

立法會
Legislative Council

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

**Minutes of meeting on
Tuesday, 12 June 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
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 TAM Heung-man
- Member attending** : Hon James TO Kun-sun
- Member absent** : Hon KWONG Chi-kin

**Public Officers
attending**

: Agenda item I

Mr Patrick HO
Deputy Secretary for the Environment, Transport and
Works

Miss Ida LEE
Principal Assistant Secretary for the Environment,
Transport and Works

Mr Michael LAM Siu-chung
Senior Assistant Law Draftsman
Department of Justice

Miss Clara LEUNG
Government Counsel
Department of Justice

**Attendance by
invitation**

: Agenda item I

MTR Corporation

Mr Leonard TURK
Legal Director & Secretary

Mr Wilfred LAU
Head of Operations

Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Mr Martin HANKS
Manager - Merger Coordination

Ms Peggy LEUNG
Associate, Slaughter & May
(Legal Adviser of MTR Corporation)

Kowloon-Canton Railway Corporation

Mr Y T LI
Senior Director, Transport

Ms Ida LEUNG
Senior Public Affairs Manager

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr Noel SUNG
Senior Council Secretary (1)4

Miss LAM Yuen-kwan
Clerical Assistant (1)1

Action

- I Meeting with the Administration/the two railway corporations**
- (LC Paper No. CB(1)1878/06-07(01) - Response to questions raised by members on draft bylaws provided by MTR Corporation Limited
 - LC Paper No. CB(1)1780/06-07(01) - Information paper on "Merger-related Subsidiary Legislation" provided by the Administration
 - LS85/06-07 - Legal Service Division's comments on the draft Mass Transit Railway (Amendment) Bylaw
 - LC Paper No. CB(1)1876/06-07(01) - Letter from Assistant Legal Adviser to the Administration dated 7 June 2007)

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. MTR Corporation Limited (MTRCL) briefed members on the revised maximum penalties for various offences under the Mass Transit Railway (Amendment) Bylaw and Mass Transit Railway (North-west Railway) Bylaw. The differences that currently existed between penalties in the North-west Railway By-laws and Kowloon-Canton Railway Corporation By-laws would be addressed as part of the overall review to be carried out by the post-merger corporation.

Action

Abusive language (by-law 28H)

3. The Subcommittee had further examined the appropriateness of pitching the maximum penalty level for using abusive language within railway premises at a fine of \$5,000. It had also reviewed the scope of the offence, the prosecution procedures, and the enforcement guidelines to be drawn up by MTRCL.

4. MTRCL explained that by-law 28H did not only cover the use of abusive language, but also other offences such as damage of railway property, and a maximum penalty of a \$5,000 fine was considered appropriate. The post-merger corporation would further review the Mass Transit Railway By-laws (MTR By-laws) within 12 months after the merger, and the feasibility of separating the penalties for using abusive language from other offences would be explored.

5. Kowloon-Canton Railway Corporation (KCRC) also explained that at present, the Corporation would initiate prosecution action only when a passenger kept on scolding the enforcement staff with abusive language after repeated verbal warnings. Normally such cases might arise when passengers were fined for carrying an excessively large luggage on train. MTRCL supplemented that the operation staff usually acted upon complaint. The passenger involved would be persuaded to stop using abusive language and if he continued to do so despite the issue of a written warning, the passenger would be prosecuted. The operation staff followed the corporation's enforcement guidelines and final decision on the cases including sentencing would rest with the court.

6. The Assistant Legal Adviser (ALA) advised that although there was no mentioning about a third party in by-law 28H(1)(a), the offence of using abusive language on a train, as drafted, should only be committed in relation to other passengers. This would mean that although a passenger who used abusive language on a train might not have intended to direct the abusive language to another person, he might be found to have committed the offence if another or other passengers on the train felt offended.

Non-compliance with notices (by-law 21(1))

7. The Subcommittee sought details of the prosecutions under by-law 21(1) and the nature of the notice.

8. KCRC explained that nearly all of the prosecutions under by-law 21(1) in 2005 and 2006 concerned passengers sitting or lying on the floor of trains. Such behaviour obstructed the movement of other passengers and in particular was a nuisance to female passengers wearing skirts or dresses.

