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A BILL

To

- (a) change the Chinese name of the MTR Corporation Limited from “地鐵有限公司” to “香港鐵路有限公司” and the Chinese short title of the Mass Transit Railway Ordinance from “《地下鐵路條例》” to “《香港鐵路條例》”, to include in the franchise granted to the MTR Corporation Limited under that Ordinance the rights to construct and operate certain railways in addition to the construction of any extension to the Mass Transit Railway and the operation of the Mass Transit Railway (and its extensions), to provide for the vesting of certain rights and liabilities of the Kowloon-Canton Railway Corporation in the MTR Corporation Limited, and to provide for the regulation (other than in relation to any fare payable for using any railway service or bus service operated by the MTR Corporation Limited) under that Ordinance of the operation by the MTR Corporation Limited of certain railways and certain bus services in addition to the Mass Transit Railway, including all aspects of safety concerning those railways;
- (b) enable the Kowloon-Canton Railway Corporation to grant rights to the MTR Corporation Limited to have access to, use or possess any railway and other property of the Kowloon-Canton Railway Corporation for the purposes of the operation of the railway, to enable that corporation to dispose of property under or in connection with the grant of those rights and to provide that the office of the Chief Executive Officer of the Kowloon-Canton Railway Corporation may be left vacant after it has granted those rights; and
- (c) make provision for connected purposes.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Rail Merger Ordinance.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

PART 2

AMENDMENTS TO MASS TRANSIT RAILWAY ORDINANCE

Division 1—Amendments to Long Title and Part I (Preliminary)**3. Long title amended**

The long title to the Mass Transit Railway Ordinance (Cap. 556) is amended—

- (a) in paragraph (a)—
 - (i) by repealing “railway” and substituting “Mass Transit Railway”;
 - (ii) in the Chinese text, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”;
- (b) in paragraph (b), by repealing “railway” and substituting “Mass Transit Railway”;
- (c) in paragraph (c), in the Chinese text, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”;
- (d) in paragraph (d)—
 - (i) by repealing the comma and substituting a semicolon;
 - (ii) in the Chinese text, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”;

- (e) by adding—
 - “(e) the inclusion in the franchise referred to in paragraph (a) of the rights to construct and operate certain railways other than the Mass Transit Railway or its extensions;
 - (f) the regulation, during the franchise period, of the operation of railways and certain bus services in addition to the operation of the Mass Transit Railway by the MTR Corporation Limited, including all aspects of safety concerning those railways;
 - (g) the vesting of certain rights and liabilities of the Kowloon-Canton Railway Corporation in the MTR Corporation Limited.”.

4. Short title amended

Section 1(1) is amended, in the Chinese text, by repealing “地下鐵路” and substituting “香港鐵路”.

5. Interpretation

Section 2(1) is amended—

- (a) in the definition of “Corporation”, by repealing “地鐵公司” and substituting “港鐵公司”;
- (b) in the definition of “MTR Corporation Limited”, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”;
- (c) by repealing the definition of “railway” and substituting—
 - ““railway” (鐵路)—
 - (a) during the Concession Period, means the Mass Transit Railway and the KCRC Railways, and a reference to the railway includes a reference to a part of the railway; and
 - (b) at any other time, means the Mass Transit Railway;”;
- (d) by repealing the definition of “railway premises” and substituting—
 - ““railway premises” (鐵路處所)—
 - (a) during the Concession Period, means—
 - (i) any area, space or building occupied by the Corporation which is designed, equipped or set apart for the carriage of passengers or goods, or both passengers and goods, by train or for affording facilities incidental to the carriage of passengers or goods, or both passengers and goods, by train;

- (ii) the stops, terminuses and interchanges of the North-west Railway; and
 - (iii) any train on premises specified in subparagraph (i) or (ii); and
- (b) at any other time, means—
 - (i) any area, space or building occupied by the Corporation which is designed, equipped or set apart for the carriage of passengers by train or for affording facilities incidental to the carriage of passengers by train; and
 - (ii) any train on premises specified in subparagraph (i);”;
- (e) by adding—
 - ““bus” (巴士) has the same meaning as in the Road Traffic Ordinance (Cap. 374);
 - “Chief Executive Officer” (行政總裁) means the Chief Executive Officer of the Corporation;
 - “Concession Period” (經營權有效期) means the period defined as such in the Service Concession Agreement;
 - “Concession Property” (經營權財產) means—
 - (a) any property which the Corporation has the right to have access to, use or possess under the Service Concession Agreement, and which falls within the definition of “Concession Property” in the Service Concession Agreement;
 - (b) any property acquired, purchased, hired, produced, created, constructed, developed, processed or adapted for use by the Corporation and used only for the purposes of the repair, maintenance, replacement or improvement of the property referred to in paragraph (a), and which falls within the definition of “Concession Property” in the Service Concession Agreement; and
 - (c) any other property which falls within the definition of “Concession Property” in the Service Concession Agreement;
 - “KCRC” (九鐵公司) means the Kowloon-Canton Railway Corporation established by section 3 of the KCRC Ordinance;
 - “KCRC Ordinance” (《九鐵條例》) means the Kowloon-Canton Railway Corporation Ordinance (Cap. 372);

- “KCRC Railway” (九鐵公司鐵路) means any railway within the meaning of section 2(1) of the KCRC Ordinance which the Corporation has the right to have access to, use or possess under the Service Concession Agreement, and a reference to the KCRC Railways is a reference to all such railways;
- “Merger Date” (合併日期) means the day appointed under section 2 of the Rail Merger Ordinance (of 2007);
- “North-west Railway” (西北鐵路) has the same meaning as in section 2(1) of the KCRC Ordinance;
- “North-west Transit Service Area” (西北鐵路服務範圍) has the same meaning as in section 2(1) of the KCRC Ordinance;
- “service concession” (服務經營權) means an arrangement under which the rights of KCRC to have access to, use or possess certain railways, and certain other property for the operation of those railways or the TSA bus service, are granted to the Corporation;
- “Service Concession Agreement” (服務經營權協議) means any agreement entered into between KCRC as the grantor and the Corporation as the grantee (and with or without any other party) under which a service concession is granted, and stated by its terms to be a Service Concession Agreement for the purposes of this Ordinance or any agreement amending or supplementing such an agreement, as having effect from time to time;
- “TSA bus service” (西北鐵路巴士服務) means the service provided through the operation of bus services within the North-west Transit Service Area.”.

Division 2—Amendments to Part II (Grant and Extension of Franchise)

6. Grant of franchise to Corporation to operate railway

Section 4 is amended—

- (a) in subsection (1), by repealing everything after “50 years from” and substituting—
- “the Merger Date—
- (a) to operate the Mass Transit Railway, including any extension to the Mass Transit Railway;

- (b) to construct any extension to the Mass Transit Railway;
 - (c) to construct any other railway (other than an extension to the Mass Transit Railway) which the Secretary has authorized the Corporation to construct;
 - (d) to operate any railway constructed under paragraph (c); and
 - (e) to operate the KCRC Railways.”;
- (b) by adding—
- “(1A) For the avoidance of doubt and without affecting the generality of subsection (1)(e), the franchise granted under subsection (1) covers the operation of the KCRC Railway for the carriage of goods and passengers to and from a place outside Hong Kong.”.

7. Extension of franchise

Section 5(3) is amended by adding “the operation by the Corporation of the TSA bus service during the franchise period and” after “including”.

Division 3—Amendments to Part III (Performance under Franchise)

8. Corporation to maintain proper and efficient service

Section 9 is amended—

- (a) by renumbering it as section 9(1);
- (b) by adding—

“(2) Where the Corporation operates the TSA bus service during the Concession Period, the Corporation shall ensure that the TSA bus service is operated properly and efficiently under this Ordinance and all other applicable laws.”.

