

LEGISLATIVE COUNCIL BRIEF

Rail Merger Bill

INTRODUCTION

At the meeting of the Executive Council on 20 June 2006, the Council ADVISED and the Chief Executive ORDERED that the Rail Merger Bill (the Bill), at **Annex A**, should be introduced into the Legislative Council with a view to implementing the merger of the Mass Transit Railway (MTR) and Kowloon-Canton Railway (KCR) systems.

JUSTIFICATIONS

Proposed transaction structure

2. The Government and the MTR Corporation Limited (MTRCL) have reached an understanding on the structure and terms for the rail merger and have signed a non-binding Memorandum of Understanding (MoU) on 11 April 2006. Details of the merger package are set out in the paper CB(1)1291/05-06(01) for The Legislative Council Panel on Transport and Panel on Financial Affairs.

3. The Mass Transit Railway Ordinance, Cap. 556 (MTRO) is the governing legislation for MTRCL which provides for the general regulatory regime over matters concerning MTRCL's franchise and related matters, whereas specific regulatory provisions including those on the service and safety requirements and matters relating to fares are stipulated in the Operating Agreement (OA) agreed between Government and MTRCL. Under the merger package, the same framework will be adopted for regulating the operations of the post-merger corporation (MergeCo).

4. Under the proposed structure for the rail merger:

- (a) the Kowloon-Canton Railway Corporation (KCRC) would enter into a service concession agreement (SCA) with the MTRCL to grant MTRCL the right to use its assets (Concession Assets) to operate the existing KCR railway lines and, upon their completion, the new KCR railway lines currently under construction as well as its other transport-related businesses such as bus operation in the North-west Transit Service Area (TSA bus operation);

- (b) MTRCL would purchase a property package and certain short-lived railway assets of KCRC such as stores and spares via one or more sale and purchase agreements;
- (c) MTRCL would maintain its listing status and would be the legal entity of MergeCo;
- (d) MergeCo would be granted a franchise to operate the MTR and KCR railways for an initial period of 50 years from the date of implementation of the rail merger (Merger Date), subject to any extension;
- (e) the SCA would be coterminous with the franchise of MergeCo;
- (f) MergeCo would be responsible for the operation, maintenance, improvements and replacement of and additions to the Concession Assets during the term of the SCA (concession period);
- (g) MergeCo would control all the operational arrangements for the MTR and KCR systems as an integrated whole and be responsible for the performance of the total system;
- (h) MergeCo would be required to return the Concession Assets together with their improvements and replacements etc. to KCRC upon revocation or expiry of the franchise; and
- (i) the existing OA between MTRCL and the Government would be expanded into an integrated OA to cover the relevant aspects of regulation of the operation of both the MTR and the KCR railways by MergeCo as well as the regulation of fares according to the fare adjustment mechanism (FAM).

5. In order to implement the rail merger on the basis of the proposed structure, it is necessary to introduce suitable amendments to the MTRO and the Kowloon-Canton Railway Corporation Ordinance, Cap. 372 (KCRCO) to empower KCRC to enter into an SCA with MTRCL for the purpose of the rail merger, expand the scope of MTRCL's franchise to cover the expanded business scope of MergeCo, transfer the employment contracts of KCRC staff and other relevant KCRC contracts to MergeCo, and introduce appropriate enabling and consequential provisions for implementing the rail merger. The amended MTRO would be the governing legislation of MergeCo. The integrated OA would stipulate the required service and safety standards of MergeCo's railway operation and the FAM which fall outside the scope of the Bill.

Functions of KCRC after the rail merger

6. Whilst KCRC would cease to have any railway operating function during the concession period, it would retain certain administrative, accounting and treasury functions with the Managing

Board comprising solely of Government officials and with operations supported mainly by outside service providers. We do not intend to have a Chief Executive Officer (CEO) of KCRC during the concession period, but would consider the need to appoint a CEO when KCRC needs to prepare for the taking back of the KCR system upon franchise revocation or expiry.

Proposed amendments to MTRO

Right to operate KCRC's railway and bus services

7. The present franchise of MTRCL does not cover the right to operate KCR railways. In pursuance of the rail merger, the Bill contains provisions to reset the duration of the franchise to run for an initial period of 50 years from the Merger Date (subject to any extension), and to expand the scope of the franchise from the Merger Date to allow MergeCo to -

- (a) operate the existing and new KCR railway lines currently under construction (viz. the Kowloon Southern Link and Lok Ma Chau Spur Line) upon their completion;
- (b) construct and operate any railways which are not extensions of MTR if Government decides to adopt the ownership approach (viz. projects to be funded, constructed and operated by MergeCo) to implement such projects; and
- (c) operate any railways which are granted to MergeCo by way of a service concession from KCRC,

in addition to MTRCL's existing powers to operate the MTR and any extension thereof and to construct any extension to the MTR during the franchise period.

8. At present, the TSA bus operation of KCRC is regulated by way of passenger service licences issued by the Transport Department under the Road Traffic Ordinance, Cap. 374 and is subject to certain provisions in the Public Bus Service Ordinance, Cap 230. After the rail merger, MergeCo's operation of TSA bus service would likewise be regulated outside the scope of the franchise.

Extension, revocation and suspension of franchise

9. There are existing provisions in the MTRO to provide for the extension, revocation and suspension of franchise. We propose that these provisions should continue to apply, subject to certain modifications to cater for the expanded scope of the franchise as well as some new arrangements that arise from the service concession arrangements as set out below:

- (a) At present, the franchise can be revoked or suspended by the Chief Executive in Council on specified grounds as prescribed

in the MTRO. The Bill contains provisions to stipulate that the grounds for franchise suspension would in future also cover relevant matters concerning the operation of the KCR railways. The grounds for franchise revocation would in future cover relevant matters concerning the operation of the KCR railways as well as substantial failure by MergeCo to comply with an obligation under the SCA which has certain significant consequences such as endangering passenger safety.

- (b) In view of the service concession arrangement to enable MergeCo to use KCRC assets to operate the KCR railways after the rail merger, the Bill contains provisions to stipulate that in future a major default by MergeCo in fulfilling its obligations in the SCA with KCRC (viz. payment default, breach of the restrictions against disposals or the creation of security) would trigger procedures for revocation of the part of franchise as it relates to the KCR railways. MergeCo would retain the part of franchise as it relates to the MTR in this situation, provided that there is nothing untoward in the operation of those railways that would trigger the procedures for revocation of the whole franchise as mentioned in sub-paragraph (a) above.
- (c) There are existing provisions to enable Government to take possession of assets for the operation of the MTR upon franchise revocation, suspension or expiry and to provide for the liability of Government to pay compensation to MTRCL under specified circumstances for the assets so possessed. Such arrangements would continue to apply to MTRCL's assets used for MTR operation which are taken possession by Government, whilst as agreed with MTRCL in the merger negotiations, there would be a separate compensation regime for the Concession Assets and their improvement and replacements etc. so taken possession of to be specified in the integrated OA. The Bill contains corresponding provisions to set out the liability of Government to pay compensation for the taking possession of Concession Assets and their improvement and replacement etc. for the operation of the KCR system. The amount of compensation will be calculated in accordance with the provisions of the integrated OA.
- (d) Upon progressive integration of the MTR and KCR system in future, there would be assets used for the operation of both the MTR system and the KCR system (Common Assets). The Bill contains provisions stipulating that there shall be arrangements to enable Government to use the Common Assets which Government has not taken possession of upon franchise revocation, suspension or expiry. Correspondingly, there are provisions in the Bill for MergeCo, upon revocation of the franchise as it relates to the KCR railways or suspension of part of the franchise, to use those Common Assets which had been

taken possession of by Government. Arrangements for the use of the Common Assets would be set out in the integrated OA.

- (e) The existing MTRO requires MTRCL to maintain a proper and efficient service and stipulates that in approving an extension of MTRCL's franchise, the Chief Executive in Council needs to be satisfied that the Corporation is capable of maintaining a proper and efficient service. Since MergeCo would be operating both the KCR railways and the TSA bus services after the merger, the Bill contains provisions which make it clear that where MergeCo operates the TSA bus service during the concession period, it must ensure that such service is operated properly and efficiently.

Employment-related matters

10. Under the merger package, all serving staff of the two railway corporations would be employed by MergeCo on their prevailing terms and conditions upon the rail merger. There are specific provisions in the Bill for transferring the employment contracts of all serving KCRC staff at the time of the rail merger to MergeCo with continuity of their prevailing retirement benefits. The employment under the employment contracts so transferred to MergeCo would be deemed for all purpose to be a single continuous employment.

Treatment of certain KCRC's contracts

11. Some of KCRC's contracts relate to the operation of the KCRC's railway and bus services, such as maintenance contracts. Certain rights and liabilities under these contracts would be transferred to MergeCo in order to enable MergeCo to operate the KCRC services. The Bill contains a provision for vesting the relevant rights and liabilities in the contracts which fall to be exercised or performed by KCRC on or after the merger in MergeCo as well as a waiver clause which would waive any conditions contained in the relevant KCRC contracts that prohibit such vesting. MTRCL is conducting a due diligence exercise in relation to KCRC's business. After the due diligence exercise is completed, we would take a view on the details of the contracts etc that would need to be vested in MergeCo. Similarly, a re-vesting provision is included in the Bill for the re-vesting of the relevant contracts from MergeCo to KCRC upon the revocation of the whole franchise or the part of franchise as it relates to KCR railways, as well as upon the expiry of the franchise, if the said contracts remain valid by then.

Name of MergeCo

12. MTRCL will retain its English name after the merger. The Chinese name of MTRCL (地鐵有限公司) will be changed to "香港鐵路有限公司". Therefore the Chinese name of the MTRO (地下鐵路條例) would also need to be amended accordingly.

Proposed amendments to KCRCO

13. KCRC would cease to have any railway or bus operation nor would it be responsible for constructing any new railways during the concession period. It would essentially be a statutory corporation with very few staff. In gist, KCRC's role during the concession period will basically comprise the following key elements:

- (a) the grantor of the service concession receiving concession payments from MergeCo;
- (b) the owner of KCRC's assets that are not sold to MergeCo, e.g. Octopus shares;
- (c) the borrower/obligor in relation to its existing financial obligations (e.g. cross border leases, bonds, swaps, syndicated loans etc) and contingent liabilities (e.g. land and business claims arising from railway projects undertaken by KCRC);
- (d) the owner of KCRC projects that are still under construction as at the Merger Date viz. KSL and the Lok Ma Chau Spur Line if not yet completed by then, and the principal of the agency agreement with MergeCo under which KCRC will employ MergeCo as the agent to complete the construction for these two projects; and
- (e) for any future new railways funded by Government, as the owner if the railway is sold or vested in KCRC, or as the lessee if the railway is leased to KCRC.

