

LEGISLATIVE COUNCIL BRIEF

TUNG CHUNG CABLE CAR BILL

INTRODUCTION

A At the meeting of the Executive Council on 28 January 2003, the Council ADVISED and the Chief Executive ORDERED that the Tung Chung Cable Car Bill, at Annex A, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. In July 2002, the Government entered into a Provisional Agreement with the MTR Corporation Limited (the MTRCL). Under the framework approved for implementing the Tung Chung Cable Car Project (the Project), the Provisional Agreement provides the basis for MTRCL to commence work on the Project before the Government grants a 30-year franchise to the Company. This includes developing a suitable design for the Tung Chung Cable Car System (the System) and its ancillary developments, carrying out requisite environmental and technical studies, and completing the necessary statutory procedures.

3. In parallel, the Government will seek the enactment of enabling legislation to provide the legal framework for the grant of the franchise. We will also work with MTRCL to prepare a Project Agreement.

Other Options

4. We have assessed the need for enabling legislation and have determined that there is a need to legislate to enable the grant of the franchise. Whilst most of the issues concerning the financial guarantee arrangements, design, technical and other requirements for the System during the franchise period can be dealt with through the Project Agreement, there is a need to provide for statutory backing for the following –

- (a) to provide for the creation of statutory easements over private land and payment of compensation therefor;
- (b) to deem any resumption of land for the construction of the System as being for a “public purpose”;
- (c) to specify that the Buildings Ordinance (Cap. 123) will apply to the present project;
- (d) to provide for a statutory right to terminate the franchise under specified circumstances;
- (e) to impose financial penalties in the event of default or non-compliance with the legislation or Project Agreement by the franchisee; and
- (f) to provide for payment of royalty by the franchisee to the Government.

These powers cannot be dealt with through amendments to existing legislation.

5. The operation and safety standards of cable car systems are regulated by the Aerial Ropeways (Safety) Ordinance (Cap. 211) (the ARSO) under the policy purview of the Housing, Planning and Lands Bureau (HPLB). Regulation of the operation and safety standards of the System will therefore fall under the purview of HPLB, as in the case of the cable car system in Ocean Park.

6. In drafting the Bill, we have adopted the principle that only provisions which require statutory backing will be dealt with in the Bill. Matters which can be dealt with through contractual means will be addressed in the Project Agreement.

7. We have also considered the option of generic legislation, which may be applied to different cable car projects, as an alternative to the enactment of the proposed legislation which applies specifically to the franchise for the System. After careful consideration of all the implications, we have chosen not to pursue the generic option.

THE PROPOSAL

8. The proposed legislation will provide a legal framework for the grant of the franchise. It will also define the respective rights and obligations of the Government and the franchisee under the franchise. The proposed legislation will provide for the grant of the franchise to the MTRCL or its wholly owned subsidiary. The major provisions to be included in the proposed legislation are set out in the following paragraphs.

The Franchise

9. The Bill provides for the grant of a 30-year franchise for the design, construction, operation and maintenance of the System, including a right for the franchisee to determine and collect fares for use by the public of the cable car service, and the obligation of the franchisee to pay to the Government a royalty.

10. The Bill also includes provisions dealing with default on the part of the franchisee, financial penalties in case of a failure by the franchisee to comply with any requirement of the legislation or a breach of the Project Agreement, and arbitration in the event of disputes. There are also provisions dealing with revocation of the franchise.

Land Matters

11. Under the implementation framework for the Project, the franchisee will not be given land title to the land provided by the Government. The Bill will provide for the grant to the franchisee of a statutory right to occupy the land, to use and grant licences for the use of the commercial gross floor area and operate vehicle parking facilities at the Tung Chung Terminal and the Ngong Ping Terminal, and to levy and collect licence fees for such commercial gross floor area.

12. The Buildings Ordinance (Cap. 123), which does not apply to Government land and buildings erected thereon, will apply to the Project. There will also be a provision deeming the resumption of private land for the construction of the System to be for a public purpose within the meaning of the Lands Resumption Ordinance (Cap. 124).

Easements and rights over land

13. To facilitate the development of the System, the Bill will provide for the creation of statutory easements, with a mechanism for payment of compensation, to enable the franchisee to construct, operate and maintain the aerial ropeway over private land. The Bill will also grant wayleaves and other rights to the franchisee over Government land for the development of the System. It will also grant rights of access by the franchisee over private land for the purposes of preventing an emergency or mitigating the effects of an emergency in connection with the System, with consequential arrangements for compensation.

THE BILL

14. The main provisions of the Bill are –
- (a) **Clause 1(2)** provides for the Secretary to bring into effect the legislation on a date to be appointed by notice in the Gazette. This will be the date when the Project Agreement comes into force;
 - (b) **Clause 4** grants to the Company a 30-year franchise, and enables the Company to, amongst others, determine and collect fares for the use of the System by the public. It also provides for an extension of the franchise period by an equal period of time under certain conditions stipulated in the Clause. The franchise commences on a date to be specified in the Project Agreement;
 - (c) **Clauses 6 to 8** (Part 3) deal with matters concerning the use and occupation of land by the Company, including the grant of wayleaves and other rights over unleased land to the Company;
 - (d) **Part 4** deals with statutory easements and other land matters. **Clauses 11 and 12** relate to the creation of statutory easements in respect of the land in the route projection area. This will enable the Company to place and operate aerial ropeways and to carry out the necessary

- works required. **Clause 13** establishes a compensation mechanism for owners of land affected to claim compensation in respect of any diminution of the value of the owner's interest in the land. **Clause 15** deems the resumption of private land for the construction of the cable car system to be for a public purpose within the meaning of the Lands Resumption Ordinance (Cap. 124);
- (e) **Part 5** deals with financial provisions, with Clause 16 providing for the payment to the Government of a royalty by the franchisee. **Clause 19** provides for the imposition of a financial penalty in case of a failure by the franchisee to comply with any requirement in the legislation or a breach of the Project Agreement;
 - (f) **Part 6** contains provisions on various related legal issues, including the application of the Buildings Ordinance (Cap. 123) to the Project (**Clause 20**), and the grant to the Company of the power to make by-laws (**Clause 22**);
 - (g) **Part 7** provides a mechanism to deal with any default on the part of the franchisee, and the consequences of revocation or other terminations of the franchise. **Clause 25** provides for the Secretary to serve a notice on the Company requiring it to take remedial measures in case of a default which appears to be capable of being remedied. **Clauses 26 and 27** provide that the Chief Executive in Council may direct the Secretary to issue a notice of intention to revoke the franchise, and may by order revoke the franchise. On termination or expiry of the franchise, the assets of the franchisee in respect of the System will be vested in the Government (**Clause 28**) for a payment equivalent to the residual value of the assets to be vested after deducting all sums payable by the franchisee to the Government (**Clause 29**);
 - (h) **Clauses 19, 29 and 33** contain provisions for resolving disputes between the Government and the franchisee by arbitration if such disputes cannot be resolved by mutual agreement or mediation. Matters which are subject to

resolution by arbitration include a decision by the Government on the imposition of a financial penalty, a default decision, and the amount payable by the Company or the Government upon termination of the franchise, or disputes over the operation of the Project Agreement. **Clause 33** also specifies that the arbitration provision does not apply to a decision relating to the safety of the System generally and specifically to a decision relating to the application of ARSO; and

- (i) The Schedule specifies the royalty of \$1 per journey by every fare paying passenger.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be as follows -

Publication in the Gazette	30 January 2003
First Reading and commencement of Second Reading debate	12 February 2003
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

16. The Bill is in conformity with the Basic Law, including provisions concerning human rights. The Bill does not contain an express binding provision on the State. Enactment of the Bill will have no direct financial, civil service, economic, productivity, environmental and sustainability implications. Implications of the implementation of the Project are set out at Annex B.