9. Section added

The following is added immediately after section 12—

“12A. Maintenance of crossings, bridges, arches, culverts, etc.

(1) During the Concession Period, the Corporation shall construct and maintain for the use of the occupiers of land not held by the Government and adjoining the KCRC Railway—

- (a) crossings of the KCRC Railway for the purpose of making good any use of the land enjoyed before the KCRC Railway was constructed or as nearly as is reasonably practicable; and
- (b) works for the purpose of conveying water from or to the land as freely as before the KCRC Railway was constructed or as nearly as is reasonably practicable.

(2) The Corporation shall not be obliged under this section to do anything—

- (a) in such a manner as would prevent the use or cause inconvenience in the use of the KCRC Railway;
- (b) with respect to which any person whose right to occupy the land has been prejudiced has made no objection or claim during the time of the construction of that part of the KCRC Railway affecting that land or with respect to which that person has accepted compensation; or
- (c) where, after the construction of that part of the KCRC Railway adjoining any land, a natural or artificial feature of that land is altered by any event outside the control of the Corporation and the Corporation has done all that is required of it under this section before that alteration took place.”.

10. Chief Executive in Council may give directions

Section 13(1) is amended by adding “and the TSA bus service” after “franchise”.

Division 4—Amendments to Part IV (Suspension, Revocation and Expiry of Franchise, etc.)

11. Sections added

The following are added immediately after section 15—

“15A. Suspension of any part of franchise relating to KCRC Railway

- (1) Section 15(6)(a) does not apply to any Concession Property.
- (2) Section 15(6)(b) does not apply to the extent that the loss or damage arises from or is attributable to the suspension of any part of the franchise relating to the KCRC Railway.
- (3) Where any part of the franchise relating to the KCRC Railway is suspended under section 15(1) and the suspension is attributable to a specified cause—
 - (a) the Government is liable to pay compensation for the loss of or damage to any Concession Property taken possession of under section 15(5) in connection with the suspension of that part of the franchise (but excluding, for the avoidance of doubt, the loss of the right to use or possess that Concession Property); and
 - (b) subject to paragraph (a), the Government is not liable to pay compensation for any loss or damage of any kind (including consequential loss) sustained by the Corporation and in any way arising from or attributable to the suspension of that part of the franchise.
- (4) Where any part of the franchise relating to the KCRC Railway is suspended under section 15(1) and the suspension is attributable otherwise than to a specified cause, the Government is liable to pay compensation for—
 - (a) the loss of or damage to any Concession Property taken possession of under section 15(5) in connection with the suspension of that part of the franchise (and including, for the avoidance of doubt, the loss of the right to use or possess that Concession Property); and
 - (b) any other actual loss or damage of any kind (but excluding, for the avoidance of doubt, any consequential loss) sustained by the Corporation and resulting directly from or attributable to the suspension of that part of the franchise.
- (5) For the avoidance of doubt, subsections (3) and (4) do not apply to any loss or damage which arises from or is attributable to the taking possession of any Corporation Common Property under section 15(5), for which compensation shall be payable under section 15(6).
- (6) The amount of any compensation payable under subsection (4) shall be calculated in accordance with the provisions of the operating agreement relating to the calculation of compensation payable under this section.

- (7) In this section and section 15B—
- “Corporation Common Property” (港鐵共用財產) means any property (other than Concession Property) which at the time of the suspension of the franchise or any part of it, is property owned, kept or used by the Corporation for the purposes of or in connection with the operation of both the KCRC Railway and the Mass Transit Railway, and which falls within the definition of “Corporation Common Property” in the Service Concession Agreement;
- “KCRC Common Property” (九鐵共用財產) means any Concession Property which at the time of the suspension of the franchise or any part of it, is Concession Property kept or used by the Corporation for the purposes of or in connection with the operation of both the KCRC Railway and the Mass Transit Railway, and which falls within the definition of “KCRC Common Property” in the Service Concession Agreement;
- “specified cause” (指明原因) means—
- (a) anything done or omitted to be done by the Corporation;
 - (b) a breach of the Service Concession Agreement by the Corporation; or
 - (c) a breach of the operating agreement by the Corporation.

15B. Rights to have access to and use Corporation Common Property and KCRC Common Property upon suspension of franchise

(1) Where the franchise is suspended under section 15(1) (whether wholly or in part), the Government, its nominee or a third party designated by the Government may have access to any Corporation Common Property and KCRC Common Property which is not taken possession of under section 15(5), and may use such Corporation Common Property and KCRC Common Property in the operation of the service and the TSA bus service to the extent that they are covered by the suspension in accordance with the provisions of the operating agreement relating to such use.

(2) Where any part of the franchise is suspended under section 15(1), the Corporation may have access to any Corporation Common Property and KCRC Common Property which is taken possession of under section 15(5), and may use such Corporation Common Property and KCRC Common Property in the operation of the service and the TSA bus service to the extent that they are not covered by the suspension in accordance with the provisions of the operating agreement relating to such use.”.

12. Default under franchise

Section 16 is amended—

- (a) by renumbering it as section 16(1);
- (b) in subsection (1)(a)—
 - (i) by repealing “either” and substituting “any”;
 - (ii) in subparagraph (i), by repealing “or”;
 - (iii) in subparagraph (ii), by repealing the comma and substituting “; or”;
 - (iv) by adding—
 - “(iii) there has been a substantial failure by the Corporation to discharge an obligation under the Service Concession Agreement which does not amount to a major breach of the Service Concession Agreement,”;
- (c) in subsection (1)(b), by repealing the comma and substituting “; or”;
- (d) in subsection (1), by adding—
 - “(c) there has been a major breach by the Corporation of the Service Concession Agreement,”;
- (e) by adding—
 - “(2) For the purposes of subsection (1), there has been a major breach by the Corporation of the Service Concession Agreement if the Corporation—
 - (a) makes any default in payment under the Service Concession Agreement;
 - (b) contravenes any restriction imposed under the Service Concession Agreement on the disposal of the Concession Property; or
 - (c) contravenes any prohibition imposed under the Service Concession Agreement on the creation of security over the Concession Property,
 and the default or contravention is, under the terms of the Service Concession Agreement, a major breach of the Service Concession Agreement.”.

13. Defaults capable of remedy

Section 17 is amended by adding—

- “(3) A default committed by reason of section 16(1)(c) shall not be regarded as one which is capable of being remedied for the purposes of subsection (1), and no notice shall be served under that subsection in respect of such a default.”.

14. Revocation of franchise

- (1) Section 18(1) is amended—
 - (a) in paragraph (a), by repealing “or”;
 - (b) in paragraph (b)—
 - (i) by adding “otherwise than by reason of section 16(1)(c)” after “in default”;
 - (ii) by repealing “remedied,” and substituting “remedied; or”;
 - (c) by adding—
 - “(c) it appears to the Chief Executive in Council that the Corporation is in default by reason of section 16(1)(c),”.
- (2) Section 18(2) is amended—
 - (a) by repealing “or subsection (1)(b)” and substituting “, (b) or (c)”;
 - (b) in paragraph (b), by adding “or (c)” after “subsection (1)(b)”.
- (3) Section 18(5)(b) is amended by repealing “subsection (8)” and substituting “subsections (8) and (8A)”.
- (4) Section 18 is amended by adding—
 - “(8A) Where an order is made under subsection (5)(b) only due to a default committed by reason of section 16(1)(c), the order shall have effect on the franchise only to the extent that the franchise relates to the KCRC Railways.”.

