

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
環境運輸及工務局  
香港花園道美利大廈



Environment, Transport  
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Government Secretariat  
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Ms Connie Fung  
Assistant Legal Advisor,  
Legislative Council Secretariat,  
4/F., Prince's Building,  
Central, Hong Kong.

14 June 2007

Dear Connie,

**Draft subsidiary legislation relating to the rail merger**

Thank you for your letter of 7 June 2007 setting out your comments on the draft subsidiary legislation relating to the rail merger. Please note our response as follows:

Draft Mass Transit Railway (Amendment) Regulation

Proposed regulation 11

- (i) We agree to your comment. Regulation 11(6) has been amended to the effect that the Commissioner for Transport will be required to give reasons if he refuses to give approval under the new regulation 11(1), (2) or (3).

Proposed regulation 13

- (ii) The words "notice in respect of which the appeal is lodged" in the new regulation 13(2) refer to the notification of any decision or requirement of, or the refusal of any approval by, the Commissioner for Transport given under the new regulation 11 that is the subject of an appeal under the new regulation 13(1). We consider that the words are sufficiently clear.
- (iii) We agree to your comment. The new regulation 13(3) has been

amended to the effect that the Secretary for the Environment, Transport and Works will be required to give reasons for his decision on an appeal.

The above changes have been incorporated in the Mass Transit Railway (Amendment) Regulation 2007 which was gazetted on 12 June 2007.

Draft Mass Transit Railway (Transport Interchange)(Amendment) Bylaw 2007 (2007 Bylaw)

Regarding paras (a) and (b) of item V of your letter of 7 June 2007, DoJ advised that the question of vires of the proposed amendments in the Mass Transit Railway (Transport Interchange)(Amendment) Bylaw 2007 does not arise. The proposed amendments in the MTR (Transport Interchange) (Amendment) Bylaw 2007 are housekeeping and technical changes and do not go beyond the scope of the empowering provision in s.34 of the Mass Transit Railway Ordinance.

Further, since it is intra vires for the MTR (Transport Interchange) Bylaw to make the existing set of Bylaw (i.e. Cap 556D) with reference to the existing name of the MTRCL (i.e. Corporation / 地鐵公司 / 地鐵有限公司), it is also intra vires for MTRCL to stipulate that where there are references to the name 地鐵公司 or 地鐵有限公司 in this set of Bylaw, these reference are reference to the company (i.e. the Corporation), the Chinese name of which is changed to 香港鐵路有限公司 on the Merger Date.

As regards your comments on Draft Mass Transit Railway (North-west Railway) Bylaw (Draft NWR Bylaw), Draft Kowloon-Canton Railway Corporation (Suspension of Bylaws) Bylaw, Draft Kowloon-Canton Railway (Restricted Area) (No. 2) (Amendment) Notice 2007 and Draft Mass Transit Railway (Transport Interchange) (Amendment) Bylaw 2007 (2007 Bylaw), the response from MTR Corporation Limited is attached at Annex.

Yours sincerely,



(Miss Ida LEE)

for Secretary for the Environment,  
Transport & Works

**Response MTR Corporation Ltd to Assistant Legal Adviser's (ALA's) Comments of 7/6/07  
on the Draft Subsidiary Legislation Relating to the Rail Merger**

**(using the ALA's numbering and definitions)**

**I. Draft Mass Transit Railway (North-west Railway) Bylaw (draft NWR Bylaw)**

**Bylaw 2**

- (a) Agreed. We will amend it accordingly.
- (b) Agreed. We will amend it accordingly.
- (c) Agreed. We will amend it accordingly.
- (d) Agreed. We will amend it accordingly.
- (e) The Corporation has undertaken to conduct a review of the various Bylaws within the first 12 months of the merger and to improve the relevant wording as part of that review (the "Review"). This issue will be addressed as part of the Review.

**Bylaw 5**

Agreed. We will amend it accordingly.

**Bylaw 9**

- (a) It is proposed to consider this point as part of the Review.
- (b) Agreed. We will amend it accordingly.

**Bylaw 12(1)**

Agreed. We will amend it accordingly.

**Bylaw 17**

Agreed. We will delete by-law 17.

**Bylaws 15(1), 16(1)(a) and (c), 30, 33 and 34**

Agreed. We will amend them accordingly.

**Bylaw 31**

Agreed. It is proposed to address this point as part of the Review.

**References to “an official” and “any official”**

It is proposed to consider this point as part of the Review.

**Penalty levels for offences under the draft NWR Bylaw**

Agreed. At the meeting of the subcommittee on 12 June 2007, the Corporation proposed changes to the penalties for Bylaws 8, 24, 27 & 29. The remaining discrepancies penalty levels in the proposed MTR Bylaws and proposed NWR Bylaws will be considered as part of the Review.

**III. Draft Kowloon-Canton Railway Corporation (Suspension of Bylaws) Bylaw**

Please refer to the Corporation’s response to member’s questions vide LC Paper CB(1)1878/06-07(01) and the reply to the email from the Assistant Legal Adviser dated 31 May 2007.

**IV. Draft Kowloon-Canton Railway (Restricted Area) (No.2) (Amendment) Notice 2007**

The existing Kowloon-Canton Railway (Restricted Area) (No. 2) Notice 1997 was made under Bylaw 77 of the existing Kowloon-Canton Railway Corporation By-laws. The equivalent of KCRC bylaw 77 is by-law 41B in the draft MTR Bylaws.

As explained at the subcommittee meeting on 9 June 2007, the notice to be made under the proposed MTR bylaw 41B will be published as a general notice.

**V. Draft Mass Transit Railway (Transport Interchange) (Amendment) Bylaw 2007 (2007 Bylaw)**

- (b) The Corporation agrees to provide for an expiry date or validity period for the proposed section 3(c) of the 2007 Bylaw.
- (c) The Corporation agrees to change all references to the Chinese name to MTRCL’s proposed new Chinese name (i.e. from “地鐵公司” to “港鐵公司”) and delete the proposed section 3(b) of the 2007 Bylaw.
- (d) Agreed. Schedule 3 will be amended accordingly.
- (e) Agreed. We will amend it accordingly.