PUBLIC CONSULTATION

17. We consulted the Legislative Council Panel on Economic Services on 25 November 2002 on the major proposals to be included in the Bill. Some Members had expressed the view that there should be regulation of the fare level. In response, we explained that the System was not an essential public transport facility. Members of the public who wish to travel to and from Ngong Ping would have the choice of other means of public transport. Accordingly, the franchisee should be allowed to determine the best pricing strategy, which would need to take into account factors like receptiveness of the market, and competition from other tourism facilities and public transport operators. The Government invited proposals on the basis that the fare level would not be subject to regulation, and could not seek to change the ground rule having decided on the successful proponent. Panel members have no objection in general to the introduction of the Bill.

18. We consulted the Islands District Council (IDC), the Advisory Council on the Environment and the Country and Marine Park Board on the Project, and received general public support to bring it forward. Since the Bill is an integral part of the package to implement the Project, we did not consult these parties separately on the Bill. In the course of the statutory and other related procedures required to implement various supporting infrastructure and complementary facilities, consultations with the relevant statutory authorities, the IDC and other stakeholders like Po Lin Monastery will continue. We have consulted MTRCL on the draft Bill. The Airport Authority is aware of the proposal for deeming resumption of land for the Project as being for a public purpose.

PUBLICITY

19. We will issue a press release on the day when the Bill is published in the Gazette on 30 January 2003. A spokesman will be available to handle enquiries.

ENQUIRIES

20. Enquiries may be directed to Mrs Erika Hui, Assistant Commissioner for Tourism, Economic Development and Labour Bureau on 2810 3137.

Economic Development and Labour Bureau
28 January 2003

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A BILL

To

Grant and regulate a franchise for the operation of a Cable Car System linking Tung Chung and Ngong Ping on Lantau Island, to grant ancillary rights, to provide for the payment of royalty, and to provide for related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Tung Chung Cable Car Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette, being the day on which the Project Agreement enters into force.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires –
“aerial ropeway” (架空纜車索道) means an aerial ropeway as defined in section 2 of the Aerial Ropeways (Safety) Ordinance (Cap. 211);

“arbitration” (仲裁) means domestic arbitration under Part II of the Arbitration Ordinance (Cap. 341);

“Cable Car System” (吊車系統) means an aerial ropeway system linking Tung Chung and Ngong Ping on Lantau Island, including but not limited to –

- (a) the Tung Chung Terminal and the Ngong Ping Terminal;
- (b) one or more angle stations;
- (c) buildings, pylons and other auxiliary structures;
- (d) ancillary plant and related construction works;

- “Cable Car System area” (吊車系統區) means the land required for the Cable Car System as listed in paragraphs (a) to (d) of the definition of “Cable Car System” and delineated and coloured pink on the plan deposited in the Land Registry under section 3;
- “commercial GFA” (商用總樓面面積), in relation to a terminal, means the gross floor area for or ancillary to commercial use, as specified in the Project Agreement;
- “Company” (吊車公司) means the Company designated by the Secretary for the purposes of this Ordinance under subsection (2);
- “construction works” (建造工程) means all construction works carried out or to be carried out by the Company under the Project Agreement;
- “Director” (署長) means the Director of Lands;
- “discharge date” (解除責任日期) means the date referred to in the guarantee agreement, if any, as being the discharge date of the guarantee;
- “fare-paying passenger” (付費乘客) means a person who rides on the Cable Car System in return for payment to the Company or its agent, or to the MTR Corporation Limited or its agent, made in any form, at any time, at any place and by any person;
- “financier” (出資人) means a person, not being a shareholder of the Company or a guarantor as defined in this section, who has provided credit (other than credit provided in the course of sale of goods or provision of services) or agreed to act as a surety or guarantor for or provided financial support to the Company for the purposes of the Project or to enable the Company to discharge its obligations under this Ordinance or the Project Agreement;
- “franchise” (專營權) means the franchise granted by section 4;
- “franchise period” (專營期) means the period commencing on a date specified in the Project Agreement and ending on the 30th anniversary of that date or on a later date by virtue of section 4(3);

“guarantee agreement” (保證協議) means the agreement, if any, designated as the guarantee agreement for the purposes of this Ordinance by the Secretary under subsection (3);

“guarantor” (保證人) means a person who for the time being has undertaken the obligations of a guarantor under the guarantee agreement, if any;

“level 2” (第 2 級) and “level 3” (第 3 級) mean respectively level 2 and level 3 in Schedule 8 to the Criminal Procedure Ordinance (Cap. 221);

“MTR Corporation Limited” (地鐵有限公司) means the company incorporated under that name under the Companies Ordinance (Cap. 32);

“Ngong Ping Terminal” (昂坪終點站) means the aerial ropeway terminal situated at Ngong Ping on Lantau Island, and includes the terminal building, a car park, the commercial GFA and related ancillary facilities, as delineated on the plan deposited in the Land Registry under section 3;

“occupy” (佔用), in relation to any land, includes use, be in possession of, enjoy, erect or maintain a structure on or over, or place or maintain anything on the land;

“owner” (擁有人), in relation to any land to which Part 4 applies, means –

- (a) a person registered or entitled to be registered in the Land Registry as owner of the land; and
- (b) a person who has any estate, right or interest in the land;

“Project” (工程項目) means –

- (a) the finance, design, construction, installation, testing, commissioning, operation, management and maintenance of the Cable Car System; and
- (b) any other work carried out in relation to the Cable Car System, whether before or after the commencement of the Project Agreement;

“Project Agreement” (工程項目協議) means –

- (a) an agreement between the Company and the Government designated as the Project Agreement for the purposes of this Ordinance by the Secretary by notice published in the Gazette; and
- (b) any later agreement which amends or supplements that agreement or, consistently with section 5, disposes of rights or obligations under it to any other person;

“route” (路線) means the alignment of the aerial ropeway of the Cable Car System;

“route projection area” (路線投射區) means the area delineated and coloured yellow on the plan deposited in the Land Registry under section 3;

“Secretary” (局長) means the Secretary for Economic Development and Labour;

“terminal” (終點站) means the Tung Chung Terminal or the Ngong Ping Terminal;

“Tung Chung Terminal” (東涌終點站) means the aerial ropeway terminal situated at Tung Chung town centre, and includes the terminal building, a transport interchange, a footbridge, a vehicle park, the commercial GFA and related ancillary facilities, as delineated on the plan deposited in the Land Registry under section 3;

“utility” (公用設施) means any of the following –

- (a) telecommunications apparatus;
- (b) an electric power cable, telephone cable or other cable used in communication;
- (c) a pipe used for the supply of water, gas or oil, or for drainage or sewerage;
- (d) a duct for any such cable or pipe;
- (e) apparatus or works ancillary to any of the foregoing.

