

**President's ruling on
Committee Stage amendments to
Rail Merger Bill
proposed by Hon LEE Cheuk-yan,
Dr Hon Fernando CHEUNG Chiu-hung, Hon LEUNG Kwok-hung,
Hon LEE Wing-tat and Hon Andrew CHENG Kar-foo**

Hon LEE Cheuk-yan, Dr Hon Fernando CHEUNG Chiu-hung, Hon LEUNG Kwok-hung, Hon LEE Wing-tat and Hon Andrew CHENG Kar-foo have each given notice to move Committee Stage amendments (CSAs) to the Rail Merger Bill, if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council (LegCo) on 6 June 2007. Before making a ruling on the admissibility of these CSAs, I have invited the Secretary for Environment, Transport and Works (SETW) to offer her comments on the CSAs, and Hon LEE Cheuk-yan, Dr Hon Fernando CHEUNG, Hon LEUNG Kwok-hung, Hon LEE Wing-tat and Hon Andrew CHENG to offer their response. I have also sought the advice of Counsel to the Legislature.

The Administration's views and responses from Members

2. For easier reading, SETW's comments on the CSAs proposed by the above Members, and the respective responses of the Members concerned are summarized in the **Appendix**.

3. The relevant rule in the Rules of Procedure (RoP) relating to amendments to bills, which SETW has referred to in her comments, is Rule 57(4)(a). The Rule provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

4. Relating to Hon LEE Cheuk-yan's proposed amendments, both SETW and Mr LEE have also referred to Rule 58(9). The Rule provides that, "If any amendment to the title of the bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings detailed above, but no question shall be put that the title (as amended) stand part of the bill; nor shall any question be put upon the enacting formula."

Advice of Counsel to the Legislature

5. Counsel to the Legislature has given his opinion which is summarized in the following paragraphs.

6. Counsel advises that the primary objective of the Bill is to implement Government's policy of implementing the merger of the Mass Transit Railway (MTR) and Kowloon-Canton Railway (KCR) systems by

providing the necessary legislative framework.¹ In order to enable MTR Corporation Limited (MTRCL) to become the sole operator of the two railway systems, MTRCL has to have a franchise to operate the KCR system in addition to what is provided in its present franchise, and the rights to have access to, use or possess property of the Kowloon-Canton Railway Corporation (KCRC) for the purposes of operating the KCR system. The key provisions in the Bill which are related to MTRCL's franchise and these other rights are clauses 6 and 25.

7. Clause 6 seeks to amend section 4 of MTRO to enable MTR Corporation Limited (MTRCL) to operate both the MTR and KCR systems upon the merger of the two systems. Under section 4 of MTRO, MTRCL is granted the franchise for a period of 50 years to operate the MTR (including any extension to the railway) and to construct any extension to the railway. Clause 6 of the Bill expands this franchise to cover three other parts, namely to construct other railways which SETW has authorized the MTRCL to construct, to operate any railway so constructed, and to operate the KCRC Railways.

8. Apart from the franchise, MTRCL has to acquire the right to have access to, use or possess certain property of KCRC for the purposes of operating the KCR system. Clause 25 of the Bill seeks to amend section 4 of the KCRC Ordinance (Cap. 372) to give KCRC the power to grant a service concession and to dispose of its property under or in connection with the grant of a service concession by way of a sale, lease, licence or otherwise.

9. As part of the purposes of the Bill, it is stated in the long title that 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 MTR Corporation Limited) under that Ordinance [MTRO] of the operation by the MTR Corporation Limited of certain railways and certain bus services in addition to the Mass Transit Railway".

10. Counsel also advises that the effect of this Bill on the ordinances which it amends goes beyond the apparent textual changes. For example, section 9 of MTRO imposes an obligation on MTRCL to maintain a proper and efficient service at all times during the franchise period. While the proposed amendment to the provision under the Bill does not appear to impose such an obligation on MTRCL in relation to the KCRC Railways, the enactment of the Bill will result in the scope of this provision being extended to cover the entire operation of the KCRC Railways under the franchise granted under section 4 of MTRO. Section 5(4) of MTRO requires the Chief Executive in Council to be satisfied that MTRCL is capable of maintaining a proper and efficient service

¹ See first paragraph of the LegCo Brief on the Bill: "Chief Executive ORDERED that the Rail merger Bill... should be introduced into the Legislative Council with a view to implementing the merger of the Mass Transit Railway (MTR) and Kowloon-Canton Railway (KCR) systems", and the first paragraph of the Explanatory Memorandum of the Bill: "The object of this Bill is to amend the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) and the Mass Transit Railway Ordinance (Cap. 556) to provide the necessary legislative framework for the operation by the MTR Corporation Limited of the Mass Transit Railway, the Kowloon-Canton Railway and certain other railways under one franchise".

under MTRO and the Operating Agreement in approving an extension of the franchise. Upon the merger of the two railway systems, that provision would include the quality of MTRCL's service in the operation of KCRC Railways as part and parcel of MTRCL's service that is maintained under MTRO.

Hon LEE Cheuk-yan's proposed CSAs

11. Regarding Hon LEE Cheuk-yan's proposed CSA to amend clause 17 of the Bill to add a subsection under the existing section 34(1) of MTRO to empower MTRCL to prescribe in its bylaws made under that section the fares payable by persons travelling on the railway, Counsel points out that as bylaws made under section 34 of MTRO are subject to LegCo's approval, the legal effect of the proposed CSA is to make the railway fares subject to LegCo's approval.

12. The proposed CSAs that are covered by Mr LEE's notice given include a proposal to amend the long title by deleting "(other than in relation to any fare payable for using any railway service or bus service operated by the MTR Corporation Limited)". Counsel advises that the issue before me is whether regulation of fares is outside the scope of the Bill. Mr LEE's confirmation that the proposed amendment to the long title could be dealt with in accordance with Rule 58(9)² of RoP after his proposed CSA to clause 17 is passed has suggested that he does not seek to change the scope of the Bill by way of amending the long title. The CSA to amend the long title is only a consequential amendment.

