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House Committee meeting on 29 June 2007

**Report of the Subcommittee to Study the
Draft Subsidiary Legislation Relating to the Rail Merger**

Purpose

This paper reports on the deliberations of the Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger ("the Subcommittee").

Background

2. The Rail Merger Bill, introduced to the Legislative Council on 5 July 2006, was passed by the Council at its meeting of 6 June 2007. Following the enactment of the Rail Merger Ordinance, the powers of the Secretary for the Environment, Transport and Works ("SETW") and the MTR Corporation Limited ("MTRCL") were expanded to enable the existing regulations and bylaws made under the Mass Transit Railway Ordinance (Cap. 556) ("MTR Ordinance") to be modified or expanded as appropriate to cover the relevant matters concerning the railway and bus operation of the Kowloon-Canton Railway Corporation ("KCRC"). SETW and KCRC are also provided with powers respectively to suspend the existing regulations and bylaws made under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) ("KCRC Ordinance") during the service concession period when KCRC ceases to operate its railway and bus services.

3. As a consequence of the merging of the operations of the MTR and the KCR systems, a number of amendments to the relevant subsidiary legislation are needed for the purpose of expanding the scope of the relevant regulations and bylaws. The merger-related subsidiary legislation includes amendments to the existing bylaws which are subject to the approval of the Legislative Council, and amendments to the existing regulations which would involve the negative vetting procedure.

4. During the scrutiny of the Rail Merger Bill, members noted the Administration's target timetable to complete the legislative exercise for the rail merger within the current legislative session on or before 11 July 2007 so as to facilitate the early implementation of fare reduction. To meet this timetable, the merger-related subsidiary legislation which is subject to the negative vetting procedure would have to be laid on the table of the Legislative Council on 13 June 2007 while the motions to seek the Legislative Council's approval of the bylaws made by MTRCL and KCRC would have to be moved at the Legislative Council meeting on 11 July 2007. In order to facilitate the Legislative Council in examining the subsidiary legislation and to allow sufficient time for Members to study the content of the related subsidiary legislation, in response to the request from the Administration, the House Committee agreed at its meeting on 25 May 2007 to form a subcommittee to study the draft subsidiary legislation relating to the rail merger.

The Subcommittee

5. Hon Miriam LAU Kin-ye and Hon TAM Yiu-chung were elected Chairman and Deputy Chairman of the Subcommittee respectively. There are 22 members on the Subcommittee. Mr Abraham SHEK Lai-him has declared that he is a member of the Managing Board of KCRC. The membership list of the Subcommittee is in **Appendix I**.

6. The Subcommittee held a total of seven meetings to discuss the draft subsidiary legislation relating to the rail merger with the Administration and the two railway corporations. The Subcommittee has also invited public views on the draft subsidiary legislation and received written views from three organizations/individuals. The list of the organizations/individuals is in **Appendix II**.

Merger-related subsidiary legislation

7. The Subcommittee notes that there are eight items of subsidiary legislation necessary to be made to implement the rail merger relating to the MTR and the KCR systems, following the enactment of the Rail Merger Ordinance. These include:

Amendments to subsidiary legislation which are subject to the approval of the Legislative Council

- (a) amendments to the existing Mass Transit Railway By-laws (Cap. 556 sub. leg. B) ("the MTR Bylaws") – the scope of the existing MTR Bylaws will be expanded to cover both the MTR and KCRC railways excluding the North-west Railway ("NWR");
- (b) adopting the existing North-west Railway By-laws (Cap. 372 sub. leg. E) ("the NWR Bylaws") – the existing NWR Bylaws which covers the NWR and KCRC's bus services in the North-west Transit Service Area ("TSA bus services") will be brought across to become a new set of bylaw to be made under the MTR Ordinance, namely the Mass Transit Railway (North-west Railway) Bylaw;
- (c) suspension of the existing Kowloon-Canton Railway Corporation By-laws (Cap. 372 sub. leg. B) ("the KCRC Bylaws") and the NWR Bylaws – these bylaws made under the KCRC Ordinance which cover the KCRC railways and TSA bus services will be suspended during the service concession period;
- (d) consequential changes to the Mass Transit Railway (Transport Interchange) Bylaw (Cap. 556 sub. leg. D) made under the MTR Ordinance – these changes are consequential upon the change of the Chinese name of MTRCL from "地鐵有限公司" to "香港鐵路有限公司" under the Rail Merger Ordinance;

Amendments to subsidiary legislation which involve negative vetting procedure

- (e) amendments to the existing Mass Transit Railway Regulations (Cap. 556 sub. leg. A) ("the MTR Regulations") – the scope of the existing MTR Regulations will be expanded to cover both the MTR and KCRC railways;
- (f) suspension of the existing Kowloon-Canton Railway Corporation Regulations (Cap. 372 sub. leg. A) ("the KCRC Regulations") – these regulations made under the KCRC Ordinance which cover the KCRC railways will be suspended during the service concession period;

