

立法會
Legislative Council

LC Paper No. CB(1)1957/99-00
(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 Thursday, 6 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 HO Sai-chu, SBS, JP
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 CHAN Wing-chan
Hon SIN Chung-kai
Hon Howard YOUNG, JP
Hon Andrew CHENG Kar-foo

Members absent : Hon Kenneth TING Woo-shou, JP
Hon Cyd HO Sau-lan
Hon Edward HO Sing-tin, SBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon LAU Kong-wah
Hon FUNG Chi-kin
Dr Hon TANG Siu-tong, JP

**Public officers
attending**

: Transport Bureau

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)

Transport Department

Ms Zina WONG
Assistant Commissioner for Transport (Bus Development)

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 Phil GAFFNEY
Operations Director

Mrs Miranda LEUNG
Corporate Relations Manager

Merrill Lynch (Asia Pacific)

Mr David DUNN
Managing Director

**Railway Technology Strategy Centre
Imperial College, University of London**

Professor Tony RIDLEY

Slaughter & May

Mr Jason WEBBER
Solicitor

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

Action

I Matters arising from previous meetings
(*LC Paper No. CB(1)717/99-00(01)*)

The Chairman drew members' attention to the updated list of follow-up actions requiring the Administration's response which was tabled at the meeting.

2. At the Chairman's suggestion, members agreed that the meeting would be divided into two parts, first to receive a briefing by Professor Tony RIDLEY from the University of London, and then followed by discussion with the Administration on the Operating Agreement.

II Operating Agreement

Presentation by Professor Tony RIDLEY, Railway Technology Strategy Centre, Imperial College, University of London

3. The Chairman welcomed Prof. RIDLEY from the University of London to the meeting. At the invitation of the Chairman, Prof. RIDLEY briefed members on the regulatory issues relevant to the privatization of the MTR Corporation (MTRC) and highlighted the following findings based on results obtained through the Railway Technology Strategy Centre's benchmarking analyses of 16 major metro railways over the past five years.

Action

- The best mode of regulation would be an effective policy framework that would encourage competent, pro-active and accountable management.
- Strong management, constructive competition within the market and light regulation were conducive to successful railway operation.
- The operator of metro services was best placed to oversee service regulation including time-tabling and performance levels.
- The right level of regulation allowed companies the flexibility and capability to respond to market changes.
- Micro-regulation could not compensate for incompetent management and might actually contribute to deteriorating performance.
- MTRC was one of the most competently managed systems in the world in terms of business performance, service levels, operating reliability and safety record.

4. Responding to a question from Mr Howard YOUNG, Prof. RIDLEY advised that notwithstanding the differences in design and age of metro systems participating in the benchmarking programme, those with good performance were the ones which were competently managed and subject to light regulation.

5. In response to an enquiry from the Chairman, Prof. RIDLEY advised that it would theoretically be possible to benchmark railway safety, i.e. to qualify safety information based on the design and age of the metro systems though this was not an aspect covered by the benchmarking study.

6. Given that MTRC was performing well in all areas of train service as illustrated by the benchmarking results, Mr CHENG Kar-foo sought the opinion of Prof. RIDLEY on whether it was right time to privatize the Corporation now. Prof. RIDLEY advised that improvement in performance efficiency would be one of the objectives of privatization. Apart from enhancing performance, privatization could raise capital for improving the whole system and building new lines. Irrespective of other objectives of the Government in the privatisation of MTRC, it was important to put in place a regulatory regime that could preserve its existing efficient operation.

7. In response to Mr CHENG Kar-foo's further enquiry, Prof. RIDLEY remarked that for the purpose of maintaining MTRC's high level of performance, it was of utmost importance that the management had the flexibility to respond to changing economic circumstances, while ensuring a sufficient flow of funds to modernize the system and working out a financial regime whereupon the Government and the privatized Corporation could ensure the extension of new lines as required.

