

立法會
Legislative Council

LC Paper No. CB(1)2245/06-07
(These minutes have been seen
by the Administration)

Ref: CB1/BC/3/05

Bills Committee on Rail Merger Bill

**Minutes of twenty-sixth meeting on
Monday, 30 April 2007, at 2:30 pm
in the Chamber of the Legislative Council Building**

- Members present** :
- Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
 - Hon TAM Yiu-chung, GBS, JP (Deputy Chairman)
 - Hon Albert HO Chun-yan
 - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
 - Hon LEE Cheuk-yan
 - Dr Hon LUI Ming-wah, SBS, JP
 - Hon CHAN Kam-lam, SBS, JP
 - 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 LEE Wing-tat
 - Hon LI Kwok-ying, MH, JP
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - Hon LEUNG Kwok-hung
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Hon CHEUNG Hok-ming, SBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Prof Hon Patrick LAU Sau-shing, SBS, JP
 - Hon KWONG Chi-kin
- Members absent** :
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
 - 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 Brian CHOI
Assistant Secretary for the Environment, Transport and
Works

Mr David LAU
Principal Assistant Secretary for Financial Services and the
Treasury

Mr Sunny CHAN Yuen-sun
Senior Assistant Law Draftsman
Department of Justice

Miss Clara LEUNG
Government Counsel
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 Leonard TURK
Legal Director & Secretary

Mr Wilfred LAU
Head of Operations

Mrs Miranda LEUNG
General Manager – Corporate Relations

Ms Maggie SO
External Affairs & Government Relations Manager

Mr Richard THORNHILL
Partner, Slaughter & May
(Legal Adviser of MTR Corporation)

Ms Peggy LEUNG
Associate, Slaughter & May
(Legal Adviser of MTR Corporation)

Kowloon-Canton Railway Corporation

Mr Michael KWAN
Train Operations Manager

Mr Raymond WONG
Senior Corporate Affairs Manager

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Mr Anthony CHU
Senior Council Secretary (1)3

Ms Sarah YUEN
Senior Council Secretary (1)6

Action

I Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)1345/06-07(01) - Information paper provided by the Administration
- LC Paper No. CB(3)700/05-06 - the Bill
- LC Paper No. CB(1)1330/06-07(01) - Marked-up copy of the Bill
- LC Paper No. CB(1)1330/06-07(02) - Letter from Assistant Legal Adviser (ALA) to the Administration dated 10 August 2006
- LC Paper No. CB(1)1330/06-07(03) - The Administration's reply dated 19 September 2006 to ALA's letter dated 10 August 2006
- LC Paper No. CB(1)1330/06-07(04) - Letter from ALA to the Administration dated 26 October 2006

Action

- LC Paper No. CB(1)1330/06-07(05) - The Administration's reply dated 8 November 2006 to ALA's letter dated 26 October 2006
- LC Paper No. CB(1)1345/06-07(02) - Relevant extract of Kowloon-Canton Railway Corporation Ordinance (Cap. 372))

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee continued clause-by-clause examination of the Bill.
3. Some members considered that the use of an exclusionary clause in the long title might have the effect of preventing Legislative Council Members from proposing amendments relating to the regulation of any fare payable for using any railway service or bus service operated by MTR Corporation Limited (MTRCL). They considered it necessary to examine the related matters to see whether the long title, as presently drafted, was inconsistent with the Basic Law. The legal adviser to the Bills Committee was requested to provide a paper, setting out the nature of and the procedural issues related to the long title of a bill.

(Post meeting note: The paper was circulated to members vide LC Paper No. LS 78/06-07.)

4. The Bills Committee noted that should the legislative process relating to the Bill and the related subsidiary legislation be completed in July 2007, MTRCL would proceed to make arrangements for holding an Extraordinary General Meeting (EGM) for its minority shareholders to approve the merger package. According to MTRCL, the preparatory work for the EGM would take about eight weeks to complete. Thereafter, the two railway corporations would make the necessary system modifications to effect the rail merger which would take another six weeks or so to complete. Upon completion of all these work, the Administration would take necessary steps to gazette the commencement notice to effect the rail merger.

