

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1998/99-00  
(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, 20 January 2000, at 9:00 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Mrs Miriam LAU Kin-ye, JP (Chairman)  
Hon HO Sai-chu, SBS, JP  
Hon Edward HO Sing-tin, SBS, JP  
Hon Albert HO Chun-yan  
Hon NG Leung-sing  
Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon CHAN Yuen-han  
Hon CHAN Wing-chan  
Hon CHAN Kam-lam  
Hon SIN Chung-kai  
Hon Howard YOUNG, JP

**Members absent** : Hon Kenneth TING Woo-shou, JP  
Hon Cyd HO Sau-lan  
Ir Dr Hon Raymond HO Chung-tai, JP  
Hon LEE Cheuk-yan  
Hon Eric LI Ka-cheung, JP  
Hon Ronald ARCULLI, JP  
Hon Bernard CHAN  
Hon Andrew WONG Wang-fat, 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

**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)

**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

**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

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Action

The Chairman informed members that pursuant to the decision of the Bills Committee at the last meeting, the Clerk had issued a circular inviting members to submit the draft wordings of proposed Committee Stage amendments (CSAs) on or before 26 January 2000 for discussion at the meeting scheduled for 27 January 2000. As for the meeting to be held on 25 January 2000, the Bills Committee would discuss draft CSAs proposed by the Administration.

**I Clause-by-clause examination**

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

*LC Paper No. CB(1)837/99-00(01) - Information paper provided by the Administration*

2. Members continued the clause-by-clause examination of the Bill from clause 45 onwards. The gist of the discussion was summarized in the following paragraphs.

Clause 47 – Interests in land

3. At the enquiry of the Chairman, the Senior Assistant Law Draftsman (SALD) confirmed that clause 47 was an avoidance of doubt provision to set out clearly that the vesting in the MTR Corporation Limited (MTRCL) of an interest in land would not give rise to any of the legal consequences listed thereunder.

Clause 48 – Perfection of vesting of foreign property, rights and liabilities

4. Mrs Selina CHOW asked whether clause 48 was a standard provision for the

transfer of property, rights and liabilities. In reply, SALD explained that the provision was not a standard one, but it was necessary because the law of Hong Kong would not have effect in any foreign jurisdictions. Although the transfer of the property, rights and liabilities of the Mass Transit Railway Corporation (MTRC) was effected by the Ordinance for the purpose of Hong Kong law, certain steps would still have to be taken by the parties concerned in relevant foreign law jurisdictions. He added that when a vesting of property was required, for example in the transfer of property from a bank to another entity, similar provisions would be found.

5. At Mr CHAN Wing-chan's enquiry, the Legal Director and Secretary/MTRC (LD&S/MTRC) advised that to the best of his knowledge, the principal foreign property of MTRC were notes on European or US money markets, and MTRC did not own any physical property in overseas countries.

#### Clause 49 – Evidence of vesting

6. Reiterating his view stated in the previous meeting on the necessity for a specific vesting procedure, and in particular a notice stating the actual date of vesting, Mr Albert HO opined that for the purpose of clause 49, such notice should be taken as evidence of vesting, rather than a Government Printer's copy of the Ordinance.

7. SALD replied that there was a need to distinguish between vesting a property under Part IX (Vesting Provisions and Transitional Arrangements) and any other references in the Bill, such as in clause 19 where railway property was taken possession of upon the revocation or expiry of the franchise. Part IX dealt with the passing over of all property of the existing MTRC to the new Corporation, and clause 37 (1) clearly stated that it happened on the appointed day. The Administration took the view that it was not necessary to give any notice for the vesting, as the scheme of the Bill was such that the date was fixed in the Bill and the evidence was the Bill itself. In response to Mr Albert HO and the Chairman, SALD confirmed that Part IX only applied to the vesting of property in the new Corporation.

8. The Chairman asked whether the production of an ordinance as evidence of a particular fact was a common practice. In reply, SALD advised that although it was not a common practice in law, certain UK acts did contain this kind of provisions. In this connection, LD&S/MTRC supplemented that a similar provision was found in section 12 of the Bank of Tokyo-Mitsubishi Ordinance (Cap. 1160).

