

Tung Chung Cable Car Bill

I. Response to Questions Raised by the Assistant Legal Advisor of LegCo in the letter dated 5 March 2003

Questions	Responses
<u>Clause 2</u>	
(a)	We will amend “(Scretary)” to “(Secretary)” in the definition of “局長” in the Chinese text.
(b)	We agree that “financing” would better reflect the meaning of the intention than “finance”, and will amend the definition of “Project” accordingly in the English text.
(c)	The designation of “a Company” and the designation of a guarantee agreement under Clause 2(2) and 2(3)(a) respectively are only administrative acts and are not intended to be subsidiary legislation.
(d)	We propose to amend the English text to replace “a Secretary” by “the Secretary” and “a Director” by “the Director” in Clause 2(4). To bring the English and Chinese texts into line, we also propose to delete the reference to “財政司司長、” in the Chinese text, and add “分別” before “授權”.
(e)	The Chinese equivalent of “指派” for “assigned” follows the term adopted in Section 2(2) and (3) of Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) and is considered appropriate in the present context. In addition, “授予” has been adopted for “grant” in other provisions of the Bill (e.g. long title, Clause 8(b) etc.).
(f)	We propose to amend Clause 2(5) of the Chinese text to read “凡行政長官會同行政會議獲本條例賦予或 <u>指派</u> 任何權力或職能...”.
<u>Clause 5</u>	
(a)	We propose to amend the relevant phrase in Clause 5(2) of the Chinese text to read “第(1)款所規定的同意”.
(b)	We agree to insert “擬議” before “處置的日期” in

Clause 5(3) in the Chinese text.

Clause 14 The first sentence of the Chinese text, “吊車公司如擬依據...進入...”, has already reflected the meaning of “intends to enter”.

Clause 16

(a) Our intention is that the Bill should regulate the franchise if the franchise is vested in or assigned to a third party other than MTRCL or its wholly-owned subsidiary in accordance with the Ordinance. We will propose an **amendment** to the **definition of “Company”** under Clause 2(1) to reflect this.

(b) Clause 16(2) caters for the situation in which it is necessary to assign the franchise to any person other than a wholly-owned subsidiary of MTRCL. The level of royalty payment under such circumstances will be the outcome of contractual and commercial negotiations between the Government and the franchisee. Such an amendment to the Schedule to reflect the level of royalty payable to Government is administrative in nature. Accordingly, the provisions of Section 34 of Cap. 1 should not apply.

Clause 19 We agree to **amend** the phrase to read “...先前的罰款...” in the Chinese text.

Clause 22 We agree to the **insert** “其他任何” after “規定的” in the Chinese text.

Clause 23

(a) We **agree** with your suggestion that a person’s obligation to give the name and address of the registered owner of a vehicle is confined to the situation in which the information is within his knowledge. We note your reference to a similar provision in Section 29(1)(b) of the Mass Transit Railway (Transport Interchange) Bylaw (Cap. 556 sub. leg.), and propose to **amend** in the English text Clause 23(1) by inserting after “owner of the vehicle” –
 “if that information is within the person's knowledge.”

and to insert in the Chinese text of Clause 23(1) after “車主的姓名或名稱及地址”–

“(如該人知悉有關資料的話) 。”。

- (b) It is necessary to confer on the franchisee the power to prosecute offences under the bylaws made under the Bill to ensure the safe and efficient operation of the cable car system. This power would apply to the franchisee whether it is MTRCL, a wholly-owned subsidiary of MTRCL, or a third party to whom the franchise is assigned, or vested. This kind of power is provided for in the enabling legislation of other Build-Operate-Transfer (BOT) projects such as the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) and Western Harbour Crossing Ordinance (Cap. 436). Similar provisions can also be found in the Peak Tramway Ordinance (Cap. 265) under which, the power to prosecute is conferred on the Peak Tramways Company Limited, a subsidiary of the Hongkong and Shanghai Hotels, Limited for offences under the bylaw.

Clause 24

- (a) We propose to **amend** the Chinese text of Clause 24(2) along the lines of Section 16 of the Mass Transit Railway Ordinance (Cap. 556).
- (b) In Clause 24(2)(a), the phrase “all other relevant legislation” is intended to be a catch-all provision so that apart from the Aerial Ropeways (Safety) Ordinance (Cap. 211), it is not necessary to spell out all relevant legislation. These will include Buildings Ordinance (Cap.123), Fire Services Ordinance (Cap. 95) and Electricity Ordinance (Cap. 406).
- (c) We consider that “在吊車系統處所內” is appropriate and it is not necessary to amend the Bill.

Clause 25

We **agree** to **amend** the Chinese text to read –

“第(2)款所指的通知須指明...”

Clause 33

In Clause 33(2)(a), a default decision does not include a decision relating to the application of the Aerial Ropeways (Safety) Ordinance (Cap. 211) or a decision relating to the application of regulations made or codes of practice issued

under that Ordinance. We propose to **amend** the phrase in the English text from “or to regulations made” to “or of regulations made” to make the English and Chinese texts consistent.

II. We have reviewed the Bill and would like to propose the following amendments to the Bill -

(a) Clause 2 - Meaning of “Wholly-owned subsidiary”

We would like to propose to insert the following 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) –

“(6) For the purpose of this Ordinance, a body corporate is 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.”

“(6) 就本條例而言，如某法人團體除了另一法人團體、該另一法人團體的全資附屬公司及其代名人之外，並無其他成員，則該法人團體當作是該另一法人團體的全資附屬公司。”

(b) Clause 27 - Order of Revocation

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 will propose amendments to Clause 27 along the lines of similar provisions in other BOT legislation. There will be consequential amendments to a few other provisions in the Bill. Details will be forwarded to the Legal Unit of LegCo when these are finalised.

III. Proposed Amendments

The following is a summary of the amendments proposed to the Bill in the light of the above responses and additional amendments

proposed -

Clause	English Text	Chinese Text
2	- N/A	- Amend the Chinese definition of “Secretary”.
	- Amend para. (a) of the definition of “Project” as to “finance”.	- N/A
	- Add to the definition of “Company” a phrase about assignees.	- Same as the English text.
	- Amend subclause (4) as to “Secretary” and “Director”.	- Delete the reference to “財政司司長、”.
	- N/A	- Add “分別” before “授權”.
	- To insert a new subclause (6).	- Amend subclause (5) to read as “凡行政長官會同行政會議獲本條例賦予或指派任何權力或職能...”. - Same as the English text.
5	- N/A	- Amend subclause (2) to read “第(1)款所規定的同意”.
	- N/A	- Amend subclause (3) to read “...所擬議處置的日期..”.
19	- N/A	- Amend subclause (10) to read “...先前的罰款...”.
22	- N/A	- Amend subclause (1)(f) to read “...作出規定的其他任何事宜...”
23	- Add at the end of subclause (a) a phrase about the information being within the person’s knowledge.	- Same as the English text.

24	- N/A	- Amend subclause (2) along the lines of Section 16 of the Mass Transit Railway Ordinance (Cap. 556).
25	- N/A	- Amend subclause (3) to read “第(2)款所指的通知須指明...”
27	- Amendments to enable CE in C to vest the franchise in a third party after a revocation order is made. The wording will follow that in other BOT legislation.	- Same as the English text.
33	- Amend subclause (2)(a) to replace “ <u>to</u> regulations” by “ <u>of</u> regulations”.	- N/A

Tourism Commission
Economic Development and Labour Bureau
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