(2) Subject to subsection (3), the Secretary may by notice published in the Gazette designate a Company for the purposes of this Ordinance, which shall

be either the MTR Corporation Limited or a wholly-owned subsidiary of the MTR Corporation Limited.

- (3) If the Secretary designates as the Company under subsection (2) a wholly-owned subsidiary of the MTR Corporation Limited, the Secretary shall –
- (a) by notice published in the Gazette designate a guarantee agreement for the purposes of this Ordinance;
 - (b) ensure that guarantors acceptable to the Secretary have entered into the guarantee agreement;
 - (c) by order amend Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) so as to include in that Schedule the wholly-owned subsidiary.

(4) A reference in this Ordinance to a Secretary or a Director, in relation to any power, duty or function conferred on, imposed on or assigned to the Secretary or Director, as the case may be, includes a reference to any public officer or other person whom the Secretary or Director respectively authorizes to exercise, discharge or perform the power, duty or function.

(5) A power or function conferred on or assigned to the Chief Executive in Council by this Ordinance may be exercised or performed by the Chief Executive acting in his or her discretion if the Chief Executive is of the opinion that the power needs to be exercised or the function to be performed in an emergency situation.

3. Plan of Cable Car System area and route projection area

- (1) The Secretary shall, before the Project Agreement enters into force –
- (a) prepare a plan delineating the location, extent and boundaries of –
 - (i) the Cable Car System area;
 - (ii) the route projection area;

- (iii) the Ngong Ping Terminal; and
- (iv) the Tung Chung Terminal;
- (b) assign a number to the plan, and sign and date it;
- (c) deposit the plan in the Land Registry; and
- (d) as soon as practicable thereafter, publish a notice in the Gazette that the plan has been deposited.

(2) The Secretary may, with the agreement of the Company, vary the boundaries of the Cable Car System area or the route projection area if the design, construction, operation, maintenance or safety requirements of the Cable Car System reasonably so require.

- (3) If a variation is agreed under subsection (2) –
 - (a) the Secretary shall as soon as practicable deposit the plan as varied in the Land Registry and publish a notice in the Gazette to that effect;
 - (b) the plan as varied supersedes the original plan, or any previous variation of it.

PART 2

THE FRANCHISE

4. Grant of franchise

- (1) The Company shall have the franchise to -
 - (a) design, construct and complete the construction works;
 - (b) install, test and commission the Cable Car System;
 - (c) operate, manage and maintain the Cable Car System during the franchise period;
 - (d) determine and collect fares for the use of the Cable Car System by the public during the franchise period,

in accordance with the Project Agreement.

(2) Subject to subsection (3), the franchise is granted for a period of 30 years commencing on a date specified in the Project Agreement.

(3) If there is delay in the completion of the construction works or the commencement of service of the Cable Car System as a result of –

(a) the Government failing to give possession of land for the Project in accordance with the Project Agreement; or

(b) the water supply system and sewerage system at Ngong Ping on Lantau Island not becoming operational in accordance with the timetable in the Project Agreement,

the Secretary shall extend the franchise period by an equal period of time.

(4) If there is an extension of the franchise period under subsection (3), the Secretary shall publish a notice in the Gazette to that effect as soon as reasonably practicable.

5. Assignment or other disposal of rights and obligations

(1) The Company shall not assign, subgrant, underlet, mortgage, charge, allow a lien to arise on or otherwise dispose of any of its rights or obligations under the Project Agreement or this Ordinance, or enter into any agreement for such disposal, except with the prior consent of the Chief Executive in Council and in accordance with the terms of such consent.

(2) The consent required under subsection (1) shall not be unreasonably withheld and shall not be withheld if the Chief Executive in Council is satisfied –

(a) that such disposal is necessary or desirable to give effect to any arrangements for the purpose of complying with a notice to remedy a default served under section 25;

(b) that the arrangements are adequate for that purpose; and

(c) that the person to whom the rights or obligations are to be disposed is a person in whom such rights or obligations

may properly be vested or to whom such rights or obligations may properly be transferred.

(3) If the Chief Executive in Council consents to a disposal of rights or obligations under subsection (1), the Secretary shall, as soon as practicable, publish a notice in the Gazette of the date of the intended disposal, the nature of the disposal, and the name and address of the person to whom the rights or obligations will be disposed.

PART 3

USE AND OCCUPATION OF LAND

6. Right to occupy Cable Car System area

The Company shall have the right during the franchise period to occupy the Cable Car System area, in accordance with the terms and conditions of the Project Agreement and subject to any rights excepted and reserved to the Government by that Agreement.

7. Wayleaves

(1) The Company shall have during the franchise period all wayleaves and other rights over unleased land that are necessary to render the franchise effective.

(2) In this section, “unleased land” (未批租土地) has the same meaning as in section 2 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28).

8. Right to occupy commercial GFA and to operate vehicle parking facilities

The Company shall have the right during the franchise period to –

- (a) use and occupy the commercial GFA of the Tung Chung Terminal and of the Ngong Ping Terminal consistently with this Ordinance;
- (b) grant licences for the use and occupation of the commercial GFA of each terminal consistent with this Ordinance;
- (c) demand and collect fees for such licences;
- (d) operate vehicle parking facilities at each terminal and demand and collect fees for the use of such facilities; and
- (e) charge management fees,

in accordance with the Project Agreement.

9. Reservation of rights

(1) This Ordinance does not confer on the Company any title, right or interest in any land except as specified in sections 6, 7 and 8 and under Part 4.

(2) Except as otherwise provided in this Ordinance, the Land (Miscellaneous Provisions) Ordinance (Cap. 28) does not apply to the Cable Car System area.

PART 4

EASEMENTS AND MISCELLANEOUS LAND MATTERS

10. Statutory easements

(1) Upon the commencement of the franchise period, the following easements are created in favour of the Company in respect of the land comprised in the route projection area –

- (a) the right to place, operate, replace, maintain and retain one or more aerial ropeways above ground level across the land;

- (b) the right to carry out works required for the purposes of paragraph (a) and otherwise in connection with the Cable Car System;
- (c) the right to enter on and pass over the land with persons, vehicles or equipment, and to carry out any acts, necessary for or incidental to the exercise of the rights conferred by paragraphs (a) and (b).

