

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1981/99-00  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/1/99/2

**Bills Committee on  
Mass Transit Railway Bill**

**Minutes of meeting  
held on Tuesday, 4 January 2000, at 9:00 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon Mrs Miriam LAU Kin-ye, JP (Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon HO Sai-chu, SBS, JP  
Hon Edward HO Sing-tin, SBS, JP  
Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon Eric LI Ka-cheung, JP  
Hon NG Leung-sing  
Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon Ronald ARCULLI, JP  
Hon CHAN Yuen-han  
Hon Bernard CHAN  
Hon CHAN Wing-chan  
Hon CHAN Kam-lam  
Hon SIN Chung-kai  
Hon Howard YOUNG, JP  
Hon LAU Chin-shek, JP  
Hon Andrew CHENG Kar-foo  
Hon FUNG Chi-kin
- Members absent** : Hon Cyd HO Sau-lan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon Andrew WONG Wang-fat, JP  
Hon LAU Kong-wah  
Dr Hon TANG Siu-tong, JP
- Public officers** : **Transport Bureau**

**attending**

Mr Kevin HO  
Deputy Secretary for Transport (1)

Mr Thomas CHOW  
Deputy Secretary for Transport (4)

Mr Roy TANG  
Principal Assistant Secretary for Transport (3)

**Finance Bureau**

Mr Martin GLASS  
Deputy Secretary for the Treasury (2)

Miss Jenny YIP  
Principal Assistant Secretary for the Treasury (Investment)

**Department of Justice**

Mr Jonothan ABBOTT  
Senior Assistant Law Draftsman

Ms Betty CHOI  
Senior Government Counsel

**Attendance by  
invitation**

**: MTR Corporation**

Mr Leonard TURK  
Legal Director and Secretary

Mr Clement KWOK  
Finance Director

Mr William CHAN  
Human Resources Director

Mrs Miranda LEUNG  
Corporate Relations Manager

**Merrill Lynch (Asia Pacific) Ltd**

Mr David DUNN  
Managing Director

Mr Sheldon CHANG  
Vice President

**Freshfields**

Mr Christopher WONG  
Solicitor

**Mass Transit Railway Corporation Staff Union**

Mr CHAN Sin-wo  
Chairman

Mr LO Pun-wai  
Vice Chairman

**Hong Kong Mass Transit Railway Staff General Association**

Mr MAK Pui-tung  
Chairman

Mr LAM Siu-wai  
Vice Chairman

Mr TSE Hon-bun  
Vice-chairman

**Staff Consultative Council, MTR Corporation**

Mr LAW Kam-dow  
Chief Coordinator

Mr LEE Kong-yai  
Coordinator

**Consumer Council**

Mrs CHAN WONG Shui  
Chief Executive

Mr Ron CAMERON  
Head of Trade Practices Division

**Baring Asset Management (Asia) Ltd**

Mr Syd BONE  
Managing Director

**Hong Kong University of Science and Technology**

Professor K C CHAN  
Associate Dean, School of Business & Management  
Head and Professor, Department of Finance

**Clerk in attendance** : Mr Andy LAU  
Chief Assistant Secretary (1)2

**Staff in attendance** : Miss Connie FUNG  
Assistant Legal Adviser 3

Ms Alice AU  
Senior Assistant Secretary (1)5

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Action

**I Confirmation of minutes of meeting**  
(LC Paper No. CB(1)707/99-00)

The minutes of the meeting held on 11 November 1999 were confirmed.

**II Meeting with the deputations**

2. The Chairman welcomed the deputations to the meeting and drew members attention to the written submissions from Moody's Investor Services (LC Paper No. CB(1)544/99-00(06)), Standard and Poor's International Ratings Ltd. (LC Paper No. CB(1)565/99-00) and Jardine Fleming Holdings Ltd. (LC Paper No. CB(1)690/99-00(06)) which were not available to attend the meeting.