9. While having no particular objection to the policy behind this provision, Mr Albert HO still maintained that at least the gazette notice designating the appointed day would also have to be produced as evidence of vesting on a particular day. He considered the disparity of treatment in the production of statutory documents as evidence of vesting conceptually confusing because in the present case, the production of the ordinance itself is expressly provided as conclusive evidence, while the gazette notice of the appointed day was not mentioned at all.

10. In response, SALD clarified that the provision was merely intended to provide that a Government Printer's copy of the Ordinance was the physical evidence of the fact of vesting, not of the date of vesting. The matter should be considered from the requirement of actual procedures, i.e. to devise an efficient and convenient way for bodies such as the Land Registry to effect the transfer on its records. Normally, a transfer document would be required for the Land Registry to register a transfer. In this case, however, there was no such document. In lieu of the transfer document, a Government Printer's copy of the Ordinance or a statement under subclause (2) was produced to facilitate the registration of the transfer, rather than to make the transfer lawful. SALD stressed that clause 41 was an evidential provision, while the actual transfer was effected by clause 37. If, for example, in respect of satisfying the Land Registry of both the fact and the date of vesting, the relevant gazette notice might also have to be produced.

11. The Chairman asked whether registration was the only purpose for which such evidence was necessary. SALD replied that such evidence would be needed for registration or any kind of transaction involving the title of the property.

12. On account of his concerns about the legal aspects of the vesting provisions, Mr Albert HO informed the meeting that he might consider moving CSAs to the relevant provisions.

#### Clause 51 – Evidence: books and documents

13. The Assistant Legal Adviser (ALA) advised and SALD confirmed that the Administration would move a CSA to amend the reference to the Evidence Ordinance (Cap. 8) in subclause (2) from section 55 to section 46, as a result of the enactment of the Evidence (Amendment) Ordinance 1999.

#### Clause 52 – MTRC to continue in existence until dissolved

14. In reply to the Chairman's query on the effect of this provision, SALD explained that as a matter of law, MTRC, as a statutory corporation, would be dissolved on the appointed day when the Mass Transit Railway Corporation Ordinance (Cap. 270) was repealed. The Deputy Secretary for Transport(1) (DS for T(1)) added that the dissolution of MTRC, however, would be deferred under clause 52 for a limited period of time, so that it could finish off any remaining business relating to the vesting under Part IX.

15. Highlighting the absence of a statutory basis for MTRC's existence with the repeal of Cap. 270, Mr Albert HO was concerned about the adequacy of clause 52 in ensuring MTRC's continued existence. SALD assured members that the provision was adequate to save the Corporation for its limited purpose. Moreover, the necessary powers were conferred on the Board of MTRC by the modified section 4 (2) of the repealed Ordinance under Schedule 1 to the Bill.

16. Responding to the Chairman's further question, LD&S/MTRC said that during the transitional period of MTRC's continued existence envisaged under this provision, the whole or part of its existing Board would remain functional for the purpose of signing off any transitional documents, etc., but no new obligation would be assumed.

#### Clause 53 – Appeal to Chief Executive in Council

17. Mrs Selina CHOW asked why the regulations made by the Secretary for Transport (S for T) under section 33 were not appealable. SALD replied that the right of appeal against regulations would be unprecedented as they were made under sub-delegation of a legislative power. DS for T(1) supplemented that those regulations were subsidiary legislation subject to negative vetting of the Legislative Council (LegCo). In reply to the Chairman's follow-up question, DS for T(1) advised that it was not necessary to exclude the bylaws made under section 34 because the Corporation would not appeal against those bylaws made by itself.

18. Mr Albert HO opined that as section 19 (1) was a very important provision, it should not be excluded from the appeal system. However, Mrs Selina CHOW held a different view and considered that it would be against public interest if section 19 (1) was appealable.

19. The Deputy Secretary for Transport(4) (DS for T(4)) explained that the exclusion was essential for the continued operation of the Mass Transit Railway system. DS for T(1) added that the decision to revoke the franchise was appealable and once the matter was settled by the Chief Executive (CE) in Council, section 19 (1) which required immediate implementation should not be subject to any further appeal. Otherwise, the Government would not be able to take possession of the railway property required as "the decision under appeal shall not have effect until the appeal has been determined" under clause 53 (4). For example, great inconvenience would be caused to the passengers if Octopus ticketing machines were not available for use pending a decision on the appeal.

