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on 25 May 2007**

**Report of the Bills Committee
on Rail Merger Bill**

Purpose

This paper reports on the deliberations of the Bills Committee on Rail Merger Bill.

Background

2. In February 2004, the Government announced its decision to invite the two railway corporations in Hong Kong, namely, the MTR Corporation Limited ("MTRCL") and Kowloon-Canton Railway Corporation ("KCRC") to commence negotiations on a possible merger. The aim was to put in place a fully-integrated network that could in the long term achieve more efficiency and productivity gains. The opportunity would also be taken to provide a more objective and transparent fare adjustment mechanism and to improve the interchange environment of the railway network. According to the Administration, the merged corporation could reduce duplication of networks for future railway projects and facilitate early resolution of interchange arrangements for projects under planning. In response to the Government's request, MTRCL and KCRC commenced discussion on the basis of five parameters:

- (a) the adoption of a more objective and transparent fare adjustment mechanism;
- (b) abolition of the second boarding charge and review of the fare structure with the objective of reducing fares;
- (c) early resolution of interchange arrangements for new rail projects under planning;

- (d) ensuring job security for frontline staff at the time of merger; and
- (e) provision of seamless interchange arrangements in the long run.

3. In September 2004, MTRCL and KCRC completed their discussions on the possible merger. It was concluded that the merger of the two railway systems was feasible and the five parameters set by the Government for the merger discussions could be addressed positively.

4. On 11 April 2006, after further discussion with MTRCL, the Government entered into a non-binding Memorandum of Understanding ("MoU") with MTRCL which sets out the structure and terms for merging the Mass Transit Railway ("MTR") and the Kowloon-Canton Railway ("KCR") systems.

5. Under the proposed structure for the rail merger in the MoU, 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 to "香港鐵路有限公司" whilst retaining its English name.

6. The Government also announced that in the context of the rail merger, the two railway corporations have agreed that a fare reduction package would be implemented on Day One of the rail merger and that the existing fare autonomy would be replaced by a formulaic approach for determining future fare adjustments.

7. On 5 July 2006, the Government introduced the Rail Merger Bill (the Bill) to the Legislative Council.

The Bill

8. The Bill seeks to introduce amendments to the Mass Transit Railway Ordinance (Cap. 556) ("MTRO") and the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) ("KCRCO") to provide for the implementation of the rail merger.

The Bills Committee

9. At its meeting on 7 July 2006, the House Committee agreed to form a Bills Committee to study the Bill. Hon Miriam LAU Kin-ye and Hon TAM Yiu-chung were elected Chairman and Deputy Chairman of the Bills Committee respectively. There are a total of 29 members on the Bills Committee. Mr Abraham SHEK Lai-him has declared that he is a member of the KCRC's managing board. The membership list of the Bills Committee is in **Appendix I**.

10. In view of the far reaching implications of the merger proposal, the Bills Committee considers it necessary to examine in detail the deal structure and terms as well as the future regulatory framework for railway services, taking into account public views. Between the 11 months from July 2006 and May 2007, the Bills Committee held a total of 36 meetings (total : 81 hours), including a closed meeting to receive a briefing by the Administration on the pricing and valuation of the property package under the merger deal and a public hearing to listen to views from interested parties.

11. The Bills Committee has received views from 24 organizations/individuals. The list of the organizations/individuals is in **Appendix II**. The Bills Committee has taken into account the views expressed by various parties in examining the merger deal and the Bill.

Deliberations of the Bills Committee

12. The Bills Committee notes that the Bill seeks to provide the necessary legislative framework for the operation by MTRCL of the MTR, the KCR and certain other railways under one franchise, and to enable KCRC to enter into a service concession agreement with MTRCL under which the right of KCRC to have access to, use or possess certain property is granted to MTRCL. Matters relating to the regulation of the operation of both the MTR and the KCR by the post-merger corporation ("MergeCo") are separately dealt with in an integrated Operating Agreement ("IOA") to be signed between MTRCL and the Government, in line with the existing arrangement where matters relating to MTRCL's operation of the MTR are dealt with in an Operating Agreement ("OA") signed between MTRCL and the Government. The IOA would be a legally binding document covering matters such as fare regulation, performance requirements, safety management, construction of new railways and the related financial arrangements, disclosure of information, etc. In order to ensure that a proper regulatory framework will be in place after the rail merger, the Bills Committee has examined clause by clause both the Bill and the draft IOA. This report outlines the Bills Committee's deliberations in three parts:

Part I: the need and justifications for the merger; and whether the merger exercise, in particular the proposed transaction structure and the financial terms as well as the inclusion of the purchase of KCRC's property and other related commercial interests as an integral part of the deal, could safeguard public interest (paragraph 13 - paragraph 34) ;

Part II: the legal framework for the merger, as provided in the Bill (paragraph 35 - paragraph 53) ;

Part III: powers and obligations of MergeCo and the Government under the IOA and how far they are accountable to the public for the operation of the two railway systems in respect of:

- (a) fare regulation (paragraph 54 - paragraph 69);
- (b) fare reduction as part of the merger package (paragraph 70 - paragraph 83) ;
- (c) the safety and service requirements (paragraph 84 - paragraph 119) ;
- (d) facilities and services for people with disabilities (paragraph 120 - 126);
- (e) impact on the implementation of Shatin to Central Link and other new railway projects (paragraph 127 - paragraph 131);
- (f) impact on railway staff (paragraph 132 - paragraph 141); and
- (g) regulatory regime under the IOA for ensuring the quality and safety of railway services as well as monitoring the design and construction of new railways, etc. (paragraph 142 - paragraph 145)

Part I: Need and justifications for the rail merger

Objectives of the merger

13. The Bills Committee notes the Administration's views that the most important premise of the rail merger is to provide a more efficient, convenient and cost-effective railway service for the people of Hong Kong. After the merger, passengers will enjoy improved convenience through the seamless interchange arrangements between the two railway systems and they will not need to pay a second boarding charge. The merger will enhance efficiency of the rail network and reduce duplication, thereby achieving synergy and creating room for economies, which will benefit the majority of rail passengers through

fare reduction effective upon the implementation of the rail merger. For the railway corporations, the respective strengths of MTRCL and KCRC can supplement each other through the merger, making it a stronger railway operator, which will be more competitive in the Mainland market and in the international arena. More career development opportunities will thus be resulted after the rail merger.

14. The Bills Committee recognizes the merits of the economies of scale in the operation of the two railways as a result of the merger. However, members are concerned whether the deal is a fair and balanced one for all stakeholders, namely, the people of Hong Kong (as 100% of KCRC and more than 76% of the shares of MTRCL belong to the Government), as well as the passengers of the two railways, the staff of the two railway corporations and the minority shareholders of MTRCL.

Proposed transaction structure and financial terms for the merger deal

15. The Bills Committee notes that the Government and MTRCL have agreed to effect the rail merger by means of a service concession arrangement under which MTRCL will be granted a service concession by KCRC to operate the existing KCR lines and new railway lines where appropriate and other transport-related businesses of KCRC. MTRCL will retain its listing status and the post-merger franchise will be expanded to include provision of the KCRC services. MergeCo would be responsible for the operation, maintenance and improvement of the KCR system, including the replacement of the concession assets, during the concession period which is 50 years. MergeCo would exercise control over all the operational arrangements of both the MTR and KCR networks as an integrated whole, and be responsible for the performance of the total system. Upon expiry or termination of the service concession, MergeCo would be required to return an operating KCR system to KCRC that meets the prevailing operating standards.

16. The Bills Committee notes that under the proposed financial terms, KCRC will receive from MergeCo the following payments for the service concession –

- (a) an upfront payment of \$4.25 billion on the "Appointed Day" of the merger;
- (b) fixed annual payments of \$750 million; and
- (c) starting from the fourth year of the service concession, an annual share of the actual revenue generated from the KCR system based on a pre-agreed set of sharing ratios. The sharing ratios are 10% for revenue exceeding \$2.5 billion and up to \$5 billion; 15% for revenue between \$5 billion and \$7.5 billion; and 35% for revenue

beyond \$7.5 billion.

17. Apart from the service concession arrangement, MTRCL has proposed to acquire property-related interests of KCRC as well as the development rights for the property sites on Kowloon Southern Link and the other commercial interests of KCRC as part of the deal at a cost of \$7.79 billion, excluding the land premium to be paid by the developers to the Government. After the rail merger, MergeCo will replace KCRC as the agent of the Government for the development of property sites along West Rail and attend to the relevant tendering procedures. Developers for the development of these sites would continue to be selected through tender, and the financial benefits arising from the relevant property development rights would accrue to the Government.

18. The Bills Committee has examined the proposed transaction structure and financial terms for the merger deal to see if the package proposal is a fair and balanced one which can bring overall benefits to the community as a whole. It has also examined the basis of calculation of the amount of payments for the service concession and the rationale for setting the term of the concession agreement to 50 years.

19. The Bills Committee notes that some members are of the view that as a matter of principle, they are not in support of the proposed merger as it involves the transfer of public assets to a private corporation, which aims at profit maximization. They are worried that after the rail merger, MergeCo would monopolize the transport market. They are also concerned that KCRC's assets would be grossly underestimated as many of its projects are either newly completed or still under construction.

20. The Administration points out that Government is not disposing of the assets of the KCR system. Upon expiry or termination of the service concession, MergeCo is obliged to deliver back to KCRC a railway system that meets the prevailing operating standards. Further, in considering the deal structure, the Government has already sought to structure the financial terms in order to capture the likely future performance of the KCR system. Under the service concession arrangement, KCRC will not only receive an upfront payment of \$4.25 billion and fixed annual payments of \$750 million, it will also enjoy the upside through a revenue-sharing arrangement as the revenue from the KCR system increases. This will ensure a fair valuation for Government, if the performance of the KCR system improves.

21. The Administration also points out that MergeCo will continue to face strong competition from other modes of public transport, notably bus services. The corporation will need to provide quality service at competitive fare levels to maintain/expand its market share. Hence, competition will still exist after the merger and prevent MergeCo from taking a monopolistic position in the

provision of transport service. A carefully drafted piece of legislation which sets out clearly the rights and obligations of MergeCo coupled with the IOA stating clearly the quality and safety requirements for the services to be provided will be key elements to ensure proper regulation of the merged entity. The Hong Kong Railway Inspectorate will retain the statutory powers to inspect the railways and investigate into railway incidents/accidents with a view to ensuring the safety of railways and railway premises. As such, there is no question of turning MergeCo into an independent kingdom which is not subject to any form of control by the Government.

Calculation of the concession payment

22. On the basis of calculation of the amount of payment for the service concession, the Administration advises that the principal consideration is on the evaluation of the future cash flow of the KCR system taking into account the operating costs and commitments on maintenance and renewal of the KCR system during the 50-year concession period. Other factors that have been considered include the risks associated with fluctuations in patronage in respect of the KCR system, future debt obligations of KCRC and affordability of MTRCL while striking an appropriate balance between the interests of the parties involved.

Term of the concession agreement

23. The Bills Committee has examined the rationale for setting the term of the concession agreement at 50 years, and whether it is appropriate to shorten the term to 20 or 30 years with an option for further extension subject to an interim review.

24. The Administration advises that under the service concession arrangement, MergeCo is responsible for carrying out and paying for all maintenance, improvement and replacement of assets. These will be long-term capital investments, which warrant sufficient time for the corporation to earn a return. During the 50-year concession period, the corporation will need to meet established service standards, and Government will continue to monitor its operation. The 50-year term, which ties in with the franchise period of MergeCo, is therefore appropriate. If there is an additional requirement of periodic reviews whereby Government or KCRC can unilaterally change the concession conditions or period, the uncertainties to MergeCo will increase, and the deal terms for KCRC and Government will naturally be detrimentally affected. This will not be in the interest of Government or KCRC.

Inclusion of property rights in the deal

25. The Bills Committee notes that the proposed deal includes the sale of KCRC's property development rights, investment properties and property management businesses to MTRCL. In this connection, MTRCL will pay \$4.91 billion for the rights over the eight property development sites, and \$2.84 billion for the eight investment properties. In addition to the right to manage the said investment properties, MTRCL will also acquire KCRC's property management business for five existing properties owned by third parties, namely, Pierhead Garden, Sun Tuen Mun Centre, Hanford Garden, Royal Ascot and the Metropolis. MTRCL will also acquire the initial rights to manage properties to be built along West Rail.

26. The Bills Committee has examined why there is a need to include the property package as an integral part of the deal. Some members of the Bills Committee are worried that without going through a public tender or auction, KCRC's properties may be disposed of at a severely diminished valuation. In order to ascertain whether the pricing of the property package is a fair and reasonable one, the Bills Committee has examined in detail the basis and methodology adopted by the professional surveyor appointed by the Government in conducting valuation of the property and related commercial interests included in the property package. It has also received views from professional bodies on the pricing and valuation of the property package.

27. According to the Administration, the Government's intention is to sell the property package to MTRCL on market terms. A professional property valuation consultant appointed by Government, who has adopted a methodology for property valuation widely accepted in the market, has confirmed that the pricing of the property package is fair and reasonable. The cash upfront which MTRCL would be paying upon the merger is only the expected share of surplus proceeds to MergeCo for the development rights of the development sites (similar to an entry fee), which should be differentiated from paying for the land premium and for the properties (i.e. the total value of the completed development). Hence, after payment for such development rights, MergeCo will still need to arrange for the payment of land premium, construction costs, and other development costs such as project enabling works costs, tax, financing costs, professional fees, marketing costs, etc to complete the development of the properties in the development sites. The risks of these property developments, including market risk, land premium/construction cost increase risks, etc, will rest with MTRCL. Furthermore, the risks will also be affected by the fact that it will take a number of years to fully develop these eight sites and realize any profit.

