

Bills Committee on Mass Transit Railway Bill

Operating Agreement

PURPOSE

The Bills Committee was consulted on 23 November 1999 on the principal headings of the Operating Agreement (OA) when Members made various comments and suggestions. This paper serves as the Administration's response to these comments and suggestions.

2. The revised draft of the principal headings of the OA is at **Annex** for Member's information.

DETAILS

Train Service Arrangements (clause 4.2)

3. The Administration's original proposal was to maintain the status quo, i.e. to allow MTR Corporation Limited (MTRCL) to determine its daily hours of operation, train frequencies, composition of trains and train carrying capacity (collectively called "Train Service Arrangements"). MTRCL would be required to notify the Commissioner for Transport (hereafter referred to as "the Commissioner") in advance of any "material modifications" to these Arrangements. Some Members of the Bills Committee considered it inadequate to require MTRCL to notify the Commissioner only of any material modifications to the Train Service Arrangements.

4. It is the view of the Corporation, on grounds set out below, that the interest of the commuting public will be best served by maintaining status quo, i.e. the Corporation to notify the Commissioner of any material modification to Train Service Arrangements:-

- (a) it is essential that the Corporation's management retains the flexibility to respond quickly and efficiently to changing market demands;
- (b) competition in the market will demand that the Corporation should provide the best possible service to customers including optimal train frequency but as market conditions change over time and also possibly in different specific locations, management must have the flexibility to avoid less cost-effective operations brought about by sub-optimal timetabling.

Any such actions will not only be notified to the Commissioner, but will also be explained and the Executive made accountable to the Board; and

- (c) the conclusions reached from an analysis of the COMET Benchmarking Group, carried out by Professor Tony Ridley, Imperial College, who will appear to give expert advice to the Bills Committee, is that service regulation, including timetabling is best done by the metro operator on a routine and comprehensive basis and that the correct level of regulation allows companies to be responsive to the market and to be capable of changing quickly.

Performance Requirements (clause 4.9)

5. MTRCL's target is to meet the Customer Service Pledges as it is required to do under clause 4.11 of the OA. Under clause 4.9 of the OA, MTRCL will be required to meet certain passenger service standards (thresholds). These service thresholds will form acceptable levels to achieve a proper and efficient service. Failure of MTRCL to meet these thresholds can be cause for financial penalties or, in serious cases, revocation of franchise.

6. As set out in Schedule III to the previous draft of the OA attached to the paper that the Bills Committee considered on 23 November 1999, MTRCL will be obliged to meet thresholds in respect of the following areas of performance :-

- (a) Train Service Delivery - measuring the percentage of trains actually run against the number of trains scheduled;
- (b) Train Punctuality - measuring the percentage of trains completing their journeys without experiencing a delay of two minutes or more on MTR and five minutes or more on AEL. The difference between benchmarks for MTR and AEL trains is to reflect the unique operational features of the latter, e.g. loading and unloading of baggages and lower train frequency for AEL;
- (c) Passenger Journeys on Time - it is a percentage which reflects passengers who complete their journeys without experiencing a delay of five minutes or more. Unlike punctuality which measures the arrival of trains, this provides a more accurate measurement of total passengers affected, which varies during

different hours of the day. The five-minute benchmark is derived from the extent of allowance which passengers have consistently indicated in MTRC's passenger surveys that they would give when travelling on MTR and AEL; and

(d) reliability of value adding machines, ticket issuing machines, ticket gates, escalators and passenger lifts.

7. We consider that the thresholds should be set on the following premises :-

(a) the thresholds should be set at a level that will require MTRCL to maintain its recent average performance; and

(b) a safety margin should be provided to cater for minor fluctuations that may occur occasionally.

8. The proposed performance levels now set out in Schedule III of Annex have been worked out with reference to the Corporation's performance during the past two years. When we finalize Schedule III, a snap shot will be taken of the Corporation's performance in the two-year period right before privatisation and the thresholds will be pitched at 1% below historical performance to allow occasional fluctuation. The Corporation has agreed to adopt Customer Service Pledges at 0.5% above the thresholds. Members may wish to note that :-

(a) the thresholds are sanctionable standards which the Corporation has a contractual obligation to meet. These thresholds are extremely high by any international standards (an expert from London University will give evidence in this respect before the Bills Committee);

(b) the real targets MTRCL will be obliged under the OA to strive to achieve are the Customer Service Pledges which are higher than the contractual thresholds; and

(c) the Government, as the majority shareholder, will exercise its influence over the management which will be made accountable to deliver its Customer Service Pledges.

Objective Benchmark for Railway Safety (clause 5.1)

9. At the Bills Committee meeting on 23 November 1999, a Member suggested that the Government should consider incorporating performance criteria on railway safety.

10. Sections 28 to 30 of the Mass Transit Railway Bill, as they are presently drafted, impose statutory obligations on the Corporation to ensure that the conditions of the railway system and the manner of railway operation would not pose danger to passengers and employees. These are statutory duties which the Corporation has an absolute obligation to discharge. Any numerical targets on safety will constitute derogation from such absolute statutory duties which are important for railway safety. There are at present no railway safety benchmarks denoted in numerical forms internationally.

11. Members may wish to note that following safeguards will be in place to ensure that the MTR system will be maintained to very high safety standards :-

- (a) MTRCL will be required by the OA to maintain and operate the railway at all time having full regard to the safety of the system to the satisfaction of the Hong Kong Railway Inspectorate (HKRI) (clause 5.1.1);
- (b) MTRCL will be required by the OA to establish a safety management system (clause 5.1.2) to review, control and minimise safety risks;
- (c) same as at present, the Bill empowers HKRI to investigate into all the incidents and make sure that MTRCL will undertake improvement works if necessary; and
- (d) should MTRCL fail to take remedial action as required, section 28 of the Bill empowers the Secretary for Transport to require MTRCL to take such remedial action and impose penalty if it does not comply with the requirement.