13. Counsel further advises that none of the provisions in the Bill nor in MTRO is on the regulation of fares. From all the relevant materials, including the long title, the Explanation Memorandum, the LegCo Brief and SETW's speech at Second Reading, there is nothing to suggest that the purposes of the Bill are not what have already been set out in the long title, which include an exclusion "other than in relation to any fares payable for using any railway service or bus service operated by the MTR Corporation Limited" pertaining to the purpose to provide for the regulation of MTRCL's operation of railways and certain bus services in addition to the MTR. Counsel is of the view that Mr LEE's CSA to put fares under bylaws which are subject to LegCo's approval is outside the scope of the Bill and hence not relevant to the subject matter of the Bill.

Dr Hon Fernando CHEUNG Chiu-hung's proposed CSAs

14. Dr Hon Fernando CHEUNG's proposed CSAs seek to -

- (a) add a new clause to impose a duty on the directors of MTRCL

² Rule 58(9) provides that if any amendment to the title of the bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings detailed above, but no question shall be put that the title (as amended) stand part of the bill; nor shall any question be put upon the enacting formula.

to require MTRCL to adopt a policy and implement measures necessary for the fulfilment of its corporate social responsibility, and to set indicators with regard to the employment of disabled persons;

- (b) amend clause 8 of the Bill to set out how MTRCL should discharge its duty to provide a "proper and efficient service" as provided in the existing section 9 of MTRO by requiring MTRCL to provide certain facilities and adequate staff on the railway and railway premises; and
- (c) add a new clause to require MTRCL to provide half-fare concession to disabled persons.

15. As regards the proposed CSA set out in paragraph 14(a) above, Counsel considers that it relates more to the duties of MTRCL's directors than the operation of the railway systems. It does not appear to be relevant to any of the purposes set out in paragraphs 6 to 10 above which form the subject matter of the Bill.

16. Counsel points out that the proposed CSA set out in paragraph 14(b) above would apply to MTRCL's operation of MTR as well as the KCRC Railways. The main thrust of SETW's argument against any proposed CSAs which would affect the operation of MTR is that it is not the purpose of the Bill to amend the existing regulatory regime or provisions governing the existing operation of MTRCL under MTRO. However, as Counsel has explained in paragraph 10 above, the effect of section 9 of MTRO would be changed as a result of the enactment of the Bill which puts both MTR and KCR systems under the same franchise granted under section 4 of MTRO. Section 9 would apply to the MTR and KCRC Railways at the same time. Counsel considers that SETW's argument does not appear to stand. The proposed CSA is on matters concerning the operation of the railways which is covered by one of the purposes set out in the long title. Matters which relate to the operation of the railways appear to be relevant to the subject matter of the Bill, and the proposed CSA may be regarded as having complied with the requirement that it has to be relevant to subject matter of the clause to which it relates.

17. As regards the proposed CSA set out in paragraph 14(c) above, Counsel is of the view that it is a form of regulation of fares that the long title has made it clear that it is not a purpose of the Bill. The proposed CSA should be considered as outside the scope of the Bill and, therefore, not relevant to its subject matter.

Hon LEUNG Kwok-hung's proposed CSAs

18. Hon LEUNG Kwok-hung's proposed CSAs seek to repeal sections 54 and 56 of and Schedule 2 to MTRO, section 37 of the Noise Control Ordinance (NCO) (Cap. 400) as well as section 20(2) of the Tung Chung Cable

Car Ordinance (TCCCO) (Cap. 577).

19. Counsel explains that under existing section 54(1) of MTRO, MTRCL is exempted from the application of certain provisions of the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO). These exempted provisions are set out in Schedule 2 to MTRO. They relate to provision of public toilets, nuisance, obstruction to scavenging or conservancy operation; and advertising and signs erected on the railway or railway premises. In addition, under section 54(2), the Building Authority may, having regard to the exceptional nature of building or other works connected with the operation or construction of the railway, and on such conditions as he may specify in any particular case, exempt any of those works from any provision of the Buildings Ordinance (BO) (Cap. 123).

20. As regards NCO, Counsel points out that under section 13 of NCO, the Authority may serve a noise abatement notice on a person requiring the person to take necessary steps as may be specified in the notice to abate the noise. Section 37 of NCO provides that section 13 applies to MTRCL only so far as is practicable and compatible with the discharge of any function or the exercise of any power or duty conferred or imposed upon it according to law.

21. Upon passage of the Bill, the franchise granted to MTRCL in relation to the construction of railways and provisions of service would be expanded to cover KCRC Railways. Section 54 of MTRO would apply to both the MTR and KCRC Railways as the non-application of some of the provisions in Cap. 132 is in relation to MTRCL's provision of service under the franchise. The same will apply to the exemption which covers building and works connected with the operation or construction of the railway, as well as MTRCL's functions and power or duty under section 37 of NCO.

22. Counsel points out that the effect of the repeal of section 54 of and Schedule 2 to MTRO as well as section 37 of NCO is to remove the relevant exemptions and subject MTRCL to the regulation under PHMSO, NCO and BO. As the exempted matters covered by these provisions concern matters related to the operation of the railway systems, and MTRCL will be operating the two railway systems under the amended MTRO, Counsel advises that the proposed CSAs to repeal section 54 of and Schedule 2 to MTRO as well as section 37 of NCO are relevant to the subject matter of the Bill.

23. Counsel also advises that Mr LEUNG's proposed CSA to section 20(2) of the TCCCO is an amendment consequential upon the repeal of section 37 of NCO. Section 20(2) of TCCCO provides that section 37 of NCO does not apply to the construction works relating to the Cable Car System or to the operation of the System. It should be treated as a package with the proposed CSA to repeal section 37 of NCO. If I allow the proposed CSA to repeal section 37 of NCO, I should also allow this proposed CSA.

