立法會
Legislative Council

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by the Administration)

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Bills Committee on
Mass Transit Railway Bill

Minutes of meeting
held on Thursday, 11 November 1999, at 4:30 pm
in the Chamber of the Legislative Council Building

Members present	**:**	Hon Mrs Miriam LAU Kin-yee, 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 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-yee, 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 LAU Kong-wah Hon Andrew CHENG Kar-foo Hon FUNG Chi-kin Dr Hon TANG Siu-tong, JP
Members absent	**:**	Hon Cyd HO Sau-lan Hon Ambrose CHEUNG Wing-sum, JP Hon Andrew WONG Wang-fat, 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 (I)

Department of Justice

Mr Jonathan ABBOTT
Senior Assistant Law Draftsman

Ms Betty CHOI
Senior Government Counsel

Attendance by invitation : **MTR Corporation**

Mr Clement KWOK
Finance Director

Mrs Miranda LEUNG
Corporate Relations Manager

Clerk in attendance : Ms Pauline NG
Assistant Secretary General 1

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Miss Irene MAN
Senior Assistant Secretary (1)6

I Election of Chairman

Mrs Miriam LAU was elected Chairman of the Bills Committee. In view of the wide range of issues covered in the Bill, members agreed to hold meetings on a weekly basis subject to review in due course.

2. The meeting also noted Mr Edward HO's declaration of interest as a member of the Board of Directors of the Mass Transit Railway Corporation (MTRC).

II Meeting with the Administration

(LegCo Brief Ref: TBCR1/1017/99, LC Paper No. CB(3)32/99-00, LS2/99-00 and LC Paper No. CB(1)315/99-00 (01) and (02))

3. At the invitation of the Chairman, the Deputy Secretary for Transport (1) (DS for T(1)) briefed members on the reasons and advantages for privatization of the MTRC, as well as the content of the Mass Transit Railway Bill (the Bill). On account of massive capital investment and substantial initial debt, MTRC was wholly owned by the Government since its establishment as a statutory Corporation in 1975. As the Corporation had become one of the most efficient and profitable railway systems in the world and gained good credit ratings, the Government considered it time to partially privatize MTRC. The Government's intention was to privatize a substantial minority share of MTRC through an Initial Public Offering, while the Government would remain as the majority shareholder in the privatized MTRC. Accordingly, the Bill had been introduced to facilitate the privatization of MTRC.

4. The Bill would repeal the existing Mass Transit Railway Corporation Ordinance (Cap.270). Under the Bill, a Mass Transit Railway Corporation Limited (MTRCL) would be established and registered under the Companies Ordinance. MTRCL would enjoy an initial 50-year franchise for running the existing railway network of MTRC and the Government would enter into a legally binding Operating Agreement with MTRCL. The Agreement would stipulate the performance levels required of MTRCL, and provide for a mechanism for the Government to monitor its services on the basis of these performance levels.

5. DS for T(1) said that the Government believed that privatization would bring about higher quality of service and better efficiency of the mass transit railway (MTR). With the increased diversity of sources of capital for construction and expansion of railway projects after privatization, Government resources could be re-allocated to other areas which in turn would benefit the general public. As far as the fare determination mechanism was concerned, MTRCL would continue to retain fare autonomy based on prudent commercial principles. Under the new legislation, MTRCL would be required to consult the LegCo Panel on Transport and the Transport Advisory Committee (TAC) on its annual fare review to ensure that public acceptability would be duly considered.

6. The Deputy Secretary for Treasury (DS for Tsy) elaborated on the positive

effects of the smooth implementation of the privatization of MTRC on Hong Kong's economy. He advised that the privatization would reinforce Hong Kong's status as an international financial centre, enhance the stability and diversity of the local stock market, strengthen Hong Kong's commitment to a free market, and establish precedents for the privatization of other public enterprises. In addition, privatization would also provide more access to capital and financing, free up Government funds, reduce budget deficits and generate significant proceeds for General Revenue. The Government's position as the majority shareholder of MTRCL would also assure the public of the Government's continuous commitment and support for the Corporation. DS for Tsy explained that the Initial Public Offering would take place in 2000-01. It was assumed for planning purposes that the Initial Public Offering would raise about $30 billion of proceeds over the next two financial years and that this would help reduce the budget deficits. DS for Tsy added that the Government encouraged the public to participate in the success of MTRCL through the listing exercise.

7. Expressing support for the privatization project, the Finance Director of MTRC (FD/MTRC) stressed that MTRC was operating on prudent commercial principles and this was essential in making it one of the best railway systems in the world with a relatively modest investment of public capital. Successful listing would reduce dependence on Government funding and promote the image of Hong Kong as a free economy. He stressed that the employment terms of existing staff would not be affected by the listing plan. The speaking note of FD/MTRC was circulated to members after the meeting vide LC Paper No. CB(1)375/99-00(01).

