

Rail Merger Bill to be introduced into Legco

The Executive Council had endorsed the Rail Merger Bill, a spokesman for the Environment, Transport and Works Bureau said today (June 28, 2006).

"The Rail Merger Bill which seeks to provide the legislative framework for implementing the merger of the Mass Transit Railway (MTR) and Kowloon-Canton Railway (KCR) systems, will be gazetted this Friday (June 30)," the spokesman said.

"Since the announcement of the merger package in April, 2006, the Government has briefed the Legco Panel on Transport and Panel on Financial Affairs, the Transport Advisory Committee and the Traffic and Transport Committees of a number of District Councils. The MTR Corporation Limited (MTRCL) and the Kowloon-Canton Railway Corporation (KCRC) have also organised a number of briefings for their staff.

"The merger proposal is a fair and a balanced package which balances the interests of all stakeholders. In view of the generally favourable response to the rail merger, we now proceed with the legislative amendment exercise and other necessary procedures to implement the rail merger," the spokesman said.

"Under the proposed structure for the rail merger, KCRC will enter into a service concession agreement with MTRCL to grant MTRCL the right to use its assets to operate the existing KCR railway lines and the new KCR railway lines currently under construction (upon their completion) as well as its other transport-related businesses."

The Rail Merger Bill expressly empowers KCRC to grant service concession to MTRCL and expands the scope of MTRCL's franchise for taking up the

operation of these KCRC's transport services. The franchise period would be re-set to 50 years from merger date.

"To reflect the expanded scope of businesses after merger, MTRCL will change its Chinese name to 「香港鐵路有限公司」 while retaining its English name," the spokesman said.

The Bill contains corresponding changes to the relevant legislative provisions on revocation, suspension and expiry of franchise. Substantial failures of the operation of post-merger corporation (MergeCo) in KCR would be a ground for triggering revocation of its entire franchise, same as if there are substantial failures in its operation of the MTR.

On the other hand, major default by MergeCo in fulfilling its obligations under the Service Concession Agreement (SCA) with KCRC, viz payment default, breach of restrictions against disposal of concession assets or breach of restrictions against creation of security over its rights in the SCA, would be a ground for triggering revocation of the part of MergeCo's franchise as it relates to the KCR.

There are provisions in the Bill to provide for the right of Government to have access where necessary to common assets used to support operations of both MTR and KCR systems (and likewise similar rights of MergeCo) under specified circumstances of suspension, revocation or expiry of franchise.

The Bill also includes provisions to vest the employment contracts of all serving KCRC staff at the time of the rail merger to MergeCo with continuity of their prevailing retirement benefits. There are also provisions to provide for a mechanism to vest KCRC's contracts which are related to its transport operation to MergeCo.

"To better reflect post-merger functions of KCRC, there are provisions in the Bill to suspend those statutory powers / obligations of KCRC which are related to its transport operation and dis-apply the requirement for KCRC to appoint a Chief Executive Officer during the service concession period," the spokesman said.

"In line with the existing regulatory framework for MTRCL under which matters on fares are stipulated in its Operating Agreement with the Government, the fare adjustment mechanism which is part and parcel of the merger package will be stipulated in the integrated Operating Agreement between MergeCo and Government after the rail merger," the spokesman added.

"MTRCL would invite its minority shareholders to approve the merger proposal if and after the necessary legislative amendments have been approved by LegCo. Depending on the progress of the legislative amendment exercise, we envisage that the whole merger process would take about one year to complete."

The Rail Merger Bill will be introduced into Legislative Council on July 5.

Ends/Wednesday, June 28, 2006