

立法會
Legislative Council

LC Paper No. LS18/12-13

**Paper for the House Committee Meeting
on 11 January 2013**

**Legal Service Division Report on three
Proposed Resolutions under section 5(3)(b) of the
Public Bus Services Ordinance (Cap. 230)**

The Secretary for Transport and Housing has given notices to move three motions at the Legislative Council (LegCo) meeting on 23 January 2013 to seek LegCo's approval so that the new 10-year franchises granted by the Chief Executive in Council on 24 April 2012 to New World First Bus Services Limited, Long Win Bus Company Limited and Citybus Limited (Franchise for Airport and North Lantau Bus Network)¹ (collectively known as "the New Franchises") will not be subject to sections 27, 28, 29 and 31 of the Public Bus Services Ordinance (Cap. 230) (the Ordinance).

2. Section 5(3)(b) of the Ordinance provides that a franchise shall, except where LegCo by resolution excludes the application of all or any of the provisions of the profit control scheme (the Scheme), be subject to the Scheme as defined in section 2 of the Ordinance. The motions, if passed by LegCo, operate to exclude the New Franchises from the Scheme during their franchise periods.

3. The Scheme is set out in Part V² of the Ordinance. In gist, section 28(1) provides for the permitted return that a franchised bus company can earn in an accounting year, calculated by reference to a percentage per annum as specified in its franchise of the average net fixed assets of the bus company in that accounting year. Bus fares are to be set at a level which allows cost recovery plus a certain level of profit with a cap on the permitted return. Profit exceeding the permitted return in any year will, according to section 28(3), be added to a reserve known as the Development Fund provided

¹ The new franchise granted to New World will commence at 0400hr on 1 July 2013 whereas the new franchises respectively granted to Long Win and Citybus will commence at 0400hr on 1 May 2013. Members may refer to Annex 1 of the LegCo Brief issued by the Transport and Housing Bureau (File Ref: THB(T)CR2/5591/99) dated January 2013 for further information.

² Part V consists of sections 26 to 32. The New Franchises are only excluded from the operation of sections 27 to 29 and 31.

under section 27. Section 28(4) provides that when profit falls below the permitted return, the company shall recover the shortfall by drawing money from the Development Fund. Further, section 29 provides for the deductions that must be deducted from the permitted return in each accounting year. According to section 31, the operation of the Scheme in respect of a grantee shall be reviewed by Chief Executive in Council every 2 years.

4. According to the LegCo Brief issued by Transport and Housing Bureau dated January 2013 (File Ref: THB(T)CR2/5591/99), the Scheme had been criticised by LegCo and the community in that it reduced the incentive for the franchised bus companies to enhance cost-effectiveness and to reduce expenditure. The Scheme also in effect encouraged the franchised bus companies to over-expand and inflate their asset value. In the light of the said criticisms, in June 1992, the then Executive Council decided that the Scheme would not be applicable to all new bus franchises granted thereafter.

5. According to the Administration, the Scheme is not applicable to any existing bus franchises and the disallowance of permitted return offers the best protection of passengers' interest. Further, the New Franchises have been granted on the clear understanding that there would be no permitted return. Members may refer to the LegCo Brief and drafted speeches annexed to the notices for further information.

6. As advised by the Clerk to the Panel on Transport, the Panel discussed the New Franchise requirements at five meetings held from July 2011 to May 2012 and received views from deputations at one of the meetings. The Panel expressed a strong view that the Administration should seize the opportunity of negotiating the new ten-year franchises with each of the three franchised bus companies to press for fare concessions and service enhancements. The Panel did not specifically discuss the Scheme.

7. No difficulties relating to the legal and drafting aspects of the proposed resolutions have been identified. According to the LegCo Brief, the Administration intends to publish the Resolution, if passed by LegCo, in the Gazette on 25 January 2013.

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