14. In view of the above, we propose to make the following amendments to the KCRCO:

- (a) to empower KCRC to grant the right to MergeCo to use its assets for operation of its railway and bus services by way of a service concession and, in connection with the service concession, to dispose of its assets;
- (b) to make it clear that KCRC shall not exercise its power under the KCRCO to operate railway and bus services nor to construct new railways during the concession period;
- (c) to make it clear that KCRC is not required to appoint a Chief Executive Officer during the concession period;
- (d) to make consequential changes to the composition of the Managing Board to take into account the proposal in sub-paragraph (c) above; and

- (e) to change the quorum of the Managing Board from five to a simple majority of the members of the Managing Board during the concession period, as we envisage that the size of the Managing Board of KCRC would be around five during the concession period when the corporation would have no transport operation function.

15. The Schedules in the KCRCO provide for, inter alia, certain rights and obligations of KCRC in respect of the land vested in the corporation for the purpose of operating its railways. We intend to effect the transfer of those rights and obligations of KCRC to MergeCo during the concession period through the SCA and therefore the Bill does not contain any amendments to these Schedules for this purpose. Nevertheless if, during the course of finalising the SCA, it transpires that it would be more appropriate to effect the transfer of any of these rights and obligations of KCRC to MergeCo by legislation, we would consider Committee Stage Amendments to the Bill.

THE BILL

16. The main provisions of the Bill are set out below -

- (a) Part 1 contains preliminary provisions. It specifies that the commencement date of the Ordinance (i.e. the Merger Date for the merger to take effect) is to be appointed by the Secretary for the Environment, Transport and Works (SETW) by notice published in the Gazette.
- (b) Part 2 contains the amendments to the MTRO. It is divided into seven divisions:
 - (i) Division 1 provides for relevant amendments to the long title and short title to the MTRO and the interpretation provisions in the MTRO.
 - (ii) Division 2 provides for the granting of an expanded franchise to MTRCL for an initial period of 50 years from the Merger Date (subject to any extension) to cover the expanded scope of operation of MergeCo.
 - (iii) Division 3 sets out the requirement for MergeCo to maintain a proper and efficient KCR railway service and TSA bus services in the same way as for its MTR operation and that the Chief Executive in Council's power to give directions to MergeCo on matters concerning the latter's franchise covers any matter concerning the expanded scope of MergeCo's service including the TSA bus service.
 - (iv) Division 4 deals with the suspension, revocation and expiry of the franchise. In particular, this Division deals with the following issues:
 - Government's liability to pay compensation in connection with the suspension of MergeCo's

- franchise as it relates to KCR railways will be different from that for the suspension of MergeCo's franchise as it relates to the MTR;
- Government has power to take possession of the Concession Assets when MergeCo's franchise is revoked, suspended or expired and the amount of compensation payable to MergeCo will be calculated in accordance with the provisions in the integrated OA; and
 - Government has the right to use the Common Assets which Government has not taken possession of upon franchise revocation, suspension or expiry, and on the other hand MergeCo has the right to use the Common Assets which Government has taken possession of upon suspension or revocation of the franchise as it relates to the KCR railways.
- (v) Division 5 deals with SETW's power to make regulations under the MTRO on specified matters concerning the operation of KCRC's railway and bus services and MergeCo's power to make bylaws in order to cover the expanded scope of MergeCo's operation.
- (vi) Division 6 deals with the transfer of certain of KCRC's rights and liabilities including its employment contracts to MergeCo.
- (vii) Division 7 contains provisions which have the effect of applying appropriate provisions in other legislation to the expanded scope of operation of MergeCo.
- (c) Part 3 contains amendments to the KCRCO which are divided into four divisions:
- (i) Division 1 provides for relevant amendments to the long title to the KCRCO and the interpretation provisions in the KCRCO.
 - (ii) Division 2 deals with the changes relating to the managing board and powers of KCRC. In particular, it removes the requirement for KCRC to appoint a Chief Executive Officer during the concession period. It also contains provisions to empower KCRC to grant a service concession to MTRCL and, in connection with the service concession, to dispose of its assets. There are provisions to make it clear that KCRC shall not exercise its power under the KCRCO to operate railway and bus services nor to construct new railways during the concession period.
 - (iii) Division 3 provides that the regulation and by-laws made under KCRCO may make provisions for the suspension of operation of the regulations and by-laws during the Concession Period.
 - (iv) Division 4 deals with the suspension of certain provisions of the KCRCO during the concession period as KCRC will

- cease to have any transport operational function during that period.
- (v) Division 5 deals with the quorum of the KCRC during the Concession Period.
- (d) Part 4 contains consequential amendments to other legislation arising from the grant of service concession by the KCRC to MTRCL.

LEGISLATIVE TIMETABLE

17. The proposed legislative timetable will be -

Publication in the Gazette	30 June 2006
First Reading and commencement of Second Reading debate	5 July 2006
Resumption of Second Reading debate, Committee Stage and Third Reading	To be notified

18. The Regulations and bylaws made under the MTRO would need to be modified or expanded to cover relevant matters concerning KCRC's railway and bus services. Amendments to the relevant subsidiary legislations will be introduced into this Council if and after it has approved the Bill. Preparatory work is underway. We plan to brief any Bills Committee to be set up by this Council to scrutinise the Bill on the details of the proposed amendments to the relevant subsidiary legislation in the course.

IMPLICATIONS OF THE PROPOSAL

B 19. The proposal has financial, civil service, economic, sustainability and environmental implications as set out at **Annex B**.

20. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The amendments proposed in the Bill will not affect the current binding effect of MTRO and KCRCO. The proposal has no productivity implications.

PUBLIC CONSULTATION

21. We briefed the Legislative Council Panel on Transport and the Panel on Financial Affairs on 12 April 2006 on the merger package and the proposed next steps. We had further discussions with the Panels on 28 April 2006 and 22, 23 and 26 May 2006 on staff-related matters, fare-related matters, the finance/property package and the broad

proposals for legislative amendments to MTRO and KCRCO respectively.

22. We briefed the Transport Advisory Committee on the merger package on 13 April 2006, and the Traffic and Transport Committees of four District Councils on the merger package in April to June 2006 upon their invitation.

PUBLICITY

23. A press release will be issued. A spokesman will be available to handle enquiries.

BACKGROUND

24. On 11 April 2006, the Government announced that it has reached an understanding with MTRCL on the structure and terms for the merger of the MTR and the KCR systems. The Government has signed a non-binding Memorandum of Understanding (MOU) with MTRCL on this basis.

ENQUIRY

25. Any enquiry on this brief should be directed to Miss Ida Lee, Principal Assistant Secretary (Transport) Special Duties (telephone number: 2189 7348).

Environment, Transport and Works Bureau
June 2006

RAIL MERGER BILL

CONTENTS

Clause		Page
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PART 1

PRELIMINARY

1.	Short title	2
2.	Commencement	2

PART 2

AMENDMENTS TO MASS TRANSIT RAILWAY ORDINANCE

Division 1 – Amendments to Long Title and Part I (Preliminary)

3.	Long title amended	2
4.	Short title amended	3
5.	Interpretation	3

Division 2 – Amendments to Part II (Grant and Extension of Franchise)

6.	Grant of franchise to Corporation to operate railway	8
7.	Extension of franchise	9

**Division 3 – Amendments to Part III (Performance
under Franchise)**

8.	Corporation to maintain proper and efficient service	9
9.	Section added	
	12A. Maintenance of crossings, bridges, arches, culverts, etc.	10
10.	Chief Executive in Council may give directions	11

**Division 4 – Amendments to Part IV (Suspension,
Revocation and Expiry of Franchise, etc.)**

11.	Sections added	
	15A. Suspension of any part of franchise relating to KCRC Railway	11
	15B. Rights to have access to and use Corporation Common Property and KCRC Common Property upon suspension of franchise	13
12.	Default under franchise	14
13.	Defaults capable of remedy	15
14.	Revocation of franchise	15
15.	Sections added	
	19A. Taking possession of Concession Property by Government upon revocation or expiry of franchise	16
	19B. Compensation for taking possession of Concession Property under section 19A	17
	19C. Rights to have access to and use KCRC Common Property or Corporation Common Property upon revocation or expiry of franchise	18

**Division 5 – Amendments to Part VIII (Regulations
and Bylaws)**

16.	Regulations	19
17.	Bylaws	20
18.	Further powers in relation to regulations and bylaws	22

Division 6 – Addition of new Part

19. Part IXA added

PART IXA

VESTING OF CERTAIN RIGHTS AND LIABILITIES OF KCRC IN CORPORATION

52A.	Interpretation of Part IXA	23
52B.	Vesting of certain contractual rights and liabilities of KCRC in Corporation	24
52C.	Re-vesting of certain contractual rights and liabilities in KCRC	25
52D.	Employment contracts	26
52E.	Pension fund schemes, etc.	26
52F.	Security	26
52G.	Supplementary provisions relating to vesting under this Part	27
52H.	Evidence of vesting	29
52I.	Waiver of prohibition of vesting	29
52J.	Evidence: books and documents	30
52K.	Perfection of vesting of foreign rights and liabilities	30
52L.	Resolution of dispute	31

Division 7 – Amendment to Part X (Miscellaneous)

20.	Appeal to Chief Executive in Council	32
21.	Sections added	
	54A. Application of section 11 of Tramway Ordinance	32
	54B. Public Bus Services Ordinance not to apply to TSA bus service	32

PART 3

AMENDMENTS TO KOWLOON-CANTON RAILWAY
CORPORATION ORDINANCE

**Division 1 – Amendment to Long Title and Part I
(Preliminary)**

22.	Long title amended	34
23.	Interpretation	34

**Division 2 – Amendments to Part II (Establishment of
the Kowloon-Canton Railway Corporation)**

24.	Corporation established	36
25.	Powers of the Corporation	37

**Division 3 – Amendments to Part VI (Regulations and
By-laws)**

26.	Regulations	38
27.	By-laws	38

Division 4 – Addition of new Part

28.	Part VIII added	
-----	-----------------	--

PART VIII

SUSPENSION OF CERTAIN PROVISIONS
DURING CONCESSION PERIOD

40.	Suspension of certain provisions during Concession Period	39
-----	--------------------------------------------------------------	----

Division 5 – Amendment to Schedules

29.	Provisions with respect to the Corporation and members thereof	39
-----	----------------------------------------------------------------	----

PART 4**CONSEQUENTIAL AND RELATED AMENDMENTS**

30.	Consequential and related amendments	40
Schedule 1	Consequential and related amendments	42
Schedule 2		50

A BILL

To

- (a) change the Chinese name of the MTR Corporation Limited from “地鐵有限公司” to “香港鐵路有限公司” and the Chinese short title of the Mass Transit Railway Ordinance from “《地下鐵路條例》” to “《香港鐵路條例》”, to include in the franchise granted to the MTR Corporation Limited under that Ordinance the rights to construct and operate certain railways in addition to the construction of any extension to the Mass Transit Railway and the operation of the Mass Transit Railway (and its extensions), to provide for the vesting of certain rights and liabilities of the Kowloon-Canton Railway Corporation in the MTR Corporation Limited, and to provide for the regulation (other than in relation to any fare payable for using any railway service or bus service operated by the MTR Corporation Limited) under that Ordinance of the operation by the MTR Corporation Limited of certain railways and certain bus services in addition to the Mass Transit Railway, including all aspects of safety concerning those railways;
- (b) enable the Kowloon-Canton Railway Corporation to grant rights to the MTR Corporation Limited to have access to, use or possess any railway and other property of the Kowloon-Canton Railway Corporation for the purposes of the operation of the railway, to enable that corporation to dispose of property under or in connection with the grant of those rights and to provide that the office of the Chief Executive Officer of the Kowloon-Canton Railway