Platform Safety

12. We have considered the suggestion of a Member to set a numerical benchmark for platform screen doors (PSDs). It should be noted that whilst platform screen doors can enhance the safety of passengers, they are not a pre-requisite for safe railway operations. Indeed, platform screen doors are far from being standard provisions in most railway systems around

the world. To suggest that installation of platform screen doors is the only way to ensure the safety of passengers is not doing justice to the very high safety standards which have been built into our railway systems and are strictly followed by MTRC in its daily operations.

13. MTRC has taken elaborate measures to ensure platform safety. CCTV cameras have been installed by the Corporation at every station platform to facilitate effective monitoring and management of platforms. Station Control Rooms and Platform Supervision Booths are equipped with sufficient communication and control facilities to prevent untoward incidents. Emergency Train Stop Buttons are available along platforms on the pillars or wall panels. Station management programmes including crowd control measures are in place to ensure passenger safety. Station broadcasting is also used to remind passengers to stand behind the yellow lines at platforms. MTRC also regularly organises platform safety campaigns. With all these precautionary measures, MTRC has achieved very good safety records for its passengers over the years.

14. Notwithstanding the above, MTRC announced in May 1999 that it would proceed with a phased programme of retrofitting platform screen doors at 30 stations of its Kwun Tong, Tsuen Wan and Island Lines. The total cost for the project is substantial, estimated to be \$2.5 billion. The decision demonstrates the Corporation's commitment to provide quality and improved services to the public. The MTRC will be the first railway in the world to undertake a project as complex as the retrofitting of platform screen doors on an operating railway. The technical challenges are significant and unprecedented. The works involve major alterations to the station and tunnel ventilation, air-conditioning and smoke extract systems to meet the revised operating requirements under the changed station conditions. Equally vital is the need to ensure that during the construction and installation process, normal train operation is not affected.

Independent Safety Expert (clause 5.3)

15. The OA provides that MTRCL shall employ an independent external expert to review its safety management system at a regular interval of not more than five years. A Member has requested that the review be carried out more frequently. We have further discussed with MTRC and the Corporation has agreed that such external review should be conducted every three years after privatisation. Clause 5.3 has been amended accordingly.

Open Tender for Property Development Rights

16. A Member suggested that MTRCL should be required to continue MTRC's current practice of picking the developer for property development rights above MTR stations and depots by way of open tender.

17. Members may wish to note that the Government is supportive of the idea for MTRCL to continue to tender out the property development rights. The tendering process, however, needs to reflect the dynamics of the market. Crystallizing the open tender requirement in the OA may deprive MTRCL of the flexibility that it may require in responding to market conditions and different natures of projects (e.g. MTRCL may need the consent of another party to carry out a development and it would be expedient to deal with that party). The Government and the Corporation believe that the Project Agreement where such development rights are granted is the best instrument to incorporate the open tender requirement if that is deemed appropriate at the time when the Project Agreement is signed.

Compensation (clause 9)

18. A Member has asked for information on the basis of assessing compensation if and when the Government has taken possession of the property of MTRCL used in connection with the operation of the railway upon revocation and expiry of the franchise. Clause 9 of the OA provides that compensation payable will be based on the fair value of the relevant railway property as determined by an independent expert appointed by the Government and the Corporation.

Interim Review (clause 13)

19. A Member has suggested that there should be a mechanism of interim review whereby MTRCL will be required to take action to ensure that the MTR system is not lagging behind in the adoption of technological and technical advances used internationally for railway operations. We have considered the suggestion and revised clause 13 to the effect that at the periodic review, the parties shall also consider the manner in which MTRCL may maintain a rate of technological and technical progress for the management and operation of the railway commensurate with good international practice.

Disclosure of Information (clause 17.4)

20. A Member expressed concern that the Administration should agree to bind itself to consult MTRCL before releasing information pertaining to the Corporation's operation.

21. Members may wish to note that the Hong Kong Stock Exchange Listing Rules (the Listing Rules) impose stringent control on the

disclosure of price sensitive information by listed companies. The objective is to maintain a fair and orderly securities market and ensure that all stakeholders have simultaneous access to the same information. Under the Listing Rules, a listed company must consult the Stock Exchange on the disclosure of certain information which may reasonably be expected to affect materially market activity in and the price of securities. To ensure that MTRCL would not be in breach of the Listing Rules, it is in order for the Government to consult MTRCL before we release price sensitive information which has been obtained from MTRCL in our capacity as the regulator. This will enable MTRCL to make suitable arrangements with the Stock Exchange for the information to be released in accordance with the Listing Rules.

22. Members may wish to note that the Government's obligation under the OA will only be one of consultation. There is no question of the Government seeking the consent of the Corporation before the information is released. We do not envisage that this consultation requirement will in any way hinder our regulatory functions.

Conflict of Interest

23. Some Members suggested that there could be a conflict of interest between the Government as a shareholder and a regulator, in particular where the Government, for public interest purposes, ask MTRCL to take on railway projects which are not commercially viable.

24. We do not believe that the conflict of interest, as envisaged by Members, will even arise. As we have pointed out at the previous Bills Committee meetings, the Government expects MTRCL to continue to be driven by market competition and the need to achieve a commercial return. As in the past 25 years, the Government will not compel the Corporation to take on railway projects which do not yield a commercial return. In the event that the Government and the MTRCL agree that the Corporation is to undertake railway projects which are commercially unviable, the Government will provide support to MTRCL. Such support must be separately identified and justified publicly, and can take the form of property development rights, contribution to railway infrastructure, etc. The details of such support will be negotiated in the process of preparing the relevant Project Agreement.

ADVICE SOUGHT

25. Members are requested to note the contents of this paper.

Transport Bureau
4 January 2000

PRINCIPAL HEADINGS
of the
OPERATING AGREEMENT
between
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
and
MTR CORPORATION LIMITED

Preamble

This Operating Agreement is made pursuant to the Mass Transit Railway Ordinance (the “MTR Ordinance”) and will replace the existing Memorandum of Agreement between the SAR Government (“Government”) and MTRC.

Note

Amendments or additions which have been made in response to the suggestions of the Bills Committee meeting on 23 November 1999 have been highlighted in bold.

1. INTERPRETATION

The new Operating Agreement will contain appropriate interpretation provisions.

