

Rail Merger Bill

Committee Stage Amendments by the Administration

PURPOSE

This paper informs Members of the Committee Stage Amendments (CSAs) which the Administration intends to move during the resumption of the Second Reading Debate of the Rail Merger Bill (the Bill)

DETAILS

2. The CSAs which the Administration intends to move during the resumption of Second Reading Debate are set out in the **Annex**. They fall into three categories:-

- (a) CSAs which are proposed in response to the suggestions by Members at previous meetings of the Bills Committee;
- (b) Amendments proposed by the Administration or technical amendments proposed by the LegCo Legal Adviser to improve the drafting of the Bill. Paragraph 3 of this paper explains the relevant major amendments; and
- (c) CSAs which improve the Chinese texts to follow more closely with the English version of the Bill.

3. In respect of the amendments proposed by the Administration as described in paragraph 2(b) above, the major content and the purpose of the proposed amendments are as follows:

- (a) Clauses 5(e) and 23(1)(c) of the Bill
For clarity, we propose to amend the interpretation of “Concession Period” to mean the period for which that part

of the franchise relating to the KCRC Railways is granted, including any period for which any part of such part of the franchise is suspended under this Ordinance.

(b) Clause 19 of the Bill

The proposed section 52B provides for the vesting of certain contractual rights and liabilities of the Kowloon-Canton Railway Corporation (KCRC) in MergeCo. We propose to amend section 52B(1)(a) and add a new proposed section 52B(1A) to clarify that section 52B(1)(a) would not vest the right which is exercisable by KCRC in respect of the period before the relevant date in MergeCo. This ensures that the appropriate rights and liabilities under the contracts specified in a Vesting Notice would be vested in MergeCo.

The proposed section 52C provides for the vesting of certain contractual rights and liabilities of MergeCo in KCRC. Similar amendments as mentioned above are proposed for section 52C(1) to ensure that the appropriate rights and liabilities under the contracts specified in a Re-vesting Notice would be re-vested to KCRC.

(c) New Clause to amend section 61 of the Mass Transit Railway Ordinance

Section 61 of the existing Mass Transit Railway Ordinance (MTRO) provides that the requirement for SETW to consult MTR Corporation Limited (MTRCL) or any other person in relation to any matter under the MTR Ordinance does not oblige SETW to obtain the agreement of MTRCL or that person. As clause 16 of the Bill stipulates that the Commissioner for Transport (the Commissioner) shall consult MergeCo for disclosure of relevant information, we propose to amend section 61 to include the Commissioner to make it absolutely clear that the requirement for consultation does not oblige him to obtain the agreement of MergeCo.

(d) New Clause to effect the change of Chinese name of

MTRCL

As we mentioned at the meeting on 10 May 2007, we proposed to add new provisions to give effect to the change in the Chinese name of the MTRCL to “香港鐵路有限公司” after the merger. This provision will be without prejudice to the future exercise of the power of MergeCo shareholders under section 22(1) of the Companies Ordinance and an avoidance of doubt provision to this effect will be added.

(e) Clause 28 of the Bill

Clause 28 of the Bill stipulates that the operation of certain provisions in the Kowloon-Canton Railway Corporation Ordinance (KCRCO) will be suspended during the Concession Period, but during the period where the MergeCo franchise or any part of it relating to the KCRC Railways is suspended, the suspension of those specified provisions of the KCRCO would not apply.

On the other hand, the Bill introduces new provisions to the MTRO which are similar to certain KCRCO's provisions that would be suspended as mentioned above (viz. sections 23, 34B and 35A of the KCRCO). Since the obligations of KCRC under these sections have been transferred to MergeCo and would remain in MergeCo even in case the part of MergeCo franchise relating to the KCRC Railways is temporarily suspended, we propose to amend the relevant clause to ensure that the corresponding provisions in the KCRC Ordinance would remain suspended during such period.