15. Sections added

The following are added immediately after section 19—

“19A. Taking possession of Concession Property by Government upon revocation or expiry of franchise

- (1) Section 19(1) does not apply to Concession Property.
- (2) Where the franchise or that part of it relating to the KCRC Railways is revoked under section 18 or the franchise has expired and has not been extended under section 5, the Government, its nominee or a third party designated by the Government may take possession of any Concession Property and use such Concession Property in the operation of the service and the TSA bus service to the extent that they are covered by the revocation or expiry as it thinks fit.
- (3) Subject to subsections (4) and (5), any Concession Property taken possession of under subsection (2) may be returned to KCRC or may be otherwise disposed of in a manner and upon terms the Chief Executive in Council may think fit.

(4) The right conferred under subsection (2) to take possession of any Concession Property and to use such Concession Property includes the right to keep or maintain such Concession Property in whatever condition or to alter such Concession Property in whatever manner.

(5) Without affecting any entitlement to compensation under section 19B, nothing in this Ordinance or any other law imposes on the Government any obligation in relation to the condition in which any Concession Property taken under subsection (2) is to be kept or returned.

(6) For the purpose of, and to the extent necessary to effect, the disposal under subsection (3) of any Concession Property taken possession of under subsection (2) (and for that purpose and to that extent only), title in that Concession Property is deemed to be vested in the Government.

19B. Compensation for taking possession of Concession Property under section 19A

Where any Concession Property is taken possession of under section 19A(2), the Government is liable to pay such compensation to the Corporation in relation to that Concession Property as would be required to be paid by KCRC to the Corporation under the Service Concession Agreement had the Concession Property been taken possession of by KCRC or redelivered by the Corporation to KCRC under the Service Concession Agreement upon the termination or expiry of the Service Concession Agreement.

19C. Rights to have access to and use KCRC Common Property or Corporation Common Property upon revocation or expiry of franchise

(1) Where the franchise or that part of it relating to the KCRC Railways is revoked under section 18 or the franchise has expired and has not been extended under section 5, the Government, its nominee or a third party designated by the Government may have access to any Corporation Common Property which is not taken possession of under section 19(1), and may use such Corporation Common Property in the operation of the service and the TSA bus service to the extent that they are covered by the revocation or expiry in accordance with the provisions of the operating agreement relating to such use.

(2) Where that part of the franchise relating to the KCRC Railways is revoked under section 18 and that part of the franchise relating to the Mass Transit Railway remains in force, the Corporation may have access

to any KCRC Common Property which is taken possession of under section 19A(2), and may use such KCRC Common Property in the operation of the Mass Transit Railway in accordance with the provisions of the operating agreement relating to such use.

(3) In this section—

- (a) “Corporation Common Property” (港鐵共用財產) means any property (other than Concession Property) which at the time of the revocation of the franchise or that part of it relating to the KCRC Railways or the expiry of the franchise (as the case may be), is property owned, kept or used by the Corporation for the purposes of or in connection with the operation of both the KCRC Railway and the Mass Transit Railway, and which falls within the definition of “Corporation Common Property” in the Service Concession Agreement;
- (b) “KCRC Common Property” (九鐵共用財產) means any Concession Property which at the time of the revocation of that part of the franchise relating to the KCRC Railways, is Concession Property kept or used by the Corporation for the purposes of or in connection with the operation of both the KCRC Railway and the Mass Transit Railway, and which falls within the definition of “KCRC Common Property” in the Service Concession Agreement.”.

Division 5—Amendments to Part VIII (Regulations and Bylaws)

16. Regulations

(1) Section 33 is amended by adding—

“(1A) The Secretary may make regulations for all or any of the following purposes—

- (a) requiring the Corporation to submit to the Commissioner, at such times and in such manner as may be specified in the regulations, a programme of the future operations or plans of the Corporation for the rail and TSA bus service within the North-west Transit Service Area for such period as may be so specified, including, without derogation from the generality of the foregoing, routes to be operated, frequency of service and vehicle allocation to those routes;
- (b) controlling and regulating the maintenance and operation of the TSA bus service by the Corporation;

(c) the use of the TSA bus service by members of the public and their conduct while using the TSA bus service; and

(d) any connected purposes.

(1B) Subsection (1A) expires when that part of the franchise relating to the KCRC Railways is revoked under section 18.

(1C) Where any regulation is made under subsection (1A)(a) to require the Corporation to submit to the Commissioner any programme, neither the Commissioner nor any other person shall disclose any information obtained pursuant to that regulation unless he has consulted the Corporation regarding his intention to do so.”.

(2) Section 33 is amended by adding—

“(4) A regulation made under this section may contain such consequential, transitional or saving provision as may be necessary or expedient in consequence of the expiry of any regulation made under this section.”.

17. Bylaws

Section 34 is amended by adding—

“(1A) The Corporation may, under its common seal, make bylaws for any or all of the following purposes—

- (a) prescribing the terms upon which any goods or class of goods will be received for carriage by the Corporation or stored by them including limitations on the liability of the Corporation in respect of the goods; and
- (b) controlling access to certain areas of the railway premises by—
 - (i) restricting access by the public or by any person to any part of the railway premises, and the days and times of admission to that part of the railway premises;
 - (ii) issuing permits for access to any restricted area of the railway premises and the fees payable in respect of such permits;
 - (iii) exempting, by notice in writing and subject to such conditions as the Chief Executive Officer may impose, any person or class of person from all or any of the requirements of any bylaw regarding entry into a restricted area; and
 - (iv) empowering the Chief Executive Officer to prepare and certify a plan delineating or describing any part or parts of the railway premises as a restricted area.

(1B) Subsection (1A) expires when that part of the franchise relating to the KCRC Railways is revoked under section 18.

(1C) Where the Corporation operates the TSA bus service, the power to make bylaws under subsections (1) and (1A) shall extend to making bylaws for the purposes of the TSA bus service for any of the matters specified in those subsections as if the TSA bus service were the service.

(1D) Nothing in subsection (1C) shall have the effect of deeming premises used in the operation of the TSA bus service to be the railway premises for the purposes of subsection (1A)(b).

(1E) Any bylaw made under this section may contain such consequential, transitional or saving provision as may be necessary or expedient in consequence of the expiry of any bylaw made under this section.”.

18. Further powers in relation to regulations and bylaws

Section 35 is amended by adding—

“(6) A plan purporting to be certified by the Chief Executive Officer as a plan of a restricted area or as a copy of a plan of a restricted area certified by the Chief Executive Officer is admissible in evidence in any proceedings for an offence against a bylaw made under section 34(1A)(b) on its production without further proof and until the contrary is proved—

- (a) the court before which such certified plan or copy is produced shall presume that the signature to the plan or copy is genuine and that the Chief Executive Officer was duly appointed when he certified it; and
- (b) the plan or copy shall be evidence of the area and boundaries of any part or parts of the KCRC Railways delineated or described in the plan as a restricted area.”.

Division 6—Addition of new Part

19. Part IXA added

The following is added immediately after Part IX—

“PART IXA

VESTING OF CERTAIN RIGHTS AND LIABILITIES OF KCRC
IN CORPORATION**52A. Interpretation of Part IXA**

In this Part—

“contract” (合約) includes any agreement, bond, guarantee or security made or given orally, in writing, by deed, by conduct or otherwise;

“liabilities” (法律責任) includes obligations;

“relevant date” (有關日期)—

- (a) in relation to a contract which is specified in a Vesting Notice, means the date specified in the Vesting Notice for the purposes of section 52B(1);
- (b) in relation to a contract which is specified in a Re-vesting Notice, means the date specified in the Re-vesting Notice for the purposes of section 52C(1);
- (c) in relation to a contract or document to which section 52D or 52E applies, means the Merger Date;
- (d) in relation to any security to which section 52F applies, means the date on which the rights in respect of which the security is held are vested in the Corporation or KCRC under section 52B or 52C (as the case may be);

“relevant rights and liabilities” (有關的權利及法律責任), in relation to a contract or document to which section 52B, 52D, 52E or 52F(1) applies, means the rights and liabilities vested in the Corporation under section 52B, 52D, 52E or 52F(1) (as the case may be);

“Re-vesting Notice” (再轉歸公告) means a notice made by the Secretary under section 52C(2);

“security” (抵押) means any interest, legal or equitable, by means of which the payment or discharge of a debt or liability (whether present or future, actual or contingent) is secured, whether or not that interest is evidenced in writing;

“Vesting Notice” (轉歸公告) means a notice made by the Secretary under section 52B(2).