24. Regarding Mr LEUNG's proposed CSA to repeal section 56 of MTRO, Counsel advises that the objective of the proposed CSA is to remove the power of MTRCL to prosecute in its name offences under the Ordinance. Counsel is of the view that this proposed CSA is beyond the scope of the Bill. The argument put forward by Mr LEUNG in support of the admissibility of this proposed CSA is that the Bill will substantially change MTRO and extend the power of MTRCL to cover the operations of the KCR Railways. This argument would mean all the provisions in MTRO have to be regarded as part of the Bill for the purpose of deciding what the subject matter of the Bill is. Counsel's opinion is that the determination of whether MTRCL should continue to have the prosecution power under section 56 of MTRO is not relevant to the matters relating to the franchise, hence the proposed removal of the power is beyond the scope of the Bill.

Hon LEE Wing-tat's proposed CSAs

25. Counsel explains that the effect of Hon LEE Wing-tat's proposed new clause to the Bill is that the franchise granted to MTRCL does not include the right to develop residential or commercial projects or other projects above or annexed to any new station and along any extension to the railway, and to require that such right to be granted through open tender. Mr LEE also proposes to impose a duty on MTRCL to cooperate with and provide reasonable assistance to the successful bidder in the open tender.

26. Counsel points out that SETW has argued that the proposed CSA is outside the scope of the Bill because it goes beyond the provision of a necessary legislative framework for the operation of the KCR services by the MTRCL. SETW has also stated that the existence of an option to the Government to grant property development rights to a railway corporation to help bridge the funding gap of a new railway project undertaken by that corporation is an established arrangement which currently applies to both MTRCL and KCRC.

27. Mr LEE's response to the Administration's view is along the lines that the right to develop residential or commercial projects is an inseparable part of the granting of the franchise for the operation of the railways by Government to MTRCL. His proposed CSAs tie in with the future construction and operation of the extended portion of the railway, and would form part of the legislative framework for the operation of the KCR services by MTRCL. In relation to the existing arrangements that the Administration refers to in its comments, Mr LEE suggests that as LegCo is responsible for the scrutiny of the Bill and not any operating agreement or arrangement between the Government and MTRCL, in deciding whether his proposed CSAs are within the scope of the Bill, the President needs only to consider whether his CSAs are related to the subject matter of the relevant clause, and not whether his CSAs will make changes to the Operating Agreement.

28. Counsel agrees to Mr LEE's view that whether there is already an

existing arrangement under which the Government may opt to grant property developments to MTRCL or KCRC is not relevant for deciding whether the proposed CSAs are relevant to the subject matter of the Bill. This approach should not be affected even if these arrangements are already contained in the Operating Agreement entered between the Government and MTRCL or will be contained in the integrated Operating Agreement which is to be entered into between the Government and MTRCL to replace the existing Operating Agreement after enactment of this Bill. In any event, should any of the terms and conditions in the Operating Agreement be incompatible with any provision of the MTRO, the latter must prevail³.

29. Counsel points out that clause 6 is one of the key provisions in the Bill for implementing the Government policy of merging the MTR and KCR systems by granting MTRCL a franchise which includes the operation of the two systems under section 4 of MTRO. Mr LEE's proposed CSA seeks to impose a condition on the franchise which would be granted to MTRCL under the amended section 4, and is, for that reason, relevant to the subject matter of the Bill.

Hon Andrew CHENG Kar-foo's proposed CSAs

30. Hon Andrew CHENG's proposed CSAs seek to –

- (a) amend clause 8 of the Bill to set out certain specific acts which MTRCL is required to do in order to discharge its duty to provide a proper and efficient service under section 9 of MTRO;
- (b) add a new Part VII to establish a Railway Development Fund into which 3% of MTRCL's annual net profit derived from the Corporation's property development, property investment and property management will be paid, and the moneys of the Fund will be applied for the purposes of improving facilities and services on the railway and railway premises, and enhancing the safety of the railway and of persons on the railway and railway premises;
- (c) add a new clause to the Bill to establish a Railway Penalty Point System relating to delay or termination of train service under which MTRO is subject to the payment of a specified financial penalty if MTRCL incurs 15 points within a period of three months in respect of a delay or termination of train service;

³ Paragraph 18.7 of "Details of the Relevant Provisions of the Operating Agreement between Government of the Hong Kong Special Administrative Region and The Post-Merger Corporation" which is attached as Annex C to LegCo Paper: CB(1)627/06-07(01) provides: "Nothing in the integrated Operating Agreement shall oblige the Corporation to conduct its business in any manner or to do anything which is incompatible with any provision of the MTR Ordinance."

- (d) amend clause 16 of the Bill to empower SETW to make regulations requiring MTRCL to submit to the Commissioner for Transport (C for T) a programme of the future operations or plans of the Corporation for the rail and bus service within the North-west Transit Service Area (TSA), including information on the fare level of the service;
- (e) add a new clause to the Bill to amend the existing section 54(2) of MTRO to the effect that the power of the Building Authority to exempt MTRCL from the provisions of BO does not apply to the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulation (Cap. 123, sub. leg. I); and
- (f) add a new clause to repeal the existing paragraphs 1, 2, 3 and 4 of Schedule 2 to MTRO to remove the exemption relating to the public toilets, nuisance and obstruction to scavenging; however, the exemption relating to advertising remains unchanged.

31. Counsel points out that the proposed CSAs described in paragraph 30(a) above are similar in nature to those proposed by Dr Hon Fernando CHEUNG (paragraph 14(b) above). Based on the same reasoning as detailed in paragraph 16 above, Counsel would advise they are relevant to the subject matter of the Bill.

32. In relation to the proposed CSA described in paragraph 30(b) above, Counsel is of the view that the proposed Railway Development Fund, which is established for the purposes of providing or improving facilities and services on the railway and railway premises, and enhancing the safety of the railway and of persons on the railway and railway premises, could be regarded as a means to ensure that MTRCL will be able to maintain a proper and efficient service as required under section 9 of MTRO. As such, the proposed CSA may appear to be relevant to the subject matter of the Bill.

