

**立法會**  
***Legislative Council***

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**Paper for the House Committee meeting  
on 16 May 2003**

**Report of the Bills Committee  
on Tung Chung Cable Car Bill**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Tung Chung Cable Car Bill (the Bill).

**Background**

2. 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. The Government subsequently tasked the Mass Transit Railway Corporation (MTRC) (now known as MTR Corporation Limited (MTRCL)) to undertake a feasibility study on the development of the proposal.

3. The MTRC Study concluded that the Project was feasible in both technical and financial terms and would bring about socio-economic benefits to Hong Kong, including additional tourist visits to attractions on Lantau Island, serving as another tourist attraction to enhance visitors' experience in Hong Kong, etc. The Government invited in February 2000 expressions of interest and preliminary proposals on the basis of the alignment as recommended in the MTRC Study.

4. In April 2001, the Executive Council approved the framework for implementing the Project, and on this basis, the Government issued a Project Brief to invite detailed proposals for the finance, design, construction, operation and maintenance of the cable car system. The Government received three proposals upon close of submission in July 2001. The Government short-listed two proponents, including MTRCL, for further negotiations in January 2002.

5. In June 2002, the Executive Council approved the selection of MTRCL as the successful proponent to take forward the Project. In July 2002, the Government entered into a Provisional Agreement with MTRCL. Under the framework approved

for implementing 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 MTRCL. This includes developing a suitable design for the Tung Chung Cable Car System and its ancillary developments, carrying out requisite environmental and technical studies, and completing the necessary statutory procedures.

## **The Bill**

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 Cable Car System. The Bill also sets out the rights and obligations of the franchisee during the franchise period. The detailed provisions relating to the construction and operation of the Cable Car 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 Cable Car 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.

## **The Bills Committee**

7. The House Committee agreed at its meeting on 14 February 2003 to form a Bills Committee to study the Bill. Chaired by Hon James TIEN Pei-chun, the Bills Committee held a total of six meetings to discuss the Bill. The membership list of the Bills Committee is in **Appendix I**. The Bills Committee has invited the 18 District Councils to give views on the Bill and uploaded an invitation note on the Website of the Legislative Council. The Bills Committee has received two written submissions from interested parties. The list of organization/individual which have given views to the Bills Committee is in **Appendix II**.

## **Deliberations of the Bills Committee**

8. The Bills Committee has invited MTRCL to brief members on the design of the Cable Car System, including the complementary development of a themed Tourist Corridor at Ngong Ping, which will be allocated to MTRCL by the Government under a Private Treaty Grant. The Bills Committee has made various suggestions on the cable car selection and modes of operation of the Cable Car System.

9. The Bills Committee notes that the Administration has adopted the principle that only matters 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.

10. The majority of the Bills Committee members support the Cable Car System and have called for the early implementation of the Project. The Bills Committee notes that the Administration is working closely with MTRCL to take forward the statutory procedures necessary to implement the Cable Car System. The target completion date of the Cable Car System is August 2005.

11. The Bills Committee notes that Mr Albert CHAN objects to the Cable Car System due to its impact on existing public transport operators, its impact on the environment, its financial viability and concern about a need for cross-subsidy from MTRCL's rail operation for the cable car operations, and its impact on the sustainable development of the local community due to changes in travelling pattern of visitors to the area.

12. In the course of deliberation, the Bills Committee has examined, inter alia, the following issues:

- (a) franchise for the financing, design, construction, operation and maintenance of the Cable Car System;
- (b) use and occupation of land;
- (c) easements and miscellaneous land matters;
- (d) financial provisions;
- (e) ancillary legal provisions; and
- (f) default and termination of franchise.

### The Franchise

13. Clause 4 of the Bill provides for the grant of a 30-year franchise to MTRCL, or a wholly-owned subsidiary of MTRCL ("the Company") for the design, construction, operation and maintenance of the Cable Car System from Tung Chung town center up to the Ngong Ping plateau.

### *Assessment of proposals for the Cable Car System*

14. The Bills Committee has examined the assessment of proposals for the Cable Car System and the selection of MTRCL as the successful proponent.