**52B. Vesting of certain contractual rights
and liabilities of KCRC in Corporation**

(1) Where a contract or a class of contracts is specified in a Vesting Notice—

- (a) the rights under the contract or contracts of the class of contracts which are exercisable by KCRC at any time on or after but not before the relevant date under the terms of the contract or those contracts; and
- (b) the liabilities under the contract or those contracts which are to be discharged by KCRC at any time on or after the relevant date under the terms of the contract or those contracts,

shall vest in the Corporation by virtue of this subsection on that date.

(2) The Secretary may make a Vesting Notice for the purposes of subsection (1).

(3) A Vesting Notice made under subsection (2) shall be published in the Gazette as a general notice.

52C. Re-vesting of certain contractual rights and liabilities in KCRC

(1) Where a contract or a class of contracts which has been specified in a Vesting Notice is specified in a Re-vesting Notice—

- (a) the rights under the contract or contracts of the class of contracts which are exercisable by the Corporation at any time on or after but not before the relevant date under the terms of the contract or those contracts; and
- (b) the liabilities under the contract or those 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 those contracts,

shall vest in KCRC by virtue of this subsection on that date.

(2) The Secretary may make a Re-vesting Notice for the purposes of subsection (1) where—

- (a) the franchise is revoked under section 18;
- (b) that part of the franchise relating to the KCRC Railways is revoked under section 18;
- (c) the franchise has expired and has not been extended under section 5; or
- (d) both KCRC and the Corporation agree that it is necessary to make a Re-vesting Notice.

(3) A Re-vesting Notice made under subsection (2) shall be published in the Gazette as a general notice.

52D. Employment contracts

(1) All rights and liabilities to which KCRC was entitled or subject immediately before the relevant date under any contract of employment entered into with KCRC which was in force immediately before the relevant date shall vest in the Corporation by virtue of this subsection on that date.

(2) Employment with KCRC and the Corporation under a contract of employment to which subsection (1) applies is deemed for all purposes to be a single continuing employment.

(3) No member of the managing board of KCRC or auditor of KCRC becomes by virtue only of subsection (1) a director or auditor of the Corporation.

52E. Pension fund schemes, etc.

(1) All rights and liabilities to which KCRC was entitled or subject immediately before the relevant date under any contract or other document constituting or relating to any pension fund scheme, provident fund scheme or any other retirement benefits scheme established for the benefit of employees of KCRC or to any gratuity benefits payable by KCRC which was in force immediately before the relevant date shall vest in the Corporation by virtue of this subsection on that date.

(2) Any contract or other document to which subsection (1) applies shall (as from the relevant date) be construed and have effect, so far as the context permits, as if for any reference in the contract or document to KCRC there were substituted a reference to the Corporation.

52F. Security

(1) In relation to a contract to which section 52B(1) applies, any security held immediately before the relevant date by KCRC, or by a person as nominee of, agent of or trustee for KCRC, in respect of the rights under the contract which are vested in the Corporation under that section, shall be held by the Corporation, or by that person as nominee of, agent of or trustee for the Corporation (as the case may require), and shall be available to the Corporation (whether for its own benefit or for the benefit of any other person, as the case may be) as from that date.

(2) In relation to any security vested in the Corporation by virtue of subsection (1) and any liabilities secured by the security, the Corporation shall be entitled to the rights and priorities, and shall be subject to the obligations and incidents, which KCRC would have been entitled to and subject to if it had continued to hold the security.

(3) In relation to a contract to which section 52C(1) applies, any security held immediately before the relevant date by the Corporation, or by a person as nominee of, agent of or trustee for the Corporation, in respect of the rights under the contract which are vested in KCRC under that section, shall be held by KCRC, or by that person as nominee of, agent of or trustee for KCRC (as the case may require), and shall be available to KCRC (whether for its own benefit or for the benefit of any other person, as the case may be) as from that date.

(4) In relation to any security vested in KCRC by virtue of subsection (3) and any liabilities secured by the security, KCRC shall be entitled to the rights and priorities, and shall be subject to the obligations and incidents, which the Corporation would have been entitled to and subject to if it had continued to hold the security.

52G. Supplementary provisions relating to vesting or re-vesting under this Part

(1) A contract or other document to which section 52B, 52D, 52E or 52F(1) applies shall, to the extent of the relevant rights and liabilities, have effect as from the relevant date as if the Corporation is a party to the contract or document in all respects and as if the Corporation were the same person in law as KCRC.

(2) Accordingly, references (whether express or implied) to KCRC in the contract or document referred to in subsection (1) shall, to the extent of the relevant rights and liabilities, be taken as from the relevant date as referring to the Corporation.

(3) Where the contract or document referred to in subsection (1) refers (in whatever terms and whether expressly or by implication) to a person employed by or engaged in the business of KCRC, it shall have effect, to the extent of the relevant rights and liabilities and in relation to anything falling to be done on or after the relevant date, as if for that reference there were substituted a reference to such person as the Corporation may appoint or, in default of appointment, to the person employed by or engaged in the business of the Corporation who corresponds as nearly as may be to the person employed by or engaged in the business of KCRC in question.

(4) A contract to which section 52C or 52F(3) applies shall, to the extent of the rights and liabilities vested in KCRC by virtue of section 52C or 52F(3) (as the case may be), have effect as from the relevant date as if KCRC is a party to the contract in all respects and as if KCRC were the same person in law as the Corporation.

(5) The Corporation and all other persons have the same rights, powers and remedies for ascertaining, perfecting or enforcing any right or liability vested in the Corporation by virtue of section 52B, 52D, 52E or 52F(1) as they would have had if that right or liability had at all times been a right or liability of the Corporation.

(6) KCRC and all other persons have the same rights, powers and remedies for ascertaining, perfecting or enforcing any right or liability vested in KCRC by virtue of section 52C or 52F(3) as they would have had if that right or liability had at all times been a right or liability of KCRC.

(7) In subsections (5) and (6), a reference to rights and powers includes a reference to rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority.

52H. Evidence of vesting

(1) The production of a Government Printer's copy, or a document certified by a solicitor to be a true copy of a Government Printer's copy, of this Ordinance is conclusive evidence for all purposes of any vesting (other than any vesting under section 52B or 52C) effected under this Part.

(2) The production of a Government Printer's copy, or a document certified by a solicitor to be a true copy of a Government Printer's copy, of this Ordinance and of a Vesting Notice is conclusive evidence for all purposes of any vesting under section 52B to which the Vesting Notice relates.

(3) The production of a Government Printer's copy, or a document certified by a solicitor to be a true copy of a Government Printer's copy, of this Ordinance and of a Re-vesting Notice is conclusive evidence for all purposes of any vesting under section 52C to which the Re-vesting Notice relates.

52I. Waiver of prohibition of vesting

(1) A provision contained in any contract or other document—
(a) prohibiting or having the effect of prohibiting the vesting under section 52B, 52D, 52E or 52F(1); or
(b) to the effect that a default shall occur or be deemed to occur, or any right or liability shall cease, as a result of the vesting under section 52B, 52D, 52E or 52F(1),
and to which KCRC is a party, is deemed to have been waived.

