

**立法會**  
**Legislative Council**

LC Paper No. CB(4)1322/14-15  
(These minutes have been seen  
by the Administration)

Ref: CB4/BC/2/14

**Bills Committee on Peak Tramway (Amendment) Bill 2015**

**Minutes of the second meeting held on  
Tuesday, 2 June 2015, at 5:00 pm  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)  
Hon CHAN Kam-lam, SBS, JP  
Hon Cyd HO Sau-lan, JP  
Hon Paul TSE Wai-chun, JP  
Hon Frankie YICK Chi-ming  
Hon YIU Si-wing  
Hon CHAN Han-pan, JP  
Dr Hon Kenneth CHAN Ka-lok  
Hon KWOK Wai-keung  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon SIN Chung-kai, SBS, JP

**Member attending** : Hon Martin LIAO Cheung-kong, SBS, JP

**Members absent** : Hon WONG Kwok-hing, BBS, MH  
Hon Tony TSE Wai-chuen, BBS

**Public Officers  
attending** : **Agenda item II**

Mr Andy CHAN, JP  
Deputy Secretary for Transport and Housing  
(Transport) 2

Miss Carrie CHANG  
Principal Assistant Secretary for Transport and  
Housing (Transport) 1

Mr Gilbert MO  
Deputy Law Draftsman (Bilingual Drafting and  
Administration)  
Department of Justice

Mr Llewellyn MUI  
Senior Assistant Solicitor General  
Department of Justice

Ms Doris CHOW  
Assistant Director (Regional 1)  
Lands Department

**Clerk in attendance** : Ms Debbie YAU  
Chief Council Secretary (4)5

**Staff in attendance** : Miss Evelyn LEE  
Assistant Legal Adviser 10

Miss Mandy NG  
Council Secretary (4)5

Ms Zoe TONG  
Legislative Assistant (4)5

---

Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(4)1089/14-15 -- Minutes of meeting held on  
18 May 2015)

The minutes of the meeting held on 18 May 2015 were confirmed.

**II. Meeting with the Administration**

(LC Paper No. CB(4)1006/14-15(01) -- Marked-up copy of the Bill  
prepared by the Legislative  
Service Division (Restricted to  
members only)

Action

- LC Paper No. CB(4)1069/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 18 May 2015
- LC Paper No. CB(4)1069/14-15(02) -- Letter from the Assistant Legal Adviser to the Administration dated 19 May 2015
- LC Paper No. CB(4)1069/14-15(03) -- Administration's consolidated response to issues raised at the meeting on 18 May 2015 and to the Assistant Legal Adviser's letter dated 19 May 2015)

Discussion

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**).

Follow-up actions to be taken by the Administration

3. The Administration was requested to provide the following information –
- (a) in respect of the proposed mandatory lease arrangement ("MLA") under exit mechanism, the Administration pointed out that similar arrangement could be found under the Public Bus Services Ordinance (Cap. 230), Ferry Services Ordinance (Cap. 104) and Mass Transit Railway Ordinance (Cap. 556). In view of it, the Administration undertook to provide information on the similarities and differences in the arrangements between these Ordinances and the Bill, in particular, the Administration might wish to provide –
- (i) details on the ownership of the pieces of land concerned (such as whether a piece of land was owned by the relevant franchisee) and the nature of the properties (such as whether the properties were real properties) that the respective examples were applicable to; and
- (ii) information regarding the application of the said examples on the properties concerned to illustrate the similarities and differences that were mentioned in the paragraph.
- (b) by having Peak Tramways Company Limited ("PTC") agreeing to surrender its present grant and by the Government making a re-grant to stipulate MLA in the land leases, the proposed MLA could be

Action

implemented by non-legislative means. The Administration undertook to explain why it was considered not feasible and the legal reasoning as to why the said non-legislative means could not bind the successor, i.e. the new operator/lessee, by ways of stipulating the terms (including the term which was provided in the proposed section 11B(9)) of the arrangement in the relevant land leases and rendering any grantee of the operating right of the peak tramway to be bound by the terms; and

- (c) the handling of China Motor Bus Company's assets and premises after its franchise being revoked.