8. Responding to the Chairman, Prof. RIDLEY confirmed that the performance requirements and thresholds as contained in Schedule III of the Operating Agreement (OA) of the MTRC were the most stringent standards in the world.

9. Mr SIN Chung-kai sought the opinion of Prof. RIDLEY on a comparison of railway fare. In reply, Prof. RIDLEY cited the London Underground as charging the highest fare, which had enabled the company to cover its operating cost and a substantial part of maintenance cost. On the other end would be the metro system in New York. Although the fare was kept constantly low for a long time, revenue from the fare box was not sufficient to enable the management to invest in the maintenance and improvement of the system. MTRC charged fare that was attractive to the customers because of its high ridership, and it was also able to finance operating and investment costs. That was an enormous strength of MTRC. At Mr SIN's request, Prof. RIDLEY agreed to provide data on benchmarking study of fare of metro railways with reference to the cost of living of the respective cities for members' information.

MTRC

(Post-meeting note: Prof. RIDLEY's briefing note tabled at the meeting was subsequently issued to members via LC Paper No. CB(1)740/99-00(01).)

Meeting with the Administration

(LC Paper No. CB(1)717/99-00(02))

10. At the invitation of the Chairman, the Deputy Secretary for Transport(4) (DS for T(4)) briefed members on the information paper and the revised draft of the Principal Headings of the OA which incorporated some suggestions made by members during previous discussion on the subject at the meeting on 23 November 1999.

11. Referring to paragraph 24 of the paper, Mr Howard YOUNG sought clarification on whether any railway projects currently being contemplated by the Administration, including the Penny's Bay Rail Link to serve the Disneyland, would come under the category of commercially unviable projects. The Deputy Secretary for Transport(1) (DS for T(1)) confirmed that no such project was being planned at this stage. As for the Penny's Bay rail link project, he said that the Government had yet to discuss with the Corporation, pending the detailed design of the project.

12. Responding to Mr CHENG Kar-foo's question on the support to be provided by the Government to the MTR Corporation Limited (MTRCL) for commercially unviable projects, DS for T(1) advised that the Administration would consider each case on its own merits and details of support would be incorporated in the respective project agreements to be signed between the Government and MTRCL.

Performance requirements (clause 4.9)

13. Mr CHENG Kar-foo was dissatisfied with the pitching of the proposed performance levels specified in Schedule III of the OA at 1% below the Corporation's historical performance in the past two years immediately before privatization. Given that the performance levels such as train service delivery and train punctuality were of great concern to the general public, and the intention of MTRC's privatization was to raise capital, Mr CHENG was of the view that the new Corporation should be required to deliver an even higher level of service or at least keep up with MTRC's existing good performance to safeguard the interest of the public after privatization.

14. In response, DS for T(4) said that under clause 9 of the Bill, MTRCL was obliged to maintain a proper and efficient service, and the performance levels in Schedule III were only threshold standards. The real targets which MTRCL would strive to achieve under the OA were the Customer Service Pledges (CSPs) which would generally be 0.5% above the performance requirements. Indeed, the proposed thresholds were already extremely high by any international standards. DS for T(4) stressed that the minimum performance levels were reasonable as a safety margin should be allowed for minor fluctuations that might occur occasionally due to, for example, mechanical problems that might come with ageing of the system. In order to ensure the existing level of high performance, the Administration had taken on board a member's suggestion that there should be a mechanism of interim review whereby MTRCL would be required to review its adoption of technological and technical advances used internationally for railway operations. The Government would also review the OA including the performance requirements in Schedule III every year or more often if necessary.

15. The Chairman queried why MTRC's existing performance levels could not be adopted. In reply, the Operations Director of MTRC (OD/MTRC) emphasized that in setting the performance requirements which served as the minimum level MTRCL would be obliged to achieve, consideration had to be given to the fact that these levels were indeed very high by international standards, and as the franchise was to last for 50 years, some sort of margin had to be built in for occasional fluctuations. The management of Corporation would focus on meeting the CSPs and not the performance requirements which were lower sanctionable standards. Moreover, reports of the Corporation's performance against the CSPs would be released on a quarterly basis to the public. OD/MTRC assured members that MTRCL would strive for a standard much higher than the stipulated performance levels.

