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TUNG CHUNG CABLE CAR BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Economic Development and Labour

Clause

Amendment Proposed

- 2(1) (a) In the definition of "Company" by adding
before the semicolon -
"
", or a person to whom the franchise is
assigned under section 5(1), or a body
corporate designated under section
27(7)(b)".
- (b) In the definition of "fare-paying passenger"
by deleting "to the Company or its agent, or
to the MTR Corporation Limited or its agent".
- (c) In paragraph (a) of the definition of
"Project" by deleting "finance" and
substituting "financing".

(d) In paragraph (b) of the definition of "Project Agreement" by deleting "section 5" and substituting "this Ordinance".

(e) In the definition of "局長", by deleting "Scretary" and substituting "Secretary".

(f) In the definition of "第2級"、"第3級", by adding "分別" before "指".

2(4) (a) By deleting "a Secretary or a Director" and substituting "the Secretary or the Director".

(b) By adding "分別" before "授權".

2(5) By deleting "任何權力或指派任何" and substituting "或指派任何權力或".

2 By adding -

"(6) For the purposes of this Ordinance a body corporate shall be deemed to be the wholly-owned subsidiary of another if it has no members except that other and that other's wholly-owned subsidiaries and its or their nominees.".

5(2) By deleting "所指" where it twice appears and substituting "所規定".

5(3) By deleting “該處置” and substituting “擬議處置”.

5 By adding -

“(4) Upon the disposal of the company’s rights and obligations to a body corporate pursuant to subsection (1), Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is deemed to be amended -

- (a) to remove the Company which is disposing of its rights and obligations (unless it is the MTR Corporation Limited); and
- (b) to include the body corporate to which the rights and obligations are disposed.”.

10(2) By deleting everything after “land” and substituting a full stop.

13(2) By adding “, or within such longer period as the Director may in any particular case allow” after “easement”.

13(6) By deleting “, not later than 60 days after the expiration of that period,”.

13 By adding -

"(9A) Compensation and costs payable by the Government under this section are payable out of the general revenue.".

14(5) By deleting paragraph (c) and substituting -

"(c) the reference in that subsection (2) to "the creation of the easement" is to be read as a reference to "the entry on the land".". "

14 By adding -

"(5A) In the application of the Lands Tribunal Ordinance (Cap. 17) to a claim under this section, section 11(1) of that Ordinance shall have effect as if for paragraphs (a) and (b) thereof there were substituted the words "the amount of compensation payable under section 14 of the Tung Chung Cable Car Ordinance (of 2003)". ".

16(2) By deleting everything after "If" and substituting -

" -

(a) the franchise is assigned under section 5(1) to any person

other than a wholly-owned
subsidiary of the MTR
Corporation Limited; or

- (b) a body corporate is designated
under section 27(7)(b) as the
Company (being a Company other
than the MTR Corporation
Limited or its wholly-owned
subsidiary),

the Secretary may by notice published in the
Gazette amend the Schedule.".

- 19(10) By deleting "罰款所規定的款項" and substituting "的罰款".
- 22(1)(f) By deleting everything after "地與" and before "的事宜" and substituting "吊車系統的管制、營運與管理以及乘客和吊車系統的安全有關且屬吊車公司認為需要或適宜作出規定的任何其他".
- 23(1) By adding "if that information is within the person's knowledge" before the full stop.
- 24(2) By deleting "事項" and substituting "情況".

25(3) and (4) By deleting “根據第(2)款送達” and substituting “第(2)款所指”.

27 By adding -

“(7) If the franchise is revoked under subsection (1) -

- (a) the body corporate whose franchise is revoked ceases to be the Company for the purposes of this Ordinance except as regards any liabilities of the Company remaining under section 29;
- (b) the Chief Executive in Council may by order designate another body corporate as the Company for the purposes of this Ordinance, on such terms and conditions, consistent with this Ordinance, as the Chief Executive in Council thinks fit, and upon the publication of that order in the Gazette the franchise vests in that body corporate.

(8) Upon the publication of an order under subsection (7)(b), Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is deemed to be amended -

- (a) to remove the body corporate whose franchise has been revoked (unless it is the MTR Corporation Limited); and
- (b) to include the body corporate designated under subsection (7)(b).".

28(2) By adding before the full stop -

" , but upon the designation of a body corporate as the Company under section 27(7)(b), they vest in that body corporate without further order".

29(1) By adding -

"(ba) payment of compensation arising from entry on land by the Company pursuant to section 14;".

31 In the Chinese text, by deleting the clause and substituting -

"31. 政府對吊車公司的債項並無法律責任

吊車公司資產根據本部歸屬政府，並不使政府須為吊車公司的任何債項負法律責任。”.

33(2)(a) By deleting "to regulations" and substituting "of regulations".

Tung Chung Cable Car Bill

Explanatory Note for the Proposed Committee Stage Amendments (CSAs)

In response to the letter of the Clerk to the Bills Committee of 29 April 2003, we set out in the following paragraphs explanations on major proposals of the draft CSAs issued earlier.

Clause 2 - Meaning of “Wholly-owned subsidiary”

2. We propose to add a new subclause (6) in Clause 2 to clarify, for the avoidance of doubt, the meaning of “wholly-owned subsidiary”, along the lines of section 124(4) of the Companies Ordinance (Cap. 32).

Clause 10 - Erection of Permanent Structures

3. 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 Electricity Networks (Statutory Easements) Ordinance (Cap. 357).

4. 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.

5. This is 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. The proposed CSA to clause 10(2) is intended to rectify this.

Clauses 13 and 14 – Compensation

6. Having regard to the concern raised by Members, we have agreed to introduce certain amendments to clauses 13 and 14 of the Bill. The proposed CSA to clause 13(2) would enable claims for compensation to be made even when the time limit of 12 months for submitting claims has

expired. The proposed CSA to clause 13(6) removes the time limit for submitting unresolved claims to the Lands Tribunal. This would encourage resolution of the claims through mutual agreement.

7. We have also proposed CSAs to clause 14(5)(c) to relax the time limit for submitting claims to the Company. A new subclause 14(5A) is proposed to make it clear that a decision of the Lands Tribunal under the Lands Tribunal Ordinance (Cap. 17) would apply to compensation by the Company.

Clause 27 - Order of Revocation

8. Clause 27 provides that the Chief Executive in Council (CE in C) may by order revoke the franchise. However, the Bill has not specifically catered for the continuation of the franchise after a revocation order is made. It is necessary to make specific provisions to enable the CE in C to vest the franchise with a third party after the revocation. We propose to add a new subclause 27(7)(b) along the lines of similar provisions in other Build-Operate-Transfer legislation. Consequential amendments are also proposed to the definitions of “Company”, “fare-paying passenger” and “Project Agreement” under clause 2 and to clauses 16(2) and 28(2).

9. In addition, to ensure that the liability of the Company arising from the emergency access to land pursuant to clause 14 will not cease only by reason of the franchise being terminated, we propose to add a new subclause 29(1)(ba) to make this clear.

Others

10. Other proposed CSAs are largely textual changes to better clarify the intention of the Bill or to ensure consistency between the Chinese and English texts.

Tourism Commission
Economic Development and Labour Bureau
6 May 2003