

立法會
Legislative Council

LC Paper No. CB(1)1982/99-00
(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, 11 January 2000, at 4:30 pm
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 Cyd HO Sau-lan
Hon Ronald ARCULLI, JP
Hon CHAN Yuen-han
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon LAU Chin-shek, JP
Hon LAU Kong-wah
Hon Andrew CHENG Kar-foo
Hon FUNG Chi-kin

Members absent : 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 Eric LI Ka-cheung, JP
Hon NG Leung-sing
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Bernard CHAN
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)

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

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)757/99-00(01) - List of follow-up actions

LC Paper No. CB(1)757/99-00(02) - Information paper provided by the Administration)

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

2. At the invitation of the Chairman, the Deputy Secretary for Transport(4) (DS for T(4)) briefed members on the Administration's response to the outstanding issues arising from the meetings on 4 January 2000 and 6 January 2000.

Clause 29 - Offence of negligent act or omission by employees

3. Drawing a comparison between the provisions under section 6B of the Factories and Industrial Undertakings Ordinance (Cap. 59) and clauses 29 and 30 of the Bill, Miss CHAN Yuen-han opined that different penalties should also be imposed for the acts or omissions of employees of the Mass Transit Railway Corporation Limited (MTRCL) which endangered the safety of other persons, depending on whether such acts or omissions were done negligently or wilfully. In case of negligence, only a fine should be imposed.

4. In reply, DS for T(4) reiterated that clause 29 was intended to ensure the safety of passengers travelling on the Mass Transit Railway (MTR) and similar provisions were also provided under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372). Citing regulation 25(3) of the Public Bus Services Regulations (Cap. 230, sub. leg.) (PBSR) as another example, he said that bus drivers who failed to take precautions to ensure the safety of passengers on the bus or entering or alighting from the bus, or to shut off the engine if the bus was left unattended, etc., would be liable to a fine of \$3,000 and to imprisonment for 6 months. The penalty in terms of imprisonment was the same.

5. Acknowledging the importance of ensuring safety, Miss CHAN however queried why clause 29 only referred to the general condition that "in connection with his duty, an employee of the Corporation negligently does or omits to do anything" while specific acts were set out in regulation 25(3) of the PBSR. In response, DS for T(4) and the Operations Director/MTRC (OD/MTRC) advised that as railway system

network was significantly more complicated than bus operation and a wide range of staff was involved in its operation and maintenance, the drafting of clause 29 would have to be more general in nature, instead of only referring to certain specific acts.

6. Miss CHAN indicated that subject to further discussion with the staff side, she might move a Committee Stage amendment (CSA) to clause 29.

Clause 41 - Employment-related matters

7. DS for T(4) advised that after discussion with the Mass Transit Railway Corporation (MTRC), the Administration confirmed that existing contracts of employment and other benefits of the staff were adequately covered under clause 41. In particular, a reference to "pensions, allowances or gratuities of every description" was made under clause 41(2), and all the related rights and liabilities would be continued after privatization.

8. Notwithstanding the Administration's assurance, Miss CHAN Yuen-han was still concerned that the provision as drafted would not adequately cover employment benefits of all sorts and descriptions that were granted to the staff. Members noted that Miss CHAN would move a CSA to clause 41 accordingly.

9. Apart from the coverage of clause 41 as raised by Miss CHAN, Mr LAU Chin-shek pointed out that the staff was also worried about changes made to their terms and conditions of employment by the new Corporation some time after privatization. He asked what protection could be given to the staff in this respect. The Legal Director and Secretary/MTRC (LD/MTRC) replied that as indicated to members on a previous meeting, there would be no need for the Corporation to implement further restructuring measures in the foreseeable future. The Corporation would also consult the staff through the existing staff consultative procedures before any changes affecting staff benefits were introduced.

Operating Agreement

10. Mr CHENG Kar-foo was dissatisfied with the Administration's reply in respect of the performance requirements including the setting of a numerical benchmark for platform screen doors (PSDs) as members' request for a higher level of performance was not addressed at all. He opined that the performance requirements proposed under the OA should be included in the principal Ordinance so that the performance of MTRCL would come under the scrutiny of the Legislative Council (LegCo).

11. In response, DS for T(4) said that the member's suggestion would take away the flexibility required for the updating of such performance requirements arising out of the annual review to be conducted by the Commissioner for Transport.

12. However, Mr CHENG Kar-foo remarked that the difficulty mentioned was only technical in nature. As a matter of policy, the performance requirements and fare

increases should be vetted by LegCo.

13. The Chairman enquired whether any practical difficulties were involved in the inclusion of a separate performance level for PSDs. OD/MTRC replied that as the operation, availability and reliability of PSDs would be captured by the performance requirements for passenger delay and train punctuality, it was neither meaningful nor necessary to set a separate performance requirement. However, in view of members' concern in this matter, the Corporation might consider including the availability of PSDs as a Customer Service Pledge.

Competition

14. Referring to the Administration's response in paragraph 12 of its paper, Mr CHENG Kar-foo sought the opinion of the Assistant Legal Adviser (ALA) on whether it was in order to include in the principal Ordinance the competition commitment as suggested by the Consumer Council, as well as the performance requirements specified in Schedule III of the Operating Agreement (OA).

15. In reply, ALA advised that as a general principle, Committee Stage amendments to be moved by Members or the Bills Committee had to be relevant to the subject matter of the bill and meet the charging effect test. In relation to this Bill, taking into account paragraph (b) of the long title which provided for "the regulation of the operation of the Mass Transit Railway under the franchise", it could be argued that Mr CHENG's suggestion on performance requirements might be considered within the scope of the Bill. However, in respect of the competition commitment, she would need some time to consider whether it was relevant to the Bill.

ALA

Corporate governance

16. Mr LAU Chin-shek said that he had yet to solicit views from the staff side on the Administration's response in respect of staff representation on the Board of Directors.

II Any other business

17. At the Chairman's suggestion, members agreed that the Bills Committee would begin clause-by-clause examination of the Bill at the next meeting to be held on 13 January 2000. Any related matters such as amendments to the Bill and proposals on fare determination mechanism would be dealt with afterwards.

18. There being no other business, the meeting was adjourned at 5:10 pm.

Legislative Council Secretariat
26 July 2000