香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

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19 September 2006

Dear Connie,

Rail Merger Bill

Thank you for your letter of 10 August 2006. Enclosed please find our response for your information.

Yours sincerely,

(Miss Ida LEE)
for Secretary for the Environment,
Transport & Works

Clarifications on the Rail Merger Bill

Long title of the Bill

It is noted that fare-related matters are not to be regulated under the Bill, but will be provided for in the Integrated Operating Agreement. In such circumstances, please clarify how the proposed fare reduction and fare adjustment mechanism ("FAM") will be enforced. Is the MTR Corporation Limited ("MTRCL") subject to any sanction for not effecting the fare reduction or non-compliance with the FAM? If yes, what are these sanctions and where are these sanctions provided for?

1. The integrated Operating Agreement (IOA) will stipulate the fare adjustment mechanism (FAM). Under the proposed scheme, adjustments to railway fares must be in accordance with the FAM and the post-merger corporation (MergeCo) shall provide to Government certifications from two third parties independent from MergeCo to certify that fare adjustments are in compliance with the FAM. Fare adjustments will not take effect until after MergeCo has fulfilled these requirements. Non-compliance with the FAM would place MergeCo in breach of its obligations under the IOA.

2. The fare reduction to be effected upon implementation of the rail merger will be stipulated in a separate agreement to be entered into between the MTR Corporation Limited (MTRCL) and the Government. Non-compliance with the fare reduction provisions of the agreement would place MergeCo in breach of its obligations under the agreement.

Proposed amendments to the Mass Transit Railway Ordinance (Cap. 556) ("MTRO")

Clause 5 – proposed section 2(1)

In paragraphs (a), (b) and (c) of the proposed definition of "Concession Property", while reference is made to property which falls within the definition of "Concession Property" in the Service Concession Agreement, there is no indication in the Bill as to the scope of the property concerned. For the purpose of clarity, would the Administration consider incorporating into the Bill the definition of "Concession Property" as set out in the Service Concession Agreement instead?

3. Under the proposed definition of "Concession Property" in Clause 5 of the Bill, the scope of Concession Property includes –

(a) any property which MergeCo has the right to have access to, use or possess under the Service Concession Agreement (SCA); and

(b) any property acquired, purchased, hired, produced, created, constructed, developed, processed or adapted for use by MergeCo and used only for the repair, maintenance, replacement or improvement of the property in (a) above.

Relevant property of the Kowloon-Canton Railway Corporation (KCRC) will be classified as Concession Property according to the above and specified as such in the SCA. There will be a long list of KCRC's property that would belong to the category

of Concession Property. Para.(c) in the proposed definition of "Concession Property" in the Bill is a general provision to allow for flexibility in case there are individual assets of KCRC which do not fall within the scope of (a) and (b) above but are eventually identified as Concession Property.

Clause 16 – proposed section 33

(a) Proposed section 33(1B) provides that subsection (1A) expires when that part of the franchise relating to KCRC railways is revoked. While the Secretary for the Environment, Transport and Works ("SETW") will no longer have power to make regulations under proposed section 33(1A) because of the expiry of the said section, what will happen to the regulations already made? Do they also expire? If so, is it necessary to stipulate this clearly?

(b) In the proposed section 33(1C), what is the reason for requiring the Commissioner for Transport ("the Commissioner") to consult MTRCL before the relevant information could be disclosed? Is the consent of MTRCL a prerequisite to disclosure? As you are aware, section 61 of MTRO provides that a provision of the Ordinance requiring or providing for SETW to consult MTRCL in relation to any matter does not oblige the Secretary to obtain the agreement of MTRCL in relation to the matter. Should a similar provision be included to cover consultation made by the Commissioner under the proposed section 33(1C)?

4. Where the proposed s.33(1A) of the Mass Transit Railway Ordinance (Cap. 556)("MTRO") expires, the regulations made under it will not expire automatically. Separate provisions will be made by regulations under proposed s.33(1A) to provide for the expiry of the relevant provisions in those regulations where appropriate. In this connection, the proposed sub-section 33(4) in this clause has provided for the making of consequential, transitional or saving provision as may be necessary or expedient in consequence of the expiry of any regulations made under the section. It should be noted that the power under proposed s.33(1A) is to exist as long as that part of the franchise relating to the KCRC Railways is in force. Looking into the future, it is possible that some of the regulations made under this provision should expire upon the expiry of the regulation-making power while some might have to remain effective for some time after the partial revocation of the franchise as it relates to the KCRC Railways. We consider it more appropriate to provide for the expiry of the relevant provisions in the regulations in question by the same regulations which, where necessary, could also prescribe specific conditions concerning the expiry of the individual provisions. It is more user-friendly for a user of the regulations in question to find out in the same regulations when and how some of the provisions in those regulations will expire.