Corporation may be left vacant after it has granted those rights; and

- (c) make provision for connected purposes.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Rail Merger Ordinance.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

PART 2

AMENDMENTS TO MASS TRANSIT RAILWAY ORDINANCE

Division 1 – Amendments to Long Title and Part I (Preliminary)

3. Long title amended

The long title to the Mass Transit Railway Ordinance (Cap. 556) is amended –

- (a) in paragraph (a) –
- (i) by repealing “railway” and substituting “Mass Transit Railway”;
 - (ii) in the Chinese text, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”;

- (b) in paragraph (b), by repealing “railway” and substituting “Mass Transit Railway”;
- (c) in paragraph (c), in the Chinese text, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”;
- (d) in paragraph (d) –
 - (i) by repealing the comma and substituting a semicolon;
 - (ii) in the Chinese text, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”;
- (e) by adding –
 - “(e) the inclusion in the franchise referred to in paragraph (a) of the rights to construct and operate certain railways other than the Mass Transit Railway or its extensions;
 - (f) the regulation, during the franchise period, of the operation of railways and certain bus services in addition to the operation of the Mass Transit Railway by the MTR Corporation Limited, including all aspects of safety concerning those railways;
 - (g) the vesting of certain rights and liabilities of the Kowloon-Canton Railway Corporation in the MTR Corporation Limited.”.

4. Short title amended

Section 1(1) is amended, in the Chinese text, by repealing “地下鐵路” and substituting “香港鐵路”.

5. Interpretation

- (1) Section 2(1) is amended –

- (a) in the definition of “Corporation”, by repealing “地鐵公司” and substituting “港鐵公司”;
- (b) in the definition of “MTR Corporation Limited”, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”;
- (c) by repealing the definition of “railway” and substituting –
 - “(a) during the Concession Period, means the Mass Transit Railway and the KCRC Railways, and a reference to the railway includes a reference to a part of the railway; and
 - (b) at any other time, means the Mass Transit Railway;”;
- (d) by repealing the definition of “railway premises” and substituting –
 - “(a) during the Concession Period, means –
 - (i) any area, space or building occupied by the Corporation which is designed, equipped or set apart for the carriage of passengers or goods, or both passengers and goods, by train or for affording facilities

incidental to the carriage of passengers or goods, or both passengers and goods by train;

- (ii) the stops, terminuses and interchanges of the North-west Railway; and
- (iii) any train on premises specified in subparagraph (i) or (ii); and

(b) at any other time, means –

- (i) any area, space or building occupied by the Corporation which is designed, equipped or set apart for the carriage of passengers by train or for affording facilities incidental to the carriage of passengers by train; and
- (ii) any train on premises specified in subparagraph (i);”;

(e) by adding –

““bus” (巴士) has the same meaning as in the Road Traffic Ordinance (Cap. 374);

“Chief Executive Officer” (行政總裁) means the Chief Executive Officer of the Corporation;

“Concession Period” (經營權有效期) means the period defined as such in the Service Concession Agreement;

“Concession Property” (經營權財產) means –

- (a) any property which the Corporation has the right to have access to, use or possess under the Service Concession Agreement, and which falls within the definition of “Concession Property” in the Service Concession Agreement;
- (b) any property acquired, purchased, hired, produced, created, constructed, developed, processed or adapted for use by the Corporation and used only for the purposes of the repair, maintenance, replacement or improvement of the property referred to in paragraph (a), and which falls within the definition of “Concession Property” in the Service Concession Agreement;
and
- (c) any other property which falls within the definition of “Concession Property” in the Service Concession Agreement;

“KCRC” (九鐵公司) means the Kowloon-Canton Railway Corporation established by section 3 of the KCRC Ordinance;

“KCRC Ordinance” (《九鐵條例》) means the Kowloon-Canton Railway Corporation Ordinance (Cap. 372);

“KCRC Railway” (九廣公司鐵路) means any railway within the meaning of section 2(1) of the KCRC Ordinance which the Corporation has the right to have access to, use or possess under the Service Concession Agreement, and a reference to the KCRC Railways is a reference to all such railways;

“Merger Date” (合併日期) means the day appointed under section 2 of the Rail Merger Ordinance (of 2007);

“North-west Railway” (西北鐵路) has the same meaning as in section 2(1) of the KCRC Ordinance;

“North-west Transit Service Area” (西北鐵路服務範圍) has the same meaning as in section 2(1) of the KCRC Ordinance;

“service concession” (服務經營權) means an arrangement under which the rights of KCRC to have access to, use or possess certain railways, and certain other property for the operation of those railways or the TSA bus service, are granted to the Corporation;

“Service Concession Agreement” (服務經營權協議) means any agreement entered into between KCRC as the grantor and the Corporation as the grantee (and with or without any other party) under which

a service concession is granted, and stated by its terms to be a Service Concession Agreement for the purposes of this Ordinance or any agreement amending or supplementing such an agreement, as having effect from time to time;

“TSA bus service” (西北鐵路巴士服務) means the service provided through the operation of bus services within the North-west Transit Service Area.”.

Division 2 – Amendments to Part II (Grant and Extension of Franchise)

6. Grant of franchise to Corporation to operate railway

Section 4 is amended –

(a) in subsection (1), by repealing everything after “50 years from” and substituting –

“the Merger Date –

- (a) to operate the Mass Transit Railway, including any extension to the Mass Transit Railway;
- (b) to construct any extension to the Mass Transit Railway;
- (c) to construct any other railway (other than an extension to the Mass Transit Railway) which the Secretary has authorized the Corporation to construct;

(d) to operate any railway constructed under paragraph (c); and

(e) to operate the KCRC Railways.”;

(b) by adding –

“(1A) For the avoidance of doubt and without affecting the generality of subsection (1)(e), the franchise granted under subsection (1) covers the operation of the KCRC Railway for the carriage of goods and passengers to and from a place outside Hong Kong.”.

7. Extension of franchise

Section 5(3) is amended by adding “the operation by the Corporation of the TSA bus service during the franchise period and” after “including”.

Division 3 – Amendments to Part III (Performance under Franchise)

8. Corporation to maintain proper and efficient service

Section 9 is amended –

(a) by renumbering it as section 9(1);

(b) by adding –

“(2) Where the Corporation operates the TSA bus service during the Concession Period, the Corporation shall ensure that the TSA bus service is operated properly and efficiently under this Ordinance and all other applicable laws.”.

9. Section added

The following is added immediately after section 12 –

“12A. Maintenance of crossings, bridges, arches, culverts, etc.

(1) During the Concession Period, the Corporation shall construct and maintain for the use of the occupiers of land not held by the Government and adjoining the KCRC Railway –

- (a) crossings of the KCRC Railway for the purpose of making good any use of the land enjoyed before the KCRC Railway was constructed or as nearly as is reasonably practicable; and
- (b) works for the purpose of conveying water from or to the land as freely as before the KCRC Railway was constructed or as nearly as is reasonably practicable.

(2) The Corporation shall not be obliged under this section to do anything –

- (a) in such a manner as would prevent the use or cause inconvenience in the use of the KCRC Railway;
- (b) with respect to which any person whose right to occupy the land has been prejudiced has made no objection or claim during the time of the construction of that part of the KCRC Railway affecting that land or with respect to which that person has accepted compensation; or
- (c) where, after the construction of that part of the KCRC Railway adjoining any land, a natural or artificial feature of that land is altered by any event outside the control of the Corporation and the Corporation has done all that is required of it

under this section before that alteration took place.”.

10. Chief Executive in Council may give directions

Section 13(1) is amended by adding “and the TSA bus service” after “franchise”.

Division 4 – Amendments to Part IV (Suspension, Revocation and Expiry of Franchise, etc.)

11. Sections added

The following are added immediately after section 15 –

“15A. Suspension of any part of franchise relating to KCRC Railway

(1) Section 15(6)(a) does not apply to any Concession Property.

(2) Section 15(6)(b) does not apply to the extent that the loss or damage arises from or is attributable to the suspension of any part of the franchise relating to the KCRC Railway.

(3) Where any part of the franchise relating to the KCRC Railway is suspended under section 15(1) and the suspension is attributable to a specified cause –

(a) the Government is liable to pay compensation for the loss of or damage to any Concession Property taken possession of under section 15(5) in connection with the suspension of that part of the franchise (but excluding, for the avoidance of doubt, the loss of the right to use or possess that Concession Property); and

(b) subject to paragraph (a), the Government is not liable to pay compensation for any loss or damage

of any kind (including consequential loss) sustained by the Corporation and in any way arising from or attributable to the suspension of that part of the franchise.

(4) Where any part of the franchise relating to the KCRC Railway is suspended under section 15(1) and the suspension is attributable otherwise than to a specified cause, the Government is liable to pay compensation for –

- (a) the loss of or damage to any Concession Property taken possession of under section 15(5) in connection with the suspension of that part of the franchise (and including, for the avoidance of doubt, the loss of the right to use or possess that Concession Property); and
- (b) any other actual loss or damage of any kind (but excluding, for the avoidance of doubt, any consequential loss) sustained by the Corporation and resulting directly from or attributable to the suspension of that part of the franchise.

(5) For the avoidance of doubt, subsections (3) and (4) do not apply to any loss or damage which arises from or is attributable to the taking possession of any Corporation Common Property under section 15(5), for which compensation shall be payable under section 15(6).

(6) The amount of any compensation payable under subsection (4) shall be calculated in accordance with the provisions of the operating agreement relating to the calculation of compensation payable under this section.

(7) In this section and section 15B –
“Corporation Common Property” (港鐵共用財產) means any property
(other than Concession Property) which at the time of the

suspension of the franchise or any part of it, is property owned, kept or used by the Corporation for the purposes of or in connection with the operation of both the KCRC Railway and the Mass Transit Railway, and which falls within the definition of “Corporation Common Property” in the Service Concession Agreement;

“KCRC Common Property” (九鐵共用財產) means any Concession Property which at the time of the suspension of the franchise or any part of it, is Concession Property kept or used by the Corporation for the purposes of or in connection with the operation of both the KCRC Railway and the Mass Transit Railway, and which falls within the definition of “KCRC Common Property” in the Service Concession Agreement;

“specified cause” (指明原因) means –

- (a) anything done or omitted to be done by the Corporation;
- (b) a breach of the Service Concession Agreement by the Corporation; or
- (c) a breach of the operating agreement by the Corporation.

