

立法會
Legislative Council

LC Paper No. CB(1)2125/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

**Minutes of twentieth meeting on
Tuesday, 13 March 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon WONG Kwok-hing, MH
Hon LI Kwok-ying, MH, JP
Hon LEUNG Kwok-hung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
- Members absent** : Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon TAM Heung-man

- Public Officers attending** :
- Mr Patrick HO
Deputy Secretary for the Environment, Transport and Works
 - Miss Ida LEE
Principal Assistant Secretary for the Environment, Transport and Works
 - Mr Kady LO Kin-hung
Chief Inspecting Officer (Railways)
Environment, Transport and Works Bureau
 - Mr David LAU
Principal Assistant Secretary for Financial Services and the Treasury
 - Mr Sunny CHAN Yuen-sun
Senior Assistant Law Draftsman
Department of Justice
 - Mr Albert YUEN Lap-pun
Assistant Commissioner for Transport/Bus & Railway
 - Miss Alice AU YEUNG
Principal Transport Officer (Bus and Railway)
Transport Department
- Attendance by invitation** :
- MTR Corporation Limited
 - Mr Wilfred LAU
Head of Operations
 - Ms Maggie SO
External Affairs & Government Relations Manager
 - Kowloon-Canton Railway Corporation
 - Mr Y T LI
Senior Director, Transport
 - Mr Jeff LEUNG
External Affairs Manager
- Clerk in attendance** :
- Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Sarah YUEN
Senior Council Secretary (1)6

Mr Anthony CHU
Council Secretary (1)2

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I Confirmation of minutes and matters arising

(LC Paper No. CB(1)1099/06-07 - Minutes of the meeting held on 6 February 2007)

The minutes of the meeting held on 6 February 2007 were confirmed.

II Integrated Operating Agreement

- (LC Paper No. CB(1)627/06-07(01) - The Administration's response to issues raised at the meeting on 19 December 2006 on integrated Operating Agreement
- LC Paper No. CB(1)1071/06-07(01) - Submission from Dr Hon Fernando CHEUNG Chiu-hung dated 1 March 2007 on the integrated Operating Agreement
- LC Paper No. CB(1)1006/06-07(01) - Submission from Dr Hon Fernando CHEUNG Chiu-hung dated 23 February 2007 on the integrated Operating Agreement
- LC Paper No. CB(1)755/06-07(01) - Submission from Dr Hon Fernando CHEUNG Chiu-hung dated 15 January 2007 on the integrated Operating Agreement
- LC Paper No. CB(1)520/06-07(01) - Information paper on the integrated Operating Agreement provided by the Administration
- LC Paper No. CB(1)872/06-07(01) - Information paper on collection of fares provided by the Administration
- LC Paper No. IN03/06-07 - Information note on major changes proposed in the draft integrated Operating Agreement between the MTR Corporation Limited and the Government prepared by Research and Library Services Division of the LegCo Secretariat)

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2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. The Bills Committee continued to examine the integrated Operating Agreement (IOA) clause by clause.

Clause 9 and clause 10

4. The Bills Committee noted that clause 9 and clause 10 were an extension of the arrangement in the existing Operating Agreement, whereby the compensation payable under the Mass Transit Railway Ordinance (Cap. 556) (MTRO) as determined by independent valuers were extended to cover the compensation payable by Government to the post-merger corporation (MergeCo) in relation to the use of railway property when the franchise was revoked or suspended.

Clause 11 – Dispute settlement

5. The Bills Committee noted that if Government and MergeCo could not resolve a dispute arising out of or in connection with the IOA by means of informal negotiation, both parties might agree to submit that dispute to arbitration in accordance with the Arbitration Ordinance (Cap. 341). However, in the absence of a time limit for settling the dispute by means of informal negotiation, Mr Andrew CHENG and Mr WONG Kwok-hing were concerned that either party might resort to delay tactic in the course of negotiation, and refused to submit the dispute to arbitration under clause 11.2. Ir Dr Raymond HO also remarked that if an agreement on an appropriate commercial rate of return for undertaking a railway project could not be reached within a reasonable time, the railway implementation plan would be unduly affected as a result. They therefore requested the Administration to consider fixing a time limit for negotiation. The Chairman remarked that the avenue for arbitration should not, in one way or another, affect a party's right to seek injunctive or other judicial relief at any time.

