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**Panel on Transport**

**Subcommittee on Matters Relating to Railways**  
**Meeting on 19 April 2016**

**Background brief on the review of the Mass Transit Railway By-laws,  
Mass Transit Railway (North-west Railway) Bylaw**

**Purpose**

This paper provides background information on the review of the Mass Transit Railway By-laws (Cap. 556B) ("MTR Bylaws") and the Mass Transit Railway (North-west Railway) Bylaw (Cap. 556H) ("NWR Bylaw") conducted by the MTR Corporation Limited ("MTRCL"), in particular the regulations under MTR Bylaws relating to the size of personal objects which could be carried into the MTR network. It also summarizes the major views and concerns expressed by the Legislative Council ("LegCo") Members during previous discussions on the subject.

**Background**

2. Pursuant to Section 34 of the Mass Transit Railway Ordinance (Cap. 556) ("MTR Ordinance"), MTRCL may make bylaws for the purpose of prescribing the conditions relating to the use of its service. Bylaws made in this way are subject to the approval of LegCo. MTRCL may also, following the stipulations of the bylaws, promulgate detailed prescriptions on routine matters relating to train operations and conduct of passengers by way of notices. These matters include restriction on size of luggage, areas within railway premises where entry of passengers is forbidden because of safety and where smoking is prohibited. Should the matters involved in the notices attract wide public attention, MTRCL will conduct public consultation to gauge the views from the community.

### Merger of MTR and KCR systems

3. Due to the rail merger in 2007, the original bylaws which were respectively applicable to the ex-MTR and ex-KCR heavy rail systems were combined (i.e. MTR Bylaws), while Light Rail, because of its significant operational differences with the heavy rails, continued to adopt, largely, a separate set of bylaws as before (i.e. NWR Bylaw). To implement the rail merger, amendments to the relevant subsidiary legislation were needed to bring across the relevant parts of the regulations and bylaws made under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) ("KCRC Ordinance") for adoption under the MTR Ordinance, whereas all regulations and bylaws made under the KCRC Ordinance would suspend during the service concession period. On 25 May 2007, the House Committee agreed to form the Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger ("the Rail Merger Subcommittee") to study the related draft subsidiary legislation relating to the rail merger.

4. During its deliberations, the Rail Merger Subcommittee made suggestions on the following areas<sup>1</sup>:

- (a) the consistency between MTR Bylaws and NWR Bylaw ("the two sets of bylaws");
- (b) the proposed maximum penalty levels for various offences (e.g. illegal hawking and use of abusive language on railway premises) which are not related to safety and security of railway operations under the two sets of bylaws; and
- (c) the drafting of certain provisions (e.g. those relating to the use of abusive language and compliance with notice on railway premises).

In this connection, MTRCL undertook to conduct a comprehensive review of the two sets of bylaws within 12 months after the rail merger<sup>2</sup>, taking into account the experience of operating the integrated railway system after the rail merger, as well as the views expressed by members of the Rail Merger Subcommittee.

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<sup>1</sup> LC Paper No. CB(1)1997/06-07

<sup>2</sup> The Rail Merger Bill was passed by the Council at the meeting of 6 June 2007.

5. In January 2009 and June 2010, MTRCL submitted to the Subcommittee on Matters Relating to Railways ("the Subcommittee") proposals on amendments of the two sets of bylaws<sup>3</sup>. However, after several rounds of discussion, the Transport and Housing Bureau and MTRCL considered that the views expressed by Subcommittee members on the definition and scope of certain terms in the original provisions, such as "abusive language" and "improper dressing" were diverse, and that no clear direction on the proposed amendments was formed. As no further discussion was carried out on the amendment exercise in LegCo, MTRCL reviewed the matter with its railway operations experience since the rail merger, and concluded that the two sets of bylaws by and large adequately facilitate proper and efficient railway services, no amendments were necessary.

#### Regulations under MTR Bylaws relating to luggage size

6. Luggage may only be carried on the railway subject to compliance with MTR Bylaws and the Conditions of Carriage of Luggage issued by MTRCL<sup>4</sup>. To ensure safety of railway services, MTRCL has, having regard to factors e.g. the design of stations and trains running on various railway lines as well as passenger flow, formulated and adopted restriction on luggage size and set a limit<sup>5</sup>. If the luggage fails to comply with the limit, MTRCL's staff will give verbal/written warning to or prosecute passengers where necessary.

