

立法會
Legislative Council

LC Paper No. CB(1)2248/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

**Minutes of twenty-ninth meeting on
Thursday, 10 May 2007, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon WONG Kwok-hing, MH
Hon LI Kwok-ying, MH, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man
- Members absent** : Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, JP
Hon LEE Wing-tat
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon KWONG Chi-kin

Public Officers attending : Mr Patrick HO
Deputy Secretary for the Environment, Transport and Works

Miss Ida LEE
Principal Assistant Secretary for the Environment, Transport and Works

Mr Brian CHOI
Assistant Secretary for the Environment, Transport and Works

Mr David LAU
Principal Assistant Secretary for Financial Services and the Treasury

Mr Sunny CHAN Yuen-sun
Senior Assistant Law Draftsman
Department of Justice

Miss Clara LEUNG
Government Counsel
Department of Justice

Mr Albert YUEN Lap-pun
Assistant Commissioner for Transport/Bus & Railway

Attendance by invitation : MTR Corporation

Mr Leonard TURK
Legal Director & Secretary

Mr Wilfred LAU
Head of Operations

Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Mr Richard THORNHILL
Partner, Slaughter & May
(Legal Adviser of MTR Corporation)

Mr Jason WEBBER
Partner, Slaughter & May
(Legal Adviser of MTR Corporation)

Ms Peggy LEUNG
Associate, Slaughter & May
(Legal Adviser of MTR Corporation)

Kowloon-Canton Railway Corporation

Mr Michael KWAN
Train Operations Manager

Ms Ida LEUNG
Senior Public Affairs Manager

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

Action

I Clause-by-clause examination of the Bill

- | | |
|-----------------------------------|---|
| (LC Paper No. CB(1)1345/06-07(01) | - Information paper provided by the Administration |
| LC Paper No. CB(3)700/05-06 | - The Bill |
| LC Paper No. CB(1)1330/06-07(01) | - Marked-up copy of the Bill |
| LC Paper No. CB(1)1330/06-07(02) | - Letter from Assistant Legal Adviser (ALA) to the Administration dated 10 August 2006 |
| LC Paper No. CB(1)1330/06-07(03) | - The Administration's reply dated 19 September 2006 to ALA's letter dated 10 August 2006 |
| LC Paper No. CB(1)1330/06-07(04) | - Letter from ALA to the Administration dated 26 October 2006 |

Action

- LC Paper No. CB(1)1330/06-07(05) - The Administration's reply dated 8 November 2006 to ALA's letter dated 26 October 2006
- LC Paper No. CB(1)1345/06-07(02) - Relevant extract of Kowloon-Canton Railway Corporation Ordinance (Cap. 372))

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members continued to examine the Chinese version of the Bill clause by clause starting from clause 17.

Major views and concerns

3. Ms LI Fung-ying requested that the two railway corporations should issue formal letters to all staff before implementation of the rail merger to ensure that any transitional arrangements agreed between the two railway corporations and their staff to ensure smooth transfer to the post-merger corporation (MergeCo) could be materialized after the rail merger.

4. Mr Andrew CHENG expressed strong view about the continued application of the Kowloon-Canton Railway Corporation's variable pay scheme after the rail merger. He asked the two railway corporations to consider repealing the application of the variable pay scheme before the rail merger; otherwise all these employment contracts with the terms relating to the variable pay scheme would be deemed to be effective at the time of the rail merger under the new section 52D of the Mass Transit Railway Ordinance (Cap. 556) (MTRO).

5. The Bills Committee had examined the scope of exemption granted under section 54 of MTRO and section 35 of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (KCRCO). Some members took the view that after the rail merger, there was no reasonable ground to continue granting exemption to MergeCo, which was a commercial entity. Mr Albert CHAN indicated that he would consider moving a Committee Stage amendment (CSA) to repeal all the exemptions granted to MTR Corporation Limited (MTRCL).