- (g) amendments to the existing Kowloon-Canton Railway (Restricted Area) (No.2) Notice 1997 (Cap. 372 sub. leg. I) ("the KCR Notice") – the existing KCR Notice declares certain areas at KCR Hung Hom Station associated with the intercity service to be restricted areas. The purpose of the amendment is to suspend its operation during the service concession period; and
- (h) consequential changes to the Mass Transit Railway (Transport Interchange) Regulation (Cap. 556 sub. leg. C) made under the MTR Ordinance – these changes are consequential upon the change of the Chinese name of MTRCL from "地鐵有限公司" to "香港鐵路有限公司" under the Rail Merger Ordinance.

Deliberations of the Subcommittee

8. Of the eight items of subsidiary legislation, the Subcommittee is mostly concerned about the draft Mass Transit Railway (Amendment) Bylaw and the draft Mass Transit Railway (North-west Railway) Bylaw. The Subcommittee has examined the reasons for keeping two sets of bylaws after the rail merger (i.e. one for MTR and KCRC's intercity passenger and freight services, and the other for the NWR and TSA bus services). The Subcommittee is also concerned about the appropriateness of the proposed maximum penalty levels for various offences under the two bylaws, having regard to the nature and seriousness of the offences as well as the existing maximum penalty levels for similar offences in other legislation. The Subcommittee has further expressed concern about the drafting of certain provisions in the two sets of bylaws as some of them are already obsolete and cannot reflect the present-day circumstances whereas some others are not clearly defined and should be improved to ensure clarity and ease of enforcement.

Consistency between the two sets of bylaws

9. The Subcommittee notes that at present, the content of the MTR Bylaws is broadly the same as that of the KCRC Bylaws. The main difference is that the KCRC Bylaws have a wider coverage to cater for the intercity passenger and freight services as well as certain unique features of KCRC's operation such as the existence of first class compartments. The Subcommittee notes that it is necessary to bring across these provisions under the KCRC Bylaws to the MTR Bylaws such that the same provisions would continue to apply to the services concerned which would be operated by the post-merger corporation ("MergeCo") after the rail merger.

10. Regarding the draft Mass Transit Railway (North-west Railway) Bylaw, the Subcommittee notes that the existing NWR Bylaws would be adopted under the MTR Ordinance so that all the relevant bylaws would continue to apply to the NWR and TSA bus services after the merger. Under the proposed arrangements, MTRCL would only introduce a few technical changes to these bylaws to dovetail the corresponding changes to relevant provisions in the MTR Ordinance. The remaining bylaws are directly copied from the existing NWR Bylaws and no material change is proposed.

11. The Subcommittee has expressed concern about the inconsistency between the two sets of bylaws. Whilst the Subcommittee notes that the inconsistency is inherited from the existing bylaws made under the KCRC Ordinance which are brought across to the bylaws to be made by MTRCL, members consider that after the rail merger, a reconciliation exercise should be conducted to ensure consistency between the two. They called on MTRCL to review the relevant matters. MTRCL has advised that the objective of the current exercise is to amend the existing bylaws where necessary for implementing the rail merger. To this end, the Corporation has decided not to pursue certain newly added bylaw provisions in this amendment exercise which were originally intended to be included in the Mass Transit Railway (Amendment) Bylaw to strengthen the existing MTR Bylaws for the purpose of ensuring public safety and station order. The Corporation has undertaken that a comprehensive review of the amended bylaws would be conducted, taking into account the experience of operating the integrated railway system after the merger as well as members' views expressed at the meetings. MergeCo would revert to the Legislative Council on the outcome of the review with details of the proposed amendments within 12 months after the rail merger.

Penalty schedule

12. Another major concern raised by the Subcommittee is related to the proposed maximum penalty levels for some relatively minor offences listed in the two sets of bylaws which are not related to safety and security of railway operations. The Subcommittee notes that the maximum levels of the penalties under the MTR Bylaws and the KCRC Bylaws are not entirely the same, with the penalty levels under the MTR Bylaws being lighter in general. Originally, the two railway corporations propose to align the maximum levels of penalty for contravention of similar provisions in the MTR Bylaws and the KCRC Bylaws respectively after the rail merger by adopting the maximum levels of penalty in the KCRC Bylaws, subject to the restriction in section 35(3) of the MTR Ordinance that such penalties shall not exceed a fine at level 2 (i.e. \$5,000) and imprisonment for 6 months. The two railway corporations also point out that the actual penalty

applicable to each case will continue to be subject to the determination of the Magistrates' Courts. Regarding the offences under the existing NWR Bylaws, subject to the restriction in section 35(3) of the MTR Ordinance on the level of prescribed penalty, no change to the existing penalty levels is proposed.

