

立法會
Legislative Council

LC Paper No. LS99/06-07

**Paper for the House Committee Meeting
on 29 June 2007**

**Legal Service Division Report on
Proposed Resolutions under section 34 of the
Mass Transit Railway Ordinance (Cap. 556) and
section 31 of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372)**

The Secretary for the Environment, Transport and Works has given notice to move four motions at the Legislative Council ("LegCo") meeting on 11 July 2007. The purpose of these motions is to seek LegCo's approval of four bylaws, three of which are made by the MTR Corporation Ltd ("MTRCL"), namely, the Mass Transit Railway (Amendment) Bylaw 2007, Mass Transit Railway (North-west Railway) Bylaw and Mass Transit Railway (Transport Interchange) (Amendment) Bylaw 2007, and the Kowloon-Canton Railway Corporation (Suspension of Bylaws) Bylaw 2007 made by the Kowloon-Canton Railway Corporation ("KCRC"). As a result of the reorganization of policy bureaux of the Government Secretariat which will take effect on 1 July 2007, the motions will be moved by the Secretary for Transport and Housing on 11 July 2007.

2. The above Bylaws are among the eight items of subsidiary legislation necessary to be made to implement the rail merger relating to the Mass Transit Railway and the Kowloon-Canton Railway systems following enactment of the Rail Merger Ordinance (11 of 2007). Members may recall that the other four items of subsidiary legislation which are subject to LegCo's scrutiny under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) have been published in the Gazette on 12 June 2007 and tabled at LegCo on 13 June 2007.

3. At the House Committee meeting held on 25 May 2007, Members agreed to form a Subcommittee to study the draft subsidiary legislation relating to the rail merger ("the Subcommittee"). During the Subcommittee's deliberations, MTRCL has informed the Subcommittee that the object of the current exercise is to amend the existing bylaws where necessary for implementing the rail merger. As regards making improvements to individual provisions in the bylaws, MTRCL has agreed to conduct a comprehensive review of the relevant bylaws from an overall perspective after the merger taking into account the Subcommittee's suggestions. The Subcommittee has called upon MTRCL to include in the review matters such as reviewing the need to retain certain provisions in the bylaws having regard to the present day circumstances

and operational needs, examining whether the maximum penalties for various offences under the bylaws are appropriate with reference to the nature and seriousness of the offences and the maximum penalties for similar offences in other legislation, and improving the drafting of the bylaws to achieve consistency. Members may refer to the report of the Subcommittee to the House Committee meeting on 29 June 2007 for details (LC Paper No. CB(1)1997/06-07).

Mass Transit Railway (Amendment) Bylaw 2007 ("the 2007 MTR Bylaw")

4. To enable MTRCL to operate the KCRC railways during the period when the operation of the KCRC railways is taken over by MTRCL upon the rail merger ("the Concession Period"), the 2007 MTR Bylaw amends the Mass Transit Railway By-laws (Cap. 556 sub. leg. B) ("the MTR By-laws") to add to the MTR By-laws the relevant existing provisions of the Kowloon-Canton Railway Corporation By-laws (Cap. 372 sub. leg. B) ("the KCRC By-laws") that are required for the operation of the KCRC railways, excluding the North-west Railway. These provisions include those relating to intercity passenger and freight service and those that cater for the unique features of KCRC's operation such as the carrying of passengers in first class compartments and acceptance of goods for carriage on the railway or storage.

5. Other proposed amendments include those providing for the validity of tickets issued by KCRC before the merger until such time when the tickets expire, changing the references to the Chinese name of MTRCL in the MTR By-laws and other consequential amendments.

Mass Transit Railway (North-west Railway) Bylaw ("the NWR Bylaw")

6. Upon the rail merger, the North-west Railway will be operated by MTRCL during the Concession Period. Because the MTR By-laws (as amended by the 2007 MTR Bylaw) do not apply to the North-west Railway, it is necessary for MTRCL to make the NWR Bylaw to enable the post-merger Corporation to operate the North-west Railway and the bus services within the North-west Transit Service Area during the Concession Period.

7. The NWR Bylaw, which is modelled on the North-west Railway By-laws (Cap. 372 sub. leg. E) made by KCRC, provide for the following matters:

- (a) prescribing the terms and conditions relating to the use of the North-west Railway and bus services;
- (b) controlling and regulating matters such as the conduct of members of the public using the North-west Railway or buses or on buses, vehicles of the North-west Railway or railway premises, and a system for evidencing the payment of fares on the North-west Railway or buses; and

- (c) protecting the property of MTRCL on buses, vehicles of the North-west Railway or railway premises.

