

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1168/99-00  
(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, 18 November 1999, 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 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 SIN Chung-kai  
Hon LAU Chin-shek, JP

**Member attending** : Hon James TIEN Pei-chun, JP

**Members absent** : Hon Cyd HO Sau-lan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon Ambrose CHEUNG Wing-sum, JP  
Hon CHAN Kam-lam  
Hon Andrew WONG Wang-fat, JP  
Hon Howard YOUNG, JP  
Hon LAU Kong-wah  
Hon Andrew CHENG Kar-foo

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)

**Finance Bureau**

Mr Martin GLASS  
Deputy Secretary for the Treasury (2)

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

**Lands Department**

Mr R D POPE  
Director of Lands

**Department of Justice**

Mr Jonothan ABBOTT  
Senior Assistant Law Draftsman

Ms Betty CHOI  
Senior Government Counsel

**Attendance by  
invitation**

**: MTR Corporation**

Mr Phil GAFFNEY  
Operations Director

Mr Thomas HO  
Property 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

Miss Irene MAN  
Senior Assistant Secretary (1)6

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Action

**I Meeting with the Administration**

- (LC Paper No. CB(1) 395/99-00 (01) - List of Follow-up Actions  
LC Paper No. CB(1) 395/99-00 (02) - Property Development Rights  
LC Paper No. CB(1) 395/99-00 (03) - Unbundling of Mass Transit  
Railway Corporation)

The Chairman drew members' attention to the list of follow-up actions requiring the Administration's response as attached at LC Paper No. CB(1) 395/99-00 (01) and the two information papers provided by the Administration on "Property Development Rights" and "Unbundling of Mass Transit Railway Corporation" at LC Papers No. CB(1) 395/99-00 (02) and (03). She also informed members of the subjects for discussion at subsequent meetings as proposed by the Administration as follows:

<u>Meeting</u>	<u>Subject</u>
23 November 1999	Operating Agreement
30 November 1999	Initial Public Offering Process and Valuation
10 December 1999	Presentation by Overseas Experts and Credit Ratings Organizations

The Chairman took note of Mr SIN Chung-kai's request for re-scheduling the discussion topic on Initial Public Offering Process and Valuation to a later date since he had another commitment on 30 November 1999, and advised that the Clerk would inform members of the details separately.

*(Post meeting note : With the concurrence of the Chairman, the meeting on 30 November 1999 had been rescheduled for 7 December 1999 at 4:30 pm.)*

2. The meeting also noted Mr Ronald ARCULLI's declaration of interest regarding his business relationship with certain developers of Mass Transit Railway Corporation (MTRC) projects.

3. Members took note of a submission on the fare determination mechanism of the MTR Corporation Limited (MTRCL) from the Democratic Alliance for Betterment of Hong Kong tabled at the meeting.

*(Post meeting note : The submission was circulated to members after the meeting vide LC Paper No. CB(1) 413/99-00(02).)*

### **Property Development Rights**

4. At the invitation of the Chairman, the Property Director/MTRC (PD/MTRC) presented to members the justifications for MTRC to retain property developments above its stations and depots after privatization. With the Corporation held responsible for the entire station site, the above-station or depot development could be most optimally planned and utilized. It was also essential for MTRC to carry out the enabling works, which were intricately integrated with the railway station structures, in advance of property construction for safety and technical reasons. If a third party were involved in co-ordinating the development process, contractual problems would arise between railway construction or operation below and property development above.

5. PD/MTRC added that the tender process was very transparent, and that detailed information was provided to developers in the tender offer so that developers were fully aware of all perceived risks associated with the development. Since all land premiums offered by Government for development rights were based on the full market value, and MTRC would bear all the development and financial risks, he emphasized that property development right was not a subsidy. The speaking note of PD/MTRC was circulated to members after the meeting vide LC Paper No. CB(1) 413/99-00 (01).

### **Appointment of Consultants**

6. Mr CHAN Wing-chan enquired whether the Corporation would need to engage consultants for undertaking property development projects. PD/MTRC advised that while the Corporation had expertise in both the fields of property development and railway engineering, there was still a need to appoint consultants to assist in the implementation process. The Corporation would closely monitor the performance of consultants and steer their work towards the overall success of the development projects.

## Financial Risks

7. Mr CHAN Wing-chan expressed concern about the risks associated with property developments. He also enquired whether the fluctuation of property price would have an implication on the ultimate value of the privatized Corporation. In response, PD/MTRC explained that the factor of financial risks associated with property developments would be taken into account in the course of valuation. As regards the amount of profit that could be shared in the course of property development, he advised that this would be highly sensitive to prevailing market conditions.

