

立法會

Legislative Council

LC Paper No. CB(1)1984/99-00

(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, 13 January 2000, immediately after
the Chief Executive's Question and Answer Session
in Conference Room A of the Legislative Council Building

Members present : Hon Mrs Miriam LAU Kin-yee, JP (Chairman)

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 Eric LI Ka-cheung, JP

Hon NG Leung-sing

Hon Mrs Selina CHOW LIANG Shuk-yee, JP

Hon Bernard CHAN

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 Andrew CHENG Kar-foo

**Other Member
attending** : Hon Mrs Sophie LEUNG Lau Yau-fun, JP

Members absent : Hon Kenneth TING Woo-shou, JP

Hon Cyd HO Sau-lan

Hon LEE Cheuk-yan

Hon Ronald ARCUILLI, JP

Hon CHAN Yuen-han

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)

Mr Eric CHAN
Assistant Secretary for Transport (3B)

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 of 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

Slaughter & May

Mr Richard THORNHILL
Partner

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

I Clause-by-clause examination

LC Paper No. CB(3)32/99-00 - Bill

LC Paper No. CB(1)315/99-00(01) - Letter from the Legal Service

Division to the Administration

LC Paper No. CB(1)315/99-00(02) - The Administration's response to
LC Paper No. CB(1)315/99-00(01)

Before proceeding to the clause-by-clause examination of the Bill, members went through the questions raised by the Assistant Legal Adviser (ALA) on the Bill as set out in her letter dated 12 October 1999 to the Administration (LC Paper No. CB(1)315/99-99(01)) and the Administration's response dated 5 November 1999 (LC Paper No. CB(1)315/99-99(02)).

2. On question 1, Mr CHENG Kar-foo enquired about the legal position if the project agreement to be entered into between the Government and the Mass Transit Railway Corporation (MTRC) for the construction of an extension was in contravention with the provisions of the Railways Ordinance (Cap. 519). In reply, the Deputy Secretary for Transport(1) (DS for T(1)) stressed that all provisions under Cap. 519 would be strictly adhered to after privatization, and the existing arrangements in respect of land resumption and compensation payment would continue to apply to MTRC. The project agreement, on a case by case basis, would set out clearly the

legal responsibilities of both parties and provided the mechanism for the Government to recover all land costs and compensation payable from the Corporation.

3. As a related issue, Mr Albert HO asked if the Administration would consider giving effect to such mechanism in law, instead of by agreement. In response, DS for T(1) said that a certain degree of flexibility would be required as some of the compensation was ex-gratia payment. Mr HO then enquired whether MTRC would participate in the consideration of the claims and the decision of the amount of payment. DS for T(1) replied that as in existing procedures, there were established rules to apply in relation to land resumption and compensation payment, and if ex-gratia payment was considered necessary, the matter would first be discussed with MTRC.

4. Considering the Administration's reply to question 3 incomplete, Mr CHENG Kar-foo asked the Administration to indicate whether it would consider setting some guidelines for "a proper and efficient service" as in section 12 of the Ferry Services Ordinance (Cap. 104). The Deputy Secretary for Transport(4) explained that such guidelines would not be necessary as the Ordinance and the Operating Agreement (OA) had respectively laid down the requirements in respect of various aspects of the railway operation. It was also important to note that the operation of the Mass Transit Railway (MTR) was much more complicated than ferry services.

5. Mr CHENG however opined that there was a policy issue involved if the Government considered that it was better to set out the relevant requirements in the OA rather than the principal ordinance. In reply, the Principal Assistant Secretary for Transport(3) (PAS for T(3)) advised that section 12 of the Ferry Services Ordinance (Cap.104) basically required the grantee to maintain and operate ferry services in accordance with its franchise, the Ordinance and any direction, specification or requirement under its franchise or the Ordinance. The Administration took the view that the spirit of the two legislation was the same, as both referred to the principal ordinance and operating requirements made under the franchise to determine what would be "proper and efficient service".

