Corporation shall cause printed copies of all bylaws made under this section to be kept at its registered office and to be available for sale to any person at a reasonable cost.

35. Further powers in relation to regulations and bylaws

(1) Regulations made under section 33 or bylaws made under section 34 may confer authority upon employees of the Corporation or persons authorized by the Corporation in that regard on railway premises or in transport interchanges -

- (a) to detain any person reasonably suspected of having contravened this Ordinance, the regulations or bylaws and to take such other steps as may be provided for in the regulations or bylaws to ensure that the person is dealt with in accordance with

law;

- (b) to stop, search and detain any vehicle in connection with any contravention against this Ordinance, the regulations or bylaws.

(2) Regulations made under section 33 (1) (f) or bylaws made under section 34 may confer powers upon an employee of the Corporation or any person authorized by the Corporation in that regard -

- (a) to request a person suspected of having contravened this Ordinance, the regulations or bylaws to give his personal particulars to the requestor;
- (b) if a vehicle is involved in that contravention, to request the registered owner of the vehicle to give the personal particulars of the driver of the vehicle at the material time to the requestor.

(3) Regulations made under section 33 or bylaws made under section 34 may provide that a contravention of a specified provision of the regulations or bylaws is an offence and may prescribe penalties for that contravention not exceeding a fine at level 2 and to imprisonment for 6 months.

(4) Regulations made under section 33 or bylaws made under section 34 which provide that hawking on railway premises is an offence may also provide that all or any part of sections 86, 86A, 86C and 86D of the Public Health and Municipal Services Ordinance (Cap. 132) are to apply as if that offence was a hawker offence within the meaning of section 83 of that Ordinance.

(5) Bylaws made under section 34 (1) (d) may provide for a fixed penalty to be payable for contravention of any specified provision of the bylaws and for the recovery of that fixed

penalty.

PART IX

VESTING PROVISIONS AND TRANSITIONAL ARRANGEMENTS

36. Interpretation

(1) In this Part, unless the context requires otherwise, “financial year” (財政年度) means a year ending with 31 December, and reference to the last complete financial year of MTRC is a reference to the last financial year of MTRC ending before the appointed day.

(2) Reference in this Part to property, rights and liabilities of MTRC is a reference to

-

- (a) property and assets of every description (whether tangible or intangible) and rights and liabilities of every description (whether present or future, actual or contingent);
- (b) property wherever situated or rights and liabilities under the law of any place;
- (c) all such property, rights and liabilities, whether or not capable of being transferred or assigned by MTRC.

Vesting

37. Property, etc. of MTRC to vest in Corporation

(1) On the appointed day all the property, rights and liabilities to which MTRC was entitled or subject immediately

before that day become by virtue of this section property, rights and liabilities of the Corporation.

(2) Sections 38 to 41 are supplementary to this section and, accordingly, have effect on and from the appointed day subject to, and without limiting the generality of, subsection (1).

38. Agreements, transactions, etc. affecting MTRC

(1) Any agreement made, transaction effected or other thing done by, to or in relation to MTRC which is in force or effective immediately before the appointed day shall have effect as from that day as if made, effected or done by, to or in relation to the Corporation, in all respects as if the Corporation were the same person in law as MTRC.

(2) Accordingly, references (whether express or implied) to MTRC -

- (a) in any agreement made, transaction effected or other thing done by, to or in relation to MTRC (whether or not in writing);
- (b) in any process or other document issued, prepared or employed for the purpose of any proceedings before any court or other tribunal or authority;
- (c) in any other document whatever (other than an enactment) relating to or affecting any property, right or liability of MTRC which vests by virtue of section 37 in the Corporation,

shall be taken as from the appointed day as referring to the Corporation.

(3) Where immediately before the appointed day there is in force or effective an agreement made, transaction effected or

other thing done by, to or in relation to MTRC which refers (in whatever terms and whether expressly or by implication) to a person employed by or engaged in the business of MTRC, that agreement, transaction or other thing shall have effect, in relation to anything falling to be done on or after the appointed day, as if for that reference there were substituted a reference to such person as the Corporation may appoint or, in default of appointment, to the person employed by or engaged in the business of the Corporation who corresponds as nearly as may be to the person employed by or engaged in the business of MTRC in question.

(4) For the avoidance of doubt, reference in this Part to any agreement made, transaction effected or other thing done by, to or in relation to MTRC includes reference to

-

- (a) any guarantee, conveyance, deed, lease, licence, notice, permit, document granting or comprising any security, bond, mandate, instruction and other document or instrument entered into by, given to or by or addressed to MTRC;
- (b) any instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to or by MTRC, whether alone or jointly with another person and whether in writing or not;
- (c) any direction, order or notice made under any legislation;
- (d) any contract to which MTRC was not a party;
- (e) any entry on any register.

(5) Sections 39 to 41 are for the avoidance of doubt and do not affect the generality of this section.

39. Security

(1) Any security held immediately before the appointed day by MTRC, or by a person as nominee of, agent of or trustee for MTRC, shall be held by the Corporation, or by that person as nominee of, agent of or trustee for the Corporation (as the case may require), and shall be available to the Corporation (whether for its own benefit or for the benefit of any other person, as the case may be).

(2) In relation to any security vested in the Corporation by virtue of this Part and any liabilities secured by the security, the Corporation shall be entitled to the rights and priorities, and shall be subject to the obligations and incidents, which MTRC would have been entitled to and subject to if it had continued to hold the security.

(3) In this section, “security” (抵押) means any interest, legal or equitable, by means of which the payment or discharge of a debt or liability (whether present or future, actual or contingent) is secured, whether or not that interest is evidenced in writing.

40. Miscellaneous supplementary provisions

(1) The Corporation and all other persons have the same rights, powers and remedies for ascertaining, perfecting or enforcing any right or liability vested in the Corporation by virtue of this Part as they would have had if that right or liability had at all times been a right or liability of the Corporation; and in this subsection reference to rights and powers includes in particular a reference to rights and powers as to the taking or resisting of legal proceedings or the making or

resisting of applications to any authority.

(2) Any legal proceedings or applications to any authority pending or commenced by or against MTRC shall be continued by or against the Corporation to the exclusion of MTRC.

(3) Any judgment or award obtained by or against MTRC and not fully satisfied before the appointed day is enforceable by or against the Corporation to the extent that it was enforceable by or against MTRC immediately before that date.