Mass Transit Railway (Transport Interchange) (Amendment) Bylaw 2007 ("the 2007 Transport Interchange Bylaw")

8. The main purpose of the 2007 Transport Interchange Bylaw is to make technical and consequential amendments to the Mass Transit Railway (Transport Interchange) Bylaw (Cap. 556 sub. leg. D) as a result of the change of the Chinese short title of the Mass Transit Railway Ordinance and the Chinese name of MTRCL to “香港鐵路條例” and “香港鐵路有限公司” respectively under the Rail Merger Ordinance.

Kowloon-Canton Railway Corporation (Suspension of Bylaws) Bylaw 2007 ("the Suspension Bylaw")

9. The Suspension Bylaw is made by KCRC to suspend the operation of the KCRC By-laws and the North-west Railway By-laws during the Concession Period. Provisions that are required for the operation of KCRC railways under these By-laws are provided for under the 2007 MTR Bylaw and the NWR Bylaw reported above to enable MTRCL to operate the same during the Concession Period.

Penalty levels for offences under the MTR By-laws and NWR Bylaw

10. In response to views expressed by members of the Subcommittee on the proposed increase in the maximum penalties for existing offences under the MTR By-laws, MTRCL has agreed to retain their existing penalty levels. For example, the maximum penalty for the offence of using abusive language remains to be a fine at \$5,000. The existing maximum penalty for the offence of loitering is also proposed to be revised by removing the penalty of 3 months imprisonment while maintaining the existing level of fine at \$2000.

11. In respect of new offences added to the MTR By-laws which do not have railway safety or security implications, such as unauthorized display of materials for the purpose of advertisement, and soliciting for handling of luggage or goods, MTRCL has accepted the Subcommittee's suggestion to remove the penalty of 6 months imprisonment as originally proposed and the maximum penalty now proposed for these offences under the 2007 MTR Bylaw is a fine at \$5,000.

12. To make the maximum penalties for similar offences under the MTR By-laws and the NWR Bylaw consistent, MTRCL has accepted members' suggestion to revise the penalty levels for four offences under the NWR Bylaw, namely, damaging a ticket, use of abusive language, unauthorized bill posting, advertising and touting, and loitering by removing the penalty of imprisonment as currently provided in KCRC's North-west Railway By-laws. The effect of this proposal is that the maximum penalty for these offences (except for loitering) under the MTR By-laws and the NWR Bylaw

would be a fine at \$5,000. As for the offence of loitering under the NWR Bylaw, the level of fine is proposed to be revised from \$1,000 to \$2,000 to align with the fine level for the same offence under the MTR By-laws. The Subcommittee has no objection to this proposed revision in view of the proposed removal of the penalty of imprisonment for the offence.

Review of the bylaws

13. According to the draft speech of the Secretary for Transport and Housing on the 2007 MTR Bylaw, the comprehensive review of the relevant bylaws which MTRCL has undertaken to conduct will be completed after it has gained experience in operating the integrated railway system and MTRCL will put forward detailed amendment proposals to the relevant Panel or committee within 12 months of the merger.

Commencement

14. The four Bylaws reported above will come into operation on the day appointed for the commencement of the Rail Merger Ordinance.

Concluding observations

15. The Legal Service Division (LSD) has sought clarification from the Administration on some drafting matters relating to the three bylaws made by MTRCL. The Administration has referred LSD's enquiries to MTRCL. LSD's letter and MTRCL's reply are attached at Annexes 1 and 2 respectively. In gist, MTRCL considers that the matters concerned relate to improving the drafting of some of the provisions in the bylaws and hence the provisions, as currently drafted, should not cause any confusion or misinterpretation. Nevertheless, MTRCL has agreed to consider those matters in the review exercise. Members may wish to consider whether to accept MTRCL's proposal.

Encl.

Prepared by

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Legislative Council Secretariat
27 June 2007

LS/R/17/06-07

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25 June 2007

BY FAX

Fax No. : 2537 5246

Dear Miss Lee,

Proposed resolutions relating to the rail merger

I am studying the above proposed resolutions with a view to advising Members and should be grateful if you would clarify the following:

Mass Transit Railway (Amendment) Bylaw 2007

In the proposed by-law 4A, should “trolley” be added after “barrow” to reflect the meaning of “多輪推車” in the Chinese text?