6. On question 7, ALA drew members' attention to the fact that in the examples cited by the Administration, the power of prosecution of other franchisees was limited to offences under the relevant bylaws, whereas the power given to MTRC to bring prosecutions was only in relation to offences under the principal Ordinance. In response to the Chairman's enquiry, the Senior Assistant Law Draftsman (SALD) confirmed that there was no difference in principle as regards prosecutions for offences under the bylaws and the principal ordinance.

7. Mr Albert HO asked if MTRC would take legal proceedings against offences with custodial penalty. In reply, PAS for T(3) advised that according to clause 35(4) of the Bill, regulations made under clause 33 or bylaws made under clause 34 might provide for penalties not exceeding a fine at level 2 and to imprisonment for 6 months. This was in line with the general provision with regard to power to make subsidiary

legislation under section 28 of the Interpretation and General Clauses Ordinance (Cap. 1).

8. Referring to the examples given by the Administration, Mr CHENG Kar-foo queried whether it was appropriate to compare MTRC with tunnel companies and asked about the situation with franchised bus operators. DS for T(1) advised that the comparison between MTRC and tunnel companies was appropriate and meaningful as large premises such as transport interchanges were put under the control of MTRC, and commission of any offence provided under the relevant legislation might have serious consequences. As for franchised bus companies, they were only responsible for the order of passengers in their buses.

9. Noting the Administration's explanation on question 8 that proposed clause 57 was an avoidance of doubt provision to make it clear that a breach of statutory duty did Admin. not by itself give rise to civil liability, Mr Albert HO requested the Administration to provide judicial precedent or legal authority to support this view.

(*Post-meeting note:* The required information was circulated vide LC Paper No. CB(1)837/99-00(01).)

10. Members then proceeded to scrutinize the Chinese and English texts of the Bill clause by clause. The gist of the discussion on clauses 1 to 8 of the Bill was summarized in the following paragraphs.

Clause 2 - Interpretation

11. The Chairman asked and PAS for T(3) clarified that "railway premises" had the same meaning in both the existing Mass Transit Railway Corporation Ordinance (Cap. 270) and the proposed Ordinance. However, a new definition on "railway" was provided to clarify that the term only referred to MTR and would not have the broad meaning as defined under the Railways Ordinance (Cap. 519).

12. Both Mr CHAN Kam-lam and Mr Albert HO were concerned about the definition of "extension" and enquired if it was sufficiently clear to distinguish between an extension of MTR and a new network not operated by MTRCL. DS for T(1) replied that as the "railway" had already been defined to mean the "Mass Transit Railway", it would only cover an extension of MTR for which plans had been deposited by the Corporation with the Land Registry. Hence, any new network not granted to the MTR Corporation Limited (MTRCL) would not be covered by the Ordinance.

Clause 4 - Grant of franchise to Corporation to operate railway

13. Referring to subclause (1)(b), Mr Howard YOUNG asked if it was possible to extend the franchise of a particular line but not the whole railway. DS for T(1) replied in the negative, as it was the Government's intention to consider the extension

of the franchise for the whole system.

14. Mr CHENG Kar-foo sought clarification on the relationship between subclause (2) and the grant of franchise. In reply, DS for T(1) advised that subclause (2) dealt with the OA to be entered into between the Government and the Corporation which provided for all the detailed terms of the franchise for compliance by MTRCL.

15. Mr Albert HO was concerned about the lack of reference to a proper authority within the Government to agree with MTRCL on the terms and conditions of the OA under subclause (2). He requested the Administration to consider making explicit reference in the Ordinance on the specific authority within the Government who could enter into an OA with MTRCL.

ALA & Admin 16. At Mr CHAN Kam-lam's request, ALA and the Administration undertook to verify the legal position as to whether the Secretary for Transport (S for T) should be the Government official responsible for the matters related to the OA.

17. Mr HO also queried the use of "for the purposes of" instead of "in accordance with" under subclause (2) in relation to operating agreements made under the Ordinance. He was concerned that with the former, the validity of such agreements would not be subject to the Ordinance. As such, "in accordance with" should be adopted to tighten the drafting.