15. The Bills Committee notes that the Government received three submissions upon close of submission in July 2001, and short-listed two proponents, including

MTRCL, for further negotiations in January 2002. Based on the predetermined assessment criteria, namely the technical aspects, and the financial and general aspects, the Assessment Panel formed to assess the Final Proposals submitted by the two short-listed proponents concluded in May 2002 that while both proponents were financially capable of taking up the Project, the proposal from MTRCL had a significant advantage in a number of aspects. MTRCL had shown more commitment to the Project by putting up a Final Proposal which addressed issues more comprehensively, and had put more thought to developing the Cable Car System as a tourist facility. MTRCL also performed better in respect of proposed royalty payment, land requirements, safety and rescue provisions, the implementation programme, and environmental and ecological matters. As such, the development right for the Cable Car System was granted to MTRCL.

### *Fares*

16. The Bills Committee notes that the franchisee will have the right to determine and collect fares for the use of the Cable Car System by the public during the franchise period. The Bills Committee has examined the fare levels of the Cable Car System and the need to introduce a fare regulatory mechanism to control its fares.

17. The Bills Committee notes that MTRCL had adopted a working assumption of a fare level of \$66 for a round trip and \$50 for a single trip based on 2000 prices in working out the financial model. The Administration says that the Cable Car System is a tourism project but not an essential public transport facility. The Government does not provide any guarantee on the level of return to the franchisee who has to bear the commercial risks arising from the investment in the Cable Car System. In determining its business strategy, including the fare structure, the franchisee will have to take into account competitions from other transport operators and other tourist attractions to ensure the competitiveness of the Cable Car System. Concessionary and promotional fares may be introduced as appropriate.

### *Financial arrangement and financial viability of the Cable Car System*

18. The Bills Committee has also examined the financial arrangement and financial viability of the Cable Car System, and the concern expressed by members of a need for cross-subsidy from MTRCL's rail operations for the cable car operations.

19. MTRCL has pointed out that as a listed company, they have difficulty in releasing commercially sensitive information to the Bills Committee. Nevertheless, MTRCL has pointed out to the Bills Committee that when comparing the project cost and estimated revenues of the Cable Car System to MTRCL's total assets of \$101 billion and total revenues of \$7.7 billion in 2002, the Cable Car System is only a small project with an initial project cost of \$750 million. MTRCL believes that the project is a self-financing project with a satisfactory rate of return which will not require any cross subsidy from the railway operation.

20. Clause 4(3) provides that if there is a 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 for Economic Development and Labour (the Secretary) shall extend the franchise period by an equal period of time.

21. The Bills Committee has examined whether the conditions so stipulated are too narrow. The Administration explains that whilst the conditions stipulated are not exhaustive, MTRCL is satisfied that given the length of the franchise period which straddles over a period of 30 years, a minor slippage in the delivery of the Cable Car System due to some unforeseen factors should have no major impact on the Company.

#### Use and occupation of land (Part 3 of the Bill)

22. The Bills Committee notes that 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 however grant wayleaves and other rights to the franchisee over Government land for the development of the Cable Car System. The Bill will also 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 to collect fees for such licences, to operate vehicle parking facilities at the Tung Chung Terminal and the Ngong Ping Terminal, to collect fees for such facilities, and to charge management fees.

#### Easements and miscellaneous land matters (Part 4 of the Bill)

23. To facilitate the development of the Cable Car 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. 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 Cable Car System, with consequential arrangements for compensation.

24. 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 14 empowers the Company to gain entry on land in an emergency. Clause 14(4) further provides that 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 may claim from the Company compensation for loss or damage arising as a direct and reasonably foreseeable result of the entry.

25. The Bills Committee has examined the time limit allowed for affected land owners to claim compensation under clause 13(2). It has also requested the Administration to consider the provisions for claims for compensation against the Company for loss or damage arising from emergency entry under clause 14. Having regard to the concern raised by members, the Administration has agreed to introduce Committee Stage amendments (CSAs) to clauses 13 and 14 of the Bill. The proposed CSA to clause 13(2) would enable claims for compensation to be made even when the time limit of 12 months for submitting claims has expired. The proposed CSA to clause 13(6) removes the time limit for submitting unresolved claims to the Lands Tribunal. This would encourage resolution of the claims through mutual agreement. The Administration has also proposed CSA to clause 14(5)(c) to relax the time limit for submitting claims to the Company. A new subclause 14(5A) is proposed to make it clear that a decision of the Lands Tribunal under the Lands Tribunal Ordinance (Cap. 17) would apply to compensation payable by the Company.

