

LEGISLATIVE COUNCIL BRIEF

Peak Tramway Ordinance
(Chapter 265)

PEAK TRAMWAY (AMENDMENT) BILL 2013

INTRODUCTION

A At the meeting of the Executive Council on 3 September 2013, the Council ADVISED and the Chief Executive ORDERED that the Peak Tramway (Amendment) Bill 2013 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to empower the Chief Executive in Council to grant an operating right to the Peak Tramways Company Limited (“PTC”) for a two-year interim period.

JUSTIFICATIONS

Legal provisions for the operating right

2. The peak tramway is run by PTC on the strength of an operating right granted by the Government under section 2A of the Peak Tramway Ordinance (Chapter 265) (“the Ordinance”). PTC’s current 10-year operating right to operate the peak tramway lasts from 1 January 2004 to 31 December 2013. It was granted by the Chief Executive in Council in 2003 on account of PTC’s good performance on service and safety, and its commitment to implement a number of measures to enhance passenger convenience as well as following its payment of a lump-sum premium of \$36.8 million for the period.

3. Previously, it was the understanding of the Government and PTC that sections 2A(5) and 2A(6) of the Ordinance provided the necessary basis for the continued operation of the peak tramway beyond 2013, subject to application by PTC, payment of a premium by PTC and approval by the Executive Council. However, during the discussion on the extension of the operating right beyond 2013 between the Government and PTC, and upon further examination of the legislation by and advice from the Department of Justice, it has come to the Government’s attention that sections 2A(5) and 2A(6) were one-off provisions and would not allow further extensions beyond 2013. We need to amend the Ordinance to enable the Chief Executive in Council to have the power to grant the operating right for the peak tramway again.

Legislative amendment exercise – a two-stage approach

4. The amendment exercise, however, will not be straightforward. The Government would need to study and decide upon the long-term arrangements for the operating right of the peak tramway, including assessing the merits and feasibility of PTC's proposed upgrading plan¹ for the peak tramway system and services, how the operating right should be granted, extended and, where necessary, ended for the long term having regard to the upgrading plan (if it is considered meritorious and feasible in the end). All these tasks are complex. They would take time to complete and it is not possible to resolve all the issues between now and year end. We therefore propose to first amend the Ordinance to provide for a statutory power to grant an interim operating right to PTC to ensure no disruption to the peak tramway service. Considering the tasks which need to be completed, and having regard to PTC's request for early certainty on the long-term arrangements to enable it to decide whether to take forward its upgrading plan, a two-year period would be reasonable. During the interim period, the Government would resolve all the aforementioned issues related to the long-term arrangements for the operation of the peak tramway, and prepare a bill on the long-term arrangements for timely introduction into LegCo so that they could be ready for implementation before the end of the interim period on 31 December 2015.

Basis to grant the two-year interim operating right

5. In proposing amendments to the Ordinance to grant an operating right to PTC for a two-year interim period upon the expiry of the current one on 31 December 2013, the Government has assessed carefully, and is satisfied with, PTC's safety and service performance during the current operating right period. Details are set out at **Annex B**. A condition which PTC must satisfy for it to be granted the operating right is that the company shall pay a premium to the Government, on account of the fact that the land on which the track of the peak tramway lies is Government land (its two termini are located on land owned by PTC). The premium amount is being assessed by the Lands Department.

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¹ The Government is given to understand that the plan comprises road, civil engineering, drainage and other works and requires heavy investment. Its key features include –

- (a) replacement of tramcars with new ones that can increase carrying capacity by over 60%;
- (b) substantial improvement of the two termini to expand the holding capacity and improve the waiting environment;
- (c) installation of an upgraded haulage system to operate the enlarged tramcars whilst maintaining safety and reliability; and
- (d) replacement of all track rails and structural improvement of track foundation and tramway bridges.

THE BILL

6. The main provisions of the Bill are as follows –
- (a) **Clause 1** sets out the short title; and
 - (b) **Clause 3** adds two new subsections (i.e. subsections (7) and (8)) to section 2A of the Ordinance to empower the Chief Executive in Council to grant to PTC the right to run and operate the peak tramway for a period of two years commencing on 1 January 2014 on such terms as may be agreed between the Government and PTC.

