

Tung Chung Cable Car Bill

Response to Questions Raised by the Assistant Legal Advisor of LegCo in the letter dated 23 April 2003

The Assistant Legal Advisor (ALA) of LegCo raised in her letter dated 23 April 2003 several questions relating to claims for compensation under the Bill. We set out our response in the following paragraphs.

Clause 12

2. Clause 12(3) provides that the owner has a right (but not a duty) to submit a claim to the Director in writing. We consider the word “may” appropriate in this context.

Clause 13

3. Compensation provisions in legislation such as the Railways Ordinance (Cap. 519) (RO) and Road (Works, Use and Compensation) Ordinance (Cap. 370) (RWUCO) have to cater for claims arising from different railway and road schemes. Accordingly, these provisions would have to be sufficiently detailed to ensure that there are adequate safeguards to protect the interests of different land and property owners. As we have pointed out in our information paper in response to questions raised by Members of the Bills Committee at its meeting held on 11 April 2003, the proposed alignment for the Cable Car System principally crosses the country park. Other than land on the Airport Island, it is unlikely to impact on any private property. The instance of a need to resort to claims for compensation should be minimal. The provisions for compensation for diminution of value of the land as a result of the easement are intended to provide basic safeguards in case easements are necessary. Accordingly, we consider that it is not necessary to provide for compensation in respect of loss or damage to land or property situated on land [Question (b)], and make interest payable on compensation [Question (e)].

4. The Tung Chung Cable Car Bill, however, applies specifically to the franchise for the Tung Chung Cable Car. It is not appropriate to make direct comparisons between the Bill and these other legislation. Provisions of the Bill have been drawn up having regard to the specific circumstances of the Cable Car System. In particular, the provision on creation of easements and compensation should be considered in context,

i.e. the system would have a defined alignment.

5. Our reply to other questions raised under clause 13 is as follows –

- Question (a): in the light of the arguments at para. 4 we consider that the 12-month period within which to submit claims for compensation reasonable. However, having regard to the Members' concern, we are **prepared to consider adding “claims out of time” provisions** along the lines of provisions of the RO and RWUCO;
- Question (c): since both the claimant and the Director of Lands may submit a claim to the Lands Tribunal under clause 13(6), it should not be necessary to provide specifically for the situation as described in the letter;
- Question (d): we consider that the context of clause 13(7) should be clear that the compensation payable is in respect of a claim submitted to the Lands Tribunal under this section. Accordingly, it is not necessary to pursue the amendment; and
- Question (f): all compensation and all costs agreed will be paid out of the general revenue. To clarify the intention, we will **propose a CSA to include a provision in the Bill to cover this.** In the light of the arguments at para. 4, we consider it is not necessary to impose a time limit for payment of compensation in the Bill.

Clause 14(5)

6. We agree that clause 14 should refer to section 11(1)(a) of the Lands Tribunal Ordinance (Cap. 17), as regards the finality of a decision on compensation by the Lands Tribunal. **We will propose a CSA to add an appropriate subclause to clause 14 along the lines of section 10(4) of the Electricity Networks (Statutory Easements) Ordinance (ENSEO) (Cap. 357) and to make it clear that section 11(1)(a) of the Lands Tribunal Ordinance (Cap. 17) also applies to compensation payable by the Company under the clause.**

7. The reference to “subject to subsection (8)” in clause 13(7) is intended to be applicable to a claim against the Company under clause 14.

Erection of Permanent Structures under Clause 10

8. Clause 10 of the Bill grants rights in respect of easements in favour of the franchisee, including the right to place and operate “aerial ropeways above ground level”. The provision is modeled on section 4 of the ENSEO.

9. During our consultation with the Airport Authority on the provisions of the Bill, however, it had been drawn to our attention that as drafted, clause 10(2) has the effect of allowing the Company a right to place permanent structures on the land in question. Our legal advice has also confirmed such view.

10. This is clearly against the intention of the Bill since under clause 6, the Company will be granted the right to occupy the Cable Car System area. This includes the right to erect or maintain a structure on or over the land. Accordingly, we will need to **introduce an amendment to clause 10(2)** to rectify this.

Tourism Commission
Economic Development and Labour Bureau
28 April 2003