7. In 2015, there were public concerns on the restrictions imposed by MTRCL on the size of luggage following some incidents where passengers with large musical instruments/sports equipment were disallowed from entering in the paid areas or travelling on MTR.

8. On 25 September 2015, MTRCL announced that it would conduct a review of the size limit on personal objects allowed in the MTR network, followed by a public consultation exercise. On 2 November 2015, MTRCL implemented a registration scheme for carriage of oversized musical Instruments ("the Scheme") on a trial basis for four months<sup>6</sup>. Under the Scheme, passengers could carry large musical instruments when travelling

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<sup>3</sup> LC Paper Nos. CB(1)557/08-09(08) & CB(1)2089/09-10(01), in particular Annexes 2 and 3 of LC Paper No. CB(1)2089/09-10(01) set out the proposed amendments to the two sets of bylaws.

<sup>4</sup> Please see MTRCL's Conditions of Carriage of Luggage: [http://www.mtr.com.hk/en/customer/main/carriage\\_of\\_luggage.html](http://www.mtr.com.hk/en/customer/main/carriage_of_luggage.html)

<sup>5</sup> Each passenger may carry a piece of luggage or a hand-carried item with total dimensions (i.e. length, width and height) not exceeding 170cm, and the length of any one side not exceeding 130cm. Since February 2013, MTRCL has further tightened the maximum weight limit for passenger luggage to 23kg.

<sup>6</sup> Please see MTRCL's press release issued on 27 October 2015: [https://www.mtr.com.hk/archive/corporate/en/press\\_release/PR-15-088-E.pdf](https://www.mtr.com.hk/archive/corporate/en/press_release/PR-15-088-E.pdf)

on MTR during non-peak hours with prior registration for a permit<sup>7</sup>. Over 2 300 applications have been received under the trial Scheme. MTRCL conducted a review on the Scheme after the trial period and considered that the Scheme has operated smoothly. On 1 March 2016, MTRCL announced that the Scheme would become an on-going arrangement with immediate effect to facilitate passengers<sup>8</sup>.

## **Major concerns raised by Members**

9. Members have expressed concern on the reviews of the two sets of bylaws in the Fourth and Fifth LegCo. Their major views and concerns are summarized in the ensuing paragraphs.

### Reviews of the two sets of bylaws

10. Members were upset that after 2010, the Government did not follow up with LegCo on the proposed amendments of the two set of bylaws. They queried whether the regulations under the two sets of bylaws were reasonable and suitable under the present circumstances. In response, the Secretary for Transport and Housing promised in the LegCo Meeting on 14 October 2015 that if Members had strong views over certain parts of the current bylaws, he would arrange an occasion for MTRCL to explain to Members. The responses from MTRCL on the Rail Merger Subcommittee members' concerns on consistency between the two sets of bylaws and the level of penalties are in **Appendices I** and **II** respectively. Specific issues raised by Subcommittee members at the meetings in January 2009 and June 2010 are set out in paragraphs 11 to 19.

### *Use of abusive language*

11. Section 22(1)(a) of NWR Bylaw provides that no person shall at any time while upon the railway premises "use any threatening, abusive, obscene or offensive language or behave in a riotous, disorderly, indecent or offensive manner". Members considered that it was necessary to provide a clear definition of "use of abusive language" for the purpose of clarity. They suggested that a person committed an offence if he, by use of threatening, abusive, obscene or offensive language, incited violence or discrimination towards another passenger, or if he did so to insult, threaten or disturb another passenger. In May 2010, MTRCL proposed to amend

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<sup>7</sup> The Permit allows the registered person to bring one oversized instrument (longest side not exceeding 145cm and total dimensions (i.e. length, width and height) below 235cm (including the case or bag)) into stations and trains at any one time during MTR service hours except in the morning peak period between 8:15 am and 9:15 am from Mondays to Fridays.

<sup>8</sup> Please see MTRCL's press release issued on 1 March 2016: [https://www.mtr.com.hk/archive/corporate/en/press\\_release/PR-16-015-E.pdf](https://www.mtr.com.hk/archive/corporate/en/press_release/PR-16-015-E.pdf)

the provisions relation to "abusive language" to prohibit "any threatening, abusive, obscene or offensive language likely to cause annoyance or offence to any person.