(2) A provision contained in any contract or other document—

- (a) prohibiting or having the effect of prohibiting the vesting under section 52C or 52F(3); or
- (b) to the effect that a default shall occur or be deemed to occur, or any right or liability shall cease, as a result of the vesting under section 52C or 52F(3),

and to which the Corporation is a party, is deemed to have been waived.

52J. Evidence: books and documents

(1) In relation to any matter concerning any right or liability under a contract vested in the Corporation under section 52B, 52D, 52E or 52F(1), books and other documents which would, before the relevant date, have been evidence in respect of that matter for or against KCRC are admissible in evidence in respect of the same matter for or against the Corporation.

(2) In relation to any matter concerning any right or liability under a contract vested in KCRC under section 52C or 52F(3), books and other documents which would, before the relevant date, have been evidence in respect of that matter for or against the Corporation are admissible in evidence in respect of the same matter for or against KCRC.

(3) In this section, “documents” (文件) has the same meaning as in section 46 of the Evidence Ordinance (Cap. 8).

52K. Perfection of vesting of foreign rights and liabilities

(1) KCRC and the Corporation shall take, as and when the Corporation considers appropriate, all steps necessary or desirable for securing that the vesting in the Corporation under this Part of any foreign right or liability is effective under the relevant foreign law.

(2) Until the vesting of any foreign right or liability of KCRC in the Corporation becomes effective under the relevant foreign law, KCRC shall hold that right for the benefit of, and discharge that liability on behalf of, the Corporation.

(3) Any costs and expenses incurred by KCRC under subsections (1) and (2) shall be met by the Corporation.

(4) KCRC and the Corporation shall take, as and when KCRC considers appropriate, all steps necessary or desirable for securing that the vesting in KCRC under this Part of any foreign right or liability is effective under the relevant foreign law.

(5) Until the vesting of any foreign right or liability of the Corporation in KCRC becomes effective under the relevant foreign law, the Corporation shall hold that right for the benefit of, and discharge that liability on behalf of, KCRC.

(6) Any costs and expenses incurred by the Corporation under subsections (4) and (5) shall be met by KCRC.

(7) Nothing in this section shall be taken as prejudicing the effect under the laws of Hong Kong of the vesting in the Corporation or KCRC by virtue of this Part of any foreign right or liability.

(8) In this section, a reference to any foreign right or liability is a reference to any right or liability in respect of which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a place outside Hong Kong.

52L. Resolution of dispute

(1) The Corporation and KCRC shall take all steps necessary or desirable to cooperate with each other in any mediation, arbitration or legal proceedings involving KCRC, the Corporation and any party to a contract specified in a Vesting Notice or Re-vesting Notice, or a contract of a class of contracts specified in such a Notice, which may arise from any dispute regarding the contract.

(2) Subsection (1) does not apply where the dispute regarding the contract is—

- (a) a dispute only as between KCRC and the Corporation; or
- (b) a dispute between, on the one hand, one of those corporations and, on the other hand, the other corporation and another party to the contract.”

Division 7—Amendment to Part X (Miscellaneous)

20. Appeal to Chief Executive in Council

Section 53(1) is amended by repealing everything after “than section” and substituting “15(5), 15B(1), 19(1), 19A(2), 19C(1), 22, 26 or 33.”.

21. Sections added

The following are added immediately after section 54—

“54A. Application of section 11 of Tramway Ordinance

During the Concession Period, section 11 of the Tramway Ordinance (Cap. 107) applies to the North-west Railway and, for the purposes of such application, references in that section to “the company” shall be construed as references to the Corporation and references to “the tramway” as references to the North-west Railway.

54B. Public Bus Services Ordinance not to apply to TSA bus service

(1) During the Concession Period, the Public Bus Services Ordinance (Cap. 230) does not apply to the TSA bus service with the following exceptions—

(a) sections 16(1)(b), 18, 19, 20 and 21;

(b) sections 2 and 3 to the extent that they apply to the provisions specified in paragraph (a),

and for the purposes of those provisions, the Corporation shall be deemed to be a grantee within the meaning of that Ordinance.

(2) Section 53 of this Ordinance applies to a decision, direction or requirement of the Commissioner given under section 16(1)(b), 19 or 20 of the Public Bus Services Ordinance (Cap. 230) in respect of the TSA bus service as if the decision, direction or requirement were a decision of the Commissioner made under this Ordinance.

(3) Neither the Commissioner nor any other person shall disclose any information relating to the TSA bus service obtained pursuant to section 18 of the Public Bus Services Ordinance (Cap. 230) unless he has consulted the Corporation regarding his intention to do so.

(4) The powers conferred by section 21(1)(a) of the Public Bus Services Ordinance (Cap. 230) may be exercised in respect of the TSA bus service only for the purpose of—

(a) ensuring the safety of the TSA bus service; or

(b) investigating an accident which involved a bus used in the operation of the TSA bus service.

(5) No person shall disclose, except to the Commissioner, any information obtained through an inspection conducted in respect of the TSA bus service under section 21(1)(a) of the Public Bus Services Ordinance (Cap. 230) unless he has given reasonable notice to the Corporation beforehand.”.

PART 3

AMENDMENTS TO KOWLOON-CANTON RAILWAY
CORPORATION ORDINANCE

Division 1—Amendment to Long Title and Part I (Preliminary)

22. Long title amended

The long title to the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) is amended—

- (a) by adding “or other railways” after “that railway”;
- (b) by adding “to enable that corporation to dispose of its property or to grant its rights over its property and its other rights to the MTR Corporation Limited, to enable that corporation to own or take a lease of other railways” after “other railways”.

23. Interpretation

(1) Section 2(1) is amended—

- (a) in the definition of “railway”—
 - (i) in paragraph (b), by repealing “or”;
 - (ii) in paragraph (c), by repealing the comma and substituting “; or”;
 - (iii) by adding—
 - “(d) any railway (other than a railway referred to in paragraph (a), (b) or (c)) constructed by, leased to or vested in the Corporation,”;
- (b) in the definition of “railways”—
 - (i) in paragraph (b), by repealing “and”;
 - (ii) in paragraph (c), by repealing the full stop and substituting “; and”;
 - (iii) by adding—
 - “(d) any railway (other than a railway referred to in paragraph (a), (b) or (c)) constructed by, leased to or vested in the Corporation,”;
- (c) by adding—
 - ““Concession Period” (經營權有效期) means the period defined as such in the Service Concession Agreement;
 - “Merger Date” (合併日期) means the day appointed under section 2 of the Rail Merger Ordinance (of 2007);

“MTR Corporation Limited” (香港鐵路有限公司) has the same meaning as in section 2(1) of the Mass Transit Railway Ordinance (Cap. 556);

“service concession” (服務經營權) means an arrangement under which the rights of the Corporation to have access to, use or possess certain railways, and certain other property for the operation of those railways or the TSA bus service, are granted to the MTR Corporation Limited;

“Service Concession Agreement” (服務經營權協議) means any agreement entered into between the Corporation as the grantor and the MTR Corporation Limited as the grantee (and with or without any other party) under which a service concession is granted, and stated by its terms to be a Service Concession Agreement for the purposes of this Ordinance or any agreement amending or supplementing such an agreement, as having effect from time to time;

“TSA bus service” (西北鐵路巴士服務) means the service provided through the operation of bus services within the North-west Transit Service Area.”.

(2) Section 2(2) is repealed and the following substituted—

“(2) The Chief Executive in Council may—

(a) during the Concession Period, upon being satisfied that the MTR Corporation Limited and the Corporation have been consulted about the variation; and

(b) at any other time, upon being satisfied that the Corporation has been consulted about the variation,

by order published in the Gazette require the Commissioner for Transport to vary the boundaries of the North-west Transit Service Area in such manner as may be specified in the order.”.