8. Sharing Mr CHAN's concern on financial risks to be borne by MTRC, Mr HO Chun-yan was concerned that the Corporation was assuming not only the role of a public transport provider but also a real estate corporation with its financial status readily influenced by the property market and land premium. PD/MTRC disagreed with this view and explained that MTRC was a railway corporation with their joint venture developers taking part in the property development projects. The Deputy Secretary for Transport(1) (DS for T(1)) supplemented that MTRC was responsible mainly for the construction and operation of the railway, and the property development items did not play a dominant role in MTRC's operation.

9. In response to Mr HO Chun-yan's enquiry about the feasibility of appointing the Corporation as an agent instead of a developer with the Government offering it a substantial remuneration in property developments, DS for T(1) advised that historically, MTRC had played a useful role in the property developments over its railway stations and depots and had established new communities along the railway footprint. It undertook planning for the property developments, building a substantial part of the foundations and providing other common infrastructure. The property developments also helped provide early patronage to the railway system. Government therefore believed MTRC should be allowed to continue its role in integrating railway and property developments after privatization. PD/MTRC also rejected the idea of appointing the Corporation as an agent. He remarked that the current practice of sharing profits with the joint venture developers could help MTRC finance its railway developments. Deputy Secretary for the Treasury (DS for Tsy) also regarded it unreasonable for commercial organizations to take downside risks with upfront investment in properties with no prospect of upside returns.

10. Referring to paragraph 7 of LC paper No. CB(1)395/99-00(02) regarding the development and financial risks as borne by MTRC in the profit-sharing process with developers, Mr NG Leung-sing was concerned about whether railway users would have to shoulder the financial burden if MTRC were not making profit or even suffering from a loss in premium. PD/MTRC clarified that MTRC would bear financial risks associated with property developments. However, this did not mean that the Corporation would suffer any financial loss under any circumstances. In a worst-case scenario, the Corporation would not be offered any share of profits by a developer. This did not mean that it would be expected, or have to, contribute towards a loss-making development scheme.

Benefit or Subsidy

11. Mr HO Chun-yan remarked that historically, MTRC's rail extension had been funded predominantly by various forms of Government support including property development rights. However, in considering that MTRC would be transformed from a Government's wholly-owned company to a listed company after privatization, the continued granting of property development rights to MTRC would constitute a case of granting subsidy to a private company.

12. DS for T(1) assured members that this was not a form of subsidy. The Corporation had to pay full market value premium for the land to be developed. Besides, the property developments also helped provide early patronage to the railway system and this coordinated approach would ensure that a comprehensive development was accomplished. DS for Tsy also clarified that the granting of property development rights constituted benefits but not subsidy to MTRC. Such an arrangement was advantageous to the Government, the Corporation and the railway users because the profits arising from the developments had allowed the cost-effective expansion of railway system in Hong Kong as a whole.

13. Mr HO Chun-yan sought clarification on the difference between benefit and subsidy. He considered that the former had to be conferred directly or indirectly in pecuniary terms, and this would in a way become a subsidy. In response, DS for Tsy explained that subsidy referred to a cash subsidy allocated to assist non-profit making organizations. The benefit now conferred to MTRC did not contain any element of a cash subsidy, and the Corporation was paying a full value for the development rights of its assets. DS for T(1) added that the Government might help facilitate the services of the Corporation and benefit it in one way or another, but such facilitation should not be regarded as a subsidy so long as no cash was involved.

14. Mr HO remained unconvinced and insisted that the property development rights so granted to MTRC was a form of subsidy unless MTRC simply acted as an agent in property management rather than as a developer. PD/MTRC said that the agency idea deviated from the original principle of profit sharing between MTRC and the developers in the course of property developments; the Corporation would not be interested in acting as an agent without the property development rights.

15. Mr SIN Chung kai expressed interest in how the benefit of granting MTRC the development rights would be reflected in terms of valuation in the listing exercise. The Administration undertook to address his concern in detail when the subject of Initial Public Offering Process and Valuation was discussed at a future meeting.

### Market Value of Property

16. Although the Government stated that property development rights were offered to MTRC at full market value, Mr HO Chun-yan doubted whether this value could be truly reflected without going through the process of open tender.

17. In response, the Director of Lands explained that the property development rights were granted to MTRC at full market value on a bare site basis. The full market value was assessed by a team of Government valuers who monitored the property market on a regular basis. In determining the full market value, the Government had to take into account the type and scale of the developments concerned. He emphasized that he had received neither pressure to reduce the premium nor directive to give subsidy to MTRC, and that all the assessments were carried out on a fair basis.