Follow-up actions

5. To address members' concerns raised at the meeting, the Administration was requested to follow up on certain matters and provide information as detailed below –

Clause 5

- (a) The Administration to review the need for paragraph (a)(ii) in the proposed amended definition of "railway premises" which listed the North-west Railway separately from the other KCR railways which were covered in paragraph (a)(i) of the said definition;

Action

Clause 6

- (b) The Administration to explain the legal basis of granting a franchise to MergeCo for a period of 50 years, which would extend beyond the timeframe stipulated in Article 5 of the Basic Law that the previous capitalist system and way of life in Hong Kong should remain unchanged for 50 years from 1997;

Clause 11

- (c) The Administration to review the wording of the Chinese text of the new section 15(A) of the Mass Transit Railway Ordinance (Cap. 556) (MTRO), in particular, section 15(A)(3);

Clause 12

- (d) The Administration to consider deleting the phrase "and the default or contravention is, under the terms of the Service Concession Agreement, a major breach of the Service Concession Agreement" from the new section 16(2) of MTRO since sub-paragraphs (a) – (c) of that proposed section had already listed the circumstances that would constitute a major breach of the Service Concession Agreement; and
- (e) The Administration to explain the meaning of "substantial breakdown of the service".

II Any other business

- 6. The Bills Committee agreed to continue clause-by-clause examination of the Bill at the next meeting scheduled for 2 May 2007, from 8:30 am to 10:30 am.
- 7. There being no other business, the meeting ended at 4:30 pm.

**Proceedings of the twenty-sixth meeting of
the Bills Committee on Rail Merger Bill
on Monday, 30 April 2007, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Clause-by-clause examination of the Bill</i>			
000000 000406	- Chairman Ms Emily LAU Mr Abraham SHEK Mr TAM Yiu-chung	- Opening remarks - Time limit for questioning and answering	
000407 001105	- Administration Ms Emily LAU Mr LEE Wing-tat Mr Albert HO MTR Corporation Limited (MTRCL)	- Briefing on Clauses 1 and 2 by the Administration (LC Paper No. CB(1)1330/06-07(01)) - Discussion on the commencement date of the Rail Merger Ordinance - Discussion on the arrangements for seeking approval from the minority shareholders of MTRCL on the rail merger package	
001106 001248	- Administration Chairman	- Briefing on Clauses 3 and 4 by the Administration	
001249 002223	- Administration Mr LEE Wing-tat Ms Emily LAU Chairman	- Briefing on Clause 5 by the Administration - Discussion on changing the Chinese name of MTRCL - Discussion on the amended definitions of "railway" and "railway premises"	Administration to take necessary follow-up action
002224 003852	- Administration Mr WONG Kwok-hing Ms Emily LAU Mr LEE Wing-tat Mr Andrew CHENG Chairman	- Briefing on Clause 6 by the Administration - Discussion on the effective date of rail merger - Discussion on the legal basis to grant a 50-year franchise to MTRCL - Discussion on how the post-merger corporation (MergeCo) could be granted a service concession to operate a new railway under the concession approach	Administration to take necessary follow-up action
003853 010705	- Administration Mr Andrew CHENG Chairman Mr Ronny TONG	- Briefing on Clause 11 by the Administration - Discussion on the circumstances under	Administration to take necessary follow-up action

Time marker	Speaker	Subject(s)	Action required
	Mr LEE Wing-tat	<p>which the Government was liable to pay compensation for the loss of or damage to MTRCL in relation to the KCRC Railway where any part of the franchise relating to the KCRC was suspended</p> <ul style="list-style-type: none"> - Mr Andrew CHENG's request to review the wording of the Chinese text of the new section 15A of the Mass Transit Railway Ordinance (Cap. 556) (MTRO), in particular, section 15A(3) 	
010706 - 013337	Administration Mr Andrew CHENG Mr LEE Wing-tat Chairman Mr Albert HO	<ul style="list-style-type: none"> - Briefing on Clause 12 by the Administration - Discussion on the interpretation of a substantial breakdown of the service of MergeCo in the proposed section 16(1) of MTRO 	
013338 - 013649	Mr LEUNG Kwok-hung	<ul style="list-style-type: none"> - Mr LEUNG's expression of concern about the lack of effective regulatory framework for monitoring the performance of the railway service after the rail merger 	
013650 - 014902	Mr LEE Wing-tat Mr Albert HO Ms Emily LAU Chairman Administration	<ul style="list-style-type: none"> - Discussion on the meaning of "substantial breakdown of the service" 	Administration to take necessary follow-up action
014903 - 015227	Mr LEE Cheuk-yan Chairman	<ul style="list-style-type: none"> - Discussion on the long title of the Bill 	Assistant Legal Adviser 3 to take necessary follow-up action
015228 - 020015	Mr LEUNG Kwok-hung Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Discussion on the need for setting up objective and clear standards for the service performance of the railway corporations 	
<i>Agenda Item II – Any other business</i>			
020016	Chairman	Date of next meeting	