13. Upon announcement by MTRCL of its proposals, the Subcommittee notes that there are wide public concerns about the need of and justifications for adopting the more stringent penalties of the KCRC Bylaws for some minor offences contained in the draft Mass Transit Railway (Amendment) Bylaw, such as use of abusive language, unauthorized display of materials, failure to queue, loitering, playing radios, cassettes, musical instruments, in railway premises, etc. The Subcommittee has reviewed with the two railway corporations the related matters, including the appropriateness of pitching the maximum penalty levels at the proposed ones, having regard to the nature and seriousness of the offences concerned. The Subcommittee has also examined whether there is a rising trend of the relevant offences which warrant an increase of the maximum penalty levels to effectively combat and deter the improper behaviour of railway users.

14. After deliberation and with due consideration of views expressed by the Subcommittee and members of the public, MTRCL has agreed to revise the respective maximum penalties according to the following principles:

- (a) retain the MTR Bylaws penalties for existing bylaws;
- (b) adopt the KCRC Bylaws penalties for bylaws adopted from the KCRC Bylaws that do not exist in the MTR Bylaws; and
- (c) review the penalties in (b) to determine if imprisonment is appropriate. Imprisonment penalty will only be retained if there are railway safety or security implications.

Details of the revised proposal are set out in **Appendix III**.

15. Regarding the penalty schedule of the NWR Bylaws to be made by MTRCL, MTRCL has also taken on board the suggestions of the Subcommittee and agreed to revise the maximum penalty levels for four offences, namely damaging and using damaged tickets (section 7), nuisance (section 22), unauthorized bill posting, advertising and touting (section 26), and loitering prohibited (section 28) by removing the imprisonment penalty. Having considered the impact of loitering on other passengers, the Subcommittee does not object to MTRCL's revised proposal to increase the maximum fine of the offence from \$1,000 to \$2,000, given that the imprisonment penalty is to be removed. Details of the revised proposal are shown in **Appendix IV**.

16. The Subcommittee generally welcomes MTRCL's proposed amendments to the penalty schedule of the two sets of bylaws but considers that there is still room for improvement, particularly regarding the maximum penalty levels for illegal hawking and use of abusive language. They therefore call on the two railway corporations to re-examine the related matters, in the context of the overall review of the two sets of bylaws, having regard to the nature and seriousness of the offences and the associated maximum penalty levels for similar offences in other legislation.

Penalty for illegal hawking

17. The Subcommittee notes that some members are still of the view that in the context of the present exercise, there is a need for MTRCL to reconsider the maximum penalty level for illegal hawking, taking into account the penalty for a similar offence in the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO"). At present, PHMSO allows for a maximum fine of \$5,000 and one-month imprisonment for a first conviction of hawking without a licence and \$10,000 fine and six-month imprisonment for a subsequent conviction. These members consider that there is no justification for pitching the maximum penalty for hawking at a fine of \$5,000 and six-month imprisonment which is much more stringent than that in PHMSO. Besides, in considering that MTRCL has agreed to revert to the original maximum levels of penalty in the MTR Bylaws instead of adopting the more stringent penalty in the KCRC Bylaws for some offences which involve safety considerations such as flying materials endangering operations (from \$5,000 fine and 6-month imprisonment to \$3,000 fine and 3-month imprisonment), failure of vehicle driver to comply with signs (from \$5,000 fine and 6-month imprisonment to \$4,000 fine and two-month imprisonment) etc, these members consider that the proposed penalty for hawking is inappropriate and too stringent.

18. MTRCL has clarified that the penalty level for illegal hawking is the existing maximum level of penalty under the existing MTR Bylaws. It further explains that illegal hawking activities in railway premises may pose a safety hazard to railway passengers as they may block the key passageways and entrances of the stations, etc. Notwithstanding this, MTRCL agrees to review the maximum penalty level for hawking in the overall review of the various set of bylaws.

Penalty for use of abusive language

19. The Subcommittee notes that some members are of the view that the use of abusive language in railway premises should not be taken as an offence whilst some others consider that even if use of abusive language were to be treated as an offence, the penalty for such offence should be set at the minimum level.

20. MTRCL explains that the relevant provision does not merely cover the use of abusive language but also other offences such as damage of railway property which justifies the penalty level for the provision. The Corporation would however review the feasibility of separating the penalties for using abusive language in railway premises and other offences when it carries out the comprehensive review in 12 months' time.

