

立法會
Legislative Council

LC Paper No. LS91/05-06

**Paper for the House Committee Meeting
on 7 July 2006**

**Legal Service Division Report on
Rail Merger Bill**

I. SUMMARY

- 1. Object of the Bill** To provide the legislative framework for the implementation of the merger of the Mass Transit Railway and Kowloon-Canton Railway (“KCR”) systems.
- 2. Comments**

 - (a) It is proposed that the Kowloon-Canton Railway Corporation (“KCRC”) will grant to the MTR Corporation Limited (“MTRCL”) the right to use KCRC’s property to operate KCR railway lines and bus services by way of a service concession.
 - (b) The scope of MTRCL’s franchise is to be expanded to cover the expanded business scope after the merger and the franchise will last for 50 years from the merger date. MTRCL will also change its Chinese name to “香港鐵路有限公司”.
 - (c) KCRC’s rights and liabilities under certain contracts (including those under employment contracts) are to be vested in MTRCL following the rail merger.
 - (d) Matters relating to regulation of fares payable for using the railway services or bus services operated by MTRCL after the merger are outside the scope of the Bill.
- 3. Public Consultation** The Transport Advisory Committee and the Traffic and Transport Committees of four District Councils have been briefed on the proposed merger.
- 4. Consultation with LegCo Panel** The LegCo Panel on Transport and the Panel on Financial Affairs have been consulted on the proposed financial terms and structure of the merger deal at their joint meetings.
- 5. Conclusion** Members are recommended to form a Bills Committee to study the Bill in detail.

II. REPORT

Object of the Bill

The object of the Bill is to amend the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (“KCRCO”) and the Mass Transit Railway Ordinance (Cap. 556) (“MTRO”) to:

- (a) 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
- (b) enable the Kowloon-Canton Railway Corporation (“KCRC”) to enter into a service concession with MTRCL under which MTRCL is granted the right to have access to, use or possess the property of KCRC.

LegCo Brief Reference

2. File Ref.: ETWB(T)CR 1/986/00 issued by the Environment, Transport and Works Bureau in June 2006.

Date of First Reading

3. 5 July 2006.

Background

4. In February 2004, the Government invited MTRCL and KCRC to commence discussion on a possible rail merger on the basis of five parameters, namely, the adoption of a more objective and transparent fare adjustment mechanism, abolition of the second boarding charge and review of the fare structure with the objective of reducing fares, early resolution of interchange arrangements for new rail projects under planning, ensuring job security for frontline staff at the time of merger and provision of seamless interchange arrangements in the long run.

5. MTRCL and KCRC completed their discussions on a possible merger in September 2004. The outcome of the discussions indicates that a merger of the Mass Transit Railway (“MTR”) and the Kowloon-Canton Railway (“KCR”) systems is feasible and the five parameters set by the Government for the merger discussions can be addressed positively. After further discussion with MTRCL, the Government has reached an understanding with MTRCL on the structure and terms for the rail merger. The Government has subsequently entered into a non-binding Memorandum of Understanding (“MoU”) with MTRCL on 11 April 2006. Details

of the merger package are set out in LC Paper No. CB(1)1291/05-06(01).

6. Under the proposed structure for the rail merger, KCRC would enter into a service concession agreement with MTRCL to grant MTRCL the right to have access to, use or possess KCRC's property ("the concession property") to operate existing KCR railway lines and the new KCR railway lines currently under construction as well as KCRC's other transport-related businesses during the period of validity of the service concession agreement ("the concession period"). The merger would be effected through expanding the scope of MTRCL's franchise to cover the expanded business scope after the merger. MTRCL will be the legal entity for the purpose of the rail merger, and it would maintain its listing status. However, to reflect its expanded business scope, MTRCL will change its Chinese name while retaining its English name.