### Presentation of views by deputations

#### *Mass Transit Railway Corporation Staff Union (LC Paper No. CB(1)544/99-00(01))*

3. Mr CHAN Sin-wo of the Mass Transit Railway Corporation Staff Union (MTRCSU) outlined the salient points of the Union's submission. He highlighted the results of a survey conducted by the Union in November last year, in which about 70% of the staff were against the privatization of the Mass Transit Railway Corporation (MTRC), 20% were neutral, and only 10% were in support of the proposal. In general, MTRCSU had expressed concerns in the following areas –

- (a) after public listing, the Corporation would reduce manpower and thus jeopardising the job security of staff and increasing the workload of those who stayed;
- (b) the compensation package of staff might be worse off, bearing in mind the conflicting interest among shareholders, passengers and staff;
- (c) the timing of the initial public offering in view of declining economic conditions and decreasing ridership; and
- (d) the monitoring mechanism to be adopted by the Government to oversee operational safety.

4. On the protection of staff interests, MTRCSU took the view that notwithstanding clause 41 of the Bill which provided for the continuity of all existing contractual arrangements including employment contracts, the staff might not be adequately protected in case the new Corporation changed their terms of employment after privatization. The Union hoped that the staff would have the opportunity to participate in the formulation of any policy relating to staff matters.

#### *Hong Kong Mass Transit Railway Staff General Association (LC Paper Nos. CB(1)544/99-00(02) and CB(1)690/99-00(01))*

5. Mr MAK Pui-tung of the Hong Kong Mass Transit Railway Staff General Association (HKMTRSGA) drew members' attention to a survey conducted by the Association in December last year. Nearly 80% of the staff interviewed had reservation about the privatization proposal as they felt that their job security and rights were not adequately and effectively safeguarded.

6. On the proposed privatization of MTRC, HKMTRSGA had made the following requests –

- (a) to retain the current establishment of staff;

- (b) to preserve the existing salary levels and benefits enjoyed by the staff;
- (c) to review clause 29 of the Bill as the proposed penalty of imprisonment in connection with the offence of negligent acts or omissions by employees was too stringent;
- (d) to appoint staff representatives to the Board of Directors which would enhance productivity and ensure effective deployment of resources; and
- (e) to maintain the existing modes of operation and operating principles.

HKMTRSGA stressed that staff morale would be seriously affected if their concerns about the privatization proposal were not properly addressed.

*Staff Consultative Council, MTR Corporation  
(LC Paper No. CB(1)544/99-00(03))*

7. Mr LAW Kam-dow of the Staff Consultative Council, MTR Corporation (SCCMTRC) briefed members on the following views collected through consultation with the staff on MTRC's public listing plan -

- (a) the possible change in the mode of operation of the new Corporation which would be transformed from a Government's wholly-owned company to a listed private company operating on commercial principles;
- (b) the existing employment terms and conditions of staff would be worse off after privatization;
- (c) operating departments of the new Corporation might be separately listed, thus resulting in vicious competition for resources; and
- (d) excessive regulation might be imposed by the Government in the Operating Agreement (OA) which would undermine the competitiveness of the Corporation.

8. In conclusion, SCCMTRC stressed that with more transparency on the progress of privatization, assurance given in respect of staff benefits and other concerns duly addressed, the majority of MTRC's staff would support the listing plan and appreciate a preferential opportunity to subscribe the shares of the Corporation.

9. Responding to a question from the Chairman on paragraph 7(c) above, Mr LAW clarified that the staff's concern applied both to departments operating with a profit or a loss.

*Consumer Council  
(LC Paper No. CB(1)544/99-00(04))*

10. Mrs CHAN WONG Shui, the Chief Executive of the Consumer Council (CC) briefed members on the salient points of its submission. She then expounded on two main areas of CC's concern on the privatization of MTRC for members' consideration, namely consumer protection in terms of fares and service standards, and MTRC's competitive position in the market for transport services.

11. Mrs CHAN said that as a consumer advocate, CC supported the use of competition mechanism to achieve high level of services for consumers and welcomed the Government's commitment to maintaining a level playing field and competitive environment to ensure appropriate standards of consumer welfare, including the capability of market forces to act as a constraint on fare increases. CC also acknowledged that the public transport services sector in Hong Kong operated in a highly competitive environment. However, according to the "Third Comprehensive Transport Study" released by the Government in October 1999, railway would form the backbone of Hong Kong's transport system and handle about 40% to 50% of the total public transport journeys by 2016. There might be potential conflict between these two policy objectives, and the Government had to ensure that the commuting public would continue to have a choice of competing transport modes at affordable prices. Mrs CHAN also drew members' attention to the possibility of market participants engaging in activities that would limit market accessibility. As the Bill did not have specific reference to the issues of competition and consumer safeguards, CC would like to see the obligations of the Mass Transit Railway Corporation Limited (MTRCL) in these areas clearly laid down in the OA.