### Profit-sharing with Developers

18. Mr Eric LI noted that it had been an established practice for MTRC to tender out the development projects and invite developers to offer a share of profit to the Corporation. However, this arrangement was not clearly provided for in the legislation. He suggested that suitable provisions be included in the Memorandum and Articles of Association of the privatized Corporation to guard against a change in practice and ensure its continuation in future. This would help prevent MTRC from shifting its emphasis to property development and eventually turn into a real estate Corporation.

19. PD/MTRC assured members that MTRC would continue to adopt the open, fair and transparent practice since it had proved to be effective for the past 20 years. DS for T(1) advised that in line with the existing practice, the Government would sign a Project Agreement with MTRCL for each railway project to be developed. Any related arrangements for property development could also be included in the Agreement. Nevertheless, he undertook to further examine the member's suggestion of including an express provision in this respect in the Memorandum and Articles of Association.

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### **Unbundling of Mass Transit Railway Corporation**

20. At the invitation of the Chairman, DS for T(1) briefed members on the experience of unbundling of railway corporations in foreign countries. Many foreign countries had unbundled their railway corporations after privatization with a view to enhancing the efficiency of loss-making, inefficient railway operations, or separating inherently unprofitable parts of a particular system. Such situations did not apply to MTRC which had a highly successful track record of operating a compact, fully-integrated system and achieving world-class service standards. Unbundling the efficient and successful MTRC in Hong Kong would only risk the efficiency and safety

of the already highly integrated railway services. Furthermore, the commercial disputes arising from unbundling would adversely affect railway users.

### Difficulties in Unbundling

21. In view of the problems associated with unbundling, Mr HO Chun-yan suggested defining the legal liabilities clearly to avoid disputes between the parties concerned. DS for T(1) advised that whilst detailed provisions could be stipulated to delineate the respective liabilities of different parties, it would be difficult, if not impossible, to investigate into the real causes behind each incident. According to the experience of foreign countries, the separation of passenger service and the provision of railway infrastructure had diluted accountability of individual operators. Passenger service operators and the infrastructure provider tended to shift blame to each other whenever there was a service disruption. DS for T(1) further advised that both safety and efficiency could be best achieved by means of a control mechanism as an integrated whole. It would also run contrary to the aim of privatization if the Corporation were only responsible for the operation and management of railway service without owning the railway assets. Mr Eric LI also remarked that investors might regard it risky to invest in a listed corporation with only the operating rights but not the ownership of assets after unbundling.

22. Mr NG Leung-sing made reference to paragraphs 4(b) and 6 in LC Paper No. CB(1)395/99-00(03) and sought elaboration on the difficulty for the Government to become a regulator of the railway service after unbundling. DS for T(1) advised that the biggest problem in unbundling was in the requirement for close integration of various railway facilities; the slightest disruption of any kind or conflicts between the parties concerned would cause users inconvenience which the Government could do little to assist. He considered it risky to unbundle a railway system which had already been running successfully and emphasized the importance of not affecting the users in all circumstances.

23. The Operations Director/MTRC supplemented that the interest of users was a prime factor in determining whether unbundling should be adopted. Since railway operation required a very tight and close integration of related facilities, disruption to any parts of the service might affect the users seriously. A seamless operation was therefore important for users to locate the accountable party and have their requests and complaints addressed in the first instance. The railway systems in overseas countries had, however, become very confusing after unbundling as the users did not know precisely which party should be held responsible for the disruptions.

### Delay in Provision of Service

24. Mr HO Chun-yan was worried that MTRCL might delay the provision of railway service in areas of low returns. DS for T(1) assured members that MTRC had all along been operating under prudent commercial principles and would continue to operate in the same manner in future.

Remedial Policy

25. Mr HO Chun-yan questioned how the railway assets would be handled if MTRCL suffered a financial breakdown or if its franchise was revoked. DS for T(1) advised that the Government could take possession of the Corporation's property should the Corporation cease the railway operation for any reasons. Moreover, the Government could also take over the employees concerned to ensure continuity of railway service. As provided in the Operating Agreement, compensation made to the Corporation would be assessed according to market value. However, details of the compensation provisions had yet to be finalized.

Admin 26. Mr Eric LI considered it difficult to determine the market value for the compensation because the unique situation of one single railway with the Government being the sole buyer principally could not make up a "market". To cater for the change of circumstances over the 50-year franchise period, Mr LI considered it necessary for the Administration to draw up in advance the various types of termination and compensation provisions that were applicable and include them in the Operating Agreement to avoid future disputes. DS for T(1) remarked that details concerning the assessment of the market value would be further explored and these would be submitted to the Committee for examination in due course.

27. There being no other business, the meeting adjourned at 5:50pm.

Legislative Council Secretariat

14 March 2000