

TUNG CHUNG CABLE CAR ORDINANCE**CONTENTS**

Section	Page
PART 1	
PRELIMINARY	
1. Short title and commencement	A765
2. Interpretation	A765
3. Plan of Cable Car System area and route projection area	A771
PART 2	
THE FRANCHISE	
4. Grant of franchise	A773
5. Assignment or other disposal of rights and obligations	A775
PART 3	
USE AND OCCUPATION OF LAND	
6. Right to occupy Cable Car System area	A775
7. Wayleaves	A777
8. Right to occupy commercial GFA and to operate vehicle parking facilities	A777
9. Reservation of rights	A777
PART 4	
EASEMENTS AND MISCELLANEOUS LAND MATTERS	
10. Statutory easements	A777
11. New easements	A779
12. Notice of creation of easements	A779
13. Compensation	A781
14. Entry on land in emergency	A785
15. Resumption of land	A787
PART 5	
FINANCIAL PROVISIONS	
16. Royalty payments	A787
17. Records in relation to royalty	A787
18. Tax status of the Company	A789
19. Financial penalties	A789

Section	Page
PART 6	
ANCILLARY LEGAL PROVISIONS	
20. Application of other Ordinances	A791
21. Installation of utilities in Cable Car System area	A793
22. Power to make bylaws	A793
23. Company may prosecute, etc.	A795
PART 7	
DEFAULT AND TERMINATION OF FRANCHISE	
24. Default	A795
25. Defaults capable of remedy	A797
26. Notice of intention to revoke franchise	A799
27. Order of revocation	A801
28. Termination of franchise	A803
29. Consequences of termination	A803
30. Consequences of expiry of franchise period	A807
31. Government not liable for Company's debts	A807
32. Meaning of "assets"	A807
PART 8	
MISCELLANEOUS	
33. Arbitration	A807
34. Directions by Chief Executive in Council	A809
35. Certificate as to moneys owing to Government	A809
36. Non-derogation from Government's rights	A809
37. Limitation of liability	A811
38. Offence to obstruct Company	A811
PART 9	
CONSEQUENTIAL AMENDMENTS	
Lands Tribunal Ordinance	
39. Ordinances under which matters may be submitted to the Tribunal for determination	A811
Schedule Royalty	A811

HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE NO. 20 OF 2003**L.S.

TUNG Chee-hwa
Chief Executive
5 June 2003

An Ordinance 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), or a person to whom the franchise is assigned under section 5, or a body corporate designated under section 27(7);
- “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, 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 financing, 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 this Ordinance, 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 the Secretary or the 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.

(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.

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, consistently with subsection (4)(a).

(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.

(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.

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.

(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, or within such longer period as the Director may in any particular case allow, 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 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) Compensation and costs payable by the Government under this section are payable out of the general revenue.

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

(6) 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 (20 of 2003)”.

(7) 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—

(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.

(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 other Ordinances

(1) 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.

(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.

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 if that information is within the person’s knowledge.

(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).

(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. 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, 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. 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) payment of compensation arising from entry on land by the Company pursuant to section 14;
 - (d) 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 (d) 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 of 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—

“20 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.