

立法會
Legislative Council

LC Paper No. CB(1)623/12-13

Ref: CB1/SS/4/12

Paper for the House Committee meeting on 1 March 2013

**Report of Subcommittee on Three Proposed Resolutions under
Section 5(3)(b) of the Public Bus Services Ordinance (Cap. 230)**

Purpose

This paper reports on the deliberations of the Subcommittee on Three Proposed Resolutions under Section 5(3)(b) of the Public Bus Services Ordinance (Cap. 230).

Background

2. The Secretary for Transport and Housing intends to move three motions at a Legislative Council ("LegCo") meeting to seek LegCo's approval so that the new 10-year franchises granted by the Chief Executive in Council on 24 April 2012 to New World First Bus Services Limited, Long Win Bus Company Limited and Citybus Limited (Franchise for Airport and North Lantau Bus Network)¹ (collectively known as "the New Franchises") will not be subject to sections 27, 28, 29 and 31 of the Public Bus Services Ordinance (Cap. 230) ("the Ordinance").

3. Section 5(3)(b) of the Ordinance provides that a franchise shall, except where LegCo by resolution excludes the application of all or any of the provisions of the Profit Control Scheme ("PCS"), be subject to the PCS as defined in section 2 of the Ordinance. The motions, if passed by

¹ The new franchise granted to New World will commence at 0400hr on 1 July 2013 whereas the new franchises respectively granted to Long Win and Citybus will commence at 0400hr on 1 May 2013. Members may refer to Annex 1 of the LegCo Brief issued by the Transport and Housing Bureau (File Ref: THB(T)CR2/5591/99) dated January 2013 for further information.

LegCo, operate to exclude the New Franchises from the PCS during their franchise periods.

Profit Control Scheme

4. The PCS is set out in Part V² of the Ordinance. In gist, section 28(1) provides for the permitted return that a franchised bus company can earn in an accounting year, calculated by reference to a percentage per annum as specified in its franchise of the average net fixed assets of the bus company in that accounting year. Bus fares are to be set at a level which allows cost recovery plus a certain level of profit with a cap on the permitted return. Profit exceeding the permitted return in any year will, according to section 28(3), be added to a reserve known as the Development Fund under section 27.

5. Section 28(4) provides that when profit falls below the permitted return, the company shall recover the shortfall by drawing money from the Development Fund. Further, section 29 provides for the deductions that must be deducted from the permitted return in each accounting year. According to section 31, the operation of the PCS in respect of a grantee shall be reviewed by Chief Executive in Council every 2 years.

6. According to the LegCo Brief issued by Transport and Housing Bureau dated January 2013 (File Ref: THB(T)CR2/5591/99), the PCS had been criticized by LegCo and the community in that it reduced the incentive for the franchised bus companies to enhance cost-effectiveness and to reduce expenditure. The PCS also in effect encouraged the franchised bus companies to over-expand and inflate their asset value. In the light of the said criticisms, and following a decision by the then Executive Council in June 1992, all new bus franchises granted thereafter were awarded without the PCS.

7. Since then, the policy secretary responsible for the transport portfolio would, after each grant of a new franchise, move a motion at LegCo that a resolution to exclude the application of the PCS to the franchise be passed. LegCo has passed a total of 17 resolutions since the 1990s to exclude the application of the PCS to the new franchises.

8. In the absence of the PCS, the Government would take into account a basket of factors³ in assessing franchised bus fare adjustment

² Part V consists of sections 26 to 32. The New Franchises are only excluded from the operation of sections 27 to 29 and 31.

³ The basket of factors includes:

applications. Such factors include public acceptability and affordability and service performance of the bus companies.

9. According to the Administration, the PCS is not applicable to any existing bus franchises. The Administration considers the disallowance of a permitted return offers the best protection of the passengers' interest. In fact, the New Franchises were granted by the Government on the clear understanding that there would be no permitted return. To implement this arrangement, the Administration has to make sections 27, 28, 29 and 31 of the Ordinance not applicable to the said new franchises.

