

# 立法會

## *Legislative Council*

LC Paper No. LS85/06-07

### **Subcommittee to Study the Draft Subsidiary Legislation Relating to the Rail Merger**

#### **Legal Service Division's comments on the Draft Mass Transit Railway (Amendment) Bylaw**

##### By-law 2

- (a) Is it necessary to include in by-law 2 definitions of “automatic processing device”, “invalid ticket”, “luggage” and “smart card”? As you are aware, the definitions of these terms are provided in the Kowloon-Canton Railway Corporation By-laws (Cap. 372 sub. leg. B) (KCRC By-laws).
- (b) In the proposed definition of “railway premises”, the reference to “North-west Railway By-law” appears to be ambiguous as it is not clear whether it refers to the existing North-west By-laws made under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (KCRCO) which will be suspended from operation, or the new one to be made under the Mass Transit Railway Ordinance (Cap. 556) (MTRO). To avoid ambiguity, please consider setting out the full meaning of “railway premises” for the purposes of the North-west Railway.
- (c) The proposed definition of “the Ordinance” is not necessary in the light of section 31(1) of the Interpretation and General Clauses Ordinance (Cap. 1).<sup>1</sup> Please consider deleting it to make the drafting of the Mass Transit Railway (Amendment) Bylaw (the Amendment Bylaw) consistent with the drafting convention adopted in Hong Kong.

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<sup>1</sup> Section 31(1) of Cap. 1 provides that where any Ordinance confers power to make subsidiary legislation, expressions used in the subsidiary legislation shall have the same meaning in the Ordinance conferring the power, and any reference in such subsidiary legislation to “the Ordinance” shall be construed as a reference to the Ordinance conferring the power to make such subsidiary legislation.

Proposed by-law 28A

Should all references to “telecommunication” be replaced by “telecommunications”. Please refer to the Telecommunications Ordinance (Cap. 106) for the usage of the term in legislation.

Proposed by-law 28C

- (a) In the proposed by-law 28C(2), should the reference to “a member of the staff” be replaced by “a member of the staff of the Corporation”? The reason why the former reference is used in the KCRC By-laws is that in those by-laws, “member of the staff” is defined. However, since no definition is proposed for the term in the draft Amendment By-law, it would appear necessary to specify that the member of the staff belongs to staff of the Corporation.
- (b) In the proposed by-law 28C(4), is it necessary to add “a member of the staff of the Corporation” before “an official”?

Proposed by-law 34(3)

This proposed by-law adds a new scenario under which a vehicle left on railway premises will become the property of the Corporation, viz. where the service of notice under paragraph (2) is impracticable. As this scenario does not appear in the existing KCRC By-laws, please explain the purpose of the proposed amendment.

Proposed by-laws which may be ultra vires

Any by-law made by the Corporation must be within the scope of the powers conferred on the Corporation under section 34 of MTRO; otherwise, the bylaw might be subject to legal challenge on the ground that it is ultra vires. This means that the powers of the Corporation to make by-laws have to be confined to the areas specified in the existing section 34(1)(a) to (c) of MTRO and the new section 34(1A)(a) and (b) proposed in the Rail Merger Bill.<sup>2</sup> In this regard, please explain the legal basis on which the Corporation proposes to make by-laws on the following matters when these matters do not appear to be authorized under section 34(1) of MTRO, or under section 34(1A) proposed by the Rail Merger Bill:

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<sup>2</sup> Extracts of the relevant provisions are annexed for easy reference.

- (a) It appears that the effect of proposed by-law 3A is to control and regulate animals as well. Please clarify which part of section 34 of MTRO authorizes the Corporation to make by-laws controlling animals. You may wish to note that KCRC has such powers by virtue of section 31(1)(j) KCRCO<sup>3</sup>, but no corresponding provision appears in section 34(1) of MTRO.
- (b) While KCRC has the powers under section 31(1)(n) of KCRCO to make by-laws preventing the erection of unauthorized buildings or structures on railway premises, there is no corresponding provision under section 34(1) of MTRO. As such, what is the legal basis for proposing by-law 4B?
- (c) In the proposed by-law 6(d), if the reservoir, tank, ponds, etc. do not form part of the railway premises, it seems that the Corporation does not have power under section 34(1) of MTRO to make this by-law. Please make the necessary amendment to make it align with the corresponding by-law 71 of KCRC By-laws.<sup>4</sup>
- (d) In the proposed by-laws 10(3) and 41F(2), please clarify which part of section 34 of MTRO authorizes the making of the proposed saving and transitional provision? Should the saving and transitional provision be provided under the proposed Kowloon-Canton Railway Corporation (Suspension of By-laws) By-law 2007 instead?<sup>5</sup>

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<sup>3</sup> Section 31(1)(j) of Cap. 372 provides that KCRC may make by-laws for the control of persons, vehicles and animals while on the railways.

