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Secretary for Economic Development and Labour  
(Attention : Mrs Erika Hui,  
Assistant Commissioner for Tourism)  
Economic Development and Labour Bureau  
2/F Main and East Wings  
Central Government Offices  
Ice House Street Central  
Hong Kong

5 March 2003

**BY FAX**  
Fax No. : 2801 4458  
Total No(s) of page(s) : (4)

Dear Mrs Hui,

### **Tung Chung Cable Car Bill**

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following matters:

#### **Clause 2**

- (a) In the definition of "局長", please amend "(Scretary)" to "(Secretary)".
- (b) In paragraph (a) of the definition of "Project", should "finance" be amended to "financing" to reflect the meaning of providing money for a project more accurately?
- (c) Is the notice published in the Gazette under clause 2(2) and (3)(a) subsidiary legislation? Will the Administration consider stipulating the nature of such notice expressly in the Bill?
- (d) In subclause (4), should the reference to "a Secretary or a Director" be amended to "the Financial Secretary, the Secretary or the Director" to make the provision clearer and to make the Chinese and English texts match? Should "分別" be added before "授權" to reflect the meaning of "respectively" in the English text?

- (e) In subclauses (4) and (5), would "授予" be a more appropriate rendition for "assigned". As you are aware, in section 3(2A) of the Kowloon-Canton Railway Corporation Ordinance (Cap. 372), the Chinese rendition for "assigned" in the context of functions being assigned by that Ordinance is "授予" while "指派" is used to refer to functions assigned by the Corporation. As "assigned" in this Bill is used in the context of functions being assigned by the Tung Chung Cable Car Ordinance, should "授予" be used?
- (f) If the Administration agrees that the Chinese text for "assigned" should be "授予", should the Chinese text for "A power or function conferred on or assigned to the Chief Executive in Council by this Ordinance" be "凡行政長官會同行政會議獲本條例賦予或授予任何權力或職能" to make the English and Chinese texts match?

#### Clause 5

- (a) In clause 5(2), should the Chinese text for "required under subsection (1)" be "第(1)款所需的同意" instead of "第(1)款所指的同意" to make the English and Chinese texts match?
- (b) In clause 5(3), should "擬議" be added before "處置的日期" to reflect the meaning of "the date of the intended disposal"?

#### Clause 14

In clause 14(2), the English text refers to "intended entry" instead of "entry". Should the Chinese text be amended to reflect the meaning of the English text?

#### Clause 16

- (a) If the franchise is assigned to any person other than a wholly-owned subsidiary of the MTR Corporation Limited (MTRCL), will the provisions of the Bill continue to be applicable to regulate the franchise upon such assignment? As drafted, the Bill applies to the Company, which is defined as the Company designated by the Secretary for Economic Development and Labour under clause 2(2). Clause 2(2) provides that the Secretary may designate a Company which shall be either the MTRCL or a wholly-owned subsidiary of the MTRCL. It would appear that the provisions of this Bill will no longer apply to regulate the franchise when MTRCL or its wholly-owned subsidiary ceases to be the franchise holder. Does this reflect the Administration's intention? If not, should the definition of "Company" be amended to include such other person to whom the franchise is assigned under clause 5(1)?
- (b) Clause 16(2) provides that if the franchise is assigned to any person other than a wholly-owned subsidiary of MTRCL, the Secretary for Economic Development and Labour may by notice published in the Gazette amend the Schedule, which sets out the royalty rate and payment intervals. As the Schedule is part of the

Bill, it would appear that any notice which seeks to amend the Schedule should have legislative effect and hence is subsidiary legislation. Accordingly, please explain why it is proposed in clause 16(3) that such notice will not be subject to section 34 of Cap. 1.

Clause 19

In clause 19(10), the English text refers to "the previous penalty". There is no reference to the amount of the previous penalty. Accordingly, should the reference to "先前罰款所規定的款項" be amended to "先前的罰款" to make the English and Chinese texts match?

Clause 22

In clause 22(f), would it be more appropriate to place "其他任何" after "規定的"?

Clause 23

- (a) Under clause 23(2), a person commits an offence if he fails to give the name and address of the owner of a vehicle involved in an offence relating to the Cable Car System when requested to do so by an employee of the Company. The way this provision is drafted would suggest that a person would incur criminal liability for failing to give the required information when the person, not being the vehicle owner himself, does not know the name and address of the owner. Does this reflect the Administration's intention? Will the Administration consider providing for a defence for this offence? Alternatively, will the Administration consider confining the person's obligation to giving the name and address of the registered owner of the vehicle only if that information is within his knowledge? A provision to that effect can be found in the Mass Transit Railway (Transport Interchange) Bylaw (Cap. 556 sub. leg.).
- (b) What is the rationale for conferring on a private company, in particular, a wholly-owned subsidiary of MTRCL the power to prosecute offences under the Bill or under the bylaws made under the Bill? While MTRCL is given the power to prosecute under the Mass Transit Railway Ordinance (Cap. 556), should its wholly-owned subsidiary which is a separate legal entity from MTRCL be given the same power in this Bill? If the franchise is assigned to any person other than a wholly-owned subsidiary of MTRCL, will the assignee have the power to bring prosecution in its name?

Clause 24

- (a) In clause 24(2), while the English text refers to "the failure, or likely failure", the Chinese text refers to "上述事項". Please make both texts match.
- (b) In clause 24(2)(a), what does "all other relevant legislation" refer to? Can this be set out clearly in the Bill?

- (c) In clause 24(2)(d) and (e), as the English text refers to "on the System premises" instead of "in the System premises", should the Chinese text be amended to "在吊車系統處所之上"? Alternatively, the Administration may consider amending the English text to "in the System premises" if this reflects the policy intent more accurately.

Clause 25

In clause 25(3) and (4), should "根據第(2)款送達的通知" be amended to "第(2)款所指的通知" to reflect the meaning of "notice under subsection (2)"? Alternatively, please consider adding "served" before "under subsection (2)" to make the English and Chinese texts match.

Clause 33

In clause 33(2)(a), the English text, as drafted, suggests that a default decision is a decision relating to the application of the Aerial Ropeways (Safety) Ordinance (Cap. 211) or relating to regulations made or codes of practice issued under that Ordinance. However, this is not the meaning expressed in the Chinese text. Please make the necessary amendment to make the meaning of two texts consistent with each other.

I would appreciate it if you could let me have a reply in both languages by 13 March 2003.

Yours sincerely,

(Connie Fung)  
Assistant Legal Adviser

cc: DoJ (Attn: Mr John F Wilson (Consultant Counsel) Fax No. 2869 1302)  
(Attn: Ms Carmen Chu (SGC) Fax No. 2845 2215)

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