

立法會
Legislative Council

LC Paper No. CB(1)1771/02-03
(These minutes have been seen
by the Administration)

Ref: CB1/BC/4/02

**Bills Committee on
Tung Chung Cable Car Bill**

**Meeting on
Monday, 28 April 2003, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon James TIEN Pei-chun, GBS, JP (Chairman)
Hon Cyd HO Sau-lan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon SIN Chung-kai
Hon Howard YOUNG, JP
Hon TAM Yiu-chung, GBS, JP
Hon Albert CHAN Wai-yip

Member absent : Hon Miriam LAU Kin-ye, JP

**Public officers
attending** : Economic Development and Labour Bureau

Mr Duncan PESCOD
Deputy Commissioner for Tourism

Mrs Erika HUI
Assistant Commissioner for Tourism

Miss Joan HUNG
Administrative Officer (Tourism)

Department of Justice

Mr John WILSON
Consultant Counsel

Action

Ms Carmen CHU
Senior Government Counsel

Lands Department

Mr LAU Chi-ming
District Lands Officer/Islands

Mr Jimmy WOO
Chief Estate Surveyor (Acquisition Section)

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Assistant Secretary (1)1

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)1468/02-03 - Minutes of meeting held on 4 April 2003

The minutes of the meeting held on 4 April 2003 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)1545/02-03(01) - The Administration's reply dated 28 April 2003 to the Assistant Legal Adviser;

LC Paper No. CB(1)1469/02-03(01) - Information paper provided by the Administration in response to issues raised at the meeting on 11.4.2003;

LC Paper No. CB(1)1528/02-03(01) - Letter dated 23.4.2003 from Assistant Legal Adviser to the Administration;

LC Paper No. CB(3)329/02-03 - The Bill;

LC Paper No. CB(1)1094/02-03(01) - Letter dated 5.3.2003 from Assistant Legal Adviser to the Administration; and

LC Paper No. CB(1)1094/02-03(02) - The Administration's reply dated 13.3.2003 to the Assistant Legal Adviser)

Action

2. The Bills Committee deliberated (Index of proceedings attached at **Annex A**).
3. The Bills Committee requested the Administration to provide further information on the following to facilitate their consideration:
 - (a) to list out similar legislation which empowered a private company to prosecute as provided for under clause 23 of the Bill;
 - (b) to advise whether there was a provision similar to clause 27(6) in other Build-Operate-Transfer legislation;
 - (c) to advise whether the level of penalty provided for the offence to obstruct the Company under clause 38 of the Bill was in line with other legislation, such as the Kowloon-Canton Railway Corporation Ordinance (Cap. 372); and
 - (d) to provide a set of draft Committee Stage Amendments (CSAs) proposed by the Administration together with a copy of explanatory note.
4. The Bills Committee requested the Assistant Legal Adviser (ALA) to advise whether the Bill provided for any escape clause allowing the Company to evade its responsibility to remedy a default under the Bill on the grounds that it was not practicable or financially viable to do so.

(Post-meeting note: ALA advised that there was no such escape clause in the Bill. However, it should be noted that under clause 26(2)(c), the Chief Executive (CE) in Council might come to the view that the terms of the notice to remedy a default were unreasonable and might thereby specify other terms. The Administration might be asked to clarify whether financial and practical reasons would be relevant factors that CE in Council might take into account under clause 26(2)(c).)

Date of next meeting

5. The Bills Committee agreed that the next meeting would be held on 9 May 2003 at 9:30 am to consider the CSAs proposed by the Administration.

II Any other business

6. There being no other business, the meeting ended at 6:40 pm.

Council Business Division 1
Legislative Council Secretariat
27 May 2003

**Proceedings of the meeting of the Bills Committee on
Tung Chung Cable Car Bill
Monday, 28 April 2003, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes and matters arising</i>			
000000-000136	Chairman ALA3	<ul style="list-style-type: none"> • Introductory remarks • Confirmation of minutes of meeting on 4 April 2003 • Matters arising from last meeting 	
<i>Agenda Item II – Meeting with the Administration</i>			
000137-000817	Chairman Administration	<ul style="list-style-type: none"> • LC Paper Nos. CB(1) 1545/02-03(01), 1469/02-03(01) and 1528/02-03(01) • Proposed Committee Stage amendments (CSAs) to <ul style="list-style-type: none"> (a) clause 13(6) to delete the time limit on bringing unresolved claims to the Lands Tribunal; (b) clause 14(5) to extend the time limit within which claims might be submitted to the Company to tie in with the 12-month period allowed for under clause 13(2); (c) add a provision under clause 13 specifying that all compensation and all costs agreed would be paid out of the general revenue; (d) add an appropriate subclause to clause 14 along the lines of section 10(4) of the Electricity Networks (Statutory Easements) Ordinance (Cap. 357) to make it clear that section 11(1)(a) of the Lands Tribunal Ordinance (Cap. 17) also applied to compensation payable by the Company under clause 14(5) ; & (e) clause 10 to avoid the possibility of allowing the Company a right to place permanent structures on the land of the route projection 	
000818-001857	Chairman ALA3 Administration Mrs Selina CHOW Ir Dr Raymond HO Mr TAM Yiu-chung	<p><u>Clause 16</u></p> <ul style="list-style-type: none"> • Notice to amend the Schedule was not subsidiary legislation subject to scrutiny by the Legislative Council • The royalty (\$1 per journey for each fare-paying passenger riding on the Cable Car) payable by the Company to the Government was part and parcel of the MTRCL's proposal for the Tung Chung 	