2. EXTENSION OF FRANCHISE

Whilst the MTR Ordinance enables MTR Corporation Limited (the "Corporation") to apply for, and Government to grant, extensions of the franchise, the detail relating to this procedure and the factors to be taken into account (including capital expenditure incurred or to be incurred by the Corporation) will be contained in the Operating Agreement.

3. DESIGN, CONSTRUCTION AND MAINTENANCE OF THE RAILWAY

3.1 Electric Power Supply

The Corporation shall make provision for and, as far as is reasonably practicable, maintain more than one source of electric power supply to all parts of the railway so that, in the event of a failure of one source, another source shall be capable of maintaining a safe and tolerable environment for all persons using the railway.

3.2 Use of Electrical Energy

3.2.1 The Corporation shall take all proper precautions in the use of electrical energy.

3.2.2 The Corporation shall take all reasonable precautions in constructing, placing and maintaining its electric lines and circuits and other works of all descriptions, and also in the operation of the railway, so as to prevent the discharge of electrical current into the ground in such a manner as will injuriously affect by fusion or electrolytic action any gas, water or hydraulic power pipes, electric lines or other metallic pipes, structures or substances or as will interfere with, or with the working of, any wire, line or apparatus from time to time used for the purpose of transmitting electrical energy or of telegraphic, telephonic or electrical signalling communication or the currents in such wire, line or apparatus.

3.3 Control Centres

3.3.1 The Corporation shall provide and maintain adequate facilities in the control centres for the safe regulation, control and direction of trains and persons using or employed in the operation of the railway.

3.3.2 The Corporation shall ensure that such control centres are manned at all times by persons trained in the use of the equipment installed therein and in such duties assigned to them and shall take such steps as may be necessary to ensure that such persons remain at all times competent to carry out such duties.

3.4 Prevention of Flooding

The Corporation shall provide and maintain adequate means to prevent flooding of the railway premises.

3.5 Provision of Depots and Equipment

- 3.5.1 The Corporation shall provide and maintain adequate depot facilities for the stabling, cleaning, inspection, maintenance and repair of rolling stock. These depots shall be of an adequate capacity to maintain full services and shall contain all the necessary equipment for the work to be undertaken safely.
- 3.5.2 The Corporation shall develop and maintain suitable arrangements for the maintenance and repair of all rails, overhead line equipment, tunnels, viaducts, stations and other structures, infrastructure, plant and equipment used in connection with the operation of the railway, subject to such particular arrangements as are made within the terms of Schedule I and Schedule II.

3.6 Monitoring of Environmental Conditions

The Corporation shall monitor and record the environmental conditions throughout the enclosed areas of the railway and shall provide and maintain such measuring and recording instruments as may be necessary for the continuous monitoring and recording of such environmental conditions.

3.7 Lighting and Ventilation

- 3.7.1. The Corporation shall provide and maintain adequate lighting in areas of the railway premises accessible to the public and where persons are at any time required to work.
- 3.7.2. The Corporation shall provide and maintain adequate ventilation in enclosed areas of the railway premises and in areas of the railway premises over which the Corporation can reasonably exercise climatic control and which are not naturally ventilated, in each case to which the public has access.

3.8 Police Accommodation

- 3.8.1 The Corporation shall provide, to the satisfaction of the Commissioner of Police, adequate accommodation and facilities for members of the Hong Kong Police Force on duty on the railway and the railway premises and maintain such accommodation and facilities properly.
- 3.8.2 The Government shall continue to procure that the Hong Kong Police Force will continue to provide a police service for the railway and the railway premises in the same manner as that provided as at the date of this Agreement.

4. RAILWAY PASSENGER SERVICES

4.1 Disruptions to Train Services

The Corporation shall report to the Commissioner and the Commissioner of Police, in accordance with the agreed alert procedures, with the least practicable delay:

- (i) the emergency closure of any station or any part of the railway during normal operational hours;
- (ii) any anticipated emergency closure of any station or any part of the railway that may affect the normal operation of the railway; and

- (iii) any interruption or delay in train service which might affect the safe and efficient conveyance of passengers travelling or wishing to travel on the railway.

4.2 Train Service Arrangements

4.2.1 Upon commencement of the Franchise Period, the Corporation shall give written notification to the Commissioner of its train service arrangements for each line of the railway in respect of:

- (i) the hours of daily operation;
- (ii) the frequency of train services for peak and off-peak services;
- (iii) the composition of trains deployed on each line; and
- (iv) the carrying capacity of each car deployed in each such train,

(together, "Train Service Arrangements").

4.2.2 The Corporation shall give the Commissioner:

- (i) not less than 28 days notice in the case of the hours of daily operation, the frequency of train services for peak services, the composition of trains deployed on each line and the carrying capacity of each car deployed in each such train; and
- (ii) not less than 14 days notice in the case of the frequency of train services for off-peak services,

or any such shorter period of notice as the Commissioner, in his absolute and sole discretion, may agree, before implementing any material modification to such Train Service Arrangements together with explanations of, and for, any such proposed modification and the Corporation's assessment of the likely impact on passenger services.

4.3 Railway Cleanliness

The Corporation shall, as far as is reasonably practicable, at all times keep the railway premises in a clean and sanitary state.

4.4 Passenger Environment

4.4.1 The Corporation shall provide a comfortable passenger environment by maintaining adequate standards for temperature and ventilation in enclosed areas of the railway premises and in areas of the railway premises over which the Corporation can reasonably exercise climatic control and which are not naturally ventilated, in each case to which the public has access.

4.4.2 In ensuring that a comfortable passenger environment is provided, the Corporation shall take into account such guidance notes, practice notes and other advice relevant to clause 4.4.1 as may be issued by Government from time to time.

4.5 Communications

The Corporation shall provide and maintain adequate and efficient means of communication between its control centres and:

all:

- (i) trains in operation (whether or not carrying passengers);
- (ii) stations;
- (iii) depots; and
- (iv) such other places as are essential to the proper, efficient and safe operation of the railway;

and such:

- (i) police facilities as may be designated by the Commissioner of Police;
- (ii) control centres and such other places as may be designated by the Commissioner;
- (iii) communications centre or centres as may be designated by the Director of Fire Services; and
- (iv) control rooms of those companies that supply electric power to the Corporation.