#### *Improper dressing*

12. At the Subcommittee meeting on 16 January 2009, members opined that the definition of "improper dressing" under the relevant provisions was unclear. MTRCL explained that the intent of this bylaw was to prevent passengers from being impacted on as a result of others' extremely dirty clothing, and this bylaw was commonly found in transport-related bylaws/regulations in the world.

13. Taking into account members' views, MTRCL proposed in May 2010 to amend the bylaw to "prohibit dressing or clothing, in the reasonable opinion of an official, in a condition liable to soil or damage the dress or clothing or personal effects of any other person".

#### *Consumption of food and beverage on railway premises*

14. Members questioned about the definition, enforcement actions and penalty levels relating to the consumption of food and beverage at the Subcommittee meetings as well as the Council meetings. MTRCL responded that passengers who consumed food or beverage on railway premises in breach of the two sets of bylaws would first be advised that they were breaching the relevant Bylaw and asked to cease eating or drinking. If a passenger complied with the inspector's request, a warning would be given; if a passenger refused to comply with the inspector's request, an infringement notice would be issued.

#### *Fares and tickets*

15. At the Subcommittee meetings and the Council meetings, Members requested MTRCL to consider adding provisions to the Bylaw clearly stipulating its responsibility regarding the refund of overcharged fare to passengers by Octopus devices. They also asked about MTRCL's guidelines on the exercise of discretion by staff on the waiver of surcharges imposed on passengers travelling First Class on East Rail Line ("ERL") without paying a premium in advance or travelling without valid tickets.

16. MTRCL replied that under normal circumstances, as established procedure and test had been put in place to ensure correct deduction of fares, it was unlikely that fares were overcharged by the fare collection system. In any case if fares were overcharged, MTRCL would, upon receipt of a genuine claim, refund any sum which it had overcharged. If fares were

overcharged as a result of an error in the fare collection system, MTRCL would post notices at the relevant stations to inform affected passengers that they might seek refund of the overcharged sum.

17. MTRCL also advised that its station staff and Ticket Inspection Unit staff performed ticket inspection work within the MTR area from time to time every day. Front-line staff of MTRCL might, depend on individual cases and special circumstances (e.g. first-time offenders who were not wilfully breaching the MTR Bylaws), consider issuing written warnings instead of imposing a surcharge on the passenger immediately

#### *Enforcement of luggage-related provisions*

18. As parallel traders had caused inconvenience to other passengers when they carried large pieces of luggage within railway stations and trains, members were all along concerned about MTRCL's handling on oversized luggage. According to the Administration, oversized or excessively long objects might obstruct or trip passengers, prevent train doors from opening and closing, obstruct evacuation in times of emergency, or even pose danger if these objects were too close to overhead line. In view of strong public views concerning parallel traders carrying large pieces of luggage, the Government had requested strict enforcement of the related bylaws by MTRCL. Furthermore, MTRCL set up the Bylaws Inspection Unit ("BIU") in April 2009 for the enforcement of the MTR Bylaws and the Conditions of Carriage of Luggage. As at March 2015, there were 59 staff with experience in disciplinary services in BIU leading 90 security staff to perform their duties along ERL. For the three months from December 2014 to February 2015, there were 8 450, 15 149 and 8 155 cases respectively at ERL in which passengers were disallowed to travel on MTR because of violation of the weight or size limit for luggage.

#### *Trainings and guidelines for MTR staff*

19. Members enquired about the training and guidelines for MTRCL staff on the enforcement of the bylaws and the approach of the enforcement work. MTRCL pointed out that it would arrange regular training to the staff who dealt with enforcement of the bylaws, so that they would be sufficiently familiarized with the bylaws and operational guidelines which set out the clauses of the MTR Bylaws and procedures to be observed when handling passengers who breached the MTR Bylaws. MTRCL was strengthening its staff training and communication so that they could have even clearer understanding on the operational guidelines when handling special cases.

## **LegCo questions and relevant papers**

20. In the Forth and Fifth LegCo, Members raised eight questions relating to the review of the two sets of bylaws. The hyperlinks to the above LegCo questions and other relevant papers are in **Appendix III**.