16. DS for T(1) was appreciative of Mr CHENG's concern about maintaining a high level of service. However, unforeseeable factors beyond the Corporation's control could often happen and affect the performance levels. For example, a sudden increase in the number of passengers would lengthen the time taken by passengers for alighting and boarding. As a result, the performance requirements might not be achieved.

17. Mr CHENG Kar-foo drew members' attention to clause 4.11.4 which stated that the CSPs were only voluntary targets and did not form part of the Corporation's obligations relating to performance. He sought clarification on the meaning of that provision and its effect in relation to clause 4.9.1. DS for T(1) replied that the latter provision set out the absolute performance levels which MTRCL would be obliged to achieve contractually. However, the real targets which were the CSPs would not form part of the OA signed between the Government and MTRCL, and as such, clause 4.11.4 was needed to make this fact clear. The Government hoped that with a light-handed approach in regulation as proposed by Prof. RIDLEY for MTRCL, the privatized Corporation could have more flexibility in its operation. In any event that MTRCL failed to meet the performance levels, clause 4.9.1 (i) could be invoked to impose sanctions.

18. Mr CHENG Kar-foo considered it unacceptable that under clause 4.9.1 (iv), MTRCL would be allowed to furnish written explanations to the Commissioner for Transport (C for T) for its non-compliance with the performance requirements, as it would mitigate against the effect of clause 14 of the Bill and clause 4.9.1 (i) of the OA. DS for T(4) explained that the effect of clause 14 of the Bill was clear, and it could be invoked in the event of any non-performance, such as non-compliance with any performance requirements set out in Schedule III of the OA. However, as clause 14 (2)(a) of the Bill provided that the Corporation should be given an opportunity to make representations to the Chief Executive in Council before any penalty could be imposed, clause 4.9.1 (iv) of the OA was necessary for that purpose. In such case, Mr CHENG remarked that the drafting of clause 4.9.1 (iv) should be improved so that MTRCL would not inadvertently be absolved from the legal consequences by simply providing explanations to the C for T. The Legal Director and Secretary of MTRC (LD&S/MTRC) clarified that the drafting of clause 4.9.1 (iv) was in order as it should be read disjunctively from clause 4.9.1(i). The fact that MTRCL was allowed to give an explanation did not stop the Government from exercising its powers in relation to any non-performance by MTRCL. If the Chief Executive in Council did not accept the explanations given, the Government could take punitive actions against MTRCL. At Mr CHENG's request, the Assistant Legal Adviser undertook to examine the drafting of clause 4.9.1 (iv) of the OA.

ALA

(Post-meeting note: The Administration had confirmed after the meeting that clause 4.9.1(i) and clause 4.9.1(iv) were separate and independent of each other. The drafting would be improved to put this beyond doubt.)

19. On Mr CHENG Kar-foo's request for information on the number of complaints about malfunctioning of Octopus cards for the past 12 months, OD/MTRC responded that figures regarding Octopus card reliability in terms of transaction and failure rates could only be provided for all service providers globally, as malfunctioning detected by MTR machines might be caused by a previous carrier. Notwithstanding this technical limitation, Mr CHENG and the Chairman opined that MTRC should monitor incidents of Octopus card failure and keep record of complaint cases handled by each station.

Measuring customer satisfaction (clause 4.12)

20. Citing the example of the Airport which had benchmarks set for measuring customer satisfaction, Mr NG Leung-sing enquired whether MTRC would consider adopting a similar approach. In response, OD/MTRC explained that instead of setting objective targets, MTRC had been gauging customer satisfaction by passenger surveys conducted every six months. The Chairman remarked that objective benchmarks in this respect might serve as a useful indicator of service performance. OD/MTRC took note of the suggestion.

