

**President's Rulings on
Committee Stage Amendments proposed by
Hon Albert HO Chun-yan and Hon Andrew CHENG Kar-foo to
Mass Transit Railway Bill**

Introduction

Under the Council's Rules of Procedure made in pursuance of Article 75 of the Basic Law, I am required to rule whether the Committee stage amendments proposed by Members to the Mass Transit Railway Bill (the Bill) are in order.

2. The Secretary for Transport, who introduced the Bill, has been asked to comment on the proposed CSAs. He has offered the view that some of the CSA's proposed by Hon Albert HO and Hon Andrew CHENG are out of order.

3. Details of the CSAs concerned, the Secretary's view, and my rulings are set out below.

Hon Albert HO's CSA

4. **Mr HO** proposes to add a new Clause 8A to the Bill, to the effect that the franchise granted to the Mass Transit Railway Corporation Limited (MTRCL) does not include the right to develop residential or commercial projects or other projects above or annexed to any new station and along any extension to the railway, and that such right shall be granted through open tender.

5. **The Secretary for Transport** states that no part in the Bill authorizes the Government to grant MTRCL any right to develop residential or commercial property on top of or annexed to new railway stations or along railway extension. The proposed new Clause 8A seeks to prohibit the Government from granting such right, which the Bill does not authorize the Government to do, and is therefore not relevant to the scope of the Bill. The Secretary also states that the imposition of a requirement that the Government grant development right, by open tender, of land annexed to new stations or along railway extension (irrespective of whether the land is owned by Government, MTRCL or private bodies) introduces a new element of land policy for Hong Kong, which is beyond the scope of the Bill.

My opinion

6. Although no specific clause in the Bill refers to Government's granting of property development rights to MTRCL, I am persuaded by Mr HO's argument that such grant is part and parcel of the Government's grant of the franchise to MTRCL to operate the railway. Clause 4(2) of the Bill provides that:

"The terms and conditions agreed between the Government and the Corporation as having effect with respect to the franchise granted (to MTRCL) under this section are those set out in one or more agreements entered into between the Government and the Corporation which are declared by their terms to be an operating agreement for the purposes of this Ordinance"

The term "operating agreement" is defined in Clause 2 as meaning "the agreement or agreements specified in section 4(2) as having effect from time to time". When the Bill was introduced, the Legislative Council Brief provided by the Administration to the Council stated that the operating agreement "will provide for all the detailed terms of the franchise". Annexed to the Legislative Council Brief was a Summary of the Principal Headings of the Operating Agreement in which there was a specific section on Land, which stated:

"This section will contain provisions addressing the framework for the grant by Government to the Corporation of:

- (a) land required for the operation (and extensions that may be agreed) of the railway;
- (b) land for property development by the Corporation in connection with railway development;"

7. I also note that a significant part of the Bills Committee's deliberations was devoted to the study of the terms in the Principal Headings of the Operating Agreement, which resulted in the Administration making substantial revisions to its content. However, in a paper entitled Property Development Rights submitted to the Bills Committee in November 1999, the Administration maintained its position that to oblige the Government to grant property development rights through open tender is no guarantee that Government will fetch a better price than that it can get from MTRCL.

Ruling

8. It is abundantly obvious to me that, for all intent and purposes, the grant of property development rights to MTRCL forms an integral part of the grant of the franchise to MTRCL to operate the railway. The facts that clause 4(2) refers to an operating agreement for the purposes of the Bill, that the operating agreement contains provisions for the grant of land for property development, and that the Administration has been prepared to devote a substantial amount of time and efforts to explain these matters to Members, all lead to the natural conclusion that it cannot be correct for the Secretary to claim that the Bill does not concern the grant of property development rights to MTRCL.

9. I therefore rule that the proposed new clause 8A is relevant to the subject matter and within the scope of the Bill. It may be admitted for the Council's consideration.

Hon Andrew CHENG's CSAs

10. **Mr CHENG's** proposal is to amend clause 9 and add a new Schedule 5A - Performance Requirements. The original clause 9 stipulates that "the Corporation shall maintain proper and efficient service at all times in accordance with this Ordinance and the operating agreement". Mr CHENG's intention is clear; he wishes to set performance levels for the Corporation, in the form of new Schedule 5A. Hence, the schedule sets, for example, a 99.5% performance level for train service delivery; 99% level for the Airport Express Line on-time journeys and for the Line's punctuality etc. etc.

11. **The Secretary for Transport** claims that the proposed new Schedule 5A is meaningless because it does not define the term "performance criteria" and it does not explain how the percentage figures are to be calculated. The Secretary is also of the view that the CSA is legally unenforceable.

My Opinion

12. I consider that Rule 57(4)(d) of the Rules of Procedure, which states that "An amendment which is in the opinion of the Chairman (of the Council) frivolous or meaningless may not be moved", cannot catch Mr CHENG's proposed CSAs. The New Shorter Oxford English Dictionary defines "frivolous" as of little or no value or importance, and lacking seriousness or sense, and "meaningless" as without meaning; without purpose. Given the clear purpose of the proposed CSAs, they cannot be meaningless.

13. Whether the CSAs have merits or are enforceable if passed is for the Member to justify and for the Council to consider.

Ruling

14. I rule that Mr CHENG's proposed CSAs do not fall foul of Rule 57(4)(d) and may be admitted for the Council's consideration.

(Mrs Rita FAN)
President
21 February 2000