15B. Rights to have access to and use Corporation Common Property and KCRC Common Property upon suspension of franchise

(1) Where the franchise is suspended under section 15(1) (whether wholly or in part), the Government, its nominee or a third party designated by the Government may have access to any Corporation Common Property and KCRC Common Property which is not taken possession of under section 15(5), and may use such Corporation Common Property and KCRC Common Property in the operation of the service and the TSA bus service to the extent that they are covered by the suspension in

accordance with the provisions of the operating agreement relating to such use.

(2) Where any part of the franchise is suspended under section 15(1), the Corporation may have access to any Corporation Common Property and KCRC Common Property which is taken possession of under section 15(5), and may use such Corporation Common Property and KCRC Common Property in the operation of the service and the TSA bus service to the extent that they are not covered by the suspension in accordance with the provisions of the operating agreement relating to such use.”.

12. Default under franchise

Section 16 is amended –

- (a) by renumbering it as section 16(1);
- (b) in subsection (1)(a) –
 - (i) by repealing “either” and substituting “any”;
 - (ii) in subparagraph (i), by repealing “or”;
 - (iii) in subparagraph (ii), by repealing the comma and substituting “; or”;
 - (iv) by adding –
 - “(iii) there has been a substantial failure by the Corporation to discharge an obligation under the Service Concession Agreement which does not amount to a major breach of the Service Concession Agreement,”;
- (c) in subsection (1)(b), by repealing the comma and substituting “; or”;
- (d) in subsection (1), by adding –
 - “(c) there has been a major breach by the Corporation of the Service Concession Agreement,”;
- (e) by adding –

“(2) For the purposes of subsection (1), there has been a major breach by the Corporation of the Service Concession Agreement if the Corporation –

- (a) makes any default in payment under the Service Concession Agreement;
- (b) contravenes any restriction imposed under the Service Concession Agreement on the disposal of the Concession Property; or
- (c) contravenes any prohibition imposed under the Service Concession Agreement on the creation of security over the Concession Property,

and the default or contravention is, under the terms of the Service Concession Agreement, a major breach of the Service Concession Agreement.”.

13. Defaults capable of remedy

Section 17 is amended by adding –

“(3) A default committed by reason of section 16(1)(c) shall not be regarded as one which is capable of being remedied for the purposes of subsection (1), and no notice shall be served under that subsection in respect of such a default.”.

14. Revocation of franchise

(1) Section 18 (1) is amended –

- (a) in paragraph (a), by repealing “or”;
- (b) in paragraph (b) –

- (i) by adding “otherwise than by reason of section 16(1)(c)” after “in default”;
 - (ii) by repealing “remedied,” and substituting “remedied; or”;
- (c) by adding –
 - “(c) it appears to the Chief Executive in Council that the Corporation is in default by reason of section 16(1)(c).”.
- (2) Section 18(2) is amended –
 - (a) by repealing “or subsection (1)(b)” and substituting “, (b) or (c)”;
 - (b) in paragraph (b), by adding “or (c)” after “subsection (1)(b)”.
- (3) Section 18(5)(b) is amended by repealing “subsection (8)” and substituting “subsections (8) and (8A)”.
- (4) Section 18 is amended by adding –
 - “(8A) Where an order is made under subsection (5)(b) only due to a default committed by reason of section 16(1)(c), the order shall have effect on the franchise only to the extent that the franchise relates to the KCRC Railways.”.

15. Sections added

The following are added immediately after section 19 –

“19A. Taking possession of Concession Property by Government upon revocation or expiry of franchise

- (1) Section 19(1) does not apply to Concession Property.
- (2) Where the franchise or that part of it relating to the KCRC Railways is revoked under section 18 or the franchise has expired and has not been extended under section 5, the Government, its nominee or a third

party designated by the Government may take possession of any Concession Property and use such Concession Property in the operation of the service and the TSA bus service to the extent that they are covered by the revocation or expiry as it thinks fit.

(3) Subject to subsections (4) and (5), any Concession Property taken possession of under subsection (2) may be returned to KCRC or may be otherwise disposed of in a manner and upon terms the Chief Executive in Council may think fit.

(4) The right conferred under subsection (2) to take possession of any Concession Property and to use such Concession Property includes the right to keep or maintain such Concession Property in whatever condition or to alter such Concession Property in whatever manner.

(5) Without affecting any entitlement to compensation under section 19B, nothing in this Ordinance or any other law imposes on the Government any obligation in relation to the condition in which any Concession Property taken under subsection (2) is to be kept or returned.

(6) For the purpose of, and to the extent necessary to effect, the disposal under subsection (3) of any Concession Property taken possession of under subsection (2) (and for that purpose and to that extent only), title in that Concession Property is deemed to be vested in the Government.

19B. Compensation for taking possession of Concession Property under section 19A

Where any Concession Property is taken possession of under section 19A(2), the Government is liable to pay such compensation to the Corporation in relation to that Concession Property as would be required to be paid by KCRC to the Corporation under the Service Concession Agreement had the Concession Property been taken possession of by KCRC or redelivered by the Corporation to KCRC under the Service

Concession Agreement upon the termination or expiry of the Service Concession Agreement.

**19C. Rights to have access to and use KCRC
Common Property or Corporation
Common Property upon revocation
or expiry of franchise**

(1) Where the franchise or that part of it relating to the KCRC Railways is revoked under section 18 or the franchise has expired and has not been extended under section 5, the Government, its nominee or a third party designated by the Government may have access to any Corporation Common Property which is not taken possession of under section 19(1), and may use such Corporation Common Property in the operation of the service and the TSA bus service to the extent that they are covered by the revocation or expiry in accordance with the provisions of the operating agreement relating to such use.

(2) Where that part of the franchise relating to the KCRC Railways is revoked under section 18 and that part of the franchise relating to the Mass Transit Railway remains in force, the Corporation may have access to any KCRC Common Property which is taken possession of under section 19A(2), and may use such KCRC Common Property in the operation of the Mass Transit Railway in accordance with the provisions of the operating agreement relating to such use.

(3) In this section –

(a) “Corporation Common Property” (港鐵共用財產) means any property (other than Concession Property) which at the time of the revocation of the franchise or that part of it relating to the KCRC Railways or the expiry of the franchise (as the case may be), is property owned, kept or used by the Corporation for the purposes of or in

connection with the operation of both the KCRC Railway and the Mass Transit Railway, and which falls within the definition of “Corporation Common Property” in the Service Concession Agreement;

- (b) “KCRC Common Property” (九鐵共用財產) means any Concession Property which at the time of the revocation of that part of the franchise relating to the KCRC Railways, is Concession Property kept or used by the Corporation for the purposes of or in connection with the operation of both the KCRC Railway and the Mass Transit Railway, and which falls within the definition of “KCRC Common Property” in the Service Concession Agreement.”.

Division 5 – Amendments to Part VIII (Regulations and Bylaws)

16. Regulations

- (1) Section 33 is amended by adding –

“(1A) The Secretary may make regulations for all or any of the following purposes –

- (a) requiring the Corporation to submit to the Commissioner, at such times and in such manner as may be specified in the regulations, a programme of the future operations or plans of the Corporation for the rail and TSA bus service within the North-west Transit Service Area for such period as may be so specified, including, without derogation from the generality of

the foregoing, routes to be operated, frequency of service and vehicle allocation to those routes;

- (b) controlling and regulating the maintenance and operation of the TSA bus service by the Corporation;
- (c) the use of the TSA bus service by members of the public and their conduct while using the TSA bus service; and
- (d) any connected purposes.

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

(1C) Where any regulation is made under subsection (1A)(a) to require the Corporation to submit to the Commissioner any programme, neither the Commissioner nor any other person shall disclose any information obtained pursuant to that regulation unless he has consulted the Corporation regarding his intention to do so.”.

(2) Section 33 is amended by adding –

“(4) A regulation 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 regulation made under this section.”.

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.”.

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.”.

Division 6 – Addition of new Part

19. Part IXA added

The following is added immediately after Part IX –

“PART IXA

VESTING OF CERTAIN RIGHTS AND LIABILITIES OF KCRC IN CORPORATION

52A. Interpretation of Part IXA

In this Part –

“contract” (合約) includes any agreement, bond, guarantee or security made or given orally, in writing, by deed, by conduct or otherwise;

“liabilities” (法律責任) includes obligations;

“relevant date” (有關日期) –

- (a) in relation to a contract which is specified in a Vesting Notice, means the date specified in the Vesting Notice for the purposes of section 52B(1);
- (b) in relation to a contract which is specified in a Re-vesting Notice, means the date specified in the Re-vesting Notice for the purposes of section 52C(1);
- (c) in relation to a contract or document to which section 52D or 52E applies, means the Merger Date;
- (d) in relation to any security to which section 52F applies, means the date on which the rights in respect of which the security is held are vested in the Corporation or KCRC under section 52B or 52C (as the case may be);

“relevant rights and liabilities” (有關的權利及法律責任), in relation to a contract or document to which section 52B, 52D 52E or 52F(1) applies, means the rights and liabilities vested in the Corporation under section 52B, 52D 52E or 52F(1) (as the case may be);

“Re-vesting Notice” (再轉歸公告) means a notice made by the Secretary under section 52C(2);

“security” (抵押) means any interest, legal or equitable, by means of which the payment or discharge of a debt or liability (whether present or future, actual or contingent) is secured, whether or not that interest is evidenced in writing;

“Vesting Notice” (轉歸公告) means a notice made by the Secretary under section 52B(2).

52B. Vesting of certain contractual rights and liabilities of KCRC in Corporation

(1) Where a contract or a class of contracts is specified in a Vesting Notice –

- (a) the rights under the contract or contracts of the class of contracts which are exercisable by KCRC at any time on or after but not before the relevant date under the terms of the contract or those contracts; and
- (b) the liabilities under the contract or those contracts which are to be discharged by KCRC at any time on or after the relevant date under the terms of the contract or those contracts,

shall vest in the Corporation by virtue of this subsection on that date.

(2) The Secretary may make a Vesting Notice for the purposes of subsection (1).

(3) A Vesting Notice made under subsection (2) shall be published in the Gazette as a general notice.

52C. Re-vesting of certain contractual rights and liabilities in KCRC

(1) Where a contract or a class of contracts which has been specified in a Vesting Notice is specified in a Re-vesting Notice –

- (a) the rights under the contract or contracts of the class of contracts which are exercisable by the Corporation at any time on or after but not before the relevant date under the terms of the contract or those contracts; and
- (b) the liabilities under the contract or those contracts which are to be discharged by the Corporation at any time on or after the relevant date under the terms of the contract or those contracts,

shall vest in KCRC by virtue of this subsection on that date.

(2) The Secretary may make a Re-vesting Notice for the purposes of subsection (1) where –

- (a) the franchise is revoked under section 18;
- (b) that part of the franchise relating to the KCRC Railways is revoked under section 18;
- (c) the franchise has expired and has not been extended under section 5; or
- (d) both KCRC and the Corporation agree that it is necessary to make a Re-vesting Notice.