Follow-up actions

6. The Administration was requested to take the following actions –
- (a) Regarding clause 11, to consider revising the drafting of the proposed section 15A(3)(b) of MTRO, say by inserting "other" before the expression "any loss" in the English version, and improving the readability of the Chinese version;

Action

- (b) Regarding clause 19, to consider amending the term "desirable" in the proposed section 52L(1) of MTRO;
 - (c) To advise whether the scope of exemption under section 54 of MTRO was the same as that under section 35 of KCRCO. If not, the Administration to consider aligning the provisions after the rail merger;
 - (d) Regarding clause 16, to explain the requirement regarding the disclosure of information relating to the programme of the future operations or plans for the rail and North-west Transit Service Area bus service, and information of a more general nature;
 - (e) Regarding clause 22, to consider amending the Chinese term "將它對它" in paragraph (b) to improve the Chinese text of amendment to the long title of KCRCO;
 - (f) Regarding clause 25, to consider whether the word "construction" in the proposed section 4(9) of KCRCO was clear enough to reflect its policy intention; and
 - (g) In relation to clause 28 to add the proposed section 40 to KCRCO, to consider suspending section 38 of KCRCO during the Concession Period because KCRC would cease to operate the railways during that period.
7. After completing examination of the Chinese version of the Bill clause by clause, members agreed to proceed to clause-by-clause examination of the English version of the Bill.

II Any other business

8. There being no other business, the meeting ended at 5:15 pm.

**Proceedings of the twenty-ninth meeting of
the Bills Committee on Rail Merger Bill
on Thursday, 10 May 2007, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Clause-by-clause examination of the Bill			
000000 – 000024	Chairman	- Opening remarks	
000025 – 000330	Chairman Administration Mr Andrew CHENG	- Briefing by the Administration on clauses 17 and 18 of the Bill	
000331 – 000509	Chairman Administration	- Briefing by the Administration on clause 9 of the Bill	
000510 – 001018	Chairman Administration Mr Andrew CHENG Ms LI Fung-ying	- Briefing by the Administration on clause 21 of the Bill - Enquiry and explanation of the proposed section 54B of the Mass Transit Railway Ordinance (MTR) (Cap.556) to be added by clause 21	
001019 – 001619	Chairman Administration Mr Andrew CHENG	- Briefing by the Administration on clause 22 of the Bill - Enquiry and explanation of clause 22 - Discussion on the Chinese version of clause 22(b)	Administration to take necessary follow-up actions
001620 – 002038	Chairman Administration Mr Andrew CHENG	- Briefing by the Administration on clause 23 of the Bill - Enquiry and explanation of clause 23(2)	
002039 – 002248	Chairman Administration Mr Andrew CHENG	- Briefing by the Administration on clause 24 of the Bill - Enquiry and explanation of clause 24	
002249 – 003301	Chairman Administration Mr Andrew CHENG Ms LI Fung-ying Mr LAU Kong-wah	- Briefing by the Administration on clause 25 of the Bill - Enquiry and explanation of clause 25, in particular whether the Shatin to Central Link would be interpreted as a railway the construction of which had begun	Administration to take necessary follow-up actions

Time marker	Speaker	Subject(s)	Action required
003302 – 003602	Chairman Administration Mr Andrew CHENG	<ul style="list-style-type: none"> - Briefing by the Administration on clause 26 of the Bill - Enquiry and explanation of clause 26 	
003603 – 005713	Chairman Administration Assistant Legal Adviser 3 (ALA3) Mr Andrew CHENG	<ul style="list-style-type: none"> - Briefing by the Administration on clauses 27 and 28 of the Bill, and its intention to introduce Committee Stage amendments (CSAs) to clause 28 to ensure that the suspension of certain provisions of the Kowloon-Canton Railway Corporation Ordinance (KCRCO) (Cap. 372) would still apply during the temporary suspension of the part of the post-merger corporation (MergeCo)'s franchise relating to the Kowloon-Canton Railway Corporation (KCRC) Railways - Discussion on ALA3's comment in LC Paper No. CB(1)1330/06-07(02) on clause 28 	<p>Administration to take necessary follow-up actions</p> <p>Administration to take necessary follow-up actions</p>
005714 – 010301	Chairman Administration Mr Andrew CHENG	<ul style="list-style-type: none"> - Briefing by the Administration on clause 29 of the Bill - Enquiry and explanation of clause 29 	
010302 – 010529	Chairman Administration Mr Andrew CHENG	<ul style="list-style-type: none"> - Briefing by the Administration on clause 19 of the Bill (proposed sections 52A and 52B of MTRO) - Discussion on the proposed sections 52A and 52B of MTRO, in particular the definition of "relevant date" 	
010530 – 011009	Chairman Administration Mr Andrew CHENG	<ul style="list-style-type: none"> - Continued briefing by the Administration on clause 19 of the Bill (proposed section 52C of MTRO) - Enquiry and explanation of the proposed section 52C of MTRO 	
011010 – 012207	Chairman Administration Ms LI Fung-ying MTR Corporation Limited (MTRCL) Mr Andrew CHENG	<ul style="list-style-type: none"> - Continued briefing by the Administration on clause 19 of the Bill (proposed sections 52D and 52E of MTRO) - Discussion on the proposed section 52D of MTRO, in particular in relation to staff transitional arrangements, and the variable pay scheme for members of the Management Committee of KCRC 	Administration to take necessary follow-up actions