28. To reinforce its stance, the Administration has referred the Bills Committee to the submissions put forward by The Hong Kong Institute of Surveyors ("HKIS") (LC Paper No. CB(1)2266/05-06(08) and Mr David

WEBB, Editor, Webb-site.com (LC Paper No. CB(1)2266/05-06(05)). The HKIS, which represents the surveying profession in Hong Kong, has expressed support for the valuation methodology and valuation results for the property package prepared by the Government. HKIS is also of the view that the terms of the property package are fair and reasonable. Mr David WEBB, on the other hand, points out that under the merger deal, MTRCL would have to give up fare autonomy on most of its merged network and be bound by the proposed fare adjustment mechanism without compensation, hence the proposed deal is not in the interest of independent shareholders of MTRCL. The Administration considers that Mr WEBB's opinion could be taken as to imply that the pricing of the property package is not disadvantageous to the Government.

29. The Bills Committee notes that there is concern among members about the pricing of the property package. Some members maintain that without reviewing the full set of financial information used in the valuation, it is difficult to draw a conclusion that the disposal of the development rights under the property package is appropriately priced. In order to allay public concerns, the property package should not be included as part of the merger deal, but be put out for open tender or auction, and the proceeds so derived can be injected into the company for railway development and operations.

30. To better understand the pricing and valuation of the property package, the Bills Committee has examined, at a closed meeting arranged by the Administration, information including the market sale prices assumed in valuation, and the land premium of the sites. Separately, the Bills Committee has also been provided with an assessment of the assumed market sale prices of the residential portion of the five sites which have yet to be tendered with prices of comparable completed residential properties in the vicinity of the five sites. According to the Administration, the market sale prices assumed in Government's valuation compare favourably with the market prices of the completed properties, and hence, there is no question of Government disposing of KCRC's assets at a severely diminished valuation.

31. As to whether the property package has to be included as part of the financial arrangements in the merger proposal, the Administration advises that this is the result of prolonged discussions and negotiations with MTRCL. The focus should be on the benefits that the overall merger proposal would bring to the general public and passengers of the two railways, rather than isolating individual items for analysis. Given the uncertainty in the property market, it is difficult to give an accurate projection on the final selling price of the completed properties when they are launched in the market for sale. As the Government's independent property valuer has already adopted a valuation methodology that is widely accepted in the market for a professional assessment of the concerned properties, the Administration considers the proposed price fair and reasonable. The Bills Committee notes that whilst some members are still concerned about the disposal of KCRC's assets at a

severely diminished valuation, the majority of the members consider that the information provided by the Administration has sufficiently allayed their concern about the under valuation of the property package sold to MTRCL.

32. The Administration has also advised that historically, MTRCL has played a useful role in the property development over its railway stations and depots and has established new communities along the railway footprint. It undertakes planning for the property developments, building a substantial part of the foundations and providing other common infrastructure. The property developments also help provide early patronage to the railway system. The Administration believes MTRCL should be allowed to continue its role in integrating railway and property development after the rail merger. The Bills Committee notes that under clause 6.1 of the IOA, the Government and MergeCo shall agree the detailed terms upon which the land required for a new railway project will be provided to the Corporation and that the land premium shall be assessed in accordance with Government's land policy at the relevant time.

33. On the justifications for including the purchase of KCRC's property management business by MTRCL as an integral part of the deal, the Administration explains that the inclusion of KCRC's property management business as an integral part of the merger transaction is essential in order to ensure the long-term sustainability of the connection and integration benefits between railway and property. If rail and property are managed separately, there would be less incentive for the respective parties to align their interests and ensure the optimal integration of the two, thus leading to the loss of connection and integration benefits. For example, essential links between station and properties (such as pedestrian footbridges and subways) may not be constructed or could be poorly managed even if built. Another critical reason for properties above or adjacent to stations to be managed by the rail operator is to secure a safe and efficient environment for rail operation. If the properties above or adjacent to stations are not properly managed, there could be adverse effects on the station such as water ingress or blockage of evacuation routes, which could negatively affect the provision of rail services. In addition, some stations and adjacent property developments share services or access through each other's areas. Such situations require an integrated management approach to ensure smooth operation.

34. In considering the way to have access to the relevant financial information, Mr Andrew CHENG Kar-foo moved a motion at one of the Bills Committee meeting to seek the Council's authorization for the Bills Committee to exercise the powers conferred under the Legislative Council (Powers and Privilege) Ordinance (Cap. 382) to order the Administration to disclose further information relating to the valuation of the property package and financial arrangements for the merger deal. The motion however is not supported by the Bills Committee.

Part II: Legal framework for the merger

Long title of the Bill

35. The Bills Committee notes that while the merger exercise aims to address the concerns under the five parameters set out by the Government in February 2004, the purpose of the Bill is to provide for the necessary legal framework for the merger while many of the details in addressing issues under the five parameters are dealt with in the IOA. Some members have raised concern about the way the long title of the Bill is drafted. According to the long title of the Bill, one of the purposes of the Bill is "to provide for the regulation (other than in relation to any fare payable for using any railway service or bus service operated by the MTRCL) under MTRO of the operation by MTRCL of certain railways and certain bus services in addition to the MTR, including all aspects of safety concerning those railways". These members consider that the use of an exclusionary clause in the long title might have the effect of preventing Legislative Council ("LegCo") Members from proposing amendments relating to the regulation of any fare payable for using any railway service or bus service operated by MTRCL. They have therefore requested that the long title of the Bill should be examined to see whether the long title, as drafted, is inconsistent with the Basic Law.

36. In this respect, the legal adviser to the Bills Committee advises that the use of an exclusionary clause in the long title of the Bill may be regarded as an alternative way to set out the purpose of a bill and such use is not prohibited under the Basic Law or the Rules of Procedure of the Council. The Legal Adviser is of the opinion that it would seem that no issue of inconsistency with the Basic Law should arise from the way the long title of the Bill is drafted.

Grant and extension of franchise (clause 6 and clause 7)

37. The present franchise of MTRCL does not cover the right to operate KCR railways. Clause 6 of the Bill amends section 4 of MTRO to expand the scope of MTRCL's franchise to cover the operation of the KCR system, and to reset the duration of the franchise to run for an initial period of 50 years from the Merger Date (subject to any extension). 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 is a relevant consideration in any recommendation made by the Secretary for the Environment, Transport and Works ("the Secretary") as to whether the franchise should be extended.

38. The Bills Committee has examined the legal basis of granting a franchise to MergeCo for a period of 50 years, which would extend beyond the timeframe stipulated in Article 5 of the Basic Law that the previous capitalist

system and way of life in Hong Kong should remain unchanged for 50 years from 1997. The Administration's explanation is that Article 5 of the Basic Law does not set a deadline of 50 years for any specific arrangement or measure that is practised in the Hong Kong Special Administrative Region (HKSAR). Nor does it stipulate that the previous capitalist system or the way of life shall change after 2047. The net effect is that the Basic Law does not place any restriction on the duration of a railway franchise. Besides, the existing railway franchise of MTRCL which was granted in 2000 through the enactment of the MTRO also has a 50-year duration which ends beyond 2047.

Suspension, revocation and expiry of franchise (Clauses 11 to 15)

39. The Bills Committee notes that there are existing provisions in the MTRO to provide for the revocation and suspension of franchise. The Administration proposes that these provisions should continue to apply, subject to certain modifications to cater for the expanded scope of the franchise as well as some new arrangements that arise from the service concession arrangements as set out below:

- (a) At present, the franchise can be revoked (section 18) or suspended (section 15) by the Chief Executive in Council on specified grounds as prescribed in MTRO. The Bill contains provisions to stipulate that the grounds for franchise suspension would in future also cover relevant matters concerning the operation of the KCR railways. The grounds for franchise revocation would in future cover relevant matters concerning the operation of the KCR railways as well as substantial failure by MergeCo to comply with an obligation under the Service Concession Agreement which has certain significant consequences such as endangering passenger safety.
- (b) In view of the service concession arrangement to enable MergeCo to use KCRC assets to operate the KCR railways after the rail merger, the Bill contains provisions to stipulate that in future a major default by MergeCo in fulfilling three specified obligations in the Service Concession Agreement with KCRC (viz. payment default, breach of the restrictions against disposals or the creation of security) would trigger procedures for revocation of the part of franchise as it relates to the KCR railways. MergeCo would retain the part of franchise as it relates to the MTR in this situation, provided that there is nothing untoward in the operation of those railways that would trigger the procedures for revocation of the whole franchise as mentioned in sub-paragraph (a) above.
- (c) There are existing provisions to enable Government to take possession of assets for the operation of the MTR upon franchise revocation, suspension or expiry and to provide for the liability of Government to

pay compensation to MTRCL under specified circumstances for the assets so possessed. Such arrangements would continue to apply to MTRCL's assets used for MTR operation which are taken possession by Government, whilst as agreed with MTRCL in the merger negotiations, there would be a separate compensation regime for the Concession Assets and their improvement and replacements etc. so taken possession of to be specified in the IOA. The Bill contains corresponding provisions to set out the liability of Government to pay compensation for the taking possession of Concession Assets and their improvement and replacement etc. for the operation of the KCR system. The amount of compensation will be calculated in accordance with the provisions of the IOA.

- (d) Upon progressive integration of the MTR and KCR systems in future, there would be assets used for the operation of both the MTR system and the KCR system (Common Assets). The Bill contains provisions stipulating that there shall be arrangements to enable Government to use the Common Assets which belong to MTRCL and which Government has not taken possession of upon franchise revocation, suspension or expiry. Correspondingly, there are provisions in the Bill for MergeCo, upon revocation of the franchise as it relates to the KCR railways or suspension of part of the franchise, to use those Common Assets which belong to KCRC and have been taken possession of by Government. Arrangements for the use of the Common Assets would be set out in the IOA.
- (e) The existing MTRO requires MTRCL to maintain a proper and efficient service and stipulates that in approving an extension of MTRCL's franchise, the Chief Executive in Council needs to be satisfied that the Corporation is capable of maintaining a proper and efficient service. Since MergeCo would be operating KCRC bus service within the North-west Transit Service Area ("TSA bus service") in addition to the MTR and KCR, the Bill contains provisions which make it clear that where MergeCo operates the TSA bus service during the concession period, it must ensure that such service is operated properly and efficiently.

40. The Bills Committee has examined the appropriateness of defining the meanings of substantial failure by MergeCo to discharge an obligation under the Service Concession Agreement or the IOA, and a major breach by MergeCo of the Service Concession Agreement which will be regarded as a default under the franchise. The Administration has pointed out that the IOA already states clearly the safety requirements and minimum performance level for the services to be provided. The Administration would take these into account as well as all relevant factors in assessing whether MergeCo is in default under the franchise on a case by case basis.

41. The Bills Committee has also considered whether there is a need to provide an objective yardstick for the term "substantial breakdown of the service". The Administration advises that this reference is contained in an existing provision in MTRO. Since section 16 of MTRO sets out the conditions which would lead to a serious consequence of franchise revocation, it is appropriate to qualify that the service breakdown must be "substantial" before triggering the procedures for franchise revocation. Whether or not a service breakdown is "substantial" is to be decided according to the fact of each case.

42. The Bills Committee has requested the Administration to set out its policy intent and factors to be taken into account when determining whether a particular incident would be construed as a substantial failure or substantial breakdown of service by MergeCo when the Bill resumes Second Reading debate on 6 June 2007.

Employment-related matters (the new section 52D)

43. The Bill contains specific provisions for transferring the employment contracts of all serving KCRC staff at the time of the rail merger to MergeCo with continuity of their existing retirement benefits and for dealing with other employee-related issues. The purpose is that upon the Merger Date:

- (a) all serving staff of KCRC immediately before the Merger Date would be deemed to be employed by MergeCo from the Merger Date; and
- (b) the rights and liabilities to which KCRC was entitled or subject before the date of the rail merger under employment contracts entered into with KCRC and under the prevailing retirement schemes relating to KCRC staff would be vested in MergeCo on that date so that, among other things:
 - (i) the vested employment contracts would be construed from the Merger Date as if MergeCo had been a party thereto instead of KCRC, as the case may be; and
 - (ii) each vested employment contract would be deemed for all purposes to be a single continuing employment.

44. The Bills Committee notes that some members of the Bills Committee hold a strong view about the continued application of the KCRC's variable pay scheme after the rail merger. Concerns have been raised that notwithstanding the incidents such as the East Rail underframe equipment mounting cracks and the West Rail voltage transformer fire incident as well as the incidents and delays involving the railway systems that occurred from time to time in the past

few years, the Managing Board of KCRC still considered that payment of variable pay for 2006 should not be influenced by these spate of incidents. These members have called on the Administration and KCRC to repeal the application of the variable pay scheme before the rail merger; otherwise, all these employment contracts with the terms relating to the variable pay scheme would be deemed to be effective at the time of the rail merger.

Application of certain laws to MTRCL and KCRC

45. The Bills Committee has examined the scope of exemption granted under section 54 of MTRO and section 35 of KCRCO to see if there is a need to align the provisions therein after the rail merger.

46. Section 54 of MTRO and section 35 of KCRCO stipulate the scope of exemptions granted to MTRCL and KCRC under the Buildings Ordinance ("BO") (Cap 123) and the Public Health and Municipal Services Ordinance ("PHMSO") (Cap 132). In respect of PHMSO, the scope of the exemptions granted under section 54(1) of MTRO and section 35(3) of KCRCO are as follows:

- (a) MTRCL is exempted from PHMSO provisions relating to public toilets, whereas KCRC is not;
- (b) MTRCL is exempted from provisions of the PHMSO relating to nuisance (e.g emission of air either above or below the temperature of external air from ventilation outlets) and obstruction to scavenging or conservancy operation, whereas KCRC is not. The difference is mainly because MTRCL's operations are primarily in the congested urban areas whereas KCRC's have been in the rural areas; and
- (c) the exemption provisions in PHMSO regarding the regulations related to advertising and signs erected on the railway or railway premises are broadly the same under MTRO and KCRCO.

47. The Bills Committee notes the Administration's view that the exemption from the provisions regarding public toilets of the PHMSO would continue not to apply to the KCRC Railways. To maintain the status quo, the Administration will introduce a Committee Stage amendment (CSA) to the Bill to clearly stipulate that during the concession period, section 54(1) of MTRO (insofar as it relates to sections 3 and 4 of Schedule 2) does not apply in relation to any part of the franchise relating to the KCRC Railways.