## **Latest development**

21. The Administration and MTRCL plan to brief members on the operation of the two set of bylaws and the implementation of the Scheme at the Subcommittee meeting to be held on 19 April 2016.

Council Business Division 4  
Legislative Council Secretariat  
13 April 2016

**(I) Responses to concerns raised by the Subcommittee to Study the  
Draft Subsidiary Legislation Relating to the Rail Merger**

	<b>Bylaws/Offences</b>	<b>Responses</b>
1.	<b>Wrongfully entering or leaving trains</b> MTR Bylaw 9(2) NWR Bylaw 16(c)	Will provide for an exemption in situation where there is an accident or an emergency.
2.	<b>Compliance with notices</b> MTR Bylaw 21(1) NWR Bylaw 18 (1)	The Corporation proposes that all notices relating to an infringement or contravention will in future have a written reference to not only the relevant bylaw but also the applicable penalty.
3.	<b>No Eating or drinking</b> MTR Bylaw 27(b) NWR Bylaw 25(b)	Will delete “attempt to consume” from the MTR bylaw to avoid confusion.
4.	<b>Queuing</b> MTR Bylaw 28C(3) and 28C(4)	Section 34 of the MTR 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.
5.	<b>Intoxication</b> MTR Bylaw 28F NWR Bylaw 23	Both bylaws will be amended by replacing “as determined by an official in his absolute discretion” with “determination by an official in accordance with his belief or reasonable cause to believe”.  The adoption of language which refers to a state of intoxication “resulting from consuming or abusing alcohol, medicine or drug” in the MTR bylaw into the NWR bylaw to better define “intoxication”.



	<b>Bylaws/Offences</b>	<b>Responses</b>
6.	<b>Abusive language</b> MTR Bylaw 28H(1)(a) NWR Bylaw 22(1)(a)	Will not provide exemption for use of abusive language in private conversation given that the possibility of private conversation 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.  Penalty being reduced (see item 3 of Annex II)
7.	<b>Loitering</b> MTR Bylaw 31 NWR Bylaw 28	To be repealed.
8.	<b>Bill posting, etc., unauthorised display of materials for the purpose of advertisement, etc.</b> MTR bylaw 32 MTR bylaw 32A NWR Bylaw 26	No amendment as it is inappropriate to limit the scope of the bylaw since non-commercial promotion activities can also affect smooth passenger flow.
9.	<b>Disposal of lost property</b> MTR Bylaw 41(1)(c) NWR 36(1)(b)	Extend the lost property retention period from 1 months to 3 months.

## **(II) Other Amendments proposed by MTRCL pursuant to the review**

- **Authorized crossing places and conditions of crossing (MTR Bylaw 3A)**  
This is an obsolete provision and will be repealed since there is no longer designated crossing for animals, etc.
- **Firearms (MTR Bylaw 38)**  
There is no equivalent provision in the NWR Bylaw. In the interests of consistency it is proposed to adopt the MTR Bylaw into the NWR Bylaw.
- **Nuisance (MTR Bylaw 25)**  
There is no equivalent in the NWR Bylaw. In the interests of consistency it is proposed to adopt the MTR Bylaw into the NWR Bylaw.
- **Damage to Railway Premises (MTR Bylaw 5, NWR Bylaw 16(e))/Improper Operation of Equipment (MTR Bylaw 28A, NWR Bylaw 16(e))**  
Whilst the importance of these bylaws cannot be under-estimated the Corporation, upon review, accepts that an exception should be made for persons who genuinely acted in the belief that there was an emergency or that the damage sustained was the result of a genuine accident.

(I) Responses to concerns raised by the Subcommittee to Study the Draft  
Subsidiary Legislation Relating to the Rail Merger

