

立法會

Legislative Council

LC Paper No. LS116/99-00

Paper for the Bills Committee on the Urban Renewal Authority Bill

At the Bills Committee meeting on 27 March 2000, Members requested the Legal Service Division to prepare a paper on the provisions on transitional arrangements for employees of the Mass Transit Railway Corporation under the Mass Transit Railway Ordinance (13 of 2000) ("the Related Ordinance") and the Committee Stage amendments that were proposed by Members during the Legislative Council proceedings on the Mass Transit Railway Bill.

Urban Renewal Authority Bill

2. During discussion of the Urban Renewal Authority Bill ("the Bill") by the Bills Committee, Members noted that under clause 32(5) of the Bill, every contract, including every employment contract or other agreement with any person, entered into by the Land Development Corporation ("LDC") shall have effect as if the Urban Renewal Authority ("URA") is substituted for LDC and the contract or other agreement may be enforced by or against URA.

3. Clause 32(8) of the Bill relates to the contributory or non-contributory scheme for payment of provident funds to the employees of LDC such that it may continue to operate as if the scheme had been put in place by URA. Under that clause, the employees of LDC under the arrangements of such a scheme shall be taken to be the employees of URA, and URA shall replace LDC in all the arrangements of such a scheme.

Mass Transit Railway Ordinance

4. Part IX of the Related Ordinance contains vesting provisions and transitional arrangements regarding the dissolution of the Mass Transit Railway Corporation ("MTRC") and the vesting of all property rights and liabilities in the MTR Corporation Limited ("the Corporation"). Section 37 is a general vesting provision and section 41 specifically relates to employment-related matters (**Annex A**).

5. Section 41(1) of the Related Ordinance modifies any contract of employment with MTRC by substituting the Corporation for MTRC, and provides that employment with MTRC and the Corporation under such contract of employment is deemed to be a single continuing employment. The difference between this section and clause 32(5) of the Bill is that the former deals expressly with contracts of employment only while the latter is a general provision on all kinds of contracts.

6. Section 41(2) of the Related Ordinance vests in the Corporation the rights and liabilities of MTRC under any agreement made, transaction effected or other thing done by, to or in relation to MTRC (including under the pay review mechanism which has been adopted by MTRC and effective immediately before the appointed day) for the payment of pensions, allowances, gratuities and benefits. It also provides that (a) documents relating to retirement schemes or retention bonus schemes of MTRC and (b) entitlements to gratuities or benefits payable by MTRC would be construed and have effect as if reference in those documents to MTRC was a reference to the Corporation and as if those entitlements were payable by the Corporation.

7. The scope of application of section 41(2) of the Related Ordinance is wider than clause 32(8) of the Bill in that it extends beyond provident funds to cover pensions, allowances, gratuities and benefits of every description. The Legal Service Division has asked the Administration to clarify what benefits the employees of LDC are presently receiving other than provident funds and those specified in their contracts of employment.

8. Section 41(3) of the Related Ordinance specifies that no member of the Board of MTRC or auditor of MTRC becomes a director or auditor of the Corporation by virtue only of section 37 or 38. The legal effect of this provision is such that there is no automatic continuation of office despite the vesting provisions and transitional arrangements in the Ordinance. No provision similar to that is provided in the Bill. The Administration has been asked to clarify the reason for the discrepancy because the appointment mechanism for the Chairman, the Chief Executive, and members of the Board in the LDC Ordinance is basically the same as the Chairman, Managing Director and members of the Board in the MTRC Ordinance before it was repealed by the Related Ordinance.

Committee Stage amendments

9. Section 41(2) of the Related Ordinance incorporates a Committee Stage amendment originally proposed by the Hon CHAN Yuen-han and moved by the Administration. The amendment (adding the words underlined in **Annex A**) is to clarify that the benefits of employees of MTRC and their prevailing pay review mechanism would remain in force after privatization.

10. Another Committee Stage amendment that was considered but rejected by the committee of the whole Council is the addition of a subclause 41(2A) (**Annex B**) proposed by the Hon LAU Chin-shek. The effect of the proposed amendment would be to provide that persons with contracts of employment with MTRC may all remain in employment and their seniority shall be retained with pay, allowances, benefits and conditions of service no less favourable than before. The wording of the proposed amendment is broadly similar to that of Article 100 of the Basic Law.

11. An extract of the record of proceedings on 23 February 2000 in respect of the Committee Stage of the Mass Transit Railway Bill in connection with clause 41 is at **Annex C**.

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