Bills Committee on Rail Merger Bill

Administration's Response to the Follow-up to Bills Committee Meetings on Clause-by-Clause Examination of the Bill

Issue	Response
Group A – Preliminary provisions and definitions	
(i) Clause 5(d) – Definition of "railway premises"	
(1) The Administration to review the need for paragraph (a)(ii) in the proposed amended definition of "railway premises" which lists the North-west Railway separately from the other KCR railways which are covered in paragraph (a)(i) of the said definition	• After further review taking into account legal advice, we agree that the "stops, terminuses and interchanges of the North-west Railway" referred to in paragraph (a)(ii) of the said definition are already covered in paragraph (a)(i) of the same definition and therefore we will move a committee stage amendment (CSA) to the Rail Merger Bill (the Bill) to delete paragraph (a)(ii).
Group B – Franchise and related matters	
(ii) Clause 6(a)	
(2) The Administration to explain the legal basis of granting a franchise to the post-merger corporation (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	• Whilst Article 5 of the Basic Law stipulates that the previous capitalist system and way of life shall remain unchanged in the Hong Kong Special Administrative Region (HKSAR) for 50 years, it does not set a deadline of 50 years for any specific arrangement or measure that is practised in the HKSAR, nor does it stipulate that the previous capitalist system or the way of life shall change after 2047. The net effect is that the Basic Law does not place any restriction on the duration of a railway franchise. Indeed, the existing railway franchise of MTRCL which was granted in 2000 through the enactment of the MTR Ordinance also has a 50-year duration which ends beyond 2047.
(iii) Clause 11	
(3) The Administration to consider revising the drafting of the Chinese	• We will improve the Chinese version of the new section 15A(3) and 15A(4) taking into account

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version of the new section 15(A)(3) of MTRO to improve the readability of the section.	members' comments and suggestions. The proposed amended version is listed in Annex A. We will move a CSA to the Bill.
(iv) Clause 12(e)	
(4) 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 have already listed the circumstances that would constitute a major breach of the Service Concession Agreement.	• Agreed. We will move a CSA to the Bill.
(v) Clause 15	
(5) The Administration to explain what kind of Concession Property, if taken possession by Government upon revocation or expiry of MergeCo's franchise, would be subject to compensation under proposed new section 19B and the calculation basis of such compensation.	• The question of compensation may arise only in cases where MergeCo made additional investment to acquire additional Concession Property for the operation of the KCR system during the concession period. As explained at the meeting on 8 May 2007, any such compensation will be calculated on the basis of the depreciated book value of the additional assets concerned.
(6) The Administration to review the need to improve the Chinese term in the Chinese version of the Bill that corresponds with the term "access" under the proposed sections 15B and	• According to legal advice from DoJ, "接觸" is an appropriate Chinese term that corresponds to the English term "access" in the context of the proposed sections 15B and 19A. • These provisions refer to "access to any Corporation Common Property and KCRC Common Property …… and may use such Corporation Common Property and KCRC Common

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19A .	Property ……". Since the common property referred thereto can involve a wide variety of properties, such as depots, records, computer systems etc., it is considered appropriate to use the term "接觸" which offers a more general coverage. • It is relevant to note that the use of "接觸" as the corresponding Chinese term for the English term "access" is not uncommon in our legislation. The following are a few examples: – s.3 of the Civil Aviation Ordinance, Cap 448: The Chinese version of "access to …… aircraft to which an accident has occurred" is "接觸……曾發生意外的飛機" – s.4(1) of the Inland Revenue Ordinance, Cap 112: The Chinese version of "access to any records" is "接觸任何紀錄" – s.8 of Clearing and Settlement Systems Ordinance, Cap 584: The Chinese version of "access to operation of the system" is "接觸該系統的運作"
(7) Referring to the term "it appears to" in the new section 18(1)(c) of MTRO, the Administration to review whether it is more appropriate to replace the term "覺得" by "有理由相信"or "認為"in the Chinese version of the Bill.	• We have reviewed the appropriateness of using the term "覺得" in this context. It is noted that "覺得" is commonly used for "it appears to", whereas "認爲" is commonly used for "considers" or "in the opinion of", and "有理由相信" is commonly used for "has reason to believe". • In addition, the Chinese phrase "行政長官會同行政會議覺得" is commonly used in the context of "it appears to the Chief Executive in Council" in relevant legislation. Examples in relation to public transport services are s.25(1) of the Ferry Services Ordinance, Cap 104 and s.24(1) of the Public Bus Services Ordinance, Cap 230. Relevant provisions are at Annex B. • Other similar examples can also be found in the following existing provisions: s. 35(1) of the Labour Relations Ordinance, Cap. 55; s. 29 of the Tramway Ordinance, Cap. 107; s. 10 of the Peak Tramway Ordinance, Cap. 265; s. 9(1)(d) of the Civil Aviation (Aircraft Noise) Ordinance, Cap. 312; s. 6(6)(a) of the Post Secondary Colleges Ordinance, Cap. 320; s. 33 of the Trade Description Ordinance, Cap. 362; s. 2A(2)(y) of the Civil Aviation Ordinance, Cap. 448; s. 180(1) of the Copyright Ordinance, Cap. 528; s. 80(7) of the Securities and Futures Ordinance, Cap. 571; and s.