20. Mr Albert HO further asked if there were other provisions which might require immediate implementation in public interest. In reply, DS for T(1) stressed that fair protection should be given to both the Government and the Corporation under all the provisions. As the decisions that were subject to appeal did not concern the revocation and expiry of the franchise and other matters related to service provision might be involved, subclause (4) had provided that those decisions under appeal should not have effect until the appeal had been determined. However, if urgent matters were involved, CE in Council could always direct otherwise or determine the appeal rightaway. In this connection, Mrs Selina CHOW remarked that it might be necessary to specify the conditions under which CE in Council could give such directions.

21. Mr Albert HO was concerned that even though CE in Council could direct otherwise, public safety might be jeopardized as it would take time for the Executive Council (ExCo) to convene a meeting. DS for T(1) replied that the Administration

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considered it not necessary to exclude other decisions relating to safety of the system because S for T and the railway inspector had already been given great powers to order the Corporation to carry out works immediately in the interest of safety. The Chairman shared Mr HO's views and said that there was a real concern as the Corporation could appeal against decisions made under all other provisions except those specifically excluded. At the suggestion of the Chairman, DS for T(1) agreed to re-consider the scope of exclusion under subclause (4) with particular attention to whether decisions related to works on safety should be included.

#### Clause 54 – Application of certain laws to Corporation

22. The Operations Director/MTRC (OD/MTRC) explained the background of various provisions of the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO) specified in Schedule 2 to the Bill which were disapplied through clause 54 (1).

23. Referring to the exemptions under sections 29, 30, 35 and 36 of PHMSO in relation to latrines, Mr Albert HO urged MTRC to reconsider its position of not providing public toilets in its urban line stations, or he might consider moving CSAs to remove the exemptions to ensure that this basic facility was provided for the convenience of passengers. OD/MTRC advised that public toilets were not provided primarily out of the consideration of security. According to advice from the Hong Kong Police, public toilets in stations, particularly underground stations where space was very restricted, could become potential areas for crimes and criminal activities. MTRC had kept this matter under regular review through customer service surveys which indicated that this facility did not feature high in terms of importance to passengers of the Mass Transit Railway (MTR). Arrangement was in place and information had been disseminated to passengers that in case of dire need, they could contact station staff for the use of station facility provided for staff. In this connection, MTRC would continue to pursue with relevant authorities to locate suitable toilets adjacent to MTR stations.

24. Mr HO asked and OD/MTRC replied that overseas experiences in London, New York and Paris had shown that in most of the stations where toilets were previously provided, the toilets had to be closed down subsequently for security reasons.

25. Mrs Selina CHOW enquired about the reasons for exemptions granted by the Building Authority (BA) to the building works of the Corporation under subclause (2). OD/MTRC explained that the exemption was necessary in view of the special complexities of a railway system, as opposed to a straight-forward building. Since the initial project back in 1976, such exemption had been granted on the discretion of BA for railway works only, such as railway stations, plant room buildings and track work support structures which were very specific to the railway system. Property development and other non-railway works were not exempted.

26. The LD&S/MTRC supplemented that such exemption was granted in the first

place because the required expertise, particularly for railway stations and track support structures, was deemed to be within the project management of MTRC. With BA's exemption, the Corporation would have to demonstrate that the main system and controls that were in place met with the required standard and there would be no need for BA to employ inspectors and railway expertise for the purpose.

27. Notwithstanding the explanation given, Mrs Selina CHOW was of the view that the drafting was unnecessarily wide for its purpose and the scope of such exemption might need to be tightened so that the provision was only applicable in a very narrow and necessary context as explained. She said that such exemption called into question as to whether the same safety standards and requirements were consistently applied to all building works as railway stations and passenger buildings were also exempted. Her views were shared by Ms CHAN Yuen-han. In response, DS for T(1) and OD/MTRC stressed that the works were not exempted from required safety and building standards as the exemption was in terms of procedure only. When a new project was approved by ExCo, BA would look at the particular project and grant exemption on a specific project by project basis, and it was not a blanket exemption. The design, planning and construction methodology for the railway works would still be subject to approval by the Safety and Security Co-ordinating Committee chaired by the Railway Inspectorate, with members including representatives of BA and the Highways Department. Hence, BA still had approval authority through the Railway Inspectorate. The difference was that approval and inspection were to be done by the Railway Inspectorate who had taken the place of BA throughout the whole process.