(4) The functions of MTRC under any Ordinance as in force immediately before the appointed day which -

(a) relates to any part of the business of MTRC; or

(b) authorizes the carrying out of works designed to be used in connection with any part of the business of MTRC or the acquisition of land for the purpose of carrying out any such works,

become the functions of the Corporation for the purposes of that Ordinance.

41. Employment-related matters

(1) The effect of section 37 in relation to any contract of employment with MTRC in force immediately before the appointed day is merely to modify that contract (as from that day) by substituting the Corporation for MTRC and, accordingly, employment with MTRC and the Corporation under a contract of employment to which that section applies is deemed for all purposes to be a single continuing employment.

(2) Section 37 is effective to vest in the Corporation the rights and liabilities of MTRC under any agreement made, transaction effected or other thing done by, to or in relation to

MTRC for the payment of pensions, allowances or gratuities of every description along with all other rights and liabilities of MTRC and, accordingly -

- (a) any deed, rule, certificate, registration, exemption or other document constituting or relating to the Mass Transit Railway Corporation Retirement Scheme, the Mass Transit Railway Corporation Retention Bonus Scheme and the U.K. Office Retirement Scheme established for the benefit of employees of MTRC or any other body corporate related to MTRC; or
- (b) any entitlement to gratuity benefits payable by MTRC,

in force or effective immediately before the appointed day is construed and has effect, so far as the context allows, as if reference in that document to MTRC was a reference to the Corporation and as if that entitlement was payable by the Corporation.

(3) No member of the Board of MTRC or auditor of MTRC becomes by virtue only of section 37 or 38 a director or auditor of the Corporation.

Matters relating to Corporation as a company

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.

43. Accounts

(1) For the purpose of any accounts prepared by the Corporation for the purposes of the Companies Ordinance (Cap. 32) -

- (a) the Corporation shall be treated, on and from the appointed day, as if it were the continuation of MTRC;
- (b) the value of any asset and the amount of any liability of MTRC vested in the Corporation by virtue of this Part is taken to be the value assigned to that asset or the amount assigned to that liability in the audited accounts of MTRC for the last complete financial year of MTRC; and
- (c) the amount to be included in respect of any item is determined as if anything done by MTRC (whether by

way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the Corporation.

(2) Accordingly (and without affecting the generality of subsection (1)) -

- (a) the amount to be included from time to time in any reserves of the Corporation as representing the Corporation's accumulated realised profits is determined as if the profits realised and retained by MTRC had been realised and retained by the Corporation;
- (b) every other reserve or provision of MTRC becomes a reserve or provision of the Corporation; and
- (c) the amount, description and character of every reserve or provision of the Corporation which becomes a reserve or provision of the Corporation pursuant to paragraph (b) is the same in all respects as those of the corresponding reserve or provision of MTRC immediately before the appointed day.

(3) Without affecting the generality of subsection (1), on and from the appointed day all profits or losses of MTRC earned or incurred after the beginning of the financial year of MTRC in which the appointed day occurs are treated as profits or losses of the Corporation.

(4) For the purposes of the accounts of the Corporation prepared for the purposes of the Companies Ordinance (Cap. 32),

the vesting in the Corporation effected by virtue of this Part is taken -

- (a) to have been effected immediately after the end of the last complete financial year of MTRC; and
- (b) to have been a vesting of all the property, rights and liabilities to which MTRC was entitled or subject immediately before the end of the last complete financial year of MTRC.

(5) Section 122(1) of the Companies Ordinance (Cap. 32) applies to and in relation to the Corporation as if reference in that subsection to the period since the incorporation of the company was a reference to the period beginning immediately after the last complete financial year of MTRC.

44. Distribution of dividend

For the purpose of any distribution to which Part IIA of the Companies Ordinance (Cap. 32) applies and which is made by the Corporation during the financial year of the Corporation which includes the appointed day or at any time before any accounts are laid or filed in respect of that year -

- (a) sections 79F to 79L of that Ordinance have effect as if -
 - (i) reference in those sections to the company's accounts is a reference to the accounts of MTRC; and
 - (ii) reference in those sections to the company's last annual accounts or to the initial accounts of the company is a reference to the accounts of MTRC

prepared in accordance with section 16 of the repealed Ordinance
in respect of the last complete financial year of MTRC;

- (b) the accounts of MTRC mentioned in paragraph (a) (ii) are regarded as satisfying the requirements of sections 79G and 79I of that Ordinance.

Taxation and revenue matters

45. Taxation

(1) For the purposes of the Inland Revenue Ordinance (Cap. 112), on and from the appointed day the Corporation is treated as if it were the continuation of and the same person in law as MTRC.

(2) Accordingly (and without affecting the generality of subsection (1)) -

- (a) a vesting in the Corporation of any property, right or liability by virtue of this Part does not constitute a sale or other disposal of or a change in the nature of that property, right or liability for any purpose under the Inland Revenue Ordinance (Cap. 112);
- (b) the aggregate amount of any losses sustained by MTRC which are capable of but have not been carried forward and set off against assessable profits of MTRC for the purposes of section 19C of the Inland Revenue Ordinance (Cap. 112) as at the end of the last complete financial year of MTRC are deemed to be losses of the Corporation and, accordingly,

available for set off against the assessable profits of the Corporation (or the Corporation's share of assessable profits of a partnership in which it is a partner) for the purposes of that Ordinance.

(3) The profits of MTRC treated as profits of the Corporation in accordance with section 43 (3) -

- (a) shall not be taken into account for the purpose of computing the profits of MTRC which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for any year of assessment; and
- (b) shall be taken into account for the purpose of computing the profits of the Corporation which are chargeable to tax under Part IV of the Inland Revenue Ordinance (Cap. 112) for the year of assessment the basis period for which includes the appointed day.

46. Stamp duty

No stamp or other duty is chargeable in respect of the transfer or vesting of any property or rights taking effect by virtue of this Part.

Miscellaneous

47. Interests in land

The vesting in the Corporation of an interest in land by virtue of this Part does not -

- (a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of section 53 (4) (a) or (7) (a), 119E(2) or 119H(1) (a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);
- (b) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest for the purposes of any instrument concerning or affecting that interest;
- (c) operate as a breach of covenant or condition against alienation;
- (d) give rise to any right of pre-emption, right of forfeiture, right of re-entry, option, damages or other right of action affecting land;
- (e) invalidate or discharge any contract or security;
- (f) operate so as to merge any leasehold interest in the reversion expectant on it;
- (g) extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in equity.