(2) The Company shall not place, construct, erect or retain any permanent structure, pole, mast or pylon on, over or under the land except pursuant to the rights conferred by subsection (1).

(3) The easements created by this section are of full force and effect against all persons having any estate, right or interest in the land, without any consent, grant or conveyance.

(4) The ownership of any thing is not altered by reason only that it is placed on, erected on or affixed to any land in exercise of rights and powers arising from or incidental to an easement created by subsection (1).

(5) If, pursuant to an easement created by subsection (1), a person proposes to enter on land which is occupied, the person shall give the owner and occupier of the land at least 28 days' notice of the intention to do so.

(6) In this section, "land" (土地) does not include unleased land as defined in section 2 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28).

11. New easements

If the route projection area is varied pursuant to section 3(2), the easements referred to in section 10(1) are created in favour of the Company in respect of any additional land comprised in the route projection area as varied, and the provisions of section 10 apply to that land from the date of publication of a notice in the Gazette under section 3(3)(a).

12. Notice of creation of easements

(1) Once an easement is created in favour of the Company by section 10(1) or 11 the Secretary shall within 28 days –

- (a) cause the easement to be registered in the Land Registry under the Land Registration Ordinance (Cap. 128);
- (b) give notice of the creation of the easement in accordance with this section.

(2) The notice of the creation of an easement required by subsection (1)(b) shall be –

- (a) served on the person who was, at the date of the creation of the easement, the owner of the land to which the easement relates –
 - (i) by being affixed in a conspicuous position on the land;
 - (ii) by delivery to the owner; or
 - (iii) by registered post to the owner's last known postal address;
- (b) published –
 - (i) in Chinese and English in one issue of the Gazette;
 - (ii) in one issue of a Chinese language daily newspaper circulating in Hong Kong; and
 - (iii) in one issue of an English language daily newspaper circulating in Hong Kong; and
- (c) made available for inspection by the public free of charge, during normal opening hours, at such offices of the Government as the Secretary specifies.

(3) A notice of the creation of an easement shall –

- (a) describe the land and the easement and state that the easement has been created by this Ordinance;

- (b) state when the easement was created in favour of the Company;
- (c) state where and at what times a plan of the land may be inspected;
- (d) state the date on which and the manner in which service of the notice was effected;
- (e) state that claims for compensation may be submitted in writing to the Director not later than 12 months after the creation of the easement; and
- (f) state that if the parties fail to agree, claims for compensation will be determined by the Lands Tribunal.

(4) In this section, “land” (土地) does not include unleased land as defined in section 2 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28).

13. Compensation

(1) When an easement over land is created by virtue of section 10(1) or 11, the Government becomes liable to pay compensation to the person who at the date of creation of the easement is the owner of the land, in respect of any diminution of the value of the owner’s estate, right or interest in the land as a result of the easement.

(2) A person who wishes to claim compensation under this section shall send written particulars of the claim to the Director, not later than 12 months after the creation of the easement, setting out –

- (a) the name of the claimant and an address for service of notices;
- (b) the nature of the claimant’s interest in the land;
- (c) the loss or damage sustained;
- (d) the amount of the claim; and
- (e) how the amount is calculated.

(3) The Director may request the claimant to provide further particulars of and in support of the claim or any item of it. If such particulars are not provided within one month of the request, or within any further period the Director allows in writing, the claim or the item of the claim, as the case may be, must be rejected and subsection (4) will not apply to it.

(4) The Director shall, within 6 months after receiving a claim under subsection (2), or, if the Director has requested further particulars under subsection (3), within 6 months after receiving the particulars, notify the claimant in writing that the Director –

- (a) admits the whole claim;
- (b) rejects the whole claim, with brief reasons for the rejection;
or
- (c) admits a specified part of the claim and rejects the remainder, with brief reasons for the rejection.

(5) If the Director rejects a claim or any part of it, the Director may –

- (a) offer in writing to the claimant a sum the Government is willing to pay in full and final settlement of the claim or any part of it, with costs to be agreed; or
- (b) if an offer under paragraph (a) is not made, or is not accepted within one month of being made, commence proceedings in the Lands Tribunal to have the claim, or so much of it as is then in dispute, determined in accordance with this Ordinance.

(6) If the claimant and the Director fail to reach agreement on compensation within 7 months after receipt by the Director of the claim under subsection (2), or of any further particulars requested under subsection (3), either the claimant or the Director may, not later than 60 days after the expiration of that period, submit the claim to the Lands Tribunal for determination in accordance with this Ordinance.

(7) The Lands Tribunal has jurisdiction to determine the amount of any compensation payable and, subject to subsection (8), to apply the provisions of the Lands Tribunal Ordinance (Cap. 17) in the determination of the claim.

(8) In determining the amount of the compensation, no account is to be taken of –

- (a) any expectation or probability of the grant, renewal or continuance by the Government or any person of any licence, permission, lease or permit of any kind;
- (b) any use of the land which is not in accordance with the terms of the Government lease under which the land is held.

(9) No action, claim or proceeding lies or may be brought against the Government, the Company or any other person to recover compensation in respect of any loss or damage arising out of the creation of an easement by section 10(1) or 11, or the exercise of any rights pursuant to such an easement, except as provided for by this section.

(10) In this section, “value” (價值) means the open market value of the land, assessed as at the date of the creation of the easement.

14. Entry on land in emergency

(1) If an emergency arises or is reasonably apprehended in connection with the Cable Car System, the Company may enter on any land in order to prevent the emergency, or to mitigate the effects of the emergency, and may do all such things and take on the land all such persons, vehicles and equipment as are necessary for the purpose.

(2) If the Company intends to enter on any land pursuant to subsection (1) it shall, before the intended entry –

- (a) give to the owner of the land a notice of its intention and of the right to compensation under subsection (4); and

(b) fix a copy of the notice in a conspicuous position on the land.

(3) If it is not practicable for the Company to comply with subsection (2) before entering on the land, the Company shall, as soon as practicable after entry has been made –

(a) give to the owner of the land a notice that entry has been made and of the right to compensation under subsection (4); and

(b) fix a copy of the notice in a conspicuous position on the land.

(4) Any owner of land who suffers any loss or damage to the land as a direct result of entry on the land by the Company pursuant to subsection (1) may claim from the Company compensation for loss or damage arising as a direct and reasonably foreseeable result of the entry.