28. With a view of comparing with similar cases, Mr Edward HO asked and LD&S/MTRC replied that equivalent exemption was also found under section 46 of the Airport Authority Ordinance (Cap. 483).

29. Mr Edward HO enquired about the difference between stating the exemption by BA under this Ordinance and the Buildings Ordinance (Cap. 123). SALD replied that the legal effect would be the same for this provision to appear in either Ordinance. However, it would be tidier for all matters related to MTRCL be grouped under this Ordinance.

30. Mr Edward HO, however, held a different view and said that it would be very difficult for related professionals to locate various provisions on the powers of the BA in different ordinances. For the purpose of clarity and easy referencing, all such provisions should be put under the Buildings Ordinance. His views were shared by Ms CHAN Yuen-han who remarked that it was the same case with the Employment Ordinance (Cap. 57) and related provisions. DS for T(1) responded that similar provisions were found in both the existing Mass Transit Railway Corporation Ordinance (Cap. 270) and the Kowloon-Canton Railway Corporation Ordinance (Cap. 372). In this regard, Mr HO suggested that the Administration should consider adding a general provision in the Buildings Ordinance to specify that provisions related to the granting of exemption by BA were found in other ordinances. The Chairman remarked that it would be a separate exercise outside the scope of the Bill.

### Clause 55 – Railway premises are public places

31. DS for T(1) advised that clause 55 was an avoidance of doubt provision to make it clear that railway premises and transport interchanges adjacent to MTR stations remained to be public places after MTRC became a private company. An equivalent provision was found in section 22 of the Mass Transit Railway Corporation Ordinance and the existing position had not been changed.

32. In reply to Mr CHAN Wing-chan's question about the distribution of electioneering material in MTR stations, DS for T(1) clarified that the declaration of station premises as public places was solely for the purposes of the Public Order Ordinance (Cap. 245) (POO) and it had nothing to do with the Corporation's management of its stations. LD&S/MTRC supplemented that by such declaration, the Corporation could take public security measures allowed under POO for the control of demonstrations and disturbances etc.

33. Responding to Ms CHAN Yuen-han's comments on the excessive powers of MTRC in prohibiting the distribution of election leaflets in its stations and surrounding areas, LD&S/MTRC said that the rules for the regulation of passenger or public behaviour would be published in the Corporation's bylaws. With regard to election activities, the Corporation would agree related guidelines with the Electoral Affairs Commission and the published rules would apply to all. DS for T(1) pointed out that the most important thing was for everyone to be treated equally. The Administration did not think that the powers of MTRC was excessive as the Corporation had to consider the safety of passengers.

### Clause 56 – Corporation may prosecute in its own name

34. Mr CHAN Wing-chan asked about the differentiation between prosecutions brought by the Corporation and the Government. SALD replied that the provision did not seek to draw such a line. LD&S/MTRC added that the practical demarcation was that minor offences under the bylaws were taken up by MTRC while crimes were dealt with by the Department of Justice. The Police was kept informed of enforcement actions taken by the Corporation.

### Clause 57 – No civil liability for breach of statutory duty

35. Ms CHAN Yuen-han was concerned that the right of an individual to sue the Corporation in civil law might be affected by the provision. In response, SALD stressed that subclause (1) only related to statutory duties. He assured members that subclause (2) had clearly provided that the existing right of a private individual in bringing civil actions against the Corporation for negligence or any breach of contract would not be affected. Individual members of the public could still rely on general law, for example contract or tort, to take action against the Corporation and their general rights were not taken away.