33. In relation to proposed CSA described in paragraph 30(c) above, Counsel points out that the proposed Railway Penalty Point System may be regarded as a mechanism to regulate the operation of the MTR and KCRC Railways systems by MTRCL under the franchise which would be granted pursuant to the amended section 4 of MTRO. Under MTRO, such regulation for the purpose of the franchise is effected by the imposition of financial penalty by the Chief Executive in Council under section 14, and suspension and revocation of the franchise under sections 15 and 18 respectively. Although the Bill does not amend sections 14 and 15 textually, the effect of these two provisions, like that of section 9 of MTRO, would be changed as a result of the enactment of the Bill as the operation of both the MTR and KCR systems will be subject to those provisions on financial penalty and suspension. In light of the above, the proposed Railway Penalty Point System, which relates to the

regulation of the operation of the railway systems under the franchise, may be regarded as relevant to the subject matter of the Bill.

34. In relation to proposed CSAs described in paragraph 30(d) above, Counsel would agree with Mr CHENG that a regulation made under the MTRO by SETW which imposes an obligation on MTRCL to provide information on the fare level for the rail and TSA bus service to C for T could not be regarded as a power to regulate the fares payable for using MTRCL's railway or bus service. Counsel considers that the Administration's ground for suggesting that the proposed CSA is outside the scope of the Bill does not stand.

35. In relation to the proposed CSAs described in paragraph 30(e) and (f) above, Counsel points out that they are similar to those proposed by Hon LEUNG Kwok-Hung in that they contain proposals relating to the exemptions that MTRCL would continue to enjoy when operating the KCRC Railway and the MTR at the same time. However, Mr LEUNG's proposals are seeking to repeal the exemptions in their entirety, whilst Mr CHENG is proposing modifications to them. His advice on the admissibility of Mr LEUNG's proposed CSAs applies equally to Mr CHENG's. Based on the same reasons as explained in paragraphs 21 and 22 above, Counsel would advise that they are relevant to the subject matter of the Bill.

My opinion

36. Rule 57(4)(a) of RoP provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

37. My analysis of the proposed CSAs proposed by the five Members is in the following paragraphs.

Hon LEE Cheuk-yan's proposed CSAs

38. Hon LEE Cheuk-yan's proposed CSA to clause 17 seeks to empower MTRCL to prescribe in its bylaws made under section 34(1) of MTRO, which are subject to LegCo's approval, the fares payable by persons travelling on the railway.

39. Counsel has advised me that none of the provisions in the Bill or in MTRO is on the regulation of fares. From the long title of the Bill and all the relevant documents, including the LegCo Brief on the Bill, the Explanation Memorandum of the Bill and SETW's speech moving the Bill at Second Reading, there is nothing to suggest that the purposes of the Bill include the regulation of fare payable for using the railway service or bus service operated by MTRCL. I take Counsel's advice and rule that Mr LEE's CSAs are not relevant to the subject matter of the Bill.

40. Mr LEE has pointed out in his response to SETW's comments that the Bills Committee has spent considerable time in scrutinizing the terms and conditions contained in the integrated Operating Agreement, including fare regulation. I have stated in my past rulings that what may be considered as relevant to discussions that take place at a Bills Committee meeting does not necessarily become relevant to the subject matter of the bill that the Bills Committee is considering.

Dr Hon Fernando CHEUNG's proposed CSAs

41. Regarding Dr Hon Fernando CHEUNG's proposed CSA to impose a duty on the directors of MTRCL to require MTRCL to adopt a policy and implement measures necessary for the fulfilment of its corporate social responsibility, and to set indicators with regard to the employment of disabled persons, my view is that it relates to the duties of MTRCL's directors rather than to the operation of the MTR and KCR Railways under the expanded franchise to be granted to MTRCL, which is part of the subject matter of the Bill. I do not consider the proposed CSA to be within the scope of the Bill.

42. Dr CHEUNG's proposed CSA to clause 8 seeks to amend section 9 of MTRO to require MTRCL to provide certain facilities and adequate staff on the railway and railway premises. Section 9 of MTRO imposes an obligation on MTRCL to maintain a proper and efficient service at all times during the franchise period.

43. SETW has argued that the proposed CSA is outside the scope of the Bill as it is not the purpose of the Bill to amend the existing regulatory regime or provision governing the existing operation of MTRCL under MTRO.

44. Certain provisions, such as section 9 of MTRO, which govern the existing operation of MTRCL will be applicable to the operation of the MTR and KCR Railways under the expanded franchise to be granted to MTRCL, upon the passage of the Bill. As the operation of the two railways under the expanded franchise to be granted to MTRCL is the subject matter of the Bill, amendments seeking to change those provisions are relevant to the subject matter of the Bill. I therefore do not consider Dr CHEUNG's proposed CSA to be outside the scope of the Bill.

45. Regarding Dr CHEUNG's proposed CSA to require MTRCL to provide half-fare concession to disabled persons, I agree with Counsel that it is a form of regulation of fares which falls outside the scope of the Bill.

Hon LEUNG Kwok-hung's proposed CSAs

46. Hon LEUNG Kwok-hung's proposed CSAs seek to repeal section 54 of and Schedule 2 to MTRO as well as to repeal section 37 of NCO to remove the exemptions currently given to MTRCL under PHMSO, BO, and NCO, and subject MTRCL to their regulation. Counsel has explained in detail what

these provisions are in paragraphs 19 and 20 above. Upon the passage of the Bill, these provisions apply to both the MTR and KCR Railways. As the exempted matters covered by these provisions concern matters that relate to the operation of the railways under the expanded franchise to be granted to MTRCL, which is the subject matter of the Bill, my view is that the above-mentioned CSAs proposed by Mr LEUNG are admissible.

47. As Mr LEUNG's proposed CSA to TCCCO is an amendment consequential upon the repeal of section 37 of NCO, this CSA is also admissible.