4.6 Noise and Vibration

The Corporation shall ensure that the noise and vibration emitted due to the operation of the railway is at all times kept to a minimum consistent with proper maintenance and safe operational practices.

4.7 Collection of Fares

The Corporation shall provide and maintain adequate staff and a reliable ticketing system for the efficient and effective collection of fares.

4.8 Ticket and Cash Handling

The Corporation shall, as far as is reasonably practicable, ensure that all ticket, smart card and cash handling facilities are at all times safe and secure.

4.8A Escalators and Lifts

The Corporation shall provide and maintain adequate and reliable escalators and lifts for the efficient and effective transportation of passengers within stations.

4.9 Performance Requirements

4.9.1 Performance Levels

- (i) In each Operating Period, the Corporation shall at least meet the Performance Levels specified in Schedule III to this Agreement.
- (ii) The Commissioner shall assess the Corporation's compliance with clause 4.9.1(i) in respect of each Operating Period on a date as he and the Corporation shall agree, such date being within two months following the end of the relevant Operating Period.
- (iii) During an assessment carried out pursuant to Clause 4.9.1(ii), the Commissioner may require the Corporation to explain any failure by the Corporation to meet any Performance Level applicable for the relevant Operating Period and to provide information on the actions it has taken, or proposes to take, to improve its performance.
- (iv) Should for any reason the Corporation become aware during any Operating Period that it is unable to meet, or is unlikely to meet, any Performance Level, it shall furnish the Commissioner with explanations in writing for its inability, or the unlikelihood of its ability, to meet such Performance Level or Levels, together with information on any action it is taking to improve the situation.

4.9.2 Review of Performance Requirements

The Performance Requirements shall be jointly reviewed by the Corporation and the Commissioner:

- (i) not later than 28th February, [2001] and, thereafter, not later than 28th February (or such other date as the Corporation and the Commissioner may agree) in each subsequent Operating Period, taking into account the results of customer surveys carried out pursuant to clause 4.12, the opening of any major extensions and any other relevant circumstances; and
- (ii) at any other time or times during an Operating Period, within 28 days after receipt by the Commissioner of a request in writing from the Corporation for a joint review to be carried out in the particular circumstances (save that no such request may be made if the particular circumstances existed, or the Corporation was aware that the particular circumstances would arise, at the time of the most recent annual review carried out pursuant to clause 4.9.2.(i)).

At a review, the parties may agree what, if any, temporary changes should be made to any of those Performance Requirements or the application thereof, in each case, for such period as may be agreed between the Commissioner and the Corporation. Any such request referred to in clause 4.9.2(ii) shall be accompanied with details of the Corporation's proposals and reasons supporting them. The particular circumstances in which a request may be made may include, but shall not be limited to:

- (a) the period during which new or substantially modified designs for passenger trains are implemented and for the initial period thereafter agreed between the Corporation and the Commissioner;
- (b) the period during which any new or substantially revised methods of automatic train control are implemented and for the initial period thereafter agreed between the Corporation and the Commissioner;

- (c) the period during which any substantial alteration, extension, addition or modification to any material infrastructure, plant or equipment used in connection with the operation of the railway is implemented and for the initial period thereafter agreed between the Corporation and the Commissioner; and
- (d) any infrastructure, plant or equipment necessary for the operation of the railway or a substantial percentage of rolling stock being damaged beyond economic repair unless such damage is the fault of the Corporation because it has not used its reasonable endeavours (i) to take such steps to prevent such damage and (ii) to take such steps to remedy such damage, in each case as is practicable in the circumstances.

4.9.3 New Lines and New Technologies

- (i) In determining whether the Corporation has met any Performance Requirement, no account shall be taken of any new line for two years from the commencement of its operations.
- (ii) Where new or substantially changed technology (the purpose of which is to assist in improving or maintaining the railway) is introduced by the Corporation in connection with the operation of the railway ("New Technology") and the introduction of such New Technology is likely materially to affect the Corporation's ability to meet any Performance Requirement in respect of the operation of that or any other part of the railway (the "Relevant Part of the Railway") during the period when such New Technology is being introduced, then in determining whether the Corporation has met any Performance Requirement, no account shall be taken of the operation of the Relevant Part of the Railway for two years from the date of the introduction of the New Technology.
- (iii) A provision to address specific Performance Requirements for any new line and, in respect of the introduction of new technology, the operation of the Relevant Part of the Railway.

4.9.4 Modifications to Schedule III

Schedule III to this Agreement shall be amended from time to time in accordance with clause 13.3 to reflect any modification to any Performance Requirements agreed between the Corporation and the Commissioner pursuant to clause 4.9.2 or 4.9.3 or 13 (as the case may be).

4.10 Force Majeure

4.10.1 The Corporation shall not be regarded as having failed to meet a Performance Requirement specified in Schedule III if the failure has resulted (whether directly or indirectly and whether in whole or in part) from the occurrence of a Force Majeure Event, provided that the Corporation shall not be entitled to rely upon a Force Majeure Event if such event occurred as a result of a breach of contract or negligence by or on the part of the Corporation.

4.10.2 For the purposes of clause 4.10.1, a "Force Majeure Event" means:

- (i) the outbreak of war affecting Hong Kong, hostilities (whether or not war is declared), invasion, acts of foreign enemies, rebellion, revolution, military or

usurped power, the overthrow of Government (whether by external or internal means), natural disasters, civil war, riot, commotion, disorder, civil disturbance, terrorism, strike, industrial action, act of god, loss or diminution of power supply, disruption caused by any member of the public or any other cause or event which is beyond the control of the Corporation; and

- (ii) one or more Mandatory Modifications affecting any infrastructure, plant or equipment necessary for the operation of the railway or a substantial percentage of rolling stock which materially affects the Corporation's ability to meet any Performance Requirement.