5. MergeCo will be a listed company and must comply with its general obligation to disclose price sensitive information. Under Rule 13.09 of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the

"Listing Rules"), MergeCo is obliged to announce as soon as reasonably practical any information which

(a) is necessary to enable MergeCo and the public to appraise the position of the company; or

(b) is necessary to avoid the establishment of a false market in its securities; or

(c) might be reasonably expected materially to affect market activity in and the price of its securities.

Programmes of the future operations or plans of MergeCo for the light rail and TSA bus services within the North-west Transit Service Area may contain information on plans for capital investment by MergeCo which may constitute price sensitive information, therefore it is proper under the proposed section 33(1C) for the Commissioner for Transport to consult MergeCo before he discloses any such information. The prior consultation would enable MergeCo to consider in a timely manner steps to ensure compliance with the Listing Rules, e.g. whether MergeCo should simultaneously release the same information at the same time as the Commissioner intends to disclose the information. Under proposed section 33(1C), there is no requirement for the Commissioner to obtain the agreement of MergeCo before making the disclosure. We will consider whether it is necessary to include a similar provision as in section 61 of the MTRO to cover the consultation made by the Commissioner under this proposed section.

<u>Clause 17 – proposed section 34</u>

(a) In proposed section 34(1A)(a), should "them" by replaced by "it" as the pronoun for "the Corporation"?

(b) In the light of the proposed definition of "railway premises", the proposed section 34(1A)(b), as drafted, could empower MTRCL to make bylaws for the purpose of controlling access to certain areas of railway premises of both the Kowloon-Canton Railway ("KCR") and Mass Transit Railway ("MTR"). Does this reflect the Administration's intention? If it is intended that the proposed section 34(1A) should be applied to the railway premises of KCR only, should this intention be reflected more clearly in the provision?

(c) In the proposed section 34(1B), is it intended that the bylaws made under the proposed section 34(1A) would expire as well? If so, please reflect this intention more clearly.

6. It is noted that in MTRO, "it" (rather than "them") has been used as the pronoun of "the Corporation" (e.g. "as if **it** were the continuation of and the same person in law as MTRC" in section 45(1), "be delivered to the Corporation or sent to **it** by post" in section 63(3)). We therefore have no objection to replacing "them" by "it" in proposed section 34(1A)(a).

7. Proposed section 34(1A)(b) is introduced so as to enable MergeCo to preserve or modify as necessary in future the existing by-laws on control of access to certain areas of KCRC railway premises which were made by KCRC under a similar provision in the Kowloon-Canton Railway Corporation Ordinance (KCRCO). The application of the proposed section is intended to be limited to KCRC railway premises only. We will consider reflecting this more clearly in the Bill.

8. On the question regarding expiry of by-laws made under the proposed section 34(1A) when the part of the franchise relating to the KCRC Railways is revoked, our considerations are the same as set out in para. 4 above.

Clause 19 – proposed sections 52B and 52C

(a) What is the nature of the contracts or class of contracts that would be specified in a Vesting or Re-vesting Notice? Is there any reason for not making the relevant Notice subsidiary legislation?

(b) In the light of section 62 of MTRO, is it necessary to provide in the proposed sections 52B(3) and 52C(3) that a Vesting Notice and a Re-vesting Notice shall be published in the Gazette *as a general notice*? Please consider deleting the reference to "as a general notice" from the relevant provisions to make the drafting of these provisions consistent with that of existing provisions (e.g. sections 18(7)(b) and 19(2)) of MTRO).

9. The types of contracts to be included in a Vesting Notice may include supply contracts, maintenance contracts, service contracts, marketing and related agreements etc. to facilitate the implementation of the rail merger. The relevant rights and obligations under these contracts/agreements, etc. need to be transferred to MergeCo for operational reasons. According to the initial information from MTRCL and KCRC, thousands of contracts will be involved and they are most likely to be technical in nature. The detailed list of contracts for this purpose will be determined after further discussions between the two corporations and Government in the coming months. The Vesting Notice will simply contain particulars of the relevant contracts in sufficient detail to identify the contracts. In view of the above, the Vesting Notice is not considered to be a subsidiary legislation that would require scrutiny by the Legislative Council.