36. LD&S/MTRC supplemented that the scheme of regulatory control set out in the Ordinance and the Operating Agreement (OA) was to be enforced in all aspects by the Government, i.e. no additional right was conferred on members of the public for the enforcement of statutory obligations. He then illustrated this point with the following example. In case a group of citizens thought that the Corporation was not providing "a proper and efficient service" in those broad terms under clause 9, they could not file a case against the Corporation for a breach of statutory duty. That would have to be instituted by the Government and the Bill had set out a very detailed and comprehensive enforcement regime (e.g. financial penalty, suspension, revocation, directions, etc.) for the Government to ensure that the Corporation complied with its statutory obligations. However, if an individual would like to claim under the law of tort, for example, in respect of personal injury or under the law of contract in respect of a contract with MTRC, his right was not affected because those were not related to statutory duty. Therefore, the effect of clause 57 was that whilst no additional rights to enforce the Corporation's statutory obligations were conferred on members of the public, all of their existing rights to sue the Corporation were preserved.

37. Ms CHAN further asked if subclause (1) would work against a third party's claim for damages arising out of the Corporation's negligence. SALD replied that the right of individual passengers to sue the Corporation was governed by the general law of tort and the contract that existed between MTRC and the passengers when they bought a ticket. It would depend on the terms of that agreement as to whether individual passengers had a right of action or were successful in claiming damages.

38. Mr Albert HO enquired whether the provision could be construed in such a way as to preclude a claimant from relying on a breach of statutory duty under the Ordinance by the Corporation as evidence of his civil claim against the Corporation. SALD advised that it was his preliminary view that the provision would not have effect as such, and he undertook to revert back to the Bills Committee on this point.

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39. In reply to members' questions about the meaning of civil liabilities of the Corporation for negligence or otherwise "which arises apart from this Ordinance" in subclause (2), SALD advised that it meant any other civil liabilities, other than those imposed by the Ordinance would be preserved.

40. Referring to the authority of Lord BROWNE-WILKINSON cited in LC Paper No. CB(1)838/99-00(01), Mr Albert HO opined that as the proposition that a breach of statutory duty did not by itself give rise to civil liability was only a general one, the enactment of subclause (1) might have abrogated the residual right of private individuals to sue the Corporation for a breach of statutory duty. SALD explained that in the ordinary case, a breach of statutory duty did not, by itself, give rise to civil liability. If a private law cause of action was to exist, there had to be, as a matter of construction, a specific intention obvious from the ordinance that the legislature intended to confer on members of the public or a particular class of people a private right of action for breach of that statutory duty. However, that was not normally

found in the vast majority of ordinances enacted.

41. Mr HO disagreed with SALD's explanation and opined that by enacting subclause (1), the Government had made a general proposition absolute, thereby varying the common law principles. He expressed reservation on the provision as a whole. In this connection, LD&S/MTRC advised that while the proposition was a general one, there could be exceptions. It was precisely for those exceptions that subclause (1) was needed, to make it beyond doubt that the regulatory provisions under the Ordinance were for the Government alone and there was no intention to give private individuals the right to enforce those provisions.

Admin. 42. In view of members' concerns, the Chairman requested and the Administration agreed to provide further information on the operation of the provision in relation to the right of private individuals to sue the Corporation in civil law and to illustrate the answer with examples, focusing particularly on whether public interest was adequately protected.

#### Clause 59 – Securities of Corporation as authorized investment

43. The Deputy Secretary for the Treasury (DS for Tsy) advised that the Administration would move a CSA to delete the word "ordinary" from the expression "issued ordinary share capital" in subclause (2)(b) for consistency with the Trustee Ordinance (Cap. 29) and earlier references in the Bill.

44. While not disagreeing with the provision, Mr Albert HO remarked that for the purpose of easy referencing by international investors, the relevant provisions might more appropriately be put under the Trustee Ordinance.

#### Clause 60 – Corporation not a public body

45. Responding to Mr Albert HO's enquiry, LD&S/MTRC advised that after privatization, MTRCL would be a company governed by the Companies Ordinance (Cap. 32), and it would obviously not be a public body as commonly understood. But for general avoidance of doubt, clause 60 intended to make it clear that unless there was a specific reference in the relevant legislation, MTRCL was not a public body within the meaning of the Interpretation and General Clauses Ordinance (Cap. 1). An example of such specific reference could be found in the Prevention of Bribery Ordinance (Cap. 201) where MTRC (and MTRCL) had been specifically identified as a public body, and thus not exempted from its application.

Admin. 46. At the suggestion of Mr HO, DS for T(1) undertook to re-examine whether the provision had other legal consequences.