(5) Subsections (2) to (7) of section 13 govern the procedure for a claim against the Company under this section, except that –

(a) references in those subsections to “the Director” are to be read as references to “the Company”;

(b) the reference in that subsection (5)(a) to “the Government” is to be read as a reference to “the Company”;

(c) the period of 12 months specified in that subsection (2) as the period for written particulars of the claim to be sent is reduced to 3 months after the date of entry on the land.

(6) In this section, “land” (土地) does not include unleased land as defined in section 2 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28), unless it is occupied under Part II of that Ordinance.

15. Resumption of land

Any resumption of land by the Government for the Cable Car System is deemed to be resumption for a public purpose within the meaning of section 2 of the Lands Resumption Ordinance (Cap. 124).

PART 5**FINANCIAL PROVISIONS****16. Royalty payments**

(1) The Company shall pay to the Government, in respect of the operation of the Cable Car System, a royalty at a rate, at times, and for a period as specified in the Schedule.

(2) If the franchise is assigned under section 5(1) to any person other than a wholly-owned subsidiary of the MTR Corporation Limited, the Secretary may by notice published in the Gazette amend the Schedule.

(3) Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to a notice published under subsection (2).

17. Records in relation to royalty

(1) For the purpose of ascertaining the amount of the royalty which is payable under section 16, the Company shall –

- (a) provide a system for evidencing to the satisfaction of the Financial Secretary the number of fare-paying passengers on the Cable Car System in each direction;
- (b) permit the Financial Secretary, or any person authorized in writing by the Financial Secretary, to make all reasonable tests and checks to satisfy himself or herself as to the integrity of the system;
- (c) permit the Financial Secretary, or any person authorized in writing by the Financial Secretary, at all reasonable times

to inspect and make copies of the records evidencing the payment of fares on the Cable Car System.

(2) Nothing in subsection (1) requires the Company or any other person to produce any document or provide any information which the Company or that other person could not be compelled to produce or provide in civil proceedings in the High Court.

(3) Before disclosing to any person outside the Government any information obtained pursuant to subsection (1), the Financial Secretary shall inform the Company of the intention to do so.

18. Tax status of the Company

For the purpose of Part VI of the Inland Revenue Ordinance (Cap. 112), the Company is deemed to be the owner of the Cable Car System for as long as the Company holds the franchise.

19. Financial penalties

(1) Subject to subsection (2), if the Company persistently fails to comply with any requirement of this Ordinance or is in substantial breach of the Project Agreement, the Secretary may initiate the procedure set out in this section for imposing a financial penalty on the Company.

(2) As the first step in the procedure, the Secretary shall notify the Company of the failure or breach, as the case may be, and, if it is capable of being remedied, give the Company a reasonable opportunity to comply with the requirement or remedy the breach.

(3) If the Secretary considers that a financial penalty ought to be imposed (because the failure or breach is not capable of being remedied, or is not remedied within a reasonable period), the Secretary shall inform the Company in writing of the proposed penalty and invite the Company to comment on it in writing.

(4) Subject to subsection (5), the Secretary shall inform the Chief Executive in Council of the failure or breach, of the proposed financial penalty, and of the Company's comments, if any, and seek the approval of the Chief Executive in Council for the imposition of a financial penalty. The Chief Executive in Council may either approve the imposition of a penalty in a specified amount, or disapprove the imposition, in either case stating briefly the reasons.

(5) The approval of the Chief Executive in Council referred to in subsection (4) is not required for the imposition of a further financial penalty under subsection (7) for a continuing failure or breach.

(6) If the Chief Executive in Council approves the imposition of a penalty in a specified amount, or if a further financial penalty is being imposed for a continuing failure or breach, the Secretary shall notify the Company in writing and require the Company to pay the penalty to the Government within 30 days after service of the notice.

(7) If the failure or breach is capable of being remedied, the financial penalty that may be imposed on the Company is a sum not exceeding \$5,000, with a further penalty not exceeding \$5,000 for each day the failure or breach continues after the service of the notice under subsection (6).

(8) If the failure or breach is by its nature not capable of being remedied, the financial penalty that may be imposed on the Company is a sum not exceeding –

- (a) \$10,000 on the first occasion;
- (b) \$25,000 on the second occasion;
- (c) \$50,000 on the third or a subsequent occasion,

on which a penalty is imposed.

(9) For the purpose of subsection (8), in deciding, as regards a particular failure or breach, whether it is the first, second, or third or subsequent occasion on which a financial penalty is being imposed, only occasions on which

a financial penalty has been imposed for a failure or breach of the same type as the particular failure or breach are to be taken into account.

(10) When considering the imposition of a financial penalty on the Company under this section, the Chief Executive in Council shall not take into account any failure or breach which was considered for the purpose of a previous imposition of a financial penalty on the Company under this section, unless the Company has failed to pay the previous penalty or to remedy the previous failure or breach.

(11) A financial penalty imposed under this section is recoverable as a debt due to the Government.

(12) Nothing in this section affects the power of the Chief Executive in Council to revoke the franchise pursuant to section 27.

(13) For the purposes of this section, any dispute between the Company and the Secretary as to whether the Company has failed to comply with a requirement of this Ordinance or is in substantial breach of the Project Agreement, if not resolved by mutual agreement or mediation, is to be resolved by arbitration as provided for in the Project Agreement.

(14) Subsection (13) does not apply to the amount of a financial penalty imposed under this section, but the amount must be proportionate and reasonable in relation to the failure or breach.

PART 6

ANCILLARY LEGAL PROVISIONS

20. Application of Buildings Ordinance

In relation to land occupied by the Company for the construction, operation and maintenance of the Cable Car System, the Buildings Ordinance (Cap. 123) applies as follows –

- (a) for the purpose of section 41(1)(a) of that Ordinance, buildings constructed on the land are not to be regarded as belonging to the Government;
- (b) for the purpose of section 41(1)(ba) of that Ordinance, the land is not to be regarded as unleased land;
- (c) for all purposes of that Ordinance, the Company is to be regarded as the owner of the land and of buildings constructed on it.

21. Installation of utilities in Cable Car System area

(1) Subject to subsection (3), before installing any utility in the Cable Car System area, the provider of a utility (other than the Company) shall obtain the written consent of the Company.

(2) The consent required by subsection (1) –

- (a) shall not be withheld unless the Company reasonably considers that the installation of the utility may adversely affect the safety of persons using or operating the Cable Car System or working in the Cable Car System area, or the efficient operation of the Cable Car System;
- (b) may be granted subject to reasonable conditions.

(3) This section does not apply to the placement and maintenance of a telecommunications line or a radiocommunications installation by the Telecommunications Authority or by a licensee authorized by the Telecommunications Authority pursuant to section 14 of the Telecommunications Ordinance (Cap. 106).