10. As section 62 of the MTRO has already stipulated that other than a commencement notice issued under section 1(2), a regulation made under section 33 and a bylaw made under section 34, all other instruments issued under the MTRO are not a subsidiary legislation, we will consider your suggestion of deleting "as a general notice" in proposed sections 52B(3) and 52C(3).

Clause 19 – proposed section 52G

It is noted that one of the terms under the MoU for the merger of the MTR and KCR systems is that job security for all frontline staff of MTRCL and KCRC will not be affected as it relates to the rail merger. However, proposed section 52G(3), as drafted, would suggest that the rights and liabilities of KCRC under employment contracts which are vested in MTRCL by virtue of proposed section

52D would have effect on MTRCL only if the employees referred to in those contracts are appointed by MTRCL on or after the date of merger. In this regard, please explain how the above term under the MoU is reflected in the Bill. Please also explain the criteria for making the appointment and whether these criteria should be set out in the Bill. What protection, if any, will be offered to existing employees of KCRC who are not appointed by MTRCL on or after the merger?

11. The proposed section 52G relates to contracts and other documents to which section 52B, 52D, 52E and 52F apply. Proposed section 52G only deals with the way the vesting provisions are to be construed. It does not itself effect the vesting of contracts. The proposed section 52G(3) is intended merely to deal with the construction of a reference to a person appearing in a contract to which KCRC is a party; it is not intended to specify any condition on appointment. For example, if there is a reference to the "Purchasing Manager" in a supply contract entered into by a supplier with KCRC but the equivalent post in MergeCo will bear a different name as the "Procurement Manager", the contract shall have effect as if, for the reference to "Purchasing Manager", there is substituted a reference to "Procurement Manager", being a person "appointed" to such role by MergeCo, as the contract is vested in MergeCo upon the merger. In the absence of an "appointment" by MergeCo of a "Purchasing Manager", if the "Procurement Manager" in MergeCo is the person who corresponds nearest to the "Purchasing Manager" in KCRC, under proposed section 52G(3), the reference to "Purchasing Manager" in the contract will be construed as a reference to the "Procurement Manager" after the merger. As such, the "appointment" by MTRCL under proposed section 52G(3) deals only with the construction of a reference to a person; it does not govern the transfer of employees from KCRC to MergeCo (which is dealt with in section 52D). It should also be noted that this proposed section is modeled on the existing section 38(3) of the MTRO which was brought into force upon privatization of MTRC, and it had not been necessary for the then MTRC to make any appointment of its employees to become staff of MTRCL upon the privatisation.

12. MTRCL has agreed that, on the Merger Date, MergeCo will undertake to all frontline staff that it will provide job security, as it relates to the merger integration process (other than in the case of cause) to them, and such undertaking will be legally binding and enforceable between MergeCo and each frontline staff. MTRCL's undertaking will be documented in the separate agreement to be entered into between the Government and the corporation as referred to in para.2 above. MTRCL has also agreed that on the Merger Date, all serving staff of MTRCL and KCRC will be employed by MergeCo on their prevailing terms. Under the proposed section 52(D), all serving staff of KCRC at the time of the merger will automatically become employed by MergeCo on merger date.

<u>Clause 19 – proposed section 52L</u>

(a) Why is it necessary to impose a duty on MTRCL and KCRC to co-operate with each other in the resolution of disputes regarding contracts specified in a Vesting Notice or Re-vesting Notice? Is there any sanction for non-compliance with the proposed section 52L(1)?

(b) In the light of the exclusion proposed in section 52L(2), what sort of disputes will be covered by the proposed section 52L(1)? Could some

examples be given?

13. Under proposed section 52B, the rights and liabilities under a contract specified in a vesting notice will be split between KCRC and MergeCo. Certain rights and liabilities as specified in proposed section 52B(1)(a) and (b) will be vested in MergeCo, whereas the other rights and liabilities under the contract will remain with KCRC. Under such circumstances, it is possible that both KCRC and MergeCo may be involved in disputes concerning a right or liability governed by the same contract.

14. An example will be a dispute between KCRC and one of its suppliers over the quality of goods supplied to KCRC, where KCRC may regard the goods supplied as defective goods and refuse to make payments for those goods, and the supplier may stop making further supplies beyond the Merger Date until payment is received. It is desirable for KCRC and MergeCo to cooperate with each other in seeking to resolve the dispute. There may be certain circumstances where it may only be beneficial for one of the corporations to cooperate and not at all or less so for the other; this provision is useful in such circumstance to require mutual cooperation. There is provision in the existing section 14 of the MTRO to deal with non-compliance with the Ordinance.