#### Schedule 6 - Consequential amendments

*Capital Investment Fund (Cap. 2, sub. leg.)*

47. On Mr CHAN Kam-lam's enquiry, SALD advised that the reference to "Mass Transit Railway Ordinance ( of 1999)" would be picked up when the Bill was enacted and the date would then be amended to 2000.

*Inland Revenue (Qualifying Debt Instruments) Order (Cap. 112, sub. leg.)*

48. DS for Tsy advised that for the same reason as the amendment proposed under clause 59, a CSA would be moved to delete the word "ordinary" from the expression "issued ordinary share capital".

49. As no queries were raised on other provisions of and schedules to the Bill, members then went through the paper provided by the Administration (LC Paper No. CB(1)837/99-00(01)) setting out its response to issues raised by the Bills Committee in the course of clause-by-clause examination of the Bill.

Clause 4 - Grant of franchise to Corporation to operate railway

50. Members noted that a CSA would be moved by the Administration to replace the word "Government" by "the Secretary on behalf of the Government" in subclause (2). Considering the proposed CSA at odds with similar references in other ordinances, Mr CHAN Kam-lam opined that members' concern would be addressed by simply clarifying the reference to "Government" in the Ordinance. In reply, DS for T(1) said that the proposed CSA would remove any ambiguities in relation to the proper authority within the Government to agree with MTRCL the terms and conditions of the franchise, which were to be set out in the OA. Moreover, by identifying S for T as the proper authority, it would facilitate co-ordination between the Government and MTRCL with regard to the detailed provisions of the OA. The Chairman remarked that as clause 4 was only related to the OA and its amendments, it might not be appropriate to re-define the term "Government" for the whole Ordinance simply by making reference to this limited context.

51. Members also noted that appropriate amendments would be made to the Chinese text of subclause (2) by way of a CSA. Detailed wording would be provided by the Administration soon.

Clause 7 - Directors of Corporation

52. Ms CHAN Yuen-han asked about the reason for adopting the term "ordinarily resident in Hong Kong" instead of "Hong Kong permanent resident". DS for T(1) replied that the provision 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. The status of "permanent resident", however, might not be useful for the purpose as Hong Kong permanent residents might not be ordinarily resident in Hong Kong. He further advised that the same expression was adopted for ordinances governing similar bodies.

### Clause 8 - Chief Executive may appoint additional directors

53. On Mr CHAN Kam-lam's suggestions to amend the Chinese version of the term "additional directors" to "增委董事" instead of "增補董事", DS for T(1) pointed out that they might not be appropriate as other directors were also appointed by the general meeting of shareholders. The Senior Government Counsel added that the chosen terms "additional directors" and "增補董事" would aptly describe those directors CE might appoint under the provision, without any negative connotations.

54. Mr Albert HO enquired whether subclause (4) might create the wrong impression that those powers listed thereunder could only be exercised by additional directors. DS for T(4) advised that such would not be the case as the general rights of other directors were clearly provided under the Companies Ordinance (Cap. 32). With the special appointment of additional directors, it would be desirable to highlight under the provision those rights which were of particular importance for the fulfilment of the roles and functions of additional directors.

### Clause 9 - Corporation to maintain proper and efficient service

55. DS for T(4) invited members to note that in response to the request of the Bills Committee, MTRC had agreed to set its Customer Service Pledges at 1% above the performance requirements.

56. In reply to Mr Albert HO's enquiry, DS for T(4) said that as contractual obligations were imposed in the OA, any failure on the part of MTRCL to meet the stipulated performance requirements would constitute a breach of contract and no allowance could be made.

57. Noting the Administration's response to members' concerns, Mr Albert HO said that in the interest of the public, the Democratic Party insisted that the performance requirements in Schedule III to the OA should be maintained at the existing levels and that those performance requirements should be incorporated into a schedule to the Bill so that any future revisions would be subject to negative vetting of LegCo. Relevant CSAs to the effect would be moved to this clause.

58. The Chairman was concerned about LegCo not being informed of changes to the performance requirements. While stressing that the Administration would report to the LegCo Panel on Transport all major amendments to the OA, DS for T(4) agreed to consider the matter further.