Improvements to individual bylaw provisions

21. In the course of deliberation, some members consider that there is a need to improve the two sets of bylaws as some provisions and offences therein are already outdated, and cannot meet the present-day circumstances. On the other hand, some members are concerned about the drafting of some of the existing provisions. In their opinion, these bylaw provisions are not clearly defined, and hence the general public may inadvertently be caught by the provisions. The Subcommittee notes the policy decision of MTRCL that the objective of the current exercise is to amend the existing bylaws where necessary for implementing the rail merger. MTRCL agrees that a comprehensive review of the bylaws would be conducted taking into account the experience of operating the integrated railway system after the merger as well as suggestions by members to improve individual bylaw provisions, and that MergeCo would report the review result to the Legislative Council within 12 months after the rail merger.

22. The Subcommittee notes that some members are in support of the proposed approach as suggested by MTRCL. They consider that the Corporation should be given time to review the related matters taking into account public views. However, some other members consider that the bylaws should be reviewed in the present exercise. They are worried that after the rail merger, MergeCo may not have the incentive to carry out a genuine review. As such, the Subcommittee notes that individual members may move motions to amend the relevant sections of the bylaws. In response to the concerns of these members, MTRCL has reaffirmed its undertaking to conduct a comprehensive review of the bylaws taking into account members' comments and suggestions and report the review result with details of proposed amendments to the Legislative Council within 12 months after the rail merger.

Abusive language

23. The Subcommittee has examined the drafting of the provision on the offence of using abusive language on railway premises. Section 22(1)(a) of the Mass Transit Railway (North-west Railway) Bylaw made by MTRCL provides that no person shall at any time while upon the railway premises "use any threatening, abusive, obscene or offensive language or behave in a riotous, disorderly, indecent or offensive manner;". This provision is modelled on the existing NWR Bylaws. Similar provision is also provided for in the existing MTR Bylaws (i.e. by-law 28H - Abusive language).

24. Some members consider that the general public may inadvertently be caught by the provisions. For example, a passenger may be prosecuted if he uses abusive language in his conversation with his friends in the train or over the phone, or when he is complaining about some personal matters. To this end, the Subcommittee notes that Hon James TO will consider moving a motion to amend section 22(1)(a) of the Mass Transit Railway (North-west Railway) Bylaw to be made by MTRCL to the effect that no person shall at any time while upon the railway premises "behaves in a noisy or disorderly manner, or use threatening, abusive or insulting words, with intent to cause a breach of the peace in railway premises, or whereby a breach of the peace in railway premises are likely to be caused;".

25. MTRCL has advised the Subcommittee that the purpose of the relevant provisions on abusive language is to ensure that, in the confined area of railway premises, passengers are protected from being affected by threatening or abusive language of others. The way the provision on the offence of abusive language is drafted is not unique, as it is similar to section 19 of the Airport Authority Bylaw (Cap. 483 sub. leg. A); by-law 11 of the Peak Tramway By-laws (Cap. 265 sub. leg. B); and by-law 4 of the "Star" Ferry Company, Limited By-laws (Cap.104 sub. leg. E). MTRCL has also advised that the enforcement of this Bylaw is normally triggered by reports or complaints from passengers or staff who are being abused by such language or behaviour. The normal procedure is first to advise the person which is subject of the complaint and seek his cooperation. Further enforcement action would only be taken if that person refuses to cooperate.

26. MTRCL notes members' concerns about the drafting of the provision on the offence of using abusive language on railway premises and the associated penalty level. MTRCL would review the related matters when it carries out the comprehensive review within 12 months after the rail merger.

Intoxication

27. The Subcommittee notes that under section 23 of the Mass Transit Railway (North-west Railway) Bylaw made by MTRCL and the existing by-law 28F under the MTR Bylaws, no person in a state of intoxication or in an unfit condition shall enter or remain upon the railway premises. Hon James TO takes the view that passengers in unfit or improper condition should not be penalized as intoxication itself should not be deemed to be an offence. It is also doubtful whether a person can control his own behaviour if he is in a state of intoxication. Under such circumstance, there is no reason to impose criminal liability on this group of passengers.

28. MTRCL has advised that the purpose of the provision concerned is to allow the railway operator to ensure railway safety and to deal with any persons in a state of intoxication who may endanger themselves and/or pose hazards and/or nuisance to others in the railway premises. This provision enables the railway operator to refuse any persons in a state of intoxication who may affect other passengers to enter or remain in the railway premises, with a view to protecting other passengers in the railway premises. In practice, the corporation would normally act on reports or complaints from passengers. In enforcing the bylaw, the corporation will firstly advise the person who is the subject of the complaint to leave. Further enforcement action will only be taken if that person refuses to follow the advice.

29. The Subcommittee notes that Hon James TO is not convinced of the explanation given by MTRCL. He will consider moving a motion to delete the offence provided in section 23 of the Mass Transit Railway (North-west Railway) Bylaw to be made by MTRCL and to empower a NWR official to refuse the admission into or remove from the railway premises:

- (a) any person whom he believes or is given reasonable cause to believe is under the influence of alcohol or drugs or in a state of intoxication resulting from consuming or abusing medicine;
- (b) any person whom he believes or is given reasonable cause to believe is suffering from a contagious disease; or
- (c) any person whom he believes or is given reasonable cause to believe may prejudice the safety of railway premises.