48. Perfection of vesting of foreign property, rights and liabilities

(1) MTRC and the Corporation shall take, as and when the Corporation considers appropriate, all steps necessary or desirable for securing that the vesting in the Corporation under this Part of any foreign property, right or liability is effective

under the relevant foreign law.

(2) Until the vesting of any foreign property, right or liability of MTRC in the Corporation becomes effective under the relevant foreign law, MTRC shall hold that property or right for the benefit of, and discharge that liability on behalf of, the Corporation.

(3) Any costs and expenses incurred by MTRC under this section shall be met by the Corporation.

(4) In this section, reference to any foreign property, right or liability is a reference to any property, right or liability in respect of which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a place outside Hong Kong.

49. Evidence of vesting

(1) The production of a Government Printer's copy, or a document certified by a solicitor to be a true copy of a Government Printer's copy, of this Ordinance shall be conclusive evidence for all purposes of any vesting effected by virtue of this Part.

(2) Without affecting the generality of subsection (1), a certificate given by or on behalf of the Corporation on or after the appointed day that any property, right or liability specified in the certificate (being property or a right or liability which immediately before the appointed day was that of MTRC) is vested in the Corporation under this Part is conclusive evidence for all purposes of the fact so certified.

(3) The Corporation shall register or cause to be registered

in the Land Registry a Government Printer's copy of this Ordinance in respect of the vesting of the properties of MTRC in the Corporation.

50. Waiver of prohibition of vesting

A provision contained in any deed, contract or other document -

- (a) prohibiting or having the effect of prohibiting the vesting under this Part; or
- (b) to the effect that a default shall occur or be deemed to occur, or any right or liability shall cease, as a result of the vesting under this Part,

and to which MTRC is a party, is deemed to have been waived.

51. Evidence: books and documents

(1) Books and other documents which would, before the appointed day, have been evidence in respect of any matter for or against MTRC are admissible in evidence in respect of the same matter for or against the Corporation.

(2) In this section "documents" (文件) has the same meaning as in section 55 of the Evidence Ordinance (Cap. 8).

52. MTRC to continue in existence until dissolved

(1) Despite the repeal effected by section 63, MTRC continues in existence after the appointed day until it is dissolved in accordance with subsection (3), and in this section the period of that continued existence is referred to as "the transitional period".

- (2) During the transitional period, and despite the repeal effected by section 63 -
- (a) sections 4 and 9 of the repealed Ordinance, modified as set out in Schedule 1, continue to have effect to and in relation to MTRC;
 - (b) section 16 of the repealed Ordinance continues to apply in relation to the preparation and auditing of accounts in respect of the last complete financial year of MTRC, and MTRC shall prepare those accounts in accordance with that section,

as if section 63 had not been enacted.

(3) As soon as he is satisfied that nothing further remains to be done by MTRC under this Ordinance, and after consulting MTRC and the Corporation, the Secretary may, by notice published in the Gazette, dissolve MTRC on a day he specifies in the notice.

(4) The costs and expenses arising from the continuation of MTRC under this section and incurred by MTRC shall be borne by the Corporation.

PART X

MISCELLANEOUS

53. Appeal to Chief Executive in Council

(1) This section applies to any decision of the Secretary or the Commissioner, or any person authorized by either of them, which is made under any provision of this Ordinance other than section 15(5), 19(1), 22, 26 or 33.

(2) If the Corporation is aggrieved by any decision to which this section applies the Corporation may, within 28 days after the

making of the decision, appeal by petition to the Chief Executive in Council.

(3) The decision of the Chief Executive in Council on any appeal under this section is final.

(4) Where the Corporation appeals under this section, the decision under appeal shall not have effect until the appeal has been determined, unless the Chief Executive in Council directs otherwise.

(5) In this section, reference to a decision made by any person includes reference to a direction given or a requirement imposed by that person.

54. Application of certain laws to Corporation

(1) The Public Health and Municipal Services Ordinance (Cap. 132) does not apply to the Corporation, in relation to the provision of a service under the franchise, to the extent set out in Schedule 2.

(2) The Building Authority may -

- (a) having regard to the exceptional nature of building or other works connected with the operation or construction of the railway; and
- (b) on such conditions as he may specify, either generally or in any particular case,

exempt any of those works from any provision of the Buildings Ordinance (Cap. 123) as he thinks fit.

(3) Except as provided in subsection (2), the Buildings Ordinance (Cap. 123) applies to any building or other works carried out by or on behalf of the Corporation.

55. Railway premises are public places

For the avoidance of doubt, and without affecting any other Ordinance, it is declared that the railway premises and transport interchanges are public places for the purposes of the Public Order Ordinance (Cap. 245).

56. Corporation may prosecute in its name

Without affecting any Ordinance relating to the prosecution of criminal offences or the powers of the Secretary for Justice in relation to the prosecution of criminal offences, prosecutions for an offence under this Ordinance may be brought in the name of the Corporation.

**57. No civil liability for breach of
statutory duty**

(1) No breach of any duty of the Corporation created by or pursuant to this Ordinance gives rise to any civil liability.

(2) Subsection (1) does not affect any civil liability of the Corporation for negligence or otherwise which arises apart from this Ordinance.

**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).

59. Securities of Corporation as authorized investment

(1) For the purposes of paragraph 1(a) of the Second Schedule to the Trustee Ordinance (Cap. 29), the Corporation is deemed to have paid a dividend as there mentioned in the calendar year in which the appointed day falls (whether or not the Corporation does in fact pay such a dividend in that year) and in each of the 5 years immediately preceding that year.

(2) For the purposes of paragraph 2 of the Second Schedule to the Trustee Ordinance (Cap. 29) -

- (a) any debt security which was issued by, or the payment of principal and interest on which was guaranteed by, MTRC before the appointed day and

which becomes vested in the Corporation by virtue of Part IX; or

- (b) during any period for which the Government beneficially owns more than half in nominal value of the issued ordinary share capital of the Corporation, any debt security which is issued by, or the payment of principal and interest on which is guaranteed by, the Corporation,

is deemed to be a debt security which satisfies the requirements of that paragraph.

60. Corporation not a public body

Unless otherwise expressly provided for in any Ordinance, the Corporation is not a public body within the meaning of the Interpretation and General Clauses Ordinance (Cap. 1).

61. Requirement for Secretary to consult Corporation

For the avoidance of doubt, a provision of this Ordinance requiring or providing for the Secretary to consult with the Corporation or any other person in relation to any matter does not oblige the Secretary to obtain the agreement of the Corporation or that other person in relation to the matter.