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### Clause 11 - Records

59. Following up on Mr CHENG Kar-foo's previous request for information on the number of incidents involving delays between 10 and 20 minutes in the past two years, Mr Albert HO asked whether the number of such incidents would be significantly

higher than those involving delays of more than 20 minutes. OD/MTRC replied that the requested information was unavailable as it was very difficult to track delays lasting less than 20 minutes. However, the difference should not be significant. Even for the numbers provided, they were actually higher than historical averages because of the inclusion of the operational phase of the Tung Chung Line and Airport Express Line. For MTR lines, there were 18 and 17 incidents causing delays of 20 minutes or more in 1998 and 1999 respectively.

Clause 13 - Chief Executive in Council may give directions

60. Members noted the Administration's explanation in relation to subclause (2) and the proposed CSA on the revised Chinese text of subclause (5).

Clause 15 - Suspension of franchise

61. Members noted that in response to the request of the Bills Committee, the Administration had agreed to move a CSA to subclause (2) so as to give the Corporation an opportunity to make representations to CE in Council before a decision to suspend the franchise was made under subclause (1). As for another CSA on the Chinese text of subclause (7), members would need some time to consider the drafting in detail.

Clause 18 - Revocation of franchise

62. Members noted that in response to the request of the Bills Committee, the Administration had agreed to move a CSA to add the words "of default" after "in any other case" in subclause (5)(b) for the sake of clarity.

Clause 19 - Use of railway property by Government

63. On Mr Albert HO's enquiry, SALD advised that the Administration maintained its view that it was not necessary for vesting to take place unless and until the property was to be disposed of.

### Clause 27 - General powers of inspectors

64. At the suggestion of the Bills Committee, the Administration agreed to move a CSA to subclause (5) to put it beyond doubt that the Railway Inspector was not required to give reasonable notice to the Corporation before passing the information obtained under the clause to S for T.

### Clause 29 - Offence of negligent act or omission by employee

65. Disagreeing with the Administration's view that no amendment to the provision was necessary, Ms CHAN Yuen-han opined that the term "negligence" was not properly defined and that custodial sentence should not be imposed on all cases involving "negligent acts or omissions" of employees. She would move relevant CSAs to ensure that a right balance was struck between staff protection and public safety. In reply, DS for T(4) advised that the Administration would be prepared to consider any new arguments put forward by members.

### Clause 41 - Employment-related matters

66. Notwithstanding the Administration's explanation, Ms CHAN Yuen-han said that she had yet to consult the staff side's opinions as to whether their concerns were adequately addressed. In this connection, the Corporate Relations Manager/MTRC advised that further discussions had been held between MTRC and the three staff bodies. The staff bodies had accepted the explanation given and they were also satisfied that adequate protection was accorded under clause 41. Ms CHAN said that she would follow up the matter with the staff bodies.

67. The Chairman also drew members' attention to the supplementary submission provided by the Hong Kong Mass Transit Railway Staff General Association on 16 January 2000 (issued vide LC Paper No. CB(1) 825/99-00) commenting on questions raised by members at a previous meeting on staff-related matters.

### Clause 57 - No civil liability for breach of statutory duty

68. Members noted that the provision had just been discussed in detail and further response from the Administration was awaited.

*(Post-meeting note: The Administration's response to issues raised by members on clauses 9, 53, 57 and 60 was circulated vide LC Paper No. CB(1)870/99-00(01).)*

69. Concluding the clause-by-clause examination of the Bill, the Chairman advised that there were still a few outstanding issues that required further response from the Administration, and individual members could decide for themselves whether CSAs should be moved to address their concerns. The Bills Committee would then proceed to discuss draft CSAs to be proposed by the Administration and members.

70. At the Chairman's suggestion, members agreed that the meetings originally scheduled for 22 January 2000 and the afternoon of 25 January 2000 for clause-by-clause examination of the Bill would be cancelled. The Chairman reminded members that the next meeting would be held on 25 January 2000 at 9:00 am to discuss draft CSAs to be moved by the Administration. For draft CSAs to be moved by members, they should reach the Secretariat on or before 26 January 2000 for discussion at the meeting scheduled on 27 January 2000.

## **II Any other business**

71. There being no other business, the meeting was adjourned at 12:40 pm.

Legislative Council Secretariat  
14 August 2000