8. Before inviting views from members, the Chairman drew their attention to the results of the two surveys on the privatization of MTRC conducted by the Democratic Party (circulated vide LC paper no. CB(1)336/99-00) and by the Democratic Alliance for Betterment of Hong Kong (tabled at the meeting and circulated thereafter vide LC Paper No. CB(1) 375/99-00(02)) respectively.

Operating Agreement and Memorandum & Articles of Association

9. In order to facilitate examination of the Bill, Mr HO Chun yan requested the Administration to provide a copy each of the Operating Agreement to be signed between the Government and the MTRCL, and the Memorandum and Articles of Association concerned for members' reference. DS for T(1) advised that the latest draft of the Operating Agreement headings had been drawn up and was being translated into Chinese; it should be available for members' reference in the following meeting. The draft Memorandum and Articles of Association was not yet ready but he undertook to provide a copy to members once available.

Admin

Property Development Rights

10. Members noted that the Government had been granting property development rights to MTRC along its railway network over the past years. Mr HO Chun-yan considered such a practice no longer appropriate after privatization due to possible conflict of interest. He requested the Administration to set out in detail the

considerations for not separating the operating right from asset ownership of railways since some overseas countries had adopted this separation policy. He also wanted to know the experience of some overseas Governments which have retained the ownership of assets of railways even after privatization and the feasibility of similar arrangements in Hong Kong.

11. In reply, DS for T(1) advised that the Administration had considered the feasibility of separating the operating right from asset ownership of railways but had decided against it as the separation would affect the reliability and quality of the highly integrated railway services. At members' request, he undertook to elaborate on the considerations in writing.

Admin

12. Mr Eric LI was concerned about whether MTRCL would have advantage over other developers in obtaining property development rights in the vicinity of its railway stations. Given that MTRCL might be granted the rights to develop not only the stations and depots but also the land along the network, Mr LI was worried that the absence of a monitoring mechanism might result in preferential treatment being accorded to MTRCL. He also showed concern about the factors to be taken into account in determining the land premium after privatization as there would be serious implications on financial and land policies.

13. DS for T(1) explained that the Government would not give preferential treatment to MTRCL over other developers since MTRCL would still be required to pay the full land premium at market value. The integration of property and station developments also ensured that safety and operational aspects of the railways were safeguarded. Nevertheless, he agreed to address the issue fully in the form of a written response.

Admin

Fare Determination Mechanism

14. Some members expressed concern over the fare determination mechanism after privatization of MTRC. Mr LAU Kong-wah took the view that compulsory consultation with the Transport Panel and TAC on fare review after privatization was insufficient, and that a comprehensive fare monitoring system should be developed to ease the public's concern. He considered that being the majority shareholder after privatization, the Government should be empowered to monitor the fare levels.

15. DS for T(1) pointed out that since the establishment of MTRC in 1975, the Corporation had been operating according to prudent commercial principles and enjoying fare autonomy. The Government believed that the present system which had been working well in the past 20 years should not be changed. On the other hand, MTRC was also subject to fierce competition from other public transport providers which should best regulate the fare levels. After privatization, MTRC would also need to consult the LegCo Panel on Transport and the TAC before adjusting its fares. Such arrangement would be stipulated in the Operating Agreement, which was a legally binding document signed by the Government and MTRCL. This would ensure that when determining its fare, MTRCL would be required to fully consider

public acceptability.

16. On the fare autonomy for MTRC, Mr LEE Cheuk-yan remarked that organizations like the Hong Kong Confederation of Trade Union had requested public monitoring on several occasions in the past. As the shareholders would be very concerned about the profitability of MTRCL, he envisaged that there would be heavy commercial pressure on fare increase after the listing exercise. He was also concerned that the market forces might not be effective enough in regulating the fare as MTRCL would likely monopolize the market since the efficiency of other modes of public transport might not measure up to that of the MTR. As such, Mr LEE was of the view that the Bill should be amended to provide for the Council to monitor the fare, and he sought the Administration's stance on whether it would withdraw the listing plan altogether if the Bill were so amended.

17. As far as fare review was concerned, DS for T(4) emphasized that the Operating Agreement not only required MTRCL to consult the Transport Panel and TAC on a compulsory basis, it also required the Corporation to consider the survey result of commuters’ acceptability. He stressed that fare increase might not necessarily bring about higher profits as it could affect the popularity of the railway. Rather, MTRCL would adhere to prudent commercial principles in giving full consideration to public interest. DS for T(4) cautioned that it would be risky to alter the factors, including fare autonomy, that had led to the successful operation of a railway corporation for the past 20 years. Furthermore, any fare monitoring would be against the philosophy of promoting Hong Kong as a free market economy.