48. Regarding Mr LEUNG's proposed CSA to repeal section 56 of MTRO to remove the power of MTRCL to prosecute in its name offences under the Ordinance, I agree with Counsel that Mr LEUNG's CSA is not within the scope of the Bill. The prosecution power of MTRCL is not related to the expanded franchise to be granted to MTRCL for the operation of the MTR and KCR Railways, which is the subject matter of the Bill. In addition, I note that the Bill only proposes an amendment to section 56 to change the Chinese name of MTRCL. This is a consequential amendment made necessary by the change of the Chinese name of MTRCL referred to in the long title and proposed in clause 5 of the Bill. Mr LEUNG's proposed CSA's to remove MTRCL's prosecution power goes beyond the mere changing of the Chinese name of MTRCL.

Hon LEE Wing-tat's proposed CSAs

49. Hon LEE Wing-tat has proposed a new clause to the Bill to stipulate, among other things, that the expanded franchise to be granted to MTRCL does not include the right to develop residential or commercial projects or other projects above or annexed to any new station and along any extension to the railway, and to require that such right be granted through open tender.

50. Counsel refers to Mr LEE's view that whether there is already an existing arrangement under which the Government may opt to grant property developments to MTRCL or KCRC is not relevant for deciding whether the proposed CSAs are relevant to the subject matter of the Bill. Counsel agrees to Mr LEE's view. Counsel also points out that even if these arrangements are already contained in the Operating Agreement or in the integrated Operating Agreement after enactment of the Bill, it would not alter the requirement that I have to consider the relevance of the proposed CSA to the subject matter of the Bill. As Mr LEE's proposed CSA seeks to impose a condition on the expanded franchise which would be granted to MTRCL to operate the MTR and KCR Railways, the CSA is relevant to the subject matter of the Bill.

Hon Andrew CHENG's proposed CSAs

51. Hon Andrew CHENG has proposed a number of CSAs. Mr CHENG's proposed CSA to clause 8 seeks to amend section 9 of MTRO to

require MTRCL to provide certain facilities and comply with specified performance levels. Section 9 of MTRO imposes an obligation on MTRCL to maintain a proper and efficient service at all times during the franchise period. Mr CHENG's CSA is similar to Dr Hon Fernando CHEUNG's proposed CSA discussed in paragraph 42 above.

52. I have stated in paragraph 44 above that certain provisions, such as section 9 of MTRO, governing the existing operation of MTRCL will govern how MTRCL operates the MTR and KCR Railways under the expanded franchise to be granted upon the passage of the Bill. As the operation of the two railways under the expanded franchise to be granted to MTRCL is the subject matter of the Bill, amendments seeking to change those provisions are relevant to the subject matter of the Bill. As in Dr CHEUNG's case, I do not consider Mr CHENG's proposed CSA to be outside the scope of the Bill.

53. Mr CHENG has proposed CSAs to establish a Railway Development Fund into which 3% of MTRCL's annual profits derived from its property investment and management will be paid, and the moneys of the Fund must be applied for the purpose of improving facilities and services and enhancing the safety of persons on the railway and railway premises.

54. In this respect, Counsel advises that the Railway Development Fund could be regarded as a means to ensure that MTRCL will be able to maintain a proper and efficient service as required under section 9 of MTRO. I consider Mr CHENG's proposed CSAs to be admissible as they are relevant to the subject matter of the Bill.

55. Regarding Mr CHENG's proposal to set up a Railway Penalty Point System, I have considered Counsel's view and reasoning in paragraph 33 above that the proposed system relates to the regulation of the operation of the railways under the expanded franchise and may be regarded as relevant to the subject matter of the Bill. I also note from paragraph (a) of the long title that the object of the Bill includes providing for regulation under MTRO of the operation by MTRCL of certain railways and certain bus services in addition to MTR, including all aspects of safety concerning those railways. I am satisfied that, on balance, the proposed Railway Penalty Point System may be regarded as a mechanism to regulate the operation of the MTR and KCR Railways by MTRC under the expanded franchise. I therefore rule that the proposed CSA is admissible.

56. Regarding Mr CHENG's proposed CSA to clause 16 to empower SETW to require MTRCL to provide information on the fare level for the rail and TSA bus service, I agree with Mr CHENG that imposing such an obligation on MTRCL could not be regarded as a power to regulate the fares payable for using MTRCL's railway or bus service. Mr CHENG may move his proposed CSA.

57. Mr CHENG has proposed to amend the existing section 54(2) to

remove the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulation from the scope of exemption that may be granted by the Building Authority under that provision, and to modify Schedule 2 to MTRC in order to remove certain exemptions currently given to MTRCL which relate to public toilet, nuisances and obstruction to scavenging. These amendments are similar to Hon LEUNG Kwok-hung's CSAs to repeal section 54 of and Schedule 2 to MTRC. For the reasons that I have explained in paragraph 46 above, Mr CHENG's proposed CSA is admissible.

My ruling

58. Having considered SETW's comments, Members' responses and the advice of Counsel to the Legislature, my ruling is as follows.

59. Hon LEE Cheuk-yan may not move his proposed CSAs to empower SETW to make bylaws to prescribe fares (amendments to clause 17 and long title);

60. Dr Hon Fernando CHEUNG may move his proposed CSA to require MTRCL to provide certain facilities and adequate staff to assist passengers (amendment to clause 8).

61. Dr CHEUNG may not move the following proposed CSAs –

- (a) to require the MTRCL's directors to require MTRC to adopt a policy and implement measures for the fulfilment of MTRCL's corporate social responsibility and to set indicators regarding the employment of disabled persons (amendments to clause 5 and proposed new clause 7A); and
- (b) to require MTRCL to provide half-fare concession to disabled persons (amendment to clause 5 and proposed new clause 8A).

62. Hon LEE Wing-tat may move his proposed CSA relating to the right to develop residential or commercial projects (proposed new clause 6A).

63. Hon LEUNG Kwok-hung may move the following proposed CSAs –

- (a) to remove exemptions currently given to MTRCL under BO and PHMSO (proposed new clauses 20A and 21E);
- (b) to remove the exemption in relation to the application of noise abatement notices currently given to MTRCL under NCO (proposed new Part 3A, i.e. new clause 29C); and
- (c) to move a consequential amendment to TCCCO relating to the

application of noise abatement notices (amendment to clause 30).