**III. Any other business**Dates of next meeting

- 4. Members noted that the next meeting of the Bills Committee would be held on 29 June 2015 to meet with the Administration and deputations.
- 5. There being no other business, the meeting ended at 7:04 pm.

Council Business Division 4  
Legislative Council Secretariat  
14 July 2015

**Proceedings of the second meeting of  
the Bills Committee on Peak Tramway (Amendment) Bill 2015  
on Tuesday, 2 June 2015, at 5:00 pm  
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Confirmation of minutes of meeting</b>			
000428 – 000547	Chairman	Confirmation of minutes of meeting	
<b>Agenda item II – Meeting with the Administration</b>			
000548 – 001007	Chairman Administration	The Administration briefed members on its consolidated response to issues raised at the meeting on 18 May 2015 and to the letter of Assistant Legal Adviser ("ALA") dated 19 May 2015 (LC Paper No. CB(4)1069/14-15(03)).	
001008 – 003003	Chairman ALA Administration	<p>Referring to the Administration's paper (LC Paper CB(4)1069/14-15(03)), ALA said that, given the Legislative Council ("LegCo") Secretariat only received the paper on 29 May 2015, it would take time to study the information, especially the overseas legislation and court case quoted in the paper.</p> <p>ALA raised the following enquiries/concerns –</p> <p>(a) in respect of the advice or information which was furnished by the Administration, in particular, the advice that the Public Bus Services Ordinance (Cap. 230), Ferry Services Ordinance (Cap. 104) and Mass Transit Railway ("MTR") Ordinance (Cap. 556) ("the three ordinances") contained similar provisions which provided for the Government to take possession of properties owned by the relevant franchisee under certain circumstances for a period of time specified in the said respective Ordinances, the Administration was requested to provide information on whether the respective parties owned the properties concerned in a manner which was similar to the situation where the two terminus sites were owned by Peak Tramways Company, Limited ("PTC");</p> <p>(b) in respect of the Administration's advice that there were differences between the mandatory lease arrangement ("MLA") under the local legislation/court case which were referred to in the relevant paper and the Bill, details on the differences; and</p>	The Administration to follow up as per paragraph 3(a) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>(c) the matters that had been considered by the Department of Justice before it gave the advice that the proposed MLA satisfied the "proportionality test" and would not constitute deprivation of property as stated in footnote 2 of said Administration's paper.</p> <p>The Administration advised that –</p> <p>(a) the three ordinances were quoted to illustrate that the idea of MLA could be found in local legislation and was not unprecedented. While some depot sites were owned by the bus company concerned and were subject to MLA, the premises might not be as indispensable as the two terminus sites to the operation of the peak tramway from the functional point of view;</p> <p>(b) while the idea of MLAs behind the quoted legislation and court case was similar to that under the Bill, the details pertaining to the operation of the arrangements might not be entirely the same. The Administration undertook to provide further information after the meeting as per the request of ALA;</p> <p>(c) irrespective of how similar or dissimilar the quoted examples were to MLA under the Bill, the proposed MLA in the Bill was legally in order and in particular in compliant with the Basic Law; and</p> <p>(d) according to Hysan Development Co. Ltd. &amp; Ors v Town Planning Board, CACV 232 &amp; 233 of 2012, the Court of Appeal expressed reservation towards whether the "proportionality test" under the common law should apply to the protection of property rights of individuals and legal persons. Even assuming the "proportionality test" would be applicable, since the MLA was able to balance the general interest of society and the protection of the relevant rights of a property owner, such an arrangement could satisfy the "proportionality test".</p>	
003004 – 005240	Chairman Mr Paul TSE Administration	<p>Mr TSE was concerned that –</p> <p>(a) in respect of the arrangements provided under the said respective three ordinances which the Administration said to contain similar provisions</p>	The Administration to follow up as per paragraph 3(b) of the