<u>Clause 19 – proposed section 54B</u>

(a) It is noted that the corresponding provision in the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) does not contain the requirement for the Commissioner to consult KCRC regarding his intention to disclose information relating to the TSA bus service obtained pursuant to section 18 of the Public Bus Services Ordinance (Cap. 230). Why is it necessary to provide for the requirement to consult MTRCL under proposed section 54B(3) before disclosure can be made?

(b) In the proposed section 54B(3), is it necessary for the Commissioner to obtain the consent of MTRCL before he can disclose the information? Should a provision similar to section 61 of MTRO be included to apply to the consultation required under the proposed section.

15. On the question regarding disclosure of information, our considerations are the same as set out in para.5 above.

Proposed amendments to the Kowloon-Canton Railway Corporation Ordinance (Cap. 372)("KCRCO")

<u>Clause 22 – Long title</u>

What is the purpose of enabling KCRC to own or take a lease of other railways? Is this purpose related to the rail merger in any way? What are these other railways?

16. In future after the merger, for individual new railway projects which are not natural MTR-extension projects, Government may determine whether the "ownership approach" (under which MergeCo would fund, construct and operate the new railway)

or the "concession approach" (under which Government would fund the construction of the new railway and MergeCo may be granted a service concession to operate the new railway) should be adopted. It is Government's intention that if the "concession approach" is adopted for any particular new railway in future, that railway will be vested in or leased to KCRC and in turn KCRC will grant the operating right to MergeCo through a service concession. KCRC will have to "own" the railway or take a lease of the railway before it grants a service concession in respect of the new railway to MergeCo. Therefore the Bill enables KCRC to own or take a lease of a new railway.

Clause 25 – proposed section 4

In the proposed section 4(db), does the reference to property include property-related interests of KCRC, the development rights for certain KCRC property sites as well as other commercial interests of KCRC? If yes, please explain how and why the disposal of these rights and interests are made under or in connection with the grant of a service concession? Are there provisions in the service concession agreement which cover the details of these rights and interests to be disposed of by KCRC?

17. The "property" referred to in the proposed section 4(db) does not include the property package. As explained in para.4(b) of the Legislative Council Brief on the Rail Merger Bill which we issued in June 2006, MTRCL would purchase the property package via a sale and purchase agreement with KCRC, which will be separate from the service concession agreement.

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Clause 28 – proposed section 40

It is noted that the operation of Part IV, sections 23, 25, 34B and 35A of KCRCO is to be suspended during the concession period. Is there any reason for not suspending the operation of other provisions, namely, section 26 (Power to enter lands), section 27 (Removal of trees), section 29 (Claims for compensation), section 34A (Corporation to have control over the laying of cables, pipes, etc. in the wayleave area), section 37 (Corporation may prosecute in its name etc.) and section 38 (Arrest of offenders)? Is it intended that KCRC should continue to exercise the powers or perform the functions under those provisions during the concession period, and if so, why?

18. After the rail merger, section 29 of KCRCO should still be applicable to claims for compensation for loss arising from railway works of KCRC within the three years before the merger date, therefore we have not proposed to suspend this provision after the merger.

19. Sections 26 and 27 of KCRCO provide inter alia that KCRC may enter lands and remove trees under specified circumstances. Section 38 of KCRCO relates to the power to arrest without warrant any person reasonably suspected of committing an offence under the KCRCO. Since KCRC will no longer have any statutory power or function of constructing or operating railways after the rail merger, the specified

circumstances that may trigger the operation of these sections will not arise. On consideration of minimising the amendments to the KCRCO, we have not proposed to suspend these sections during the concession period.

20. Section 34A of KCRCO prohibits unauthorised laying of cables, pipes etc in areas which a wayleave is vested in KCRC and it also stipulates Government's rights to use such areas. This provision should not be suspended after the merger.

21. Section 37 of KCRCO is not proposed to be suspended because otherwise KCRC would not be able to bring prosecutions after the merger on offences committed before the merger date.