(3) A Re-vesting Notice made under subsection (2) shall be published in the Gazette as a general notice.

52D. Employment contracts

(1) All rights and liabilities to which KCRC was entitled or subject immediately before the relevant date under any contract of employment entered into with KCRC which was in force immediately before the relevant date shall vest in the Corporation by virtue of this subsection on that date.

(2) Employment with KCRC and the Corporation under a contract of employment to which subsection (1) applies is deemed for all purposes to be a single continuing employment.

(3) No member of the managing board of KCRC or auditor of KCRC becomes by virtue only of subsection (1) a director or auditor of the Corporation.

52E. Pension fund schemes, etc.

(1) All rights and liabilities to which KCRC was entitled or subject immediately before the relevant date under any contract or other document constituting or relating to any pension fund scheme, provident fund scheme or any other retirement benefits scheme established for the benefit of employees of KCRC or to any gratuity benefits payable by KCRC which was in force immediately before the relevant date shall vest in the Corporation by virtue of this subsection on that date.

(2) Any contract or other document to which subsection (1) applies shall (as from the relevant date) be construed and have effect, so far as the context permits, as if for any reference in the contract or document to KCRC there were substituted a reference to the Corporation.

52F. Security

(1) In relation to a contract to which section 52B(1) applies, any security held immediately before the relevant date by KCRC, or by a person as nominee of, agent of or trustee for KCRC, in respect of the rights under the contract which are vested in the Corporation under that section,

shall be held by the Corporation, or by that person as nominee of, agent of or trustee for the Corporation (as the case may require), and shall be available to the Corporation (whether for its own benefit or for the benefit of any other person, as the case may be) as from that date.

(2) In relation to any security vested in the Corporation by virtue of subsection (1) and any liabilities secured by the security, the Corporation shall be entitled to the rights and priorities, and shall be subject to the obligations and incidents, which KCRC would have been entitled to and subject to if it had continued to hold the security.

(3) In relation to a contract to which section 52C(1) applies, any security held immediately before the relevant date by the Corporation, or by a person as nominee of, agent of or trustee for the Corporation, in respect of the rights under the contract which are vested in KCRC under that section, shall be held by KCRC, or by that person as nominee of, agent of or trustee for KCRC (as the case may require), and shall be available to KCRC (whether for its own benefit or for the benefit of any other person, as the case may be) as from that date.

(4) In relation to any security vested in KCRC by virtue of subsection (3) and any liabilities secured by the security, KCRC shall be entitled to the rights and priorities, and shall be subject to the obligations and incidents, which the Corporation would have been entitled to and subject to if it had continued to hold the security.

52G. Supplementary provisions relating to vesting or re-vesting under this Part

(1) A contract or other document to which section 52B, 52D, 52E or 52F(1) applies shall, to the extent of the relevant rights and liabilities, have effect as from the relevant date as if the Corporation is a party to the contract or document in all respects and as if the Corporation were the same person in law as KCRC.

(2) Accordingly, references (whether express or implied) to KCRC in the contract or document referred to in subsection (1) shall, to the extent of the relevant rights and liabilities, be taken as from the relevant date as referring to the Corporation.

(3) Where the contract or document referred to in subsection (1) refers (in whatever terms and whether expressly or by implication) to a person employed by or engaged in the business of KCRC, it shall have effect, to the extent of the relevant rights and liabilities and in relation to anything falling to be done on or after the relevant date, as if for that reference there were substituted a reference to such person as the Corporation may appoint or, in default of appointment, to the person employed by or engaged in the business of the Corporation who corresponds as nearly as may be to the person employed by or engaged in the business of KCRC in question.

(4) A contract to which section 52C or 52F(3) applies shall, to the extent of the rights and liabilities vested in KCRC by virtue of section 52C or 52F(3) (as the case may be), have effect as from the relevant date as if KCRC is a party to the contract in all respects and as if KCRC were the same person in law as the Corporation.

(5) The Corporation and all other persons have the same rights, powers and remedies for ascertaining, perfecting or enforcing any right or liability vested in the Corporation by virtue of section 52B, 52D, 52E or 52F(1) as they would have had if that right or liability had at all times been a right or liability of the Corporation.

(6) KCRC and all other persons have the same rights, powers and remedies for ascertaining, perfecting or enforcing any right or liability vested in KCRC by virtue of section 52C or 52F(3) as they would have had if that right or liability had at all times been a right or liability of KCRC.

(7) In subsections (5) and (6), a reference to rights and powers includes a reference to rights and powers as to the taking or resisting of

legal proceedings or the making or resisting of applications to any authority.

52H. Evidence of vesting

(1) The production of a Government Printer's copy, or a document certified by a solicitor to be a true copy of a Government Printer's copy, of this Ordinance is conclusive evidence for all purposes of any vesting (other than any vesting under section 52B or 52C) effected under this Part.

(2) The production of a Government Printer's copy, or a document certified by a solicitor to be a true copy of a Government Printer's copy, of this Ordinance and of a Vesting Notice is conclusive evidence for all purposes of any vesting under section 52B to which the Vesting Notice relates.

(3) The production of a Government Printer's copy, or a document certified by a solicitor to be a true copy of a Government Printer's copy, of this Ordinance and of a Re-vesting Notice is conclusive evidence for all purposes of any vesting under section 52C to which the Re-vesting Notice relates.

52I. Waiver of prohibition of vesting

- (1) A provision contained in any contract or other document –
- (a) prohibiting or having the effect of prohibiting the vesting under section 52B, 52D, 52E or 52F(1); or
 - (b) to the effect that a default shall occur or be deemed to occur, or any right or liability shall cease, as a result of the vesting under section 52B, 52D, 52E or 52F(1),

and to which KCRC is a party, is deemed to have been waived.

- (2) A provision contained in any contract or other document –

- (a) prohibiting or having the effect of prohibiting the vesting under section 52C or 52F(3); or
- (b) to the effect that a default shall occur or be deemed to occur, or any right or liability shall cease, as a result of the vesting under section 52C or 52F(3),

and to which the Corporation is a party, is deemed to have been waived.

52J. Evidence: books and documents

(1) In relation to any matter concerning any right or liability under a contract vested in the Corporation under section 52B, 52D, 52E or 52F(1), books and other documents which would, before the relevant date, have been evidence in respect of that matter for or against KCRC are admissible in evidence in respect of the same matter for or against the Corporation.

(2) In relation to any matter concerning any right or liability under a contract vested in KCRC under section 52C or 52F(3), books and other documents which would, before the relevant date, have been evidence in respect of that matter for or against the Corporation are admissible in evidence in respect of the same matter for or against KCRC.

(3) In this section, “documents” (文件) has the same meaning as in section 46 of the Evidence Ordinance (Cap. 8).

52K. Perfection of vesting of foreign rights and liabilities

(1) KCRC and the Corporation shall take, as and when the Corporation considers appropriate, all steps necessary or desirable for securing that the vesting in the Corporation under this Part of any foreign right or liability is effective under the relevant foreign law.

(2) Until the vesting of any foreign right or liability of KCRC in the Corporation becomes effective under the relevant foreign law,

KCRC shall hold that right for the benefit of, and discharge that liability on behalf of, the Corporation.

(3) Any costs and expenses incurred by KCRC under subsections (1) and (2) shall be met by the Corporation.

(4) KCRC and the Corporation shall take, as and when KCRC considers appropriate, all steps necessary or desirable for securing that the vesting in KCRC under this Part of any foreign right or liability is effective under the relevant foreign law.

(5) Until the vesting of any foreign right or liability of the Corporation in KCRC becomes effective under the relevant foreign law, the Corporation shall hold that right for the benefit of, and discharge that liability on behalf of, KCRC.

(6) Any costs and expenses incurred by the Corporation under subsections (4) and (5) shall be met by KCRC.

(7) Nothing in this section shall be taken as prejudicing the effect under the laws of Hong Kong of the vesting in the Corporation or KCRC by virtue of this Part of any foreign right or liability.

(8) In this section, a reference to any foreign right or liability is a reference to any right or liability in respect of which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a place outside Hong Kong.

52L. Resolution of dispute

(1) The Corporation and KCRC shall take all steps necessary or desirable to cooperate with each other in any mediation, arbitration or legal proceedings involving KCRC, the Corporation and any party to a contract specified in a Vesting Notice or Re-vesting Notice, or a contract of a class of contracts specified in such a Notice, which may arise from any dispute regarding the contract.

(2) Subsection (1) does not apply where the dispute regarding the contract is –

- (a) a dispute only as between KCRC and the Corporation; or
- (b) a dispute between, on the one hand, one of those corporations and, on the other hand, the other corporation and another party to the contract.”.

Division 7 – Amendment to Part X (Miscellaneous)

20. Appeal to Chief Executive in Council

Section 53(1) is amended by repealing everything after “than section” and substituting “15(5), 15B(1),19(1), 19A(2), 19C(1), 22, 26 or 33.”.

21. Sections added

The following are added immediately after section 54 –

“54A. Application of section 11 of Tramway Ordinance

During the Concession Period, section 11 of the Tramway Ordinance (Cap. 107) applies to the North-west Railway and, for the purposes of such application, references in that section to “the company” shall be construed as references to the Corporation and references to “the tramway” as references to the North-west Railway.

54B. Public Bus Services Ordinance not to apply to TSA bus service

(1) During the Concession Period, the Public Bus Services Ordinance (Cap. 230) does not apply to the TSA bus service with the following exceptions –

- (a) sections 16(1)(b), 18, 19, 20 and 21;
- (b) sections 2 and 3 to the extent that they apply to the provisions specified in paragraph (a),

and for the purposes of those provisions, the Corporation shall be deemed to be a grantee within the meaning of that Ordinance.

(2) Section 53 of this Ordinance applies to a decision, direction or requirement of the Commissioner given under section 16(1)(b), 19 or 20 of the Public Bus Services Ordinance (Cap. 230) in respect of the TSA bus service as if the decision, direction or requirement were a decision of the Commissioner made under this Ordinance.

(3) Neither the Commissioner nor any other person shall disclose any information relating to the TSA bus service obtained pursuant to section 18 of the Public Bus Services Ordinance (Cap. 230) unless he has consulted the Corporation regarding his intention to do so.

(4) The powers conferred by section 21(1)(a) of the Public Bus Services Ordinance (Cap. 230) may be exercised in respect of the TSA bus service only for the purpose of –

- (a) ensuring the safety of the TSA bus service; or
- (b) investigating an accident which involved a bus used in the operation of the TSA bus service.

(5) No person shall disclose, except to the Commissioner, any information obtained through an inspection conducted in respect of the TSA bus service under section 21(1)(a) of the Public Bus Services Ordinance (Cap. 230) unless he has given reasonable notice to the Corporation beforehand.”.