12. On fare regulation, CC took the view that a competition commitment by the Government and a competition rule on MTRCL in the OA, along the line of the Government's Competition Policy Statement which advocated that businesses should refrain from introducing restrictive practices that impair economic efficiency or free trade, would be necessary conditions for MTRC's privatization. They could provide essential safeguards for the Government's reliance on market competition as the rationale behind the limited scrutiny of fare increases.

13. Given the importance of the privatization plan, Mrs CHAN stressed that the public should be kept informed of the major issues discussed by the Government and MTRC during the process so that they could have a clear understanding on the rationale behind the decisions taken.

*Baring Asset Management (Asia) Limited  
(LC Paper Nos. CB(1)544/99-00(05) and CB(1)690/99-00(02))*

14. Mr Syd BONE, the Managing Director of Baring Asset Management (Asia) Limited (Baring) welcomed the Government's proposal to privatize MTRC from an institutional investor's point of view. While stressing that the best practices model which had enabled MTRC to operate effectively over a long period of time should be retained as much as possible, he outlined the factors which would contribute to the Corporation's successful operation after privatization, namely operational

independence, a clear and sustained focus on shareholders' financial returns, independence of management control, fare setting autonomy, credit rating maintenance, objectivity in project assessment including property development rights, as well as ongoing operation efficiency utilizing state-of-the-art technologies.

*Hong Kong University of Science and Technology  
(LC Paper Nos. CB(1)580/99-00 and CB(1)690/99-00(03))*

15. Professor K C CHAN, Head of the Department of Finance, School of Business and Management of Hong Kong University of Science and Technology, stated his support for MTRC's privatization which would bring about the benefits of spearheading the company towards creating economic values, improving management culture and exploring new business opportunities. He pointed out that as MTRCL would be given a franchise to run a major transport network in Hong Kong, it would be of utmost importance to strike a right balance between the interests of the shareholders and the public. Professor CHAN was of the view that with the Government retaining majority ownership and undertaking to promote competition, as well as a detailed OA in place to regulate MTRCL's performance, there should be adequate safeguards to protect public interest.

16. On fare regulation, Professor CHAN took the view that MTRCL should have the autonomy to set fares. If such power was taken away, the Corporation would find it difficult to create economic values and make long term business planning. Echoing the views presented by CC on competition, Professor CHAN said that the Government's efforts to create a favourable environment for market competition would be the key to MTRCL providing quality service at reasonable costs.

#### Members' response

17. Before inviting questions from members, the Chairman drew their attention to MTRC's consolidated reply to the views expressed by the three staff deputations (LC Paper No. CB(1)690/99-00(04)), as well as its written replies to each deputation's submission to the Bills Committee.

*(Post meeting note: MTRC's written replies to each deputation's submission to the Bills Committee were tabled at the meeting and subsequently circulated to members vide LC Paper No. CB(1)718/99-00(01) to (03).)*

#### *Staff's general concerns*

18. Mr CHAN Kam-lam sought clarification from MTRCSU on the reasons for 750 staff members choosing to leave MTRC voluntarily and the relationship between this incident and the staff's lack of confidence in the Corporation's privatization. Mr CHAN Sin-wo of MTRCSU replied that even though the Corporation had denied any association between the streamlining action and privatization, the staff's decision to leave the company amidst Hong Kong's economic downturn with a persistently high



rate of unemployment had clearly illustrated their lack of confidence. As to whether the package offered was attractive, it was a matter for individual staff member to decide.

19. Mr CHAN Kam-lam remarked that given the present economic conditions, it seemed contradictory that the staff would have confidence in the labour market but not in the company and choose to leave voluntarily. Mr LO Pun-wai of MTRCSU replied that according to statistics provided by the company, some staff who took part in the streamlining action had worked for the company for a long time, and they would indeed be entitled to better compensation.