Time marker	Speaker	Subject(s)	Action required
		<p>providing for the Government to take possession of properties of individuals or legal persons under certain circumstances for a period of time specified, the three ordinances respectively stipulated that the Government could take possession of the properties and assets of the bus, ferry and MTR companies for a period of time specified mainly when the franchises concerned were revoked or under emergency situations; and</p> <p>(b) noting the Administration's advice regarding whether the proposed MLA could be achieved by way of land lease modification between the Government and PTC that the modified land leases for the terminus sites would not bind the lessee of the proposed MLA, consideration could be given to modeling on the arrangements under a deed of mutual covenant ("DMC"), with the terms of the proposed MLA stated therein with a view to binding the successive operator(s). In this way, the proposed MLA could then be implemented by non-legislative means.</p> <p>The Administration explained that some of the examples quoted were for the situation whereby a franchise had expired and no new one had been granted. Further, implementing the proposed MLA through land lease modification, and by making reference to the DMC model could not achieve the same effect as having the arrangement implemented through legislative amendments (LC Paper No. CB(4)1208/14-15(02)).</p> <p>Mr TSE noted the Administration's explanations but considered it much more flexible by stipulating the terms of MLA in the re-grant and that the arrangement of a DMC model could help to shed some light on how MLA might be implemented by non-legislative means.</p>	minutes
005241 – 011432	Chairman Ms Cyd HO Administration	<p>Ms HO expressed concern about the private property right of the land owner if MLA could be achieved by land lease modification instead of legislative means. She urged the Administration to strike a balance between establishing a mechanism to introduce competition and protecting the private property rights of the land owner.</p> <p>Ms HO considered it more practicable for the new operator to buy the terminus sites instead of leasing</p>	The Administration to follow up as per paragraph 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>the relevant parts of the sites with a view to avoiding dealing with disputes, if any, over the market rent at the end of each lease period. She suggested the Government buying the pieces of land of the terminus sites and leasing them to the new operator to avoid disruption of peak tramway service.</p> <p>The Administration advised that while a mandatory sale arrangement would be more straightforward as opposed to MLA, the new operator would have to pay a hefty sum if he/she was required to purchase the relevant parts of the two terminus sites and related premises upon entry, and this would in turn raise the market entry threshold which would not be conducive to introducing competition where necessary. Moreover, PTC found MLA acceptable but was unwilling to sell the "essential premises" under the exit mechanism. The Administration supplemented that the proposed MLA was legally in order and especially complied with the requirements stipulated under Article 6 and Article 105 of the Basic Law for protection of private property. The Administration remarked that to avoid service disruption, the Bill provided for the new operator to take possession of the "essential premises" first pending settlement of the dispute on the rental amount, if any.</p> <p>In reply to the Chairman, the Administration confirmed that the "essential premises" only referred to the relevant parts of the two terminus sites of the peak tramway, as well as the related premises on the two terminus sites.</p>	
011433 – 011808	Chairman ALA	ALA supplemented that for any property taken possession by the Government under the respective three ordinances, there was a specified period of retention and, in certain cases, the period might be extended if certain conditions were satisfied. She further pointed out that under the Bill, the operating right for the peak tramway might last for ten years and, subject to the approval of the Chief Executive ("CE") in Council, the period might be extended for not more than ten years. Further, the period of the lease under the proposed MLA was to be determined by CE in Council.	
011809 – 012716	Chairman Mr Frankie YICK Administration	Noting from the land lease terms of the terminus site at the Peak that the lot should not be used for residential or industrial purposes except for the purpose in connection with the operation of the peak	