Consequential and related amendments

Clause 30

Under clause 30(2), the references to "地鐵公司" in the Chinese text of certain provisions of MTRO are proposed to be replaced by "港鐵公司". Some of these provisions (i.e. sections 37 to 52 and 59) relate to vesting of property of the Mass Transit Railway Corporation in MTRCL and related matters on the appointed day. By G.N. 3903 of 2000 in the Gazette, the then Secretary for Transport designated 30 June 2000 as the appointed day. Since these provisions deal with acts that have already taken place, and as at 30 June 2000, it is a fact that there was no company in Hong Kong bearing the Chinese name "港鐵公司", please consider whether it is appropriate to simply substitute "港鐵公司" for "地鐵公司". Please consider whether it is necessary to include substantive provisions in the Bill to reflect clearly that the change of the Chinese name of MTRCL takes effect on the date of merger instead of from the appointed day.

22. While sections 37 to 52 of the MTRO deal with the vesting of certain property, etc. in MTRCL on the appointed day, which has already become a historical matter, many provisions in these sections have a continuous effect and continue to serve their intended purposes. For example, section 38(2)(a) provides inter alia that references to MTRC in any agreement vested in MTRCL under the Ordinance shall be taken as from the appointed day as referring to the corporation. Since the Chinese name of MTRCL will be changed on the Merger Date if the merger proposal is approved, it will be appropriate to amend the Chinese text of section 38(2)(a) as well so that a Chinese reference to MTRC in the relevant contracts shall be construed as a reference to the new Chinese name of MTRCL as from the Merger Date.

23. Where a provision of the Laws of Hong Kong is amended, an editorial note will be added beside the provision in question to indicate the amending section by which that provision is amended. This practice will guide a reader of the MTRO to find out how and when the Chinese name of MTRCL is changed.

Schedule 2 – proposed amendment to section 2(5) of the Eastern Harbour Crossing Ordinance (Cap. 215)

Instead of merely replacing "地下鐵路條例" and "地鐵有限公司" by "香港鐵路條例" and "香港鐵路有限公司" respectively, please consider the need to include a separate provision to reflect the transition from "地鐵有限公司" to "香港鐵路有限公司" upon the date of merger.

24 This provision is applicable not only on the appointed day within the meaning of Cap. 556 but also thereafter beyond the Merger Date. Therefore, it is necessary to amend the Chinese text of section 2(5) of cap.215, so that the Chinese references to MTRO and MTRC in Cap.215 shall be construed as references to the new Chinese name of Cap.556 and of MTRCL respectively.

Acquisition of KCRC's property and related commercial interests

It is noted from the MoU that the acquisition of KCRC's property and related interests by MTRCL forms an integral part of the merger deal. However, this matter does not appear to have dealt with in the Bill. In the circumstances, please explain how the above acquisition and the terms thereof will be given legal effect.

25. As mentioned in para.17 above, MTRCL would purchase the property package via a sale and purchase agreement with KCRC.

Composition of MTRCL's board of directors upon merger

(a) Given that the rights of KCRC to have access to, use or possess certain property are to be granted to MTRCL by way of a service concession, does the Administration consider it necessary to appoint a member of the KCRC to sit on the Board of MTRCL in order to safeguard KCRC's interest? If so, should this requirement be stipulated clearly in the Bill?

(b) At the meeting of the Panel on Transport held on 26 May 2006, some members raised concerns on how to ensure that Government officials sitting on the MTRCL Board could safeguard public interest and it was suggested that the Bill should clearly provide for the power/function of these Government officials to properly monitor MTRCL to safeguard public interest. Is there any reason for not incorporating this suggestion into the Bill?

(c) It is noted that in the Airport Authority Ordinance (Cap. 483) and Urban Renewal Authority Ordinance (Cap. 563), there is a provision imposing a duty on a Board member who is a public officer to state the public interest relevant to a matter before a meeting of the Board, if he considers that the matter which is to be or is being considered, decided or determined by the relevant Authority is or could be contrary to the public interest as perceived by him. Please refer to section 14 of Cap. 483 and section 8 of Cap. 563. Would the Administration consider including a similar provision in this Bill?

26. The interests of post-merger KCRC will be safeguarded through the enforcement of the service concession agreement and the sale and purchase agreement for the merger. As MergeCo will take up full responsibilities for the operation of

KCRC Railways after the merger, we do not consider it necessary or appropriate to appoint a member of KCRC to sit on the Board of MergeCo for the purpose of safeguarding the interests of KCRC.