PART 3

AMENDMENTS TO KOWLOON-CANTON RAILWAY CORPORATION ORDINANCE

Division 1 – Amendment to Long Title and Part I (Preliminary)

22. Long title amended

The long title to the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) is amended –

- (a) by adding “or other railways” after “that railway”;
- (b) by adding “to enable that corporation to dispose of its property or to grant its rights over its property and its other rights to the MTR Corporation Limited, to enable that corporation to own or take a lease of other railways” after “other railways”.

23. Interpretation

- (1) Section 2 (1) is amended –
 - (a) in the definition of “railway” –
 - (i) in paragraph (b), by repealing “or”;
 - (ii) in paragraph (c), by repealing the comma and substituting “; or”;
 - (iii) by adding –
 - “(d) any railway (other than a railway referred to in paragraph (a), (b) or (c)) constructed by, leased to or vested in the Corporation,”;
 - (b) in the definition of “railways” –
 - (i) in paragraph (b), by repealing “and”;
 - (ii) in paragraph (c), by repealing the full stop and substituting “; and”;

(iii) by adding –
“(d) any railway (other than a railway referred to in paragraph (a), (b) or (c)) constructed by, leased to or vested in the Corporation;”;

(c) by adding –

““Concession Period” (經營權有效期) means the period defined as such in the Service Concession Agreement;

“Merger Date”(合併日期) means the day appointed under section 2 of the Rail Merger Ordinance (of 2007);

“MTR Corporation Limited” (香港鐵路有限公司) has the same meaning as in section 2(1) of the Mass Transit Railway Ordinance (Cap. 556);

“service concession” (服務經營權) means an arrangement under which the rights of the Corporation to have access to, use or possess certain railways, and certain other property for the operation of those railways or the TSA bus service, are granted to the MTR Corporation Limited;

“Service Concession Agreement” (服務經營權協議) means any agreement entered into between the Corporation as the grantor and the MTR Corporation Limited as the grantee (and with or without any other party) under which a service concession is granted, and stated by its terms to be a Service Concession Agreement for the purposes of this Ordinance or any agreement amending or

supplementing such an agreement, as having effect from time to time;

“TSA bus service” (西北鐵路巴士服務) means the service provided through the operation of bus services within the North-west Transit Service Area.”.

(2) Section 2(2) is repealed and the following substituted –

“(2) The Chief Executive in Council may –

(a) during the Concession Period, upon being satisfied that the MTR Corporation Limited and the Corporation have been consulted about the variation; and

(b) at any other time, upon being satisfied that the Corporation has been consulted about the variation,

by order published in the Gazette require the Commissioner for Transport to vary the boundaries of the North-west Transit Service Area in such manner as may be specified in the order.”.

Division 2 – Amendments to Part II (Establishment of the Kowloon-Canton Railway Corporation)

24. Corporation established

Section 3 is amended –

(a) in subsection (2)(b), by adding “subject to subsection (2B),” before “a Chief Executive Officer”;

(b) by adding –

“(2B) The office of the Chief Executive Officer may be left vacant during the Concession Period.

(2C) Where the office of the Chief Executive Officer is left vacant under subsection (2B), the managing

board of the Corporation shall consist of persons referred to in subsection (2)(a) and (c).”.

25. Powers of the Corporation

Section 4 is amended –

- (a) in subsection (1) –
 - (i) in paragraph (d), by repealing “and”;
 - (ii) by adding –
 - “(da) to grant a service concession;
 - (db) to dispose of its property under or in connection with the grant of a service concession by way of a sale, lease, licence or otherwise;
 - (dc) to own or take a lease of certain railways; and”;
- (b) by adding –
 - “(7) The Corporation shall not exercise its powers under subsection (1)(a), (b), (c) and (d) during the Concession Period.
 - (8) Subsection (7) does not apply where the franchise granted to the MTR Corporation Limited under section 4 of the Mass Transit Railway Ordinance (Cap. 556), or any part of it relating to those railways covered by a service concession, is suspended under that Ordinance.
 - (9) Notwithstanding subsection (7), where the Corporation has begun the construction of any railway before the Merger Date and the construction is not completed before the Merger Date, the Corporation may

exercise any of its powers under this section for the purpose of the construction of that railway until –

- (a) the construction is completed; and
- (b) the rights to have access to, use or possess that railway is granted by way of a service concession.”.

Division 3 – Amendments to Part VI (Regulations and By-laws)

26. Regulations

Section 30 is amended by adding –

“(5) Regulations made under subsection (1) may make provision for the suspension of the operation of any such regulation during the Concession Period.

(6) Where regulations are made under subsection (1) to provide for the suspension of the operation of any regulation 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 regulations.”.

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.”.

Division 4 – Addition of new Part

28. Part VIII added

The following is added –

“PART VIII

SUSPENSION OF CERTAIN PROVISIONS DURING CONCESSION PERIOD

40. Suspension of certain provisions during Concession Period

(1) The operation of Part IV, sections 23, 25, 34B and 35A is suspended during the Concession Period.

(2) Subsection (1) does not apply where the franchise granted to the MTR Corporation Limited under section 4 of the Mass Transit Railway Ordinance (Cap. 556), or any part of it relating to those railways covered by a service concession, is suspended under that Ordinance.

(3) Section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) shall have the same effect in relation to the suspension of the operation of any provision by virtue of this section as it would have if such provision had been repealed.”.

Division 5 – Amendment to Schedules

29. Provisions with respect to the Corporation and members thereof

Paragraph 9 of the First Schedule is amended –

(a) by renumbering it as paragraph 9(1);

(b) by adding –

“(2) During the Concession Period, subparagraph (1) does not apply, and a simple majority of the members of the Corporation for the time being shall form the quorum.”.

PART 4

CONSEQUENTIAL AND RELATED AMENDMENTS

30. Consequential and related amendments

(1) The enactments specified in Schedule 1 are amended as set out in that Schedule.

(2) The following provisions of the Mass Transit Railway Ordinance (Cap. 556) are amended, in the Chinese text, by repealing “地鐵公司” wherever it appears and substituting “港鐵公司” –

- (a) section 2(1) (the definitions of “地下鐵路”, “運輸交匯處” and “營運協議”);
- (b) section 4(2);
- (c) section 5;
- (d) section 6;
- (e) section 7;
- (f) section 8;
- (g) section 9;
- (h) section 10;
- (i) section 11;
- (j) section 12;
- (k) section 13;
- (l) section 14;
- (m) section 15;
- (n) section 16;
- (o) section 17;
- (p) section 18;
- (q) section 19;
- (r) section 20;
- (s) section 21;

(<i>t</i>)	section 27;
(<i>u</i>)	section 28;
(<i>v</i>)	section 29;
(<i>w</i>)	section 31;
(<i>x</i>)	section 33;
(<i>y</i>)	section 34;
(<i>z</i>)	section 35;
(<i>za</i>)	section 37;
(<i>zb</i>)	section 38;
(<i>zc</i>)	section 39;
(<i>zd</i>)	section 40;
(<i>ze</i>)	section 41;
(<i>zf</i>)	section 42;
(<i>zg</i>)	section 43;
(<i>zh</i>)	section 44;
(<i>zi</i>)	section 45;
(<i>zj</i>)	section 47;
(<i>zk</i>)	section 48;
(<i>zl</i>)	section 49;
(<i>zm</i>)	section 51;
(<i>zn</i>)	section 52;
(<i>zo</i>)	section 53;
(<i>zp</i>)	section 54;
(<i>zq</i>)	section 56;
(<i>zr</i>)	section 57;
(<i>zs</i>)	section 58;
(<i>zt</i>)	section 59;
(<i>zu</i>)	section 60;
(<i>zv</i>)	section 61;
(<i>zw</i>)	section 63;

(zx) Schedule 2.

(3) The following provisions of the Mass Transit Railway Ordinance (Cap. 556) are amended, in the heading, in the Chinese text, by repealing “地鐵公司” and substituting “港鐵公司” –

(a) section 4;

(b) section 7;

(c) section 9;

(d) section 28;

(e) section 37;

(f) section 54;

(g) section 56;

(h) section 58;

(i) section 59;

(j) section 60;

(k) section 61.

(4) Section 2(1) of the Tung Chung Cable Car Ordinance (Cap. 577) is amended, in the English text, in the definition of “MTR Corporation Limited”, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”.

(5) The Chinese text of the provisions set out in Part 1 of Schedule 2 is amended by repealing “《地下鐵路條例》” wherever it appears and substituting “《香港鐵路條例》”.

(6) The Chinese text of the provisions set out in Part 2 of Schedule 2 is amended by repealing “地鐵有限公司” wherever it appears and substituting “香港鐵路有限公司”.

(7) Section 37 of the Noise Control Ordinance (Cap. 400) is amended, in the heading, in the Chinese text, by repealing “地鐵有限公司” and substituting “香港鐵路有限公司”.

CONSEQUENTIAL AND RELATED AMENDMENTS

Dutiable Commodities Ordinance

1. Schedule 1 amended

Schedule 1 to the Dutiable Commodities Ordinance (Cap. 109) is amended, in Part III, by adding –

“3A. Where it is proved to the satisfaction of the Commissioner that light diesel oil on which duty has been paid under paragraph 1(*b*) has been used in road vehicles operated by the MTR Corporation Limited in maintaining bus services within the North-west Transit Service Area referred to in paragraph 3 during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), a refund of duty paid on the light diesel oil so used may be granted by the Commissioner and subject to such conditions as the Commissioner may specify.”.

Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations

2. Use of marked oil

Regulation 5B(2) of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg. C) is amended –

- (a) in paragraph (*b*), by repealing “or”;
- (b) in paragraph (*c*), by repealing the full stop and substituting “; or”;
- (c) by adding –
 - “(d) that is operated by the MTR Corporation Limited in maintaining bus services within the North-west Transit Service Area referred to in paragraph (*c*) during the Concession Period within the meaning

of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556).”.

Public Health and Municipal Services Ordinance

3. Definitions and saving for other enactments

Section 104E(1)(b) of the Public Health and Municipal Services Ordinance (Cap. 132) is repealed and the following substituting –

- “(b) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) and in respect of any land belonging to the Kowloon-Canton Railway Corporation which the MTR Corporation Limited has the right to have access to, use or possess during the Concession Period, the MTR Corporation Limited;
- (ba) at any time outside the Concession Period referred to in paragraph (b) and in respect of any land belonging to the Kowloon-Canton Railway Corporation, the Kowloon-Canton Railway Corporation;”.

Traffic Accident Victims (Assistance Fund) Ordinance

4. Levy on motor vehicles

Section 5 of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) is amended –

- (a) in subsection (7A), by repealing “In” and substituting “Subject to subsection (7B), in”;
- (b) by adding –
 - “(7B) During the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), the levy payable under subsection (7A) shall be payable by the MTR Corporation Limited as if it were the Kowloon-Canton Railway Corporation.”;

- (c) in subsection (9), by adding “, MTR Corporation Limited” after “Kowloon-Canton Railway Corporation”.