<sup>4</sup> By-law 71 of the KCRC By-laws prohibit a person from taking, using, permitting or causing to be taken or used or otherwise abstracting, bathing in or polluting the water or contents of any reservoir, tank, duct or water or other container belonging to the Corporation or otherwise forming part of or being upon the railway premises or any part thereof.

<sup>5</sup> The legal basis for making the saving and transitional provision in the proposed Kowloon-Canton Railway Corporation (Suspension of By-laws) By-law 2007 is provided in the new section 31(7) of Cap. 372 to be added by the Rail Merger Bill. The said new section provides that where by-laws are made to provide for the suspension of the operation of any by-law made under section 31(1) of Cap. 372, these by-laws may include such incidental, consequential, supplemental, transitional or saving provisions as may be necessary or expedient in consequence of those by-laws.

- (e) While section 34(1A)(a) of MTRO as proposed in the Rail Merger Bill empowers the Corporation to make by-laws relating to the carriage of goods, there is no provision under Cap. 556 or proposed under the Rail Merger Bill which empowers the Corporation to make by-laws relating to the carriage of luggage. As such, please explain the legal basis for proposing by-laws 39A and 39B.
  
- (f) It is doubtful whether the Corporation has the powers under section 34(1) of MTRO to make by-laws 44A and 45A as proposed in the draft Amendment Bylaw. Corresponding by-laws found in the KCRC By-laws are presumably made pursuant to section 31(1)(p) of KCRCO which provides that KCRC may make by-laws for such purposes as may be necessary to carry out effectively the provisions of the Ordinance. However, no such provision is found in section 34 of MTRO.

By-laws found in KCRC By-laws but are not included in the draft Amendment Bylaw

It is noted that some of the existing by-laws in the KCRC By-laws are not included in the draft Amendment Bylaw. Examples of these are by-law 11 of the KCRC By-laws (*period of validity of first/standard class tickets*) and by-law 11A (*validity of monthly return tickets*). Is there any reason for not including these by-laws in the draft Amendment Bylaw?

Encl.

Prepared by

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**34. Bylaws**

(1) The Corporation may, under its common seal, make bylaws for any or all of the following purposes—

- (a) prescribing the terms and conditions relating to the use of its service;
- (b) controlling and regulating—
  - (i) the conduct of members of the public using the railway or on railway premises;
  - (ii) a system for evidencing (whether by the issue of tickets or otherwise) the payment of fares on the railway and any contract of carriage of passengers on the railway;
  - (iii) advertising on railway premises; and
  - (iv) the custody and disposal of property found on railway premises;
- (c) protecting the property of the Corporation on railway premises;
- (d) in relation to a transport interchange—
  - (i) controlling and regulating classes of vehicular and pedestrian traffic as may be approved by the Commissioner;
  - (ii) controlling and regulating vehicles and the conduct of members of the public at bus stops, light bus stands and taxi ranks;
  - (iii) controlling and regulating vehicles and the conduct of members of the public in car parks and at parking spaces;
  - (iv) controlling and regulating the conduct of members of the public at other parts of a transport interchange;
  - (v) providing for any of the following things to be done subject to the approval of the Commissioner—
    - (A) erecting or placing traffic signs, road markings and light signals;
    - (B) establishing zebra crossings and light signal crossings;
    - (C) altering, suspending or cancelling anything done under bylaws made for the purposes of this subparagraph;
  - (vi) providing for the following things to be done subject to the approval of the Commissioner—
    - (A) designating bus stops, light bus stands, taxi ranks, restricted and prohibited zones, car parks and parking spaces;
    - (B) imposing speed limits;
    - (C) altering, suspending or cancelling anything done under bylaws made for the purposes of this subparagraph;

**17. Bylaws**

Section 34 is amended by adding—

“(1A) The Corporation may, under its common seal, make bylaws for any or all of the following purposes—

- (a) prescribing the terms upon which any goods or class of goods will be received for carriage by the Corporation or stored by them including limitations on the liability of the Corporation in respect of the goods; and
- (b) controlling access to certain areas of the railway premises by—
  - (i) restricting access by the public or by any person to any part of the railway premises, and the days and times of admission to that part of the railway premises;
  - (ii) issuing permits for access to any restricted area of the railway premises and the fees payable in respect of such permits;
  - (iii) exempting, by notice in writing and subject to such conditions as the Chief Executive Officer may impose, any person or class of person from all or any of the requirements of any bylaw regarding entry into a restricted area; and
  - (iv) empowering the Chief Executive Officer to prepare and certify a plan delineating or describing any part or parts of the railway premises as a restricted area.

(1B) Subsection (1A) expires when that part of the franchise relating to the KCRC Railways is revoked under section 18.