48. Regarding exemption from provisions of the PHMSO relating to nuisance, the Administration has pointed out that in recent years, KCRC has further expanded into the urban areas with the construction of East Tsim Sha

Tsui Station and Kowloon Southern Link project and therefore the relevant exemption currently applicable to the MTR should in future also apply to the KCRC Railways. Nevertheless, this does not mean that railway construction would be exempted from the stringent requirements set by the relevant authority.

49. In respect of BO, the Administration advises that the scope of exemption mentioned in sections 54(2) and (3) of MTRO and section 35(1) of KCRCO are the same. They provide that the Building Authority, having regard to the exceptional nature of buildings and other works connected with the operation or construction of the railway, may exempt those works from the provisions of BO. The Administration further points out that the exemption in respect of BO is only applicable to approval and related procedures under BO. The design and construction of all railways are subject to the regulation and approval of a committee comprising relevant government departments. As advised by the Buildings Department, the two corporations have to comply with the health and safety standards stipulated in BO in the railway design and construction works and do not have any special exemptions in this regard. On the other hand, the Administration clarifies that there is no statutory requirement on the provision of public toilet facilities under BO.

Names of MergeCo

50. The Bills Committee notes that prior to privatization, the names of the Corporation is "Mass Transit Railway Corporation (地下鐵路有限公司)". Upon privatization, the names of the entity have been changed to "MTR Corporation Limited (地鐵有限公司)". In the context of the Bill, the Chinese name of the Corporation is proposed to be changed to "香港鐵路有限公司" upon merger whereas the English name will remain unchanged.

51. The Bills Committee has expressed concern about the confusion caused by the adoption and use of different names in the ordinances. It has urged the Administration to ensure that proper references to the names of the Corporation are used in the relevant ordinances. For clarity purposes, the Administration will introduce CSAs relating to the change of the Chinese name of the Corporation upon merger and the interpretation of the various references to the names of the Corporation to reflect the change of names from privatization to the rail merger.

Treatment of other KCRC contracts, licences, permits, etc.

52. The Bills Committee notes that some of the KCRC's contracts relate to the operation of KCRC's railway and bus services, such as maintenance contracts. Certain rights and liabilities under these contracts would need to be transferred to MergeCo in order to enable MergeCo to operate the KCRC services. The Bills Committee takes note of the technical provisions for

vesting the relevant rights and liabilities in the contracts which fall to be exercised or performed by KCRC on or after the merger in MergeCo as well as a waiver clause which would waive any conditions contained in the relevant KCRC contracts that prohibit such vesting.

Proposals to amend the KCRCO

53. The Bills Committee notes that after the rail merger, KCRC would cease to operate railway and bus services while it would retain certain administrative, accounting and treasury functions. The following changes to the KCRCO would be required:

- (a) to empower KCRC to grant the right to MTRCL to use KCRC assets for operation of the KCR railway and bus services by way of a service concession and, in connection with the service concession, to dispose of its assets;
- (b) to make it clear that KCRC shall not exercise its power under the KCRCO to operate railway and bus services nor to construct new railways during the concession period;
- (c) to make it clear that KCRC is not required to appoint a Chief Executive Officer during the concession period;
- (d) to make consequential change to the composition of the Managing Board to take into account the proposal in sub-paragraph (c) above; and
- (e) to change the quorum of the Managing Board from five to a simple majority of the members of the Managing Board during the concession period, as the size of the Managing Board of KCRC is expected to be downsized during the concession period when the corporation would have no transport operation function.

Part III: Powers and obligations of MergeCo and the Government under the IOA for the operation of the two railway systems

Fare Regulation

54. At present, both MTRCL and KCRC have fare autonomy, and they set their fares in accordance with prudent commercial principles, having regard to, inter alia, economic conditions, competition from other transport modes and whether the services are value for money. In the context of the rail merger exercise, MTRCL and KCRC have agreed that MergeCo would adopt a

formulaic approach for determining future fare adjustments to replace fare autonomy. The fare adjustment mechanism (FAM) after the rail merger would be based on the following formula :

$$\text{Overall fare adjustment rate} = 0.5 * \Delta \text{CCPI} + 0.5 * \Delta \text{Wage Index} - \text{Productivity Factor}$$

where ΔCCPI is the change in the composite Consumer Price Index and $\Delta \text{Wage Index}$ is the change in Nominal Wage Index (Transport Sector). Both indices are published data of the Census & Statistics Department. The productivity factor would be a pre-agreed fixed number. It would be set at 0.1% starting from the 6th year of the rail merger.

55. Under the proposed FAM, fares would be reviewed and adjusted on an annual basis. There would be a trigger mechanism under which overall fare reduction or increase of less than 1.5% would be carried over to the next annual fare review. The overall fare adjustment rate calculated from the formula would apply to the fares of MergeCo as in one basket. However, MergeCo may determine the rate of adjustment of individual railway fares which shall be within the range of ± 10 percentage points from the overall fare adjustment rate ("the permitted range") provided that the adjustment rate of weighted average fare of all individual fares must be equal to the overall fare adjustment rate derived from the FAM formula and that there shall be no increase of any individual railway fares if the overall fare adjustment rate is negative.

56. The Bills Committee notes that fares of all existing and new railway lines on the integrated MTR/KCR network (other than the Airport Express Line, Tung Chung Cable Car, intercity and freight services, promotional fares and those new railway lines which are not natural extensions of the MTR or KCR railways and are not intended for the use of daily commuters for domestic travel) as well as the fares of Light Rail and TSA bus service will be subject to the FAM (i.e. Controlled Fares).

57. The Bills Committee has examined the control mechanism for ensuring the accuracy of calculations under the FAM. The Administration has advised that under the IOA, MergeCo shall, in each year and at its own cost, appoint two independent third party experts for the purpose of certifying whether the decision of MergeCo on the adjustments to Controlled Fares in the relevant year complies with the FAM. Unless the FAM dictates that there shall be no adjustment to the Controlled Fares in a particular year, MergeCo shall at its own cost appoint an additional independent expert for the fare review in that year. The selection of one of the independent experts shall be subject to Government's agreement.

Adjustment of individual fares within the permitted range

58. The Bills Committee notes that there are strong views among members on the proposal to allow MergeCo to adjust individual fares within the range of ± 10 percentage points from the overall fare adjustment rate under the proposed FAM. Members are concerned about the uncertainty created by the proposed flexibility which would render the FAM no longer transparent and objective. They are also worried that passengers in remote areas where competition is not keen would be subject to a higher rate of fare increase. In the extreme case, the gap between individual fares after applying the flexibility of ± 10 percentage points from the overall fare adjustment rate can be as high as 20%. This will give rise to social discord. The Bills Committee has therefore requested the Administration to reduce the scope of flexibility granted to MergeCo for adjusting the rate of fare increase/decrease for individual fares from the overall adjustment rate to ± 5 percentage points. Some members even consider that it is unfair to allow MergeCo to compete with other public transport services through such predatory marketing practices, and hence, the flexibility granted to MergeCo to adjust individual fares should be repealed.

59. The Administration has advised that as part of the overall merger package, the existing fare autonomy of the two railway corporations will be replaced with the FAM upon implementation of the rail merger. Fares of MergeCo would be adjusted according to a direct-drive formula which is linked to changes in consumer price index and wage index as well as a pre-determined productivity factor. As compared with the existing fare autonomy, the FAM would restrict MergeCo's discretion to increase its fares and mandate MergeCo to reduce fares under specified circumstances. The overall fare adjustment rate by MergeCo would be capped at the overall fare adjustment rate derived from the FAM formula, i.e. the adjustment rate of weighted average fare of all individual fares must equal to the overall fare adjustment rate derived from the FAM formula. The FAM itself has already ensured that MergeCo would not obtain additional financial benefits even if it decides to exercise flexibility in adjusting individual fares at different rates within the permitted range. Besides, the railways face keen competition from other public transport services. MergeCo needs to be able to cope with market changes. It is therefore necessary that MergeCo should be able to retain certain flexibility in adjusting individual fares. In the course of determination, MergeCo must take into account public affordability of its fares, otherwise its passengers would switch to other modes which would not be in MergeCo's own interest. From a practical point of view, given that railway fares are set to the nearest of \$0.1 and \$0.5 for Octopus and single journey tickets respectively, it is not practicable to require MergeCo to adjust all individual fares by the same overall adjustment rate across the board.

60. The Administration also advises the Bills Committee that flexibility for different adjustment rates to individual fares is not unique to the railway

corporations, and there were cases in past years where the actual adjustment rates of individual franchised bus routes deviated from the overall approved fare adjustment rate by more than ± 10 percentage points.

61. To address members' concerns, the Administration advises that after further discussion with MTRCL, the degree of flexibility granted to MergeCo to adjust individual fares by not more than ± 10 percentage points will be revised to ± 5 percentage points from the overall fare adjustment rate. The Bills Committee notes that some members welcome the revised proposal, whilst some other members take the view that the permitted range of flexibility should be reduced further and the Administration and MergeCo should monitor the situation to ensure that long-haul passengers in Tin Shui Wai, Tuen Mun, Yuen Long and Tung Chung would not be adversely affected as a result of applying the flexibility to adjust individual fares within the permitted range.

Suggestions to refine the fare regulatory framework

62. The Bills Committee has examined various proposals put forward by members to refine the fare regulatory framework after the rail merger. Some members acknowledge that the replacement of fare autonomy by a FAM is an improvement, whilst some consider that MergeCo should use part of the profits from property development to set up a fare stabilization fund to moderate the rate of fare increase and some others consider that railway fares should be subject to the approval of LegCo or the Executive Council. There are also suggestions that MergeCo should consider other factors such as prevailing economic conditions, its operating environment and public affordability before determining the rate of fare increase or decrease under the FAM, or imposing a cap on the rate of fare increase.

63. The Administration and MTRCL have advised the Bills Committee that railway development is highly capital intensive, not only during the initial construction phase of the rail infrastructures but also throughout the life of the operation. To ensure long-term sustainability for provision of safe and quality passenger service and also to meet the demands of a listed company, MTRCL needs to earn a commercial return. For a new railway project that will benefit the public but will not be financially viable, there is a funding gap to be bridged. The granting of property development rights is a way for bridging the funding gap of new railway projects. The funding through property development rights has enabled MTRCL to meet the high capital costs of the rail infrastructures whilst keeping fares affordable. The prevailing fare structure has always been used as the basis for the calculation of funding gap requirement and correspondingly the amount of property rights granted to MTRCL as the Government's means to providing funding. In other words, for railway projects where property rights were granted, the initial fares of the new railways concerned have already taken into account the expected property profits. Given that the profits from property developments arising from the

application of the rail-and-property model for railway development have been taken into account in the setting of the initial fares of the relevant railways, using such profits to set up a fare stabilization fund under the FAM would have the effect of double-counting the property development profits.

64. The Bills Committee has also explored the feasibility of subjecting fare adjustments to the approval of the Chief Executive in Council or LegCo. MTRCL has advised that in view of the drastic change from fare autonomy to price regulation by FAM, they do not agree to subject fare adjustments of MergeCo to approval by Government or LegCo. It also considers it inappropriate to impose an artificial cap on the overall fare adjustment rate. According to MTRCL, fare levels after the rail merger would be adjusted according to a formula which is linked to changes in consumer price index and wage index as well as a pre-determined productivity factor. These indices are objective and transparent. In general, this formula can reflect economic conditions in Hong Kong and affordability of the public. The addition of other factors for consideration would be inconsistent with the regulatory approach of adopting a direct-drive fare adjustment formula.

65. MTRCL has also referred to the submission put forward by Professor RIDLEY of Imperial College, London on the merits of the proposed FAM. Professor RIDLEY is of the view that "The formula, by allowing an automatic annual adjustment, protects the interests of the workforce of the metro by providing income that can support fair wages, protects the legitimate interests of shareholders who receive a fair return on the capital they provide, protects the interests of taxpayers by giving strong management incentives to deliver efficiency, and protects the interests of the travelling public against unjustified fares increases..... Therefore, in order to facilitate stable business decisions by the metro to deliver sustained, long-term service quality, it is essential that the agreed formula for annual adjustments in fares is adopted automatically and in full."

66. The Bills Committee has also examined whether the Government would have measures to influence the decision of MergeCo in respect of fare increase in case of special circumstances such as serious economic downturn. The Administration has pointed out that there is already a mechanism which provides for the handling of very special circumstances that affect public interest. Under MTRO, the Chief Executive in Council has power to give direction to MTRCL in relation to any matter concerning the franchise if he considers the public interest so requires. There is no specific restriction on the scope of such direction. MTRO also stipulates that the Government is liable to pay compensation to the Corporation for loss or damage sustained by the Corporation arising from its compliance with the direction.

67. Regarding consultation with LegCo on fare-related matters after the rail merger, the Administration points out that there is also a provision in the

IOA requiring MergeCo to notify the Panel on Transport of LegCo in writing before implementation of fare adjustment. MTRCL has advised that MergeCo would be prepared to attend meetings of the Panel on Transport of LegCo to answer questions on fare adjustment.

Hypothetical application of FAM

68. The Bills Committee has examined the hypothetical changes of railway fares over the past 22 years by applying the FAM formula to see how it works. The Bills Committee notes the Administration's view that it is not appropriate to artificially apply the fare adjustment formula retrospectively as if it had been agreed for application at that time, which it was not, and compare the hypothetical result with the actual fare increases in the past period. According to the Administration's rough analysis on the hypothetical calculations for different time periods (Appendix II to LC Paper No. CB(1) 258/06-07(01)), the FAM would have resulted in :

- (a) overall reduction in fares by 0.5% or 5.7%, as compared to actual cumulative increase of 13.8% in railway fares during the last 10 years;
- (b) lower cumulative fare increase rate than actual during the last 15 years;
- (c) fare increase rates comparable to the actual during the last 18 or 22 years; and
- (d) similar results are obtained if the calculations are based on simple average rate of fare adjustments per annum over the relevant time periods.