LEGISLATIVE AMENDMENT TIMETABLE

7. The Bill will be published in the Gazette on 13 September 2013 and introduced into LegCo on 9 October 2013.

IMPLICATIONS OF THE PROPOSAL

- C 8. The proposal has financial, economic and environmental implications, as set out at **Annex C**. It has no productivity, civil service, sustainability or family implications. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

9. We consulted the LegCo Panel on Transport, with members from the Panel on Economic Development (the subject Panel on tourism matters) participating, on 19 July 2013 on the two-stage approach and the proposed legislative amendments for a two-year interim operating right. LegCo members supported this two-stage approach, with the first being to amend the law for a two-year interim operating period to avoid disruption to the peak tramway service. As for the long-term arrangements, a clearly expressed sense of LegCo members was that a number of issues must be fully addressed. These include the “exit arrangement”, premium payable by the operator of the peak tramway service, as well as the operator’s profitability. The Transport Advisory Committee was also consulted on 30 July 2013, and supported the granting of a two-year interim operating right to PTC to ensure the continued operation of the peak tramway service.

PUBLICITY

10. A press release will be issued on 11 September 2013. A spokesperson will be available for answering media enquiries.

ENQUIRIES

11. Any enquiries on this brief can be addressed to Miss Carrie Chang, Principal Assistant Secretary for Transport and Housing (Transport) (Tel: 3509 8171).

**Transport and Housing Bureau
11 September 2013**

**A BILL
To**

Explanatory Memorandum

Empower the Chief Executive in Council to grant to the Peak Tramways Company Limited the right to run and operate the Peak Tramway for a period of 2 years.

The purpose of this Bill is to amend the Peak Tramway Ordinance (Cap. 265) to empower the Chief Executive in Council to grant to the Peak Tramways Company Limited the right to run and operate the Peak Tramway for a period of 2 years. The period commences on 1 January 2014.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Peak Tramway (Amendment) Ordinance 2013.

2. Peak Tramway Ordinance amended

The Peak Tramway Ordinance (Cap. 265) is amended as set out in section 3.

3. Section 2A amended (right to run and operate the tramway)

After section 2A(6)—

Add

“(7) The Chief Executive in Council may grant to the company the right to run and operate the tramway authorized by this Ordinance, along the route specified in section 3, for a period of 2 years commencing on 1 January 2014.

(8) The right granted under subsection (7) is subject to this Ordinance and terms as may be agreed between the company and the Government.”.

**Safety and Service Performance of PTC
under the Current Operating Right**

Safety performance

PTC has carried out regular inspections and maintenance works in compliance with the relevant statutory requirements. It has also implemented a series of measures to further enhance the safety of the system. These include upgrading the signalling and control system, providing additional emergency walkway and safety railings along the track, reinforcing the tramway bridges, strengthening foundations, and repairing the slopes adjacent to the tramway. In addition, PTC has strengthened communication with the relevant government departments, developed a fully updated emergency manual and enhanced staff training for emergency response.

2. Over the period of the current operating right starting in 2004, there has been no major incident involving the operation of the peak tramway. Occasional service suspensions were mainly due to pre-scheduled maintenance works, inclement weather or minor equipment faults. From 2004 to 2012, the peak tramway was out of service for an average of fewer than six hours per year due to unplanned maintenance issues, representing 0.08% of total service hours. Swift actions were taken by PTC to rectify the defects and there was minimal disruption of service.

Service performance

3. The average daily patronage of the peak tramway has increased from about 11,000 in 2004 to about 16,000 in 2012. The service has been maintained at a satisfactory level throughout. From 2004 to the first quarter of 2013, the Transport Complaints Unit received fewer than two complaints and suggestions on average against the peak tramway every year. This represents a ratio of less than 0.001% of total number of passengers. These cases were mainly about the general standard of service (such as the conduct and performance of individual staff) and did not concern any major issues. Meanwhile, PTC has taken improvement measures as appropriate in response to the complaints and suggestions.

FINANCIAL IMPLICATIONS

The payment of the premium for the two-year interim operating right by PTC will increase the general revenue of the Government.

ECONOMIC IMPLICATIONS

2. The continued operation of the peak tramway will preserve one of the major local tourist attractions and this will be conducive to maintaining Hong Kong's attractiveness to tourists.

ENVIRONMENTAL IMPLICATIONS

3. The continued operation of the peak tramway will obviate the need to enhance the provision of road-based public transport services to/from the Peak. This helps to reduce road-side emission.