

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
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8 November 2006

Dear *Connie*,

Rail Merger Bill

Thank you for your letter of 26 October 2006. Our bilingual response is attached for your reference please.

Yours sincerely,

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

Response to Issues on Rail Merger Bill

Letter from Bills Committee Assistant Legal Adviser of 26 October 2006

Clauses 16 and 17 – proposed sections 33 and 34 of the Mass Transit Railway Ordinance (MTRO)

If the Administration intends to provide for the expiry of the relevant provisions in the regulations and bylaws by the same regulations and bylaws, please add a provision to reflect this intention in the proposed sections. For example, in the proposed section 33 of MTRO, would the Administration consider adding a provision (similar to section 30(5) of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (KCRCO) proposed under clause 26) to the effect that a regulation made under the section may provide for the expiry of any of the provisions of the regulation when that part of the franchise relating to the KCRC Railways is revoked? It seems that such provision is necessary to tie in with the proposed section 33(4).

Clauses 16 and 17 seek to create the necessary power to make subsidiary legislation under the MTRO for the purpose of and arising from the rail merger. Insofar as regulations/bylaws to be made under proposed sections 33(1A) and 34(1A) of the MTRO are concerned, it is our intention to provide for their expiry also by way of the same set of regulations/bylaws.

It is generally accepted that the power to provide for the expiry of a regulation/bylaw is included in the power enabling the making of that regulation/bylaw, and no express enabling provision is required. In fact, the power to provide for a provision's expiry does not differ much from the power to repeal that provision (please see, for example, section 27 of Cap. 1). Precedents of providing for the expiry of a provision by another provision in the same piece of subsidiary legislation can be found in reg. 3(7) of Cap. 51D, reg. 3(3) of Cap. 369AP and reg. 2(4) of Cap. 371A.

On the other hand, the case of making consequential, transitional or saving provisions in subsidiary legislation where there is no express authorization in the relevant principal ordinance is less clear. It is therefore common that express provisions in this regard are included in the relevant principal ordinance. Examples include section 28(2)(e) of Cap. 116, section 89(6)(f) and (7) of Cap. 548, section 67(2) of Cap. 576 and section 63(2)(c) of

Cap. 583.

On the basis of the above observations, we consider that it is not necessary to include a provision in sections 33 and 34 of the MTRO to expressly provide that a regulation or bylaw may provide for the expiry of other provisions made under the same regulation/bylaw making power, while the addition of proposed section 33(4) and 34(1E) is necessary.

Clause 30

- (a) **Since an editorial note does not have legal or legislative effect, it would appear not desirable to use it in the circumstances. In fact, by reading the amended section 37 of MTRO, for example, readers might misunderstand that the vesting of the property, rights and liabilities of the Mass Transit Railway Corporation in MergeCo has already taken place on the appointed day, i.e. 30 June 2000. To avoid this, should appropriate provisions be made to reflect the change on the merger date. For example, in Part IX of MTRO, please consider adding a provision to the effect that on the merger date, all property, rights and liabilities vested in the Corporation by virtue of this Part shall continue to be so vested notwithstanding the change of the Chinese name of the Corporation to “香港鐵路有限公司”.**
- (b) **If it is considered not desirable to include Chinese characters in the English text of MTRO, will the Administration consider using two different terms to represent the corporation before and on the merger date respectively for the purposes of Part IX of MTRO? For example, “MTRCL” (“地鐵有限公司”) may be used to refer to the corporation that exists before the merger date while “Corporation” (“香港鐵路有限公司”) is used to represent the corporation on the merger date. In Part IX of MTRO, provisions may then be added to vest the property, rights and liabilities of MTRCL in the Corporation on the merger date.**

We are grateful for your suggestions. On reflection and after consultation with MTRCL, a simpler solution would be to retain all the references to "地鐵公司" in Part IX, and add a provision to section 36 to the effect that as from the Merger Date, a reference to "地鐵公司" in Part IX shall

be regarded as a reference to "港鐵公司".

Chinese text

Clause 25 – proposed section 4(9) of KCRCO

If it considered appropriate to use “**建造工程**” as the Chinese text in the context of the proposed section, please replace “**construction**” by “**construction works**” to make the Chinese and English texts match. As you are aware, in provisions of existing Ordinances where “**建造工程**” appears in the Chinese text, the corresponding English text generally contains the word “**works**” or “**operations**”. Examples of these provisions are sections 14 and 15 of the Tate’s Cairn Tunnel Ordinance (Cap. 393), sections 11 and 12 of the Western Harbour Crossing Ordinance (Cap. 436), and section 34(1) of the Construction Industry Council Ordinance (Cap. 587).

We have re-considered the issue. We will consider if the Chinese term “**建造工程**” in the proposed section 4(9) of KCRCO shall be amended.

Clause 28 – heading of Part VIII and proposed section 40 of KCRCO

In order to make the Chinese and English texts match, it would be desirable to amend the English text to “**suspension of operation of certain provisions during Concession Period**”. It would seem that consistency and accuracy should be more important than other considerations.

We have no objection to the suggested amendment.

Schedule 1 to the Bill

Section 2 – proposed amendments to Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations, Cap.109C

In the proposed regulation 5B(2)(d), if it is considered desirable to use “**營運**”, please also make a similar amendment to existing regulation 5B(2)(c) where the context is similar to that of the proposed regulation.

We have reconsidered the issue. We will consider if the term “**運作**” shall be replaced by the term “**經營**” in proposed regulation 5B(2)(d) for the purpose of achieving consistency with the existing regulation 5B(2)(c).