

**Legislative Council Panel on Transport
Subcommittee on Matters Relating to Railways**

**Government's Assessment on
MTR Corporation Limited's Bylaw Review**

Purpose

This paper sets out the Government's assessment on the outcome of the review on the Mass Transit Railway Bylaws ("MTR Bylaws") and the Mass Transit Railway (North-west Railway) Bylaw ("the NWR Bylaws") carried out by MTR Corporation Limited ("MTRCL").

Background

2. MTRCL has undertaken to the then Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger ("the Subcommittee") that a comprehensive review of its two sets of bylaws (i.e. MTR Bylaws and NWR Bylaws) would be conducted, taking into account the experience of operating the integrated railway system after the merger as well as LegCo Members' views expressed at the meetings, and would revert to LegCo on the outcome of the review within 12 months after the rail merger. MTRCL has completed the review and the outcome is set out in the paper submitted by MTRCL.

Government's assessment

3. We have examined the outcome of the review conducted by MTRCL and are of the view that the scope of the review has covered the areas of concern of the Subcommittee; and agree with the findings and proposed amendments to the bylaws. Our assessment of the main areas covered in the review is set out in the following paragraphs.

Consistency and Clarity

4. Having reviewed the two sets of bylaws and taking into account the experience of operating the integrated railway system, MTRCL has

proposed to maintain two sets of bylaws because the MTR and Light Rail are two different systems. Some provisions in the MTR Bylaws will need to differ from the NWR Bylaws to cater for the differences between the two systems. Following a thorough comparison of the two sets of bylaws, MTRCL has agreed that where the intent and purpose of the bylaws are the same but the wording is inconsistent, amendments will be made. The Administration supports MTRCL's approach to address and remove inconsistencies where appropriate. We note that MTRCL has proposed amendments in response to the concerns raised by the Subcommittee except for the three items below -

- (a) confining the scope of the bylaws on "queuing" –
MTRCL explained that Section 34 of the Mass Transit Railway Ordinance provides that the Corporation can make bylaws to regulate the conduct of members of the public using the railway or on railway premises. Hence, MTR bylaw 28C is not ultra vires and no amendments will be made;
- (b) confining the scope of the bylaws on "Bill posting, etc., unauthorised display of materials, etc." –
MTRCL explained that it is inappropriate to limit the scope of the bylaw since non-commercial promotion activities can also affect smooth passenger flow; and
- (c) provide exemption for use of abusive language in private conversations –
MTRCL explained that the possibility of private conversations being caught by the bylaw is very remote as only abusive language which manifests itself as a disturbance to other passengers will be caught by this provision. In this regard, there is no need to provide an exemption.

The Administration considers MTRCL's explanation reasonable.

Penalty Level

5. Taking into account the Subcommittee's comments over the appropriateness of the penalty levels of various offences under the two sets of bylaws, MTRCL has proposed to benchmark its penalty levels

against the levels of penalties in the Criminal Procedure Ordinance. On this basis, MTRCL has examined all bylaws carrying penalties and re-classified them according to the degree to which those offences affect railway operation and safety. In the course of the exercise, MTRCL has also made reference to similar offences in other relevant legislation. The review has resulted in penalties being removed for 4 bylaws, reduced for 16 bylaws and increased for 15 bylaws. The Administration agrees that MTRCL has taken a systematic approach in the review and all of the concerns raised by the Subcommittee on specific provisions have also been addressed.

Other relevant matters

6. Apart from the bylaws, the Corporation has also been asked to follow up on the matters below -

- (a) improving the bylaw enforcement guidelines to facilitate enforcement by frontline staff;
- (b) improving the clarity of notices posted in railway premises to enhance public awareness of the application of those bylaws with penalties;
- (c) considering the installation of Octopus device for refund of First Class Premium at platforms; and
- (d) looking into a LegCo Member's earlier concerns over the nuisance to passengers caused by audio-visual broadcast on trains and promotional activities at stations.

7. We understand that MTRCL has revised its enforcement guidelines and has agreed to improve the clarity of notices posted in railway premises by including references to the relevant bylaw and the applicable penalty where appropriate. MTRCL has explained that the installation of an Octopus device at platforms for refund of First Class Premium is not justifiable in view of the small number of affected passengers.

8. With regard to the concerns over nuisance caused by audio-visual broadcast on trains and promotional activities at stations, the Corporation has to comply with the guidelines relating to audio-visual broadcast for the former and if approved commercial activities create a nuisance to passengers for the latter, the Corporation will ask those persons conducting such activities to cease such immediately, and will even rescind the approval if they fail to comply.

Way Forward

9. Subject to Members' comments on the outcome of the review, MTRCL will prepare the amendments to the bylaws and seek the approval of the Legislative Council.

Transport and Housing Bureau
January 2009