Determination of the productivity factor under the FAM

69. The Bills Committee has examined the basis for determining the productivity factor under the FAM. According to the Administration, there is no single authoritative methodology recognized internationally for measuring productivity of the railways. This is due to special characteristics of the railway industry which involves heavy investment and long payback period. If the Administration adopts the same approach used for calculating the productivity gain of the franchised bus industry in Hong Kong to measure the productivity performance of the railway industry, it would yield a negative result of -2.6% per annum. The net effect is that this would amplify future fare increases or decrease the level of fare reduction. This would not be in the interest of the travelling public. Under the proposed FAM formula, the productivity factor would be set at a positive value of 0.1%, which would have the effect of moderating future rail fare increase (or increasing the level of future rail fare reduction, as the case may be) by 0.1%. In considering that MergeCo would

return the benefits of the merger synergies to passengers through fare reduction immediately upon the merger before the expected synergies take full effect, the productivity value of 0.1% would take effect starting from the 6th year of the merger.

Fare reduction package

70. In the context of the rail merger, a fare reduction package is proposed as an integral part of the FAM. According to the Administration, the fare reduction package is made possible due to the synergy that could be brought about by the merger. MergeCo will reduce the railway fares immediately from the first day of the merger as follows:

- (a) abolition of second boarding charge ranging from \$1 to \$7;
- (b) further global fare reduction of \$0.20 for all Octopus card users paying full fares;
- (c) an extra \$1 reduction for medium/long distance journeys charging \$12 or above;
- (d) for all journeys charging \$12 or above, if (a), (b) and (c) above when combined result in less than a 10% reduction, there would be a further reduction to achieve a minimum of a 10% reduction for all these journeys; and
- (e) for all journeys charging between \$8.50 and \$11.90, if (a) and (b) above when combined result in less than a 5% reduction, there would be a further reduction to achieve a minimum of a 5% reduction for all these journeys.

71. MergeCo will also provide a concessionary fare of \$2 per trip in the first year after the rail merger for senior citizens travelling on the railway network on Sundays and public holidays. The existing student fare discount would be maintained, i.e. students would continue to enjoy half fares when travelling on MTR.

Effective period of fare reduction

72. The Bills Committee has expressed grave concern that railway fares could be adjusted upwards in accordance with the FAM shortly after the rail merger, notwithstanding the proposed fare reduction on Day One of the merger and the undertaking given by the two railway corporations not to increase their fares for two years starting from April 2006. Members are concerned that as the two railway corporations have not reduced their fares during the past deflationary period, there is already room for them to reduce railway fares, not

to mention the fact that they are making profit each year. In order to enable the travelling public to enjoy a longer period of fare reduction, they consider that the two-year commitment not to increase railway fares should count from passage of the Bill instead of the signing of the MoU (i.e. April 2006). To this end, the Bills Committee has passed a motion strongly requesting the Government to seek an agreement with the two railway corporations to reduce railway fares immediately, and to formally activate the FAM, which allows for increase and reduction in railway fares, two years after the passage of the Bill.

73. The Administration advises that the proposed fare reduction which amounts to an annual saving of \$600 million for the public is made possible only because of synergies to be achieved as a result of the merger. The two corporations have estimated that the synergies arising from the merger is only \$450 million per annum. In other words, the revenue foregone due to fare reduction from the first day of the merger has already exceeded the estimated amount of potential synergies.

74. MTRCL also points out that it has already made considerable concession by agreeing to replace fare autonomy with FAM upon merger. By reason of the on-going discussion of the rail merger, the Corporation has frozen its fares for more than three years since February 2004. MTRCL has indicated that it is very difficult for the Corporation to absorb the impact of a prolonged period of fare freeze following the proposed fare reduction on its operation. Further, rail transport fares are already at a very competitive level before any fare reductions proposed upon implementation of the merger.

75. After several rounds of discussion between the Administration and MTRCL, MTRCL finally offers to extend the effective period of its commitment not to increase fares from April 2008 to June 2009 on the basis that the rail merger will be implemented.

Scope of the fare reduction package

76. The Bills Committee has examined why the proposed fare reduction would only apply to domestic MTR and KCR railway lines but not fares of the Airport Express Line (AEL) and Lo Wu as well as the Light Rail (LR) services. The Bills Committee notes that Tuen Mun and Yuen Long District Councils have expressed grave concern about the Administration's proposal to exclude the LR services from the fare reduction package. The Bills Committee has urged the Administration and the two railway corporations to review the matter, and to increase also the rate of fare reduction to benefit the travelling public.

77. According to the Administration, in the light of the potential synergies arising from the rail merger, the travelling public will get immediate benefit out of the rail merger. The objective of the fare reduction package is to benefit local commuters in domestic travels. For AEL service, it is not used by

commuters as a form of daily travel, whereas airport workers who are frequent users of AEL are already provided with substantial discount. As regards Lo Wu service, its main service target is different from the domestic railway services. There are historical reasons to maintain a different fare structure of the Lo Wu service which helps maintain a relatively low fare levels for the East Rail service between Sheung Shui and Tsim Sha Tsui (and Tsim Sha Tsui East now). Reduction of Lo Wu fares would have a negative impact on the East Rail domestic fares which would affect over 660,000 daily commuters and would also adversely affect the financial position of MergeCo.

78. Regarding the LR system, the Administration points out that it has been in deficit requiring cross-subsidization from KCRC's other operations. There is little scope for fare reduction which would affect the sustainability of the LR system. Besides, it is noted that nearly one-third of LR passengers are already enjoying free service for interchange with West Rail, and frequent LR users can benefit from the "Light Rail Frequent User Bonus Scheme" which provides fare concession equivalent to about 10% fare discount. The Bills Committee considers that as LR is the primary mode of public transport services in the North-west TSA, there is an urgent need for the Administration and MergeCo to review the role of LR in the overall public transport services market and make necessary improvements so as to cater for the transport needs of residents in the areas at affordable prices.

Concessionary schemes

79. The Bills Committee notes that some members are very concerned about the possibility of gradual cancellation of promotional and concessionary fares for passengers after the rail merger as this would offset the benefits associated with the provision of fare reduction in the context of the rail merger. The Bills Committee has requested the two railway corporations to give an undertaking not to cancel the promotional and concessionary fares, and consider introducing new concessionary monthly ticket schemes for the benefit of the travelling public.

80. The two railway corporations have pointed out that they have introduced a number of fare concessionary schemes over the past few years in the light of the overall economic environment of Hong Kong, their marketing strategy and passenger demand so as to lessen the burden of the travelling public. These include MTR Fare Savers in many districts, East Rail/West Rail One-Month Pass, West Rail Discovery Pass, East Rail/West Rail travel package, Child/Senior Citizen \$2 special concession on West Rail on Saturdays, Sundays and public holidays, and other inter-modal discounts for interchange. The two corporations have indicated that the fare concessionary schemes would continue to be reviewed regularly in the light of market conditions and passenger demand. The Administration also advises that according to the spirit of free enterprise, it will be the commercial decision of railway

corporations as to whether they will offer concessions.

81. The Bills Committee has also examined the requests put forward by members for including a new clause in the IOA, requiring MergeCo to provide half-fare concession to full-time students aged 25 or below, senior citizens aged 65 or above and people with disabilities (PwDs). The Bills Committee notes that some members are of the view that as the two railway corporations are making profits each year, they shall take the lead to fulfill their corporate social responsibility and offer fare concessions to the above groups of passengers, particularly PwDs. Government, being the sole owner of KCRC and the majority shareholder of MTRCL, should also exercise its influence in the respective Management Boards to request the two railway corporations to offer concessionary fares to PwDs.

82. The Administration advises that through its discussion with MTRCL on the rail merger, MTRCL has agreed to continue retaining existing half-fare concession for student passengers using MTR service and half-fare concession for senior citizens using MTR and KCR services after the rail merger. MTRCL however has advised that fare concessions are their own initiatives and thus it is not appropriate to stipulate this as a requirement in the IOA. The Bills Committee notes that MTRCL does not agree to add the proposed new provision in the IOA.

83. Regarding the provision of concessionary fares to PwDs, the Administration has pointed out that public transport services in Hong Kong are provided by the private sector under prudent commercial principles without Government subsidy. Should the Government make it mandatory for the operators to offer any particular fare concession, the income of the operators may drop which would pose pressure for fare increase. This would not be in the interest of the public. The Administration is aware of members' concern about the matter and is presently considering ways to take forward the matter in collaboration with the Health, Welfare and Food Bureau. The Administration would continue to discuss the matter with the Subcommittee to Study the Transport Needs of and Provision of Concessionary Public Transport Fares for Persons with Disabilities. As a means to assist the PwDs to access the MTR, MTRCL has stressed that they have put into considerable resources in improving station facilities. Over \$400 million has been spent on retrofitting new station facilities and a further \$100 million will be committed for the next five years.

Safety and service requirements

84. The Bills Committee notes the concerns expressed by members that as the railway network in Hong Kong is continuously expanding with part of the railway systems starting to age, and in view of the recent serious railway incidents such as the East Rail underframe equipment mounting cracks and the

West Rail voltage transformer fire incident as well as the incidents and delays involving the railway systems that occurred from time to time in the past few years, which have aroused public concern about the safety of railway operations, the Government should strengthen its supervision of the two railway corporations and adopt a series of new measures, in order to safeguard the safety of the public and ensure that the railway systems are capable of providing efficient, effective and safe services. To this end, the Bills Committee has examined the following suggestions put forward by members:

- (a) including the number of hours of service disruptions or delays resulting from railway incidents, the number of affected passengers and the number of the resultant casualties as factors to be considered when assessing annually whether the services of the railway corporations have attained the required standards;
- (b) introducing a demerit points system for situations such as disruptions, delays and system failures in train services, and setting objective and clear standards for the service performance of the railway corporations;
- (c) expanding the current staff establishment and powers of Hong Kong Railway Inspectorate to enable them to make assessments and propose improvement measures on the various safety issues of the railway systems (including daily maintenance, system safety, train operations, etc);
- (d) requiring the railway corporations to provide radio reception services along all the railways (including the tunnels), so as to ensure that the public can obtain information on railway incidents and emergency arrangements more promptly; and
- (e) requesting the railway corporations to install screen doors or automated gates at the platforms of all railway stations so as to ensure the safety of passengers.

85. The Administration advises that at present, the safe and efficient operation of the MTR and KCR railways are regulated under the MTRO and KCRCO and the OA signed between Government and MTRCL. HKRI is responsible for monitoring railway safety, while the Transport Department is responsible for monitoring the performance of railway services. After the merger, all the relevant provisions in the existing OA would be retained in the IOA with suitable modifications to cover the regulation of both the MTR and the KCR railways. The Administration further advises that there are clear Performance Requirements stipulated in the IOA and that the level of a number of Performance Requirements would be uplifted after the rail merger.

86. The Administration advises that MTRCL and KCRC have already installed a special broadcasting system in their respective railway to enable direct communication between train drivers and passengers as necessary. MTRCL also advises that the corporation is studying the installation of Automatic Platform Gates (APGs) at above-ground MTR stations.

Performance Requirements (Clause 4 of the IOA and sections 9 to 14 of MTRO)

87. The Bills Committee notes the Administration's views that under the existing legislation and OA, MTRCL is required to meet a set of pre-determined performance requirements, which are objective and transparent. A set of comprehensive and objective mechanism for monitoring railway performance is already in place, which requires continuous review and improvement from the railway corporations so that the services provided can meet changing needs. Currently there are three main performance requirements that relate to the monitoring of service performance of railway, viz. Train Service Delivery, Passenger Journeys On Time and Train Punctuality. They are scientific and objective measurements, which have taken into account fully and comprehensively the impact of railway incidents of different nature on train services, since the nature, duration and the timing of the incidents (e.g. whether they occur during peak hours) will have different levels of impact. The relevant requirements are set in accordance with international practices and are set at levels higher than international levels.

88. On the suggestion to introduce an additional performance indicator on train service disruptions, the Administration's view is that the existing Performance Requirements are commonly-used international standards and that Hong Kong should not deviate from them by adopting other not proven or well-tested service indicators. It is only through the international standard that the Administration and the two railway corporations can measure Hong Kong's performance against other systems. Moreover, having a train service disruption indicator may inadvertently create pressure on the frontline staff in incident recovery due to the risk of being sanctioned for service delay, thereby affecting railway safety and quality of services.

89. The Administration further points out that the existing Performance Requirements measure the overall railway performance in a comprehensive, objective and transparent manner. For instance, if there are frequent railway incidents causing delays and slippage of train schedule, it would be reflected in the performance in Train Service Delivery and Train Punctuality. Furthermore, if more incidents occurred during peak hours, it would have more significant effect on Passengers Journey On Time since there are a larger number of passengers during that period.

90. In case of non-compliance with the Performance Requirements, the

Administration advises that it could issue verbal or written warnings and require improvements from MergeCo or even impose financial penalty, or revoke the franchise if MergeCo is in substantial failure to comply with these requirements under the relevant legislation.

91. At the request of the Bills Committee, the Administration agrees to amend the IOA to require MergeCo to provide information to LegCo concerning any failure by MergeCo to meet any Performance Requirement and to advise the actions it has taken, are being taken or proposed to take to improve its performance within one month after the Commissioner for Transport has assessed a failure by MergeCo to meet any Performance Requirement during the operating period.

Customer Service Pledges (Clause 4.12 of the IOA)

92. The Bills Committee notes that apart from the Performance Requirements which set out the standards of performance MergeCo has to meet during the operating period, MergeCo shall establish and publish on an annual basis Customer Service Pledges. Customer Service Pledges however are voluntary targets and intentionally set at a higher level with a view to providing the best service quality to its passengers. Failure to comply with any of the Customer Service Pledges will not be subject to any penalty. The Bills Committee considers that MergeCo should take appropriate follow-up action should it constantly fail to meet the Customer Service Pledges. After taking into account MTRCL's elucidation and members' views, the Administration agrees to amend the relevant clause of the IOA to require MergeCo to explain any failure by the corporation to meet any Customer Service Pledge when publishing the actual performance and to provide information on the actions it has taken, or proposed to take to improve its performance.

Intercity passenger service and freight service (Clause 17 of the IOA)

93. The Bills Committee has examined why the intercity passenger and freight service are not subject to the same set of Performance Requirements and Customer Services Pledges for domestic service.