18. Regarding the introduction of a fare monitoring system into the legislation, FD/MTRC remarked that this might affect the feasibility of the privatization plan. Further, any changes in the regulatory framework would adversely affect lenders' and investors' view of the MTR and might affect the credit ratings and loan facilities of the Corporation.

19. Given that MTRC had been conducting annual survey to gauge public views on MTR service including fare levels, Mr LEE Cheuk-yan sought clarification on how commuters’ acceptability would be duly considered in the fare review after privatization. DS for T(4) advised that commuters’ acceptability of fare levels would be duly addressed as such a consideration would be enhanced from a voluntary consultation basis to a legally binding basis. In fact, MTRC had taken corresponding actions over the years in response to concerns expressed by the public, TAC as well as the LegCo Panel on Transport. For example, MTRC fare had not been revised since September 1997 and a promotional fare for the Airport Express Line service was also introduced.

20. Mr CHENG Kar-foo referred to the survey conducted by the Democratic Party in which 84.5% of respondents were of the view that the railway fare should be monitored after privatization. He was of the view that the existing market competition did not provide an efficient and effective form of fare regulation. With the projected increase of market share for MTR service and taking into account the

Government's transport policy to promote the greater use of railway, he was worried that the Corporation might further monopolize the market after privatization. He therefore sought explanation from the Administration for not adopting the option of price cap regulation where the maximum level of fare increase was determined on the basis of a formula (Permitted Increase = Consumer Price Index - X, where X represented a factor dictating the share of productivity gains of the regulated firm which was to be allocated to the consumers).

21. In response, DS for T(1) remarked that some overseas countries had also adopted similar formulae in fare determination on a temporary basis, but would withdraw such an approach once the market operation became effective. It would not be appropriate to adopt the formulae approach in Hong Kong as the market forces in Hong Kong were very effective in fare determination. He also assured members that MTRCL would work closely with the operators of other modes of public transport to cater for the public's need. Nevertheless and at members' request, DS for T(1) agreed that the feasibility of the formulae approach would be further explored during the experts' presentation sessions in future meetings.

Admin

22. Mr FUNG Chi-kin reckoned that it was difficult to strike a balance in the fare determination mechanism with the public becoming both the consumers and the investors at the same time after privatization.

Quality of Service and Employment Matters

23. Mr CHAN Wing-chan was concerned about the quality of service and safety of the railway system after privatization. He made reference to MTRC's recent implementation of the Voluntary Separation Scheme, and enquired whether there would be sufficient manpower to maintain the standard of railway service after privatization.

24. DS for T(4) reiterated that the Corporation had been operating under prudent commercial principles, and clarified that the Voluntary Separation Scheme was not related to the privatization exercise. The existing powers of the Hong Kong Railway Inspectorate would be preserved in the Bill, and MTRCL would have to maintain sufficient manpower to comply with the performance levels as stipulated in the Operating Agreement. Breaches of these performance levels might lead to financial penalties, suspension or revocation of franchise. Moreover, the Bill clearly stated that the contracts of employment would not be affected after privatization. Corporate Relations Manager/MTR added that the Voluntary Separation Scheme would not affect the quality of service as staff members concerned would not leave the Corporation all at the same time. Re-allocation of resources and adequate training to staff would be provided as part of the Scheme.

25. Miss CHAN Yuen-han questioned whether the compulsory consultation system on fare review, the deployment of manpower resources and other related details after privatization were clearly documented. She was particularly concerned with the preservation of rights and benefits of employees arising from the privatization exercise.

DS for T(4) responded that the member’s concerns had been addressed in the Principal Headings of the Operating Agreement attached at Annex B to the LegCo Brief on the Bill. As for employment-related matters, he directed members’ attention to clauses 38 and 41 of the Bill which explicitly provided for the pre-privatisation contract terms for employees of MTRC to remain unchanged after privatization.

26. Mr LEE Cheuk-yan regarded the assurance for employees as cited in the Bill inadequate. He considered that the Bill should be amended to provide for the appointment of employee representative(s) to the Board of Directors of MTRCL. Miss CHAN Yuen-han shared this view and requested enhancement of the protection for employees in the light of the reduction in the number of staff by some overseas railway companies after privatization.

27. DS for T(1) clarified that some overseas railway companies privatized their operation because their business had not been running successfully. A reduction of staff size to minimize cost and simplify the structure of the organizations would therefore be a logical move. Such cases were, however, not applicable to MTRC since the latter was operating efficiently and successfully. FD/MTRC supplemented that unlike MTRC, these overseas railway companies did not operate according to prudent commercial principles before privatization. He reiterated that employees of the local Corporation would not be affected by the privatization exercise. As for the appointment of employee representative(s) to the Board of Directors of MTRCL, DS for T(1) remarked that there was no such provision in the Bill but undertook to consider the proposal.

28. Mr FUNG Chi-kin expressed objection to the idea of appointing employee representatives to the Board of Directors of MTRCL.