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	26 of the Tung Chung Cable Car Ordinance, Cap. 577. • Therefore, we propose no change to this term in the new s.18(1)(c).
(vi) Clause 16(1)	
(8) The Administration to review whether the proposed section 33(1A)(c) which empowers SETW to make regulations for the purpose of controlling and regulating the use of the TSA bus service by members of the public and their conduct while using the TSA bus service, and the existing section 33(1)(a)(ii) of MTRO which provides for SETW's power to make regulations to control and regulate the same aspects in respect of railway services, are outdated and should be deleted.	• Agreed that these two provisions are outdated. We will move CSAs to the Bill to delete these provisions.
(9) The Administration to explain the need for the proposed section 33(1A)(d) which provides for SETW's power to make regulations on "any connected purposes" to the matters set out in sub-paragraph (a) – (c) of the same section.	• As explained at the meeting on 8 May 2007, the proposed section 33(1A) stipulates that SETW may make regulations for "all or any of the following purposes". Whilst sub-paragraphs (a) – (c) set out the key matters which are to be prescribed by regulation, we need a general provision in sub-paragraph (d) under the same section to provide for the making of regulations on related matters such as delineation of TSA bus stops.

Annex A

Proposed amendment to the new sections 15(A)(3) and 15A(4)

Taking into account members' suggestion, we will add "other" in s.15A(3)(b) to qualify the loss and damage in that provision. The addition of "other" is bold for easy reference. The other changes are to improve the readability of the section.

The proposed amended version of s.15A(3) and 15A(4) is set out below

"(3) 凡專營權中任何關乎九鐵公司鐵路的部分根據第15(1)條被暫時中止，而該項暫時中止是可歸因於某指明原因 —

(a) 凡在與該部分的專營權被暫時中止有關連的情況下，根據第15(5)條被接管的經營權財產蒙受任何損失或損壞(爲免生疑問，不包括使用或管有該經營權財產的權利的損失)，政府有法律責任就該等損失或損壞支付補償；及

(b) 在不抵觸(a)段的情況下，凡港鐵公司蒙受任何**其他**種類的損失或損害(包括任何相應而生的損失)而該項損失或損害在任何方面是該部分的專營權被暫時中止所引致的，或在任何方面是可歸因於該項暫時中止的，政府沒有任何法律責任就該項損失或損害支付補償。

(4) 如專營權中任何關乎九鐵公司鐵路的部分根據第15(1)條被暫時中止，而該項暫時中止是可歸因於並非指明原因的原因，則政府有法律責任就以下事宜支付補償 —

(a) 在與該部分的專營權被暫時中止有關連的情況下，根據第 15(5)條被接管的經營權財產蒙受任何損失或損壞(爲免生疑問，包括使用或管有該經營權財產的權利的損失)；及

(b) 港鐵公司所蒙受的任何種類的其他實際損失或損害(但爲免生疑問，不包括任何相應而生的損失)，而該項損失或損害是該部分的專營權被暫時中止而直接引致的，或是可歸因於該項暫時中止的。"

For members' easy reference, we also provide the marked-up version of the proposed amendments as follows:

"(3) 凡專營權中任何關乎九鐵公司鐵路的部分根據第15(1)條被暫時中止，而該項暫時中止是可歸因於某指明原因 —

(a) ~~政府有法律責任就任何~~凡在與該部分的專營權被暫時中止有關連的情況下，根

據第15(5)條被接管的經營權財產蒙受任何~~的~~損失或損壞(~~但~~爲免生疑問，不包括使用或管有該經營權財產的權利的損失)，政府有法律責任就該等損失或損壞支付補償；及

(b) 在不抵觸(a)段的情況下，凡港鐵公司蒙受~~在任何方面是該部分的專營權被暫時中止所引致或是可歸因於該項暫時中止的~~任何**其他**種類的損失或損害(包括任何相應而生的損失)而該項損失或損害在任何方面是該部分的專營權被暫時中止所引致的，或在任何方面是可歸因於該項暫時中止的，政府沒有任何法律責任就該項損失或損害支付補償。

(4) 如專營權中任何關乎九鐵公司鐵路的部分根據第15(1)條被暫時中止，而該項暫時中止是可歸因於並非指明原因的原因，則政府有法律責任就以下事宜支付補償 —

(a) 在與該部分的專營權被暫時中止有關連的情況下，根據第 15(5)條被接管的經營權財產蒙受任何~~的~~損失或損壞(爲免生疑問，包括使用或管有該經營權財產的權利的損失)；及

(b) 港鐵公司所蒙受~~、並是該部分的專營權被暫時中止而直接引致的或是可歸因於該項暫時中止~~的任何種類的其他實際損失或損害(但爲免生疑問，不包括任何相應產生的損失)，而該項損失或損害是該部分的專營權被暫時中止而直接引致的，或是可歸因於該項暫時中止的。”

Annex B

Section 25(1) of the Ferry Services Ordinance, Cap 104

(1) If it appears to the Chief Executive in Council that without good cause a grantee has failed, or is likely to fail, to maintain a proper and efficient ferry service, either generally or in respect of any franchised service the Chief Executive in Council may direct the Commissioner to serve on the grantee a notice in writing requiring the grantee to show cause in writing, within 28 days after the service of the notice-

(a) why its authority to operate any franchised service set out in the notice should not be revoked; or

(b) why its franchise should not be revoked altogether.

Section 24(1) of the Public Bus Services Ordinance, Cap 230

(1) If-

(a) it appears to the Chief Executive in Council that without good cause a grantee has failed, or is likely to fail, to maintain a proper and efficient public bus service, either generally or in respect of any specified route, in accordance with section 12; or

(b) a grantee has failed to pay any financial penalty imposed under section 22,

the Chief Executive in Council may direct the Commissioner to serve on the grantee a notice requiring the grantee to show cause in writing, within 28 days after the service of such notice-

(i) why its right to operate a public bus service on such specified routes as are set out in such notice should not be revoked; or

(ii) why its franchise should not be revoked altogether,

and any such notice shall specify the ground on which such right or the franchise may be revoked.