The Subcommittee

10. At the meeting of the House Committee held on 11 January 2013, Members agreed to form a subcommittee to study the three proposed resolutions (attached as **Appendix I**). At the request of the House Committee, the Secretary for Transport and Housing wrote to the Clerk to LegCo on 14 January 2013 to withdraw his notices to move the resolutions at the Council meeting of 23 January 2013. The membership list of the Subcommittee is in **Appendix II**. Under the chairmanship of Hon CHAN Kam-lam, the Subcommittee has held one meeting with the Administration.

Deliberations of the Subcommittee

11. The Subcommittee generally is in support of the proposed resolutions. The Subcommittee does not propose any amendment to the three proposed resolutions.

12. The Subcommittee notes that it is the intention of the Administration to exclude the New Franchises from the application of the PCS as a whole. Under section 5(3)(b) of the Ordinance, LegCo may by resolution exclude the application of *all* or *any* of the provisions of the PCS, which is defined in section 2 to mean the PCS provided for by Part

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- (a) changes in operating costs and revenue since the last fare adjustment;
 - (b) forecasts of future costs, revenue and return;
 - (c) the need to provide the operator with a reasonable rate of return;
 - (d) public acceptability and affordability;
 - (e) service performance; and
 - (f) a formula for a supportable fare adjustment rate for reference by the Administration. The formula is $0.5 \times \text{Change in Nominal Wage Index for the Transportation Section} + 0.5 \times \text{Change in Composite Consumer Price Index} - 0.5 \times \text{Productivity Gain}$.

V of the Ordinance.

13. As the proposed resolutions merely specify that the New Franchises are not subject to sections 27 to 29 and 31 of the Ordinance, the Subcommittee has examined why sections 26, 26A, 30 and 32 of Part V of the Ordinance are excluded from the proposed resolutions.

14. The Administration explains that the PCS would cease to apply to the New Franchises after the disapplication of sections 27 to 29 and 31, notwithstanding that sections 26, 26A, 30 and 32 would continue to apply.

15. The Administration points out that Section 27 to 29 and 31 of the Ordinance set out the core elements of the PCS, namely the development fund, permitted return, deductions from permitted returns and review of the PCS. Existing and new franchises do not carry any arrangements concerning the PCS, development fund and permitted return. By disapplying these sections, there would no longer be any PCS mechanism in place in substance. The fact that some sections under Part V of the Ordinance, namely sections 26, 26A, 30 and 32, continue to apply will not affect this.

16. Indeed, sections 26, 26A, 30 and 32 are required for purpose of the execution of other parts of the Ordinance and/or the franchises in addition to the PCS. Specifically, such needs are as follows –

- (a) section 26 contains definitions (such as accounting year, average net fixed assets, fixed assets, operating costs, operating receipts, and operating profit) required for monitoring of the financial situation of a bus franchisee irrespective of whether there is a PCS. This is an integral part of the financial monitoring of the public bus service operated in connection with the Ordinance and the franchise;
- (b) section 26A specifies that financial penalties levied against a bus company shall not be taken into account in ascertaining the operating cost or service related expenditure of the company for any purpose related to the Ordinance or the franchise;
- (c) section 30 enables the Government to specify in the franchise depreciation rates and residual values in respect of fixed assets used or kept by a bus company for the purpose of or in connection with its franchise; and

- (d) section 32 requires a bus company to produce accounts and other information in relation to the public bus service operation as the Financial Secretary may require.

17. Given the subject matters that each of these sections concerns, their application is required for the proper monitoring of the financial aspects of the franchise by the Government, with or without the PCS. Their continued application would not have automatically put in place the PCS mechanism, and neither would it contradict with the disapplication of the PCS.

18. The Subcommittee has taken the opportunity to urge the Administration to introduce new competitors in the process of assessing applications to run public bus service in the future; to closely monitor the performance of the bus service operators and to impose, if necessary, sanctions for poor performance; and also to implement district-wide bus route rationalisation plans to achieve effective use of resources like road space so as to solve the associated problems of traffic congestion and air pollution in urban areas.

19. The Administration takes note of members' views. In respect of the introduction of new competitors, the Administration agrees to consider any views that LegCo may have when other franchises are due to expire in 2016/17 having regard to the benefits of scale of economy in bus operation and the need for the franchised bus operators to provide proper and efficient bus services for Hong Kong. The Administration would also continue to monitor closely the performance of the bus service providers and to implement bus route rationalisation plans with enhanced effort in consultation with the district councils.

