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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

26 October 2006

BY FAX
Fax No. : 2537 5246

Dear Miss Lee,

Rail Merger Bill

Thank you for your letter of 19 September 2006 which sets out the Administration's response to my letter of 10 August 2006. Set out below are my comments on the Administration's response:

Clauses 16 and 17 – proposed sections 33 and 34 of the Mass Transit Railway Ordinance (MTRO)

If the Administration intends to provide for the expiry of the relevant provisions in the regulations and bylaws by the same regulations and bylaws, please add a provision to reflect this intention in the proposed sections. For example, in the proposed section 33 of MTRO, would the Administration consider adding a provision (similar to section 30(5) of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (KCRCO) proposed under clause 26) to the effect that a regulation made under the section may provide for the expiry of any of the provisions of the regulation when that part of the franchise relating to the KCRC Railways is revoked? It seems that such provision is necessary to tie in with the proposed section 33(4).

Clause 30

- (a) Since an editorial note does not have legal or legislative effect, it would appear not desirable to use it in the circumstances. In fact, by reading the amended section 37 of MTRO, for example, readers might misunderstand that the vesting of the property, rights and liabilities of the Mass Transit Railway Corporation in MergeCo has already taken place on the appointed day, i.e. 30 June 2000. To avoid this, should appropriate provisions be made to reflect the change on the merger date. For example, in Part IX of MTRO, please consider adding a provision to the effect that on the merger date, all property, rights and liabilities vested in the Corporation by virtue of this Part shall continue to be so vested notwithstanding the change of the Chinese name of the Corporation to “香港鐵路有限公司”.

- (b) If it is considered not desirable to include Chinese characters in the English text of MTRO, will the Administration consider using two different terms to represent the corporation before and on the merger date respectively for the purposes of Part IX of MTRO? For example, “MTRCL” (“地鐵有限公司”) may be used to refer to the corporation that exists before the merger date while “Corporation” (“香港鐵路有限公司”) is used to represent the corporation on the merger date. In Part IX of MTRO, provisions may then be added to vest the property, rights and liabilities of MTRCL in the Corporation on the merger date.

Chinese text

Clause 25 – proposed section 4(9) of KCRCO

If it considered appropriate to use “建造工程” as the Chinese text in the context of the proposed section, please replace “construction” by “construction works” to make the Chinese and English texts match. As you are aware, in provisions of existing Ordinances where “建造工程” appears in the Chinese text, the corresponding English text generally contains the word “works” or “operations”. Examples of these provisions are sections 14 and 15 of the Tate’s Cairn Tunnel Ordinance (Cap. 393), sections 11 and 12 of the Western Harbour Crossing Ordinance (Cap. 436), and section 34(1) of the Construction Industry Council Ordinance (Cap. 587).

Clause 28 – heading of Part VIII and proposed section 40 of KCRCO

In order to make the Chinese and English texts match, it would be desirable to amend the English text to “suspension of operation of certain provisions during Concession Period”. It would seem that consistency and accuracy should be more important than other considerations.

Schedule 1 to the Bill

Section 2 – proposed amendments to Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations

In the proposed regulation 5B(2)(d), if it is considered desirable to use “營運”, please also make a similar amendment to existing regulation 5B(2)(c) where the context is similar to that of the proposed regulation.

I would appreciate it if you could let us have the Administration’s reply in both languages *by 8 November 2006*.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

cc: DoJ (Attention: Mr Sunny CHAN, SGC and Mr Lewis LAW, GC)
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