20. As MTRCSU and SCCMTRC had presented different pictures in terms of staff support for privatization, Mr CHAN Wing-chan enquired about the methods they used to collect views from the staff. In reply, a representative of MTRCSU said that the Union had sent out 1 000 questionnaires to gauge the staff's views. About 500 staff members had responded and out of which, 70% did not support the proposal and their major worries were on job security and pay and benefits. Mr LAW of SCCMTRC explained that the views presented to the Bills Committee were collected and discussed through MTRC's long-standing two-tier staff consultative machinery of the Joint Consultative Committee and the Staff Consultative Council.

21. With the staff bodies' affirmation of the good operation of MTRC on one hand and concerns raised on a number of matters on the other, Mr LAU Chin-shek asked if the staff bodies considered now the opportune moment for privatization. MTRCSU replied in the negative as the number of passengers had decreased amidst the declining economic conditions. HKMTRSGA was of the view that privatization was a commercial decision made by the company. However, SCCMTRC was in favour of MTRC's privatization now as the financial gains could benefit the society as a whole.

22. Mr LAU further asked if other measures could be taken to allay the staff's worries, such as an agreement to be reached between the staff and the management as in some other privatization projects. Mr LAM Siu-wai of HKMTRSGA hoped that staff protection could be stated in the Bill. Mr CHAN of MTRCSU added that staff representation on the Board of Directors and an undertaking from the Corporation would help to ease the staff's concerns. Mr LAW of SCCMTRC stated that the management should consult staff opinion on important issues before and after privatization.

*Clause 29 - Offence of negligent act or omission by employee*

23. In response to Mr CHAN Wing-chan, Mr MAK of HKMTRSGA explained further the staff's concern on the custodial sentence imposed under clause 29 of the Bill. As front-line staff had the duty to deal with emergency situations on-the-spot, it would be unfair for them to face such a heavy penalty in case any of their actions were subsequently found to have constituted negligent acts or omissions. Referring to the

penalty of similar offence under section 6B of the Factories and Industrial Undertakings Ordinance (Cap. 59), HKMTRSGA suggested that the 6-month imprisonment term should be removed and the term "negligence" more clearly defined.

24. Responding to Miss CHAN Yuen-han's request, MTRCSU, HKMTRSGA and SCCMTRC stated their position on clause 29. Given that only disciplinary actions would be taken against the concerned staff under existing practice and the statutory penalty for other industries was less severe, they were of the unanimous stand that the proposed penalty of imprisonment was too stringent and should be deleted.

25. On the advice of the Assistant Legal Adviser, the Chairman drew the attention of the meeting that there was a similar provision under section 23D of the existing Mass Transit Railway Corporation Ordinance (Cap. 270).

*Clause 41 - Employment-related matters*

26. Referring to the staff's concern on inadequate protection for the continuity of employment contracts and benefits under clause 41, Miss CHAN Yuen-han requested a clear mandate from the staff bodies as to whether the relevant provisions in the Bill should be amended to include a specific undertaking for this purpose. In reply, Mr LAM of HKMTRSGA said that according to their legal advice, "contracts of employment" might only include the letter of employment signed by the employees when they joined the Corporation. Other arrangements related to staff benefits and remuneration might not be covered by clause 41. As such, the Bill should be amended to specify that the pay and benefits of the staff should be no less favourable than before privatization. HKMTRSGA's views were shared by both MTRCSU and SCCMTRC.

*Further views from staff deputations*

Staff  
deputations 27. Responding to some members' enquiries, MTRCSU, HKMTRSGA and SCCMTRC undertook to provide supplementary submissions on the following matters for members' consideration -

- (a) preferential allocation of shares to the staff;
- (b) envisaged role of the staff representative on the Board of Directors and his functions in relation to the staff unions;
- (c) penalty of imprisonment imposed under clause 29; and
- (d) current practice of disciplinary actions taken against negligent acts of the staff and appeal mechanism.

*(Post meeting note: The staff deputations' supplementary submissions were subsequently issued to members vide LC Paper Nos. CB(1)825/99-00,*

CB(1)840/99-00 and CB(1)858/99-00.)

*Competition commitment*

28. Noting CC's concern on the market share of MTRCL increasing to about 50% by 2016, and the Government's policy to give priority to railway development, Mr CHAN Wing-chan asked whether fair competition could still prevail. Mrs CHAN Wong Shui pointed out that MTRCL's market share in each district would be an important consideration as the percentage only represented an overall figure. She stressed that the Government had to make a long term commitment of maintaining competition both before and after privatization in order to safeguard consumers' interests. With its majority shareholding in the new Corporation, the Government should be able to fulfil its commitment.