#### Financial provisions (Part 5 of the Bill)

##### *Royalty payments (Clause 16)*

26. Clause 16 of the Bill provides that 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. The Schedule of the Bill provides that a royalty of \$1.00 for every single or return journey by a fare-paying passenger will be payable by the Company to the Government. The Bills Committee has examined the basis of pitching the royalty at \$1.00 per journey.

27. The Administration has explained to the Bills Committee that the royalty forms part of the MTRCL's Final Proposal for the Cable Car Project. The royalty remains payable until termination of the franchise under section 28 of the Ordinance. If the franchise is assigned under section 5(1) to any person other than a wholly-owned subsidiary of MTRCL, the Secretary may by notice published in the Gazette amend the Schedule. 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, such notice is not subsidiary legislation and will not be subject to scrutiny by the Legislative Council.

##### *Financial penalties (Clause 19)*

28. Clause 19 provides for the imposition of financial penalties on the Company in the event of persistent failure to comply with any requirements under the Ordinance or substantial breaches of the Project Agreement. 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 a notice under section 19(6). 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.

29. The Bills Committee has examined whether the proposed levels of financial penalty on the Company are too low, particularly for those breaches by their nature not capable of being remedied which is only \$10,000 on the first occasion. The Administration advises that the proposed financial penalties are modeled on the existing Mass Transit Railway Ordinance (Cap. 556). Even if MTRCL were not selected as the project proponent, the other selected operator would be subject to the same terms of penalties. The Administration says that 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.

30. The Bills Committee has also examined the procedure set out in clause 19 for imposing a financial penalty on the Company. The Bills Committee notes that the Secretary shall inform the Chief Executive in Council of the failure or the 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 Bills Committee also notes that the Chief Executive in Council can either approve or disapprove the imposition of a penalty in a specified amount put forward by the Secretary. No provision has been made to allow the Chief Executive in Council to amend the proposed financial penalty put forward by the Secretary. The Administration advises that as the Secretary is the monitoring authority for the Project, he will be in a better position to determine the exact amount of penalty based on the nature and seriousness of the breach. The Secretary will present the full facts to the Chief Executive in Council seeking its endorsement for the proposed financial penalty as appropriate.

#### Ancillary legal provisions (Part 6 of the Bill)

31. As the franchisee will not be given land title to the land provided by the Government for the construction and operation of the Cable Car System, clause 20 of the Bill specifically provides that the Buildings Ordinance (Cap. 123), which does not apply to Government land and buildings erected thereon, will apply to the Cable Car System.

*Power to make bylaws (Clause 22)*

32. 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 Bills Committee notes that the bylaws made under clause 22(1), which involve public conduct and safety, will be subject to positive vetting by the Legislative Council.

*Company may prosecute, etc (Clause 23)*

33. Clause 23(3) of the Bill provides that the prosecutions for an offence under this clause or under the bylaws made under clause 22(1) may be brought by and in the name of the Company. The Bills Committee has examined whether the power so granted to the Company is consistent with other legislation.

34. The Administration explains that 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 in whom it is vested. The Bills Committee notes that power for a private company to prosecute exists in the following legislative provisions: the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) and the Western Harbour Crossing Ordinance (Cap. 436). Similar provisions can also be found in the Mass Transit Railway Ordinance (Cap. 556), the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) and the Peak Tramway Ordinance (Cap. 265) under which, the power to prosecute is conferred on the MTRCL, the Kowloon-Canton Railway Corporation and the Peak Tramways Company Limited respectively.

Default and termination of franchise (Part 7 of the Bill)

*Default (Clause 24)*

35. Clause 24(2)(a) of the Bill provides that the Company will be in default if it fails, or there is a substantial likelihood of it failing 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. Since the provision will affect the Company, the Bills Committee is of the view that it is important that the Company is aware of the ambit of "all other relevant legislation" to avoid any unnecessary argument on the extent to which the Company may be held to be in default under the Bill.

36. The Administration advises that the phrase "all other relevant legislation" in clause 24(2)(a) is intended to be a catch-all provision relating to the operation and maintenance of the Cable Car System. The clause is further qualified by sub-clauses (2)(c) to (e), i.e. the failure or likely failure to comply with the relevant legislation is



likely to result in a breakdown of the Cable Car System or cause death or serious injury to the passenger. Therefore, the Administration considers that it is not necessary to spell out all the relevant legislation. The Administration indicates that it has also consulted MTRCL on the provisions of the Bill and MTRCL is content with the provision.