Frontier Closed Area (Permission to Enter) Notice

5. Scheduled amended

The Schedule to the Frontier Closed Area (Permission to Enter) Notice (Cap. 245 sub. leg. H) is amended –

- (a) in Part I, in item 1, in the fourth column, by repealing everything after “defined for” and substituting –
 “the purposes of –
- (a) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), the Mass Transit Railway Ordinance (Cap. 556); and
- (b) at any other time, the Kowloon-Canton Railway Corporation Ordinance (Cap. 372).”;
- (b) in Part II –
- (i) in item 5, in the second column, by adding “at any time outside the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556)” after “closed area”;
- (ii) by adding –
- “5A. Employees of the MTR Corporation Limited on duty on board trains or otherwise in the course of their duties in the closed area during the At any time”.

Concession Period
referred to in item 5.

Motor Vehicles Insurance (Third Party Risks) Ordinance

6. Obligations on users of motor vehicles to be insured against third party risks

Section 4(4)(*bc*) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) is amended by repealing “Mass Transit Railway By-laws (Cap. 270 sub. leg.)” and substituting “Mass Transit Railway By-laws (Cap. 556 sub. leg. B)”.

Mining Ordinance

7. Lands excluded from prospecting and mining

Section 9 of the Mining Ordinance (Cap. 285) is amended –

- (a) by renumbering it as section 9(1);
- (b) in subsection (1)(*b*) –
 - (i) by repealing “Manager and Chief Engineer, Kowloon-Canton Railway” and substituting “Kowloon-Canton Railway Corporation”;
 - (ii) by repealing “he” and substituting “it”;
- (c) by adding –
 - “(2) During the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), in subsection (1)(*b*) –
 - (a) “railway” (鐵路) means “KCRC Railway” within the meaning of section 2(1) of that Ordinance;
 - (b) the reference to Kowloon-Canton Railway Corporation shall be

construed as a reference to the
MTR Corporation Limited.”.

Motor Vehicles (First Registration Tax) Ordinance

8. Classes of motor vehicles and rate of tax

The Schedule to the Motor Vehicles (First Registration Tax) Ordinance
(Cap. 330) is amended –

- (a) in item 4, by repealing everything after “operating” and substituting –
 - “a public bus service –
 - (a) under the Public Bus Services Ordinance (Cap. 230);
 - (b) under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) within the North-west Transit Service Area within the meaning of section 2(1) of that Ordinance; or
 - (c) by the MTR Corporation Limited within the North-west Transit Service Area referred to in paragraph (b) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) 3.7”;
- (b) in item 5, by repealing everything after “operating” and substituting –
 - “a public bus service –
 - (a) under the Public Bus Services Ordinance (Cap. 230);
 - (b) under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) within

the North-west Transit Service Area referred to in item 4(b); or

- (c) by the MTR Corporation Limited within the North-west Transit Service Area referred to in item 4(b) during the Concession Period referred to in item 4(c) 3.7”.

Smoking (Public Health) Ordinance

9. Public transport carriers where smoking is prohibited

Schedule 1 to the Smoking (Public Health) Ordinance (Cap. 371) is amended –

- (a) in item 6, by adding “at any time outside the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556)” after “(Cap. 372)”;
- (b) by adding –
- “6A. A train operated on the KCRC Railway within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) during the Concession Period referred to in item 6.”;
- (c) in item 7, by adding “at any time outside the Concession Period referred to in item 6” after “(Cap. 372)”;
- (d) by adding –
- “7A. A light rail vehicle operated on the North-west Railway within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556) during the Concession Period referred to in item 6.”.

Road Traffic (Traffic Control) Regulations

10. Interpretation

(1) Regulation 2 of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) is amended –

(a) in subregulation (1), by repealing the definition of “rail stop” and substituting –

““rail stop”(輕鐵站) means –

(a) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), a rail stop designated by regulation made under the Mass Transit Railway Ordinance (Cap. 556); and

(b) at any other time, a designated rail stop under the Kowloon-Canton Railway Corporation Regulations (Cap. 372 sub. leg. A);”;

(b) in subregulation (4), in the proviso, by repealing everything after “without” and substituting –

“the consent of –

(a) during the Concession Period within the meaning of section 2(1) of the Mass Transit Railway Ordinance (Cap. 556), the MTR Corporation Limited; and

(b) at any other time, the Kowloon-Canton Railway Corporation.”.

(2) Schedule 1 is amended by repealing the legend below FIGURE No. 159 and substituting –

“THIS SIGN PROHIBITS THE ENTRY OF ALL VEHICLES EXCEPT VEHICLES OF THE NORTH-WEST RAILWAY AND TRAMS AND SUCH VEHICLES AS ARE AUTHORIZED TO ENTER BY THE KOWLOON-CANTON RAILWAY CORPORATION, THE MTR CORPORATION LIMITED OR THE HONG KONG TRAMWAYS LIMITED, AS THE CASE MAY BE, AND PROHIBITS THE ENTRY OF ALL PERSONS EXCEPT THOSE PERSONS AUTHORIZED TO ENTER BY THE KOWLOON-CANTON RAILWAY CORPORATION, THE MTR CORPORATION LIMITED OR THE HONG KONG TRAMWAYS LIMITED, AS THE CASE MAY BE.”.

SCHEDULE 2

[s. 30(5) & (6)]

PART 1

SUBSTITUTE “《香港鐵路條例》” FOR “《地下鐵路條例》”

1. Paragraph 3(f) of the Capital Investment Fund (Cap. 2 sub. leg. B).
2. Regulation 3(2)(e) of the Factories and Industrial Undertakings (Electricity) Regulations (Cap. 59 sub. leg. W).
3. Section 2(5) of the Eastern Harbour Crossing Ordinance (Cap. 215).
4. Item 5 of Schedule 1 to the Smoking (Public Health) Ordinance (Cap. 371).

PART 2

SUBSTITUTE “香港鐵路有限公司” FOR “地鐵有限公司”

1. Paragraph 3(a) of the Capital Investment Fund (Cap. 2 sub. leg. B).
2. Section 1 of the Schedule to the Inland Revenue (Qualifying Debt Instruments) Order (Cap. 112 sub. leg. M).
3. Paragraph (a)(iii) of the definition of “特殊用途契約” in section 3(1) of the New Territories Leases (Extension) Ordinance (Cap. 150).
4. The definition of “香港公營單位” in paragraph 1 of Schedule 3 to the Banking Ordinance (Cap. 155).
5. Item 37 of Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201).
6. Section 2(5)(a) of the Eastern Harbour Crossing Ordinance (Cap. 215).
7. Section 4(4)(bc) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272).
8. Section 37 of the Noise Control Ordinance (Cap. 400).
9. The definition of “青馬管制區” in section 2(7) of the Tai Lam Tunnel and Yuen Long Approach Road Regulation (Cap. 474 sub. leg. B).
10. The definition of “地下鐵路區” in section 2 of the Airport Authority Bylaw (Cap. 483 sub. leg. A).
11. The definition of “青馬管制區” in section 2 of the Tsing Ma Control Area Ordinance (Cap. 498).
12. Item 93 of Schedule 1A to the Legislative Council Ordinance (Cap. 542).

13. The definition of “指明文書” in section 2 of the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (Cap. 571 sub. leg. R).
14. The definition of “地鐵有限公司” in section 2(1), sections 2(2) and (3), 5(4)(b)(i), 16(2)(a) and (b) and 27(8)(a) of the Tung Chung Cable Car Ordinance (Cap. 577).
15. Item 9 of Schedule 2 to the Construction Workers Registration Ordinance (Cap. 583).
16. Item 3 of Part 1 of Schedule 2 to the Construction Industry Council Ordinance (12 of 2006).

Explanatory Memorandum

The object of this Bill is to amend the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (“KCRCO”) and the Mass Transit Railway Ordinance (Cap. 556) (“MTRO”) to provide the necessary legislative framework for the operation by the MTR Corporation Limited (“MTRCL”) of the Mass Transit Railway, the Kowloon-Canton Railway and certain other railways under one franchise, and to enable the Kowloon-Canton Railway Corporation (“KCRC”) to enter into a service concession agreement (“SCA”) with MTRCL under which the right of KCRC to have access to, use or possess certain property is granted to MTRCL. The Bill is not intended to deal with the regulation of any fare payable for using any railway service or bus service operated by MTRCL.

2. The Bill is divided into 4 Parts. Part 1 provides for the short title and commencement. Part 2 (clauses 3 to 21) amends MTRO. Part 3 (clauses 22 to 29) amends KCRCO and Part 4 (clause 30) provides for consequential and related amendments.

3. Clause 3 amends the long title of MTRO to reflect changes in the scope of MTRO regarding the expansion of the franchise granted to MTRCL and the

regulation of the operation of certain railways in addition to the regulation of the operation of the Mass Transit Railway.

4. Clause 4 amends the Chinese short title of MTRO.

5. Clause 5 amends certain existing definitions in MTRO and adds new definitions.

6. Clause 6 amends section 4 of MTRO to provide that the franchise granted to MTRCL under MTRO (“the franchise”) covers the construction and operation of railways other than the Mass Transit Railway and, subject to any extension, lasts 50 years from the commencement of this Ordinance.

7. Clause 7 amends section 5 of MTRO to provide that the operation by MTRCL of bus services in connection with the North-west Railway within the meaning of KCRCO (“TSA bus service”) is a relevant consideration in any recommendation made by the Secretary for Environment, Transport and Works (“the Secretary”) as to whether the franchise should be extended.

8. Clause 8 amends section 9 of MTRO to impose an obligation on MTRCL to ensure that where MTRCL operates the TSA bus service during the period defined as “Concession Period” in the MTRO, it must ensure that the TSA bus service is operated properly and efficiently.

9. Clause 9 adds a new section to impose an obligation on MTRCL to construct and maintain certain facilities for the use of occupiers of private land adjoining any railway operated by MTRCL under the SCA (“KCRC Railway”).

10. Clause 10 amends section 13 of MTRO to enable the Chief Executive in Council to give directions in respect of the TSA bus service.

11. Clause 11 adds new provisions to Part IV of MTRO to provide for –

- (a) compensation which may be payable by the Government to MTRCL in relation to the KCRC Railway where any part of the franchise relating to the KCRC Railway is suspended;
- (b) requirements under which –

- (i) when the franchise is suspended (whether in whole or in part), the Government may have access to and use certain property which remains in the possession of MTRCL;
- (ii) when any part of the franchise is suspended, MTRCL may have access to and use certain property taken possession of by the Government in connection with the suspension.

12. Clause 12 amends section 16 of MTRO to provide that certain types of breaches of the SCA may amount to a default under the franchise and a major breach of the SCA is a default under the franchise.

13. Clause 13 amends section 17 of MTRO to provide that a major breach of the SCA is not to be regarded as a default capable of being remedied for the purposes of section 17(1) of MTRO.

14. Clause 14 amends section 18 of MTRO to provide for the circumstances under which the Chief Executive in Council may revoke that part of the franchise relating to the KCRC Railways.

