

Board

Date: 10 December 2014

Item 10: Crossrail: Infrastructure Management Company

This paper will be considered in public

1 Summary

1.1 The purpose of this paper is to:

- (a) update the Board on the proposed regulatory compliance matters associated with the revision of the Infrastructure Manager (“IM”) arrangements for the Crossrail Central Tunnel Section (“CTS”);
- (b) set out the separation requirements under the Railways Infrastructure (Access and Management) Regulations 2005 (“2005 Regulations”) for the functions of the IM from those of a railway undertaking, to be achieved through the creation of a new subsidiary company(s) within TfL; and
- (c) recommend to the Board that TfL establishes such new subsidiary companies as it may require to enable compliance with the 2005 Regulations.

2 Recommendations

2.1 The Board is asked to:

- (a) note this paper;
- (b) approve TfL or any of its Subsidiaries (as described in paragraph 2.2 below) to establish such new subsidiary companies as are required or desirable to ensure regulatory compliance in relation to the Infrastructure Manager arrangements for the Crossrail Central Tunnel Section;
- (c) authorise the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) to:
 - (i) form one or more companies as subsidiaries of TfL or any of the Subsidiaries (as appropriate);
 - (ii) approve the adoption of the memorandum and articles of the new subsidiary;
 - (iii) approve the individuals to comprise the board of directors and the Company Secretary of the new subsidiary;

- (iv) approve the individuals to be appointed officers of the new subsidiary; and
 - (v) approve the name of the new subsidiary;
- (d) (subject to paragraph 2.1(e) below) authorise the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) to negotiate, approve, authorise, agree and execute (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate)) any documentation:
 - (i) to be entered into in connection with the incorporation of the new subsidiary; and
 - (ii) required in relation to the creation, operation, introduction and management of the subsidiary's regulatory compliance requirements,

including, without limitation, all agreements, deeds, guarantees, indemnities, announcements, notices, contracts, certificates, letters or other documents;
- (e) note that TfL's Standing Orders will apply to any new subsidiary company formed pursuant to these approvals including, without limitation, the Scheme of Authorities; and
- (f) authorise TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the regulatory compliance of the new company.

2.2 The following Officers and Subsidiaries shall have delegated authority:

- (a) **TfL Officers: the Commissioner, Managing Director Finance, Managing Director Rail and Underground and General Counsel.**
- (b) **Subsidiaries: Subsidiaries of TfL including Transport Trading Limited (TTL) and any other subsidiary (whether existing presently or to be formed) of TTL and the directors of such authorised company shall be authorised to act for and on behalf of that company.**

3 Background

3.1 At its meeting of 2 February 2012, the Board authorised amendments to the Crossrail Core Agreements to reflect changes proposed in the IM arrangements for Crossrail. The critical points are as follows:

- (a) Rail for London (RfL) will be the IM for the central section of the Crossrail central tunnel section, both under the Railways and Other Guided Transport Systems (Safety) Regulations 2006 and for the 2005 Regulations;

- (b) RfL is a subsidiary of TfL and is responsible for rail overground services, which it provides through concession agreements with private operating companies that are responsible for day-to-day operations;
- (c) RfL holds a European Passenger Licence granted by the Office of Rail Regulation (ORR) to operate rail passenger services. The licence is not specific to any rail network. RfL holds the licence only in order to act as “operator of last resort” in the event that a rail franchisee fails;
- (d) RfL has in the last year completed procurement processes for the provision of Crossrail rolling stock, maintenance and depot and the appointment of a Crossrail Train Operating Company (CTOC);
- (e) RfL will grant the CTOC access rights over the central section for the duration of the concession arrangement;
- (f) the CTOC will be provided with the trains by RfL to operate over the CTS for the term of the concession; and
- (g) the CTOC will undertake day-to-day Crossrail operations, including operating and staffing the trains.

4 Regulatory compliance

- 4.1 To ensure that the IM arrangements comply with the relevant regulatory requirements, certain changes have to be made to the structure of RfL.
- 4.2 In summary, where one body is both IM and a railway undertaking, it must comply with the separation requirements set out in the 2005 Regulations. There are two types of separation required:
 - (a) accounting separation under Regulation 9: this entails (i) preparing and publishing separate profit and loss accounts and balance sheets relating to the business of the IM and the railway undertaking and (ii) ensuring that public funds are not transferred between the two parts; and
 - (b) access and charges separation under Regulations 12(7) and 16(3): where the functions of the IM are not separate from those of the railway undertaking in its legal form, organisation or decision-making, a separate independent body, which is independent in legal form, organisation and decision-making, must be appointed to determine allocation of railway capacity and access charges.

5 Steps to ensure sufficient separation between RfL’s functions

- 5.1 Regulation 9(1) of the 2005 Regulations imposes mandatory separation requirements in relation to accounts and the transfer of public funds. RfL would have to (i) publish separate profit and loss accounts and balance sheets and (ii) ensure that public funds are not transferred between its two functions.

- 5.2 Additionally, Regulations 12(7) and 16(3) impose a mandatory requirement to ensure that the IM's capacity and charges functions are performed by an independent body. This body must be independent in legal form, organisation and decision-making.
- 5.3 The clearest method of ensuring that the functions of the IM and the business of the railway undertaking are separated is through the creation of a new subsidiary within TfL. RfL would continue to be responsible for overground services, hold licences as an operator of last resort and enter into rolling stock agreements and operating concessions. The new subsidiary would take on the role of IM.

List of appendices to this paper:

None

List of background papers:

None

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