27 The functions of the MergeCo Board are to be jointly exercised by all its members. Board Directors are required to act honestly and in good faith for the benefit of the corporation and exercise a reasonable standard of skill and care in the performance of their powers. There would be no difference in the role of Government officials sitting on the Board from that of the other Board members. Similar to the other directors who may apply their experience and knowledge obtained from their professions and contribute to the discussions in the Board, Government directors would provide advice to the Board based on their understanding of public interest and expectation, as well as any unique insight they may have from a regulatory perspective. This would ensure that the Board could strike a balance between prudent commercial principles and public interest in its deliberation. Government regulates the railway operation primarily through established channels in accordance with the relevant legislation and the operating agreement with the operator. This arrangement has worked well. The same approach will be adopted for regulation of MergeCo after the merger.

Chinese text

28. Our response to your comments on the Chinese text of the Bill is set out in the Annex.

Rail Merger Bill
Comments on the Chinese Text

Proposed amendments to Mass Transit Railway Ordinance (Cap. 556) ("MTRO")

Clause 5 – proposed section 2(1)

(a) In paragraph (b) of the proposed definition of "Concession Property", the meaning of "only" in the reference "used only for the purposes" in the English text has not been reflected in the Chinese text. Should "以用於" be replaced by "而只用於"?

(b) In the proposed definition of "Service Concession Agreement" should the reference "and with or without any other party" be replaced by "whether with or without any other party" in order to reflect the meaning of the corresponding Chinese text?

(c) In the proposed definition of "service concession", the Chinese rendition for "operation" is "經營" while "營運" is used as the Chinese rendition of the same term in the proposed definition of "TSA bus service". Should the same Chinese rendition be used for "operation" for the sake of consistency?

(a) We agree that an amendment is necessary. We will propose a suitable form of amendment accordingly.

(b) We take the view that both texts are of the same effect and the suggested amendment is not necessary.

(c) We will consider whether an amendment is necessary. We are of the view that:

(i) The dictionary meanings of the terms " 經營 " and " 營運 " are similar (please see:《現代漢語詞典》(修訂本)(中國社會科學院語言研究所詞典編輯室編，北京，1999 年) 第 665 及 1511 頁). Whereas both terms can be used in the context of managing or running a business, " 營運 " can also be used in the context of managing or running a vehicle, or the routine of a vehicle.

(ii) As such, on some occasions " 營運 " can better serve the legislative intent, for example, the use of this term in the definition of "operating agreement" and section 16(a)(ii) now existing in the MTRO.

(iii) From our point of view, the use of " 營運 " is literally a better choice for the definition of "TSA bus service", in which context the words "operation of bus service" refer to the provision of bus as a mode of transport rather than as a form of business. Please also see clause 8(b), in which " 營運 " is a more suitable verb to cater for the passive voice sentence structure of the English text.

(iv) However, given the similar meanings of the two terms and the predominance of "經營" in the MTRO and the bill, we will further consider the suggested amendment.

(v) We will also consider whether it is necessary to replace "營運" with "經營" elsewhere in the bill and the existing provisions of the MTRO. Nonetheless, the term "營運協議", as a defined term, will not be affected.

Clause 9 – proposed section 12A

Please improve the Chinese text of proposed section 12A(2)(b) with reference to the Chinese text of a similar provision in section 23(ii) of the Kowloon-Canton Railway Corporation Ordinance.

We will consider whether it is necessary to amend to both the Chinese and English texts to better convey the legislative intent.

Clause 11 – proposed section 15A

(a) In proposed section 15A(2), the meaning of "經營" does not seem to appear in the English text. To make both texts match, please delete "經營" in the proposed section.

(b) In proposed section 15A(3)(b) and 15A(4)(b), please make the Chinese text for "consequential loss" consistent.

(c) In the proposed section 15A(5), the meaning of "for which" in the English text has not been reflected in the corresponding Chinese text. Should "而補償須根據第 15(6)條支付，則第(3)及(4)款不適用於首述的損失、損壞或損害" be replaced by "而就該損失、損壞或損害須根據第 15(6)條支付補償，則第(3)及(4)款不適用於該損失、損壞或損害"?

(a) We agree with the suggested amendment.

(b) We agree that an amendment to proposed section 15A(4)(b) is necessary. The Chinese equivalent of "consequential loss" should be "相應而生的損失".

(c) We agree that an amendment is necessary. We will propose a suitable form of amendment accordingly.

Clause 11 – proposed section 15B

(a) In the proposed section 15B(1) and (2), should "經營" be added after "用於" to reflect the meaning of the corresponding English text and to achieve consistency with the Chinese text of a similar provision, i.e. proposed section 19A(2) of MTRO.