94. According to the Administration, intercity railway services are cross-boundary railway services provided jointly by KCRC and various railway authorities in the Mainland. Relevant arrangements for intercity railway services are worked out under mutual agreements between KCRC and these railway authorities. The situation is in certain ways similar to international flight services provided by airlines. Since the nature and mode of operation for intercity railway services differ from the local railway services, the Administration considers it difficult to apply all the provisions and requirements on local services as stipulated in the IOA to intercity railway services. Notwithstanding this, the proposed IOA contains provisions

governing the arrangements of the MergeCo in respect of the safety, general cleanliness, temperature of the compartments, ventilation and the emergency procedures, etc. in the provision of intercity railway services.

Disruption to train services (Clause 4.1 of the IOA)

95. Under clause 4.1.1 of the IOA, MergeCo shall report to the Commissioner for Transport and the Commissioner of Police, in accordance with the notification and alert procedures agreed between the Corporation and Government from time to time, with the least practicable delay:

- (a) the emergency closure of any station or any part of the railway during hours of operation;
- (b) any anticipated emergency closure of any station or any part of the railway that may affect the normal operation of the railway; and
- (c) any interruption or delay in train service which might affect the safe and efficient conveyance of passengers travelling or wishing to travel on the railway.

96. The Bills Committee has examined the circumstances under which MergeCo should report the disruptions concerned to the Commissioner for Transport and the Commissioner of Police and noted from the Administration that for incidents which may affect railway safety, the notification requirements for railway corporations have already been provided for under the relevant Regulations made under MTRO and KCRCO and supplemented by the procedures and arrangements agreed between them and Government. Clause 4.1.1 of the IOA only serves to ensure that MergeCo would inform the Commissioner for Transport and Commissioner of Police of service interruptions as described in the clause, so as to enable them to monitor the impact on passengers and to coordinate preparation for emergency support where necessary. In view of members' concern about the matter, the Administration agrees to amend the relevant clause to require MergeCo, in respect of all of the circumstances set out in clause 4.1.1, to notify the media as soon as practicable after reporting to the Commissioner for Transport and Commissioner of Police if the situation may affect the public and such notification will not adversely affect the safe and efficient operation of the railway.

Measuring customer satisfaction (Clause 4.13 of the IOA)

97. Under clause 4.13.1 of the IOA, MergeCo shall develop and maintain arrangements for measuring customer satisfaction with its railway services (including passenger satisfaction surveys and the method and extent of publication of the survey results). The Bills Committee considers that there is

a need to review the design of the customer satisfaction surveys so as to gauge the public views on how railway corporations handle a particular railway incident and the related contingency arrangements. The railway corporations agree to review their customers' satisfaction surveys and other customer feedback mechanisms with a view to effectively taking into consideration passengers' views obtained from these means on the way MergeCo handles railway incidents and the related contingency arrangements.

Safety management (Clause 5 of the IOA)

98. The Bills Committee has examined the adequacy of the provisions in the IOA to see if HKRI has the necessary authority to discharge his duties to ensure railway safety. The Bills Committee notes that the IOA would require MergeCo to, inter alia:

- (a) design, construct, operate and maintain (as the case may be) the railways having due regard to the safety of the railways;
- (b) establish, operate and maintain a safety management system to review, control and minimize safety risks;
- (c) satisfy the HKRI that any new lines or extensions of the railways are in all aspects safe and in sound condition to be used for carrying passengers before commissioning;
- (d) report to the Commissioner for Transport on disruptions of train services in accordance with the agreed procedures;
- (e) ensure the Commissioner for Transport has no objection to any material modification of the train service arrangement in respect of the hours of operation of train services and the service capacity for the core service hours before implementing such modification;
- (f) develop and maintain arrangements for measuring customer satisfaction with its railway services (including passenger satisfaction surveys and the method and extent of publication of the survey results); and
- (g) develop and maintain a system for handling passenger complaints and suggestions.

Further, under the IOA, MergeCo shall employ the services of an independent expert to review its safety management system at a regular interval of not more than three years, or such other period as the Corporation and the Inspector may agree from time to time.

99. In order to ensure impartiality of the independent safety expert and to assume a more proactive role in the selection process of the independent safety expert engaged by MergeCo, the Administration has taken into account members' views and agreed to stipulate in the IOA that the list of candidates for appointment as the independent expert by MergeCo shall be subject to agreement with HKRI. MergeCo shall also consult the Inspector on the study brief of the review and submit report of the review to the Inspector to explain the findings of the review.

100. Clause 5.5.1 of the IOA stipulates that the corporation shall establish, operate and maintain a maintenance management system for the maintenance of facilities, systems and trains to minimize safety risks as far as reasonably practicable and insofar as the circumstances reasonably require. The Bills Committee notes that some members are of the view that HKRI should be acquainted with an overall view on the maintenance schedules and procedures developed by the corporation to enhance railway safety. After deliberation, the Administration agrees to amend the IOA to require MergeCo to provide to the Inspector relevant documentation of the maintenance management system referred to in clause 5.5.1 of the IOA.

101. The Administration also advises that railway safety has always been the primary concern to Government. The Administration will continue with the existing arrangement whereby the 7-member HKRI team will be reinforced by seconding necessary professional and inspectorate staff from other departments on a need basis.

Platform screen doors and automatic platform gates

102. The Bills Committee has considered the difficulties associated with the retrofitting of platform screen doors (PSDs) and automatic platform gates (APGs) at existing railway stations. The Bills Committee notes that MTRCL has commenced a feasibility study on retrofitting APGs to the operational platforms at eight at-grade or aboveground stations in the MTR system. Regarding the retrofitting works at East Rail and Ma On Shan Rail stations, KCRC has advised that it has conducted studies along East Rail. Initially an automatic mechanical gap filler system will be fitted at platforms with large gaps between a train and a curved edge. The Bills Committee notes that curved platforms without such gap fillers pose an additional risk to boarding and alighting passengers if PSDs were provided. KCRC will soon award a contract for an automatic mechanical gap filler system, initially at Lo Wu station, so as to monitor passenger acceptance before installing at other curved platforms. With regard to LR, KCRC has pointed out that due to physical constraints and other operational consideration, KCRC has no plan to retrofit PSDs at LR stations.

Radio reception on board MTR trains

103. The Bills Committee has requested MTRCL to consider providing radio reception or upgrading its information dissemination system on board its trains so as to provide passengers with the latest news and information about railway incidents. The Administration has advised that MTRCL has installed a special broadcasting system to enable direct communication between train drivers and passengers. To enhance passenger service, MTRCL has recently rolled out 3G coverage across its network. Passengers can obtain information on news through the relevant internet service. MTRCL will also introduce WiFi service at platforms and concourses of 16 MTR stations in the latter half of 2007, enabling passengers to receive radio and TV services through wireless internet access.

104. The Bills Committee has urged MTRCL to examine further measures to enhance in-train dissemination of information to passengers and report to the Subcommittee on Matters Relating to Railways in six months' time. The Bills Committee has also requested the Administration to make it clear its stance in respect of the provision of radio reception on board MTR trains when the Bill resumes Second Reading debate on 6 June 2007.

Collection of fares (Clause 4.7 of the IOA)

105. The Bills Committee takes note of the incident of over-deduction of fares which occurred at an exit gate of the MTR Kowloon Tong Station in the afternoon of 10 January 2007 and the measures taken to prevent recurrence. It has examined the relevant provisions in the IOA to ensure that MergeCo would establish and maintain effective procedures to verify and ensure that the ticketing system is accurate for collection of fares.

106. The Bills Committee notes that as the regulator, the Transport Department requires the railway corporations to put in place a robust internal control and audit mechanism to ensure the provision of a reliable and accurate fare collection system to their customers. The department also monitors the trend of reliability of ticket gates through the monthly returns submitted by the corporations. According to the requirement of the existing OA, external auditor reports submitted to the department annually will provide an independent assessment on whether MTRCL has put in place internal control systems and procedures which are adequate to enable the corporation to measure and record their compliance with the Performance Requirements and their calculations of the Customer Service Pledges. The series of events, which the external auditor of the corporation has to look into under the audit plan, include reported discrepancies in fare collection at ticket gates of individual stations.

107. The Bills Committee has also considered the feasibility of setting a new Performance Requirement and Customer Service Pledge to measure the

accuracy of the add-value machines. The Administration's view is that it is difficult to identify an objective and reasonable yardstick which will be acceptable to all parties concerned to measure the performance of add-value machines in terms of their accuracy. Despite that, the corporations indicate that there are already set procedures for monitoring add-value machines to ensure their reliability and accuracy, and in case a fault of the machines is detected, the corporations would conduct investigation and rectify the faults as soon as possible. The Administration further advises that it will be a requirement of MergeCo to maintain a reliable and accurate ticketing system for collection of fares, and that add-value machines are part of the ticketing system.

Passenger environment (Clause 4.4 of the IOA)

108. Clause 4.4.3 of the IOA stipulates that MergeCo shall take into account all the guidance notes, practice notes and advice as may be issued by the Government from time to time relating to any aspects of the transmission of audio or audio-visual programmes in train compartments. The Bills Committee has reviewed the related matters with the Administration and notes that the volume of the audio broadcast would be at a level close to the ambient noise level inside the train compartment. The Administration would also require MergeCo under the proposed guideline to specify at least 25% of the compartments on each train as silent compartments which are free from broadcast with audio effect. For East Rail, West Rail and Ma On Shan Rail trains, if the rail merger is implemented, the proposed guideline will apply in full to these trains upon expiry of the current contract between KCRC and a commercial TV station regarding the provision of audio or audio-visual programmes on board these trains, which will be in August 2010.

Lighting and Ventilation (Clause 3.7 of the IOA)

109. The Bills Committee has urged the two railway corporations to improve the air flow at platforms of non-enclosed railway stations with reference to overseas experience. The two railway corporations advise that fans and spot cooling systems are installed at the platforms of some of the stations of the East Rail of KCRC and at above ground MTR stations, to cool waiting areas and to improve their air circulation. MTRCL is seeking information on the provision of cooling facilities in the rail system in Malaysia and will make reference to the information obtained in examining the feasibility of the application of these facilities to the MTR system. In parallel, MTRCL is also examining the feasibility of other possible ways, e.g. installation of additional cooling fans, enhancement of the existing ventilation system, etc. to improve the air flow in non-enclosed railway stations in the context of its station improvement plan for the relevant stations.

110. The Bills Committee considers it necessary for the Administration and

MergeCo to examine further on the subject matter and report to the Subcommittee on Matters Relating to Railways in six months' time.

Public toilets

111. The Bills Committee has requested the Administration and MTRCL to consider including relevant provisions in the IOA to ensure the provision of public toilets at railway stations, particularly existing MTR stations. Some members take the view that whilst MTRCL has placed considerable effort in improving and developing station commercial facilities to increase their profit, the corporation is not willing to put in resources to resolve the technical difficulties associated with the provision of toilet facilities for public use.

112. MTRCL has advised that it is not a common international practice to provide public toilets in urban metro as metro stations are normally built underground. Retrofitting toilets in underground stations will require not only heavy capital investment but also massive drainage and ventilation works which present great technical and engineering challenge. As such, the corporation has no plan to retrofit existing MTR underground stations with public toilets. MTRCL would however continue to work with relevant government departments to identify appropriate locations for public toilets in the vicinity of these existing MTR underground stations. It would also carry out a review of the feasibility of installing public toilets at or in the vicinity of its above-ground railway stations. For new railway projects, the corporation has taken on board members' views to include the provision of toilet facilities within, or adjacent to, stations in the overall design parameters for all future new railway lines, subject to any concerns raised by residents in the vicinity about the location of external ventilation exhausts. The corporation will also take steps to raise awareness of the availability of staff toilets for the needy.

113. The Bills Committee considers it necessary for the Administration and MergeCo to examine further on the subject matter and report to the Subcommittee on Matters Relating to Railways in six months' time. To this end, the Bills Committee also passed a motion, strongly urging the Government to instruct MTRCL to expeditiously formulate a policy on the provision of public toilets at railway stations, and to provide public toilets within the areas of the stations for the convenience of the public, including separate toilets specially for PwDs.

Signs and passenger information (Clause 4.15 of the IOA)

114. The Bills Committee is pleased to note that the Administration and the railway corporations have accepted members' suggestions to make arrangement to display a hotline number near all entry gates, ticket machines and add-value machines in their railway stations as soon as possible for passengers to make enquiries and seek in-station assistance. The two railway corporations would

also solicit the views of passengers on the provision of signs and passenger information, and they will follow up any specific suggestions or comments by passengers. MTRCL also agrees to progressively complete the improvement works for the entry gates after the rail merger such that all entry gates in MTR and KCR stations could display the remaining stored value of Octopus cards when passengers enter the gates.

Noise and Vibration (Clause 4.6 of the IOA)

115. The Bills Committee has taken the opportunity to request the two railway corporations to put in place measures to address the excessive noise generated by railway operations and maintenance activities. In the course of deliberation, views have been expressed that the Administration should consider stipulating in the IOA the requirement for MergeCo to take into account the guidance notes, practice notes and advice as may be issued by Environmental Protection Department ("EPD") from time to time relating to the noise level emitted due to maintenance works.

116. The Administration advises that noise from railway maintenance works is statutorily controlled under the mechanism in accordance with the Noise Control Ordinance (Cap. 400) ("NCO"). Similar to other construction activities which are subject to control by the Government, the noise of the railway maintenance works is subject to regulation of the construction noise permit ("CNP") system stipulated in section 6 of the NCO. EPD will require the relevant railway corporation to adopt the working practices that generates the lowest level of noise as far as practicable specifying such requirements in the CNP. If it is known to EPD at the time of issue of the CNP that there are specific and practicable methods available, such as the use of specially silenced items of powered mechanical equipment, acoustic screens and other noise control measures, EPD will specify such requirements in the CNP. The permit holder is liable to prosecution if the permit conditions are breached. The Bills Committee notes that in December 2006, EPD issued a CNP to KCRC requiring the installation of specially arranged acoustic kiosks, portable acoustic barriers or screens for noise reduction. As a result, the noise level generated from track grinding has been further reduced to about 70 dB(A).