64. Mr LEUNG may not move his proposed CSA to remove MTRCL's power under MTRO to prosecute in its name offences under the Ordinance (proposed new clause 21D).

65. Hon Andrew CHENG may move the following proposed CSAs –

- (a) to establish a Railway Development Fund (amendment to clause 5 and proposed new Division 4A, i.e. new clause 15A);
- (b) to set up a Railway Penalty Point System (amendment to clause 5 and proposed new clauses 10A and 21F);
- (c) to require MTRCL to provide certain facilities and comply with specified performance levels (amendment to clause 8 and proposed new clause 21E);
- (d) to empower SETW to require MTRCL to provide information on the fare level for the rail and TSA bus service within the North-west Transit Service Area (amendment to clause 16);
- (e) to remove the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulation from section 54(2) so that the Building Authority may not grant MTRCL exemptions (proposed new clause 20A); and
- (f) to modify Schedule 2 to MTRO so as to remove certain exemptions from PHMSO currently given to MTRCL (proposed new clause 21D).

(Mrs Rita FAN)
President
Legislative Council

5 June 2007

Rail Merger Bill

**Summary of Members' proposed Committee Stage amendments (CSAs),
Secretary for Environment, Transport and Works (SETW)'s comments and Members' responses**

	CSAs	SETW's comments	Members' responses
<i>(a) Hon LEE Cheuk-yan</i>			
(i)	<p><u>Clause 17 and long title</u> To amend section 34(1) of the Mass Transit Railway Ordinance (Cap. 556) (MTRO) to empower the MTR Corporation Limited (MTRCL) to prescribe in its bylaws made under this section the fares payable by persons travelling on the railway, and to delete the phrase: "(other than in relation to any fare payable for using any railway service operated by the MTR Corporation Limited)" from the long title</p>	<p>The CSA to amend clause 17 is outside the scope of the Bill. The long title of the Bill, the Explanatory Memorandum, the Legislative Council (LegCo) Brief on the Bill, and official statements made at meetings of the Bills Committee on Rail Merger Bill (the Bills Committee) have made it clear that matters relating to fares fall outside the scope of the Bill.</p> <p>The CSA to amend the long title is out of order. The Rules of Procedure do not permit a Member to propose an amendment to the long title for the purpose of expanding the scope of a bill. Amendments may only be made to the clause of a bill, and the long title is not a clause. Rule 58(9) provides that any amendment to the title of a bill shall be consequential to an amendment to the bill.</p>	<p>Whether his amendment to the long title needs to be or may be moved will depend on whether his CSA to clause 17 is passed during Committee Stage. In the case of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Bill 2005, amendments which appeared to fall outside the scope of the Bill, as stated in its long title, were allowed and passed and the long title was also amended as a result.</p> <p>In ruling on whether certain CSAs to a bill are admissible under Rule 57(4)(a), the President would take into account the bill's long title, Explanatory Memorandum and LegCo Brief. However, they are not the only factors for consideration and they are not the deciding factors. The President's ruling dated 21 February 2000 on the Mass Transit Railway Bill is relevant.</p> <p>The Bills Committee has spent considerable time in scrutinizing the terms and clauses contained in the integrated Operating Agreement, including fare regulation. After the deliberation, the Administration has made substantive revisions to the terms and clauses of the integrated Operating Agreement (including fare regulation).</p>

	CSAs	SETW's comments	Members' responses
			<p>The merger of the two railways, the integrated Operating Agreement and fare regulation are therefore closely related; hence his CSA on fare regulation is also related to the subject matter of the Bill. Clause 17 of Bill is to provide for the bylaw making power of MTRCL. His CSA to amend clause 17 to stipulate that the railway fares be prescribed in bylaws is therefore related to the subject matter of the clause.</p> <p>Whether or not railway fares should be regulated in the bylaws or in the integrated Operating Agreement pertains to the merit of the fare regulation policy, and is irrelevant to determining whether the CSAs are admissible under Rule 57(4)(a).</p>
<i>(b) Dr Hon Fernando CHEUNG</i>			
(i)	<p><u>Clause 5</u> To add the definition of "disabled person"</p>		
(ii)	<p><u>Clause 8</u> To amend section 9 of MTRO to stipulate that MTRCL shall provide adequate facilities (platform screen doors and automatic platform gates) for the safety of persons on the railway or railway premises,</p>	<p>The CSA is outside the scope of the Bill. The CSA goes beyond the provision of a necessary legislative framework for the operation of the Kowloon-Canton Railway (KCR) by MTRCL. As it is not the purpose of the Bill to amend the existing regulatory regime or provisions governing the existing operation of MTRCL under MTRO, the CSA which imposes new requirements on MTRO does not relate to the implementation of the rail merger.</p>	<p>It is clearly stated in the Bill that MTRCL is responsible for maintaining proper and efficient service. The purpose of his CSA is to ensure that MTRCL is able to provide more proper and efficient service. Paragraph (a) of the long title stipulates that the purpose of the Bill is to provide for the regulation (other than in relation to any fare) of the operation by MTRCL of railways and bus services, including all aspects of safety. The purpose of his CSA is to ensure safety of persons on the railway and railway premises. The CSA entirely pertains to the object and purpose of the Bill.</p>