Advice sought

20. Members are invited to note the deliberations of the Subcommittee.

Public Bus Services Ordinance

Resolution

(Under section 5(3)(b) of the Public Bus Services Ordinance (Cap. 230))

Resolved that the franchise granted on 24 April 2012 under section 5 of the Public Bus Services Ordinance (Cap. 230) to New World First Bus Services Limited (新世界第一巴士服務有限公司) and published in the Gazette as G.N. 3180 of 2012 is not subject to sections 27, 28, 29 and 31 of that Ordinance for the entire period of the franchise.

Public Bus Services Ordinance

Resolution

(Under section 5(3)(b) of the Public Bus Services Ordinance (Cap. 230))

Resolved that the franchise granted on 24 April 2012 under section 5 of the Public Bus Services Ordinance (Cap. 230) to Long Win Bus Company Limited (龍運巴士有限公司) and published in the Gazette as G.N. 3181 of 2012 is not subject to sections 27, 28, 29 and 31 of that Ordinance for the entire period of the franchise.

Public Bus Services Ordinance

Resolution

(Under section 5(3)(b) of the Public Bus Services Ordinance (Cap. 230))

Resolved that the franchise granted on 24 April 2012 under section 5 of the Public Bus Services Ordinance (Cap. 230) to Citybus Limited (城巴有限公司) and published in the Gazette as G.N. 3182 of 2012 is not subject to sections 27, 28, 29 and 31 of that Ordinance for the entire period of the franchise.

**Subcommittee on Three Proposed Resolutions under Section 5(3)(b) of the
Public Bus Services Ordinance (Cap. 230)**

Membership list

Chairman	Hon CHAN Kam-lam, SBS, JP
Members	Hon LEE Cheuk-yan Hon TAM Yiu-chung, GBS, JP Hon WONG Kwok-hing, MH Hon Frankie YICK Chi-ming Hon WU Chi-wai, MH Hon YIU Si-wing Hon Gary FAN Kwok-wai Hon CHAN Han-pan Dr Hon KWOK Ka-ki Hon TANG Ka-piu Hon Christopher CHUNG Shu-kun, BBS, MH, JP

(Total : 12 Members)

Clerk	Ms Sophie LAU
Legal Adviser	Miss Evelyn LEE
Date	25 January 2013

THB(T)CR 2/5591/99
LS/R/4/12-13
3919 3513

2877 5029
elee@legco.gov.hk

By Fax (2802 2679)

8 January 2013

Ms Macella LEE
Assistant Commissioner for Transport
Headquarters
Transport Department
40/F, Immigration Tower
7 Gloucester Road
Wanchai
Hong Kong

Dear Ms LEE,

**Proposed Resolutions to
Exclude the Application of the Profit Control Scheme to
the New Bus Franchises**

I am scrutinizing the above proposals with a view to advising Members on its legal and drafting aspects.

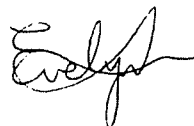
It would appear from paragraphs 1, 4 and 6 of the LegCo Brief dated January 2013 (File Ref: THB(T)CR 2/5591/99) that the Administration intends to exclude the New Bus Franchises from the application of the Profit Control Scheme (the PCS) as a whole. Under section 5(3)(b) of the Public Bus Services Ordinance (Cap. 230) (the Ordinance), LegCo may by resolution exclude the application of *all* or *any* of the provisions of the PCS, which is defined in section 2 to mean the PCS provided for by Part V of the Ordinance.

As the proposed resolutions merely specify that the New Franchises are not subject to sections 27 to 29 and 31, would the Administration please clarify-

- (a) By making the New Franchises not subject to sections 27 to 29 and 31 of Part V, are the New Franchises excluded from the application of the whole PCS or some provisions of the PCS?
- (b) If the New Franchises are excluded totally from the application of the PCS, please explain –
 - (i) whether sections 26A, 30 and 32 of Part V, to which the New Franchises are still subject to, are part of the PCS; and
 - (ii) how the sections mentioned in (i) above relate to the PCS?
- (c) If the New Franchises are not excluded totally from all the provisions of the PCS –
 - (i) are the New Franchises still subject to the PCS by operation of section 5(3)(b), though with exceptions (i.e. sections 27 to 29 and 31 of Part V being inapplicable to the New Franchises); and
 - (ii) what are the reasons for making the New Franchises subject to sections 26A, 30 and 32 of Part V.