	Bylaw/Offences	Existing penalty		Proposed amendments
		MTR Bylaws	NWR Bylaws	
1.	Playing radios, cassettes, musical instruments in railway premises	Bylaw 26,26A \$2000 fine	Bylaw 24 \$2000 fine	Exempt noise created by mobile phone ringtones generated from incoming calls.
3.	Use of abusive language	Bylaw 28H(1)(a) \$5000 fine	Bylaw 22(1)(a) \$5000 fine	Penalty to be reduced to \$2000.
4.	Hawking	Bylaw 30 \$5000 fine and 6 months imprisonment	Bylaw 27 \$5000 fine and 6 months imprisonment	The Corporation has considered a two-tier penalty adopted under the Public Health and Municipal Services Ordinance (Cap 132), but decided to reduce the penalty level by removing imprisonment instead.
5.	Loitering	Bylaw 31 \$2000 fine	Bylaw 28 \$2000 fine	To be repealed.
6.	Bill posting, unauthorized display of material for the purpose of advertisement, etc.	Bylaw 32 - Bill posting, etc.  Penalty - \$5000 fine and 3 months imprisonment  Bylaw 32A - Unauthorised display of material for the purpose of advertisement, etc.  Penalty - \$5000 fine	Bylaw 26 - Unauthorized bill posting, advertising and touting  Penalty - \$5000 fine	To reduce the penalty level by removing imprisonment.  The Corporation has considered confining the scope, but decided to maintain status quo as it is necessary to regulate all kind of promotional activities at station to ensure a smooth flow of passengers.

## **(II) Other Amendments proposed by MTRCL pursuant to the review**

- **Improper dressing (MTR bylaw 28G, NWR bylaw 23)**

The Corporation has re-assessed the nature and in the event of a breach the extent of this bylaws potential prejudice to passengers. It considers the current penalty of \$5000 can be further reduced to \$2000.

- **Failure to comply with signs (MTR Bylaw 35 and NWR Bylaw 31)**

In order to maintain consistency with Hong Kong's road traffic laws the bylaws are to be amended to align them with the Road Traffic (Traffic Control) Regulations (Cap 374). (i.e. from \$4000 and 2 months imprisonment (MTR bylaw) and \$5000 and 3 months imprisonment (NWR bylaw) to both \$5,000 and 3 months imprisonment for first conviction and \$5,000 and 6 months imprisonment for second and subsequent convictions.)

- **Spitting and littering (MTR 24 and NWR bylaw 21)**

The Corporation has re-assessed the nature and in the event of a breach the extent of this bylaws prejudice to passengers and the Corporation. It considers the current penalty of \$5000 can be further reduced to \$2000.

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

**List of relevant papers on Mass Transit Railway By-laws and  
Mass Transit Railway (North-west Railway) Bylaw**

Committee	Date of meeting	Minutes/Paper
House Committee meeting	29.6.2007	<a href="#">Report of the Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger</a>
Subcommittee on Matters Relating to Railways	16.1.2009	<a href="#">Administration's paper on Government's assessment on MTR Corporation Limited's Bylaw review</a>  <a href="#">The MTR Corporation Limited's paper on on MTR Bylaw review</a>  <a href="#">Minutes of meeting</a>
Subcommittee on Matters Relating to Railways	4.6.2010	<a href="#">Administration's paper on MTR Bylaw Review</a>  <a href="#">Minutes of meeting</a>  <a href="#">The MTR Corporation Limited's supplementary paper on MTR Bylaw review prepared by the MTR Corporation Limited</a>
Council meeting	15.2.2012	<a href="#">Ir Dr Hon Raymond HO Chung-tai raised a question on the nuisance behaviour in MTR train compartments</a>
Council meeting	22.2.2012	<a href="#">Hon CHEUNG Hok-ming raised a question on the acts of contravention in the railway premises</a>
Council meeting	17.10.2012	<a href="#">Hon CHAN Hak-kan raised a question on the measures to crack down on parallel trade activities</a>

<b>Committee</b>	<b>Date of meeting</b>	<b>Minutes/Paper</b>
Council meeting	18.3.2015	<a href="#"><u>Hon CHAN Chi-chuen raised a question on combating parallel trading activities</u></a>
Council meeting	13.5.2015	<a href="#"><u>Hon WU Chi-wai raised a question on Mass Transit Railway By-laws and Mass Transit Railway (North-west Railway) Bylaw</u></a>
Council meeting	14.10.2015	<a href="#"><u>Hon James TO Kun-sun raised a question on Mass Transit Railway By-laws and Mass Transit Railway (North-west Railway) Bylaw</u></a>
Council meeting	11.11.2015	<a href="#"><u>Hon Gary FAN Kwok-wai raised a question on MTR student concessionary fares</u></a>
Council meeting	2.12.2015	<a href="#"><u>Hon WONG Yuk-man raised a question on the monitoring of service performance of MTRCL</u></a>

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