Time marker	Speaker	Subject(s)	Action required
		<p>tramway, Mr YICK asked whether PTC could use the land in question for other purposes or it should apply for a change of land use with the Town Planning Board ("TPB").</p> <p>The Administration advised that the terms in the land lease of the terminus sites allowed the use of the sites for the purposes in connection with the operation of the peak tramway but PTC could choose not to use the site for such purposes. It might use the terminus sites for other purposes permissible in the land leases subject to compliance of the relevant Outline Zoning Plan approved by TPB.</p> <p>In reply to Mr YICK's concern about the asset values of the two terminus sites being affected by MLA as they could not be put to redevelopment, the Administration advised that the operation of the peak tramway could be regarded as a complementary facility to attract and bring potential customers to The Peak Tower which was owned by the same company controlling PTC. For the terminus site at the Garden Road, the offices at the upper floors had essentially no direct functional relation with the terminus at the lower floor. The Administration reiterated that MLA was only applicable to the part of the two sites essential to the operation of the peak tramway. It should not affect the other part of these sites.</p> <p>In reply to Mr YICK, the Administration further advised that if the operator requested to suspend operation of the peak tramway for, say, three years for redevelopment of the sites, CE in Council, in deciding whether or not to grant the operating right, must take into account all relevant matters according to the proposed section 2B(3) of the Bill. Such matters could include whether any proposal submitted by a prospective operator was justified and that there was no better offer.</p>	
012717 – 013855	Chairman Mr Paul TSE Administration Ms Cyd HO	In response to Mr TSE's concern, the Administration advised that the Bill had put in place an exit mechanism to allow entry of new operators when needed and proposed amending the definition of "company" as stated in the Peak Tramway Ordinance (Cap. 265) ("PTO") from "PTC" to "the body corporate to which the operating right is granted under PTO" so that any party that was interested in operating the peak tramway might be considered by the Government according to the proposed section	The Administration to follow up as per paragraph 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action required
		<p>2B(3) of the Bill to become an operator. Given that PTC had a good track record in terms of service quality and safety performance over the years, the Administration would discuss with PTC, on a without prejudice basis, the possibility of granting it a new 10-year operating right commencing 1 January 2016 as per the framework under the Bill. The Administration stressed that its plan had explicitly been stated in the relevant LegCo Brief and the LegCo Panel on Economic Development had been consulted.</p> <p>Regarding the lease period, the Administration advised that the lease period under the proposed MLA to be determined by CE in Council would tally with the duration of the operating right to ensure the continual operation of the peak tramway.</p>	
<b>Clause-by-clause examination of the Bill</b>			
013856 – 014919	Chairman Administration	<p>Clause 1 – Short title and commencement            Clause 2 – Enactments amended            Clause 3 – Long title amended            Clause 4 – Section 2 amended (interpretation)            Clause 5 – Section 2A repealed (right to run and operate the tramway)</p> <p>Members raised no query on the above clauses.</p>	
014920 – 020302	Chairman Dr Kenneth CHAN Administration Mr Paul TSE	<p>Clause 6 – Section 2B and 2C added</p> <p>Referring to proposed section 2B(3) of the Bill, Dr CHAN asked whether CE in Council needed to consider the views of the public, such as those expressed by LegCo, the Central and Western District Council, and other organizations, when CE in Council decided whether or not to grant the operating right to a body corporate. Having regard to the case on Hong Kong Television Network Limited which the court ruling the decision of CE in Council a departure from a stated policy, Dr CHAN considered it necessary to set out the requirement explicitly in proposed section 2B(3), in addition to the five matters listed therein.</p> <p>The Administration advised that according to the legal drafting convention, "CE in Council must take into account all relevant matters, including –" would mean that the matters to be taken into consideration clearly were not confined to the five matters listed in that section.</p>	

Time marker	Speaker	Subject(s)	Action required
		<i>(Post-meeting note: According to the Administration (LC Paper No. CB(4)1208/14-15(02)), there was no need to further amend the provision.)</i>	
<b>Agenda item III – Any other business</b>			
020303 – 020420	Chairman	Date of next meeting	

Council Business Division 4  
Legislative Council Secretariat  
14 July 2015