### Safety

37. The Bills Committee has examined the operation and safety standards of the Cable Car System. The Administration advises that the design, operation and maintenance of the Cable Car System will be governed by Aerial Ropeways (Safety) Ordinance (Cap. 211) and its subsidiary legislation, the Aerial Ropeways (Operation and Maintenance) Regulations (Cap. 211A). The Regulations provide for, amongst others, the safety requirements for operation of the Cable Car System under inclement weather, including requirements to reduce the speed or to stop the operation of the system under prescribed conditions.

38. The Bills Committee notes that the design submissions from MTRCL indicate that the Cable Car System is designed to cope with the prevailing weather conditions in Hong Kong, including high winds, monsoon winds, lightning, etc. Wind monitoring devices will be installed to monitor the speed and direction of the monsoon winds to ensure that it is safe to operate the Cable Car System. The design will also incorporate suitable lightning protection devices. Furthermore, a closed-circuit television system will be installed throughout the cable car route to monitor operations of the Cable Car System.

39. In order to gather data on the specific conditions along the route of the Cable Car System, the MTRCL has already installed four temporary wind monitoring stations at the strategic locations in Lantau North Country Park. As part of the system, permanent monitoring stations will be installed at all cable towers. These will provide real-time information on wind conditions along the cable car route. The Hong Kong Observatory and MTRCL will share wind data on an on-going basis.

### *Order of revocation (Clause 27)*

40. Clause 27 of the Bill provides that the Chief Executive in Council may by order revoke the franchise. The Bills Committee notes that an order to be made under clause 27(5) is only intended to be a public notice in the event of a revocation of the franchise under clause 27(1). Such notice is not intended to be subsidiary legislation. Accordingly, section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply. However the Administration will make every effort to brief the Legislative Council.

41. The Bills Committee notes that 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 Chief Executive in Council to vest the

franchise in a third party after the revocation. The Administration proposes to add a new subclause 27(7) along the lines of similar provisions in other Build-Operate-Transfer legislation. Consequential amendments are also proposed to the definitions of "Company", "fare-paying passenger" and "Project Agreement" under clause 2 and to clauses 16(2) and 28(2). In addition to ensuring that the liability of the Company arising from the emergency access to land pursuant to clause 14 will not cease only by reason of the franchise being terminated, the Administration proposes to add a new subclause 29(1)(ba) to make this clear.

#### *Termination of franchise (Clause 28)*

42. The Bill provides that on termination of the franchise, the "assets" of the franchisee in respect of the Cable Car 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). For this purpose, "assets" 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.

43. The Bills Committee has examined whether the meaning of "assets" should be expanded to cover not only the physical parts of the Cable Car System but also software or value-added application systems developed by the Company. The Administration says that upon the termination of the franchise, the Government is not intended to take possession of the Company but merely those items, including the physical parts of the Cable Car System which are essential to its operation. Clause 32 of the Bill is drafted to this effect.

#### Arbitration

44. Clauses 19, 29 and 33 of the Bill contain provisions for resolving disputes between the Government and the franchisee by arbitration as provided for in the Project Agreement 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 to a decision relating to the application of Aerial Ropeways (Safety) Ordinance (Cap. 211). The Bills Committee notes that the determination of arbitration proceedings is intended to be final and binding but will not affect the rights of the Company to seek judicial review. This will be reflected in the Project Agreement.

### Offence to obstruct Company (Clause 38)

45. Clause 38 of the Bill provides that it is an offence to wilfully and without reasonable excuse obstruct or interfere with the lawful exercise by the Company of its rights under the Ordinance. The maximum penalty for the offence is a fine at level 3 (\$10,000) and imprisonment for 3 months. The Bills Committee has examined whether the level of penalty proposed for the offence to obstruct the Company under clause 38 is in line with existing legislation. The Administration has advised that clause 38 is modeled on a similar provision in the Electricity Networks (Statutory Easements) Ordinance (ENSEO) (Cap. 357). Under the ENSEO, it is an offence to wilfully and without reasonable excuse obstruct the power companies in exercising their rights under the Ordinance. The maximum penalty for that offence is a fine of \$5,000 and imprisonment for 6 months.

