

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

Response to Questions Raised by Members on Draft Bylaws

Introduction

This note sets out the result of the review by the Corporation of the penalty schedule in the draft bylaws and provides supplementary information requested by members at previous meetings of the Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger (“the Subcommittee”).

2. The objective of the current exercise is to amend the existing bylaws where necessary for implementing the rail merger. The Corporation agrees 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 suggestions by Members to improve individual bylaw provisions, and that the post-merger corporation (“MergeCo”) would report the review result to the Legislative Council within 12 months.

Penalty Schedule

3. In the draft MTR (Amendment) Bylaw presented to the Subcommittee earlier, it was proposed to adopt the higher of the existing maximum levels of penalty for similar offences under the existing MTR Bylaws and KCRC Bylaws respectively, 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.

4. With due consideration to views expressed by Members and public submissions to this Subcommittee, the Corporation intends to revise the respective maximum penalties according to the following principles:

- i) retain MTR Bylaw penalties for existing bylaws;
- ii) adopt KCRC Bylaws penalties for bylaws adopted from KCRC Bylaws that do not exist in MTR Bylaws; and
- iii) Review penalties in (ii) to determine if imprisonment is appropriate. Imprisonment will be retained if there are railway safety or security implications.

5. The changes are shown in **Annex A** which also provides information on the number of prosecutions in the past two years.

Clauses of KCRC Bylaws not brought across to MTR Bylaws

6. There are a few provisions in the KCRC Bylaws which are not brought across to the draft MTR (Amendment) Bylaw. They are explained below:

- i) Gambling in KCR premises – this is outdated and not necessary because gambling is dealt with under s13 of the Gambling Ordinance.
- ii) Administration charge payable to KCRC for return of lost property and the number of children under 3 years of age who may travel free with a fare paying adult – the Corporation does not charge any such administration charge or set any limit on the number of children who may travel free with a fare paying adult.
- iii) Specification that KCRC staff have no authority to waive bylaws – this is outdated and not necessary because the absence of a provision empowering staff to waive bylaws serves the same purpose.
- iv) Liability for payment of parking fees to the Corporation and the Corporation's liabilities relating to the freight services (e.g. delay) – these will be dealt with via contract instead of in the bylaws.
- v) The use of money changing machines – this is outdated and not necessary because there are designated machines in use in railway stations.
- vi) Power to abate trespass - MergeCo will rely on civil remedies.

Other Follow-up Items

7. Clarifications and further information on other follow-up items requested by Members are contained in **Annex B**.

MTR Corporation Limited
11 June 2000

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

By-law (Clauses in grey are existing MTR Bylaws)	Summary of offence	Proposed Maximum Penalty Proposed in the Original Draft in CB(1)1780/06-07(01)	Changes to the original proposal	MTR Prosecutions		KCRC Prosecutions	
				2005	2006	2005	2006
4A	Bringing vehicles, animals, etc. across the railway premises	\$5,000 fine and 6 months imprisonment	No change	n/a	n/a	0	7
4B	Unauthorized structures	\$5,000 fine and 6 months imprisonment	No change	n/a	n/a	0	0
8	Improper use of emergency equipment	\$5,000 fine and 6 months imprisonment	\$5,000 fine ¹	1	1	0	1
17(4)	Sale of tickets	\$5,000 fine and 6 months imprisonment	\$5,000 fine ²	n/a	n/a	0	0
21(1)	Non-compliance with notices, etc.	\$2,000 fine	No change	2	0	178	250
21(2)	Failure to obey directions as to	\$5,000 fine	\$2,000 fine ¹	0	0	0	0

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 Bylaws)	Summary of offence	Proposed Maximum Penalty Proposed in the Original Draft in CB(1)1780/06-07(01)	Changes to the original proposal	MTR Prosecutions		KCRC Prosecutions	
				2005	2006	2005	2006
					occupation of trains		
22	Feet placed on seats	\$5,000 fine	\$2,000 fine ¹	0	0	4	1
23A(1)	Fire hazard	\$5,000 fine and 6 months imprisonment	No change	n/a	n/a	0	0
26	Playing musical instruments, etc.	\$5,000 fine	\$2,000 fine ¹	0	0	0	0
26A	Playing radios, cassettes, etc.	\$5,000 fine	\$2,000 fine ¹	0	0	0	0
27(a)	Bringing prohibited items of luggage, etc.	\$5,000 fine	\$2,000 fine ¹	5	6	32	8
28	Bringing animals	\$5,000 fine	\$2,000 fine ¹	1	0	0	2
28C(1) and 28C(2)	Entrance or exit by improper means	\$5,000 fine	\$3,000 fine ¹	0	0	0	0
28C(4) ³	Failure to queue	\$2,000 fine	No change	n/a	n/a	0	0
28H	Abusive language	\$5,000 fine and 6 months imprisonment	\$5,000 fine ¹	18	26	17	20