22. Power to make bylaws

(1) The Company may make bylaws, consistent with this Ordinance, for all or any of the following matters –

- (a) controlling and regulating the conduct of members of the public on the carrier and in the Cable Car System area;
- (b) providing a system for evidencing (whether by issue of tickets or otherwise) the payment of fares by passengers on the Cable Car System;
- (c) providing for the custody and return or disposal of property found on the carrier and in the Cable Car System area;
- (d) protecting any property of the Company in the Cable Car System area, and the carrier and ropes, from damage or interference;
- (e) controlling unauthorized advertising on the Cable Car System;
- (f) any other matter, whether similar to the foregoing or not, which relates to the control, operation and management of the Cable Car System or to the safety of passengers and the System generally and which the Company considers it is necessary or expedient to provide for.

(2) In subsection (1), “carrier” (運輸工具) has the same meaning as in the definition of “aerial ropeway” in section 2 of the Aerial Ropeways (Safety) Ordinance (Cap. 211).

(3) Bylaws made under subsection (1)(c) shall have due regard to the rights of owners of the property concerned.

(4) Bylaws made under subsection (1) may provide that a contravention of a specified provision is an offence and may prescribe a maximum penalty not exceeding a fine at level 2.

(5) Bylaws made under subsection (1) are subject to the approval of the Legislative Council.

(6) Printed copies of the bylaws must be kept at the registered office of the Company and at each terminal and made available to any person at a reasonable charge.

23. Company may prosecute, etc.

(1) An employee of the Company, or any person authorized in writing by the Company to do so, may ask any person who is reasonably suspected of having contravened a bylaw made under section 22(1) to give the person's name and address for purposes of identification and, if a vehicle is involved in the offence, to give the name and address of the owner of the vehicle.

(2) A person who fails to comply with a request made under subsection (1), or who gives a false name or address, commits an offence and is liable on summary conviction to a fine at level 2.

(3) Without affecting any Ordinance relating to the prosecution of criminal offences, or the powers of the Secretary for Justice in relation to the prosecution of offences, a prosecution for an offence under this section or under the bylaws made under section 22(1) may be brought by and in the name of the Company.

PART 7

DEFAULT AND TERMINATION OF FRANCHISE

24. Default

(1) The Company will be in default if it fails, or there is a substantial likelihood of it failing, in any material respect to complete the construction works in accordance with the Project Agreement.

(2) The Company will be in default if it fails, or there is a substantial likelihood of it failing –

- (a) to operate and maintain the Cable Car System in accordance with this Ordinance, the Aerial Ropeways (Safety) Ordinance (Cap. 211) and all other relevant legislation; or
- (b) to discharge any of its other obligations under the Project Agreement,

and the failure, or likely failure, results, or is likely to result, in –

- (c) a substantial breakdown of the Cable Car System;
 - (d) the death of or serious injury to persons travelling on the Cable Car System or being on the System premises; or
 - (e) significant danger to the safety of persons travelling on the Cable Car System or being on the System premises.
- (3) If there are guarantors, the Company will be in default if –
- (a) the guarantors, having been called upon under the guarantee agreement, fail to respond to such call within a reasonable period; or
 - (b) any guarantor is in material breach of any provision of the guarantee agreement and, if there is more than one guarantor, such breach has not been remedied by another guarantor or is incapable of being remedied.

25. Defaults capable of remedy

(1) This section applies in the case of a default which appears to the Secretary to be capable of being remedied.

(2) In the case of a default to which this section applies, the Secretary shall serve a notice requiring the Company to remedy the default or to take measures or make arrangements to the satisfaction of the Secretary to ensure that the default is remedied.

(3) A notice under subsection (2) shall specify a period within which the default must be remedied, being a period reasonable in the circumstances and in any event not less than 28 days.

(4) If the Company considers that it will need more time to remedy the default than is specified in the notice under subsection (2), it may in writing apply to the Secretary for an extension of the time, with reasons, and the Secretary may allow such further time as appears to the Secretary to be reasonable in the circumstances.

(5) If there is a guarantee agreement, a notice under subsection (2) shall be served –

- (a) in the case of a default arising before the discharge date, on the Company, the guarantors and any agent appointed under subsection (6);
- (b) in the case of a default arising on or after the discharge date, on the Company and any agent appointed under subsection (6).

(6) Any financier or, if a financier is a member of a consortium of financiers, the consortium, may appoint an agent in Hong Kong for the purpose of subsection (5) and shall notify the Secretary of the name and address in Hong Kong of the agent for the purpose of service of a notice under that subsection.

(7) The arrangements referred to in subsection (2) may include arrangements for the disposal of the rights and obligations of the Company to another person in accordance with section 5.

26. Notice of intention to revoke franchise

(1) This section applies if –

- (a) the Secretary reports to the Chief Executive in Council that the Company has failed to comply with a notice to remedy a default served in accordance with section 25; or

- (b) it appears to the Chief Executive in Council that there is a default which is not capable of being remedied.

(2) In the case described in subsection (1)(a) (failure to comply with a section 25 notice), if it appears to the Chief Executive in Council that –

- (a) the default is still capable of being remedied; and
- (b) the notice which should have been served under section 25(2) was not properly served; or
- (c) the terms of the notice served were unreasonable,

the Chief Executive in Council may direct the Secretary to serve a notice, or further notice, under section 25(2), in terms specified by the Chief Executive in Council, whereupon the provisions of section 25 and this section apply.

(3) In the case described in subsection (1)(a), if it appears to the Chief Executive in Council that –

- (a) the default is no longer capable of being remedied; or
- (b) a notice was properly served under section 25(2) and has not been complied with,

the Chief Executive in Council may direct the Secretary to issue a notice requiring the Company to show cause why an order should not be made under section 27.

(4) In the case described in subsection (1)(b) (default not capable of being remedied) the Chief Executive in Council may direct the Secretary to issue a notice requiring the Company to show cause why an order should not be made under section 27.

(5) If there is a guarantee agreement, a notice issued under subsection (3) or (4) shall be served –

- (a) in the case of a default arising before the discharge date, on the persons specified in section 25(5)(a);
- (b) in the case of a default arising on or after the discharge date, on the persons specified in section 25(5)(b).

(6) A notice issued under subsection (3) shall specify whether it is issued in relation to paragraph (a) or (b) of that subsection and –

- (a) if issued in relation to that paragraph (a), shall specify the nature of the default;
- (b) if issued in relation to that paragraph (b), shall give particulars of the notice to remedy a default referred to in section 25(2) and brief particulars of the report of the Secretary under subsection (1).

(7) A notice issued under subsection (4) shall specify the nature of the default.

(8) If a notice is issued under subsection (3) or (4), any person to whom it is issued, or any other person who is a shareholder of the Company or a financier may, within 28 days after the issue of the notice, or within any further period the Chief Executive in Council allows, make written representations to the Chief Executive in Council to show cause why an order should not be made under section 27.

27. Order of revocation

(1) If satisfied –

- (a) that the procedure prescribed by section 26 has been followed;
- (b) that sufficient cause has not been shown why an order under this section should not be made; and
- (c) that it is just and reasonable to do so,

the Chief Executive in Council may, subject to subsection (3), by order revoke the franchise.

