

Mass Transit Railway Bill
The Response of the Administration to Issues raised by the Bills Committee on 20 January 2000

Section	Issues and Response	Gov't to Propose CSA
9	<p>The Administration to consider whether it will bring to the attention of the LegCo Panel on Transport changes to the Performance Requirements in Schedule III of the Operating Agreement.</p> <p><i>Response :-</i></p> <p>The Administration undertakes to report to the LegCo Panel on Transport on any amendment to the Performance Requirements in Schedule III of the Operating Agreement.</p>	
53	<p>The Administration to consider whether decisions made by the Secretary under section 28 (i.e. Secretary may require Corporation to carry out works in interest of safety) should also be excluded from the appeal system stipulated in section 53.</p> <p><i>Response :-</i></p> <p>Section 53 provides the Corporation with a right of appeal to the Chief Executive in Council in respect of decisions made by the Secretary for Transport or the Commissioner for Transport, or any person authorised by them under the Ordinance. Certain of these decisions have been excluded from this provision. The reason for their exclusion, as has been explained to the Bills Committee, is that those decisions require immediate implementation in public interest.</p> <p>The objective of section 28 is to give the Secretary wide powers to require the Corporation to take action, in the interest of safety, to improve the conditions of the railway or the manner in which the railway is being operated. When exercising his power under section 28, the Secretary will give the Corporation reasonable time to complete the work or take the required steps to improve the railway. Usually such tasks required of the Corporation are not urgent. Because of this and, the scope of improvement works or measures that the Secretary may require the Corporation to carry out can be very wide, we consider it appropriate to allow the Corporation an opportunity to appeal to the Chief Executive in Council if necessary. But, where the Chief Executive in Council considers that the improvements are urgent, he can either direct under section 53(4) that the Secretary's decision shall have immediate effect while the appeal is being determined or determine the appeal rightaway.</p>	

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57	<p>(a) Whether the enactment of section 57 affects the citizen's right to sue the Corporation in Civil Law.</p> <p><i>Response :-</i></p> <p>The existing rights of members of the public to sue the Corporation in Civil Law will not in any way be affected by section 57. Therefore, if something done by the Corporation would, at present, give a member of the public the right to sue the Corporation, that member of the public will continue to have the same right to sue the Corporation after the privatisation. Section 57 (2) makes it beyond doubt that this right will not be affected at all.</p> <p>The Bill creates new obligations for the Corporation. The enforcement of these obligations lies in the hands of Government and not in the hands of individual members of the public. This is important because the Bill contains a very detailed and comprehensive enforcement regime (e.g. fines, suspension, revocation, safety notices, directions, etc.) for Government to ensure that the Corporation complies with its statutory obligations - ultimately for the interests of the public.</p> <p>Therefore, the effect of section 57 is that whilst no additional rights to enforce the Corporation's statutory obligations are conferred on members of the public, all of their existing rights to sue the Corporation are preserved.</p> <p>(b) Please illustrate answer to (a) with examples.</p> <p><i>Response :-</i></p> <p>Assume the Corporation is negligent in the way it cleans a platform floor or it is negligent in the way it maintains a ticket gate. A member of the public has sustained injuries having fallen on the slippery platform floor or as a result of the malfunctioning ticket gate.</p> <p>There are a number of legal actions that could arise from this example.</p> <p>The injured member of the public could bring a civil action for negligence against the Corporation. Section 57 does not prejudice this right at all. On the contrary, section 57(2) makes it clear that this right will continue after the privatisation.</p> <p>In addition, where the slippery floor or the malfunctioning ticket gate results from a breach by the Corporation of an obligation under the Bill, Government may be able to bring an action against the Corporation for breach of a statutory obligation and may be able to impose financial penalties under section 14. The effect of section 57(1) is that the ability to bring an enforcement action against the Corporation under the head of breach of statutory duty will lie with Government only. Section 57(2) preserves the right of a member of the public to bring an action under a different head (e.g. the tort of negligence).</p>	

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	<p>(c) Whether a plaintiff in a civil case can still introduce the breach of a statutory duty under the Bill by the Corporation as evidence in his civil claim against the Corporation.</p> <p>Response :-</p> <p>The Department of Justice has advised that section 57 does not affect the right of a claimant in a civil case from introducing as evidence the fact that the Corporation has breached its statutory duty under the Ordinance, i.e. the fact of the Corporation's breach of a statutory duty will be admissible as evidence in the claimant's civil case.</p>	
60	<p>Administration to advise on the implication of clause 60 (i.e. MTRC not a "public body").</p> <p>Response :-</p> <p>The privatised entity, MTR Corporation Limited (MTRCL), will be a company governed by the Companies Ordinance (Cap. 32). It will obviously not be a public body as commonly understood. However, under section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), a public body is defined as to include "an undertaking by or of the Government". As it is common for laws of Hong Kong to confer, from time to time, special privileges or additional burdens on public bodies, MTRCL may inadvertently, by virtue of Government's majority shareholding, avail itself to these privileges or place itself under additional burdens if it is caught by the definition in Cap. 1. Section 60 intends to make it clear that any specific rights and obligations can be conferred or imposed on MTRCL only by a specific reference in the relevant legislation, e.g. MTRC (and MTRCL) has been specifically identified as a public body under the Prevention of Bribery Ordinance (Cap. 201).</p>	