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Secretary for the Environment, Transport and Works  
(Attention: Miss Ida Lee, PAS (Transport) Special Duties)  
Environment, Transport and Works Bureau  
15-16/F, Murray Building  
Garden Road  
Central  
Hong Kong

10 August 2006

**BY FAX**  
Fax No. : 2537 3231

Dear Miss Lee,

### **Rail Merger Bill**

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

#### **Long title of the Bill**

It is noted that fare-related matters are not to be regulated under the Bill, but will be provided for in the Integrated Operating Agreement. In such circumstances, please clarify how the proposed fare reduction and fare adjustment mechanism (“FAM”) will be enforced. Is the MTR Corporation Limited (“MTRCL”) subject to any sanction for not effecting the fare reduction or non-compliance with the FAM? If yes, what are these sanctions and where are these sanctions provided for?

#### **Proposed amendments to the Mass Transit Railway Ordinance (Cap. 556) (“MTRO”)**

##### Clause 5 – proposed section 2(1)

In paragraphs (a), (b) and (c) of the proposed definition of “Concession Property”, while reference is made to property which falls within the definition of “Concession Property” in the Service Concession Agreement, there is no indication in the Bill as to the scope of the property concerned. For the purpose of clarity, would the Administration consider incorporating into the Bill the definition of “Concession Property” as set out in the Service Concession Agreement instead?

##### Clause 16 – proposed section 33

- (a) Proposed section 33(1B) provides that subsection (1A) expires when that part of the franchise relating to KCRC railways is revoked. While the Secretary for the Environment, Transport and Works ("SETW") will no longer have power to make regulations under proposed section 33(1A) because of the expiry of the said section, what will happen to the regulations already made? Do they also expire? If so, is it necessary to stipulate this clearly?
- (b) In the proposed section 33(1C), what is the reason for requiring the Commissioner for Transport ("the Commissioner") to consult MTRCL before the relevant information could be disclosed? Is the consent of MTRCL a prerequisite to disclosure? As you are aware, section 61 of MTRO provides that a provision of the Ordinance requiring or providing for SETW to consult MTRCL in relation to any matter does not oblige the Secretary to obtain the agreement of MTRCL in relation to the matter. Should a similar provision be included to cover consultation made by the Commissioner under the proposed section 33(1C)?

Clause 17 – proposed section 34

- (a) In proposed section 34(1A)(a), should "them" be replaced by "it" as the pronoun for "the Corporation"?
- (b) In the light of the proposed definition of "railway premises", the proposed section 34(1A)(b), as drafted, could empower MTRCL to make bylaws for the purpose of controlling access to certain areas of railway premises of both the Kowloon-Canton Railway ("KCR") and Mass Transit Railway ("MTR"). Does this reflect the Administration's intention? If it is intended that the proposed section 34(1A) should be applied to the railway premises of KCR only, should this intention be reflected more clearly in the provision?
- (c) In the proposed section 34(1B), is it intended that the bylaws made under the proposed section 34(1A) would expire as well? If so, please reflect this intention more clearly.

Clause 19 – proposed sections 52B and 52C

- (a) What is the nature of the contracts or class of contracts that would be specified in a Vesting or Re-vesting Notice? Is there any reason for not making the relevant Notice subsidiary legislation?
- (b) In the light of section 62 of MTRO, is it necessary to provide in the proposed sections 52B(3) and 52C(3) that a Vesting Notice and a Re-vesting Notice shall be published in the Gazette *as a general notice*? Please consider deleting the reference to "as a general notice" from the relevant provisions to make the drafting of these provisions consistent with that of existing provisions (e.g. sections 18(7)(b) and 19(2)) of MTRO).

Clause 19 – proposed section 52G

It is noted that one of the terms under the MoU for the merger of the MTR and KCR systems is that job security for all frontline staff of MTRCL and KCRC will not be affected as it relates to the rail merger. However, proposed section 52G(3), as drafted, would suggest that the rights and liabilities of KCRC under employment contracts which are vested in MTRCL by virtue of proposed section 52D would have effect on MTRCL only if the employees referred to in those contracts are appointed by MTRCL on or after the date of merger. In this regard, please explain how the above term under the MoU is reflected in the Bill. Please also explain the criteria for making the appointment and whether these criteria should be set out in the Bill. What protection, if any, will be offered to existing employees of KCRC who are not appointed by MTRCL on or after the merger?