30. As the offence relating to passengers in unfit or improper condition is proposed to be deleted, Hon James TO also proposes to delete the related penalty provision in the Schedule to the Bylaw. MTRCL considers that the proposed

amendment should be considered in detail in the context of the comprehensive review.

Loitering

31. The Subcommittee notes that under section 28 of the Mass Transit Railway (North-west Railway) Bylaw made by MTRCL and by-law 31 of the existing MTR Bylaws, no person shall loiter in or about any part of the railway premises. Hon James TO considers that MTRCL should consider making reference to section 160 of the Crimes Ordinance (Cap. 200) whereby an offence of loitering is linked to an intent to commit an offence and to define the offence of loitering in more specific terms.

32. MTRCL points out that the provision on loitering is not unique in Hong Kong's laws. There are similar provisions in bylaws made under various Ordinances. These provisions also do not include a reference to an intent to commit an offence. Examples of these provisions are :

- by-law 20 of the Eastern Harbour Crossing Road Tunnel Bylaws (Cap. 215 sub. leg. E);
- section 22 of the Discovery Bay Tunnel Link Bylaw (Cap. 520 sub. leg. B);
- section 23 of the Western Harbour Crossing Bylaw (Cap. 436 sub. leg. D);
- by-law 20 of the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg. B);
- section 23 of the Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap. 474 sub. leg. C); and
- section 20 of the Airport Authority Bylaw (Cap. 483 sub. leg. A).

33. MTRCL has further advised that the provision on loitering could also help to ensure that passengers would not linger in railway premises especially during festivals or emergency situation.

34. The Subcommittee notes that in order to define the offence of loitering in more specific terms, Hon James TO will consider moving a motion to delete the offence of loitering under section 28 of the Mass Transit Railway (North-west Railway) Bylaw to be made by MTRCL and to empower a NWR official to refuse the admission into or remove from the railway premises –

- (a) any person whom he believes or is given reasonable cause to believe is loitering with intent to commit an arrestable offence;
- (b) any person whom he believes or is given reasonable cause to believe is loitering in any way wilfully obstructs any person using railway premises;
- (c) any person whom he believes or is given reasonable cause to believe is loitering, and his presence there, either alone or with others, causes any person reasonably to be concerned for his safety or well-being.

35. As the offence of loitering is proposed to be deleted, Hon James TO also proposes to delete the related penalty provision in the Schedule to the Bylaw. MTRCL considers that the proposed amendment should be considered in detail in the context of the comprehensive review.

Disposal of lost property

36. The Subcommittee has examined the rationale for adopting the shorter period of retention of lost property in aligning the existing different arrangement under the MTR Bylaws (which stipulates three-month period) and the KCRC Bylaws (which stipulates one-month period) respectively. Some members have requested MTRCL to consider revising the period of retention of lost property from one month to three months and introducing similar change to section 36(1)(b) of the Mass Transit Railway (North-west Railway) Bylaw made by MTRCL.

37. MTRCL advises that section 41(1)(c) of the amended MTR Bylaws is based on the existing NWR Bylaws which specify that all articles or objects found which have not been claimed by the true owners within one month will be deemed to have been abandoned. MTRCL and KCRC have reviewed their past records and advised that over 95% of claimed property was claimed within a very short period, between one and two weeks. In KCRC, there was no record of found property being claimed after three weeks in the last two years. In MTRCL, most of the claimed property (some 98%) was claimed within 28 days.

38. MTRCL also advises that the proposed amendment to align the retention period to one month has taken into consideration past experience and the minimal possible impact on the travelling public.

39. Notwithstanding the explanation given by MTRCL, the Subcommittee notes that some members are not convinced of the reply. Hon James TO has indicated that he will consider moving a motion to delete the amendment proposed to by-law 41(1)(c) of the Mass Transit Railway (Amendment) Bylaw and to amend section 36(1)(b) of the Mass Transit Railway (North-west Railway) Bylaw made by MTRCL to extend the period of retention of lost property from one month to three months if MTRCL refuses to amend the bylaw provisions to this effect.

Bill posting, etc. prohibited

40. The Subcommittee has expressed concern about the provision governing the unauthorized display of materials under the new by-law 32A proposed in the Mass Transit Railway (Amendment) Bylaw. Some members are worried that the by-law would prohibit persons from displaying or exhibiting any printed, written or pictorial matter or any article while upon the railway premises. As a result, passengers would inadvertently be caught by the provision. These members therefore calls on MTRCL to consider confining the scope of by-law 32A to unauthorized display of materials for commercial purpose only. Hon James TO has indicated that if MTRCL refuses to amend by-law 32A to this effect, he will consider moving the amendment on his own.