(b) In the proposed section 15B(1) and (2), since there is no prior reference to "使用" before "該等使用" in the Chinese text, what does "該等使用" refer to? Please improve the Chinese text.

(c) In the proposed section 15B(1) and (2), is it necessary to use "有關" before "服務"? In a similar provision, i.e. proposed section 19C(1), the Chinese text for "service" is "服務".

We agree that an amendment is necessary. We will propose a suitable form of amendment to proposed sections 15B(1) and 15B(2) which caters for the comments of paragraphs (a) to (c).

Clause 12 – proposed section 16

In the proposed section 16(1)(c) and (2), should the Chinese text for "there has been a major breach of the Service Concession Agreement" be "港鐵公司嚴重違反服務經營權協議" to make the drafting consistent with that of a similar provision in existing section 16(a)(i) and the proposed section 16(1)(a)(iii)?

We consider the text as it presently stands is consistent with that of proposed section 16(1)(a)(iii), and it could effectively convey the legislative intent.

Clause 15 – proposed section 19A

(a) In the proposed section 19A(2), as there is no reference to "operation" in the reference "that part of it relating to the KCRC Railways" in the English text, should "經營" in the corresponding Chinese text be deleted?

(b) In the proposed section 19A(2), please replace "有關服務" by "服務" to make it consistent with the proposed section 19C(1).

We agree that an amendment is necessary. We will propose a suitable form of amendment to proposed sections 19A(2) which caters for the comments of paragraph (a) to (b).

Clause 15 – proposed section 19C

In the proposed section 19C(1) and (2), since there is no prior reference to "使用" before "該等使用" in the Chinese text, what does "該等使用" refer to? Please improve the Chinese text.

We agree that an amendment is necessary. We will propose a suitable form of amendment to proposed section 19C(1) and 19C(2) which is consistent with the amendment to proposed sections 15B(1) and 15B(2).

Clause 16 – proposed section 33

In the proposed section 33(1A)(b), why is "運作" used as the Chinese text for "operation"? Should "經營" be used instead? Please refer to the Chinese text of a similar provision in proposed section 34(1D).

We consider the term "運作" a better choice. We are of the view that:

(a) The term is found in section 33(1)(a)(i) of MTRO and section 30(1)(a) of Kowloon-Canton Railway Corporation Ordinance (Cap. 372) ("KCRCO"), which contexts are similar to that of the present provision.

(b) The term "運作" refers to "progress of works" (please see:《現代漢語詞典》(修訂本)(中國社會科學院語言研究所詞典編輯室編，北京，1999 年)第 1562 頁). The intent of proposed section 33(1A)(b) is to empower the

Secretary to control and regulate the daily operation of TSA bus service as a public transport service, rather than the business management of TSA bus service. This can be seen from "maintenance" being included in the same paragraph. As such, "運作" can better serve the legislative intent.

Clause 19 – proposed section 52A

(a) In the proposed definition of "contract", should "或作出" be added after "訂立" in order to reflect the meaning of the corresponding English text which refers to "made or given"?

(b) In paragraph (d) of the proposed definition of "relevant date", please delete "與" before "該權利".

(a) We agree that an amendment is necessary.

(b) We agree with the suggested amendment.

Clause 19 – proposed sections 52B and 52C

(a) Please improve the Chinese text of the proposed sections 52B(1)(a) and 52C(1)(a) to make it reflect more accurately the meaning of the corresponding English text.

(b) In the heading of the proposed section 52C, should "合約" before "法律責任" be deleted to make it consistent with the heading of the proposed section 52B?

(a) We agree that an amendment is necessary. We will propose a suitable form of amendment accordingly.

(b) We agree with the suggested amendment.

Clause 19 – proposed section 52D

In the proposed section 52D(1), since the English text refers to any contract of employment entered into with KCRC, should the corresponding Chinese text be amended to "與九鐵公司訂立的任何僱傭合約"?

We agree with the suggested amendment.

Clause 19 – proposed section 52E

(a) In the proposed section 52E(1), should "任何" be added before "退休金計劃" and "酬金利益" to reflect the meaning of "any" in the corresponding English text?

(b) In the proposed section 52E(2), please replace "提述九鐵之處均以對港鐵的提述取代" by "提述九鐵公司之處均被對港鐵公司的提述取代". Please refer to the Chinese text of a similar context in the proposed section 52G(3).

(a) We agree with the suggested amendment.

(b) We agree with the suggested amendment.