62. Whether a notice, etc. is subsidiary legislation

A commencement notice issued under section 1(2), a regulation made under section 33 and a bylaw made under section 34 are all subsidiary legislation for the purposes of section 34 (1) of the Interpretation and General Clauses Ordinance (Cap. 1); any other

instrument issued under this Ordinance is not subsidiary legislation for those or any other purposes.

63. Repeal, etc.

(1) Subject to section 52 and this section, the Mass Transit Railway Corporation Ordinance (Cap. 270) is repealed as from the appointed day.

(2) With effect from the appointed day, the regulations made under the repealed Ordinance and the notices made under those regulations subsisting immediately before that day and specified in column 2 of Schedule 3 are, subject to the modifications specified in column 3 of that Schedule, adopted as and become regulations made under this Ordinance and notices made under those regulations respectively.

(3) With effect from the appointed day, the bylaws made under the repealed Ordinance subsisting immediately before that day and specified in column 2 of Schedule 4 are, subject to the modifications specified in column 3 of that Schedule, adopted as and become bylaws made under this Ordinance.

(4) With effect from the appointed day, the notices published under the repealed Ordinance subsisting immediately before that day and specified in column 2 of Schedule 5 are, subject to the modifications specified in column 3 of that Schedule, adopted as and become notices published under this Ordinance.

(5) Unless the context requires otherwise, a reference in any Ordinance or document in existence immediately before the appointed day to the repealed Ordinance or its provisions, or to a notice published under the repealed Ordinance, is deemed to be, in

respect of the period on and after the appointed day, a reference to this Ordinance or its provisions or to a notice published under this Ordinance.

64. Consequential amendments

Subject to any notice issued under section 1(2), the consequential amendments set out in Schedule 6 have effect on and from the appointed day.

SCHEDULE 1

[s. 52 (2) (a)]

SECTIONS 4 AND 9 OF THE REPEALED ORDINANCE

Sections 4 and 9 of the repealed Ordinance, as modified for the purposes of section 52(2) (a), are as follows -

“4. Board of MTRC

(1) The Board of the Mass Transit Railway Corporation (“MTRC”) comprises -

- (a) a chairman appointed by the Chief Executive; and
- (b) such one or more other persons as the Chief Executive may appoint.

(2) The Board is the governing body of MTRC with authority, in the name of MTRC, to exercise and perform the powers, functions and duties conferred or imposed on MTRC by or under Part IX of the Mass Transit Railway Ordinance (of 1999) and to do such things as it considers expedient for or conducive to the attainment of such powers, functions and duties or for any purpose it considers reasonably incidental to or consequential upon such powers, functions

and duties.

(3) The Chairman and any person appointed under subsection (1) (b) may -

(a) resign his office by notice to the Chief Executive; or

(b) be removed from office by the Chief Executive.

(4) Arrangements relating to meetings of the Board, and the procedure at meetings of the Board, shall be such as the Board may determine.

9. Documents of MTRC

(1) The Mass Transit Railway Corporation (“MTRC”) may make and execute all such documents as may be considered by the Board to be expedient for or conducive to the attainment of the objects of Part IX of the Mass Transit Railway Ordinance (of 1999) or to be reasonably incidental to or consequential upon the attainment of those objects.

(2) A document made by MTRC is deemed to be duly executed -

(a) if sealed with the seal of MTRC in the presence of a member of its Board; or

(b) if signed on behalf of MTRC by a member of its Board.

(3) Any document purporting to be executed in accordance with subsection (2) is, unless the contrary is proved, deemed to have been duly executed.

(4) A document executed by MTRC in accordance with subsection (2) (b) is not ineffectual in law by reason only of the fact that, apart from this subsection, it would be

required by law to be executed under seal.”.

SCHEDULE 2

[s. 54 (1)]

PROVISIONS OF PUBLIC HEALTH AND MUNICIPAL SERVICES

ORDINANCE DISAPPLIED

1. No remedy lies against the Corporation under section 127 of the Public Health and Municipal Services Ordinance (Cap. 132) (“PHMSO”) in respect of a nuisance described in section 12 (1) (g) of the PHMSO.
2. Section 22 of the PHMSO does not apply to anything done by or on behalf of the Corporation in the course of constructing an extension.
3. Regulations made under section 29 or 35 of the PHMSO as to the suitability, sufficiency or mode of construction of latrines or latrine accommodation, or the licensing thereof, do not apply to railway premises.
4. Sections 30 and 36 of the PHMSO do not apply to railway premises.
5. Regulations made under section 88 of the PHMSO do not apply to railway premises.
6. Part IX and any regulations made under section 104 of the PHMSO do not apply to any sign or advertisement erected by or on

behalf of the Corporation on the railway or on railway premises.

SCHEDULE 3

[s. 63 (2)]

REGULATIONS, ETC. ADOPTED UNDER SECTION 63 (2)

OF THIS ORDINANCE

Item	Regulation	Modification
1.	Mass Transit Railway Regulations (Cap. 270 sub. leg.)	In regulations 4(1), (2) and (3), 5(1), (3) and (4) and 9(c), by repealing “Chief Secretary for Administration” wherever it appears and substituting “Secretary”.
2.	Mass Transit Railway (Transport Interchange) Regulation (Cap. 270 sub. leg.)	In section 18, by repealing “section 24” and substituting “section 33”.
3.	Mass Transit Railway (Transport Interchange) (Designation of Car Park) Notice (Cap. 270 sub. leg.)	
4.	Mass Transit Railway (Transport Interchange)	

(Designation of Prohibited and Restricted Zones) Notice (Cap. 270 sub. leg.)

SCHEDULE 4 [s. 63(3)]
 BYLAWS ADOPTED UNDER SECTION 63(3)
 OF THIS ORDINANCE

Item	Bylaw	Modification
1.	Mass Transit Railway By-laws (Cap. 270 sub. leg.)	In by-law 2 – (a) by repealing the definition of “Corporation” and substituting – ““Corporation” (地鐵公司) means the MTR Corporation Limited;”; (b) by repealing the definition of “railway” and substituting – ““railway” (鐵路) means the Mass Transit Railway;”.
2.	Mass Transit Railway (Transport Interchange) Bylaw (Cap. 270 sub. leg.)	(a) In section 2(1), by repealing “section 24A” and substituting “section 31”. (b) In Schedule 1 - (i) in Figure Nos. 1 and 2, by repealing “MASS TRANSIT RAILWAY CORPORATION ORDINANCE

(CAP. 270)”and substituting “MASS
TRANSIT RAILWAY ORDINANCE
(of 1999)”;

- (ii) in Figure No. 18, by repealing
“MASS TRANSIT RAILWAY
CORPORATION” and substituting
“MTR CORPORATION LIMITED”.