### Plan of Cable Car System area and route projection area (Clause 3)

46. The Bills Committee notes that the Secretary will be required to gazette a plan of the Cable Car System area and of the route projection area before the Project Agreement comes into force. Extension of the Cable Car System would require separate approval by the Legislative Council. However, clause 3(2) of the Bill empowers the Secretary to make minor adjustment to 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.

47. The Bills Committee has examined whether the discretionary power so granted to the Secretary will jeopardize the interest of land owners in the vicinity. The Administration says the provision is intended to deal with exceptional cases such as changes to the boundaries of Outline Zoning Plans. MTRCL cannot make any changes to the approved plans on its own initiative.

### Environmental implications of the Cable Car System

48. The Bills Committee has examined the environmental implications of the Cable Car System. It has also examined whether the Bill provides for any escape clause allowing the Company or a wholly-owned subsidiary of the Company to evade its responsibility to remedy a default relating to the control of noise under the Bill on the grounds that it is not practicable or financially viable to do so.

49. The Bills Committee notes that section 13 of the Noise Control Ordinance (Cap. 400) (NCO) provides that a noise abatement notice served under subsection (1) relating to noise emanating from any place may require the person on whom it is served to abate the noise within the period specified therein and to do all things as may be necessary for that purpose. Section 37 of the NCO provides that section 13 shall apply to MTRCL and the Kowloon-Canton Railway Corporation only so far as is practicable and compatible with the discharge of any function or the exercise of any

power or duty conferred or imposed upon them according to law.

50. The Bills Committee notes that a wholly-owned subsidiary of MTRCL is a separate legal entity. As such, even though there are exemption provisions in other legislation which exempt MTRCL from certain duty, such provisions are not applicable to the subsidiary of MTRCL. Indeed, 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, and seek approval for the EIA 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.

51. The Administration further advises that contamination of the environment is regulated during the course of the construction, operation and maintenance of the Cable Car System by the relevant environmental legislation. For example, the Waste Disposal Ordinance (Cap. 354) regulates the disposal of the mineral oils used as lubricants for engines. This is classified as chemical waste under the Ordinance. In particular, the Ordinance and the Waste Disposal (Chemical Waste) (General) Regulation (Cap. 354, sub. leg. C) control all aspects of chemical waste management including the packaging, labeling, storage, collection, transport, treatment and final disposal. A failure to comply with the relevant provisions would be subject to punishment under the legislation.

52. The Bills Committee also notes that the franchisee will also have ongoing obligations under the Project Agreement to comply with all relevant legislation, including environmental legislation. Any substantial breach of the Project Agreement, including non-compliance with any relevant legislation, would attract a financial penalty. In practice, under its current proposal, MTRCL proposes to lubricate the rope with an environmentally-friendly lubricant which is a bio-degradable product widely used by ropeways in Europe.

53. Notwithstanding the above and in order to address members' concern, the Administration has agreed to move a CSA to the effect that section 37 of the NCO shall not apply to construction works as defined in the Bill or to the operation of the Cable Car System.

#### Impact of the Cable Car System on public transport operators

54. The Bills Committee notes the concerns expressed by Mr Albert CHAN and New Lantao Bus Company (1973) Limited (NLB) about the impact of the Cable Car System on NLB.

55. The Bills Committee notes that development of the Cable Car System is expected to bring a substantial increase in the number of visitors to Ngong Ping. MTRCL estimates that the number of visitors to Ngong Ping in 1999 was around 1.16

million. With the developments at Ngong Ping and the Cable Car System, the total number of visitors to the area, both local and overseas, will reach 1.9 million and 2.5 million in 2006 and 2016 respectively. The Cable Car System is expected to have some impact on the market share of the Tung Chung – Ngong Ping service of NLB. However, it is also envisaged that NLB buses would benefit from the additional visitors to Lantau induced by the Cable Car System and other developments at Ngong Ping.

56. MTRCL have indicated that they have entered into an agreement-in-principle with Kwoon Chung Bus Holdings Limited, which owns NLB, to serve as their operating partner for the Cable Car System. NLB can complement the operation of the Cable Car System by offering integrated transport and tourism promotion packages to South Lantau and a round-Lantau bus tour service. Transport Department also plans to commence a study later this year to assess the impact of various developments on Lantau including the Cable Car System on franchised bus services.