Time	Speaker	Subject(s)	Action required
		<p>Cable Car project and the royalty would remain payable until termination of the franchise under clause 28 of the Bill</p> <ul style="list-style-type: none"> The proposed level of royalty as stipulated in the Schedule only applied to MTRCL or its wholly-owned subsidiary. In case the Administration decided to take forward the merger proposal of MTRCL and Kowloon-Canton Railway Corporation, it would introduce a separate legislation including consequential amendments to the present Bill to the Council for consideration 	
001858-001950	Chairman	<u>Clauses 17 and 18</u>	
001951-004015	Chairman Mrs Selina CHOW Administration	<p><u>Clause 19</u></p> <ul style="list-style-type: none"> Power of the Chief Executive (CE) in Council relating to the determination of the specified amount of financial penalty imposed on the Company as recommended by the Secretary for Economic Development and Labour Appropriateness of the proposed levels of financial penalties and whether they were in line with the provisions in other legislation Factors taken into account in determining the specified amount of financial penalties 	
004016-004045	Chairman	<u>Clause 20</u>	
004046-004200	Chairman	<u>Clause 21</u>	
004201-005429	Chairman Mr TAM Yiu-chung Administration Mrs Selina CHOW Mr SIN Chung-kai ALA3	<p><u>Clauses 22 and 23</u></p> <ul style="list-style-type: none"> Similar to the Mass Transit Railway Ordinance (Cap 556), <ul style="list-style-type: none"> (a) bylaws made under clause 22(1), which involved public conduct and safety, would be subject to positive vetting by the Legislative Council; and (b) the franchisee was empowered to prosecute offences under the bylaws CSA to amend the English text of clause 23(1) by inserting after "owner of the vehicle" the phrase "if that information is within the person's knowledge" 	The Admin to provide the requested information as per paragraph 3(a) of the minutes
005430-010659	Chairman Administration ALA3 Mrs Selina CHOW	<p><u>Clause 24</u></p> <ul style="list-style-type: none"> CSA to amend the Chinese text of clause 24(2) along the lines of section 16 of the Mass Transit Railway Ordinance (Cap. 556) Interpretation of "Reasonable period" under clause 24(3)(a) Whether there was a need to define clearly the meaning of "all other relevant legislation" in clause 24(2)(a) to facilitate compliance 	

Time	Speaker	Subject(s)	Action required
010700 - 011237	Chairman Mr TAM Yiu-chung Administration Mr Albert CHAN ALA3	<u>Clause 25</u> • ALA to advise whether the Bill provided for any escape clause allowing the Company to evade its responsibility to remedy a default under the Bill on the grounds that it was not practicable or financially viable to do so.	
011238 - 011509	Chairman Administration ALA3	<u>Clause 26</u> • Clause 26 relating to the serving of notice of intention to revoke franchise was modeled on existing legislation for other Build-Operate-Transfer (BOT) projects such as Route 3 and Western Harbour Crossing	
011510- 012128	Chairman Mr Albert CHAN Administration Mrs Selina CHOW ALA3 Mr TAM Yiu-chung	<u>Clauses 27 and 28</u> • An order made by the CE in Council to revoke the franchise was not subsidiary legislation subject to scrutiny by the Legislative Council but the Administration would make every effort to brief the Council as appropriate • whether there was a provision similar to clause 27(6) in other BOT legislation	The Admin to provide the requested information as per paragraph 3(b) of the minutes
012129- 012456	Chairman Administration Mr Albert CHAN ALA3	<u>Clause 29</u> • The Company's liability upon the termination of the franchise • Procedures and methodology in determining the value of assets for the purpose of clause 29(5)	
012457- 013437	Chairman Administration Mr Albert CHAN Mr TAM Yiu-chung Mrs Selina CHOW ALA3	<u>Clause 30</u> • The Government's exclusive right in deciding the way forward upon expiry of the franchise • Drafting of subclause (c) and the meaning of "expiry date"	
013438- 013904	Chairman Mr Albert CHAN Administration Mrs Selina CHOW ALA3	<u>Clause 31</u> • Government liability for Company's debts in case of vesting of the assets of the Company in the Government under Part 7 of the Bill	
013905- 015017	Chairman Mr SIN Chung-kai Administration Mrs Selina CHOW Mr Albert CHAN ALA3	<u>Clause 32</u> • Whether the definition of "assets" should be expanded to cover not only the physical parts of the Cable Car System	
015018- 015907	Chairman Mr SIN Chung-kai Administration Mrs Selina CHOW Mr Albert CHAN	<u>Clauses 33 and 34</u> • The arbitration provisions were specific to this legislation • The determination of an arbitration proceedings was final and binding and would be reflected in the Project Agreement	
015908- 015953	Chairman	<u>Clauses 35, 36 and 37</u>	

Time	Speaker	Subject(s)	Action required
015954-020200	Chairman Mr SIN Chung-kai Mr Albert CHAN Mrs Selina CHOW Administration	<u>Clauses 38 and 39</u> <ul style="list-style-type: none">• Whether the level of penalty proposed for the offence to obstruct the Company under clause 38 was in line with other legislation such as the Kowloon-Canton Railway Corporation Ordinance (Cap. 372)• Mr Albert CHAN requested to put on record that he objected to the Bill for reasons stated in previous meetings	The Admin to provide the requested information as per paragraph 3(c) of the minutes
<i>Agenda Item III – Any other business</i>			
020201-020613	Chairman Mr SIN Chung-kai Mrs Selina CHOW Mr Albert CHAN Mr TAM Yiu-chung Administration	<u>Date of next meeting</u> <ul style="list-style-type: none">• 9 May 2003 at 9:30 am to consider the CSAs and the explanatory note to be provided by the Administration	The Admin to provide the requested information as per paragraph 3(d) of the minutes

Council Business Division 1
Legislative Council Secretariat
27 May 2003