As the House Committee will consider the above proposed resolutions at its meeting on 11 January 2013, I look forward to receiving your clarification in both Chinese and English languages by **9 January 2013**.

Yours sincerely,



(Evelyn LEE)
Assistant Legal Adviser

政府總部
運輸及房屋局
運輸科
香港添馬添美道 2 號
政府總部東翼



Transport and
Housing Bureau
Government Secretariat

Transport Branch
East Wing, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

本局檔號 OUR REF.: THB(T)CR 2/5591/99
來函檔號 YOUR REF.: LS/R/4/12-13

電話 Tel. No.: 3509 8155
傳真 Fax No.: 2104 7274

9 January 2013

Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong
(Attention: Ms Evelyn Lee)
Fax No. : 28775029

Dear Ms Lee,

**Proposed Resolutions to
Exclude the Application of the Profit Control Scheme (“PCS”) to
the New Bus Franchises**

Thank you for your letter of 8 January 2013.

At present, the PCS is not applicable to any existing bus franchises. Such disapplication has been effected through the passage of resolutions by LegCo to disapply only sections 27 to 29 and 31 of the Public Bus Services Ordinance (“the Ordinance”) (Cap. 230) since 1996. We are proposing nothing but the same in the current exercise for the new franchises of New World First Bus Services Limited, Long Win Bus Company Limited and Citybus Limited in respect of its franchise for the Airport and North Lantau bus network which will take effect later this year.

Sections 27 to 29 and 31 of the Ordinance set out the core elements of the PCS, namely the development fund, permitted return, deductions from permitted returns and review of the PCS. Existing and

new franchises do not carry any arrangements concerning the PCS, development fund and permitted return. By disapplying these sections, there would no longer be any PCS mechanism in place in substance. The fact that some sections under Part V of the Ordinance, namely sections 26, 26A, 30 and 32, continue to apply will not affect this. So considered in that way, the whole PCS would disapply.

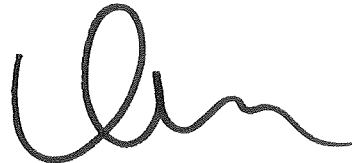
Indeed, sections 26, 26A, 30 and 32 are required for purpose of the execution of other parts of the Ordinance and/or the franchises in addition to the PCS. Specifically, such needs are as follows -

- (a) section 26 contains definitions (such as accounting year, average net fixed assets, fixed assets, operating costs, operating receipts, and operating profit) required for monitoring of the financial situation of a bus franchisee irrespective of whether there is a PCS. This is an integral part of the financial monitoring of the public bus service operated in connection with the Ordinance and the franchise;
- (b) section 26A specifies that financial penalties levied against a bus company shall not be taken into account in ascertaining the operating cost or service related expenditure of the company for any purpose related to the Ordinance or the franchise;
- (c) section 30 enables the Government to specify in the franchise depreciation rates and residual values in respect of fixed assets used or kept by a bus company for the purpose of or in connection with its franchise; and
- (d) section 32 requires a bus company to produce accounts and other information in relation to the public bus service operation as the Financial Secretary may require.

Given the subject matters that each of these sections concerns, their application is required for the proper monitoring of the financial aspects of the franchise by the Government, with or without the PCS. Their continued application would not have automatically put in place the PCS mechanism, and neither would it contradict with the disapplication of the PCS.

In short, our view is that the PCS would cease to apply to the three new franchises after the disapplication of sections 27 to 29 and 31, notwithstanding that sections 26, 26A, 30 and 32 would continue to apply. If you require further information, please contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Choy', with a large loop at the top and a wavy tail.

(Constance Choy)

for Secretary for Transport and Housing

c.c. Commissioner for Transport (Attn: Ms Macella Lee)
Department of Justice (Attn: Mr Manuel Ng and
Ms Karen Lee)

Internal: PAS(FMS)