57. Regarding the impact of the Cable Car System on the taxi service on Lantau, the Bills Committee notes that according to the Transport Department's initial assessment, the impact of the Cable Car System on the taxi service on Lantau is not expected to be significant because Lantau taxis provides personal door-to-door service for passengers and its function is quite distinct from the Cable Car System. Whilst the Cable Car System may divert some passengers from Lantau taxis on the route between Tung Chung and Ngong Ping, the Cable Car System is also expected to generate new transport demands which would also benefit the Lantau taxi trade.

58. The Bills Committee also takes the opportunity to review the planning and design of the Ngong Ping Public Transport Interchange. It also looks into the parking demand and supply in Tung Chung Terminal as well as the operation of the Lantau Permit System.

#### Land use planning framework

59. The Bills Committee has examined whether the development rights of both the Tourist Corridor in Ngong Ping and the Cable Car System should be granted to the same proponent and the likely operation of the Tourist Corridor as a monopoly. The Bills Committee also takes the opportunity to examine the funding arrangement for the sewage treatment plant in the area and whether MTRCL should be required to finance the public infrastructure.

60. The Administration says that Ngong Ping is already a significant tourist attraction. The number of visitors to the area has been in decline over recent years. There is a need to renew and upgrade the facilities to enable the area to become a more important tourism attraction. This view was shared by members of the Legislative Council Panel on Economic Services who, when consulted in January 2001, expressed the view that there should be complementary developments at Ngong

Ping to tie in with the development of the Cable Car System.

61. The Administration has considered the type of tourism development that should be brought to Ngong Ping. Any such development should respect and blend in with the natural and religious setting of the area and its tranquil environment. After careful consideration and extensive discussion with interested parties, an Outline Zoning Plan has been drawn up, which envisages a theme tourist corridor leading from the Cable Car Terminal at Ngong Ping. This will provide a total of 6,000m<sup>2</sup> of commercial gross floor area. Indeed, various options for the development of the Tourist Corridor have been considered. In keeping with the principle that public sector involvement should be minimized, options involving Government development or funding for facilities in the “Tourist Corridor” have been ruled out since such an approach would involve the development and management of commercial facilities.

62. The Administration considers that it would be appropriate to pursue the option of granting the development rights for the Tourist Corridor to the franchisee to provide assurance that the development of the Cable Car System and these facilities dovetail. This option will allow the franchisee to develop and manage the Project and the complementary facilities as an integrated tourist attraction in a coherent manner and hence provide a better assurance of quality and standards. The franchisee would also be able to minimize programme interfacing and technical constraints between the Project and the “Tourist Corridor”.

63. The Bills Committee notes that allocation of the land for the “Tourist Corridor” will be by Private Treaty Grant, with terms similar to the commercial gross floor area for the Project, including a period of 30 years to tie the land grant with the franchise period, and land premium payable at full market value upfront.

64. Regarding the funding arrangement for the sewage treatment plant in the area, the Administration says that this is essential public infrastructure, and hence, should be funded from public purse.

#### *Consultation with Po Lin Monastery*

65. The Bills Committee has examined whether the Cable Car System has the support of Po Lin Monastery, which is an essential factor to the success of the Cable Car System. The Administration advises that the Government gave no guarantee as to the opening of Po Lin Monastery and the Statue of Buddha in the tender document. Po Lin Monastery also did not raise any objection to the alignment of the cable car route and the location of the Ngong Ping terminal. Whilst the Administration is not in a position to force a private entity to open its private premises to the public, it understands, through the discussions with the Monastery, that it is the Monastery’s intention to continue to open its facilities to the public. The Administration says it will continue a dialogue with Po Lin Monastery on matters concerning the design and management details of the proposed “Piazza”, and the question of access roads near Po Lin Monastery. In discussing the option of entrusting the future management of the

proposed "Piazza" to Po Lin Monastery, one of the key conditions is that the "Piazza" will be opened to the public at all times. As most of the views of the Government and Po Lin Monastery are close to each other, there should not be any major problems for resolving technical details.

### **Committee Stage amendments**

66. Apart from the major CSAs mentioned in the foregoing paragraphs, the Administration will also move a number of amendments to improve the text of the Bill. A copy of the CSAs proposed by the Administration is at **Appendix III**. The Bills Committee has not proposed any CSAs.