(2) In exercising the power under subsection (1), the Chief Executive in Council shall take into consideration –

- (a) the extent to which the default was or is occasioned by circumstances beyond the control of the Company;

(b) any representations made under section 26(8).

(3) If the proposed revocation relates to a matter in respect of which arbitration proceedings have commenced, the Chief Executive in Council shall not make an order under subsection (1) until the determination or, where appropriate, the abandonment of the arbitration proceedings.

(4) An order made under subsection (1) shall be served –

(a) if there is a guarantee agreement and the default arises prior to the discharge date, on the Company and the guarantors;

(b) in any other case, on the Company.

(5) An order made under subsection (1) shall be published in the Gazette as soon as practicable after being made but shall take effect on the date specified in the order.

(6) Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to an order made under subsection (1).

28. Termination of franchise

(1) Except to the extent necessary to give effect to sections 29 and 30, the franchise and all rights and obligations of the Company under this Ordinance terminate on –

(a) the commencement of the voluntary winding up of the Company;

(b) the making of a winding-up order in respect of the Company;

(c) the revocation of the franchise under section 27; or

(d) the expiry of the franchise period,

whichever first occurs.

(2) Upon the termination of the franchise, the assets of the Company referred to in section 32, together with the easements created by sections 10(1)

and 11 and the rights conferred by sections 6, 7, 8 and 14, vest in the Government.

29. Consequences of termination

(1) Upon the termination of the franchise, the Company remains liable for –

- (a) effecting any repairs to the assets which the Secretary considers are reasonably required and of which the Secretary has given written notice to the Company in accordance with subsection (3);
- (b) settling accounts with the Government in respect of royalty payable under section 16 and any other sums payable to the Government under the Project Agreement;
- (c) any other obligations of the Company under this Ordinance or the Project Agreement which have not been satisfied and of which the Secretary has given written notice to the Company not less than 30 days before the termination.

(2) Upon the termination of the franchise, the Company shall –

- (a) if the construction works are not complete, bring the incomplete construction works, and the land on which they are situated, to a satisfactory condition in order to enable the construction works either to be continued or abandoned, as the Government decides;
- (b) if the construction works are complete, ensure that the Cable Car System is in a safe condition so that it can be operated commercially by the Government or another person.

(3) A notice of repairs given under subsection (1)(a) shall –

- (a) be given not less than 30 days before the termination;

- (b) specify a time within which the repairs are to be effected, being a time reasonable in the circumstances.

(4) If the Company fails to discharge its obligations under subsection (1)(a) or (c) or (2), the Government may perform them and the Company becomes liable to pay the expenses reasonably incurred by the Government in so doing.

(5) If the termination of the franchise arises under section 28(1)(a), (b) or (c), the Government shall pay to the Company, in respect of the assets of the Company which vest in the Government under section 28(2), an amount, calculated in accordance with the Project Agreement, which represents the residual value of those assets at the time of the vesting.

(6) In determining the value of the assets for the purpose of subsection (5), there shall be deducted from what would otherwise be the residual value of those assets –

- (a) any sums payable to the Government under subsection (1)(b);
- (b) any costs reasonably incurred by the Government as a result of or incidental to the termination of the franchise, including but not limited to the expenses referred to in subsection (4).

(7) Any dispute between the Company and the Government as to –

- (a) the amount, if any, payable by the Company to the Government under subsection (1) or (4); or
- (b) the amount, if any, payable by the Government to the Company under subsection (5),

if not resolved by mutual agreement or mediation, is to be resolved by arbitration as provided for in the Project Agreement.

30. Consequences of expiry of franchise period

Upon the termination of the franchise by expiry of the franchise period, no compensation is payable by the Government to the Company except for the residual value, calculated in accordance with the Project Agreement, of any thing which –

- (a) forms part of the assets purchased by the Company;
- (b) was purchased with the agreement of the Financial Secretary within the 5 years immediately preceding the expiry of the franchise period; and
- (c) is owned by the Company on the expiry date.

31. Government not liable for Company's debts

The vesting of the assets of the Company in the Government under this Part does not make the Government liable for any debts of the Company.

32. Meaning of “assets”

In this Part –

“assets” (資產) means –

- (a) the Cable Car System;
- (b) all buildings, machinery, plant and equipment which form part of the Cable Car System or are ancillary to the construction, operation and maintenance of the System; and
- (c) spare parts and special tools as defined in the Project Agreement.

PART 8

MISCELLANEOUS

33. Arbitration

(1) Any dispute between the Company and the Government regarding –

- (a) a default decision; or
- (b) the operation of the Project Agreement,

if not resolved by mutual agreement or mediation, is to be resolved by arbitration as provided for in the Project Agreement.

(2) In this section, “default decision” (失責行為決定) means a decision that the Company is in default in terms of section 24, but does not include –

- (a) a decision relating to the application of the Aerial Ropeways (Safety) Ordinance (Cap. 211) or to regulations made or codes of practice issued under it;
- (b) a decision relating to the safety of the Cable Car System generally;
- (c) a decision of the Secretary to serve a notice to remedy a default under section 25.

(3) This section is in addition to the provisions for arbitration in sections 19(13) and 29(7).

34. Directions by Chief Executive in Council

(1) If the Company gives notice of its intention to commence arbitration proceedings concerning a decision in respect of which arbitration is available under this Ordinance or the Project Agreement, it may, within 28 days beginning on the date on which it gives the notice, apply to the Chief Executive in Council in writing to issue directions as described in subsection (2).

(2) On an application under subsection (1) in respect of a decision, the Chief Executive in Council may issue directions with regard to the enforcement of the decision pending the determination or abandonment of the arbitration proceedings.

(3) A decision which has been referred to the Chief Executive in Council under subsection (1) may be enforced pending the determination or abandonment of the arbitration proceedings, but subject to directions issued under subsection (2).

35. Certificate as to moneys owing to Government

A certificate duly signed by or on behalf of the Financial Secretary as to the amount of money owing to the Government by any person under this Ordinance is sufficient evidence of that amount.

36. Non-derogation from Government's rights

(1) Nothing in this Ordinance or the Project Agreement affects the rights of the Government, its servants or agents, to enter on any land affected by the construction works or to do anything which it or they might have done if those works had not been undertaken, except to the extent that the exercise of such rights is limited by any express provision of this Ordinance or the Project Agreement or by necessary implication from those provisions.

(2) Subsection (1) does not entitle the Government, its servants or agents, to exercise any rights referred to in that subsection in a manner which would derogate from any rights granted to the Company under this Ordinance or the Project Agreement.

37. Limitation of liability

(1) No liability is incurred by the Government or any public officer by reason only of the fact that –

- (a) the construction works are carried out in accordance with this Ordinance and the Project Agreement;
- (b) the construction works are subject to the inspection or approval of a public officer under this or any other Ordinance.