(c) In Schedule 3 -

- (i) in Form 1 -

(A) by repealing “Hong Kong
Special Administrative Region
Government” and substituting
“Government of the HKSAR”;

(B) by repealing “Mass Transit
Railway Corporation” and
substituting “MTR Corporation
Limited”;

- (ii) in Form 2 -

(A) by repealing “Mass Transit
Railway

Corporation” wherever it appears
and substituting “MTR
Corporation Limited”;

(B) by repealing “Hong Kong
Special Administrative Region
Government” and substituting
“Government of the HKSAR”;

(C) by repealing “**Mass Transit
Railway Corporation**” and
substituting “**MTR Corporation
Limited**”;

(iii) in Forms 3, 4 and 5, by repealing
“Mass Transit Railway Corporation”
wherever it appears and substituting
“MTR Corporation Limited”.

NOTICES ADOPTED UNDER SECTION 63(4) OF THIS ORDINANCE

Item	Notice	Modification
1.	Mass Transit Railway (Transport Interchange) (Deposit of Plans) Notice (Cap. 270 sub. leg.)	In section 1(1) and (2) – (a) by repealing “section 24A(2)”and substituting “section 31(2)”; (b) by repealing “by the Commissioner” and substituting “by the Corporation”; (c) by repealing “section 24A(5)” and substituting “section 31(5)”.

SCHEDULE 6

[s. 64]

CONSEQUENTIAL AMENDMENTS

Capital Investment Fund

1. Paragraph amended

Paragraph 3 of the Capital Investment Fund (Cap. 2 sub. leg.) is amended -

(a) by repealing subparagraph (a) and substituting -

“(a) the shares in the MTR Corporation Limited issued to the Financial Secretary Incorporated and held by the Financial Secretary Incorporated on behalf of the

Government;”;

(b) in subparagraph (f), by repealing “Mass Transit Railway Corporation Ordinance (Cap. 270)”and substituting “Mass Transit Railway Ordinance (of 1999)”.

Factories and Industrial Undertakings

(Electricity) Regulations

2. Application

Regulation 3(2) (e) of the Factories and Industrial Undertakings (Electricity) Regulations (Cap. 59 sub. leg.) is amended by repealing “Mass Transit Railway Corporation Ordinance (Cap. 270)”and substituting “Mass Transit Railway Ordinance (of 1999)”.

Inland Revenue (Qualifying Debt Instruments) Order

3. Sections amended

Sections 1 and 2 of the Inland Revenue (Qualifying Debt Instruments) Order (Cap. 112 sub. leg.) are amended by repealing “wholly-owned” and substituting “wholly- or partly-owned”.

4. Schedule amended

The Schedule is amended, in item 1, by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited, for as long as the Government beneficially owns more than half in nominal value of the issued ordinary share capital of the company for the time being”.

New Territories Leases (Extension) Ordinance

5. Interpretation

Section 3(1) of the New Territories Leases (Extension) Ordinance (Cap. 150) is amended, in the definition of “lease for special purposes”, in paragraph (a) (iii), by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Banking Ordinance

6. Capital Adequacy Ratio

The Third Schedule to the Banking Ordinance (Cap. 155) is amended, in paragraph 1, in the definition of “public sector entity in Hong Kong”, by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Banking Ordinance (Designation of Public Statutory Corporation) Notice

7. Repeal

The Banking Ordinance (Designation of Public Statutory Corporation) Notice (Cap. 155 sub. leg.) is repealed.

Banking Ordinance (Declaration under section 2(14) (d)) (No. 2) Notice 1997

8. Schedule amended

The Schedule to the Banking Ordinance (Declaration under section

2 (14) (d)) (No. 2) Notice 1997 (Cap. 155 sub. leg.) is amended, in Part 1, in paragraph 1 (a), by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Prevention of Bribery Ordinance

9. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended, in item 37, by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Eastern Harbour Crossing Ordinance

10. Interpretation

Section 2 of the Eastern Harbour Crossing Ordinance (Cap. 215) is amended -

- (a) in subsection (1), in the definition of “Mass Transit Railway Corporation” and “Corporation”, by adding”, subject to subsection (5) (a),” after “mean”;
- (b) by adding -

“(5) In relation to the period on and after the day which is the appointed day for the purposes of section 3 of the Mass Transit Railway Ordinance (of 1999) (in this section referred to as the “1999 Ordinance”), a reference in this Ordinance or in any notice or other document made under this Ordinance –

- (a) to the Mass Transit Railway Corporation or the Corporation is a reference to the MTR Corporation Limited as defined in section 2(1) of the 1999 Ordinance;
- (b) to the Mass Transit Railway Corporation Ordinance (Cap. 270) or a provision of that Ordinance is a reference to the 1999 Ordinance or the provision to corresponding effect in the 1999 Ordinance.”.

Motor Vehicles Insurance (Third Party Risks) Ordinance

11. Obligation on users of motor vehicles to be insured against third party risks

Section 4(4) (bc) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) is amended by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Securities (Miscellaneous) Rules

12. Interpretation

Rule 2 of the Securities (Miscellaneous) Rules (Cap. 333 sub. leg.) is amended, in the definition of “specified instrument”, by repealing “Mass Transit Railway Corporation” and substituting “MTR

Corporation Limited”.

Protection of Investors Ordinance

13. Schedule amended

Part IVA of the Schedule to the Protection of Investors Ordinance (Cap. 335) is amended by repealing item 7.

Smoking (Public Health) Ordinance

14. Public transport carriers where smoking is prohibited

Schedule 1 to the Smoking (Public Health) Ordinance (Cap. 371) is amended, in item 5, by repealing “Mass Transit Railway Corporation Ordinance (Cap. 270)” and substituting “Mass Transit Railway Ordinance (of 1999)”.

The Ombudsman Ordinance

15. Organizations to which this Ordinance applies

Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended, in Part I, by repealing “Mass Transit Railway Corporation.”.