Action

Admin 9. Mr LEE Cheuk-yan and Mr James TO requested that the railway corporations should provide details of the prosecution cases under by-law 21(1) in 2006 regarding non-compliance with notices, and details of the companies' notices published so far.

Enforcement guidelines

10. The Subcommittee urged MTRCL to issue a unified set of guidelines for enforcement against the various offences to the operation staff after the rail merger so as to ensure consistency in the enforcement actions.

Admin 11. Mr Andrew CHENG requested that the two railway corporations should provide the Subcommittee before 11 July 2007 with a report on the major principles for drawing up the operation guidelines for enforcing the relevant bylaws.

Loitering (by-law 31)

12. Mr James TO queried whether by-law 31 concerning loitering should be revised so that prosecution would only be made against persons loitering in railway premises with criminal intent. He opined that the by-law could be amended to prohibit obstruction rather than loitering.

13. MTRCL responded that since the railway lines were very busy, people were discouraged from staying or gathering in the railway stations causing inconvenience or safety risks to the passengers. During festive occasions, e.g. festivals when there was a firework display, it was necessary to persuade people waiting in the railway stations to leave the premises. So far, no prosecution had been made under the by-law.

Refund for passengers (by-law 12A)

Admin 14. Mr LAU Kong-wah requested that Octopus processors should be installed at East Rail platforms to provide a convenient means for passengers who had bought first-class tickets but could not use the service due to insufficient seats in the first-class compartment to be refunded of the appropriate fare. He requested that a consolidated reply on the issue should be provided to the Subcommittee before the passage of the bylaws made by MTRCL on 11 July 2007.

Noise nuisance (by-law 26A)

15. Referring to by-law 26A of the MTR By-laws, Mr James TO was concerned that a passenger might be prosecuted for the noise generated by his telephone's ringing tone.

Action

16. MTRCL explained that the operation staff would take enforcement actions only when a third party complained about noise nuisance caused by a passenger's radio etc.

Intoxication (by-law 28F)

17. Mr James TO was concerned about the enforcement of by-law 28F regarding intoxication, and the penalty relating to the by-law.

Hawking offence

Admin

18. With reference to by-law 28 of the MTR (North-west Railway) Bylaw concerning hawking, Mr Andrew CHENG requested that consideration should be given to reducing the imprisonment term from six months to three months, given that a first offender was liable to imprisonment for only one month under the Public Health and Municipal Services Ordinance (Cap. 132).

Boarding or alighting of passengers at places other than designated rail stops for vehicles of the North-west Railway

19. Ms LI Fung-ying was concerned about the penalty level proposed under regulation 12(2) of the MTR (Amendment) Regulation 2007, regarding the boarding and alighting of passengers at places other than a designated rail stop.

20. The Deputy Secretary for the Environment, Transport and Works confirmed that in the gazetted version of the MTR (Amendment) Regulation 2007, the imprisonment term had been removed from the penalty and the offenders would only be subject to a fine.

