

立法會秘書處法律事務部的信頭
Letterhead of Legislative Council Secretariat Legal Service Division

Urgent By Fax No. 2537 3774

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12 October 1999

Secretary for Transport

Transport Bureau

(Attn: Mr. Roy Tang

Prin AS(T)3)

15/F, Murray Building

Garden Road

Hong Kong

Dear Mr. Tang,

Mass Transit Railway Bill

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following matters:

Construction of extension to the Mass Transit Railway

If land is required to be resumed for the construction of an extension to the Mass Transit Railway, do the provisions of the Railways Ordinance (Cap. 519), including the compensation provisions, apply to such resumption? If so, please explain why the Government should assume the liability to pay compensation out of the general revenue after privatisation of the Mass Transit Railway Corporation (“MTRC”).

Status of MTR Corporation Limited

If it is intended that the MTR Corporation Limited should be a company limited by shares, should this be provided expressly in the definition of “MTR Corporation Limited”? As you may be aware, companies incorporated under the Companies Ordinance (Cap. 32) may be limited by shares, limited by guarantee or unlimited in liability.

Proposed section 9

What is meant by maintaining “a proper and efficient service”? Will the Administration consider setting out some guidelines in a similar manner as in section 2 of the Ferry Services Ordinance (Cap. 104)?

Proposed sections 12(2) and 27(5)

If a person discloses information in contravention of the above provisions, what legal remedy does the “victim” have under the Bill or otherwise? Is the person who contravenes the relevant provisions liable to any sanction under the Bill or otherwise?

Proposed section 31(6)

At present, notice of the deposit of plans of transport interchanges is published in the Gazette as subsidiary legislation. The relevant notice, namely, the Mass Transit Railway (Transport Interchange) (Deposit of Plans) Notice (Cap. 270 sub. leg.) is proposed to be adopted as and become a notice published under the Bill. However, by virtue of proposed section 62, any notice issued under proposed section 31(6) will not be subsidiary legislation. Please explain why the Bill proposes to change the nature of such notices. If any variation to the existing Notice will not be published as subsidiary legislation, the information contained in the Notice may become outdated in time. What is then the purpose of adopting the Notice as subsidiary legislation under the Bill?

Proposed section 48

In line with the corresponding provision in the UK British Steel Act 1988, should a provision be added under this section to the effect that subsections (1) and (2) will not be taken as prejudicing the effect under the law of Hong Kong of the vesting in the Corporation by virtue of proposed sections 37 or 48 of the Bill of any foreign property, right or liability?

Proposed section 56

(a) Please explain why the MTR Corporation Limited, as a company incorporated

under the Companies Ordinance (Cap. 32) should be given the power to bring prosecutions for offences under the Bill in its own name? As you may be aware, companies which have been granted franchises to operate other modes of public transport such as ferry and public bus services are not given such a power.

- (b) Is it more appropriate that after privatisation of MTRC, officers authorized by the new body corporate should only be given enforcement powers similar to those given to officers authorized by franchisees of other modes of public transport?
- (c) Section 56, as drafted, may be construed to apply to offences under proposed sections 10(3), 11(4) and 28(3) with the result that the Corporation may be prosecuting itself. Does this reflect the Administration's intention?

Proposed section 57

Please explain why it is proposed that the Corporation's civil liability for breach of statutory duties should be exempted given that no such exemption is given to other companies which are granted franchises to operate other modes of public transport.

I would appreciate it if you would let me have your reply in both English and Chinese as soon as possible so that the above issues can be discussed at the Bills Committee meetings. In relation to the Chinese text of the Bill, I may have to write to you at a later stage, if necessary.

Yours sincerely,

(Connie Fung)

Assistant Legal Adviser

c.c.: DoJ (Attn: Mr. Jonothan Abbott, SALD)

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