

Mass Transit Railway Bill
The Response of the Administration to Issues raised by the Bills Committee on 25 January 2000

Section	Issues and Response	Gov't to Propose CSA
57	<p>The Administration to consider whether the drafting of section 57(2) could be improved to reflect more clearly the intention to preserve the citizens' existing rights to sue the Corporation in civil law.</p> <p><i>Response :-</i></p> <p>At the Bills Committee on 25 January 2000, members agreed with the legislative intent of section 57 which is to ensure that :-</p> <p>(a) the ability to bring an enforcement action against the Corporation for a breach of statutory duty under the Bill lies only with the Government - section 57(1); and</p> <p>(b) all of the citizen's existing rights under the civil law to sue the Corporation are preserved.</p> <p>Members suggested that the drafting of section 57(2) should be refined to reflect more clearly this legislative intent. The Administration will move a CSA to replace section 57(2) by the following :-</p> <p>"Subsection (1) does not affect any civil liability of the Corporation for negligence or otherwise which arises independently of a breach of any duty of the Corporation created by or pursuant to this Ordinance, regardless of whether the circumstances giving rise to such civil liability would also be a breach of any duty created by or pursuant to this Ordinance."</p>	Yes

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60	<p>(a) The Administration to advise whether there are drafting precedents in other Hong Kong legislation for section 60. <i>Response :-</i> There is no drafting precedent for section 60 in the statute book of Hong Kong, understandably so, as this is the first privatisation of a government owned statutory corporation in the history of Hong Kong. As we have explained on 25 January 2000, section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) defines "public body" as including "any undertaking by or of the Government". Given the majority shareholding of the Government in the privatized company, MTRCL may still be caught by this definition unless an "avoidance of doubt" provision is devised in the Bill. This is what section 60 sets out to achieve.</p> <p>(b) The Administration to provide examples of special privileges for or additional burdens on public bodies under the laws of Hong Kong. <i>Response :-</i> As we have explained at the last meeting, various ordinances may from time to time confer privileges or impose burdens on public bodies in general. The Administration is concerned that, if MTRCL is not specifically excluded from the definition of public bodies in Cap. 1, such rights may be conferred or burdens imposed inadvertently on the Corporation. Examples of such incidences include :-</p> <ul style="list-style-type: none"> (i) Section 8 of the Public Order Ordinance (Cap. 245) requires the organizer of a public meeting to give notice to the Commissioner of Police. The definition of a "meeting" in Cap. 245 excludes meetings organized exclusively for the purposes of any public body. MTRCL will be exempt from giving notice to the Police before organizing public meetings if section 60 is not there. (ii) Under section 55 of Cap. 1, the Chief Secretary for Administration may by notice in the Gazette change the title of any public body. Without section 60, the Government can arbitrarily change the name of the privatised company under section 55 of Cap. 1. (iii) Under section 4 of the Community Service Orders Ordinance (Cap. 378), the court may impose a community service order on a person convicted of a criminal offence punishable with imprisonment. Under section 6(3), the types of work that a person may be required to perform under a community service order, as specified in the Schedule, include "work on any land that is leased, occupied, administered, maintained or kept clean by the Government or any public body". Without section 60 of the Bill, which excludes MTRCL from the definition of a "public body", a convicted person may be ordered to work for or on MTR premises. 	

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62A	<p>The Administration to consider whether the word “competent” in section 62A(5) of the proposed CSA is appropriate for reflecting the legislative intent.</p> <p><i>Response :-</i> We have considered Members' views. The Administration will amend the proposed CSA to replace the word "competent" by "authorized" (Annex).</p>	

----- Ends -----

“62A. Service of notices

(1) A notice to be given to the Secretary under this Ordinance may be delivered to the Secretary or sent to him by post.

(2) The address of the Secretary for the purposes of the giving of any notice under this Ordinance is the address specified in the operating agreement as the address for the service of notices on the Secretary under that agreement.

(3) A notice to be given to the Corporation under this Ordinance shall be marked for the attention of the Chairman of the Corporation and may be delivered to the Corporation or sent to it by post.

(4) The address of the Corporation for the purposes of the giving of any notice under this Ordinance is the address specified in the operating agreement as the address for the service of notices on the Corporation under that agreement.

(5) For the purposes of this section, a notice is delivered to the Secretary or the Corporation if it is delivered to the address of the Secretary or Corporation and left with a person apparently authorized to receive communications intended for the Secretary or the Corporation”.