29. Given that MTRC would retain fare autonomy after privatization while fare increases of other major modes of public transport would require approval from the Government, Mr SIN Chung-kai asked if Professor CHAN would consider it fair competition. In reply, Professor CHAN emphasized that in view of the different nature of railway investment which required substantial capital expenditure with a long pay-back period, MTRC's fare setting mechanism should be different from other transport modes. He personally did not favour adopting a formulae approach to regulate fare as no fare determination mechanism would be applicable for the whole term of the franchise.

30. Mr SIN was unconvinced that there would be a level playing field in the market if MTRCL was allowed fare autonomy. He considered that fair competition would require MTRCL being subject to the same fare regulatory regime as other public transport providers.

31. In the absence of a general competition law in Hong Kong, Mr CHENG Kar-foo asked what could be done to safeguard public interest if CC's suggestion on a competition rule in the OA was not accepted. Mrs CHAN WONG Shui replied that while such a law would combat restrictive practices by any market participants, a voluntary code of practice might be adopted by MTRCL.

*Fare regulation*

32. Mr NG Leung-sing sought the views of the staff deputations on the existing fare determination mechanism. MTRCSU, HKMTRSGA and SCCMTRC all took the view that the existing fare determination mechanism should be preserved as it had operated satisfactorily for the past 20 years. Mr CHAN of MTRCSU said that excessive regulation on fare would constrain the company's profitability and expansion. Citing overseas experiences which showed that fare control might be accompanied by staff reduction, Mr MAK of HKMTRSGA supplemented that staff interest might be adversely affected should operational difficulty arise. Sharing similar views, Mr LAW of SCCMTRC cautioned that regulation without any specific objective might not be beneficial.

33. Given Professor CHAN's disagreement in adopting a formulae approach such as the CPI-X model in fare regulation, Mr CHENG Kar-foo enquired why he would reject this kind of price cap regulation even for the first few years after MTRC's privatization to safeguard public interest. In reply, Professor CHAN emphasized that with such a regulatory model, many practical difficulties would be involved, such as the calculation of the future costs of operation of MTRCL and the determination of factors that would contribute to an increase in operating costs. He added that there would be no reason why a fare regulatory regime, once adopted, should only be used for a few years and not thereafter. MTRCL should be allowed to find the right balance for itself in terms of ensuring the interests of the public and the shareholders. If not, public and political pressures could also be applied to ensure that fares would be set with due regard to public interest.

34. Expressing doubt on the effectiveness of political pressures in controlling prices and citing examples of other public utilities under price cap regulation, Mr CHENG asked whether CC and Professor CHAN would accept a formulae approach to regulate fare in the absence of a general anti-competition law in Hong Kong. In response, both Mrs CHAN Wong Shui and Professor CHAN reiterated their belief that market competition would be the most effective way to monitor fare levels.

35. Mrs Selina CHOW sought clarification on CC's stand on the proposed fare setting mechanism. Mrs CHAN WONG Shui replied that CC accepted the proposed mechanism for MTRCL to consult the Transport Advisory Committee and the LegCo Panel on Transport before changing the levels of fares, subject to the Government undertaking to maintain a competitive environment and MTRCL making a pledge that it would not collude with other transport operators in fare setting.

*Corporate governance*

36. Mr CHAN Wing-chan sought the views of other staff bodies on HKMTRSGA's proposal to appoint a staff representative to the Board of Directors. According to HKMTRSGA, staff representation on the Board could ensure more openness, fairness and transparency in the allocation of staff resources.

37. MTRCSU supported the proposal as it would facilitate effective communication between the staff and the management. Responding to Mr CHAN's further query on whether existing communication was adequate, a representative of MTRCSU said that regular meetings were held between the Corporation and the staff unions. However, SCCMTRC took a different view on the issue of staff representation on the Board. Given that regular and open dialogue could be maintained between the staff and the management through the existing consultation channels, a staff representative on the Board would be unnecessary as it might not bring about real benefits to the staff.