	CSAs	SETW's comments	Members' responses
	install lifts to provide direct access from ground level to station platform, and provide adequate staff to assist passengers, in order to discharge its duty to provide a proper and efficient service under that section		
(iii)	<u>Proposed new clause 7A</u> To impose on directors of MTRCL to require MTRCL to adopt a policy and implement measures for the fulfilment of MTRCL's corporate social responsibility, and set indicators regarding the employment of disabled persons	The CSA goes outside the scope of the Bill. It is not the purpose of the Bill to amend the existing regulatory regime and provisions governing the existing operation of MTRCL under MTRO. The CSA raises new matters which are not provided for in the Bill nor in the existing MTRO by imposing new duties on the directors in relation to 'social responsibility' and setting indicators on employment of disabled persons. There is nothing in the long title of the Bill or any substantive clauses of the Bill that relates to the role or duties of the directors.	The long title does not state that the responsibility of the directors is not within the scope of the Bill. In fact, according to paragraph (a) of the long title, the Bill includes regulation of the railway and bus services operated by MTRCL. As the provision of railway and bus services by MTRCL has a bearing on all strata of the society, including the disadvantaged groups, the directors of MTRCL must fulfil their corporate social responsibility, striking a balance between commercial interests and corporate responsibility. His proposed new clause 7A is therefore related to the subject matter of the Bill and its clauses.
(iv)	<u>Proposed new clause 8A</u> To require MTRCL to provide half-fare concession to disabled	The CSA is outside the scope of the Bill. Paragraph (a) of the long title makes it clear that it is not the purpose nor within the scope of the Bill to regulate fares payable for using any	The use of the term "fare concession" is to make it clear that the purpose of his CSA is about MTRCL fulfilling its corporate social responsibility and providing assistance to the disadvantaged groups, and not about fare regulation.

	CSAs	SETW's comments	Members' responses
	persons	<p>railway service or bus service operated by MTRCL. There is no provision in the substantive clauses of the Bill that provides for any regulation on the fares.</p> <p>The Explanatory Memorandum states, among other things, that the Bill is "not intended to deal with the regulation of any fare payable for using any railway service or bus service operated by MTRCL".</p> <p>The LegCo Brief and official statements made at meetings of the Bills Committee have made it clear that matters relating to fares fall outside the scope of the Bill.</p>	
(c) Hon LEUNG Kwok-hung			
(i)	<p><u>Proposed new clauses 20A and 21E</u> To repeal section 54 of and Schedule 2 to MTRO which stipulate the scope of exemptions granted to MTRCL and KCRC under the Buildings Ordinance (Cap. 123) and the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO)</p>	<p>The CSAs go beyond the scope of the Bill. It is not the purpose of the Bill to amend the existing regulatory regime or provisions governing the existing operation of MTRCL under MTRO. The CSAs seek to change in a substantive way certain regulatory provisions.</p>	<p>All his CSAs do not go beyond the scope of the Bill.</p> <p>The Bill changes the nature of MTRO. The new legislation will confer greater powers on MTRCL by vesting in it the responsibility to operate the KCR system. Under the Bill, the MTRCL is transformed from a company which is only responsible for the operation of the MTR system to one which will manage, at the same time, MTR and KCR. As such, the Bill changes the operation regime of the MTRCL.</p> <p>MTRO was originally enacted for MTRCL which is solely owned by the Government. However, since its listing in 2000, MTRCL has already become a privately-operated company. With the merger of MTR and KCR enabled by</p>

	CSAs	SETW's comments	Members' responses
			the Bill, KCR, which is solely owned by the Government, will become the asset of the privately-operated MTRCL. This shows that the Bill will bring about a complete change to the mode of operation of MTRCL.
(ii)	<p><u>Proposed new clause 21D</u> To repeal section 56 of MTRO which provides that prosecution for an offence under the Ordinance may be brought in the name of MTRCL</p>	<p>The CSA is outside the scope of the Bill. It is not the purpose of the Bill to amend the existing regulatory regime or provisions governing the existing operation of MTRCL under MTRO. The CSA seeks to change an existing provision governing the existing operation of MTRCL under the Ordinance. The CSA is not related to the purpose of the Bill, and is not part of the necessary legislative framework for the operation of KCR by MTRCL.</p>	<p>Based on the above reasons, the function of the Bill is to change the regime of MTRCL. CSAs to remove the exemptions enjoyed by MTRCL and its power to bring prosecution in its name should therefore be allowed.</p>
(iii)	<p><u>Proposed new Part 3A (proposed new clause 29C)</u> To repeal section 37 of the Noise Control Ordinance (Cap 400) (NCO) which regulates, among other things, the application of noise abatement notices to MTRCL</p>	<p>The CSA is beyond the scope of the Bill. It is not the purpose of the Bill to amend the existing regulatory regime or provisions governing the existing operation of MTRCL under MTRO. Besides, none of the substantive clauses of the Bill relates to NCO.</p>	
(iv)	<p><u>Clause 30</u> To repeal section 20(2) of the Tung Chung Cable Car Ordinance (Cap. 577) which stipulates that "section 37 of the Noise</p>	<p>The CSA is beyond the scope of the Bill. The operation of the Cable Car System is not covered by MTRO and is unrelated to the rail merger. The CSA is not consequential or necessary to the subject matter of the substantive clauses of the Bill, nor is it within the purposes of the Bill.</p>	

	CSAs	SETW's comments	Members' responses
	Control Ordinance (Cap. 400) shall not apply to construction works as defined in this Ordinance or to the operation of the Cable Car System"		
(d) Hon LEE Wing-tat			
(i)	<p><u>Proposed new clause 6A</u> To stipulate, among other things, that the franchise granted to MTRCL does not include the right to develop residential or commercial projects above or annexed to any new stations and along any extension to the railway, and that such right shall be granted through open tender</p>	<p>The CSA is outside the scope of the Bill. It is not the purpose of the Bill to amend the existing regulatory regime or provisions governing the existing operation of MTRCL under MTRO. In fact, the existing regulatory regime for MTRCL will be adopted for regulating the operations of the post-merger corporation (MergeCo). This arrangement is clearly reflected in the LegCo Brief.</p> <p>The CSA goes beyond the provision of a necessary legislative framework for the operation of the KCR services by MTRCL. The existence of an option to the Government to grant property development rights to a railway corporation to help bridge the funding gap of a new railway project undertaken by that corporation is an established arrangement which currently applies to both MTRCL and KCRC, i.e. it is not a new arrangement proposed for the rail merger.</p>	<p>In her ruling dated 10 July 2006 on the Betting Duty (Amendment) Bill 2006, the President stated that she would consider any information or material that was relevant to the determination of the subject matter of a bill. The extent to which the information contained in a LegCo Brief was relevant or useful to her consideration depended on the facts of each case.</p> <p>The elaboration on the Bill in the LegCo Brief is not equivalent to an elaboration on the subject matter of the Bill.</p> <p>He is focusing on the related part of the Bill and making a corresponding amendment. The right to develop residential or commercial projects is an inseparable part of the granting of the franchise for the operation of the railways by Government to MergeCo. The CSA ties in with the future construction and operation of the extensions of the railway. The CSA is also in line with the long title and the heading of clause 6, as well as within the provisions of the legislative framework for the operation of the KCR services.</p> <p>LegCo is responsible for the scrutiny of the Bill and not any</p>