Wrongfully entering or leaving trains

41. The Subcommittee has requested MTRCL to consider moving an amendment to by-law 9(2) proposed in the Mass Transit Railway (Amendment) Bylaw to read as "No person shall interfere with any doors or gates within the railway premises including any train doors and platform screen doors (except in case of accident or other emergency)." Hon James TO has indicated that if MTRCL refuses to amend the bylaw provision as suggested, he will consider moving the amendment on his own.

Entrance or exit by improper means and queuing

42. The Subcommittee has queried whether MTRCL has the power to make a bylaw to regulate the access to services and facilities provided in the vicinity of the railway premises under by-law 28C(3) proposed in the Mass Transit Railway (Amendment) Bylaw. Hon James TO has indicated that if MTRCL refuses to move suitable amendment to the by-law to confine the scope of the provision to railway premises only, he will consider moving the amendment on his own.

Compliance with notices

43. The Subcommittee notes that by-law 21(1) of the existing MTR Bylaws provides that "Every person while on the railway premises shall comply with these by-laws and with all notices, indicators and all reasonable directions and requests of any official." The Subcommittee has examined the content of the relevant notices, and considered that there is great room for improvement. Given that there is criminal liability for non-compliance with the notices, the Subcommittee urges MTRCL to improve the clarity of the notices to facilitate compliance by the general public.

Review to be carried out by MergeCo

44. In view that MTRCL has undertaken to carry out a comprehensive review of the relevant bylaws and to report the review results with details of proposed amendments to the Legislative Council within 12 months after the rail merger, the Subcommittee calls on MTRCL to take into account the following principles in carrying out the review:

- (a) to reconcile the two sets of bylaws to achieve consistency;
- (b) to review the need of retaining certain provisions in the bylaws having regard to the present-day circumstances, and the operational need and requirements in railway operations;
- (c) to review the appropriateness of the maximum penalty levels for various offences, having regard to the nature and seriousness of the offences and the maximum penalty levels for similar offences in other legislation; and
- (d) to improve the drafting of the bylaws to achieve consistency and enhance clarity.

45. The Subcommittee notes the concern raised by Hon James TO that after the rail merger, MTRCL may not honour its undertaking to carry out a genuine review of the bylaws to address the various points and concerns raised by members. To this end, he will consider moving a motion to add a new provision to the effect that after 15 months of the enactment of the Mass Transit Railway (North-west Railway) Bylaw to be made by MTRCL, the Legislative Council may, upon reviewing the relevant bylaws, pass a resolution to cause the Mass Transit Railway (North-west Railway) Bylaw to cease to take effect. MTRCL has reaffirmed its undertaking to conduct a comprehensive review of the bylaws taking into account members' comments and suggestions and report the review result with details of proposed amendments to the Legislative Council within 12

months after the rail merger.

Prosecution policy

46. The Subcommittee has also taken the opportunity to examine the prosecution policy and enforcement guidelines of the two railway corporations to avoid possible abuse of power by staff of MTRCL. Members also urge MTRCL to improve the clarity of the guidelines to facilitate enforcement by railway staff. MTRCL has advised that sufficient training is provided to those officials who are responsible for performing bylaw enforcement duties. The officials are issued an identity card by the corporations and when acting on behalf of the corporations in bylaw enforcement, they are required to carry with them the identity card. Before being authorized to carry out bylaw enforcement duties, the staff concerned will be required to attend training courses and pass an examination to ensure that they are fully aware of the relevant practices and procedures and their own duties. The authorized officials are required to go through an annual examination.

47. Regarding the prosecution policy, both railway corporations have advised that the enforcement of the relevant bylaw is normally triggered by reports or complaints. The normal procedure is first to advise the person who is the subject of the complaint and seek his co-operation. Further enforcement action will only be taken if that person refuses to cooperate.

Other issues

48. The Subcommittee has also taken the opportunity to request the two railway corporations to consider providing monthly tickets to railway users. The Subcommittee has also requested the two railway corporations to introduce suitable amendment to by-law 12A in the Mass Transit Railway (Amendment) Bylaw to ensure that passengers with first class tickets can get a refund if they have not used the railway service. Octopus processors should also be installed at East Rail platforms to provide a convenient means for passengers who have bought first-class tickets but could not use the service due to insufficient seats in compartments to be refunded.