38. Expressing concerns on the Government's role as a regulator of train service, a majority shareholder having the power to select board directors and senior management, and an investor, Mr Albert HO asked how should the Government perform these roles to the interests of the public and the shareholders while ensuring fair competition. Mr BONE of Baring replied that the Government should act in a passive supervisory role allowing the Corporation to run as far as possible on pure commercial grounds. When selecting Board members, it would be important to ensure the independence of management control and decision-making. Over time, the market would ensure that the businesses which survived were those that were run efficiently and effectively not only to the interests of the shareholders, but also the community and the employees. Expressing similar views, Professor CHAN pointed out with the Government promoting fair market competition, the Corporation would seek to increase its own value by providing better service to the interests of the public.

39. Responding to Mr HO's further question on voting decisions of the three additional directors appointed by the Chief Executive (CE), Professor CHAN and Mr BONE of Baring both emphasized that the directors should be allowed to make their own decisions on commercial principles and to the interests of the company. Ultimately, the Government as the majority shareholder would be able to vote on the Board's decisions. Hence, the best way was for the Government to exercise control in its capacity as a shareholder. Mrs CHAN WONG Shui of CC added that the additional directors should reflect public interest in order to strike the right balance.

40. The Chairman thanked the deputations for attending the meeting.

### **III Meeting with the Administration**

*(LC Paper Nos. CB(1)690/99-00(04), (07) and (08))*

41. The Chairman drew members' attention to the Administration's paper entitled "Major Differences between the New Operating Agreement and the Existing Memorandum of Agreement" (LC Paper No. CB(1)635/99-00) which had been issued since last meeting and the updated list of follow-up actions requiring the Administration's response (LC Paper No. CB(1)690/99-00(07)). The OA of MTRCL would be further discussed at the next meeting on 6 January 2000.

Staff's general concerns

42. On the views presented by the staff deputations, the Human Resources Director/MTRC (HRD/MTRC) highlighted the Corporation's response as detailed in MTRC's paper to the Bills Committee (LC Paper No. CB(1)690/99-00(04)).

43. Referring to HKMTRSGA's and MTRCSU's survey results, Mr CHENG Kar-foo asked why MTRC took the view that the staff were in general support of the proposed public listing as stated in paragraph 12 of its paper. HRD/MTRC replied that the staff's concerns were understandable and with such concerns properly addressed, the staff would support privatization. Also, according to SCCMTRC which represented all MTRC staff, the staff were generally supportive of the listing plan.

44. Mr CHAN Kam-lam asked what MTRC could do to allay the staff's worries that their terms and conditions of employment might be altered in view of the changed operating conditions after privatization. In reply, HRD/MTRC assured members that an undertaking had been made by the management to consult staff opinions on all matters affecting their employment. Staff views would be sought on any major decisions in relation to their welfare and benefits.

45. Mr CHAN expressed his concern about the effectiveness and acceptability of the existing staff consultative machinery. In response, HRD/MTRC explained that the Joint Consultative Committee comprised of over 500 representatives from all jobs and grades of MTRC's staff, and these representatives would elect 32 councillors to sit on the Staff Consultative Council. Regular meetings were held between the management and the Staff Consultative Council to discuss matters of staff concern. On Mr CHAN's further enquiry about the number of councillors who were members of staff unions, HRD/MTRC advised that the company had no such information as the councillors were not required to indicate their affiliation with staff unions. He added that communication had all along been maintained with the two staff unions to ensure their views were made known.

46. Highlighting worries expressed by the staff deputations at the meeting, Miss CHAN Yuen-han remained unconvinced that MTRC had won over the staff's confidence with its assurance.

Clause 29 - Offence of negligent act or omission by employee

47. Responding to Miss CHAN Yuen-han's request for a review of clause 29, the Deputy Secretary for Transport(1) (DS for T(1)) advised that clause 29 which mirrored section 23D of Cap. 270 was an essential part of the legislative framework for ensuring that railway safety would be safeguarded after privatization to protect both the 2.3 million passengers travelling on the Mass Transit Railway (MTR) system and MTRC employees. Employees who had endangered the safety of other persons as a result of

their negligent acts or omissions should be liable for punishment under the law. Hence, the continuation of existing legal provisions under section 23D was appropriate. Furthermore, there were similar provisions in respect of the operation of franchised bus companies.