Clause 19 – proposed section 52G

(a) In the proposed section 52G(3), since the phrase "and in relation to anything falling to be done on or after the relevant date" comes immediately after "to the extent of the relevant rights and liabilities", should the Chinese text be amended to reflect the meaning of the English text more accurately?

(b) In the proposed section 52G(5), the meaning of "as they would have had if that right or liability had at all times been a right or liability of the Corporation" in the English text has not been reflected in the Chinese text. The same applies to the proposed section 52G(6). Please make the English and Chinese texts match.

(a) We agree that an amendment is necessary. We will propose a suitable form of amendment accordingly.

(b) We agree that an amendment is necessary. We will propose a suitable form of amendment accordingly.

Clause 19 – proposed section 52H

In the proposed section 52H(2) and (3), please add "effected" before "under" to make it consistent with the corresponding Chinese text. As you are aware, "effected" is also used in the proposed section 52H(1).

We agree with the suggested amendment.

Clause 19 – proposed section 52J

In the proposed section 52J(1) and (2), please replace "權利及法律責任" by "權利或法律責任" to reflect the meaning of "right or liability" in the English text.

We agree with the suggested amendment.

Clause 21 – proposed section 54B

(a) In the proposed section 54B(3), please delete "的資料, " and substitute "的資料的意向" to reflect the meaning of "intention" in the English text. This would make the Chinese text consistent with a similar provision, i.e. proposed section 33(1C).

(b) In the proposed section 54B(4)(b), should the Chinese text for "operation" be amended to "經營"?

(a) We agree with the suggested amendment.

(b) We will consider the suggested amendment (please refer to our view on paragraph (c) of Clause 5 – proposed section 2(1) hereinabove).

Proposed amendment to KCRC Ordinance

Clause 25 – proposed section 4(9)

(a) Is it appropriate to use "建造工程" as the Chinese text for "construction"? If the proposed Chinese context is considered to be appropriate, please consider adding "works" or "operations" after "construction".

(b) In the proposed section 4(9)(b), since the English text refers to "access to, use or possess", please amend the Chinese text to reflect the correct order of these words.

(a) We consider inclusion of the term "工程" appropriate. We are of the view that:

(i) The word "construction" is a noun, whereas the Chinese term "建造" when used alone is a verb.

(ii) Expressions like "建造在合併日期前未完成" or "在合併日期前未完成建造" do not satisfy Chinese grammar and logic, as the term "建造" does not envisage an accomplishment, so we need a noun to collocate with "建造" to express the idea "the construction is not completed".

(iii) "Construction" means "the action of framing, devising or forming, by putting together of parts; erection, building" (please see: *The Oxford English Dictionary* (2nd edition) (Clarendon Press, Oxford, 1989) p.794), whereas "工程" in general means "everything related to building (please see: 《現代漢語大詞典》(王同憶主編, 海南出版社, 1992 年)第 443 頁). Inclusion of "工程" does not expand the scope of "construction".

(b) We agree that an amendment is necessary.

<u>Clause 28 – heading of Part VIII and proposed section 40</u>

Since the Chinese text is "若干條文在經營權有效期期間暫時中止實施", please amend the English text to "suspension of the operation of certain provisions during Concession Period" to make the two texts match.

In English, it appears acceptable to write both "suspension of certain provisions" and "suspension of the operation of certain provisions". In Chinese, however, it would sound incomplete to write "若干條文暫時中止". This explains the apparent disparity between the two texts, but in effect they are conveying the same message. As it is always desirable to have a more concise heading, the existing English text is considered appropriate. We consider that it may not be necessary to make the suggested amendment.

Schedule 1 to the Bill

<u>Section 2 – proposed amendments to Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg. C)</u>

In an existing provision (i.e. regulation 5B(2)(c)) which is similar to the proposed regulation 5B(2)(d), the Chinese text for "operated" is "經營" instead of "運作" as proposed. In a similar context in the proposed paragraph 3A of Schedule 1 to the Dutiable Commodities Ordinance (Cap. 109), "經營" is used as the Chinese text for "operated". Accordingly, please replace "運作" by "經營" in the proposed regulation 5B(2)(d) to achieve consistency.

We agree that an amendment is necessary, but given the above interpretations of "營運", "經營" and "運作", we consider "營運" the proper verb (please refer to our view on paragraph (c) of Clause 5 – proposed section 2(1) and Clause 16 – proposed section 33 hereinabove) to collocate with a motor vehicle.