117. The Bills Committee has also examined the replacement programme for major railway maintenance machines by KCRC. As the new machines can effectively reduce noise from maintenance activities, the Bills Committee has urged the railway corporations to implement the replacement programme as soon as possible so as to benefit the residents along the railway corridor. The Bills Committee has asked the Administration to closely monitor the situation and the two railway corporations to formulate effective measures to mitigate railway noise during both train operation and maintenance periods, and report to the Panel on Environmental Affairs in six months' time.

Improvement to the Light Rail services

118. The Bills Committee takes note of the concerns expressed by Tuen Mun District Council and Yuen Long District Council about the service quality and fare level of Light Rail as well as the open fare and ticketing arrangements, the signalized pedestrian crossings across the LR tracks, etc. The Bills Committee has asked the Administration and MTRCL to critically review the role of LR in the overall public transport service market within the North-west TSA in the light of the changing circumstances and introduce suitable improvement measures to enhance the transport services in the area at reasonable fares. The Bills Committee also urges the Administration and MTRCL to report in six months' time to the Subcommittee on Matters Relating to Railways on the related matters.

119. The Bills Committee has examined the mechanism for KCRC to consult the relevant District Councils on service adjustments to the LR and TSA bus service. The Administration advises that same as for KCRC currently, MergeCo will be required to consult the relevant District Councils and disclose relevant information to them for discussion prior to implementing such a plan. In case the plan of MergeCo is revised after the consultation with the District Councils, MergeCo will also be required to notify and disclose the relevant information to the DCs before implementation. This arrangement will be reflected in the IOA. Further, the relevant provisions in MTRO also enable the Government, if necessary, to disclose information obtained from MTRCL after consultation with the corporation.

Facilities and services for people with disabilities

Improvement of stations facilities

120. The Bills Committee considers that there is a need to improve railway facilities to promote the integration of PwDs into society. In the course of deliberation, the Administration has been requested to make suitable amendments to the IOA with a view to providing a convenient railway service to PwDs, including the following:

- (a) to provide lifts near the main entrances of station and platform as far as practicable;
- (b) to review the provision of lifts annually and to adjust the level of provision having regard to the results of the annual review on the demand for lift services by passengers;
- (c) to set up a users consultative committee, which should include, inter alia, users from PwDs and the elderly;

- (d) to provide bi-directional wide gates at all KCR stations, and improve the design of ticketing machines to facilitate access and use by persons with different types of disabilities;
- (e) to provide and maintain tactile guide paths, appropriate contrast tactile guide paths, anti-slip stair treads and escalator audible signals; and
- (f) to display on railway premises and the approaches thereto appropriate signs and information in Chinese and English, Braille texts and display systems with audible sounds and captions.

121. The Administration advises that the two railway corporations have established procedures to consult passenger groups representing PwDs to understand their need on service and facilities provision. After further discussion with the Government, MTRCL agrees to add a new clause in the IOA to stipulate that MergeCo shall establish procedures to consult groups representing PwDs, carry out annual reviews of its facilities provided for PwDs, and report the review result to the relevant groups representing PwDs. MTRCL also agrees to amend the relevant clause of the IOA to stipulate that escalators and lifts shall be installed in appropriate locations for the efficient and effective transportation of passengers within stations. MTRCL indicates that MergeCo would provide at least one wide-gate in each KCR station to enhance the convenience of users who are PwDs. As regards the feasibility of introducing a new customer service pledge on the reliability of the facilities for use by users who are PwDs, MTRCL has advised that in establishing Customer Service Pledges, the corporation will make reference to overseas examples and the practice of other railway operators. According to the information of MTRCL, there is currently no particular example of reliability targets on these particular facilities. MTRCL will continue to see if there is relevant information from overseas countries for its reference in this aspect.

122. The Bills Committee has examined whether the existing buses used by KCRC can be retrofitted to provide low-floor entrance/exit for PwDs. KCRC advises that at present, about two-third of its fleet have already been equipped with low-floor entrance/exit for PwDs. The corporation has a plan to replace old buses with accessible models upon replacement of their bus fleet, which would be progressively completed by 2012. The corporation would discuss with PwD organizations to see how improvement measures could be introduced to facilitate their use, and report to the relevant subcommittee in due course.

Promotion of employment of PwDs

123. The Bills Committee has examined the need for including suitable provisions in the IOA, requiring MergeCo to set a target for employment of PwDs, provide outreach service in encouraging employment of PwDs, and

adopt the guidelines for giving PwDs an appropriate degree of preference for appointment over other candidates as those of the Government.

124. The Administration points out that Government's policy objective is to ensure equal opportunities for PwDs in seeking productive and remunerative work in the open job market. Setting a target for employing PwDs is considered not a suitable or effective way for promoting employment of PwDs. Overseas experience so far in the implementation of an employment quota system could not help prove the effectiveness of such system in facilitating employment of PwDs. In helping PwDs to find suitable jobs, the Administration would emphasize their abilities rather than their disabilities, and would provide appropriate vocational training and employment services to them. The two railway corporations also advise that they have fulfilled their corporate social responsibilities in providing equal employment opportunities to PwDs. MergeCo would continue to consider ways to provide more job opportunities for PwDs and would publish annually the number of PwDs it employs.

125. Regarding the request for MergeCo to lease suitable shops at concessionary rental to social enterprises so as to facilitate employment of the PwDs and the disadvantaged groups, MTRCL indicates that commodities sold or services provided at station shops would need to meet passenger needs. There are various factors to be taken into account when determining the rents. MergeCo would consider letting out shop space to social enterprises on concessionary rental on a case-by-case basis. In the past, MTRCL has rented shops at its Tung Chung Station and Nam Cheong Station to social enterprises at concessionary rents. According to the spirit of free enterprise, Government does not require commercial enterprises to allocate station shops at concessionary rental to any particular organizations, and it is inappropriate to stipulate such requirement in the IOA.

126. On the suggestion for MergeCo to set up a Corporate Social Responsibility Committee comprised of individuals (including representatives of the disadvantaged groups, the PwDs community and the public) to facilitate and assist the Corporation in fulfilling its corporate social responsibility more effectively, MTRCL points out that it has all along endeavoured to fulfill its role of a socially responsible enterprise. MTRCL has been a signatory of the Hong Kong Corporate Social Responsibility Charter since 2005. The Charter commits the Corporation to promote the principles of responsibility by positively managing their social, environmental and economic impacts. The Corporation has also formulated and published a Corporate Social Responsibility (CSR) Guideline in furtherance of the Charter. A Sustainability and Corporate Social Responsibility Steering Committee was established in 2005 to ensure cohesive and top-down integrated supervision of the CSR Guideline. These arrangements would continue after the rail merger.

Impact on the implementation of Shatin to Central Link and other new railway projects

127. The Bills Committee has examined the mode of delivery and financing arrangements for new railway projects after the rail merger. Under the rail merger proposal, Government would have the right in future to determine whether the "ownership approach" (under which MergeCo would fund, construct and operate the new railway) or the "concession approach" (under which Government would fund the construction of the new railway and MergeCo would be granted a service concession to operate the new railway based on financial terms to be determined according to a pre-agreed mechanism) should be adopted for individual new railway projects which are not natural MTR-extension projects. For future projects which are natural MTR-extension projects, the status quo would apply i.e. Government would discuss the financial arrangement for the new project with MergeCo on the basis of the "ownership approach".

128. Regarding the financing arrangements for implementation of railway projects, the Administration advises that in considering the financing arrangements for future new railway projects, the Government would continue to examine carefully whether financial support should be provided having regard to the circumstances of individual cases, so as to ensure that maximum benefits for the public would be achieved from railway development. The Government would consider the most suitable mode of financing, including the grant of property development rights within the precinct of the railways or other measures, on a case-by-case basis.

Shatin to Central Link

129. The Bills Committee notes that some members have expressed grave concern about the slippage in the implementation of the Shatin to Central Link (SCL). As a result of the rail merger, implementation of SCL has been withheld for years. They are worried that with only one railway corporation left after the rail merger, the Administration would have little bargaining power when negotiating with MergeCo on the implementation of and funding arrangements for new railway projects. As a result, public interest would be sacrificed. In view of the uncertainty of the future of SCL, particularly the implementation timetable, alignment design, and funding approach for the project, the Bills Committee has examined whether it is appropriate to bundle the consideration of the Bill with the SCL project.

130. The Administration points out that since the acceptance of the SCL tender bid of KCRC in June 2002, KCRC had made changes to its original proposed SCL scheme, including two major revisions to the original proposal in the year 2004. As a result, Government would need to consider in detail the technical, operational and financial implications on the SCL project in respect

of such substantive amendments. On the other hand, the implementation programme for the SCL is also dependent on the progress of the Kai Tak Planning Review and the Wan Chai Development Phase II Review, which have yet to be finalized. Whilst the Government would discuss with the railway corporations the implementation details of SCL, including the funding approach for the project, taking into account the progress of the rail merger exercise, it would be inappropriate and unwise to bundle the two together because that could delay the merger exercise and hence the proposed rail fare reduction that would be made possible by the merger synergy. Early approval of the merger would help ensure the adoption of integrated interchange arrangements for SCL proposed under the merger. The Administration reassures the Bills Committee that Government will continue to pursue the SCL which would include a rail link across the harbour. The Administration would finalize the SCL scheme including implementation timetable in six months' time after completion of the legislative process for the rail merger and report to the Subcommittee on Matters Relating to Railways.

131. To address members' concerns about the uncertainty associated with the financial arrangement for future projects, the Administration also points out that after the rail merger, if Government cannot reach an agreement on the terms for MergeCo to take forward the SCL project on the basis of the "ownership approach", Government would have the additional option for requiring MergeCo to take up the operator's role and operate the new project under the "concession approach". In this regard, the Administration has taken into account members' views and agreed to amend the IOA to stipulate that if MergeCo fails to reach an agreement with the grantor of the service concession of the new railway on the relevant financial terms, each party shall separately nominate an independent valuer and the two valuers shall be jointly appointed by both parties to make the determination in accordance with the pre-agreed mechanism. In case the two valuers fail to make a joint determination, the dispute shall be referred to arbitration. Any arbitration award shall be binding on both parties.

Impact on railway staff

132. The Bills Committee is very concerned about the impact of the merger exercise on staff. It has received views from the Staff Consultative Council of MTRCL, KCRC Staff Consultative Committee, The Coalition of Five Unions of MTRCL and KCRC, and Hong Kong Mass Transit Railway Staff General Association, and urged the Administration and the two railway corporations to make every effort to allay the concerns expressed by the staff side, including, inter alia, the definition of frontline staff and job security for frontline staff, appointment, selection and appeal mechanism for merger-related staff issues, salary protection principles and status of the MergeCo grading structure design, major Terms and Conditions of Employment for MergeCo, staff arrangement process and the Voluntary Separation Scheme ("VSS"), etc.

133. The two railway corporations have advised that since the announcement of the merger proposal in April 2006, they have maintained close communication with their staff on subjects which are of their concern and organized over 200 briefing sessions for staff. The Bills Committee notes that the two railway corporations have reached mutual agreement/understanding with their staff organizations and the five unions on various staff-related matters. Notwithstanding, it has urged the two railway corporations to continue liaising with the staff side and The Coalition of Five Unions of MTRCL and KCRC with a view to resolving the differences between the management and staff side over the remaining staff-related matters.

Protection of job security for frontline staff and related matters

134. The Bills Committee notes that after a thorough staff consultation exercise, the two corporations have agreed to a list of frontline positions which covers 8,460 staff members, accounting for more than 80% of the non-managerial staff of the two corporations. Frontline staff do not need to go through selection and will be transferred directly to MergeCo upon the rail merger. The Bills Committee has examined the need of providing similar job security for non-frontline staff as well.

135. The two railway corporations advise that due to business growth including commissioning of new railways as well as retirement and turnover, a total of 1,300 job vacancies will be available in the first 3 years after the merger, which is more than adequate to absorb the estimated 650 - 700 staff synergies. Therefore in overall terms, there would be more career development opportunities for staff after the rail merger. The two corporations envisage that majority of their staff would stay in their current jobs after the rail merger. MergeCo would make every effort to re-deploy affected staff to available vacancies.

136. The Bills Committee notes that a VSS will be provided for all eligible non-frontline staff, and has examined whether the VSS can be extended to cover frontline staff as well. The Bills Committee notes that some members take the view that for non-frontline staff where selection is required, an alternative arrangement should be provided by MergeCo to allow the concerned staff to opt for the VSS after the completion of the selection process. This could ensure that staff who are not selected for the relevant posts could have a choice to leave the company instead of accepting the re-deployment arrangement which would create uncertainty to staff.

137. The two railway corporations indicate that after the rail merger, all the MTR and KCR railways will continue to be operated, and hence, there should not be any redundancy posts for frontline staff, and hence, the need for launching VSS for this group of staff. Regarding the alternative arrangement

for offering VSS to non-frontline staff after the selection process, this would have the effect of encouraging staff to defer submitting the application for VSS until the completion of the selection process. As a policy consideration, this is not desirable.

Protection of salary, benefits and salary scale

138. The Bills Committee notes that staff are most concerned about matters relating to their individual salaries and their job grading. The two railway corporations have advised that in 2006, they have already committed to protecting staff's existing salaries and benefits associated with each staff member's existing grade, as well as protecting the existing salary scales of non-managerial staff. As a result of this commitment, for non-managerial staff, if the new salary scale is higher than the existing one, he/she will immediately enjoy a higher scale upon appointment to the new grade. Otherwise, he/she will retain the existing scale, which will be frozen until the new scale matches or exceeds his/her existing one. The two railway corporations have advised that this arrangement represents maximum protection to staff and therefore staff should not have any concerns over the impact of the new grading structure. The Bills Committee however notes the worries expressed by some members that individual staff may have to face with salary freeze for a very long period, and urged the two railway corporations to review the matter or consider imposing a cap on the duration of the salary freeze. There is also a need to fully consult staff and keep them informed of any latest development.

139. The Bills Committee has expressed concern about the grading structure design and the resultant changes to salary scales. The two railway corporations advise that the review is complex, as it involves a thorough study of the structure and functions of every department of MergeCo, as well as careful consideration on how the existing grading structures of the two corporations can fit into the new structure to ensure a smooth transition. On salary scales, they would take into account the 2007 market data on pay revisions before a final decision is made. The Bills Committee has examined whether the unilateral change of the salary scale of staff by the railway corporations is a breach of the employment contract. MTRCL confirms that the corporations have the legal right to do so, adding that there would be continued communication between the corporations and their staff on the subject before a final decision is made.