Noise Control Ordinance

16. Application of section 13 to MTR Corporation Limited and Kowloon-Canton Railway Corporation

Section 37 of the Noise Control Ordinance (Cap. 400) is amended by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Tai Lam Tunnel and Yuen Long Approach Road Regulation

17. The Company’s obligations

Section 2(7) of the Tai Lam Tunnel and Yuen Long Approach Road Regulation (Cap. 474 sub. leg.) is amended, in the definition of “Tsing Ma Control Area”, by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Airport Authority Bylaw

18. Interpretation

Section 2 of the Airport Authority Bylaw (Cap. 483 sub. leg.) is amended, in the definition of “MTR Area”, by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Tsing Ma Control Area Ordinance

19. Interpretation

Section 2 of the Tsing Ma Control Area Ordinance (Cap. 498) is amended, in the definition of “Tsing Ma Control Area”, by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Legislative Council (Amendment)

Ordinance 1999

20. Schedules substituted

Section 43 of the Legislative Council (Amendment) Ordinance 1999 (48 of 1999) is amended, in new Schedule 1A, in item 93, by repealing “Mass Transit Railway Corporation” and substituting “MTR Corporation Limited”.

Explanatory Memorandum

This Bill provides for -

- (a) the grant of a franchise to the MTR Corporation Limited (“the Corporation”) to operate the Mass Transit Railway;
- (b) the regulation of the operation of the railway under the franchise; and
- (c) the vesting in the Corporation of the whole of the property, rights and liabilities of the Mass Transit Railway Corporation (“MTRC”).

Part I: Preliminary

2. Clause 1 provides for the short title and commencement of the Bill as enacted. Clause 2 provides for the definition of certain terms used in the Bill. Clause 3 provides for the designation by the Secretary for Transport (“Secretary”) of a day to be the appointed day for the purpose of certain provisions of the Bill.

Part II: Grant and Extension of Franchise

3. Clause 4 provides for the grant of a franchise to the Corporation to operate the railway for a period of 50 years and to construct any extension. This provision also makes reference to an operating agreement entered into between the Government and the Corporation which contains the agreed terms and conditions of the franchise. Clause 5 provides for the extension of the Corporation's franchise by the Chief Executive in Council, and for the publication of notice of such extension in the Gazette.

Part III: Performance under Franchise

4. Clause 9 requires the Corporation to maintain a proper and efficient service at all times in accordance with the Ordinance and the operating agreement. The Secretary is empowered to ask for information (Clause 10) and records (clause 11) to enable him to monitor the Corporation's compliance with its obligations under the Bill and the operating agreement.

5. The Chief Executive in Council is given the authority to give directions to the Corporation, which is entitled to compensation for any loss or damage resulting from its compliance with such directions (Clause 13). Clause 14 allows the Chief Executive in Council to impose financial penalties on the Corporation for any substantial or persistent breach of the Ordinance or the operating agreement.

Part IV: Suspension, Revocation and Expiry of Franchise

6. Clause 15 provides for the suspension of the franchise in the case of an emergency or substantial breakdown in the operation of the railway and for the compensation payable to the Corporation in that event. Clauses 16, 17 and 18 provide for the revocation of the franchise in the event of default by the Corporation as defined in those provisions.

7. Clause 19 authorizes the Government to take possession of railway property kept by the Corporation upon revocation or expiry of the franchise and to use or dispose of such property as it sees fit. The purpose of this provision is to give the Government the powers necessary to ensure the minimum disruption to railway services in the event of revocation or expiry of the Corporation's franchise. Clause 20 provides for the compensation payable in respect of railway property taken or used under clause 19. Clause 21 allows the Corporation to require the Government to take from it any further railway property not already taken under clause 19.

Part V: Compensation

8. Part V provides for the determination of compensation by an arbitrator should the Government and a claimant fail to agree on the amount of compensation due to the claimant, and for matters related to payment of such compensation.

Part VI: Safety of Railway

9. Clauses 26 and 27 provide for the appointment, duties and powers of railway inspectors. Clause 28 provides for the Secretary

to require the Corporation to remedy defects on the railway which are likely to cause a risk of injury to any person.

Part VII: Transport Interchanges

10. Clauses 31 and 32 provide for the delineation and management of transport interchanges by the Corporation.

Part VIII: Regulations and Bylaws

11. Clause 33 provides for the making of subsidiary legislation by the Secretary to regulate matters under the Bill. Clause 34 provides for the making of bylaws by the Corporation to regulate the conduct of passengers using the railway.

Part IX: Vesting Provisions and Transitional Arrangements

12. Clause 37 provides for the vesting of the whole of the property, rights and liabilities of MTRC in the Corporation. Clauses 38 to 41 provide for the Corporation to be treated, in relation to property, etc. so vested, in all respects as if it were MTRC; and similar provision is made in respect of company accounts (clause 43), taxation matters (clause 45) and interests in land (clause 47). Consistent with this approach, clause 46 exempts the Corporation from stamp duty in respect of property, etc. vested under Part IX.

13. Clause 42 provides for the holding of shares in the Corporation by the Financial Secretary Incorporated. Clause 52

provides for the dissolution of MTRC at an appropriate time.

Part X: Miscellaneous

14. Clause 53 provides for a right of appeal to the Chief Executive in Council against decisions of the Secretary and other public officers made under certain provisions of the Ordinance. Clause 54 and Schedule 2 exempt the Corporation from the operation of certain laws. Clause 58 allows for the costs related to the sale of shares in the Corporation or the listing of shares in the Corporation on a stock exchange to be deducted from the proceeds of the sale or listing before being paid into general revenue. Clause 59 allows the Corporation's shares and debt securities to be treated as authorized investments for the purposes of the Trustee Ordinance (Cap. 29).

15. Clause 63 provides for the repeal of the Mass Transit Railway Corporation Ordinance (Cap. 270) and for the subsidiary legislation and notices under that Ordinance as set out in Schedules 3, 4 and 5 to be adopted as subsidiary legislation and notices under the Bill. Clause 64 and Schedule 6 provide for consequential amendments to other enactments.

**Principal Headings of the Operating Agreement
between
Government of the Hong Kong Special Administrative Region
and
MTR Corporation Limited**

(Note : The Government and the Mass Transit Railway Corporation are deliberating the contents of this Operating Agreement.)

PREAMBLE

The Preamble will state that the Operating Agreement is made pursuant to the Mass Transit Railway Ordinance (the “MTR Ordinance”) and that the existing Memorandum of Agreement is replaced by this new Operating Agreement.