48. HRD/MTRC added that section 23D of Cap. 270 had never been invoked since its enactment in 1979. He opined that with the advanced design of the MTR system which minimized the risk of human errors and proper staff training on operational safety, cases of employees being prosecuted under clause 29 should be rare.

Admin. 49. Given that section 23D was enacted a long time ago and had never been invoked, Miss CHAN considered it all the more reason to review clause 29. She opined that the Administration should review whether custodial sentence was necessary taking into consideration the lesser penalty provided under section 6B of Cap. 59 which was enacted more recently. In response, DS for T(1) pointed out that as section 6B of Cap.59 only covered negligent acts in factories or industrial premises, it was quite different from other ordinances regulating public transport services which handled a large number of travelling public on a daily basis. Nevertheless, he agreed to further consider the matter.

#### Clause 41 - Employment-related matters

50. Referring to the legal advice obtained by HKMTRSGA, Miss CHAN asked for the rationale behind the Administration's view that adequate protection was provided by clause 41. The Legal Director and Secretary/MTRC (LD&S/MTRC) clarified that the contracts of employment referred to under the provision as continuing covered not only the basic terms of employment typically signed by employees at the start of their employment, but also other contractual arrangements relating to staff benefits which were granted to the staff. At the Chairman's suggestion, LD&S/MTRC agreed to convey this to the staff.

Admin. 51. Miss CHAN followed up on the staff deputations' suggestion to amend clause 41 to expressly provide that their existing terms and conditions of employment would remain unchanged after privatization. In reply, the Deputy Secretary for Transport(4) (DS for T(4)) undertook to consider the suggestion.

#### Competition commitment

Admin. 52. Mr CHENG Kar-foo asked if a competition commitment similar to the draft provisions detailed in paragraph 19 of CC's submission could be provided for in the OA. Both DS for T(1) and LD&S/MTRC advised that detailed discussions would be required as other provisions in the OA might be affected. At the request of the Chairman, DS for T(1) undertook to provide a written response to CC's comments on competition.

Corporate governance

53. At the invitation of the Chairman, Deputy Secretary for the Treasury(2) (DS for Tsy) introduced the paper entitled "Corporate Governance" (LC Paper No. CB(1)690/99-00(08)) providing further information on certain issues raised by members when the subject was previously discussed by the Bills Committee. In particular, he drew members' attention to the following proposals:

- (a) The existing Members of the Board of MTRC would be invited to serve as the first directors of MTRCL and an audit committee in MTRCL be established according to the Code of Best Practice in the Listing Rules of the Stock Exchange of Hong Kong (HKSE);
- (b) A staff representative on the Board would neither be appropriate nor necessary as it would give rise to a conflict of interest between his fiduciary duty as a director and his responsibility to the union or association who appointed him. In order to increase the staff's commitment to MTRC's future, the Government would give consideration to preferential share allocation for staff;
- (c) The Government would participate in the governance of MTRCL by the appointment of additional directors and the Chairman of the Board, voting as the majority shareholder and exercising of special powers under the Bill; and
- (d) The question on whether the Government would be treated as a connected person for the purpose of the Listing Rules would be further discussed with MTRCL and HKSE.

54. Mr SIN Chung-kai asked about the composition of the Board of Directors of MTRCL, particularly the number of directors who were not appointed by the Government. DS for T(1) advised that while the existing Members of the Board of MTRC would be invited to continue their service, the exact number of directors on the initial Board of MTRCL had yet to be finalized as there were still many uncertainties at this preliminary stage, and the Government might consider appointing other directors. As in the case of other listed companies, the number of directors would be decided at the general meeting of shareholders.

55. Mr David DUNN, the Managing Director of Merrill Lynch (Asia Pacific), financial adviser to the Government, supplemented that investors' acceptance of the composition of the initial Board would be an important factor to consider. It should provide a sense of continuity of existing commercial expertise, so that investors would feel comfortable with a minority of directors appointed to look after public interest.

56. Mr SIN was dissatisfied with the Administration's reply because as the majority shareholder, the Government should be in a position to decide on such matters.



He considered it unfair that such critical information should be withheld from the Bills Committee while members were required to decide whether to support this important Bill or not. He urged the Administration to finalize its proposal on the composition and appointment of the Board of Directors as soon as possible and inform members in due course. In response, DS for T(1) said that the Administration should come to a more definite view on the matter before the Bill resumed its Second Reading debate.