Draft Mass Transit Railway (Amendment) Regulation 2007

49. The main purpose of the draft Mass Transit Railway (Amendment) Regulation is to add certain provisions relating to the operation of NWR and TSA bus services by MTRCL upon the rail merger. These provisions are broadly the same as those provided in the existing KCRC Regulations. The Subcommittee notes that one of the provisions therein is to prohibit drivers of NWR vehicles from stopping the vehicles, for the purpose of allowing passengers or intending

passengers to alight from or board the vehicles, at any place other than a designated rail stop except in the case of emergency. In response to members' suggestions, the Administration has agreed to revise the proposed maximum penalty for the prohibited act by removing the penalty of 3 month's imprisonment while maintaining the existing level of fine at level 1 (\$2,000).

Recommendation

50. In considering that the Subcommittee has completed its scrutiny of the draft subsidiary legislation, and that MTRCL and the Administration have agreed to take on board members' suggestions to refine the subsidiary legislation, the Subcommittee recommends that there is no need for the House Committee to set up another subcommittee to study the legislative amendments relating to the rail merger. At its meeting on 15 June 2007, the House Committee noted the recommendation of the Subcommittee and agreed that there was no need to set up a new subcommittee to study the four items of subsidiary legislation tabled at the Legislative Council on 13 June 2007.

51. Regarding the four items of subsidiary legislation which are subject to the approval of the Legislative Council, SETW has given notice on 20 June 2007 of her intention to move four motions to seek the Council's approval of the four sets of bylaws made by the two railway corporations at the Council meeting on 11 July 2007. The House Committee will discuss at its meeting on 29 June 2007 on how to deal with the relevant motions. For reasons stated in paragraph 50, the Subcommittee recommends that there is no need for the House Committee to set up another subcommittee to study the motions and the proposed Bylaws, and for the Administration to withdraw its notices of moving the motions at the Council meeting on 11 July 2007.

Advice sought

52. The House Committee is invited to note the deliberations and recommendation of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
28 June 2007

**Subcommittee to Study the Draft Subsidiary Legislation
Relating to the Rail Merger**

Membership list

Chairman	Hon Miriam LAU Kin-ye, GBS, JP
Deputy Chairman	Hon TAM Yiu-chung, GBS, JP
Members	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 LAU Kong-wah, 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 WONG Kwok-hing, MH 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 Prof Hon Patrick LAU Sau-shing, SBS, JP Hon KWONG Chi-kin Hon TAM Heung-man (Total: 22 Members)
Clerk	Mr Andy LAU
Legal Adviser	Ms Connie FUNG
Date	30 May 2007

**Subcommittee to Study the Draft Subsidiary Legislation
Relating to the Rail Merger**

List of parties which have submitted views to the Subcommittee

1. Sham Shui Po District Council
2. Chairman of the Eastern District Council
3. Democratic Alliance

Council Business Division 1
Legislative Council Secretariat
22 June 2007

**Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger
Revised List of Proposed Penalties for MTR (Amendment) Bylaws**

By-law (Clauses in grey are existing MTR By-laws)	Summary of offence	Existing penalty in MTR By-laws	Existing penalty in KCRC By-laws	Proposed Maximum Penalty Proposed in the Original Draft in LC Paper No. CB(1)1780/06-07(01)	Changes to the original proposal as contained in LC Paper No. CB(1) 1780/06-07(01)
4A	Bringing vehicles, animals, etc. across the railway premises		\$5,000 fine and 6 months imprisonment (By-law 75)	\$5,000 fine and 6 months imprisonment	No change
4B	Unauthorized structures		\$5,000 fine and 6 months imprisonment (By-law 72(c))	\$5,000 fine and 6 months imprisonment	No change
8	Improper use of emergency equipment	\$5,000 fine		\$5,000 fine and 6 months imprisonment	\$5,000 fine ¹
17(4)	Sale of tickets		\$5,000 fine and 6 months imprisonment (By-law 13(4))	\$5,000 fine and 6 months imprisonment	\$5,000 fine ²
21(1)	Non-compliance with notices, etc.	\$2,000 fine		\$2,000 fine	No change
21(2)	Failure to obey directions as to occupation of trains	\$2,000 fine		\$5,000 fine	\$2,000 fine ¹
22	Feet placed on seats	\$2,000 fine		\$5,000 fine	\$2,000 fine ¹

¹ Penalty adopted from MTR Bylaws

² Penalty adopted from KCRC Bylaws for which there is no equivalent in the MTR Bylaws with imprisonment removed