4.10.3 Insofar as is reasonably practicable in the circumstances, the Corporation shall give the Commissioner prompt notice of the occurrence of any Force Majeure Event and of its cessation.

4.10.4 The Corporation shall use its reasonable endeavours:

- (i) to mitigate the effects of the occurrence of a Force Majeure Event;
- (ii) to take such steps to prevent the occurrence of a Force Majeure Event; and
- (iii) to take such steps to remedy any Force Majeure Event, in each case as are practicable in the circumstances.

4.11 Customer Service Pledges

4.11.1 For each Operating Period, the Corporation shall establish and publish, on an annual basis, Customer Service Pledges.

4.11.2 The Corporation shall publish:

- (i) on a quarterly basis, such data as shall measure its actual performance against the Customer Services Pledges, together with explanations, as appropriate;
- (ii) on a quarterly basis, data in relation to passenger complaints;
- (iii) on an annual basis, data in relation to accidents, serious injuries and fatalities on the railway; and
- (iv) on an annual basis, data in relation to the hours of daily operation of train services and the frequency of train services for peak and off-peak services.

4.11.3 The Customer Service Pledges shall relate to:

- (i) train service delivery;
- (ii) passenger journeys on time;
- (iii) train punctuality;
- (iv) train reliability;

- (v) ticket reliability;
- (vi) add-value machine reliability;
- (vii) ticket-issuing machine reliability;
- (viii) ticket-gate reliability;
- (ix) escalator reliability;
- (x) passenger lift reliability;
- (xi) temperature and ventilation levels; and
- (xii) railway cleanliness,

or as otherwise agreed between the Commissioner and the Corporation from time to time.

4.11.4 In each Operating Period, the Corporation shall strive to meet the Customer Service Pledges but the parties acknowledge and agree that the Customer Service Pledges are voluntary targets and are not themselves Performance Requirements or obligations relating to performance.

4.12 Measuring Customer Satisfaction

4.12.1 The Corporation shall develop and maintain arrangements for measuring customer satisfaction with its railway services (including passenger satisfaction surveys and the method and extent of publication of the survey results).

4.12.2 Such measures of customer satisfaction shall, as far as reasonably practicable, reflect the matters listed in clause 4.11.3.

4.12.3 Within a period that is reasonable in the circumstances following a request by the Commissioner, the Corporation shall furnish the Commissioner with a report on the outcome of any arrangements made under clause 4.12.1.

4.13 Handling of Passenger Complaints

4.13.1 The Corporation shall maintain a system for handling passenger complaints and suggestions.

4.13.2 In each calendar year, the Corporation shall furnish the Commissioner with an annual report summarising the complaints and suggestions received by the Corporation in relation to its railway services and any action taken by the Corporation thereon.

4.14 Signs and Passenger Information

4.14.1 The Corporation shall provide and maintain adequate illuminated signs, in Chinese and English, in every station for the information and direction of the public and to enable passengers to proceed safely and correctly with the minimum of delay.

- 4.14.2 The Corporation shall display on railway premises and the approaches thereto appropriate signs and information in Chinese and English, including, but not limited to, MTR By-laws, directional signs and fares.
- 4.14.3 The Corporation shall make available at each station the information published pursuant to clause 4.11.2(iv).
- 4.14.4 Subject to clause 4.15, the Commissioner may request the Corporation to review the provision, content or any other matter relating to signs and passenger information in relation to any station, line or train.

4.15 Request for Review

- 4.15.1 The Commissioner may request the Corporation to review its arrangements in respect of the operation of its railway services. The Corporation shall comply with such a request for review and shall inform the Commissioner of the outcome within a period that is reasonable in the circumstances.
- 4.15.2 The Commissioner may request the Corporation to consider specific suggestions for changes in the operation of its railway services. The Corporation shall give due consideration to any such suggestions for changes (but shall not be obliged to make any such changes) and shall notify the Commissioner of its intended course of action, giving reasons for any inability to adopt the suggestions for changes.

5. SAFETY MANAGEMENT

5.1 General

- 5.1.1 The Corporation shall design, construct, operate and maintain the railway having, at all times, due regard to the safety of the railway and of persons using or employed on the railway to the reasonable satisfaction of the Inspector.

- 5.1.2 The Corporation shall establish a safety management system to review, control and minimise safety risks as far as reasonably practicable.

5.2 Instruction Manuals

- 5.2.1 The Corporation shall provide to the Inspector copies of such manuals of instruction and documentation as relate to procedures in respect of safety, emergency and security matters in connection with the railway premises.

- 5.2.2 In the preparation and major revision of any manual of instruction required under Regulation 9(a) of the MTR Regulations, the Corporation shall consult:

- (i) the Inspector if such instructions have safety implications; and
- (ii) the Commissioner of Police, the Director of Fire Services and the Inspector if such instructions have safety implications and relate to fire fighting and rescue.

5.3 Independent Safety Expert

The Corporation shall employ the services of an independent expert to review its safety management system at a regular interval of **not more than three years, or such other period as the Inspector and the Corporation may agree from time to time.**

5.4 Rescue and Breakdown Equipment

- 5.4.1 The Corporation shall, as far as reasonably practicable, provide adequate vehicles and equipment for the safe and speedy recovery of defective trains and equipment and for the rescue of passengers and persons employed on the railway.
- 5.4.2 The Corporation shall, as far as reasonably practicable, ensure that such vehicles and equipment are at all times effective and maintained in an efficient working condition and, if necessary, are attended and operated by persons trained to carry out the duties assigned to them and that such persons remain competent at all times.

5.5 Maintenance Procedures

- 5.5.1 The Corporation shall set up procedures for the maintenance of facilities, systems and trains to minimise safety risks as far as reasonably practicable and insofar as the circumstances reasonably require.
- 5.5.2 The Corporation shall ensure that maintenance work will be carried out by competent personnel.
- 5.5.3 The Corporation shall establish effective maintenance schedules and procedures with reference to manufacturers' recommendations in line with operational experience and insofar as the circumstances reasonably require.