Time marker	Speaker	Subject(s)	Action required
012208 – 013707	Chairman Administration Mr Andrew CHENG ALA3	<ul style="list-style-type: none"> - Continued briefing by the Administration on clause 19 of the Bill (proposed sections 52F to 52L of MTRO) - Discussion on the proposed section 52L of MTRO, in particular the use of the expression "desirable" therein 	Administration to take necessary follow-up actions
013708 – 013839	Chairman Administration Mr Andrew CHENG Mr WONG Kwok-hing	<ul style="list-style-type: none"> - Briefing by the Administration on clause 30 of the Bill, and its intention to add new provisions to the Bill to give effect to the change in the Chinese name of the MTR Corporation Limited from "地鐵有限公司" to "香港鐵路有限公司" after the merger - Clarifications regarding clause 30 	Administration to take necessary follow-up actions
013840 – 015415	Chairman Mr Albert CHAN ALA3 Mr LAU Kong-wah Administration Mr WONG Kwok-hing MTRCL Ms Emily LAU	<ul style="list-style-type: none"> - Discussion on the appropriateness of exempting MTRCL from the application of certain laws (the Exemption), in particular the Public Health and Municipal Services Ordinance (Cap. 132) and the Buildings Ordinance (Cap. 123) (section 54 of MTRO), whereby MTRCL was exempted from providing public toilets at railway stations 	Administration to take necessary follow-up actions
015416 – 015553	Mr Andrew CHENG	<ul style="list-style-type: none"> - Mr Andrew CHENG's view on the need to ensure the consistency of the exemption provisions applicable to the two railway corporations 	
<i>Break from 015554 to 021249</i>			
021250 – 021420	Chairman Administration	<ul style="list-style-type: none"> - Briefing by the Administration on paragraph 1 of Schedule 1 of the Bill 	
021421 – 021709	Chairman Prof Patrick LAU Administration Ms Emily LAU Miss TAM Heung-man	<ul style="list-style-type: none"> - Further discussion on the Exemption 	
021710 – 021812	Chairman Mr Albert CHAN Administration	<ul style="list-style-type: none"> - Discussion on paragraph 1 of Schedule 1 	
021813 – 022709	Administration	<ul style="list-style-type: none"> - Continued briefing by the Administration on Schedule 1 of the Bill from paragraph 2 onwards 	

Time marker	Speaker	Subject(s)	Action required
022710 – 023606	Chairman Mr LAU Kong-wah ALA3 Mr Tommy CHEUNG Mr Andrew CHENG Ms LI Fung-ying Ms Emily LAU	- Discussion on the need to examine the English version of the Bill clause by clause and if so, whether it should be examined at this stage	
023607 – 023809	Chairman Ms Emily LAU ALA3 Administration	- Clause-by-clause examination of the English version of the Bill - Discussion on the long title of the Bill	
Agenda Item II – Any other business			
023810 – 024801	Chairman Mr Andrew CHENG Administration	- Meeting arrangements	