Financial Impact after Listing

29. Mr SIN Chung-kai sought information on the projected earnings of the Corporation after privatization as such information would help to determine whether the proposed mechanism in running the MTRCL was acceptable. Mr Howard YOUNG echoed Mr SIN’s concern. He urged the Administration to explore all possibilities which might threaten the listing result and draw members' attention at an early stage.

30. FD/MTRC pointed out that the listing proposal was only at a preliminary stage and details such as the listing price and long term profit forecast were not yet available. DS for Tsy assured members that the Government would do everything to ensure successful listing. Indepth evaluation would have to be done for the preparation of a detailed financial forecast for the listing, and reports from the financial advisers were still pending. He undertook to set out the details in due course for members’ consideration.

Admin

31. Mr Eric LI appreciated the Administration’s difficulty in supplying

information concerning the listing price and the projected earnings of MTRCL at this stage. However, he also shared Mr SIN Chung-kai's concern about how the public could be convinced that listing the Corporation would offer them a prime opportunity to participate in a successful business with strong potentials. Since the Government had invited some financial advisers to give presentations to members on the privatization issue, Mr Eric LI proposed to ask them to elaborate on the listing procedures, such as how the listing price would be fixed, in order to enhance members' understanding in this respect. Mr SIN Chung-kai added that since the listing process had not yet started, the Administration should disclose as much information as possible to facilitate members' examination of the Bill.

32. DS for Tsy agreed to liaise with their financial advisers to address the members' concerns while MTRC would do likewise with their own financial advisers. Admin

33. As the Administration had often emphasized that MTRC was a prime asset and had been generating considerable proceeds, Mr TANG Siu-tong enquired whether the returns would be greater by privatizing MTRC or by maintaining the status quo and using 20 years as the base period of calculation. In response, DS for T(1) advised that full support from the public for the MTRCL shares would bring about the best result.

Impact on Public Interest

34. Mr TANG Siu-tong was concerned with whether the extension of the railway network to developing regions in Hong Kong would be hampered after privatization since such extensions might not be profitable at the initial stage of development. Similarly, as the operation of MTRCL would bring about more flexibility in business interest after privatization, Mr Lee Cheuk-yan expressed doubt on whether public interest would be given due weight as far as the construction and expansion of railway network was concerned.

35. DS for T(1) was appreciative of members' concern on future railway extension in developing regions. He advised that in the event that public interest and transport policy required MTRC to develop commercially unviable rail projects on social and economic grounds, Government was prepared to bridge the gap so that these projects could provide a commercial return. FD/MTRC remarked that investors for infrastructure would normally assess returns in the long run and short-term deficits caused by development of new extensions would be acceptable.

Management Role

36. Given that the Government would own 51% of shares of MTRCL and the Chief Executive would appoint top-level personnel to the Corporation, Mr HO Chun-yan questioned the Government's role and participation in the corporate management of MTRCL. He also enquired about the appointment arrangements of the Board of Directors of MTRCL. Mr LAU Kong-wah shared the same concern on the formation of the Board of Directors of MTRCL.

Action

37. DS for T(1) explained that the Government would be very cautious in assuming its dominant role in the shareholding since upsetting the interest of the minority shareholders might affect the listing plan. At present, there were two Government representatives in the Board of Directors of MTRC, namely the Secretary for Transport and the Secretary for the Treasury, while the rest of the Board comprised independent personnel. Since MTRCL would be formed under the Companies Ordinance and regulated by the Memorandum and Articles of Association, the number of Board members had yet to be finalized. He agreed to provide details on the appointment of the Board of Directors in writing in due course. Admin

Granting of Franchise

38. Mr LAU Kong-wah queried the reasons for granting MTRCL a franchise to operate for an initial term of 50 years. DS for T(1) explained that 50 years was appropriate as the base period for the calculation of the Internal Rate of Return for MTR projects was 40 years from commissioning, whereas the design and construction of the MTR took about seven to eight years.

39. Mr TANG Siu-tong remarked that it might be helpful to do a comparison among MTRC, Kowloon-Canton Railway Corporation and public bus companies as regards their terms and conditions in the extension of their franchise to see if MTRC was being treated preferentially by the Government. The Chairman advised that Mr TANG could take this up in the Transport Panel.

III Any Other Business

40. The Chairman drew members' attention to the organizations listed in Appendix III of LC Paper No. CB(1)315/99-00 and the list of experts to be invited by the Administration to give presentations at the following meetings. She also reminded the Administration to provide written responses to concerns raised by members before the next meeting. The next three meetings were tentatively scheduled for 18 November, 23 November and 30 November 1999, and the Clerk would inform members of the details nearer the time.

41. There being no other business, the meeting adjourned at 6:20pm.

Legislative Council Secretariat
14 December 1999