

立法會
Legislative Council

LC Paper No. LS 56/02-03

**Paper for the House Committee Meeting
on 14 February 2003**

**Legal Service Division Report on
Tung Chung Cable Car Bill**

I. SUMMARY

1. **Object of the Bill** To provide the legal framework for the grant of a franchise for the operation of a Cable Car System (the System) linking Tung Chung and Ngong Ping on Lantau Island.

2. **Comments**
 - (a) The Bill provides for the grant of a 30-year franchise to the MTR Corporation Limited (MTRCL) or its wholly-owned subsidiary for the operation of the System on a Build-Operate-Transfer basis.
 - (b) Detailed provisions relating to the construction and operation of the System will be governed by a Project Agreement to be entered into between the franchisee and Government.
 - (c) The Bill sets out various rights and obligations of the franchisee under the franchise. These rights include the right to determine and collect fares for the use of the System by the public and the right to use and occupy the land provided by Government for the development and operation of the System.
 - (d) Obligations of the franchisee include the operation, management and maintenance of the System and payment of a royalty to Government.
 - (e) Sanctions by way of financial penalties or revocation of franchise may be imposed on the franchisee for failing to comply with any requirement of the Bill or the Project Agreement, depending on the seriousness of the breach.

3. **Public Consultation** The Administration has consulted the Islands District Council, the Advisory Council on the Environment and the Country and Marine Park Board on the Tung Chung Cable Car Project, and received general support for the Project .

4. **Consultation with LegCo Panel** The policy aspects of the Bill were discussed at the meeting of the Panel on Economic Services on 25 November 2002.

5. **Conclusion** Members of the Panel have raised concerns on a wide range of issues relating to the System. A Bills Committee is recommended to be formed to study the Bill in detail.

II. REPORT

Object of the Bill

To provide the legal framework for the grant of a franchise for the operation of a Cable Car System linking Tung Chung and Ngong Ping on Lantau Island.

LegCo Brief Reference

2. EDB CR 5/6/2091/98 dated 28 January 2003 issued by the Economic Development and Labour Bureau.

Date of First Reading

3. 12 February 2003.

Background

4. In 1998, the Financial Secretary announced Government's decision to proceed with the construction of a cable car project (the Project) linking Tung Chung and Ngong Ping on Lantau Island as a tourist attraction. Under the framework approved for implementing the Project, the Government will grant a 30-year franchise for the financing, design, construction, operation and maintenance of the Tung Chung Cable Car System (the System) on a Build-Operate-Transfer basis. The Government will provide the land required for the System.

5. In July 2002, the Government entered into a Provisional Agreement with the MTR Corporation Limited (MTRCL), under which MTRCL will commence preparatory work on the Project before the grant of the franchise. The Government, on the other hand, will seek the enactment of the enabling legislation for the franchise and will work with MTRCL to prepare a Project Agreement to provide a legal framework for the granting of the franchise and the construction, operation and maintenance of the System.

Comments

6. The Bill provides the legal framework for the grant of a 30-year franchise to MTRCL or its wholly-owned subsidiary for the design, construction, operation and maintenance of the System. The detailed provisions relating to the construction and operation of the System will be governed by a Project Agreement to be entered into between the franchisee and the Government. The Buildings Ordinance (Cap. 123) will apply to the Project and the operation and safety standards of the System will be regulated by the Aerial Ropeways (Safety) Ordinance (Cap. 211). Any resumption of land required for the System will be deemed to be resumption for a public purpose within the meaning of section 2 of the Lands Resumption Ordinance (Cap. 124) and such resumption may thereby be ordered under that Ordinance.

7. The Bill also sets out the rights and obligations of the franchisee during the franchise period. The statutory rights to be granted to the franchisee include the following:

- (a) the right to determine and collect fares for the use of the System by the public during the franchise period in accordance with the Project Agreement;
- (b) the right to occupy the Cable Car System area in accordance with the terms and conditions of the Project Agreement;
- (c) the right to all wayleaves and other rights over unleased land that are necessary to render the franchise effective;
- (d) the right to use and grant licences for the use of the commercial gross floor area of the Tung Chung Terminal and Ngong Ping Terminal, and to demand and collect fees for such licences; and
- (e) the right to operate vehicle parking facilities at the Tung Chung Terminal and Ngong Ping Terminal and demand and collect fees for the use of such facilities.

8. Apart from the above rights, the Bill also provides for the creation of statutory easements in favour of the franchisee over leased land needed for the operation of the System. It also provides for payment of compensation by the Government for diminution of the value of the landowners' estate, right or interest in the land as a result of the easements. The Lands Tribunal will have jurisdiction to determine the amount of any compensation payable.

9. The obligations to be imposed on the franchisee under the Bill include the operation, management and maintenance of the System and payment of a royalty to the Government at a rate of \$1 per journey for each fare-paying passenger riding on the cable car.

10. To ensure effective enforcement of the provisions of the Bill and the Project Agreement, the Bill provides for the imposition of financial penalties on the franchisee in the event of persistent non-compliance with the requirements of the Bill or substantial breaches of the Project Agreement. A more serious sanction proposed by the Bill is the revocation of the franchise for non-compliance with a notice to remedy a default.

11. Other provisions of the Bill deal with the vesting of the assets of the franchisee in the Government upon termination of the franchise and the power of the franchisee to make bylaws needed for the safe and efficient operation of the System.

12. If enacted, the Bill will 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.

Public consultation

13. According to the LegCo Brief, the Administration has 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 support to bring it forward. The Administration will continue its consultation with the relevant statutory authorities, the IDC and other stakeholders, like Po Lin Monastery, in the course of the statutory and other related procedures required to implement various supporting infrastructure and complementary facilities.

Consultation with LegCo Panel

14. The Panel on Economic Services was consulted on 26 February 2001 on the Administration's proposal for the development of a cable car system linking Tung Chung and Ngong Ping on Lantau Island. On 3 July 2002 and 29 July 2002, the Administration briefed the Panel on the outcome of the operator selection exercise and the way forward for the Project. The Panel discussed the main features of the Bill at a subsequent meeting on 25 November 2002.

15. During previous consultations, members of the Panel had expressed concerns over a wide range of issues. The major ones included the provision of complementary developments at Ngong Ping and objections lodged by Po Lin Monastery on the proposed land use in the vicinity of its premises. Some members had expressed the view that a fare regulatory mechanism should be introduced for the System. Others were concerned about the environmental implications of the Project and other land acquisition-related matters.

Conclusion

16. In view of Panel members' concerns on various aspects of the Project and the System, it is recommended that a Bills Committee be set up to study the Bill in detail.

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