6. Notwithstanding the availability of the avenue for seeking injunctive or other judicial relief for resolving dispute, Mr LEUNG Yiu-chung enquired how Government could resolve disputes over service improvement plans which were not accepted by MergeCo. The Administration explained that the Chief Executive in Council could give directions to MergeCo in relation to any matter concerning the franchise under section 13 of MTRO. However, compensation might be required as a result.

Clause 12 – Assistance in securing continuity

7. Ir Dr Raymond HO was concerned about the transitional arrangement for the transfer of the railway services to another railway operator. As MergeCo would be the only railway operator in Hong Kong after the rail merger, he was worried that Government might not be a position to direct the company to act in a certain way with a view to minimizing the impact of the changeover on the public and serving staff. The Administration explained that the clause was to ensure MergeCo should not take

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any action which might result in frustrating the transition to any successor franchisee of the right to provide the railway services in the case of franchise expiry or revocation.

Clause 13 – Review of terms of operating agreement

8. The Bills Committee had examined the scope, timing and working mechanism of the review, as well as the relevant factors to be considered by Government and MergeCo in the review process. As changes to the IOA would be subject to the consent of both parties, some members were worried that in conducting the review, MergeCo would only focus on commercial considerations and ignore the merits of other considerations which would be to the benefits of the travelling public. In considering the importance of the fare adjustment mechanism (FAM), some members considered that there was a need to improve the working mechanism of the review to ensure that views expressed by the Legislative Council (LegCo) and the public would be taken due consideration in the review process. There was also a need to enhance the transparency and legitimacy of the review. The Administration undertook to consider members' suggestions and revert to the Bills Committee.

Clause 14 – Furnishing of records

9. The Bills Committee noted the suggestions put forward by Dr Fernando CHEUNG Chiu-hung to include additional records that MergeCo should maintain. The Administration undertook to consider Dr CHEUNG's suggestion and revert to the Bills Committee.

Clause 17 – Intercity passenger service and freight service

10. The Bills Committee had examined the regulatory framework for Intercity Passenger Service (IPS) and Freight Service (FS) vis-à-vis Domestic Service (DS). Mr LAU Kong-wah had queried why the former would be subject to a less stringent set of performance requirements. The Administration explained that as IPS and FS would be provided by MergeCo in conjunction with third party operators, it would be inappropriate to pitch the same set of performance requirements in respect of DS for compliance by MergeCo. Mr LAU requested the Administration to consider reviewing the related matters.

Follow-up actions

Admin 11. To address various concerns expressed at the meeting, the Administration was requested to provide information on the following –

Clause 11

- (a) The Administration to consider requiring both parties to submit disputes under the IOA to arbitration if that dispute was not resolved through informal negotiation "within a reasonable period of time". Such

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requirement should not prejudice the right for both parties to seek injunctive or other judicial relief at any time;

- (b) The Administration to provide information on how the financial terms for the operation of new project under the concession approach could be finally determined if MergeCo was obliged to operate new project under the IOA;

Clause 12.2

- (c) The Administration to consider adding "reasonable" apart from "in good faith" in describing the actions taken or omitted to take by MergeCo; and to draw reference on the agreement between Government and franchised bus operator on similar matters, if any;

Clause 13

- (d) The Administration to consider revising clause 13 to ensure that the review of the terms of the IOA would take into account public affordability;
- (e) To ensure the impartiality and transparency of the review, the Administration to consider inviting academics, independent professionals or LegCo Members to undertake the review, and making public the result of the review;
- (f) The Administration to consider carrying out the first periodic review of the IOA on the third anniversary of the date of the IOA;
- (g) The Administration to consider specifying that the first periodic review would cover the review of the Fare Adjustment Mechanism;

Clause 14.1

- (h) The Administration to consider revising clause 14.1 to include records of –
 - i) reliability of facilities provided for persons with disabilities (PwDs);
 - ii) number of assistance required by PwDs; and

Clause 17

- (i) The Administration to explain why the IPS and FS were not subject to the same set of performance requirements and customer services pledges for DS.

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III Any other business

12. The Bills Committee agreed to continue examining IOA clause by clause at the next meeting scheduled for Friday, 16 March 2007, from 3:00 pm to 6:30 pm (or immediately after the House Committee meeting scheduled for the same day at 2:30 pm, whichever was later).

13. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1
Legislative Council Secretariat
17 July 2007

**Proceedings of the twentieth meeting of
the Bills Committee on Rail Merger Bill
on Tuesday, 13 March 2007, at 10:45 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes and matters arising</i>			
000000 - 000018	Chairman	- Confirmation of minutes of the meeting held on 6 February 2007 (LC Paper No. CB(1)1099/06-07)	
<i>Agenda Item II – Integrated Operating Agreement (IOA)</i>			
000019 - 000309	Chairman Administration	- Briefing by the Administration on clause 9	
000310 - 000457	Mr WONG Kwok-hing Administration	- Discussion on compensation for use of railway property by Government under the Mass Transit Railway Ordinance (Cap. 556) (MTRO) and the new provision relating to suspension of any part of franchise relating to Kowloon-Canton Railway Corporation (KCRC) Railway	
000458 - 000822	Mr Andrew CHENG Administration	- Discussion on compensation for use of railway property by Government when the franchise was revoked or suspended	
000823 - 000846	Administration	- Briefing by the Administration on clause 10	
000847 - 000957	Mr Andrew CHENG Administration	- Discussion on compensation which might be payable by Government to the post-merger corporation (MergeCo) in relation to the KCRC Railways where any part of the franchise relating to the KCRC Railways was suspended and the determination of compensation by independent valuers appointed under clause 10	
000958 - 001054	Administration	- Briefing by the Administration on clause 11	
001055 - 003537	Mr Andrew CHENG Mr WONG Kwok-hing Mr LEUNG Yiu-chung Chairman Administration	- Discussion on clause 11 regarding i) how to ensure that both Government and MergeCo would not use informal negotiation to delay submitting the dispute to arbitration ii) whether a time limit should be imposed for the informal negotiation	Administration to take necessary follow-up action

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> iii) whether fare adjustment and service improvement proposals would be subject to arbitration iv) how the Administration would ensure that MergeCo would implement suggestions to improve its railway operation 	
003538 - 004104	Ir Dr Raymond HO Chairman Administration	- Discussion on the negotiation on the financial terms for MergeCo to operate a new railway project under the concession approach	Administration to take necessary follow-up action
004105 - 004208	Administration	- Briefing by the Administration on clause 12	
004209 - 004738	Ir Dr Raymond HO Administration Chairman	- Discussion on the transitional arrangement for taking over the railway services by another railway operator	
004739 - 005334	Mr WONG Kwok-hing Administration	- Discussion on the meaning and interpretation of term "in good faith" under clause 12.2	
005335 - 005849	Ir Dr Raymond HO Administration	- Discussion on the operation of KCRC Railways upon the expiry or revocation of the franchise	
005850 - 010140	Mr Andrew CHENG Administration	- Discussion on whether clause 12.2 should stipulate that the actions mentioned therein should be acted with reasonable cause	
010141 - 010236	Administration	- Briefing by the Administration on clause 13	
010237 - 012953	Mr LAU Kong-wah Ms LI Fung-ying Prof Patrick LAU Chairman Mr WONG Kwok-hing Mr LEUNG Yiu-chung Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Discussion on clause 13 regarding <ul style="list-style-type: none"> i) whether fare adjustment mechanism would be reviewed in the first periodic review ii) whether the first periodic review could be carried out on the third anniversary of the date of IOA iii) the scope and mechanism of the review and factors to be considered in the review iv) the setting up of a special committee to review the terms of IOA v) whether the findings of the review would be published and made public 	Administration to take necessary follow-up action

Time marker	Speaker	Subject(s)	Action required
012954 - 013037	Administration	- Briefing by the Administration on clause 14	
013038 - 013213	Mr Albert CHAN Chairman	- Expression of objection against the Rail Merger Bill and discussion on clause 13 on the factors considered in reviewing the terms of IOA	
013214 - 013919	Administration Chairman	- Briefing by the Administration on clauses 15 to 17	
013920 - 014953	Mr LAU Kong-wah Mr LEUNG Kwok-hung KCRC Administration Chairman	- Discussion on clause 17 regarding the regulation of the intercity passenger service and freight service under IOA which were different from those for the domestic service	
<i>Agenda Item III – Any other business</i>			
	Chairman	- Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
 17 July 2007