Objective benchmark for railway safety (clause 5.1)

21. Referring to paragraph 10 of the Administration's paper, Mr CHENG Kar-foo was unconvinced of the explanations given for not setting numerical targets on railway safety, especially platform safety. In response, DS for T(4) reiterated that any numerical targets on safety would constitute derogation from the absolute statutory duties imposed by clauses 28 to 30 of the Bill. Part VI of the Bill had given adequate powers to the Government to oversee all aspects relating to the safety of railway operation, including passenger and staff safety. OD/MTRC added that MTRC had already taken elaborate measures to ensure platform safety, such as the installation of CCTV cameras, emergency train stop buttons on platforms and sufficient communication and control facilities. With the installation of screen doors, platform safety standard would become even higher.

22. Citing the benchmarks for ticket issuing machines, escalators etc. in Schedule III to the OA, Mr CHENG Kar-foo insisted that similar benchmarks should be set for platform safety in terms of the number, efficiency and reliability of screen doors to address the public's concern. DS for T(4) and OD/MTRC assured members that after platform screen doors had been installed, the Government and MTRC would review the reliability and availability targets of platform screen doors, and incorporate them into the CSPs. OD/MTRC further advised that the Corporation was required to establish a safety management system to review, control and minimize safety risks as far as reasonably practicable under the OA. It would be more appropriate to address the issue of platform safety through this stringent system which adopted a zero tolerance approach for passenger and staff safety incidents, and the upkeeping of a high level of safety awareness throughout the Corporation, rather than the setting of numerical targets. In an effort to demonstrate its commitment on railway safety, the Corporation and the Government had agreed to a member's suggestion made previously that the review by independent safety experts should be carried out more frequently, and clause 5.3 of the OA was thus amended to the effect that such review would be conducted every three years, instead of five years, as proposed earlier after privatization. The Corporation believed that it could give the Government and the railway inspector the assurance that MTRCL would be operating to the highest possible international standard of safety.

23. Given that platform screen doors had already been installed at stations on the Tung Chung Line and Airport Express Line, Mr CHENG Kar-foo was of the view that relevant performance thresholds should be set at this stage. DS for T(4) undertook to consider the matter.

Admin.

Dispute settlement and external auditor (clauses 10 and 15)

24. While welcoming the adoption of arbitration as a means for dispute settlement under clause 10 of the OA, Mr Eric LI asked whether the Administration would consider putting in place a mechanism to allow for an independent third party to review the performance requirements regularly which could help minimize disputes between the Corporation and the Government. The Assistant Commissioner for Transport replied that under the proposed OA, the performance requirements would be jointly reviewed by the Corporation and the C for T annually. If any amendment to the performance requirements was necessary, agreement by both parties would be required. The Principal Assistant Secretary for Transport(3) (PAS for T(3)) added that a mechanism had already been provided for under clause 15 of the OA, whereby external auditors of the Corporation would audit the Corporation's compliance with the performance levels, as well as the CSPs.

25. In response to Mr LI's further enquiry, OD/MTRC advised that the external auditors would examine the procedures the Corporation had in place for the measurement of these performance criteria, and then submit a report to the C for T. Mr LI suggested that a provision should be added to the OA to the effect that a report prepared by the external auditors for the purpose of assessing performance compliance shall be binding and final. DS for T(1) undertook to consider the matter.

Admin.

Fare

26. Responding to an enquiry from the Chairman, OD/MTRC said that discussions through international associations of transport operators had confirmed that MTRC's fare was below average.

Employment protection

27. In response to a question from Mr CHAN Wing-chan, LD&S/MTRC advised that as the OA was a regulatory agreement between the Government and MTRCL on railway operation, employment matters would best be dealt with by the staff's employment contracts with the Corporation and clause 41 of the Bill.

III Any other business

28. There being no other business, the meeting was adjourned at 10:52 am.

Legislative Council Secretariat
29 June 2000