Clause 19 – proposed section 52L

- (a) Why is it necessary to impose a duty on MTRCL and KCRC to co-operate with each other in the resolution of disputes regarding contracts specified in a Vesting Notice or Re-vesting Notice? Is there any sanction for non-compliance with the proposed section 52L(1)?
- (b) In the light of the exclusion proposed in section 52L(2), what sort of disputes will be covered by the proposed section 52L(1)? Could some examples be given?

Clause 19 – proposed section 54B

- (a) It is noted that the corresponding provision in the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) does not contain the requirement for the Commissioner to consult KCRC regarding his intention to disclose information relating to the TSA bus service obtained pursuant to section 18 of the Public Bus Services Ordinance (Cap. 230). Why is it necessary to provide for the requirement to consult MTRCL under proposed section 54B(3) before disclosure can be made?
- (b) In the proposed section 54B(3), is it necessary for the Commissioner to obtain the consent of MTRCL before he can disclose the information? Should a provision similar to section 61 of MTRO be included to apply to the consultation required under the proposed section.

**Proposed amendments to the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (“KCRCO”)**

Clause 22 – Long title

What is the purpose of enabling KCRC to own or take a lease of other railways? Is this purpose related to the rail merger in any way? What are these other railways?

Clause 25 – proposed section 4

In the proposed section 4(db), does the reference to property include property-related interests of KCRC, the development rights for certain KCRC property sites as well as

other commercial interests of KCRC? If yes, please explain how and why the disposal of these rights and interests are made under or in connection with the grant of a service concession? Are there provisions in the service concession agreement which cover the details of these rights and interests to be disposed of by KCRC?

Clause 28 – proposed section 40

It is noted that the operation of Part IV, sections 23, 25, 34B and 35A of KCRCO is to be suspended during the concession period. Is there any reason for not suspending the operation of other provisions, namely, section 26 (Power to enter lands), section 27 (Removal of trees), section 29 (Claims for compensation), section 34A (Corporation to have control over the laying of cables, pipes, etc. in the wayleave area), section 37 (Corporation may prosecute in its name etc.) and section 38 (Arrest of offenders)? Is it intended that KCRC should continue to exercise the powers or perform the functions under those provisions during the concession period, and if so, why?

**Consequential and related amendments**

(a) Clause 30

Under clause 30(2), the references to “地鐵公司” in the Chinese text of certain provisions of MTRO are proposed to be replaced by “港鐵公司”. Some of these provisions (i.e. sections 37 to 52 and 59) relate to vesting of property of the Mass Transit Railway Corporation in MTRCL and related matters on the appointed day. By G.N. 3903 of 2000 in the Gazette, the then Secretary for Transport designated 30 June 2000 as the appointed day. Since these provisions deal with acts that have already taken place, and as at 30 June 2000, it is a fact that there was no company in Hong Kong bearing the Chinese name “港鐵公司”, please consider whether it is appropriate to simply substitute “港鐵公司” for “地鐵公司”. Please consider whether it is necessary to include substantive provisions in the Bill to reflect clearly that the change of the Chinese name of MTRCL takes effect on the date of merger instead of from the appointed day.

(b) Schedule 2 - proposed amendment to section 2(5) of the Eastern Harbour Crossing Ordinance (Cap. 215)

Instead of merely replacing “地下鐵路條例” and “地鐵有限公司” by “香港鐵路條例” and “香港鐵路有限公司” respectively, please consider the need to include a separate provision to reflect the transition from “地鐵有限公司” to “香港鐵路有限公司” upon the date of merger.

**Acquisition of KCRC’s property and related commercial interests**

It is noted from the MoU that the acquisition of KCRC’s property and related interests by MTRCL forms an integral part of the merger deal. However, this matter does not

appear to have dealt with in the Bill. In the circumstances, please explain how the above acquisition and the terms thereof will be given legal effect.