5.6 Provision of Railway Staff

- 5.6.1 The Corporation shall at all times have on duty railway staff in such numbers and with such training and experience as will ensure the proper control and operation of the railway and the safety of persons using or employed on it.
- 5.6.2 The Corporation shall not knowingly permit any employee to be on duty whilst under the influence of alcohol or any drug or substance which would or may tend to impair the adequate performance of his duties, or who is otherwise unfit to perform his duties for any reason.
- 5.6.3 Every employee of the Corporation and person authorised by the Corporation on duty at places to which the public has access shall carry a means of identification and evidence of his appointment or, as the case may be, his authorisation issued by the Corporation which he shall produce for inspection to any person who on reasonable grounds requests him to do so.

5.7 Opening of the Railway and New Lines

- 5.7.1 The Corporation shall not:

- (i) open any new part of the railway for the conveyance of passengers, their luggage and goods; or
- (ii) open any additional line of the railway, deviation line, station or junction which forms part of the railway or is directly connected with such part of the railway; or
- (iii) bring into use any additional or modified major facilities, equipment, systems or trains or introduce new technology which have or are likely to have an impact on the safety of the railway or on the safety of persons using or employed on the railway,

until the Inspector has expressed in writing to the Secretary that, in his opinion, the same is in all respects safe to be used for the conveyance of passengers and their luggage and goods.

5.7.2 The Corporation shall:

- (i) establish a safety management system to review, control and minimise safety risks in any works carried out under clause 5.7.1;
- (ii) demonstrate to the Inspector that, insofar as the circumstances reasonably require, safety risks have been appropriately addressed in the design, construction and commissioning stages;
- (iii) demonstrate to the Inspector that appropriate facilities, procedures and competent staff are in place for the safe operation and maintenance of the railway;
- (iv) provide submissions on design, construction methods, commissioning tests, training, maintenance and all other information as may reasonably be required by the Inspector during the design, construction and commissioning stages;
- (v) perform any and all such tests as may reasonably be requested by the Inspector and to forward all results of such tests to the Inspector; and
- (vi) at such reasonable times as the Inspector may request in writing permit the Inspector to carry out any inspection, examination or test he considers necessary and provide such resources and assistance as may be reasonable in the circumstances to enable him to carry out such inspections, examinations and tests,

so as to enable him to give his opinion for the purpose of clause 5.7.1.

5.7.3 Notwithstanding anything herein contained and so far as permitted by law, the Inspector shall not be liable to the Corporation, by reason of him having given an opinion for the purpose of clause 5.7.1, or by reason of anything done under clause 5.7.2, for any loss or damage the Corporation may suffer arising out of the design, construction or operation of the railway and shall not relieve the Corporation from responsibility and liability under the MTR Ordinance, the MTR Regulations and the terms of this Agreement.

5.8 Contingency Plans

The Corporation shall develop and maintain contingency plans to be implemented in the event of a breakdown, accident or emergency on any part of the railway premises. Such plans shall include arrangements for the making of announcements, the broadcasting of messages through the media, the evacuation of passengers, the supply of alternative transport services and any particular arrangements for fare collection.

6. LAND

This section will contain provisions addressing the framework for the grant by Government to the Corporation of land required for railway projects. The framework is described in the paper on "Property Development Rights" which the Bills Committee considered on 18 November 1999.

7. NEW PROJECTS

This section will contain provisions which address the following objectives:

- (i) annual publication by the Corporation of statement of its own anticipated future network capacity requirements;
- (ii) building new lines only on prudent commercial principles;
- (iii) ensuring a level playing field and equal treatment with other potential competitors in the award of new railway projects and extensions; and
- (iv) providing a clear framework for new projects.

8. FARE REGULATION

8.1 Consultation Procedure

Prior to changing the level of any fare, the Corporation shall:

- (i) consider the level of public acceptance of any proposed change, based on passenger surveys;
- (ii) consult the Transport Advisory Committee;
- (iii) consult the Panel on Transport of the Legislative Council;
- (iv) after the consultation pursuant to paragraphs (ii) and (iii) above, through its board of directors, resolve to approve the proposed fare change;
- (v) formally notify both the Transport Advisory Committee and the Panel on Transport of the Legislative Council within a reasonable period prior to implementation of the new fare; and
- (vi) make a public announcement of the new fare within a reasonable period prior to implementation of the new fare.

8.2 Exclusions

8.2.1. The Corporation shall have no obligation to comply with clause 8.1 in respect of:

- (i) any arrangement which:
 - (a) has the effect of reducing any fare; and
 - (b) is considered by the Corporation to be of a promotional nature (including, without limitation, fares which entitle passengers to unlimited rides or bonus rides); and
 - (c) is intended by the Corporation to last for up to 12 months, (each, a "Promotional Arrangement"); or
- (ii) the modification or termination of any Promotional Arrangement.

8.2.2 The Corporation shall notify the Commissioner in writing at least seven days prior to the implementation of any Promotional Arrangement, except in the case of any arrangement which the Corporation considers to be of a compensatory nature or for operational purposes.

9. COMPENSATION

Compensation payable under section 20 of the MTR Ordinance will be based on the fair value of the relevant railway property as determined by an independent expert appointed by the Government and the Corporation.

10. DISPUTE SETTLEMENT

10.1 In the event of any dispute between Government and the Corporation arising out of or in connection with this Agreement, both parties shall first attempt to resolve that dispute by means of informal negotiation.

10.2 If informal negotiation does not resolve that dispute, both parties may agree to submit that dispute to arbitration in accordance with the Arbitration Ordinance (Cap. 341 of the laws of Hong Kong). Any arbitration award shall be binding on both parties.

10.3 Nothing in this clause 10 shall:

- (i) impose any legal obligation on either party to agree to submit a dispute to arbitration;
- (ii) prevent either party from seeking injunctive or other judicial relief at any time; or
- (iii) affect the rights and liabilities of either party under the MTR Ordinance.

11. OTHER AGREEMENTS

This provision will address the extension of the duration of (i) the Running Lines Leases; (ii) the arrangements in respect of the Eastern Harbour Crossing, the Tseung Kwan O

Extension and the Airport Railway; and (iii) the Corporation's other land interests, so that they are coterminous with the length of the franchise period.