	CSAs	SETW's comments	Members' responses
			operating agreement or arrangement between the Government and MTRCL. In deciding whether his CSA is within the scope of the Bill, the President needs only to consider whether his CSA is related to the subject matter of the relevant clause, and not whether his CSA will make changes to the OA.
(e) Hon Andrew CHENG			
(i)	<u>Clause 5 and proposed new Division 4A</u> (proposed new clause 15A) To establish a Railway Development Fund and Railway Development Fund Management Committee, and to require MTRCL to pay 3% of its annual net profit derived from its property businesses to the Fund	All the proposed CSAs are outside the scope of the Bill. They go beyond the provision of a necessary legislative framework for the operation of KCR services by MTRCL. It is not the purpose of the Bill to amend the existing regulatory regime or provisions governing the existing operation of MTRCL under MTRO. The CSAs seek to impose new requirements on the existing operation of MTRCL. They are not related to the implementation of the rail merger nor do they relate to the purpose of the Bill. There is nothing in the long title of the Bill or any substantive clauses of the Bill that relate to the regulation of the use of property profits by MTRCL. The proposed establishment of a Railway Development Fund raises a substantial new topic which is not mentioned in the long title, the Explanatory Memorandum, the LegCo Brief or dealt with by the substantive clauses of the Bill.	Paragraphs (a) and (c) of the long title stipulate that the purpose of the Bill is to provide for the regulation (other than in relation to any fare) of the operation by MTRCL of railways and bus services, including all aspects of safety, and to make provision for connected purposes. As such, his CSAs, including those requiring MTRCL to provide certain safety facilities on the railway or railway premises and to set up a Railway Penalty Point System, are in line with the long title. In addition, clause 8 requires MTRCL to maintain proper and efficient service, while clause 10 stipulates that the Chief Executive in Council may give directions in respect of relevant railway operation. His CSAs are therefore relevant to the subject matter of the above-mentioned clauses and are within the scope of the Bill. As regard his CSA to clause 16, it does not seek to vest in SETW the power to make regulation to regulate the fare level for the rail and TSA bus service within the North-west Transit Service Area. The CSA only seeks to require MTRCL to provide information on the fare level for the rail and TSA bus service.
(ii)	<u>Clause 5, proposed new clauses 10A and 21F</u> To set up a Railway Penalty Point System		
(iii)	<u>Clause 8 and proposed</u>		The majority of the clauses in the Bill are related to

	CSAs	SETW's comments	Members' responses
(iv)	<p><u>new clause 21E</u> To amend section 9 of MTRO to require MTRCL to provide adequate facilities (platform screen doors and automatic platform gates) to protect the safety of persons on the railway and railway premises, provide facilities to enable the reception of sound broadcasting services by persons on the railway or railway premises, and comply with specified performance levels, in order to discharge its duty to provide a proper and efficient service under that section</p> <p><u>Clause 16</u> To amend section 33 of MTRO to empower SETW to make regulation to require MTRCL to submit to</p>	<p>The proposal to provide facilities for persons on the railway or railway premises to receive radio broadcast has nothing to do with the rail merger or railway operation. The railway corporations had already installed special broadcasting system to enable direct communication between train drivers and passengers, and the frequencies for such broadcasting system are different from those used for commercial radio broadcasting and thus cannot be used for receiving commercial radio broadcast. Hence, the CSA cannot be said to be related to the operation of MergeCo. Besides, the provision of sound broadcasting is regulated through the granting of licence under the Telecommunication Ordinance (Cap. 106) and is not relevant to the rail merger or the railway operation of MTRCL under the MTRO.</p> <p>Paragraph (a) of the long title makes it clear that it is not the purpose nor within the scope of the Bill to regulate fares payable for using any railway service or bus service operated by MTRCL. There is no provision in the substantive clauses of the Bill that provides for any regulation on the fares.</p> <p>The Explanatory Memorandum states, among other things, that the Bill is "not intended to deal with the regulation of any fares payable for using any railway service or bus service operated</p>	<p>amendments to the regulation of the regime and operation of MTRCL. The LegCo Brief and the Explanatory Memorandum are not the equivalent of the long title. Paragraph (c) of the long title states that the object of the Bill is to "make provisions for connected purposes". "Connected purposes" should mean to make, on a non-fare-regulating premise, provisions for the other operations of MergeCo. His amendments referred to in (i), (iii), (v) and (vi) are in line with paragraph (c) of the long title.</p> <p>As for providing facilities to enable reception of sound broadcasting services on the railway or railway premises, the CSA is not seeking to require MTRCL to provide sound broadcasting service, but only to provide the reception facilities for broadcasting services.</p>

	CSAs	SETW's comments	Members' responses
	<p>the Commissioner for Transport information on the fare level for the rail and the Transit Service Area (TSA) bus service within the North-west Transit Service Area</p>	<p>by MTRCL".</p> <p>The LegCo Brief and official statements made at meetings of the Bills Committee have made it clear that matters relating to fares fall outside the scope of the Bill.</p>	
(v)	<p><u>Proposed new clause 20A</u> To amend section 54(2) of MTRO to remove the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulation (Cap. 123 sub. leg. I) from that section so that the Building Authority may not grant MTRCL exemptions</p>		
(vi)	<p><u>Proposed new clause 21D</u> To repeal paragraphs 1, 2, 3 and 4 of Schedule 2 to MTRO so as to remove certain</p>		

	CSAs	SETW's comments	Members' responses
	exemptions from PHMSO currently given to MTRCL		