(f) Clause 29 of the Bill

There are certain provisions in Schedules 2 and 5 of the KCRC Ordinance which specifically refer to the vesting of the relevant rights to KCRC are for the purpose “as are necessary for the [KCRC] to operate the railway” (viz. paragraphs 3 and 4 of Schedule 2 and paragraphs 2 and 3 of Schedule 5). Given that MergeCo would become the operator of the railway during the Concession Period instead

of KCRC, we propose to remove the specific reference to KCRC in the concerned phrase above to ensure that relevant rights vested in KCRC under the schedules would not be affected by the change of operator of the relevant railway.

4. Members are requested to note the proposed CSAs at the **Annex**.

Environment, Transport and Works Bureau
11 May 2007

RAIL MERGER BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
the Environment, Transport and Works

Clause

Amendment Proposed

3(d)(i)

By adding "at the end" after "comma".

5

- (a) In clause 5(d), in paragraph (a) of the proposed definition of "railway premises" -
- (i) in subparagraph (i), by adding "and" after the semicolon;
 - (ii) by deleting subparagraph (ii);
 - (iii) by re-numbering subparagraph (iii) as subparagraph (ii).

(b) In clause 5(e) -

- (i) by deleting the proposed definition of "Concession Period" and substituting -

"Concession Period" ()

means the period for which that part of the franchise relating to the KCRC Railways is in force, and

any period for which the whole or any part of such part of the franchise is suspended under this Ordinance;" ;

- (ii) in the proposed definition of "service concession", by deleting the comma before "and".

9 In the proposed section 12A(2)(b) -

- (a) by deleting "with respect" where it first appears and substituting "in respect of any matter in relation";
- (b) by deleting "land or with respect" and substituting "land or in relation".

10 By adding "operated by the Corporation" after "service".

11 In the proposed section 15A(3)(b), by adding "other" before "kind".

12(e) In the proposed section 16(2), by deleting everything after paragraph (c) and substituting a full stop.

16(1) In the proposed section 33(1A) -

- (a) by adding "and" at the end of paragraph (b);
- (b) by deleting paragraph (c).

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In the proposed section 34(1A) -

- (i) by deleting "any or all" and substituting "all or any";
- (ii) in paragraph (a), by repealing "them" and substituting "it".

19

(a) In the proposed section 52A, in paragraphs (a) and (b) of the definition of "relevant date", by deleting "which is" and substituting "or a contract of a class of contracts".

(b) By deleting the proposed section 52B(1)(a) and (b) and substituting -

- "(a) the rights under the contract or a contract of the class of contracts which are exercisable by KCRC at any time on or after the relevant date under the terms of the contract or the contract of the class of contracts (as the case may be); and
- (b) the liabilities under the contract or a contract of the class of contracts which are to be discharged by KCRC at any time on or after the relevant date under the terms of the

contract or the contract of the class of contracts (as the case may be),".

(c) In the proposed section 52B, by adding -

"(1A) Where a right under a contract or a contract of a class of contracts specified in a Vesting Notice is exercisable by KCRC before, on and after the relevant date under the terms of the contract, subsection (1) does not apply to the right which is exercisable by KCRC in respect of the period before the relevant date.".

(d) By deleting the proposed section 52C(1)(a) and (b) and substituting -

"(a) the rights under the contract or a contract of the class of contracts which are exercisable by the Corporation at any time on or after the relevant date under the terms of the contract or the contract of the class of contracts (as the case may be); and

(b) the liabilities under the contract or a contract of the class of contracts which are to be discharged by the Corporation at any time on or

after the relevant date under the terms of the contract or the contract of the class of contracts (as the case may be),".

(e) In the proposed section 52C, by adding -

"(1A) Where a right under a contract or a contract of a class of contracts specified in a Re-vesting Notice is exercisable by the Corporation before, on and after the relevant date under the terms of the contract, subsection (1) does not apply to the right which is exercisable by the Corporation in respect of the period before the relevant date.".

(f) By deleting the proposed section 52E. and substituting -

"52E. Pension fund schemes, etc.

(1) All rights and liabilities to which KCRC was entitled or subject immediately before the relevant date under any specified instrument shall vest in the Corporation on that date.