12. ASSISTANCE IN SECURING CONTINUITY

- 12.1 In order to facilitate the continuity of the railway services subject to the Franchise on expiry or revocation of the Franchise, during the period commencing five years prior to the expiry of the Franchise and during the implementation of any revocation procedure under the MTR Ordinance (as the case may be), the Corporation shall not take any action which may result in frustrating the transition to any successor franchisee of the right to provide the railway services.
- 12.2 Nothing contained in clause 12.1 shall preclude the Corporation from taking any action or omitting to take any action in good faith and in the ordinary and usual course of business of the Corporation.

13. REVIEW OF TERMS OF OPERATING AGREEMENT

13.1 Periodic Review

On the fifth anniversary of the date of this Agreement (or such other date as the parties may agree) and on each successive fifth anniversary thereafter (or such other date as the parties may agree), the parties shall jointly carry out a review of each of the terms of this Agreement and, where both parties think fit and subject to clause 13.3, they shall amend this Agreement. **The purpose of a review shall include, but is not limited to, ensuring that the Corporation maintains a rate of technological and technical progress for the management and operation of the railway commensurate with good international practice.**

13.2 Other Reviews

At any time during the franchise period, either party (the "Requesting Party") may request the other party to carry out a joint review with the Requesting Party of any term or terms of this Agreement. Following such a request being made, the other party shall be obliged to carry out a joint review within a reasonable period with the Requesting Party and, where both parties think fit and subject to clause 13.3, they shall amend this Agreement.

13.3 Amendment

No amendment to this Agreement shall have any effect whatsoever unless made in writing and signed by both parties.

14. FURNISHING OF RECORDS

14.1 The Corporation shall maintain records of:

- (i) train service delivery;
- (ii) passenger journeys on time;
- (iii) train punctuality;

- (iv) train reliability;
- (v) ticket reliability;
- (vi) add-value machine reliability;
- (vii) ticket-issuing machine reliability;
- (viii) ticket-gate reliability;
- (ix) escalator reliability;
- (x) passenger lift reliability;
- (xi) temperature and ventilation;
- (xii) railway cleanliness;
- (xiii) accidents, serious injuries and fatalities;
- (xiv) emergency closures of the railway or any part thereof;
- (xv) performance in relation to Customer Service Pledges; and
- (xvi) passenger complaints and suggestions.

14.2 Subject to the Commissioner and the Corporation reaching agreement, the Corporation shall maintain records in addition to those required under section 11 of the MTR Ordinance and clause 14.1.

14.3 The Corporation may be required to furnish copies of any records maintained pursuant to clause 14.1 or 14.2 to the Secretary or the Commissioner and to permit the Secretary or the Commissioner to inspect them in the manner prescribed in, and subject to the terms of, sections 11 and 12 of the MTR Ordinance.

15. EXTERNAL AUDITORS

The Corporation shall submit to the Commissioner a report prepared by its external auditors, on an annual basis, as to whether or not, during that Operating Period, in the opinion of the external auditors, the Corporation had in place internal control systems and procedures which were adequate to enable, as far as practicable, the Corporation to measure and record, in all material respects, its compliance with the Performance Levels and its calculation of the Customer Service Pledges and, if the opinion of the external auditors is that those control systems and procedures were not adequate, the nature and extent of any inadequacies.

16. REGULATIONS

Government undertakes that, prior to the Secretary making any regulations under section 33 of the MTR Ordinance (“Proposed Regulations”), it will:

- (i) provide the Corporation with details of the Proposed Regulations;
- (ii) consult with the Corporation in relation to the Proposed Regulations for a reasonable period taking account of the nature and scope of the Proposed Regulations and their likely impact on the Corporation; and
- (iii) take account of all reasonable representations made by the Corporation in relation to the Proposed Regulations.

17. MISCELLANEOUS

17.1 Memorandum of Agreement

The parties agree that the Memorandum of Agreement is terminated and is replaced by this Agreement.

17.2 Restatement

The Eastern Harbour Crossing Agreement and the Airport Railway Operating and Maintenance Terms are each restated.

17.3 Waiver

The failure by Government to enforce at any time or for any period any one or more of the terms of this Agreement shall not constitute a waiver of them or of the right at any time subsequently to enforce all terms of this Agreement.

17.4 Disclosure of Information

- 17.4.1 Government shall not disclose any Restricted Information unless it has first consulted the Corporation regarding its intention to do so.
- 17.4.2 Government shall procure that neither the Secretary, the Commissioner, the Inspector nor any other person acting for or on behalf of Government discloses any Restricted Information unless he has first consulted the Corporation regarding his intention to do so.
- 17.4.3 For the avoidance of doubt either Government or the Secretary may disclose particular Restricted Information after Government or the Secretary (as appropriate) has consulted the Corporation regarding its or his intention to disclose that information.
- 17.4.4 Clauses 17.4.1 and 17.4.2 shall not apply in relation to Restricted Information that has entered the public domain otherwise than as a consequence of any act of Government or any person acting for or on behalf of Government.
- 17.4.5 For the purposes of section 12(2) of the MTR Ordinance, the Corporation agrees that, prior to the date of this Agreement, it has been consulted regarding the intended disclosure by the Secretary or any other person authorised by the Secretary in writing as referred to in section 11(2)(b) of the MTR Ordinance of any information, other than Restricted Information, which might be furnished by the Corporation pursuant to section 10 or 11 of the MTR Ordinance and that the Secretary or such other person may, but shall be under no obligation to, disclose any such information without further consultation.

17.4.6 For the purposes of this clause 17, "Restricted Information" means information (in any form whatsoever) furnished to Government, the Secretary, the Commissioner, the Inspector or any other person acting for or on behalf of Government by the Corporation:

- (i) pursuant to section 10 or 11 of the MTR Ordinance; or
- (ii) under this Agreement or by virtue of the exercise of any powers conferred by this Agreement.

which, at the time that information was furnished to Government or the Secretary, the Commissioner, the Inspector or any other person acting for or on behalf of Government (as the case may be) was specified by the Corporation to be unpublished commercially sensitive information.