### **Recommendation**

67. The Bills Committee recommends the resumption of the Second Reading debate on the Bill on 28 May 2003.

### **Advice sought**

68. Members are requested to support the recommendations of the Bills Committee at paragraph 67 above.

Council Business Division 1  
Legislative Council Secretariat  
15 May 2003

**Bills Committee on  
Tung Chung Cable Car Bill**

**Membership list**

<b>Chairman</b>	Hon James TIEN Pei-chun, GBS, JP
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<b>Clerk</b>	Mr Andy LAU
<b>Legal Adviser</b>	Miss Connie FUNG
<b>Date</b>	17 March 2003



**Bills Committee on  
Tung Chung Cable Car Bill**

**List of parties which have submitted views to the Bills Committee**

1. New Lantau Bus Co (1973) Ltd
2. Mr YEUNG Wai-sing, Eastern District Council Member

TUNG CHUNG CABLE CAR BILL

COMMITTEE STAGE

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

<u>Clause</u>	<u>Amendment Proposed</u>
2(1)	<p>(a) In the definition of "Company" by adding before the semicolon -</p> <p style="padding-left: 40px;">", or a person to whom the franchise is assigned under section 5, or a body corporate designated under section 27(7)".</p> <p>(b) In the definition of "fare-paying passenger" by deleting "to the Company or its agent, or to the MTR Corporation Limited or its agent".</p> <p>(c) In paragraph (a) of the definition of "Project" by deleting "finance" and substituting "financing".</p> <p>(d) In paragraph (b) of the definition of "Project Agreement" by deleting "section 5" and substituting "this Ordinance".</p> <p>(e) In the definition of "局長" by deleting "Scretary" and substituting "Secretary".</p> <p>(f) In the definition of "第2級"、"第3級" by adding "分別" before "指".</p>

- 2(4) (a) By deleting "a Secretary or a Director" and substituting "the Secretary or the Director".
- (b) By adding "分別" before "授權".

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

- 2 By adding -

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

- 5(2) (a) In paragraph (c) by adding ", consistently with subsection (4)(a)" after "transferred".
- (b) By deleting "所指" where it twice appears and substituting "所規定".

- 5(3) By deleting "該處置" and substituting "擬議處置".

- 5 By adding -

"(4) If the disposal pursuant to subsection (1) amounts to an assignment of the franchise -

- (a) it must be to a body corporate;  
and
- (b) Schedule 1 to the Prevention  
of Bribery Ordinance (Cap. 201)  
is deemed to be amended -
  - (i) to remove the  
Company which is  
disposing of its  
rights and  
obligations  
(unless it is the  
MTR Corporation  
Limited); and
  - (ii) to include the body  
corporate to which  
the franchise is  
assigned."

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

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

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

13 By adding -

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

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

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

14 By adding -

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

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

" -

(a) the franchise is assigned under section 5 to any person other than a wholly-owned

subsidiary of the MTR  
Corporation Limited; or

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

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

- 19(10) By deleting "罰款所規定的款項" and substituting "的  
罰款".

- 20 (a) In the heading by deleting "**Buildings  
Ordinance**" and substituting "**other  
Ordinances**".

- (b) By renumbering the clause as clause 20(1).

- (c) By adding -

"(2) Section 37 of the Noise  
Control Ordinance (Cap. 400) shall not  
apply to construction works as defined  
in this Ordinance or to the operation of  
the Cable Car System."

22(1)(f) By deleting everything after “地與” and before “的事宜” and substituting “吊車系統的管制、營運與管理以及乘客和吊車系統的安全有關且屬吊車公司認為需要或適宜作出規定的任何其他”.

23(1) By adding “if that information is within the person’s knowledge” before the full stop.

24(2) By deleting “事項” and substituting “情況”.

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

27 By adding -

“(7) If the franchise is revoked under subsection (1), the Chief Executive in Council may by order designate another body corporate as the Company for the purposes of this Ordinance, on such terms and conditions, consistent with this Ordinance, as the Chief Executive in Council thinks fit, and upon the publication of that order in the Gazette the franchise vests in that body corporate.

(8) Upon the publication of an order under subsection (7), Schedule 1 to the

Prevention of Bribery Ordinance (Cap. 201) is deemed to be amended -

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

28(2) By adding before the full stop -

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

29(1) By adding -

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

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

**"31. 政府對吊車公司的債項並無法律責任**

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



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