(2) In subsection (1), "specified instrument" () means any contract or other document -

(a) which -

(i) constitutes or

relates to any pension fund scheme, provident fund scheme or any other retirement benefits scheme established for the benefit of employees of KCRC; or

(ii) relates to any gratuity benefits payable by KCRC; and

(b) which was in force immediately before the relevant date."

(g) In the proposed section 52H -

(i) in subsection (1), by adding "effected" after "other than any vesting";

(ii) in subsections (2) and (3), by adding "effected" after "any vesting".

(h) In the proposed section 52L(1), by deleting "desirable" and substituting "reasonable".

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In the proposed section 54B, by adding -

"(6) In this section, "TSA bus service" () means the service provided through the operation of bus services within the Northwest Transit Service Area by the Corporation."

New

By adding -

"21A. Requirement for Secretary to consult Corporation

Section 61 is amended-

- (a) by adding ", the Commissioner or a person other than the Secretary and the Commissioner" before "to consult";
- (b) by adding ", the Commissioner or the first-mentioned person (as the case may be)" before "to obtain";
- (c) by repealing "that other person" and substituting "the second-mentioned person".

21B. Section added

The following is added -

"65. Change of Chinese name

- (1) On the Merger Date, the Chinese

name of the Corporation is changed from "地鐵有限公司" to "香港鐵路有限公司".

(2) The Corporation shall, as soon as practicable after the Merger Date, deliver to the Registrar a copy of this Ordinance as amended by the Rail Merger Ordinance (of 2007) and published in the loose-leaf edition of the laws published under the Laws (Loose-leaf Publication) Ordinance 1990 (Cap. 2603).

(3) The Registrar shall register the copy of the Ordinance delivered to him pursuant to subsection (2) and -

- (a) enter the new Chinese name of the Corporation in the register in place of its former Chinese name; and
- (b) issue to the Corporation a certificate of change of name in respect of the change of the Chinese name of the Corporation under subsection (1).

(4) The change of the Chinese name of the Corporation under this section does not affect any rights or obligations of the Corporation or render defective

any legal proceedings by or against it and any legal proceedings that could have been commenced or continued against it by its former Chinese name may be commenced or continued against it by its new Chinese name.

(5) Section 22 of the Companies Ordinance (Cap. 32) does not apply in respect of the change of the Chinese name of the Corporation under this section.

(6) Nothing in this section shall be construed to affect the operation of section 22 of the Companies Ordinance (Cap. 32) in respect of any subsequent change of name of the Corporation.

(7) In the Chinese text of this Ordinance, unless the context otherwise requires, a reference to "地鐵公司" -

(a) in relation to any time on or after the appointed day but before the Merger Date, is a reference to "地鐵有限公司", which was the Chinese name of the Corporation at that time; and

(b) in relation to any time on

or after the Merger Date,
is a reference to "港鐵公
司".".

(8) In this section, "Registrar"
() means the Registrar of Companies
appointed under section 303 of the
Companies Ordinance (Cap. 32).".

22(b) By adding "to," after "of its property".

23(1)(c) (a) By deleting the proposed definition of
"Concession Period" and substituting -
"Concession Period" () means the
period for which that part of the
franchise relating the railways
granted under section 4 of the Mass
Transit Railway Ordinance (Cap. 556)
is in force, and any period for
which the whole or any part of such
part of the franchise is suspended
under that Ordinance;"

(b) In the proposed definition of "service
concession" -
(i) by deleting the comma before "and";
(ii) by deleting "the TSA bus service"
and substituting "the operation of
bus services within the North-west

Transit Service Area".

(c) By deleting the definition of "TSA bus service" ().

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(a) In the part heading of proposed Part VIII, by adding "OPERATION OF" after "SUSPENSION OF".

(b) By deleting the proposed section 40(1) and substituting-

"(1) The operation of the following is suspended during the Concession Period

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(a) Part IV and section 25;

(b) sections 23, 34B and 35A;
and

(c) the Kowloon-Canton Railway Corporation (Permitted Activities) (Consolidation) Order (Cap. 372 sub. leg. D).".

(c) In the proposed section 40(2), by deleting "Subsection (1)" and substituting "Subsection (1)(a)".