INTERPRETATION

1. The new Operating Agreement will contain appropriate interpretation provisions.

EXTENSION OF FRANCHISE

2. Whilst the MTR Ordinance enables the Corporation to apply for, and Government to grant, extensions of the franchise, the detail relating to this procedure and the factors to be taken into account (including capital expenditure incurred or to be incurred by the Corporation) will be contained in the Operating Agreement.

DESIGN, CONSTRUCTION AND MAINTENANCE OF THE RAILWAY

Electric Power Supply

- 3.1 The Corporation shall maintain more than one source of electric power supply to all parts of the railway so that, in the event of a failure of one source, another source shall be capable of maintainin0g a safe and tolerable environment for all persons using the railway.

Use of Electrical Energy

3.2 The Corporation shall take all proper precautions in the use of electrical energy.

Control Centres

3.3 The Corporation shall provide and maintain adequate facilities in the control centres for the safe regulation, control and direction of trains and persons using or employed in the operation of the railway.

Protection against Flooding

3.4 The Corporation shall provide and maintain adequate means to prevent flooding of the railway premises.

Provision of Depots and Equipment

3.5 The Corporation shall provide and maintain adequate depot facilities for the stabling, cleaning, inspection, maintenance and repair of rolling stock. The Corporation shall develop and maintain suitable arrangements for the maintenance and repair of all rails, overhead line equipment, tunnels, viaducts, stations and other structures, infrastructure, plant and equipment used in connection with the operation of the railway.

Monitoring of Environmental Conditions

3.6 The Corporation shall monitor and record the environmental conditions throughout the enclosed parts of the railway and shall provide and maintain measuring and recording instruments.

Lighting and Ventilation

3.7 The Corporation shall provide and maintain adequate lighting in areas of the railway premises accessible to the public and where persons are at any time required to work. The Corporation shall provide and maintain adequate ventilation in enclosed areas of the railway premises and in areas of the railway premises over which the Corporation can reasonably exercise climatic control and which are not naturally ventilated, in each case to which the public has access.

Police Accommodation

3.8 The Corporation shall provide and maintain adequate accommodation and

facilities for members of the Hong Kong Police Force on duty on the railway and railway premises. The Hong Kong Police Force will continue to provide a police service for the railway and railway premises in the same manner as that provided as at the date of the Operating Agreement.

RAILWAY PASSENGER SERVICES

Disruptions to Train Services

- 4.1 The Corporation shall report to the Commissioner for Transport and the Commissioner of Police with the least practicable delay:
- (a) the emergency closure of any station or any part of the railway during normal operational hours;
 - (b) any anticipated emergency closure of any station or any part of the railway that may affect the normal operation of the railway; and
 - (c) any interruption or delay in train service which might affect the safe conveyance of passengers travelling or wishing to travel on the railway.

Timetables

- 4.2 The Corporation shall notify in writing the Commissioner for Transport of the train service arrangements in respect of hours of operation, frequency of train service, composition of trains deployed and carrying capacity per car. The Corporation shall notify the Commissioner for Transport any material modification to any of the train service arrangements together with explanations for any such proposed modification and the Corporation's assessment of the likely impact on passenger services.

Railway Cleanliness

- 4.3 The Corporation shall keep the railway premises in a clean and sanitary state.

Passenger Environment

- 4.4. The Corporation shall provide a comfortable passenger environment by maintaining reasonable standards for temperature and ventilation in enclosed areas of the railway premises and in areas of the railway premises over which the Corporation can reasonably exercise climatic control and which are not naturally ventilated, in each case to which the public has access.

Communications

- 4.5 The Corporation shall provide and maintain adequate and efficient means of communication between its control centres and all stations and depots, trains and such other places including Transport Department, Police, Fire Services Department and power companies as are essential to the safe operation of the railway.

Noise and Vibration

- 4.6 The Corporation shall ensure that the noise and vibration emitted due to the operation of the railway are kept to a level consistent with proper maintenance and safe operational practices.

Collection of Fares and Handling of Tickets

- 4.7 The Corporation shall provide and maintain adequate staff, automatic equipment, tickets and facilities for the effective and efficient collection of fares.

Ticket and Cash Handling

- 4.8 The Corporation shall ensure that all ticket, Smart Card and cash handling facilities are at all times safe and secure.

Performance Requirements

- 4.9 (1) The Corporation shall maintain a level of service that at least meets the Performance Levels specified in a schedule to this Operating Agreement. Each "Performance Level" is an agreed acceptable threshold level of performance that must be met by the Corporation.

- (2) The Performance Requirements shall be jointly reviewed by the Corporation and the Commissioner for Transport annually and upon request by the Corporation, taking into account particular circumstances, and may be changed.
- (3) The Corporation and the Commissioner for Transport shall agree specific Performance Requirements for the initial two years of operation of any new lines.

Force Majeure

4.10 The Corporation will not be regarded as having failed to meet a Performance Level if the failure has resulted from the occurrence of a “force majeure” event. The Corporation shall use its reasonable endeavours to mitigate, prevent and remedy any “force majeure” event.

Customer Service Pledges

- 4.11 (1) The Corporation shall establish and publish, on an annual basis, Customer Service Pledges. The Corporation shall publish, on a quarterly basis, data in relation to its performance against the Customer Services Pledges together with explanations, as appropriate. The Customer Service Pledges are voluntary targets and are not themselves performance obligations.
- (2) The Corporation will publish data on passenger complaints (on a quarterly basis) and on accidents and serious injuries and fatalities (on an annual basis).

Measuring Customer Satisfaction

4.12 The Corporation shall develop and maintain arrangements for measuring passenger satisfaction, including, passenger satisfaction surveys, and the method and extent of publication of the survey results. The Corporation shall furnish the Commissioner for Transport with a report on the outcome of any such arrangements.

Handling of Passenger Complaints and Suggestions

4.13 The Corporation shall develop and maintain a system for handling passenger complaints and suggestions. The Corporation shall furnish the Commissioner for Transport an annual report summarising the complaints

and suggestions received by the Corporation in relation to railway services and any action taken by the Corporation.

Signs and Passenger Information

4.14 The Corporation shall provide and maintain adequate illuminated signs, in Chinese and English, in every station for the information and direction of the public and to enable passengers to proceed safely and correctly with the minimum of delay. The Corporation shall display on railway premises and its approaches appropriate signs and information in Chinese and English on but not limited to, MTR by-laws, services timetables and fares. The Commissioner for Transport may request the Corporation to review the provision, content or any other matter relating to signs and passenger information in relation to any station, line or train.