Division 2—Amendments to Part II (Establishment of the Kowloon-Canton Railway Corporation)

24. Corporation established

Section 3 is amended—

(a) in subsection (2)(b), by adding “subject to subsection (2B),” before “a Chief Executive Officer”;

(b) by adding—

“(2B) The office of the Chief Executive Officer may be left vacant during the Concession Period.

(2C) Where the office of the Chief Executive Officer is left vacant under subsection (2B), the managing board of the Corporation shall consist of persons referred to in subsection (2)(a) and (c).”.

25. Powers of the Corporation

Section 4 is amended—

(a) in subsection (1)—

(i) in paragraph (d), by repealing “and”;

(ii) by adding—

“(da) to grant a service concession;

(db) to dispose of its property under or in connection with the grant of a service concession by way of a sale, lease, licence or otherwise;

(dc) to own or take a lease of certain railways; and”;

(b) by adding—

“(7) The Corporation shall not exercise its powers under subsection (1)(a), (b), (c) and (d) during the Concession Period.

(8) Subsection (7) does not apply where the franchise granted to the MTR Corporation Limited under section 4 of the Mass Transit Railway Ordinance (Cap. 556), or any part of it relating to those railways covered by a service concession, is suspended under that Ordinance.

(9) Notwithstanding subsection (7), where the Corporation has begun the construction of any railway before the Merger Date and the construction is not completed before the Merger Date, the Corporation may exercise any of its powers under this section for the purpose of the construction of that railway until—

(a) the construction is completed; and

(b) the rights to have access to, use or possess that railway is granted by way of a service concession.”.

Division 3—Amendments to Part VI (Regulations and By-laws)

26. Regulations

Section 30 is amended by adding—

“(5) Regulations made under subsection (1) may make provision for the suspension of the operation of any such regulation during the Concession Period.

(6) Where regulations are made under subsection (1) to provide for the suspension of the operation of any regulation made under that subsection, they may include such incidental, consequential, supplemental, transitional or saving provisions as may be necessary or expedient in consequence of those regulations.”.

27. By-laws

Section 31 is amended by adding—

“(6) By-laws made under subsection (1) may make provision for the suspension of the operation of any such by-law during the Concession Period.

(7) Where by-laws are made under subsection (1) to provide for the suspension of the operation of any by-law made under that subsection, they may include such incidental, consequential, supplemental, transitional or saving provisions as may be necessary or expedient in consequence of those by-laws.”.

Division 4—Addition of new Part

28. Part VIII added

The following is added—

“PART VIII

SUSPENSION OF CERTAIN PROVISIONS DURING CONCESSION PERIOD

40. Suspension of certain provisions during Concession Period

(1) The operation of Part IV, sections 23, 25, 34B and 35A is suspended during the Concession Period.

(2) Subsection (1) does not apply where the franchise granted to the MTR Corporation Limited under section 4 of the Mass Transit Railway Ordinance (Cap. 556), or any part of it relating to those railways covered by a service concession, is suspended under that Ordinance.

(3) Section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) shall have the same effect in relation to the suspension of the operation of any provision by virtue of this section as it would have if such provision had been repealed.”.

Division 5—Amendment to Schedules

29. Provisions with respect to the Corporation and members thereof

Paragraph 9 of the First Schedule is amended—

(a) by renumbering it as paragraph 9(1);

(b) by adding—

“(2) During the Concession Period, subparagraph (1) does not apply, and a simple majority of the members of the Corporation for the time being shall form the quorum.”.

PART 4

CONSEQUENTIAL AND RELATED AMENDMENTS

30. Consequential and related amendments

(1) The enactments specified in Schedule 1 are amended as set out in that Schedule.

(2) The following provisions of the Mass Transit Railway Ordinance (Cap. 556) are amended, in the Chinese text, by repealing “地鐵公司” wherever it appears and substituting “港鐵公司”—

(a) section 2(1) (the definitions of “地下鐵路”, “運輸交匯處” and “營運協議”);

(b) section 4(2);

(c) section 5;

(d) section 6;

(e) section 7;

(f) section 8;

(g) section 9;

(h) section 10;

(i) section 11;

(j) section 12;

(*k*) section 13;
(*l*) section 14;
(*m*) section 15;
(*n*) section 16;
(*o*) section 17;
(*p*) section 18;
(*q*) section 19;
(*r*) section 20;
(*s*) section 21;
(*t*) section 27;
(*u*) section 28;
(*v*) section 29;
(*w*) section 31;
(*x*) section 33;
(*y*) section 34;
(*z*) section 35;
(*za*) section 37;
(*zb*) section 38;
(*zc*) section 39;
(*zd*) section 40;
(*ze*) section 41;
(*zf*) section 42;
(*zg*) section 43;
(*zh*) section 44;
(*zi*) section 45;
(*zj*) section 47;
(*zk*) section 48;
(*zl*) section 49;
(*zm*) section 51;
(*zn*) section 52;
(*zo*) section 53;
(*zp*) section 54;
(*zq*) section 56;
(*zr*) section 57;

- (zs) section 58;
- (zt) section 59;
- (zu) section 60;
- (zv) section 61;
- (zw) section 63;
- (zx) Schedule 2.

(3) The following provisions of the Mass Transit Railway Ordinance (Cap. 556) are amended, in the heading, in the Chinese text, by repealing “地鐵公司” and substituting “港鐵公司”—

- (a) section 4;
- (b) section 7;
- (c) section 9;
- (d) section 28;
- (e) section 37;
- (f) section 54;
- (g) section 56;
- (h) section 58;
- (i) section 59;
- (j) section 60;
- (k) section 61.

(4) Section 2(1) of the Tung Chung Cable Car Ordinance (Cap. 577) is amended, in the English text, in the definition of “MTR Corporation Limited”, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”.

(5) The Chinese text of the provisions set out in Part 1 of Schedule 2 is amended by repealing “《地下鐵路條例》” wherever it appears and substituting “《香港鐵路條例》”.

(6) The Chinese text of the provisions set out in Part 2 of Schedule 2 is amended by repealing “地鐵有限公司” wherever it appears and substituting “香港鐵路有限公司”.

(7) Section 37 of the Noise Control Ordinance (Cap. 400) is amended, in the heading, in the Chinese text, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”.

SCHEDULE 1

[s. 30(1)]

CONSEQUENTIAL AND RELATED AMENDMENTS

Dutiable Commodities Ordinance**1. Schedule 1 amended**

Schedule 1 to the Dutiable Commodities Ordinance (Cap. 109) is amended, in Part III, by adding—

“3A. Where it is proved to the satisfaction of the Commissioner that light diesel oil on which duty has been paid under paragraph 1(*b*) has been used in road vehicles operated by the MTR Corporation Limited in maintaining bus services within the North-west Transit Service Area referred to in paragraph 3 during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), a refund of duty paid on the light diesel oil so used may be granted by the Commissioner and subject to such conditions as the Commissioner may specify.”.

Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations**2. Use of marked oil**

Regulation 5B(2) of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg. C) is amended—

- (*a*) in paragraph (*b*), by repealing “or”;
- (*b*) in paragraph (*c*), by repealing the full stop and substituting “; or”;
- (*c*) by adding—
 - “(d) that is operated by the MTR Corporation Limited in maintaining bus services within the North-west Transit Service Area referred to in paragraph (*c*) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556).”.

Public Health and Municipal Services Ordinance

3. Definitions and saving for other enactments

Section 104E(1)(b) of the Public Health and Municipal Services Ordinance (Cap. 132) is repealed and the following substituting—

“(b) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) and in respect of any land belonging to the Kowloon-Canton Railway Corporation which the MTR Corporation Limited has the right to have access to, use or possess during the Concession Period, the MTR Corporation Limited;

(ba) at any time outside the Concession Period referred to in paragraph (b) and in respect of any land belonging to the Kowloon-Canton Railway Corporation, the Kowloon-Canton Railway Corporation;”.

