

TRANSPORT FOR LONDON

BOARD

SUBJECT: METRONET REW AND TMU – INTERNAL TRANSFER SCHEMES

DATE: 10 FEBRUARY 2009

1. PURPOSE AND DECISION REQUIRED

- 1.1 The purpose of this paper is to describe two proposed internal transfer schemes (the Schemes) to streamline the structure of the various entities that TfL acquired as part of the transfer of the Metronet businesses that took place in May 2008. The paper also describes in outline the arrangements for the dissolution of REW and TMU that it is proposed may follow the Schemes coming into effect. The Finance Committee on 27 January 2009 endorsed these proposals.
- 1.2 This paper seeks:
- (a) approval in principle to the Schemes described and related matters;
 - (b) delegation of approval of the material terms of the Schemes to the Finance Committee and delegation of administrative matters to certain officers and subsidiaries;
 - (c) authority to seek the Mayor's approval of the Schemes; and
 - (d) approval of the dissolution of two subsidiary companies, Metronet REW Limited and Metronet TMU Limited, after the Schemes have come into effect, should that demonstrate good value for money.

2. BACKGROUND

- 2.1 On 18 July 2007 Metronet Rail BCV Limited and Metronet Rail SSL Limited (the Metronet companies) were put into PPP administration, a special insolvency regime under the Greater London Authority Act 1999.
- 2.2 To enable TfL to take over the businesses of the Metronet companies and deliver their PPP obligations, on 27 May 2008, transfer schemes came into effect by which the PPP contracts and certain of the Metronet companies' property, rights and liabilities transferred to two dedicated wholly owned subsidiaries of Transport for London, LUL Nominee BCV Limited and LUL Nominee SSL Limited (the Nominee companies).
- 2.3 In acquiring the businesses of the Metronet companies, the Nominee companies also acquired two companies that had been wholly owned by the Metronet companies, Metronet REW Limited (REW) and Metronet TMU Limited (TMU).

- 2.4 Both REW and TMU are based in Acton depot in west London and they provide maintenance services for railway, rolling stock, signalling equipment and some upgrade services. Their primary role has been in relation to supporting the Nominee companies in the delivery of the PPP contracts. Neither REW nor TMU has any statutory functions.
- 2.5 After the Metronet businesses transferred to the Nominee companies, all the employees of REW and TMU agreed new contracts of employment with the Nominee companies and those employees were then transferred under the TUPE (transfer of undertakings) regulations to London Underground Limited on 7 December 2008. REW and TMU do not, therefore, now have any employees.
- 2.6 The distinction between REW, TMU and the Nominee companies is now obsolete and removing it will facilitate further efficiencies going forward in streamlining the organisation and governance administration within the Nominees companies to support the delivery of the PPP contracts. It would be beneficial if this could be achieved by the end of the current financial year.
- 2.7 It is proposed, therefore, that the remaining assets of REW and TMU transfer to LUL Nominee SSL Limited and LUL Nominee BCV Limited respectively. Those assets include third party contracts and property and will be referred to generically in the Schemes. The use of two transfer schemes to give effect to the transfer is considered to be the most prudent method of transfer as it permits the generic description of assets and ensures that there is no risk of assets that may not have been expressly identified being left behind in REW or TMU.
- 2.8 The Greater London Authority Act 1999 provides TfL with the power to make schemes for the transfer of property, rights and liabilities between TfL and a subsidiary, or between subsidiaries, subject to the approval of the Mayor. Approval of transfer schemes prior to their submission to the Mayor is a matter reserved to the Board under paragraph 4.2(h) of TfL's Standing Order No 2.
- 2.9 Any REW or TMU tax rights and liabilities in existence immediately before the Schemes come into effect will transfer to the relevant Nominee company. Where any relevant tax rights or liabilities crystallise on the Schemes coming into effect then such rights or liabilities will not transfer and will remain with REW or TMU.
- 2.10 For accounting purposes, agreements are needed for each of TMU and REW to set out the value of the transferred assets. As the Schemes will be documents of public record, it is considered appropriate that the agreements on asset values are documented separately and remain confidential.
- 2.11 In assessing the value to be ascribed to the REW and TMU assets, it may be considered that it is most effective for TfL that no value be ascribed to them and, therefore, that no consideration should be paid to either REW or TMU. If that is the case, with no retained assets, cash or trading income, REW and TMU would have insufficient funds to pay any post transfer liabilities that may arise, including tax or dissolution costs. It is proposed, therefore, that the accounting agreements referred to above also contain, if necessary, an indemnity from each Nominee

company to TMU or REW (as appropriate) in relation to such post transfer liabilities as and when they occur, together with the assignment by REW and TMU to their respective Nominee company of any income that may arise post transfer.

- 2.12 To the extent that REW and TMU may have non-contractual liabilities, REW and TMU benefit from TfL group insurance arrangements to provide protection against the cost of such liabilities should they materialise. Those insurance benefits will continue to apply following transfer to the Nominee companies.
- 2.13 After the Schemes come into effect; if it is considered to offer good value for money to TfL, appropriate steps will be taken to dissolve both REW and TMU and to arrange for their removal from the Companies House Register. Alternatively, it may be considered preferable to retain REW and TMU as dormant companies.

3. IMPLICATIONS FOR EQUALITIES AND INCLUSION, CRIME AND DISORDER AND SUSTAINABILITY

- 3.1 The Schemes are designed to reflect TfL's organisational structure and have no operational impact, and therefore there are no impacts on equality and inclusion, crime and disorder and sustainability.

4. RECOMMENDATIONS

- 4.1 The Board is requested to:
- (a) APPROVE in principle the making of the REW and TMU transfer schemes described in this paper and DELEGATE to the Finance Committee authority to approve the material terms of such schemes;
 - (b) subject to the Finance Committee giving its approval in accordance with paragraph 4.1(a) above, APPROVE the REW and TMU transfer schemes described in this paper being submitted to the Mayor for approval;
 - (c) subject to the REW and TMU transfer schemes described in this paper coming into effect, APPROVE the dissolution of Metronet REW Limited and Metronet TMU Limited if it is considered to offer good value for money to TfL; and
 - (d) subject to the Finance Committee giving its approval in accordance with paragraph 4.1(a) above:
 - (i) DELEGATE to the TfL Officers and the Subsidiaries (as described in paragraph 4.2 below) the authority to agree the final terms of the REW and TMU transfer schemes described in this paper (and their execution) and of any documentation to be entered into in connection with the REW and TMU transfer schemes (including, without limitation, ancillary agreements for accounting purposes and matters related to the dissolution of Metronet REW Limited and Metronet TMU Limited); and

- (ii) AUTHORISE the TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the matters referred to in this paragraph.

4.2 The following TfL Officers and Subsidiaries shall have delegated authority:

- (a) TfL Officers: the Commissioner, Managing Director Finance, Managing Director London Underground, Chief Finance Officer and General Counsel; and
- (b) Subsidiaries of TfL including, without limitation, London Underground Limited, LUL Nominee BCV Limited, LUL Nominee SSL Limited, Metronet REW Limited and Metronet TMU Limited.

5 CONTACT

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