Major terms and conditions of employment

140. The Bills Committee has relayed the concerns expressed by the staff side over the need to further reduce the working hours and enlarge the scope of the retirement benefits as announced. The two railway corporations have advised that staff of MTRCL currently working at 42 hours per week will

maintain the same working hours; while those working at 39.25 hours per week will have their weekly working hours reduced to 39 hours. For KCRC, staff currently working at 45 hours per week will have their weekly working hours reduced to 42 hours, equivalent to a 7% reduction; while those working at 39 hours will maintain the same hours. Regarding other benefits, staff of MergeCo will enjoy free travel on the combined network upon the rail merger. As the existing KCRC staff's parents are eligible for free travel on the KCR network, the corporations consider that the staff affected may need some time to adjust to the new arrangement and have therefore agreed to offer a transitional arrangement. The corporations have also agreed to relax the eligibility criteria for overtime allowance after the rail merger, taking into account concerns of staff on overtime allowance and the unique nature of a few types of jobs.

Issuance of employment letter to staff

141. To allay the concerns expressed by the Bills Committee, the two railway corporations confirmed that all staff would receive a formal letter before implementation of the rail merger indicating that the transfer of staff to MergeCo upon the rail merger will be based on the prevailing terms. Such letter will also specify the MergeCo grade, terms and conditions for employment for frontline staff.

Regulatory regime under the integrated Operating Agreement

142. The Bills Committee notes that under the proposed rail merger, MergeCo would be granted a franchise to operate the MTR and KCR railways. The existing regulatory regime for MTRCL would be adopted with suitable modifications to incorporate the changes required for the inclusion of KCR services. The existing OA between MTRCL and the Government would be expanded into an IOA to cover the regulation of the operation of the KCR railways by MergeCo. MergeCo would be subject to the existing requirement to maintain proper and efficient service and to meet the required service and safety standards as prescribed in the IOA.

143. The Bills Committee has examined in detail the scope and adequacy of the Government's powers granted under the IOA for the purposes of monitoring the quality and safety of railway development and operations. Details have been provided in previous paragraphs.

144. The Bills Committee notes that the IOA will be reviewed at an interval of five years. In order to ensure the impartiality and transparency of the review, the Bills Committee considers that academics, independent professionals or LegCo Members should be invited to undertake the review. There is also a need for the Administration to make public the result of the review.

145. The Administration assures the Bills Committee that in the course of the review of the IOA, Government and MergeCo will seek comments from independent experts either individually or jointly if necessary to ensure the relevant review can be carried out effectively. At the request of the Bills Committee, the Administration agrees to amend the relevant clause in the IOA to specify that the first periodic review after the IOA has come into effect shall cover the review of the relevant provisions of the FAM, and that MergeCo shall provide relevant information to the Panel on Transport of LegCo on any amendment to the IOA resulting from the periodic review.

Committee Stage amendments

146. The Bills Committee has made various suggestions to improve the drafting of the Bill. After deliberation, the Administration also agrees to make the following principal amendments to the Bill, apart from those mentioned in paragraphs 47 and 51. A full set of the Administration's proposed CSAs is in **Appendix III**.

Clauses 5(e) and 23(1) (c) of the Bill

147. The Administration proposes to amend clauses 5(e) and 23(1)(c) of the Bill to refine 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 the Ordinance.

Clause 19 of the Bill

148. The proposed section 52B provides for the vesting of certain contractual rights and liabilities of KCRC in MergeCo. The Administration proposes 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.

New clause to amend section 61 of MTRO

149. Section 61 of the existing MTRO provides that the requirement for the Secretary to consult MTRCL or any other person in relation to any matter

under the MTRO does not oblige the Secretary to obtain the agreement of MTRCL or that person. As clause 16 of the Bill stipulates that the Commissioner for Transport shall consult MergeCo for disclosure of relevant information, the Administration proposes to amend section 61 to include the Commissioner for Transport to make it absolutely clear that the requirement for consultation does not oblige him to obtain the agreement of MergeCo.

New Clause to effect the change of Chinese name of MTRCL

150. The Administration proposes 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.

Clause 28 of the Bill

151. Clause 28 of the Bill stipulates that the operation of certain provisions in 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, the Administration proposes to amend the relevant clause to ensure that the corresponding provisions in the KCRCO would remain suspended during the period of franchise suspension.

Clause 29 of the Bill

152. There are certain provisions in Schedules 2 and 5 of the KCRCO 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, the Administration proposes 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.

CSAs to be moved by individual members

153. The Bills Committee notes that some members intend to move CSAs to the Bill. In order to enable these members to brief the Bills Committee on the merits and drafting aspects of the CSAs to be moved, the Bills Committee has scheduled a series of meetings for the purpose. However, as the complete set of CSAs to be moved by the Administration was only available on 21 May 2007, these members found great difficulties in providing the wordings of their CSAs at the scheduled meetings before the Bills Committee reports to the House Committee on 25 May 2007 or before the deadline for giving notice of CSAs on 28 May 2007 should the Second Reading of the Bill resume on 6 June 2007. After discussion, it was decided that a proposal be put to the President (who is also the Chairman of the Committee of the Whole Council) to seek her leave to extend the deadline for giving notice of CSAs.

154. Subject to the President's leave to extend the deadline for giving notice of CSAs, the Bills Committee will meet on 29 May 2007 to discuss members' CSAs.

General views on the Bill and the IOA

155. The Bills Committee notes that some members are very dissatisfied with the way the Administration has handled the Bill. Due to the proposed timeframe proposed by the Administration, they consider that there is insufficient time for them to scrutinize the Bill, which might have an impact on the quality of the legislation to be made. Some other members however consider that the Bills Committee has been performing its role to scrutinize the Bill in a responsible manner. A series of meetings have been held to study the Bill and other related matters thoroughly. As such, it is not fair to allege that the quality of the legislation to be made has been unduly affected by the proposed timeframe for the Bill.

156. The Bills Committee notes that generally speaking, the majority of members of the Bills Committee are in support of the Bill as it would bring substantial benefits to the community as a whole. However, some members remain concerned about the merger exercise due to varying reasons.

157. Mr Albert CHAN Wai-yip and Mr LEUNG Kwok-hung have expressed objection to the proposed rail merger in its present form as it involves the transfer of public assets to a listed corporation. They are worried that after the rail merger, MTRCL would become an independent kingdom.

158. Mr LEE Cheuk-yan remains concerned about the fare regulatory framework and would consider moving a CSA in this regard.

159. The Democratic Party remains concerned about certain matters including the financial arrangements for the proposed merger, the pricing and valuation of the property package, the fare level of railway services, the need for setting up of a fare stabilization fund to moderate the rate of fare increase, the monopolistic position of MTRCL after the merger, the provision of public toilets, automatic platform gates, radio reception on board MTR trains, concessionary fares to PwDs and monthly ticket schemes, etc.

160. The Civic Party remains concerned about the pricing and valuation of the property package, the provision of concessionary fares for PwDs, measures to enhance the employment opportunities of PwDs, improvements to the station facilities for PwDs, provision of public toilets, the setting up of fare stabilization fund, etc.

161. The Bills Committee notes that Mr LEUNG Kwok-hung, Mr Albert CHAN Wai-yip and Mr Andrew CHENG Kar-foo have reservation about the Administration's proposal to resume Second Reading debate on the Bill on 6 June 2007.

162. The Bills Committee notes that should the Bill and the related subsidiary legislation be approved by the Council, MTRCL would proceed to make arrangements for holding an Extraordinary General Meeting for its minority shareholders to approve the merger package. The Bills Committee notes that after the related legislation is approved by the Council, in order that the merger can take effect, the merger proposal must be accepted by the minority shareholders. In case the proposal is not accepted by the minority shareholders, the commencement notice of the enacted Bill will not be gazetted. Under such circumstances, the Administration will repeal the enacted Bill in due course.

Recommendations

163. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 6 June 2007. It also recommends that a proposal be put to the President (who is also the Chairman of the Committee of the Whole Council) to seek her leave to extend the deadline for giving notice of CSAs.

Advice sought

164. Members are requested to support the recommendations of the Bills Committee in paragraph 163.

Bills Committee on Rail Merger Bill

Membership list

Chairman	Hon Miriam LAU Kin-yee, GBS, JP
Deputy Chairman	Hon TAM Yiu-chung, GBS, JP
Members	Hon Albert HO Chun-yan Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP Hon LEE Cheuk-yan Dr Hon LUI Ming-wah, SBS, JP Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon CHAN Kam-lam, SBS, JP Hon LEUNG Yiu-chung Hon SIN Chung-kai, JP Hon LAU Kong-wah, JP Hon Emily LAU Wai-hing, JP Hon Andrew CHENG Kar-foo Hon Abraham SHEK Lai-him, JP Hon LI Fung-ying, BBS, JP Hon Tommy CHEUNG Yu-yan, JP Hon Albert CHAN Wai-yip Hon WONG Kwok-hing, MH Hon LEE Wing-tat Hon LI Kwok-ying, MH, JP Hon Jeffrey LAM Kin-fung, SBS, JP Hon LEUNG Kwok-hung Dr Hon Fernando CHEUNG Chiu-hung Hon CHEUNG Hok-ming, SBS, JP Hon Ronny TONG Ka-wah, SC Hon CHIM Pui-chung Prof Hon Patrick LAU Sau-shing, SBS, JP Hon KWONG Chi-kin Hon TAM Heung-man

(Total: 29 Members)

Clerk	Mr Andy LAU
Legal Adviser	Ms Connie FUNG
Date	9 November 2006

Bills Committee on Rail Merger Bill

List of parties which have submitted views to the Bills Committee

Staff associations

1. Alliance of Five Unions in Two Rails
 - Kowloon-Canton Railway Workers Union
 - Kowloon-Canton Railway Operation Staff Association
 - Kowloon-Canton Railway Employees Association
 - Mass Transit Railway Corporation Staff Union
 - Hong Kong Mass Transit Railway Staff General Association
2. KCRC – Divisional Consultative Committee
3. KCRC – Management Staff Consultative Committee
4. Staff Consultative Council, MTR Corporation Limited

Professional bodies and trade organizations

5. Association of Engineering Professionals in Society
- *6. The Hong Kong Institute of Architects
- *7. The Hong Kong Institute of Surveyors
- *8. The Real Estate Developers Association of Hong Kong

Academics

9. Dr HUNG Wing-tat, Associate Professor, Department of Civil & Structural Engineering, The Hong Kong Polytechnic University
10. Integrated Rail-Property Development Study Team, The Hong Kong Polytechnic University
- *11. Dr LI Kui-wai, Professor, Department of Economics and Finance, City University of Hong Kong
12. Prof Tony M RIDLEY, President, Rail Technology Strategy Centre at Imperial College London

Other organizations

13. Civic Exchange
14. The Coalition to Monitor Public Transport and Utilities
15. The Hong Kong Federation of Trade Unions – Social Affairs Committee
16. Tuen Mun District Council
- *17. Whampoa Garden Owners Representatives' Committee
- *18. 《兩鐵合併》關注小組

Individuals

- *19. Mr Tony CHAN Tung-ngok
20. Mr CHENG Cho-kwong, Sha Tin District Council Member
- *21. A Mr FU
22. Mr LUK Chung-hung, Yuen Long District Council Member
- *23. Sir Wilfrid NEWTON CA(SA) CBE
24. Mr David M WEBB, Editor of Webb-site.com

*Organizations/individuals who have only provided written submissions to the Bills Committee.

RAIL MERGER BILL

COMMITTEE STAGE

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

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting "the Secretary for the Environment, Transport and Works" and substituting "the Secretary within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556)".
Part 2	In Division 1, in the heading, in the Chinese text, by adding "詳題及" after "修訂".
3	Paragraph (c) is deleted.
3(d)(i)	In the English text, by adding "at the end" after "comma".
5(c)	In the Chinese text, in the proposed definition of "鐵路", in paragraph (a), by adding "各" before "九鐵公司鐵路".

- 5(d) In the proposed definition of "railway premises", in paragraph (a) -
- (a) in subparagraph (i), by adding "and" after the semicolon;
 - (b) by deleting subparagraph (ii);
 - (c) in subparagraph (iii), by deleting "or (ii)".
- 5(e) (a) By deleting the proposed definition of "Concession Period" and substituting -
- "Concession Period" (經營權有效期) 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;".
- (b) In the English text, in the proposed definition of "service concession", by deleting the comma before "and".
 - (c) In the Chinese text, in the proposed definition of "九鐵公司鐵路", by adding "各" before "九鐵公司鐵路的提述".
 - (d) In the Chinese text, in the proposed definition of "西北鐵路巴士服務", by deleting "營運" and

substituting "經營".

(e) In the Chinese text, in the proposed definition of "經營權財產", by deleting paragraph (b) and substituting -

"(b) 為供港鐵公司使用而獲取、購買、租用、生產、創造、建造、發展、加工處理或改裝，並只用於修理、維修、更換或改善(a)段提述的財產，且屬服務經營權協議中 "Concession Property" 的定義所指的財產；及".

6(a) In the proposed section 4(1)(e), in the Chinese text, by adding "各" before "九鐵公司鐵路".

6(b) In the proposed section 4(1A), in the Chinese text, by deleting "或" and substituting "及".

8(b) By deleting the proposed section 9(2) and substituting -

"(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 -

(a) this Ordinance and all other applicable laws; and

(b) the operating agreement.".

- 9 (a) By deleting the proposed section 12A(2)(b) and substituting -
- "(b) in respect of any matter in relation 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 in relation to which that person has accepted compensation; or".
- (b) In the proposed section 12A(2)(c), in the Chinese text, by adding "的" before "作為".
- 10 By adding "operated by the Corporation" after "service".
- 11 (a) In the proposed section 15A(2), in the Chinese text, by deleting "經營".
- (b) In the Chinese text, by deleting the proposed section 15A(3)(a) and substituting -
- "(a) 凡在與該部分的專營權被暫時中止有關連的情況下，根據第15(5)條被接管的經營權財產蒙受任何損失或損壞（但為免生疑問，不包括使用或管有該經營權財產的權利的損失），政府有法律責任就該等損失或損壞支付補

償；及".