**Composition of MTRCL's board of directors upon merger**

- (a) Given that the rights of KCRC to have access to, use or possess certain property are to be granted to MTRCL by way of a service concession, does the Administration consider it necessary to appoint a member of the KCRC to sit on the Board of MTRCL in order to safeguard KCRC's interest? If so, should this requirement be stipulated clearly in the Bill?
- (b) At the meeting of the Panel on Transport held on 26 May 2006, some members raised concerns on how to ensure that Government officials sitting on the MTRCL Board could safeguard public interest and it was suggested that the Bill should clearly provide for the power/function of these Government officials to properly monitor MTRCL to safeguard public interest. Is there any reason for not incorporating this suggestion into the Bill?
- (c) It is noted that in the Airport Authority Ordinance (Cap. 483) and Urban Renewal Authority Ordinance (Cap. 563), there is a provision imposing a duty on a Board member who is a public officer to state the public interest relevant to a matter before a meeting of the Board, if he considers that the matter which is to be or is being considered, decided or determined by the relevant Authority is or could be contrary to the public interest as perceived by him. Please refer to section 14 of Cap. 483 and section 8 of Cap. 563. Would the Administration consider including a similar provision in this Bill?

**Chinese text**

My comments on the Chinese text of the Bill are set out in the Annex for your consideration.

I would appreciate it if you could let us have the Administration's reply in both languages on or before *8 September 2006*.

Yours sincerely,

(Connie Fung)  
Assistant Legal Adviser

Encl.

cc: DoJ (Attention: Mr Sunny CHAN, DPGC (Atg.) and Mr Lewis LAW – GC)  
LA  
SALA1

**Rail Merger Bill**  
**Comments on Chinese text**

**Proposed amendments to Mass Transit Railway Ordinance (“MTRO”)**

Clause 5 – proposed section 2(1)

- (a) In paragraph (b) of the proposed definition of “Concession Property”, the meaning of “only” in the reference “used only for the purposes” in the English text has not been reflected in the Chinese text. Should “以用於” be replaced by “而只用於”?
- (b) In the proposed definition of “Service Concession Agreement” should the reference “and with or without any other party” be replaced by “whether with or without any other party” in order to reflect the meaning of the corresponding Chinese text?
- (c) In the proposed definition of “service concession”, the Chinese rendition for “operation” is “經營” while “營運” is used as the Chinese rendition of the same term in the proposed definition of “TSA bus service”. Should the same Chinese rendition be used for “operation” for the sake of consistency?

Clause 9 – proposed section 12A

Please improve the Chinese text of proposed section 12A(2)(b) with reference to the Chinese text of a similar provision in section 23(ii) of the Kowloon-Canton Railway Corporation Ordinance.

Clause 11 – proposed section 15A

- (a) In proposed section 15A(2), the meaning of “經營” does not seem to appear in the English text. To make both texts match, please delete “經營” in the proposed section.
- (b) In proposed section 15A(3)(b) and 15A(4)(b), please make the Chinese text for “consequential loss” consistent.

- (c) In the proposed section 15A(5), the meaning of “for which” in the English text has not been reflected in the corresponding Chinese text. Should “而補償須根據第 15(6)條支付，則第(3)及(4)款不適用於首述的損失、損壞或損害” be replaced by “而就該損失、損壞或損害須根據第 15(6)條支付補償，則第(3)及(4)款不適用於該損失、損壞或損害”?

#### Clause 11 – proposed section 15B

- (a) In the proposed section 15B(1) and (2), should “經營” be added after “用於” to reflect the meaning of the corresponding English text and to achieve consistency with the Chinese text of a similar provision, i.e. proposed section 19A(2) of MTRO.
- (b) In the proposed section 15B(1) and (2), since there is no prior reference to “使用” before “該等使用” in the Chinese text, what does “該等使用” refer to? Please improve the Chinese text.
- (c) In the proposed section 15B(1) and (2), is it necessary to use “有關” before “服務”? In a similar provision, i.e. proposed section 19C(1), the Chinese text for “service” is “服務”.

#### Clause 12 – proposed section 16

In the proposed section 16(1)(c) and (2), should the Chinese text for “there has been a major breach of the Service Concession Agreement” be “港鐵公司嚴重違反服務經營權協議” to make the drafting consistent with that of a similar provision in existing section 16(a)(i) and the proposed section 16(1)(a)(iii)?

#### Clause 15 – proposed section 19A

- (a) In the proposed section 19A(2), as there is no reference to “operation” in the reference “that part of it relating to the KCRC Railways” in the English text, should “經營” in the corresponding Chinese text be deleted?
- (b) In the proposed section 19A(2), please replace “有關服務” by “服務” to make it consistent with the proposed section 19C(1).