(2) A breach of a duty imposed on the Company by this Ordinance does not give rise to any civil liability, but the Company remains liable for negligence or any other cause of action which arises independently of such a breach, whether or not in the circumstances there might also be such a breach.

38. Offence to obstruct Company

A person who wilfully and without reasonable excuse obstructs or interferes with the lawful exercise by the Company or its officers, servants or authorized persons of the rights exercisable by the Company under this Ordinance commits an offence and is liable to a fine at level 3 and to imprisonment for 3 months.

PART 9

CONSEQUENTIAL AMENDMENTS

Lands Tribunal Ordinance

39. Ordinances under which matters may be submitted to the Tribunal for determination

The Lands Tribunal Ordinance (Cap. 17) is amended in the Schedule by adding –

“ of 2003. Tung Chung Cable Car Ordinance.”.

SCHEDULE

[s. 16]

ROYALTY

1. The royalty payable by the Company to the Government is \$1.00 for every single or return journey taken on the Cable Car System by a fare-paying passenger.
2. For the purpose of section 1, 2 one-way trips comprising a round trip constitute 2 single journeys.
3. The royalty is payable every 6 months in arrears, in accordance with the Project Agreement.
4. The royalty remains payable until termination of the franchise under section 28 of the Ordinance.

Explanatory Memorandum

The purpose of this Bill is to grant and regulate a franchise for the operation of a Cable Car System linking Tung Chung and Ngong Ping on Lantau Island on a “build, operate, transfer” (“BOT”) basis. The Bill also grants ancillary rights and provides for the payment of royalty and for related matters.

2. The Bill if enacted will grant to the MTR Corporation Limited, or to a wholly-owned subsidiary of the MTR Corporation Limited (“the Company”), a 30-year franchise to design, construct, operate and maintain a cable car system from Tung Chung town centre up to the Ngong Ping plateau. The Secretary for Economic Development and Labour (“Secretary”) will be required to gazette a plan of the cable car system area and of the route projection area before the Ordinance comes into force.

3. Upon commencement of the franchise period, the Company will be free to determine and collect fares for the use of the cable car system, and to license commercial operations at each of the terminals. A royalty of \$1 per journey for each fare-paying passenger will be payable by the Company to the Government.

4. The Bill provides for the grant to the Company of wayleaves over unleased land and of easements over leased land needed for the operation of the cable car system. It also provides for entry on land in an emergency and for the payment of compensation for leased land affected by the construction and operation of the system.

5. The construction and operation of the cable car system will be governed by a Project Agreement to be entered into between the Company and the Government. The Buildings Ordinance (Cap. 123) and the Aerial Ropeways (Safety) Ordinance (Cap. 211) will also apply to the system.

6. The Bill provides for the imposition of financial penalties on the Company in the event of persistent breaches of its obligations under the Ordinance or the Project Agreement. A more serious sanction is the service of a default notice,

failure to comply with which can lead to a revocation of the franchise by the Chief Executive in Council. Disputes about factual matters, if not resolved by mutual agreement or mediation, are to be resolved by arbitration.

7. At the conclusion of the franchise period, or on the earlier termination of the franchise, the cable car system will become the property of the Government. Provision is made for the reimbursement by the Company of the cost of repairs specified by the Secretary and for the reimbursement by the Government to the Company of the residual value of the assets which revert to the Government.

8. Clause 22 of the Bill gives the Company power to make bylaws needed for the safe and efficient operation of the cable car system. The Bill also contains ancillary provisions relating to financial records, installation of utilities, limitation of liability, etc., similar to provisions in other Ordinances relating to BOT projects.

9. The Bill if enacted will come into operation on a day appointed by the Secretary, which is to be the day on which the Project Agreement comes into force.

Implications of the Tung Chung Cable Car Project (the Project)

FINANCIAL AND STAFFING IMPLICATIONS

Government will receive a lump sum payment upfront at full market value from MTRCL for the use of the commercial space in the development before the franchise takes effect. The franchisee would also pay to the Government a royalty of \$1 per fee-paying passenger.

2. The Bill will not give rise to financial and civil service implications as its drafting and execution will be absorbed by existing staff resources of relevant departments. With regard to implementation of the Project, the Electrical and Mechanical Services Department will incur an additional annual staff cost of \$1.2 million in the development stage up to 2006 to appoint an additional Electrical and Mechanical Engineer to monitor the technical and safety standards of the Project. The necessary funding has been provided in the Operating Expenditure Envelope of the Secretary for Economic Development and Labour (SEDL). SEDL will absorb other additional recurrent expenditure on the enforcement of legislative provisions and project implementation within his operating expenditure envelope. In respect of capital spending, \$75 million has been earmarked in the 2002 CWRP RAE for the development of the Piazza at Ngong Ping. In addition, the Government will implement other public works projects to provide supporting infrastructure, such as a water supply system, sewerage system and public transport interchange, at Ngong Ping. These are estimated to cost \$305 million.

ECONOMIC IMPLICATIONS

3. MTRCL estimated in its Final Proposal that annual patronage for the system would be 1.25 million in 2006, rising gradually up to 1.65 million in 2016 and after. MTRCL also estimated that around 6.7% of overseas visitors to Hong Kong will ride on the system, and that the cable car system will have a market share of 65% of visitors to Ngong Ping.

4. It is difficult to quantify the direct economic benefits of the development of the cable car system. However, assuming that 2% of visitors to Hong Kong (based on the levels in November 2002) will be attracted to extend their stay in Hong Kong for half of a day, and 4% of transit passengers would be attracted to spend one-quarter of a day in Hong Kong, the System would bring in

an estimated additional tourist spending of around \$300 million. It will also contribute to our strategy of broadening the range of tourist attractions in Hong Kong, in particular, helping encourage new developments in the area and foster a synergy among the various visitor attractions on Lantau.

ENVIRONMENTAL IMPLICATIONS

5. The development of the cable car system is a designated project under the Environmental Impact Assessment (EIA) Ordinance (Cap. 499). The MTRCL will have to complete an EIA Study in accordance with the statutory requirements of the EIA Ordinance, consult the public and the Advisory Council on the Environment on the EIA Report, and seek approval for the Report under the EIA Ordinance. The MTRCL will have to apply for an environmental permit under the EIA Ordinance for the construction and operation of the cable car system.

6. The MTRCL will also need to seek the consent of the Country and Marine Parks Authority for the part of the cable car route falling within the Lantau North Country Park and the proposed Lantau North (Extension) Country Park.

SUSTAINABILITY IMPLICATIONS

7. The Project and the complementary tourist facilities do not have major sustainability implications but would help enhance tourist attractions of Hong Kong and boost our tourism industry. The environmental issues would be addressed in greater detail during the EIA process.

Economic Development and Labour Bureau
15 January 2003