17.4.7 This clause 17.4 shall continue to apply after the termination of this Agreement without limitation in time.

17.5 Notices

17.5.1 Any notices, certificates or other communications to Government in connection with this Agreement shall be sent, as the circumstances require:

- (i) marked for the attention of the 'Secretary for Transport' at Murray Building, Garden Road, Central, Hong Kong ; or
- (ii) marked for the attention of the 'Commissioner for Transport' at Transport Department, 41st Floor, Immigration Tower, 7 Gloucester Road, Wan Chai, Hong Kong,

or to such other address or to such other person as may be notified by Government to the Corporation.

17.5.2 Any notices, certificates or other communications to the Corporation in connection with this Agreement shall be sent marked for the attention of the "Legal Director and Secretary" at MTR Tower, Telford Plaza, 33 Wai Yip Street, Kowloon Bay, Kowloon, or to such other address, or to such other person, as may be notified by the Corporation to Government.

17.5.3 All notices shall be in writing. Any notice delivered personally shall be deemed to have been given at the time of such delivery. Any notice sent by facsimile transmission shall be effective only on receipt. Any notice sent by post shall be deemed to have been given on the third Business Day after posting if correctly addressed and sent by prepaid mail within Hong Kong.

17.6 Counterparts

17.6.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

17.6.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

17.7 MTR Ordinance

Nothing in this Agreement shall oblige the Corporation to conduct its business in any manner or to do anything which is incompatible with any provision of the MTR Ordinance.

17.8 No Partnership

Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, the parties a partnership, association, joint venture or other co-operative entity.

17.9 Governing Law and Jurisdiction

17.9.1 This Agreement shall be governed by, and construed in accordance with, the laws of Hong Kong.

17.9.2 The courts of Hong Kong shall have jurisdiction to settle any Proceedings and each party submits to the jurisdiction of the courts of Hong Kong.

SCHEDULE I

Memorandum of Understanding dated 17th October, 1986
in respect of the Eastern Harbour Crossing

[This existing Memorandum of Understanding is to be reviewed to determine if any consequential amendments are required]

SCHEDULE II

Airport Railway Operating and Maintenance Terms

[This existing document is to be reviewed to determine if any consequential amendments are required.]

SCHEDULE III

Performance Requirements

(1) Performance Criteria	(2) Performance <u>Definitions</u>	(3) <u>Performance</u> <u>Levels</u>
Train Service Delivery	<p>“Train Service Delivery” shall be a percentage calculated by applying the following formula for each month in an Operating Period and then calculating the mean thereof:</p> $\frac{\text{Actual Train Trips in a Month}}{\text{Scheduled Train Trips in a Month}} \times 100\%$	98.5%
Passenger Journeys on Time	<p>“Passenger Journeys on Time” shall be a percentage calculated by applying the following formula for each month in an Operating Period and then calculating the mean thereof:</p> $\frac{\text{Incoming Patronage in a Month} - \text{Passengers Delayed in a Month by at least 5 minutes}}{\text{Incoming Patronage in a Month}} \times 100\%$	(i) AEL - 98% (ii) MTR - 98.5%

Train Punctuality	<p>"Train Punctuality" shall be a percentage calculated separately for: (i) the AEL; and (ii) other parts of the railway ("MTR") by applying the following formulae (as appropriate) for each month in an Operating Period and then, for each of: (i) the AEL; and (ii) the MTR, separately calculating the mean thereof:</p> <p>(i) AEL</p> $\frac{\text{Actual AEL Train Trips in a Month} - \text{AEL Train Trips in a Month Delayed by at least 5 minutes}}{\text{Actual AEL Train Trips in a Month}} \times 100\%$ <p>(ii) MTR</p> $\frac{\text{Actual MTR Train Trips in a Month} - \text{MTR Train Trips in a Month Delayed by at least 2 minutes}}{\text{Actual MTR Train Trips in a Month}} \times 100\%$	<p>(i) AEL - 98%</p> <p>(ii) MTR - 98%</p>
Add Value Machine Reliability	<p>"Add Value Machine Reliability" shall be a percentage calculated by applying the following formula for each month in an Operating Period and then calculating the mean thereof:</p> $\frac{\text{Total Operating Hours in a Month for add - value machines ("AVMs")} - \text{Total Non - Operating Hours in a Month for AVMs}}{\text{Total Operating Hours in a Month for AVMs}} \times 100\%$	<p>95.5%</p>
Ticket Issuing Machine Reliability	<p>"Ticket Issuing Machine Reliability" shall be a percentage calculated by applying the following formula for each month in an Operating Period and then calculating the mean thereof:</p> $\frac{\text{Total Operating Hours in a Month for ticket issuing machines ("TIMs")} - \text{Total Non - Operating Hours in a Month for TIMs}}{\text{Total Operating Hours in a Month for TIMs}} \times 100\%$	<p>93%</p>

Ticket Gate Reliability	<p>"Ticket Gate Reliability" shall be a percentage calculated by applying the following formula for each month in an Operating Period and then calculating the mean thereof:</p> $\frac{\text{Total Operating Hours in a Month for ticket gates ("TGs")} - \text{Total Non - Operating Hours in a Month for TGs}}{\text{Total Operating Hours in a Month for TGs}} \times 100\%$	97%
Escalator Reliability	<p>"Escalator Reliability" shall be a percentage calculated by applying the following formula for each month in an Operating Period and then calculating the mean thereof:</p> $\frac{\text{Total Operating Hours in a Month for Escalators} - \text{Total Non - Operating Hours in a Month for Escalators}}{\text{Total Operating Hours in a Month for Escalators}} \times 100\%$	98%
Passenger Lift Reliability	<p>"Passenger Lift Reliability" shall be a percentage calculated by applying the following formula for each month in an Operating Period and then calculating the mean thereof:</p> $\frac{\text{Total Operating Hours in a Month for passenger lifts ("PLs")} - \text{Total Non - Operating Hours in a Month for PLs}}{\text{Total Operating Hours in a Month for PLs}} \times 100\%$	98.5%