(c) By deleting the proposed section 15A(3)(b) and substituting -

"(b) subject to paragraph (a), the Government is not liable to pay compensation for any loss or damage of any other 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."

(d) In the Chinese text, by deleting the proposed section 15A(4)(a) and substituting -

"(a) 在與該部分的專營權被暫時中止有關連的情況下，根據第15(5)條被接管的經營權財產蒙受任何損失或損壞(為免生疑問，包括使用或管有該經營權財產的權利的損失)；及".

(e) By deleting the proposed section 15A(4)(b) and substituting -

"(b) any actual loss or damage of any other 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."

(f) In the proposed section 15A(5), in the Chinese text -

(i) by adding "就該損失、損壞或損害" before "而支付，";

(ii) by deleting "首述的" and substituting "該".

(g) In the proposed section 15B(1), in the Chinese text -

(i) by deleting "有關";

(ii) by deleting "該等使用" and substituting "將該等財產用於經營該等服務";

(iii) by adding "經營" before "該等服務".

(h) In the proposed section 15B(2), in the Chinese text -

(i) by deleting "有關";

(ii) by deleting "該等使用" and substituting "將該等財產用於經營該等服務";

(iii) by adding "經營" before "該等服務".

12(e) In the proposed section 16(2) -

(a) in paragraph (c), by deleting the comma and

substituting a full stop;

(b) by deleting everything after paragraph (c).

14(4) In the proposed section 18(8A), in the Chinese text, by adding "各" before "九鐵公司鐵路".

15 (a) In the proposed section 19A(2), in the Chinese text -

(i) by deleting "關乎經營" and substituting "關乎各";

(ii) by deleting "有關".

(b) In the proposed section 19C(1), in the Chinese text -

(i) by adding "各" before "九鐵公司鐵路";

(ii) by deleting "該等使用" and substituting "將該等港鐵共用財產用於經營該等服務".

(c) In the proposed section 19C(2), in the Chinese text -

(i) by adding "各" before "九鐵公司鐵路";

(ii) by deleting "該等使用" and substituting "將該等九鐵共用財產用於經營地下鐵路".

(d) In the proposed section 19C(3)(a) and (b), in the

Chinese text, by adding "各" before "九鐵公司鐵路的
部分".

16 By adding before subclause (1) -

"(1A) Section 33(1)(a)(ii) is repealed."

16(1) (a) By deleting the proposed section 33(1A)(b) and
substituting -

"(b) controlling and regulating the maintenance and
operation of the TSA bus service by the
Corporation; and".

(b) By deleting the proposed section 33(1A)(c).

(c) In the proposed section 33(1B), in the Chinese text,
by adding "各" before "九鐵公司鐵路".

17 (a) In the proposed section 34(1A) -

(i) by deleting "any or all" and substituting
"all or any";

(ii) by deleting paragraph (a) and
substituting -

"(a) prescribing the terms upon which any
goods or class of goods will be
received for carriage by the

Corporation or stored by it including limitations on the liability of the Corporation in respect of the goods; and".

(b) In the proposed section 34(1B), in the Chinese text, by adding "各" before "九鐵公司鐵路".

18 In the proposed section 35(6)(b), in the Chinese text, by adding "各" before "九鐵公司鐵路".

New By adding immediately after clause 18 -

"Division 5A - Amendments to Part IX (Vesting provisions and transitional arrangements)

18A. Interpretation

Section 36 is amended by adding -

"(3) In this Part, "Corporation" (地鐵公司) means the company -

(a) which, as at the appointed day, is incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name "MTR Corporation Limited" in English and "地鐵有限公司" in Chinese;

and

- (b) the Chinese name of which is changed to "香港鐵路有限公司" on the Merger Date under section 65(1).".".

19

(a) In the proposed section 52A -

(i) in the definition of "relevant date" -

- (A) in paragraphs (a) and (b), by deleting "which is" and substituting "or a contract of a class of contracts";
- (B) in paragraph (d), in the Chinese text, by deleting "與";

(ii) in the Chinese text, in the definition of "合約", by deleting "的協議、債券" and substituting "或作出的協議、保證".

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

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

- (b) the liabilities which are to be discharged by KCRC at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts,".
- (c) In the proposed section 52B, by adding -
- "(1A) Where a right is exercisable by KCRC before, on and after the relevant date under the terms of a contract or a contract of a class of contracts specified in a Vesting Notice, subsection (1) does not apply to the right which is exercisable by KCRC in respect of the period before the relevant date.".
- (d) In the proposed section 52C, in the heading, in the Chinese text, by deleting "及合約" and substituting "及".
- (e) By deleting the proposed section 52C(1)(a) and (b) and substituting -
- "(a) the rights which are exercisable by the Corporation at any time on or after the relevant date under the terms of the contract or a contract of the class of contracts; and
- (b) the liabilities which are to be discharged by the Corporation at any time on or after the relevant date under the terms of the contract

or a contract of the class of contracts,".

- (f) In the proposed section 52C, by adding -
- "(1A) Where a right is exercisable by the Corporation before, on and after the relevant date under the terms of a contract or a contract of a class of contracts specified in a Re-vesting Notice, subsection (1) does not apply to the right which is exercisable by the Corporation in respect of the period before the relevant date.".
- (g) In the proposed section 52C(2)(b), in the Chinese text, by adding "各" before "九鐵公司鐵路".
- (h) In the proposed section 52D(1), in the Chinese text, by deleting "由" and substituting "與".
- (i) 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 by virtue of this subsection on that date.

(2) In subsection (1), "specified instrument" (指明文書) 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."

- (j) In the proposed section 52F(1), by adding "as from that date" after "(as the case may require)".
- (k) In the proposed section 52F(3), by adding "as from that date" after "(as the case may require)".
- (l) In the proposed section 52G(5), in the Chinese text, by deleting everything after "而言，" and substituting "港鐵公司及所有其他人為確定、完成或強制執行該項轉歸的權利或法律責任而具有的權利、權力及補救方法，與假使該項權利或法律責任在所有時候均屬港鐵公司的權利或法律責任，港鐵公司及上述其他人便會具有的權利

- 、權力及補救方法相同。".
- (m) In the proposed section 52G(6), in the Chinese text, by deleting everything after "而言，" and substituting "九鐵公司及所有其他人為確定、完成或強制執行該項轉歸的權利或法律責任而具有的權利、權力及補救方法，與假使該項權利或法律責任在所有時候均屬九鐵公司的權利或法律責任，九鐵公司及上述其他人便會具有的權利、權力及補救方法相同。".
- (n) In the proposed section 52H(1), in the English text, by adding "effected" after "other than any vesting".
- (o) In the proposed section 52H(2) and (3), in the English text, by adding "effected" after "any vesting".
- (p) In the proposed section 52J(1), in the Chinese text, by deleting "及法律責任" and substituting "或法律責任".
- (q) In the proposed section 52J(2), in the Chinese text, by deleting "及法律責任" and substituting "或法律責任".
- (r) In the proposed section 52L(1), by deleting "desirable" and substituting "reasonable".

21

(a) By adding before the proposed section 54A -

**"54AA. Disapplication of section 54(1)
during Concession Period**

During the Concession Period, section 54(1) (insofar as it relates to sections 3 and 4 of Schedule 2) does not apply in relation to any part of the franchise relating to the KCRC Railways."

(b) In the proposed section 54A, in the heading, by adding "**during Concession Period**" after "**Ordinance**".

(c) In the proposed section 54B, in the heading, by adding "**during Concession Period**" after "**service**".

(d) In the proposed section 54B(3), in the Chinese text, by deleting "的資料" and substituting "的資料的意向".

(e) In the proposed section 54B(4)(b), in the Chinese text, by deleting "營運" and substituting "經營".

(f) In the proposed section 54B(5), in the Chinese text, by deleting "調查" and substituting "檢查".

(g) In the proposed section 54B, by adding -

"(6) In this section, "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 by the Corporation."

New By adding immediately after clause 21 -

"21A. Securities of Corporation as authorized investment

Section 59 is amended by adding -

"(3) In this section, "Corporation" (地鐵公司) means the company -

(a) which, as at the appointed day, is incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name "MTR Corporation Limited" in English and "地鐵有限公司" in Chinese; and

(b) the Chinese name of which is changed to "香港鐵路有限公司" on the Merger Date under section 65(1)."."

21B. Requirement for Secretary to consult Corporation

Section 61 is amended-

(a) in the heading, by adding ", etc." after "**Secretary**";

- (b) by adding ", the Commissioner or any other person ("the first-mentioned person")" before "to consult";
- (c) by repealing "in relation to any matter does not oblige the Secretary" and substituting "("the second-mentioned person") in relation to any matter does not oblige the Secretary, the Commissioner or the first-mentioned person (as the case may be)";
- (d) by repealing "that other person" and substituting "the second-mentioned person".

21C. 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 (51 of 1990).

(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 this section, "Registrar" (註冊處處長) means the Registrar of Companies appointed under section 303 of the Companies Ordinance (Cap. 32).".

22 By deleting paragraph (b) and substituting -

"(b) by adding "to enable that corporation to dispose of its property to, or 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(1)(c) (a) By deleting the proposed definition of "Concession Period" and substituting -

"Concession Period" (經營權有效期) means the period for which that part of the franchise relating to 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) By deleting the proposed definition of "service concession" and substituting -

"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 operation of bus services within the North-west Transit Service Area, are granted to the MTR Corporation Limited;".

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

- 25(b)
- (a) In the proposed section 4(8), in the Chinese text, by adding "有關" after "涵蓋的".
 - (b) In the proposed section 4(9), in the Chinese text, by deleting "建造工程" where it twice appears and

substituting "建造".

- (c) In the proposed section 4(9), in the Chinese text, by deleting "該工程" and substituting "該鐵路的建造".
- (d) In the proposed section 4(9)(a), in the Chinese text, by deleting "該工程" and substituting "該鐵路的建造".
- (e) In the proposed section 4(9)(b), in the Chinese text, by deleting "管有或使用" and substituting "使用或管有".

28

- (a) In the proposed Part VIII, in the heading, in the English text, 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 -

- (a) Part IV and sections 25 and 38;
- (b) sections 23, 34B and 35A; and
- (c) the Kowloon-Canton Railway Corporation (Permitted Activities) (Consolidation) Order (Cap. 372 sub.

leg. D)".

- (c) By deleting the proposed section 40(2) and substituting -

"(2) Subsection (1)(a) 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."

29

- (a) By renumbering it as clause 29(1).
(b) By adding -

"(2) In the Second Schedule, in paragraphs 3 and 4, by repealing "Corporation to operate" and substituting "operation of".

- (3) In the Fifth Schedule -

(a) in paragraph 2(b), in the English text, by repealing "Corporation to operate" and substituting "operation of";

(b) in paragraph 3(a), by repealing "Corporation to construct and maintain" and substituting

"construction and maintenance of".

30(2) By deleting paragraphs (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn) and (zt).

30(3) By deleting paragraphs (e) and (i).

- Schedule 1 (a) In section 1, in the Chinese text, by deleting "而經營" and substituting "而運作".
- (b) In section 3, in the proposed section 104E(1)(b), in the Chinese text, by adding "在經營權有效期內" before "有權接觸".
- (c) By deleting "**Traffic Accident Victims (Assistance Fund) Ordinance**" and substituting -

"Eastern Harbour Crossing Ordinance

3A. Interpretation

The Eastern Harbour Crossing Ordinance (Cap. 215) is amended, in section 2 -

- (a) in subsection (1), by repealing the definitions of "Mass Transit Railway Corporation" and "Corporation";
- (b) by repealing subsection (5).

3B. Section added

The following is added -

**"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 "Mass Transit Railway Corporation" or "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 Mass Transit Railway Ordinance (Cap. 556).

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

- (a) a reference to "Mass Transit Railway Corporation" or

"Corporation" is a reference to "MTRCL"; and

- (b) a reference to "Mass Transit Railway Corporation Ordinance (Cap. 270)" or a provision of the Mass Transit Railway Corporation Ordinance (Cap. 270) is a reference to "Mass Transit Railway Ordinance (Cap. 556)" or the provision to the corresponding effect in the Mass Transit Railway Ordinance (Cap. 556).

(3) In relation to any time on or after the appointed day but before the Merger Date, in this Ordinance or in 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 《地下鐵路公司條例》（第270章）
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 this Ordinance or in 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 《地下鐵路公司條例》（第270章）
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" (指定日期) has the same meaning

as in section 2(1) of the Mass Transit
Railway Ordinance (Cap. 556);

"Merger Date" (合併日期) has the same meaning as
in section 2(1) of the Mass Transit Railway
Ordinance (Cap. 556);

"MTRCL" means the MTR Corporation Limited as
defined in section 2(1) of the Mass Transit
Railway Ordinance (Cap. 556);

"《地下鐵路條例》" was the Chinese short title
of the Mass Transit Railway Ordinance (Cap.
556) immediately before the Merger Date;

"地鐵有限公司" was the Chinese name of MTRCL
immediately before the Merger Date;

"港鐵公司" has the same meaning as in section
2(1) of the Mass Transit Railway Ordinance
(Cap. 556).

**Traffic Accident Victims (Assistance
Fund) Ordinance".**

- (d) In section 10(1)(a), in the Chinese text, in the proposed definition of "輕鐵站", in paragraph (b), by deleting "指根據《九廣鐵路公司規例》(第372章, 附屬法例A)指定的" and substituting "指在《九廣鐵路公司

規例》(第372章, 附屬法例A)所指的指定".

- Schedule 2 (a) In Part 1, by deleting section 3.
- (b) In Part 2, by deleting section 4 and substituting -
"4. Item 1 of Part 1 of Schedule 1 to the Banking
(Capital) Rules (L.N. 228 of 2006).
4A. Section 2(a) of the Banking (Specification of
Public Sector Entity in Hong Kong) Notice (L.N. 231
of 2006)".
- (c) In Part 2, by deleting section 6.