57. Mr Kenneth TING sought clarification as to why three additional directors were necessary to safeguard public interest. In reply, DS for T(1) explained that there were two aspects of public interest to be safeguarded. On one hand, the Government had to ensure a satisfactory return on the public funds it invested in the Corporation. The directors elected at the general meeting of shareholders by the Government as a shareholder would represent the interests of the investors. On the other hand, the additional directors appointed by CE would be specifically required to consider public interest. Hence, the role of Government officials sitting on the Board would depend on whether they were elected at the general meeting or appointed by CE.

58. Referring to paragraph 53 (b) above, both Mr CHAN Wing-chan and Miss CHAN Yuen-han urged the Administration to reconsider its proposal regarding staff representation on the Board. Stressing on the conflict of interest that might arise, DS for Tsy advised that decision making at Board level might become more difficult and it would neither be a common nor good corporate practice in Hong Kong. The best way to address and discuss matters of staff concern would be through existing channels of communication in an atmosphere of transparency and openness.

Admin. 59. At the Chairman's suggestion, DS for Tsy agreed to consider the matter further taking into account the representations made by the staff unions and overseas experience.

60. As Government officials would also have a conflict of interest in the Board, Mr Albert HO queried why they were not subject to the same restriction as in the case of staff representatives. DS for T(1) clarified that it was not a legal restriction as such. Moreover, unlike staff representatives who had personal interest at stake when employment matters were discussed, Government officials would seldom have any personal interest involved in discharging their duties as directors.

61. Following up on paragraph 53 (c) above, Mr Albert HO enquired whether the Government would seek to influence the three additional directors in case there was a conflict between the interests of the public and the Corporation. Using the example of commercially unviable projects as illustration, Mr HO further asked if the Government would either use its vote on the Board or at the general meeting to ensure that MTRCL would take up these projects.

62. In response, DS for Tsy emphasized that those additional directors were appointed to safeguard public interest and with the exception of the Board Chairman and Government officials, all other directors were independent non-executive directors.

If commercially unviable projects were required to be undertaken, CE in Council could give a direction to MTRCL and the Government would pay compensation to the Corporation to bridge the gap so that these projects could provide a commercial return. Mr HO further asked if any internal return rate (IRR) would be guaranteed by the Government for making up such shortfall. In reply, DS for Tsy advised that the Government would consider providing other forms of assistance to bridge any perceived IRR gaps for any new projects, including property development rights and contribution to essential infrastructure.

63. DS for T(1) supplemented that the Government might also consider bringing in a third party who was interested in investing such projects. It would then be competition for investment in the market. Obviously, the scope of such competition might be limited for railway extensions out of the consideration of system integration, but there was certainly a choice for new projects.

64. Underlining the importance of the Government adopting an arm's length approach in its regulation on MTRCL and the Board of MTRCL balancing public interests and commercial considerations, Mrs Selina CHOW enquired about the specific role and identity of the three additional directors.

65. DS for T(1) replied that these appointments might include Government officials or any other persons whom CE appointed in view of the importance of the rail network to Hong Kong's transport system. As members of the Board, the additional directors appointed directly by CE and other directors elected through the general meeting of shareholders had the same responsibility of reviewing and making the policies and strategies of the company. This responsibility would in no way undermine the additional directors' contribution to the governance of the company from a public interest perspective. The same also applied to Government officials appointed as members of the boards of directors of other public transport providers such as franchised bus and ferry companies.

66. DS for T(1) further advised that negotiations with the Government and MTRCL on any future development would be done by the management of the company and it was only when both sides had agreed on the project that the Board was then involved in final decision making. Hence, no conflict in the day to day operation was envisaged. Moreover, Government-appointed directors would not be in the majority on the Board and as such, decision making would still depend on other directors.

67. Notwithstanding the Administration's reply, Mrs Selina CHOW still had concerns on how the same Government officials on the boards directors of different companies could balance their competing and conflicting interests, while giving effect to the general policy of maintaining fair competition in the market.

#### **IV Any other business**

68. There being no other business, the meeting was adjourned at 12:25 pm.

Legislative Council Secretariat  
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