(1C) Where the Corporation operates the TSA bus service, the power to make bylaws under subsections (1) and (1A) shall extend to making bylaws for the purposes of the TSA bus service for any of the matters specified in those subsections as if the TSA bus service were the service.

(1D) Nothing in subsection (1C) shall have the effect of deeming premises used in the operation of the TSA bus service to be the railway premises for the purposes of subsection (1A)(b).

(1E) Any bylaw made under this section may contain such consequential, transitional or saving provision as may be necessary or expedient in consequence of the expiry of any bylaw made under this section.”

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- (vii) providing for the issuing of permits, authorizations, passes and tickets for traffic control or parking purposes and the imposing and collecting of charges for parking;
- (viii) providing for—
  - (A) the towing away, impounding, removal and disposal of any vehicle or thing causing obstruction in a transport interchange;
  - (B) the imposition and collection of charges as approved by the Commissioner in respect of any such towage or removal and of any impounding, storage, detention or service of such vehicle or thing;
- (ix) providing for the limitation or exclusion of liabilities of the Corporation in respect of any loss or damage to property;
- (x) authorizing any person to act on its behalf for the purposes of this paragraph.

(2) Bylaws shall not be made under this section which are inconsistent with this Ordinance or regulations made under this Ordinance.

(3) Bylaws made under this section are subject to the approval of the Legislative Council.

(4) The Corporation shall cause printed copies of all bylaws made under this section to be kept at its registered office and to be available for sale to any person at a reasonable cost.

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**35. Further powers in relation to regulations and bylaws**

(1) Regulations made under section 33 or bylaws made under section 34 may confer authority upon employees of the Corporation or persons authorized by the Corporation in that regard on railway premises or in transport interchanges—

- (a) to detain any person reasonably suspected of having contravened this Ordinance, the regulations or bylaws and to take such other steps as may be provided for in the regulations or bylaws to ensure that the person is dealt with in accordance with law;
- (b) to stop, search and detain any vehicle in connection with any contravention against this Ordinance, the regulations or bylaws.

(2) Regulations made under section 33(1)(f) or bylaws made under section 34 may confer powers upon an employee of the Corporation or any person authorized by the Corporation in that regard—

- (a) to request a person suspected of having contravened this Ordinance, the regulations or bylaws to give his personal particulars to the requestor;
- (b) if a vehicle is involved in that contravention, to request the registered owner of the vehicle to give the personal particulars of the driver of the vehicle at the material time to the requestor.

(3) Regulations made under section 33 or bylaws made under section 34 may provide that a contravention of a specified provision of the regulations or bylaws is an offence and may prescribe penalties for that contravention not exceeding a fine at level 2 and imprisonment for 6 months.

(4) Regulations made under section 33 or bylaws made under section 34 which provide that hawking on railway premises is an offence may also provide that all or any part of sections 86, 86A, 86C and 86D of the Public Health and Municipal Services Ordinance (Cap. 132) are to apply as if that offence was a hawker offence within the meaning of section 83 of that Ordinance.

(5) Bylaws made under section 34(1)(d) may provide for a fixed penalty to be payable for contravention of any specified provision of the bylaws and for the recovery of that fixed penalty.

**18. Further powers in relation to regulations and bylaws**

Section 35 is amended by adding—

"(6) A plan purporting to be certified by the Chief Executive Officer as a plan of a restricted area or as a copy of a plan of a restricted area certified by the Chief Executive Officer is admissible in evidence in any proceedings for an offence against a bylaw made under section 34(1A)(b) on its production without further proof and until the contrary is proved—

- (a) the court before which such certified plan or copy is produced shall presume that the signature to the plan or copy is genuine and that the Chief Executive Officer was duly appointed when he certified it; and
- (b) the plan or copy shall be evidence of the area and boundaries of any part or parts of the KCRC Railways delineated or described in the plan as a restricted area."

## 31. By-laws

(1) The Corporation may, under its common seal, make by-laws not inconsistent with this Ordinance or regulations made under section 30 for all or any of the following purposes—

- (a) the carriage of passengers and all connected matters including the circumstances in which concessionary fares may be paid and exemptions from the payment of fares;
- (aa) regulating vehicles and the conduct of persons in carparks referred to in paragraph (cb) of the definition of "railway premises" and charging for the use thereof; (*Added 13 of 1998 s. 12*)
- (b) the conditions under which tickets shall be issued, including conditions for the examination and search, for the purpose of enforcing any enactment in force in Hong Kong or for customs purposes, of the person, baggage or goods of passengers travelling on the Kowloon-Canton Railway to or from a place in Hong Kong from or to a destination in another part of China; (*Amended 56 of 1986 s. 15; 62 of 1999 s. 3*)
- (c) a system for securing or evidencing the payment of fares by passengers travelling, or rates for animals or goods carried, on the railways; (*Amended 56 of 1986 s. 15*)
- (d) the imposing of a surcharge where a person travels, or animals or goods are carried, on the railways without payment of the proper fare or rate or on failure to produce evidence of such payment; (*Amended 56 of 1986 s. 15*)
- (e) the safety of person using or engaged in work on the railways; (*Amended 56 of 1986 s. 15*)
- (f) the custody, forfeiture and disposal of unclaimed property found on the railways; (*Amended 56 of 1986 s. 15*)

## 27. By-laws

Section 31 is amended by adding—

"(6) By-laws made under subsection (1) may make provision for the suspension of the operation of any such by-law during the Concession Period.