Comments

7. This Bill seeks to introduce amendments to MTRO and KCRCO to provide for the implementation of the rail merger.

8. The major proposed amendments to MTRO are summarized as follows:

- (a) to expand the scope of MTRCL's franchise to cover the construction and operation of railways other than the Mass Transit Railway and to re-set the franchise period to 50 years from the date of merger;
- (b) to change the Chinese name of MTRCL from "地鐵有限公司" to "香港鐵路有限公司";
- (c) to impose an obligation on MTRCL to ensure that the bus services operated by MTRCL in connection with the North-west Railway within the meaning of KCRCO during the concession period are operated properly and efficiently;
- (d) to extend the application of the existing provisions under MTRO relating to extension, suspension and revocation of franchise to cover relevant matters relating to the operation of the KCR railways;
- (e) to empower the Chief Executive in Council to revoke that part of the franchise relating to the KCR railways where there has been a major breach by MTRCL of the service concession agreement;
- (f) to provide for a separate compensation scheme for the taking possession by the Government of the concession property upon the suspension, revocation or expiry of the franchise as it relates to the KCR railways;

- (g) to provide for a mechanism through which certain rights and liabilities of KCRC are to be vested in MTRCL in connection with the rail merger;
- (h) to provide for the vesting in MTRCL of the rights and liabilities under employment contracts entered into with KCRC and under pension schemes established for the benefit of KCRC employees; and
- (i) to empower the Secretary for the Environment, Transport and Works (“SETW”) to make regulations, and to empower MTRCL to make bylaws, in respect of the expanded scope of the franchise during the concession period.

9. The Bill also proposes amendments to KCRCO to:

- (a) empower KCRC to grant the right to MTRCL to have access to, use or possess the concession property for the operation of KCR railways and bus services by way of a service concession;
- (b) provide that KCRC will not exercise its power under KCRCO to operate railway and bus services, nor to construct new railways during the concession period;
- (c) remove the requirement for KCRC to appoint a Chief Executive Officer during the concession period;
- (d) change the quorum of the KCRC’s managing board from five to a simple majority of the members of board during the concession period;
- (e) empower SETW and KCRC to make regulations and by-laws respectively providing for the suspension of the operation of the regulations and by-laws made under KCRCO during the concession period; and
- (f) provide for the suspension of certain provisions of KCRCO during the concession period as KCRC will cease to have any transport operational function during the period.

10. Other amendments in the Bill relate to consequential and related amendments to other legislation arising from the grant of service concession by KCRC to MTRCL.

11. According to the LegCo Brief and the long title and Explanatory Memorandum of the Bill, matters relating to the regulation of fares payable for using the railway services or bus services operated by MTRCL after the rail merger are outside the scope of the Bill.

12. If enacted, the Bill will come into operation on a day to be appointed by SETW by notice published in the Gazette.

Public Consultation

13. According to the LegCo Brief, the Administration briefed the Transport Advisory Committee on the merger proposal on 13 April 2006. The Traffic and Transport Committees of four District Councils were also briefed on the proposal in April to June 2006 upon their invitation.

Consultation with LegCo Panel

14. Subsequent to the Government's announcement on 11 April 2006 that it had entered into a non-binding MoU with MTRCL on the proposed merger, the LegCo Panel on Transport held a joint meeting with the Panel on Financial Affairs on 12 April 2006 to receive a briefing by the Administration on the merger deal. Thereafter the two Panels followed up on the proposed financial terms and structure of the merger deal as well as the fare-related matters at their joint meetings on 22 May and 23 May 2006. At the meetings on 28 April and 26 May 2006, the Panel on Transport respectively considered staff-related matters and discussed with the Administration the broad legislative proposals for implementing the proposed rail merger.

15. In discussing the proposed rail merger at the above Panel meetings, members raised a number of concerns. These include whether the proposed merger deal was fair and balanced which could bring overall benefits to the community while balancing the interests of all stakeholders; the need and justifications for selling KCRC's investment properties, property management business and property developments rights to MTRCL; the need to review the fare reduction package and the proposed formulaic approach for determining future fare adjustments so as to bring more benefits to passengers; and staff-related matters after the merger.

Conclusion

16. In view of the public importance of the Bill, Members are recommended to form a Bills Committee to study it in detail.

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