Clause 15 – proposed section 19C

In the proposed section 19C(1) and (2), since there is no prior reference to “使用” before “該等使用” in the Chinese text, what does “該等使用” refer to? Please improve the Chinese text.

Clause 16 – proposed section 33

In the proposed section 33(1A)(b), why is “運作” used as the Chinese text for “operation”? Should “經營” be used instead? Please refer to the Chinese text of a similar provision in proposed section 34(1D).

Clause 19 – proposed section 52A

- (a) In the proposed definition of “contract”, should “或作出” be added after “訂立” in order to reflect the meaning of the corresponding English text which refers to “made or given”?
- (b) In paragraph (d) of the proposed definition of “relevant date”, please delete “與” before “該權利”.

Clause 19 – proposed sections 52B and 52C

- (a) Please improve the Chinese text of the proposed sections 52B(1)(a) and 52C(1)(a) to make it reflect more accurately the meaning of the corresponding English text.
- (b) In the heading of the proposed section 52C, should “合約” before “法律責任” be deleted to make it consistent with the heading of the proposed section 52B?

Clause 19 – proposed section 52D

In the proposed section 52D(1), since the English text refers to any contract of employment entered into with KCRC, should the corresponding Chinese text be amended to “與九鐵公司訂立的任何僱傭合約”?



Clause 19 – proposed section 52E

- (a) In the proposed section 52E(1), should “任何” be added before “退休金計劃” and “酬金利益” to reflect the meaning of “any” in the corresponding English text?
- (b) In the proposed section 52F(2), please replace “提述九鐵之處均以對港鐵的提述取代” by “提述九鐵公司之處均被對港鐵公司的提述取代”. Please refer to the Chinese text of a similar context in the proposed section 52G(3).

Clause 19 – proposed section 52G

- (a) In the proposed section 52G(3), since the phrase “and in relation to anything falling to be done on or after the relevant date” comes immediately after “to the extent of the relevant rights and liabilities”, should the Chinese text be amended to reflect the meaning of the English text more accurately?
- (b) In the proposed section 52G(5), the meaning of “as they would have had if that right or liability had at all times been a right or liability of the Corporation” in the English text has not been reflected in the Chinese text. The same applies to the proposed section 52G(6). Please make the English and Chinese texts match.

Clause 19 – proposed section 52H

In the proposed section 52H(2) and (3), please add “effected” before “under” to make it consistent with the corresponding Chinese text. As you are aware, “effected” is also used in the proposed section 52H(1).

Clause 19 – proposed section 52J

In the proposed section 52J(1) and (2), please replace “權利及法律責任” by “權利或法律責任” to reflect the meaning of “right or liability” in the English text.

Clause 21 – proposed section 54B

- (a) In the proposed section 54B(3), please delete “的資料，” and substitute “的資料的意向” to reflect the meaning of “intention” in the English text. This would make the Chinese text consistent with a similar provision, i.e. proposed section 33(1C).
- (b) In the proposed section 54B(4)(b), should the Chinese text for “operation” be amended to “經營”?

**Proposed amendments to Kolwoon-Canton Railway Corporation Ordinance**

Clause 25 – proposed section 4(9)

- (a) Is it appropriate to use “建造工程” as the Chinese text for “construction”? If the proposed Chinese context is considered to be appropriate, please consider adding “works” or “operations” after “construction”.
- (b) In the proposed section 4(9)(b), since the English text refers to “access to, use or possess”, please amend the Chinese text to reflect the correct order of these words.

Clause 28 – heading of Part VIII and proposed section 40

Since the Chinese text is “若干條文在經營權有效期間期間暫時中止實施”, please amend the English text to “suspension of the operation of certain provisions during Concession Period” to make the two texts match.

**Schedule 1 to the Bill**

Section 2 – proposed amendments to Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg. C)

In an existing provision (i.e. regulation 5B(2)(c)) which is similar to the proposed regulation 5B(2)(d), the Chinese text for “operated” is “經營” instead of “運作” as proposed. In a similar context in the proposed paragraph 3A of Schedule 1 to the Dutiable Commodities Ordinance (Cap. 109), “經營” is used as the Chinese text for “operated”. Accordingly, please replace “運作” by “經營” in the proposed regulation 5B(2)(d) to achieve consistency.