18. Sharing Mr HO's concerns, Mr CHENG opined that clause 4(2) should form a separate provision which specifically dealt with the agreements to be made under the franchise.

19. Mrs Selina CHOW requested the Administration to review and improve the drafting of the Chinese text of subclause (2).

Admin. 20. In response, the Administration agreed to consider the views and suggestions made by members and revert to the Bills Committee later.

Clause 5 - Extension of franchise

21. Mr NG Leung-sing asked whether clauses 4 and 5 as drafted were sufficient to exclude from the franchise other undertakings by MTRCL, such as in property development. DS for T(1) assured members that the provisions were sufficient for the purpose, as the Ordinance dealt with the granting of a franchise to MTRCL to operate the MTR and to construct and operate any extension to the railway and other undertakings of MTRCL were separately regulated under the Companies Ordinance (Cap. 32) and other relevant legislation.

22. The Chairman remarked that there was no restriction in the Bill as to the earliest time MTRCL could apply for extension of the franchise. Mr CHENG Kar-foo shared the same concern. In response, DS for T(1) said that such restriction might

unnecessarily confine the operation of the Corporation, particularly in its planning for the construction of extension lines for which the consideration on the length of its franchise would be crucial.

23. Mr CHENG was unconvinced of the Administration's reply as a time limit could still be set having regard to the need for project financing. Mrs Selina CHOW however took a different view. She stressed that it was important to provide greater flexibility in this matter as it might affect MTRCL's operation. Moreover, no relevant information would be available to set a meaningful and realistic time limit.

24. Mr CHENG asked if the Administration would consider making available to the Legislative Council (LegCo) the report submitted by S for T to the Chief Executive (CE) in Council under subclause (3). DS for T(1) replied that it was not possible to do so in view of the confidentiality rule governing the discussions of the Executive Council. However, he assured members that the LegCo Panel on Transport would be kept fully informed on this matter.

Clause 6 - Restriction on transfer of franchise

25. Responding to Mr Albert HO's question, DS for T(1) clarified that as in the case of other public transport franchises, a change in the ownership of the company would have no effect on the franchise granted as long as satisfactory service was maintained.

Clause 7 - Directors of Corporation

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26. Mr Albert HO asked about the definition of "ordinarily resident" in law. While agreeing to provide a written reply to the question, DS for T(1) stated that the requirement was intended to ensure that a majority of the directors would normally reside in Hong Kong so that they could oversee the business of the company.

Clause 8 - Chief Executive may appoint additional directors

27. The Chairman asked why additional directors were not required to be ordinarily resident in Hong Kong. Sharing the same concern, Mrs Selina CHOW remarked that given the policy intention stated by DS for T(1), the additional directors should also be subject to the same requirement.

28. DS for T(1) replied that generally speaking, it was intended that the additional directors to be appointed by CE would be ordinarily resident in Hong Kong. However, a flexibility should be allowed for the choice of such directors so that overseas experts might be invited if necessary. As the additional directors were separately appointed by CE, it would be appropriate to exclude them from the requirement under clause 7 so that no prior restrictions were imposed on shareholders for the appointment of directors at the general meeting. SALD added that if the additional directors were included, it might reduce the requirement for the elected directors to be ordinarily resident in Hong Kong.

Admin. 29. At Mr CHAN Kam-lam's request, the Administration agreed to reconsider the Chinese translation for the term "additional directors" with reference to other legislation governing public transport services.

30. Given the provision under subclause (3), Mr Albert HO enquired whether Admin. subclause (4) was necessary as it might create the wrong impression that those were additional powers. The Administration agreed to consider the matter and revert to the Bills Committee later.

(*Post-meeting note:* The Administration's response to issues raised by members on clauses 4, 7 and 8 was circulated vide LC Paper No. CB(1)837/99-00(01).)

II Any other business

31. The Chairman reminded members that the next meeting would be held on the following day at 10:45 am to continue clause-by-clause examination of the Bill.

32. There being no other business, the meeting was adjourned at 6:30 pm.

Legislative Council Secretariat

28 July 2000