II Any other business

21. There being no other business, the meeting ended at 12:45 pm.

**Proceedings of the meeting of
the Subcommittee to Study the Draft Subsidiary Legislation
Relating to the Rail Merger
on Tuesday, 12 June 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
|---|--|---|------------------------|
| <i>Agenda Item I – Meeting with the Administration/the two railway corporations</i> | | | |
| 000000 - | Chairman | Opening remarks | |
| 000104 – 001008 | MTR Corporation Limited (MTRCL) Administration | Briefing by MTRCL on the revised list of proposed maximum penalties for the Mass Transit Railway (MTR) By-laws and the MTR (North-west Railway) Bylaw (NWR Bylaw) | |
| 001009 - | Mr LEE Cheuk-yan Kowloon-Canton Railway Corporation (KCRC) MTRCL | Prosecutions relating to two offences under the MTR By-laws, namely, "non-compliance with notices, etc." (by-law 21(1)), and use of "abusive language" within railway premises by passengers in 2006 (by-law 28H) | |
| 001611 – 002339 | Mr James TO MTRCL | Scope of the offence for using abusive language as well as enforcement and prosecution procedures | |
| 002340 – 002923 | Mr WONG Kwok-hing Administration | Discussion on maximum penalty for using abusive language | |
| 002924 – 003424 | Mr LAU Kong-wah KCRC MTRCL | Prosecution policy in respect of by-law 21(1) of the MTR By-laws "Non-compliance with notices, etc" and the variation in prosecution figures between the two railway corporations | |
| 003425 – 004130 | Mr Andrew CHENG MTRCL KCRC | Discussion on maximum penalty for hawking (i.e. by-law 28) under the NWR Bylaw | |
| 004131 – 004721 | Mr Ronny TONG MTRCL Administration | Discussion on the maximum penalty for using abusive language vis-à-vis that of the penalty for loitering | |
| 004722 – 005230 | Mr LEUNG Kwok-hung | Mr LEUNG Kwok-hung's view that the use of abusive language should not be made an offence | |
| 005231 – 005528 | Prof Patrick LAU MTRCL KCRC | Discussion on by-law 35 of the MTR By-laws "Vehicle drivers to comply with signs etc" and application of other traffic legislation on railway premises | |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|--|--|---|
| 005529 – 010424 | Mr James TO ALA3 MTRCL | Discussion of the scope of by-law 28H of the MTR By-laws "Abusive language" | |
| 010425 – 010610 | Mr WONG Kwok-hing MTRCL | Discussion on the maximum penalty for use of abusive language | |
| 010611 – 011030 | Mr LAU Kong-wah KCRC | Discussion on the installation of Octopus processors at East Rail platforms to provide a convenient means for passengers who had bought first-class tickets but could not use the service due to insufficient accommodation in the first-class compartment to be refunded | MTRCL/KCRC were requested to provide a report before 11 July 2007 on the matter |
| 011031 – 011727 | Mr Andrew CHENG MTRC Chairman | Discussion on the maximum penalty for hawking under by-law 28 of the NWR Bylaw and the enforcement guidelines by the two railway corporations | MTRCL to review the penalty level and provide information on the major principles governing the guidelines for enforcing the NWR Bylaw. |
| 011728 – 012905 | Mr James TO ALA3 MTRCL Chairman | Whether members could move amendments to the motions relating to the four sets of bylaws made by the two railway corporations Request for information on the details of the charges of the prosecution cases under by-law 21(1) of the MTR By-laws, and details of the MTRCL's notices and indicators | MTRCL to provide the requested information |
| 012906 – 013315 | Dr Fernando CHEUNG MTRCL | General view on the scope of discussion of the Subcommittee | |
| 013316 – 014034 | Mr James TO MTRCL Administration Chairman ALA3 | Discussion on the proposal for including a sun-set provision in the by-laws so as to enable members to review the subject matter, if the post-merger corporation failed to complete a comprehensive review of the bylaws and present suitable proposed amendments to the bylaws to LegCo for discussion. Concern about how by-law 28F of the MTR By-laws concerning intoxication was enforced | |

| Time marker | Speaker | Subject(s) | Action required |
|--|--|--|--|
| 014035 – 014333 | Mr TAM Yiu-chung MTRCL | Support for a review by MTRCL in one year's time but urged MTRCL to fully take into account members' comments when reviewing the bylaws. MTRCL was also requested to exercise due care in enforcing the bylaws | |
| 014334 – 014504 | Ms LI Fung-ying Administration | Review of the penalty level provided in regulation 12(2) of the MTR (Amendment) Regulation 2007, regarding the boarding and alighting of passengers at places other than a designated rail stop. | |
| 014505 – 015414 | Mr James TO MTRCL KCRC Chairman | Discussion on by-law 27(a) of the MTR By-laws relating to nuisance caused by passengers carrying luggage and articles into railway premises and discussion on the prosecution policy Discussion on whether a passenger might be prosecuted for the noise generated by his telephone's ringing tone under by-law 26A of the MTR By-laws Request for prosecution guidelines for enforcing the MTR By-laws and NWR Bylaw. | MTRCL to provide the requested information |
| 015415 - 015804 | Mr James TO MTRCL | Mr James TO's view that by-law 31 of the MTR By-laws concerning loitering should be revised so that prosecution would only be made against persons loitering in railway premises with criminal intent | |
| <i>Agenda Item II – Any other business</i> | | | |
| | Chairman | The Subcommittee agreed that the next meeting would be held on 15 June 2007. There being no other business, the meeting ended at 12:45 pm | |