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Legislative Council

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Subcommittee on Rail Merger Ordinance (Commencement) Notice

Background brief on implementation of rail merger

Background

The legislative amendment exercise for implementing the rail merger was completed in July 2007 after passage of the Rail Merger Ordinance and approval of the necessary amendments to the relevant subsidiary legislation by the Legislative Council.

2. On 9 October 2007, the MTR Corporation Limited (MTRCL) conducted an Extraordinary General Meeting in accordance with the Listing Rules to seek the approval of its minority shareholders on the proposed rail merger. The minority shareholders of MTRCL voted in favour of the proposed rail merger.

3. On 26 October 2007, the Government gazetted the Rail Merger Ordinance (Commencement) Notice (L.N. 200) (the Commencement Notice) and appoints 2 December 2007 as the day on which the Rail Merger Ordinance (11 of 2007) will come into operation.

4. The Rail Merger Ordinance amends the Mass Transit Railway Ordinance (Cap. 556) (the MTR Ordinance) and the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) to provide for the implementation of the merger of the Mass Transit Railway and Kowloon-Canton Railway systems.

5. The eight items of subsidiary legislation relating to the rail merger will also come into operation on 2 December 2007 as it is provided in the respective items of subsidiary legislation that they will come into operation on the day appointed for the commencement of the Rail Merger Ordinance. These eight items of subsidiary legislation are the Mass Transit Railway (Amendment) Regulation 2007 (L.N. 110), Kowloon-Canton Railway Corporation (Suspension) Regulation (L.N. 111), Mass Transit Railway (Transport Interchange) (Amendment) Regulation 2007 (L.N. 112), Kowloon-Canton Railway (Restricted Area) (No. 2) Notice 1997 (Amendment) Notice 2007 (L.N. 113), Mass Transit Railway (Amendment) Bylaw 2007 (L.N. 156), Mass

Transit Railway (North-west Railway) Bylaw (L.N. 158), Mass Transit Railway (Transport Interchange) (Amendment) Bylaw 2007 (L.N. 160), and Kowloon-Canton Railway Corporation (Suspension of Bylaws) Bylaw 2007 (L.N. 162).

6. The House Committee agreed at its meeting on 2 November 2007 to form a subcommittee to study the Commencement Notice.

The Rail Merger

7. The Rail Merger involves the following key elements:

(a) Structure and key financial terms of the transaction

Transaction structure

- Kowloon-Canton Railway Corporation (KCRC) will grant a Service Concession to MTRCL to use its assets to operate the KCR system.
- The initial period of the Service Concession is 50 years.
- The listing status of MTRCL will be retained. MTRCL will be the legal entity of the post-merger corporation (MergeCo).
- MergeCo will be responsible for the daily operation and maintenance of the KCR system, and will pay for all operating capital expenditure during the Service Concession period.

Key financial terms

- MTRCL will pay KCRC the following:
 - an upfront payment of \$4.25 billion for the Service Concession and for acquisition of certain short-lived railway assets of KCRC such as stores and spares;
 - fixed annual payments of \$0.75 billion for the duration of the Service Concession; and
 - starting from the fourth year, variable annual payments on the basis of a banded revenue-sharing approach based on the revenue generated from the use of KCRC's assets covered in the Service Concession, at 10% sharing for revenue exceeding \$2.5 billion and up to \$5 billion, 15% sharing for the next \$2.5 billion, and 35% sharing for revenue beyond \$7.5 billion.

- MTRCL will pay \$7.79 billion for the acquisition of property package which includes the following:
 - Property development rights along East Rail, Ma On Shan Rail, Light Rail and Kowloon Southern Link (\$4.91 billion);
 - Investment properties related to East Rail and Light Rail currently held by KCRC (\$2.84 billion); and
 - KCRC's property management business (\$40 million).

(b) Fare reduction upon rail merger

- No fare increase until after 30 June 2009.
- The second boarding charge of \$1 to \$7 will be abolished; there will be a global fare reduction of \$0.2 for Octopus users paying full fares; and fare for journeys at \$12 or above will have additional fare reduction of \$1.
- Guarantee a minimum of 10% fare reduction for all rail passengers travelling on journeys with fares at \$12 or above.
- Guarantee a minimum of 5% fare reduction for all rail passengers travelling on journeys with fares between \$8.50 and \$11.90.
- Senior citizens will also enjoy a \$2 concessionary fare per trip for travelling on the MTR and the KCR during Sundays and public holidays in the first year of the rail merger.
- The fare reduction will be applicable to MTR (except Airport Express Line), West Rail, East Rail (excluding Lo Wu trips) and Ma On Shan Rail. Light Rail will be excluded from the fare reduction package.
- MTRCL will maintain the status quo with respect to student fare discounts by continuing to provide a discount of 50% on student fares for the MTRC Railway and no discount on student fares for the KCRC Railway

(c) Introduction of Fare Adjustment Mechanism (FAM)

- An objective and transparent FAM will be introduced to replace fare autonomy.

(d) Job security for frontline staff

- Job security for all frontline staff of MTRCL and KCRC will not be affected as it relates to the rail merger.

(e) Interchange arrangements

- provision of barrier free interchanges at Nam Cheong, Mei Foo and Kowloon Tong stations and integration of operations at those stations and at Tsim Sha Tsui station.
- integration of the ticketing systems for Octopus ticket users and single journey ticket users.
- establishment of an integrated communication coordination centre and hotline system.

Issues to be followed up by committees of the Council

8. In examining the Rail Merger Bill, the Administration was requested to follow up on the following matters and to report to the Subcommittee on Matters Relating to Railways in six months' time:

- (a) measures to enhance in-train dissemination of information to passengers;
- (b) measures to improve the air flow at platforms of non-enclosed railway stations;
- (c) provision of public toilets at railway stations; and
- (d) review of the role of Light Rail in the overall public transport service market within the North-west Transit Service Area, and introduction of suitable improvement measures to enhance the transport services in the area at reasonable fares. (An information paper was circulated to the Subcommittee on Matters Relating to Railways vide LC Paper No. CB(1)2330/06-07(01) on 6 September 2007).

9. The Administration also undertook to report to the Panel on Environmental Affairs in six months' time measures to mitigate railway noise during both train operation and maintenance periods.

10. Regarding the provision of concessionary fares to persons with disabilities, the Subcommittee to Study the Transport Needs of and Provision of Concessionary Public Transport Fares for Persons with Disabilities is following up on the related matters.

11. In studying the eight items of subsidiary legislation relating to the rail merger, some members considered that there was a need to improve the two sets of bylaws (namely, the Mass Transit Railway By-laws and North-west Railway By-laws) as some provisions and offences therein were already outdated, and could not meet the present-day circumstances. On the other hand, some members were also concerned

about the drafting of some of the existing provisions. In their opinion, these bylaw provisions were not clearly defined, and hence the general public might inadvertently be caught by the provisions. The Subcommittee formed to study the eight items of subsidiary legislation noted the policy decision of MTRCL that the objective of the then exercise was to amend the relevant bylaws where necessary for implementing the rail merger. MTRCL agreed 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.

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