Request for Review

4.15 The Commissioner for Transport may request the Corporation to review its arrangements in respect of the operation of its railway passenger services. The Corporation shall comply with such a request for review and shall inform the Commissioner for Transport of the outcome within a period that is reasonable in the circumstances. The Commissioner for Transport may request the Corporation to consider specific suggestions for changes in the operation of its railway passenger services. The Corporation shall give due consideration to any such suggestions for changes (but shall not be obliged to make any such changes) and shall notify the Commissioner for Transport of its intended course of action, giving reasons for any inability to adopt the suggestions for changes.

SAFETY MANAGEMENT

General

5.1 The Corporation shall design, construct, operate and maintain the railway having due regard to the safety of the railway and of persons using or employed on the railway to the reasonable satisfaction of the Chief Inspecting Officer. The Corporation shall establish a safety management system to review control and minimize safety risks as far as reasonably practicable.

Instruction Manuals

- 5.2 The Corporation shall provide the Chief Inspecting Officer with copies of such manuals of instruction and documentation relating to procedures in respect of safety, emergency and security matters in connection with the railway premises. In the preparation and major revision of any manual of instruction required under regulation 9(a) of the MTR Regulations, the Corporation shall consult the Chief Inspecting Officer if such instruction have safety implications, and the Commissioner of Police, the Director of Fire Services and the Chief Inspecting Officer if such instructions have safety implications and relate to fire fighting and rescue.

Independent Safety Expert

- 5.3 The Corporation shall employ an independent expert to review its safety management system at a regular interval of not more than five years.

Rescue and Breakdown Equipment

- 5.4 The Corporation shall provide adequate vehicles and equipment for the safe and speedy recovery of defective trains and equipment and for the rescue of passengers and persons employed on the railway. The Corporation shall ensure that such vehicles and equipment are at all times effective and maintained in an efficient working condition and, if necessary, are attended and operated by persons trained to carry out the duties assigned to them and that such persons remain competent at all times.

Maintenance Procedures

- 5.5. The Corporation shall set up procedures for the maintenance of facilities, systems and trains to minimize safety risks as far as reasonably practicable.

Provision of Railway Staff

- 5.6 The Corporation shall have on duty railway staff in such numbers and with such training and experience as will ensure the proper control and operation of the railway and the safety of persons using or employed on it. The Corporation shall not knowingly permit any employee to be on duty whilst under the influence of alcohol or any drug or substance which would or may tend to impair the adequate performance of his duties, or who is otherwise unfit to perform his duties for any reason.

Opening of the Railway and New Lines

- 5.7 The Corporation shall not open any new part of the railway or bring into use any additional major railway facilities, equipment and systems which have an impact on safety until the Chief Inspecting Officer is satisfied that the same is safe for public use. The Corporation shall perform any and all such tests as may reasonably be requested and to forward all results of such tests to the Chief Inspecting Officer. The Corporation shall, at such reasonable times, permit the Chief Inspecting Officer to carry out any inspection, examination or test he considers necessary and provide such resources and assistance as may be reasonable in the circumstances to enable him to carry out such inspections, examinations and tests.

Contingency Plans

- 5.8 The Corporation shall develop and maintain contingency plans to be implemented in the event of a breakdown, accident or emergency on any part of the railway premises which cover announcements, broadcasting of messages through media, evacuation of passengers, supply of alternative transport services and any particular arrangements for fare collection.

LAND

6. This section will contain provisions addressing the framework for the grant by Government to the Corporation of:
- (a) land required for the operation (and extensions that may be agreed) of the railway; land for property development by the Corporation in connection with railway development;
 - (b) land required for essential infrastructure works relating to the railway; and
 - (c) basis of assessing premium amounts and manner/timing of payment.

NEW PROJECTS

7. This section will contain provisions which address the following objectives:
- (a) annual publication by the Corporation of a statement of its own anticipated future network capacity requirements;
 - (b) building new lines only on prudent commercial principles;
 - (c) ensuring a level playing field and equal treatment with other

potential competitors in the award of new railway projects and extensions; and

- (d) providing a clear framework for new projects.

FARE REGULATION

- 8. This section will contain provisions which reflect and codify the existing mechanism for determining fares, including:
 - (a) consideration by Corporation of public acceptance of any proposed fare changes, based on passenger surveys;
 - (b) consultation with Transport Advisory Committee;
 - (c) consultation with Transport Panel of the Legislative Council;
 - (d) decision on fare changes to be made by board of the Corporation;
 - (e) following the above, formal notification by the Corporation to each of Transport Advisory Committee and Transport Panel of the new fare levels; and
 - (f) public announcement by the Corporation of the new fare levels.

COMPENSATION

- 9. This provision will address the compensation that is payable by Government to the Corporation if Government has taken possession of property of the Corporation following a revocation of the franchise under the MTR Ordinance or following the expiry of the franchise.

DISPUTE SETTLEMENT

- 10. This section will contain provisions which address dispute settlement procedures.

RUNNING LINE LEASES

- 11. This provision will address Government's power to resume the Corporation's running lines which is contained in the running line leases entered into between Government and the Corporation.

ASSISTANCE IN SECURING CONTINUITY

- 12. During the period commencing five years before the expiry of the franchise period and during the implementation of any revocation procedure under

the MTR Ordinance, the Corporation will not take any action that would frustrate the transition to any successor franchisee of the right to operate the railway. The Corporation shall not be precluded from taking any action in good faith and in the ordinary and usual course of its business.

REVIEW OF TERMS OF OPERATING AGREEMENT

13. This section will contain a provision requiring the joint review by the parties of the terms contained in the Operating Agreement.

FURNISHING OF RECORDS

14. The Corporation shall maintain records in respect of the matters specified in the Operating Agreement. Subject to the Government and the Corporation reaching agreement, the Corporation shall maintain records in addition to those required under the MTR Ordinance or specified in the Operating Agreement and will furnish copies to the Secretary and permit the Secretary to inspect them in the manner prescribed in, and subject to the terms of, the MTR Ordinance.

EXTERNAL AUDITORS

15. The Corporation shall submit to the Government a report prepared by its external auditors, on an annual basis, as to whether or not, during that period, in the opinion of the external auditors, the Corporation had in place internal control systems and procedures which were adequate to enable, as far as practicable, the Corporation to measure and record, in all material respects, its compliance with the Performance Levels and its calculation of the Customer Service Pledges and, if the opinion of the external auditors is that those control systems and procedures were not adequate, the nature and extent of any inadequacies.

**Transport Bureau
September 1999**