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(a) By re-numbering it as clause 29 (1).

(b) By adding -

"(2) In the Second Schedule, in paragraphs 3 and 4, by deleting

"Corporation to operate" and substituting "operation of".

(3) In the Fifth Schedule -

(a) in paragraph 2(b), by deleting "Corporation to operate" and substituting "operation of";

(b) in paragraph 3(a), by deleting "Corporation to construct and maintain" and substituting "construction and maintenance of".

30(2) (a) In paragraph (a), by deleting "definitions of "地下鐵路", "運輸交匯處" and" and substituting "definition of".

(b) By deleting paragraphs (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn) and (zt).

Schedule 1 By adding immediately before "**Traffic Accident Victims (Assistance Fund) Ordinance**" -

"Eastern Harbour Crossing Ordinance

3A. Interpretation

The Eastern Harbour Crossing Ordinance (Cap. 215) is amended -

- (a) in section 2, by repealing -
 - (i) the definitions of "Mass Transit Railway Corporation" and "Corporation"; and
 - (ii) by repealing subsection (5); and

(b) by adding -

**"2A. Interpretation :
references to "Mass
Transit Railway
Corporation" and
"Corporation"**

(1) In relation to any time before the appointed day, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires, a reference to the Mass Transit Railway Corporation or the Corporation is a reference to the Mass Transit Railway Corporation established by section 3(1) of the Mass Transit Railway Corporation Ordinance (Cap. 270) that was repealed by section 64(1) of the MTR Ordinance.

(2) In relation to any time on or after the appointed day, in the English text of this Ordinance or in the English text of any notice or other document made under this Ordinance, unless the context otherwise requires -

(a) a reference to the Mass Transit Railway Corporation or the Corporation is a reference to MTRCL; and

(b) a reference to the Mass Transit Railway Corporation Ordinance (Cap. 270) or a provision of that Ordinance is a reference to the MTR Ordinance or the provision to the

corresponding
effect in the
MTR Ordinance.

(3) In relation to any
time on or after the appointed
day but before the Merger Date,
in the Chinese text of this
Ordinance or in the Chinese
text of any notice or other
document made under this
Ordinance, unless the context
otherwise requires -

(a) a reference to
"地下鐵路公司" is
a reference to
"地鐵有限公司";
and

(b) a reference to
"《地下鐵路公司條例》(第270章)"
or a provision
of that
Ordinance is a
reference to
"《地下鐵路條例》"
or the provision
to the

corresponding
effect in "《地下
鐵路條例》".

(4) In relation to any
time on or after the Merger
Date, in the Chinese text of
this Ordinance or in the
Chinese text of any notice or
other document made under this
Ordinance, unless the context
otherwise requires -

(a) a reference to
"地下鐵路公司" is
a reference to
"港鐵公司"; and

(b) a reference to
"《地下鐵路公司條
例》(第270章)"
or a provision
of that
Ordinance is a
reference to
"《香港鐵路條例》
(第556章)" or
the provision to
the
corresponding

effect in "《香港鐵路條例》(第556章)".

(5) In this section -
"appointed day" () has the same meaning as in section 2 of the MTR Ordinance;
"Merger Date" () has the same meaning as in section 2 of the MTR Ordinance;
"MTR Ordinance" () means the Mass Transit Railway Ordinance (Cap. 556);
"MTRCL" means the MTR Corporation Limited as defined in section 2(1) of the MTR Ordinance;
"《地下鐵路條例》" was the Chinese short title of the MTR Ordinance immediately before the Merger Date;
"地鐵有限公司" was the Chinese name of MTRCL immediately before the Merger Date;
and
"港鐵公司" has the same meaning as in section 2 of the MTR

Ordinance.".

Schedule 2

(a) In PART 1, by deleting item 3.

(b) In PART 2, by deleting item 4 and substituting-

"4. Item 1 of Part 1 of Schedule 1 to the Banking (Capital) Rules (Cap. 155 sub. leg. L).

4A. Section 2(a) of the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155 sub. leg. O).".

(c) In PART 2, by deleting item 6.