Traffic Accident Victims (Assistance Fund) Ordinance

4. Levy on motor vehicles

Section 5 of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) is amended—

(a) in subsection (7A), by repealing “In” and substituting “Subject to subsection (7B), in”;

(b) by adding—

“(7B) During the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), the levy payable under subsection (7A) shall be payable by the MTR Corporation Limited as if it were the Kowloon-Canton Railway Corporation.”;

(c) in subsection (9), by adding “, MTR Corporation Limited” after “Kowloon-Canton Railway Corporation”.

Frontier Closed Area (Permission to Enter) Notice

5. Schedule amended

The Schedule to the Frontier Closed Area (Permission to Enter) Notice (Cap. 245 sub. leg. H) is amended—

(a) in Part I, in item 1, in the fourth column, by repealing everything after “defined for” and substituting—

“the purposes of—

- (a) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), the Mass Transit Railway Ordinance (Cap. 556); and
 - (b) at any other time, the Kowloon-Canton Railway Corporation Ordinance (Cap. 372).”;
- (b) in Part II—
- (i) in item 5, in the second column, by adding “at any time outside the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556)” after “closed area”;
 - (ii) by adding—
 - “5A. Employees of the MTR Corporation At any time”.
Limited on duty on board trains or
otherwise in the course of their
duties in the closed area during
the Concession Period referred
to in item 5.

Motor Vehicles Insurance (Third Party Risks) Ordinance

6. Obligations on users of motor vehicles to be insured against third party risks

Section 4(4)(bc) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) is amended by repealing “Mass Transit Railway By-laws (Cap. 270 sub. leg.)” and substituting “Mass Transit Railway By-laws (Cap. 556 sub. leg. B)”.

Mining Ordinance

7. Lands excluded from prospecting and mining

Section 9 of the Mining Ordinance (Cap. 285) is amended—

- (a) by renumbering it as section 9(1);
- (b) in subsection (1)(b)—

- (i) by repealing “Manager and Chief Engineer, Kowloon-Canton Railway” and substituting “Kowloon-Canton Railway Corporation”;
- (ii) by repealing “he” and substituting “it”;
- (c) by adding—
 - “(2) During the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), in subsection (1)(b)—
 - (a) “railway” (鐵路) means “KCRC Railway” within the meaning of section 2(1) of that Ordinance;
 - (b) the reference to Kowloon-Canton Railway Corporation shall be construed as a reference to the MTR Corporation Limited.”.

Motor Vehicles (First Registration Tax) Ordinance

8. Classes of motor vehicles and rate of tax

The Schedule to the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) is amended—

- (a) in item 4, by repealing everything after “operating” and substituting—
 - “a public bus service—
 - (a) under the Public Bus Services Ordinance (Cap. 230);
 - (b) under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) within the North-west Transit Service Area within the meaning of section 2(1) of that Ordinance; or
 - (c) by the MTR Corporation Limited within the North-west Transit Service Area referred to in paragraph (b) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) 3.7”;
- (b) in item 5, by repealing everything after “operating” and substituting—
 - “a public bus service—
 - (a) under the Public Bus Services Ordinance (Cap. 230);

- (b) under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) within the North-west Transit Service Area referred to in item 4(b); or
- (c) by the MTR Corporation Limited within the North-west Transit Service Area referred to in item 4(b) during the Concession Period referred to in item 4(c) 3.7”.

Smoking (Public Health) Ordinance

9. Public transport carriers where smoking is prohibited

Schedule 1 to the Smoking (Public Health) Ordinance (Cap. 371) is amended—

- (a) in item 6, by adding “at any time outside the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556)” after “(Cap. 372)”;
- (b) by adding—
 - “6A. A train operated on the KCRC Railway within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) during the Concession Period referred to in item 6.”;
- (c) in item 7, by adding “at any time outside the Concession Period referred to in item 6” after “(Cap. 372)”;
- (d) by adding—
 - “7A. A light rail vehicle operated on the North-west Railway within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) during the Concession Period referred to in item 6.”.

Road Traffic (Traffic Control) Regulations

10. Interpretation

(1) Regulation 2 of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) is amended—

- (a) in subregulation (1), by repealing the definition of “rail stop” and substituting—

““rail stop” (輕鐵站) means—

- (a) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), a rail stop designated by regulation made under the Mass Transit Railway Ordinance (Cap. 556); and
 - (b) at any other time, a designated rail stop under the Kowloon-Canton Railway Corporation Regulations (Cap. 372 sub. leg. A);”;
- (b) in subregulation (4), in the proviso, by repealing everything after “without” and substituting—
- “the consent of—
- (a) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), the MTR Corporation Limited; and
 - (b) at any other time, the Kowloon-Canton Railway Corporation.”.

(2) Schedule 1 is amended by repealing the legend below Figure No. 159 and substituting—

“THIS SIGN PROHIBITS THE ENTRY OF ALL VEHICLES EXCEPT VEHICLES OF THE NORTH-WEST RAILWAY AND TRAMS AND SUCH VEHICLES AS ARE AUTHORIZED TO ENTER BY THE KOWLOON-CANTON RAILWAY CORPORATION, THE MTR CORPORATION LIMITED OR THE HONG KONG TRAMWAYS LIMITED, AS THE CASE MAY BE, AND PROHIBITS THE ENTRY OF ALL PERSONS EXCEPT THOSE PERSONS AUTHORIZED TO ENTER BY THE KOWLOON-CANTON RAILWAY CORPORATION, THE MTR CORPORATION LIMITED OR THE HONG KONG TRAMWAYS LIMITED, AS THE CASE MAY BE.”.

SCHEDULE 2

[s. 30(5) & (6)]

PART 1

SUBSTITUTE “《香港鐵路條例》” FOR “《地下鐵路條例》”

1. Paragraph 3(*f*) of the Capital Investment Fund (Cap. 2 sub. leg. B).

2. Regulation 3(2)(e) of the Factories and Industrial Undertakings (Electricity) Regulations (Cap. 59 sub. leg. W).
3. Section 2(5) of the Eastern Harbour Crossing Ordinance (Cap. 215).
4. Item 5 of Schedule 1 to the Smoking (Public Health) Ordinance (Cap. 371).

PART 2

SUBSTITUTE “香港鐵路有限公司” FOR “地鐵有限公司”

1. Paragraph 3(a) of the Capital Investment Fund (Cap. 2 sub. leg. B).
2. Section 1 of the Schedule to the Inland Revenue (Qualifying Debt Instruments) Order (Cap. 112 sub. leg. M).
3. Paragraph (a)(iii) of the definition of “特殊用途契約” in section 3(1) of the New Territories Leases (Extension) Ordinance (Cap. 150).
4. The definition of “香港公營單位” in paragraph 1 of Schedule 3 to the Banking Ordinance (Cap. 155).
5. Item 37 of Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201).
6. Section 2(5)(a) of the Eastern Harbour Crossing Ordinance (Cap. 215).
7. Section 4(4)(bc) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272).
8. Section 37 of the Noise Control Ordinance (Cap. 400).
9. The definition of “青馬管制區” in section 2(7) of the Tai Lam Tunnel and Yuen Long Approach Road Regulation (Cap. 474 sub. leg. B).
10. The definition of “地下鐵路區” in section 2 of the Airport Authority Bylaw (Cap. 483 sub. leg. A).
11. The definition of “青馬管制區” in section 2 of the Tsing Ma Control Area Ordinance (Cap. 498).
12. Item 93 of Schedule 1A to the Legislative Council Ordinance (Cap. 542).
13. The definition of “指明文書” in section 2 of the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (Cap. 571 sub. leg. R).
14. The definition of “地鐵有限公司” in section 2(1), sections 2(2) and (3), 5(4)(b)(i), 16(2)(a) and (b) and 27(8)(a) of the Tung Chung Cable Car Ordinance (Cap. 577).