Mass Transit Railway (North-west Railway) Bylaw

- (a) In section 2, should a provision similar to the new by-law 10(1A) as proposed in the Mass Transit Railway (Amendment) Bylaw 2007 be added to ensure that tickets issued by KCRC for travel on the North-west Railway will be regarded as tickets issued subject to the North-west Railway Bylaw? If such provision is to be added, please also revise the definition of “ticket” in section 1(2) accordingly. Reference may be made to the definition of the word in by-law 2 of the Mass Transit Railway (Amendment) Bylaw.
- (b) In section 39(4), please replace “企圖違犯” by “企圖觸犯” and “違犯事項” by “觸犯事項” to make the Chinese text of this section consistent with that of section 39(1) of the above Bylaw and by-law 42(2) of the Mass Transit Railway Bylaws (Cap. 556 sub. leg. B).
- (c) In the Schedule, should the summary of offence for section 6 be revised to “Failure to produce tickets” in order to reflect more accurately the offence under that section? As you are aware, failure to pay surcharge is dealt with in section 8 instead of

section 6.

Mass Transit Railway (Transport Interchange) (Amendment) Bylaw 2007

In the proposed section 1(3), please consider amending the Chinese text to “第(2)款於合併日期起計滿 12 個月當日失效”. As you are aware, in the principal Ordinance, the Chinese text for “expire” is “失效”. This is also the Chinese text used in similar provisions such as regulation 3(7) of the Gas Safety (Registration of Gas Installers and Gas Contractors) Regulations (Cap. 51 sub. leg. D). Incidentally, please also consider whether the proposed section 1(3) should be drafted in similar terms to the said regulation 3(7).

To enable us to report to the House Committee meeting on 29 June 2007, I would appreciate it if you could let us have the Administration’s reply in both languages by noon on 27 June 2007.

Yours sincerely,

(Connie FUNG)
Assistant Legal Adviser

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**MTR Corporation Limited's response to ALA's Comments of 25/6/07
on the proposed resolutions relating to the rail merger**

(using the ALA's numbering and definitions)

Mass Transit Railway (Amendment) Bylaw 2007

We note the ALA's view regarding the English term for “多輪推車” in bylaw 4A. We will consider the improvement of the drafting of this term in the comprehensive review of the various sets of Bylaws which the Corporation has undertaken to conduct (the “Review”).

Mass Transit Railway (North-west Railway) Bylaw

- (a) All tickets issued by KCRC under the North-west Railway By-law (Cap. 372 sub. leg. E) for travel on bus or on the North-west Railway (as defined in Cap. 372 sub. leg. E) are only valid on the day of issue and there is therefore no need to add an equivalent of the proposed by-law 10(1A) of the Mass Transit Railway (Amendment) Bylaw 2007.
- (b) It is proposed to consider this point in the Review.
- (c) Apart from people who refuse or fail to produce tickets, section 6(2) also regulates people who refuse or fail to pay the appropriate fare. It requires such persons to pay a surcharge. Our concern is that if the summary of this offence is reduced to “Failure to produce tickets”, it may not accurately reflect the scope of section 6(2). However we will reflect on your comment in the course of the Review in considering whether any amendment should be made to the summary of this offence.

Mass Transit Railway (Transport Interchange) (Amendment) Bylaw 2007

When we drafted the proposed section 1(3), we have considered:

- Section 27 of Cap. 1 which provides for the effect of expiry , etc. of ordinances: “When an Ordinance (a) expires or lapses ...” . The Chinese term used for “expires” is “有效期屆滿”;
- Section 1 of Cap. 537 sub. leg. Q: “This Regulation shall expire on 6 May 2003.”. The Chinese term used for “expire” is “期滿失效”;
- Section 3 of Cap. 155 sub. leg. H: “This Notice shall expire on 26 June 1999.”. The Chinese term used for “expire” is “期滿失效”;
- The English-Chinese Glossary of legal terms (4th Ed., Vol. 1) which contains 4 different Chinese alternatives for “expire” (which include both “期滿失效” and the suggested “失效”.)

We note that there is no uniform term for “expire” in the laws of Hong Kong and both “期滿失效” and “失效” are used as the Chinese term for “expire”. We are of the view that using “期滿失效” instead of “失效” will not cause any confusion or misinterpretation. However we also note the concern about consistency with the use of Chinese text for “expire” in the principal Ordinance and we will consider this as part of the Review.

MTR Corporation Limited
(26 June 07)