(7) Where by-laws are made under subsection (1) to provide for the suspension of the operation of any by-law made under that subsection, they may include such incidental, consequential, supplemental, transitional or saving provisions as may be necessary or expedient in consequence of those by-laws."



- (g) the receipt, transportation and delivery of goods to be carried over the railways and all connected matters, together with the restrictions to be placed upon dangerous and offensive, perishable or fragile goods, or other classes of goods; (*Amended 56 of 1986 s. 15*)
  - (h) the terms upon which any goods or class of goods will be received for carriage by the Corporation or stored by them including limitations on the liability of the Corporation in respect thereof;
  - (i) the receipt, transport and delivery of animals over the railways, and the terms upon which they will be received for carriage by the railways and the restrictions placed upon such carriage; (*Amended 56 of 1986 s. 15*)
  - (j) the control of persons, vehicles and animals while on the railways; (*Amended 56 of 1986 s. 15*)
  - (k) the powers and duties of railway employees;
  - (l) controlling and regulating advertising on railway premises;
  - (m) protecting the property of the Corporation on railway premises;
  - (n) preventing the erection of unauthorized buildings or structures on railway premises and enabling the Corporation to remove or require the removal of such buildings or structures;
  - (o) to control access to certain areas of the railway premises by—
    - (i) restricting access by the public or by any person to any part of the railway premises, and the days and times of admission thereto;
    - (ii) issuing permits for access to any restricted area of the railway premises and the fees payable in respect of such permits;
    - (iii) exempting, by notice in writing and subject to such conditions as the Chief Executive Officer may impose, any person or class of person from all or any of the requirements of any by-law regarding entry into a restricted area; (*Amended 90 of 1990 s. 4; 31 of 2001 s. 5*)
    - (iv) empowering the Chief Executive Officer to prepare and certify a plan delineating or describing any part or parts of the railway premises as a restricted area; (*Amended 90 of 1990 s. 4; 31 of 2001 s. 5*)
  - (p) such other purposes as may be necessary to carry out effectively the provisions of this Ordinance.
- (2) All by-laws made under subsection (1) shall be subject to the approval of the Legislative Council.

(3) The Corporation shall cause printed copies of all by-laws made under subsection (1) to be kept at its principal office and to be available for sale to any person at a reasonable cost.

(4) By-laws under subsection (1) may be made so as to apply to one or more of the railways, and different provision may be made for each railway. *(Added 56 of 1986 s. 15. Amended 13 of 1998 s. 12)*

(5) Where the Corporation operates any bus service within the North-west Transit Service Area, the power to make by-laws under subsection (1) shall extend to making by-laws for the purposes of that bus service for any of the matters specified in that subsection as if that service were a railway:

Provided that nothing in this subsection shall have the effect of deeming premises used in the operation of such a bus service to be railway premises for the purposes of subsection (1)(n) or (o). *(Added 56 of 1986 s. 15)*

**32. Supplementary provisions relating to by-laws**

(1) In any prosecution for an offence against any by-law made under section 31(1)(o), a plan purporting to be certified by the Chief Executive Officer as a plan of a restricted area or as a copy of a plan of a restricted area certified by the Chief Executive Officer, shall be admitted in proceedings before a court on its production without further proof and until the contrary is proved— (*Amended 90 of 1990 s. 5; 31 of 2001 s. 6*)

(a) the court before which such certified plan or copy is produced shall presume that the signature to the plan or copy is genuine and that the Chief Executive Officer was duly appointed when he certified it; (*Amended 90 of 1990 s. 5; 31 of 2001 s. 6*)

(b) shall be evidence of the area and boundaries of any part or parts of the railway delineated or described therein as a restricted area.

(2) Any by-law made under section 31 which provides that hawking on railway premises is an offence may also provide that all or any part of sections 86, 86A, 86C and 86D of the Public Health and Municipal Services Ordinance (Cap. 132) shall apply, with such modifications as may be specified in the by-law, as if such offence were a hawker offence within the meaning of section 83 of that Ordinance. (*Amended 10 of 1986 s. 32(1)*)

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