15. Item 9 of Schedule 2 to the Construction Workers Registration Ordinance (Cap. 583).
16. Item 3 of Part 1 of Schedule 2 to the Construction Industry Council Ordinance (12 of 2006).

Explanatory Memorandum

The object of this Bill is to amend the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (“KCRCO”) and the Mass Transit Railway Ordinance (Cap. 556) (“MTRO”) to provide the necessary legislative framework for the operation by the MTR Corporation Limited (“MTRCL”) of the Mass Transit Railway, the Kowloon-Canton Railway and certain other railways under one franchise, and to enable the Kowloon-Canton Railway Corporation (“KCRC”) to enter into a service concession agreement (“SCA”) with MTRCL under which the right of KCRC to have access to, use or possess certain property is granted to MTRCL. The Bill is not intended to deal with the regulation of any fare payable for using any railway service or bus service operated by MTRCL.

2. The Bill is divided into 4 Parts. Part 1 provides for the short title and commencement. Part 2 (clauses 3 to 21) amends MTRO. Part 3 (clauses 22 to 29) amends KCRCO and Part 4 (clause 30) provides for consequential and related amendments.
3. Clause 3 amends the long title of MTRO to reflect changes in the scope of MTRO regarding the expansion of the franchise granted to MTRCL and the regulation of the operation of certain railways in addition to the regulation of the operation of the Mass Transit Railway.
4. Clause 4 amends the Chinese short title of MTRO.
5. Clause 5 amends certain existing definitions in MTRO and adds new definitions.
6. Clause 6 amends section 4 of MTRO to provide that the franchise granted to MTRCL under MTRO (“the franchise”) covers the construction and operation of railways other than the Mass Transit Railway and, subject to any extension, lasts 50 years from the commencement of this Ordinance.
7. Clause 7 amends section 5 of MTRO to provide that the operation by MTRCL of bus services in connection with the North-west Railway within the meaning of KCRCO (“TSA bus service”) is a relevant consideration in any recommendation made by the Secretary for Environment, Transport and Works (“the Secretary”) as to whether the franchise should be extended.

8. Clause 8 amends section 9 of MTRO to impose an obligation on MTRCL to ensure that where MTRCL operates the TSA bus service during the period defined as “Concession Period” in the MTRO, it must ensure that the TSA bus service is operated properly and efficiently.
9. Clause 9 adds a new section to impose an obligation on MTRCL to construct and maintain certain facilities for the use of occupiers of private land adjoining any railway operated by MTRCL under the SCA (“KCRC Railway”).
10. Clause 10 amends section 13 of MTRO to enable the Chief Executive in Council to give directions in respect of the TSA bus service.
11. Clause 11 adds new provisions to Part IV of MTRO to provide for—
 - (a) compensation which may be payable by the Government to MTRCL in relation to the KCRC Railway where any part of the franchise relating to the KCRC Railway is suspended;
 - (b) requirements under which—
 - (i) when the franchise is suspended (whether in whole or in part), the Government may have access to and use certain property which remains in the possession of MTRCL;
 - (ii) when any part of the franchise is suspended, MTRCL may have access to and use certain property taken possession of by the Government in connection with the suspension.
12. Clause 12 amends section 16 of MTRO to provide that certain types of breaches of the SCA may amount to a default under the franchise and a major breach of the SCA is a default under the franchise.
13. Clause 13 amends section 17 of MTRO to provide that a major breach of the SCA is not to be regarded as a default capable of being remedied for the purposes of section 17(1) of MTRO.
14. Clause 14 amends section 18 of MTRO to provide for the circumstances under which the Chief Executive in Council may revoke that part of the franchise relating to the KCRC Railways.
15. Clause 15 adds new provisions to Part IV of MTRO to provide for—
 - (a) taking possession of property covered by the SCA (“Concession Property”) by the Government when the franchise or that part of it relating to the KCRC Railways is revoked or when the franchise expires;

- (b) compensation which may be payable by the Government to MTRCL in relation to Concession Property where Concession Property is taken possession of in circumstances referred to in paragraph (a); and
- (c) requirements under which—
 - (i) when the franchise or that part of it relating to the KCRC Railways is revoked or when it expires, the Government may have access to and use certain property which remains in the possession of MTRCL;
 - (ii) when that part of the franchise relating to the KCRC Railways is revoked and that part of it relating to the Mass Transit Railway remains in force, MTRCL may have access to and use certain property taken possession of by the Government in connection with the revocation.

16. Clause 16 adds new provisions to section 33 of MTRO to enable the Secretary to make regulations in respect of the expanded scope of the franchise during the Concession Period.

17. Clause 17 adds new provisions to section 34 of MTRO to enable MTRCL to make bylaws in respect of the expanded scope of the franchise during the Concession Period.

18. Clause 18 adds new provisions to section 35 of MTRO to facilitate the adducing of evidence in any proceedings for an offence against any bylaw relating to the control of access to restricted areas in railway premises.

19. Clause 19 adds a new Part to MTRO which provides for a mechanism through which certain rights and liabilities of KCRC are to be vested in MTRCL in connection with the merger of the Mass Transit Railway and the KCRC Railways, and matters related to the vesting of rights and liabilities through the mechanism, and provides for the vesting of the rights and liabilities under employment contracts entered into with KCRC and under pension schemes established for KCRC employees in MTRCL.

20. Clause 20 amends section 53 of MTRO to provide that a decision of the Secretary relating to having access to property remaining in the possession of MTRCL under section 15B or 19C of MTRO or to taking possession of Concession Property under section 19A of MTRO, in addition to certain other decisions made under other specified provisions, is not subject to appeal under section 53 of MTRO.

21. Clause 21 adds new provisions to MTRO so that during the Concession Period, section 11 of the Tramway Ordinance (Cap. 107) applies to the North-west Railway within the meaning of KCRCO, and that certain provisions of the Public Bus Services Ordinance (Cap. 230) apply to the TSA bus service operated by MTRCL.

22. Clause 22 amends the long title of KCRCO to reflect changes in the scope of that Ordinance in connection with the SCA.
23. Clause 23 amends certain existing definitions in KCRCO, adds certain new definitions, and amends subsection (2) of that section to provide that where the Chief Executive in Council varies the boundaries of the North-west Transit Service Area within the meaning of KCRCO during the Concession Period, he must consult both KCRC and MTRCL.
24. Clause 24 amends section 3 of KCRCO to provide that during the Concession Period, the office of the Chief Executive Officer may be left vacant and that where the office is left vacant, the managing board of KCRC shall not consist of a Chief Executive Officer.
25. Clause 25 amends section 4 of KCRCO to enable KCRC to grant the right to have access to, use or possess its railways and certain other property for the operation of those railways and the TSA bus service to MTRCL, and to dispose of certain property under or in connection with such grant. Moreover, provisions are added to stipulate that, subject to certain exceptions specified in KCRCO, KCRC shall not exercise its existing powers to operate and construct railways during the Concession Period.
26. Clause 26 adds new provisions to section 30 of KCRCO to enable the Secretary to suspend regulations made by him under KCRCO during the Concession Period.
27. Clause 27 adds new provisions to section 31 of KCRCO to enable KCRC to suspend by-laws made by it under KCRCO during the Concession Period.
28. Clause 28 adds a new Part to KCRCO to provide for the suspension of certain provisions in KCRCO during the Concession Period.
29. Clause 29 amends paragraph 9 of the First Schedule of KCRCO to provide for the quorum of KCRC during the Concession Period.
30. Clause 30 provides for consequential and related amendments.