³ Due to a typographical error, this was incorrectly shown as bylaw 28C(3) in LC paper no. CB(01)1780/06-07(01) Annex A and has been corrected here.

By-law (Clauses in grey are existing MTR Bylaws)	Summary of offence	Proposed Maximum Penalty Proposed in the Original Draft in CB(1)1780/06-07(01)	Changes to the original proposal	MTR		KCRC	
				Prosecutions		Prosecutions	
				2005	2006	2005	2006
28I	Flying materials endangering operations	\$5,000 fine and 6 months imprisonment	\$3,000 fine and 3 months imprisonment ¹	0	0	0	0
29	Soliciting, etc.	\$5,000 fine and 6 months imprisonment	\$5,000 fine ¹	4	4	0	0
31	Loitering	\$5,000 fine and 3 months imprisonment	\$2,000 fine ¹	0	0	0	0
32A	Unauthorized display of materials	\$5,000 fine and 6 months imprisonment	\$5,000 fine ²	n/a	n/a	0	0
33	Motor vehicles left on railway premises	\$5,000 fine	\$4,000 fine ¹	0	0	0	0
35	Failure of vehicle driver to comply with signs	\$5,000 fine and 6 months imprisonment	\$4,000 fine and 2 months imprisonment ¹	0	0	0	0
37	Vehicles on certain parts of railway premises	\$5,000 fine and 6 months imprisonment	\$5,000 fine ¹	0	0	0	0
39B	Soliciting for handling of luggage	\$5,000 fine and 6 months imprisonment	\$5,000 fine ²	n/a	n/a	0	0

By-law (Clauses in grey are existing MTR Bylaws)	Summary of offence	Proposed Maximum Penalty Proposed in the Original Draft in CB(1)1780/06-07(01)	Changes to the original proposal	MTR Prosecutions		KCRC Prosecutions	
				2005	2006	2005	2006
				39D	Soliciting for handling of goods	\$5,000 fine and 6 months imprisonment	\$5,000 fine ²
41E	Entry to cross-boundary restricted area	\$5,000 fine and 6 months imprisonment	No change	n/a	n/a	0	0
41J	Failure of employee to surrender cancelled permit	\$1,000	No change	n/a	n/a	0	0
41K	Failure of employer to surrender cancelled permit	\$1,000	No change	n/a	n/a	0	0
41L	Failure of employer to notify and surrender permit	\$1,000	No change	n/a	n/a	0	0
41M	Failure of permit holder to surrender permit upon cessation of employment	\$1,000	No change	n/a	n/a	0	0

By-law (Clauses in grey are existing MTR Bylaws)	Summary of offence	Proposed Maximum Penalty Proposed in the Original Draft in CB(1)1780/06-07(01)	Changes to the original proposal	MTR		KCRC	
				Prosecutions		Prosecutions	
				2005	2006	2005	2006
41P	Failure of permit holder to report loss of permit	\$1,000	No change	n/a	n/a	0	0
41Q	Failure of employer to report loss of permit	\$1,000	No change	n/a	n/a	0	0
41R	Failure to deliver lost permit upon discovery	\$1,000	No change	n/a	n/a	0	0

**Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger
Response to the Follow-up to Subcommittee Meetings**

Issue	Response
MTR Amendment Bylaw 5(bb)	
1. An extra ‘或’ in the Chinese version of Bylaw 5(bb) to be deleted.	The typo of one extra ‘或’ in the Chinese version will be deleted.
MTR Amendment Bylaw 12A(1)	
2. Review Bylaw 12A(1) to address the “total failure of consideration” point. Passengers should be entitled to a refund if they are not able to travel in first class.	<p>The Corporation proposes to amend Bylaw 12A(1) to address the “total failure of consideration” point as follows to make it clear that passengers with first class tickets can get refund if they have not used the railway service:-</p> <p>“ (1) The Corporation shall not be liable for any failure to carry a passenger in any particular first class of a compartment or carriage of any train where there is insufficient <u>first class</u> accommodation of a class for which a ticket has been issued. <u>In case of such insufficient accommodation, a ticket may be refunded before the passenger in respect of whom the ticket has been issued travels on any train.</u></p> <p>(2) Where there is insufficient first class accommodation on any train for which a ticket has been issued, a passenger holding a first class ticket may travel in standard class accommodation without the right to claim a refund of the appropriate difference in fare.”</p>

	<p>Where passengers holding a first class ticket choose to travel in standard class, it is not possible for the Corporation to verify the class of carriage that they traveled in, and therefore if a refund of the difference in fare is justified. Depending on the situation, if there is insufficient first class accommodation, passengers have two options:-</p> <ul style="list-style-type: none"> i) Wait for the next train; ii) Obtain a refund of their first class ticket (or resetting of the first class validation in their octopus) at the fare adjustment counter <u>before</u> continuing their journey. <p>The Corporation will explore the feasibility of the installing of new devices on railway platforms to enhance passenger convenience under situation (ii) above as suggested by members.</p>
<p>3. Provide details of the number for passengers surcharged for riding in first class without a valid ticket.</p>	<p>The details are as follows:</p> <ul style="list-style-type: none"> (a) an average of 137 passengers per month in 2006 (b) an average of 148 passengers per month in the first four months in 2007
<p>MTR Amendment Bylaw 28C (3) and (4)</p>	
<p>4. Provide justifications for extending bylaws 28C(3) and (4) (queuing), which are adopted from KCRC Bylaws, to cover the whole integrated</p>	<p>Aside from Lo Wu, which was used as an example to illustrate the requirement for this bylaw, crowd control is required to be implemented at other stations on both the KCRC and MTR systems to cope with upsurge of passengers during service interruption or special events, e.g., at Tsim Sha Tsui Station during fireworks displays. In crowd control, barriers have to be set up to control the in and out flows</p>

system.	of passengers, and passengers are required to follow the instructions of station staff to queue up along the queuing lines set up at entrances, concourses and platforms . The cooperation of passengers in crowd control is of paramount importance for the station staff to control the passenger movements in an orderly manner so as to ensure the safety of the travelling public. If there are passengers who do not follow the instructions to queue up, it will be difficult for the station staff to maintain a safe environment. Although there has not been any major incident in this regard in the operation of the MTR system in the past, we consider it more prudent to extend these bylaws to the MTR system as well after the merger so that station staff would be in a better position to maintain the order in crowded situations and the safety of the traveling public.
MTR Amendment Bylaw 32A	
3) The Corporation undertook to amend bylaw 32A to apply to commercial activities only	Bylaw 32A will be amended as follows to align with the existing KCRC bylaw :- “No person while upon the railway premises shall, except by permission of a member of the staff or an authorized person, display or exhibit any printed, written or pictorial matter or any article <u>for the purpose of advertisement or publicity.</u> ”
MTR Amendment Bylaw 44A	
4) The application of Bylaw 44A is too wide.	Bylaw 44A will be amended to limit its application to goods carried on the railway’s freight service as follows:- “(1) Without prejudice to the generality of any of these by-laws, the Corporation shall have a special lien on all motor vehicles, motorcycles, bicycles or any similar conveyance or on luggage, goods or articles howsoever brought by any person upon

the railway premises including any train of the Corporation and accepted for carriage on the railway or storage by the Corporation under bylaw 39C and shall also have a general lien against the owner of any such motor vehicles, motorcycles, bicycles, similar conveyances, luggage, goods or articles for any sum of money howsoever due on any account from such person or owner to the Corporation.

(2) If any lien is not satisfied within a reasonable time the Corporation may in its absolute discretion sell the motor vehicles, motorcycles, bicycles or similar conveyances or the luggage, goods and articles or any of them and apply the proceeds so arising in or towards the discharge of such lien including for the expenses of sale; and the balance of any proceeds if unclaimed within a period of 4 weeks following the sale shall become the general revenue of the Corporation free from any claims in relation thereto.”