15. Clause 15 adds new provisions to Part IV of MTRO to provide for –

- (a) taking possession of property covered by the SCA (“Concession Property”) by the Government when the franchise or that part of it relating to the KCRC Railways is revoked or when the franchise expires;
- (b) compensation which may be payable by the Government to MTRCL in relation to Concession Property where Concession Property is taken possession of in circumstances referred to in paragraph (a); and
- (c) requirements under which –
 - (i) when the franchise or that part of it relating to the KCRC Railways is revoked or when it expires, the Government may have access to and use certain

property which remains in the possession of MTRCL;

- (ii) when that part of the franchise relating to the KCRC Railways is revoked and that part of it relating to the Mass Transit Railway remains in force, MTRCL may have access to and use certain property taken possession of by the Government in connection with the revocation.

16. Clause 16 adds new provisions to section 33 of MTRO to enable the Secretary to make regulations in respect of the expanded scope of the franchise during the Concession Period.

17. Clause 17 adds new provisions to section 34 of MTRO to enable MTRCL to make bylaws in respect of the expanded scope of the franchise during the Concession Period.

18. Clause 18 adds new provisions to section 35 of MTRO to facilitate the adducing of evidence in any proceedings for an offence against any bylaw relating to the control of access to restricted areas in railway premises.

19. Clause 19 adds a new part to MTRO which provides for a mechanism through which certain rights and liabilities of KCRC are to be vested in MTRCL in connection with the merger of the Mass Transit Railway and the KCRC Railways, and matters related to the vesting of rights and liabilities through the mechanism, and provides for the vesting of the rights and liabilities under employment contracts entered into with KCRC and under pension schemes established for KCRC employees in MTRCL.

20. Clause 20 amends section 53 of MTRO to provide that a decision of the Secretary relating to having access to property remaining in the possession of MTRCL under section 15B or 19C of MTRO or to taking possession of Concession Property under section 19A of MTRO, in addition to certain other decisions made under other specified provisions, is not subject to appeal under section 53 of MTRO.

21. Clause 21 adds new provisions to MTRO so that during the Concession Period, section 11 of the Tramway Ordinance (Cap. 107) applies to the North-west Railway within the meaning of KCRCO, and that certain provisions of the Public Bus Services Ordinance (Cap. 230) apply to the TSA bus service operated by MTRCL.

22. Clause 22 amends the long title of KCRCO to reflect changes in the scope of that Ordinance in connection with the SCA.

23. Clause 23 amends certain existing definitions in KCRCO, adds certain new definitions, and amend subsection (2) of that section to provide that where the Chief Executive in Council varies the boundaries of the North-west Transit Service Area within the meaning of KCRCO during the Concession Period, he must consult both KCRC and MTRCL.

24. Clause 24 amends section 3 of KCRCO to provide that during the Concession Period, the office of the Chief Executive Officer may be left vacant and that where the office is left vacant, the managing board of KCRC shall not consist of a Chief Executive Officer.

25. Clause 25 amends section 4 of KCRCO to enable KCRC to grant the right to have access to, use or possess its railways and certain other property for the operation of those railways and the TSA bus service to MTRCL, and to dispose of certain property under or in connection with such grant. Moreover, provisions are added to stipulate that, subject to certain exceptions specified in KCRCO, KCRC shall not exercise its existing powers to operate and construct railways during the Concession Period.

26. Clause 26 adds new provisions to section 30 of KCRCO to enable the Secretary to suspend regulations made by him under KCRCO during the Concession Period.

27. Clause 27 adds new provisions to section 31 of KCRCO to enable KCRC to suspend by-laws made by it under KCRCO during the Concession Period.

28. Clause 28 adds a new Part to KCRCO to provide for the suspension of certain provisions in KCRCO during the Concession Period.

29. Clause 29 amends paragraph 9 of the First Schedule of KCRCO to provide for the quorum of KCRC during the Concession Period.
30. Clause 30 provides for consequential and related amendments.

IMPLICATIONS OF THE PROPOSAL

The proposed Bill is for the implementation of the rail merger. The rail merger package includes some other elements (e.g. fare reduction package, fare adjustment mechanism, financial terms of the merger etc.) that are not included in the Bill. The implications set out below represents the assessment of merger package as a whole.

Financial and Civil Service Implications

Financial Implications

2. MTRCL's payments in consideration for the service concession and acquisition for certain short-lived railway assets (including the upfront payment of \$4.25 billion, fixed annual payments of \$0.75 billion and variable annual payments based on a revenue-sharing approach), and the acquisition of KCRC's property and other related commercial interests for \$7.79 billion will be received by KCRC, which will remain wholly owned by Government after the rail merger. We expect KCRC to retain the majority of such payments to meet its outstanding financial obligations and other administrative expenses after the rail merger, although there may be scope for KCRC to distribute some surplus cash to Government as dividends.

3. Government may also need to engage professional consultants directly to assist in completing the transaction. For instance, Government may require professional assistance in auditing or verifying claims for adjustments which MTRCL may file in relation to their findings in the confirmatory due diligence on KCRC. We will work out the cost for such services nearer the time in the light of actual requirements.

4. As regards the Shatin to Central Link, we will further discuss with MTRCL the funding and implementation details.

5. In respect of the development of the property sites along West Rail (WR), MergeCo would replace KCRC as the agent of Government for implementing the property development on the basis of

an incentive scheme. The incentive payments to be made to MergeCo under this incentive scheme will likely come out of the payments from the developers participating in the property development which are ultimately receivable by Government. We will further discuss the detailed arrangements with MTRCL.

Civil Service Implications

6. After the rail merger, KCRC will have no role in railway operation with a Managing Board comprising solely of Government officials. While we intend to outsource most of the routine and ad-hoc administrative functions of KCRC (such as accounting, auditing, legal advisory and company secretarial services) to outside service providers, we estimate that additional staff may be required in the Financial Services and Treasury Bureau to manage and coordinate the work of these service providers, the outstanding financial obligations of KCRC, and interface issues between MergeCo and KCRC on a day-to-day basis. We will seek the necessary approvals and funding for the establishment of these new posts following the established practice.

7. The existing dedicated team comprising four officers and two supporting staff in the Environment, Transport and Works Bureau (ETWB) will need to be retained until 30 June 2007 to coordinate and oversee the rail merger exercise with the Financial Services and Treasury Bureau. Among the four officers, one is filling a supernumerary Administrative Officer Staff Grade B post who serves as the head of the team and is supported by an officer filling a supernumerary Administrative Officer Staff Grade C post. Approval of FC for the proposed extension of the posts concerned has been obtained.

8. For those future new projects which are to be implemented by adopting the concession approach and funded by the Government, the Railway Development Office of the Highways Department would take up the project management function in addition to their existing functions. The additional resources required will be sought through the usual procedures. The cost of providing support services to KCRC after the rail merger would be funded by KCRC and hence would have

no direct financial implications on the Government.

Economic Implications

9. The rail merger would improve the overall efficiency of our railway system through achieving economies of scale, attaining synergy through better interface and streamlining of the operations of the two railway systems, and economising on overheads at the corporate activity and internal management levels.

10. According to the assessment of MTRCL and KCRC, the rail merger could achieve an overall staffing synergy of 650-700 Full-time Equivalent (FTEs) over a number of years. The two corporations have indicated that they would make use of all opportunities of redeployment and retraining to reduce the requirement for redundancies, and would consider a voluntary separation scheme for their staff. On the other hand, they estimated that more than 1,300 new vacancies would be created through various means including commissioning of new railways, retirement and turnover in the first three years of the rail merger. Thus it is expected that the rail merger would not have a substantial impact on existing staff and job availability.

11. MTRCL and KCRC together account for one-third of the public transport passenger flow in Hong Kong. An enhanced railway service will encourage cross-district labour movements and in turn stimulate a series of economic and employment activities. The fare reduction arising from the rail merger would further encourage employment in the territory. The adoption of an objective and transparent fare adjustment mechanism (FAM) will ensure that the rail fares are responsive to changes in the economic environment. In the longer term, an affordable high-quality railway service with a comprehensive penetration network would form a public transport backbone on the basis of which other public transport services could make mutually beneficial capacity adjustments.

12. In terms of competition based on fares, the introduction of an objective and transparent FAM after the rail merger would ensure that MergeCo could not charge unfairly high prices. The proposed

FAM also provides a framework which restricts the freedom for MergeCo to price out its competitors through cut-throat price competition. Furthermore, the synergies achieved through the rail merger will be used to benefit the travelling public through fare reduction. These measures help address the concerns that MergeCo would become a monopolistic entity in the rail transport sector.

13. In fact, MergeCo would still have to face intense competition from other modes of public transport, notably from the franchised buses which have the largest market share in the public transport market in Hong Kong¹. The railways face direct competition from franchised buses in many areas including the cross harbour journeys. For example, a passenger travelling between Yuen Long and Central can choose to travel by bus or by train because they run nearly parallel routes. The charge for the bus journey is \$20.7 whereas the fare for the corresponding rail journey which requires interchange between the MTR and KCR railways is \$24.4. The same applies to journeys between Ma On Shan and Central and between Kwun Tong and Tsim Sha Tsui, where there are direct competing bus routes operating along the railway line with lower fares. MergeCo will need to continue to provide quality service at competitive fare levels to maintain its attraction to commuters. Its operation would be subject to regulation under an established framework of legislation and the integrated Operating Agreement which sets out the performance requirements and other standards required of MergeCo.

14. For implementation of new railway projects after the rail merger, Government would have the discretion to adopt the concession approach or the ownership approach to implement projects which are not MTR-extensions. If Government and MergeCo cannot agree on the funding arrangement for such new projects under the ownership approach, the Government can choose to finance the construction of the project concerned and request MergeCo to take up operation through the service concession arrangement. Under such a situation, MergeCo would be obliged to operate the new railway according to a pre-agreed mechanism as set out in the MoU to determine the concession payments to be made by MergeCo for taking up operation of

¹ The market share of franchised buses and the railways is 35.1% and 34.2% respectively in 2005.

the new railway. This would ensure that, after the rail merger, Government could still pursue new railway projects which would be of benefit to the community but not commercially viable.

Environmental Implications

15. MergeCo will take on all the existing administrative or statutory environmental responsibilities, obligations, duties, commitments and measures currently fulfilled by MTRCL and/or KCRC, and would ensure that the environmental performance of the Corporation in its construction and/or operation of all facilities or railways be maintained within acceptable environmental standards and criteria.

Sustainability Implications

16. The integration of the two railways would generate synergies to support reduction in railway fares including the abolition of the second boarding charge. The better interchanging arrangement brought about by an integrated railway network will improve passenger convenience and travelling time, which are in line with the sustainability principles of providing a safe, accessible and efficient transport system. These improvements would be welcomed by the public and should attract more commuters to use the more environmentally-friendly mode of railway transportation. As a result, the rail merger could help bring about economic and social benefits to society while improving environmental quality.