By-law (Clauses in grey are existing MTR By-laws)	Summary of offence	Existing penalty in MTR By-laws	Existing penalty in KCRC By-laws	Proposed Maximum Penalty Proposed in the Original Draft in LC Paper No. CB(1)1780/06-07(01)	Changes to the original proposal as contained in LC Paper No. CB(1) 1780/06-07(01)
23A(1)	Fire hazard		\$10,000 and 2 years imprisonment (By-law 64(c))	\$5,000 fine and 6 months imprisonment	No change
26	Playing musical instruments, etc.	\$2,000 fine		\$5,000 fine	\$2,000 fine ¹
26A	Playing radios, cassettes, etc.	\$2,000 fine		\$5,000 fine	\$2,000 fine ¹
27(a)	Bringing prohibited items of luggage, etc.	\$2,000 fine		\$5,000 fine	\$2,000 fine ¹
28	Bringing animals	\$2,000 fine		\$5,000 fine	\$2,000 fine ¹
28C(1)	Entrance or exit by improper means and queuing	\$3,000 fine		\$5,000 fine	\$3,000 fine ¹
28C(2)	Entrance or exit by improper means and queuing		\$5,000 fine (By-law 48(b))	\$5,000 fine	\$3,000 fine ¹
28C(4)	Failure to queue		\$2,000 fine (By-law 65)	\$2,000 fine	No change
28H	Abusive language	\$5,000 fine		\$5,000 fine and 6 months imprisonment	\$5,000 fine ¹
28I	Flying materials endangering operations	\$3,000 fine and 3 months imprisonment		\$5,000 fine and 6 months imprisonment	\$3,000 fine and 3 months imprisonment ¹
29	Soliciting, etc.	\$5,000 fine		\$5,000 fine and 6 months imprisonment	\$5,000 fine ¹

By-law (Clauses in grey are existing MTR By-laws)	Summary of offence	Existing penalty in MTR By-laws	Existing penalty in KCRC By-laws	Proposed Maximum Penalty Proposed in the Original Draft in LC Paper No. CB(1)1780/06-07(01)	Changes to the original proposal as contained in LC Paper No. CB(1) 1780/06-07(01)
31	Loitering	\$2,000 fine and 3 months imprisonment		\$5,000 fine and 3 months imprisonment	\$2,000 fine ³
32A	Unauthorized display of materials		\$5,000 fine and 6 months imprisonment (By-law 56(a))	\$5,000 fine and 6 months imprisonment	\$5,000 fine ²
33	Motor vehicles left on railway premises	\$4,000 fine		\$5,000 fine	\$4,000 fine ¹
35	Failure of vehicle driver to comply with signs	\$4,000 fine and 2 months imprisonment		\$5,000 fine and 6 months imprisonment	\$4,000 fine and 2 months imprisonment ¹
37	Vehicles on certain parts of railway premises	\$5,000 fine		\$5,000 fine and 6 months imprisonment	\$5,000 fine ¹
39B	Soliciting for handling of luggage		\$5,000 fine and 6 months imprisonment (By-law 33)	\$5,000 fine and 6 months imprisonment	\$5,000 fine ²
39D	Soliciting for handling of goods		\$5,000 fine and 6 months imprisonment (By-law 35)	\$5,000 fine and 6 months imprisonment	\$5,000 fine ²
41E	Entry to cross-boundary restricted area		\$10,000 and 2 years imprisonment (By-law 80)	\$5,000 fine and 6 months imprisonment	No change

³ Penalty adopted from the MTR Bylaws with imprisonment removed

By-law (Clauses in grey are existing MTR By-laws)	Summary of offence	Existing penalty in MTR By-laws	Existing penalty in KCRC By-laws	Proposed Maximum Penalty Proposed in the Original Draft in LC Paper No. CB(1)1780/06-07(01)	Changes to the original proposal as contained in LC Paper No. CB(1) 1780/06-07(01)
41J	Failure of employee to surrender cancelled permit		\$1,000 fine (By-law 85)	\$1,000 fine	No change
41K	Failure of employer to surrender cancelled permit		\$1,000 fine (By-law 86)	\$1,000 fine	No change
41L	Failure of employer to notify and surrender permit		\$1,000 fine (By-law 87)	\$1,000 fine	No change
41M	Failure of permit holder to surrender permit upon cessation of employment		\$1,000 fine (By-law 88)	\$1,000 fine	No change
41P	Failure of permit holder to report loss of permit		\$1,000 fine (By-law 91)	\$1,000 fine	No change
41Q	Failure of employer to report loss of permit		\$1,000 fine (By-law 92)	\$1,000 fine	No change
41R	Failure to deliver lost permit upon discovery		\$1,000 fine (By-law 93)	\$1,000 fine	No change

Revised List of Proposed Penalties for the MTR Northwest Railway Bylaws

By-law	Summary of offence	Maximum Penalty Proposed in CB(1)1780/06-07(01)	Revised Maximum Penalty
7	Damaging and using damaged tickets	\$5,000 fine and 6 months imprisonment	\$5,000 fine
22	Nuisance	\$5,000 fine and 6 months imprisonment	\$5,000 fine
26	Unauthorised bill posting, advertising and touting	\$5,000 fine and 6 months imprisonment	\$5,000 fine
28	Loitering prohibited	\$1,000 fine and 3 months imprisonment	\$2,000 fine