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7 May 2015

Miss Evelyn Lee
Assistant Legal Advisor
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Miss Lee,

Peak Tramway (Amendment) Bill 2015

Thank you for your letter dated 6 May 2015 concerning the Peak Tramway (Amendment) Bill 2015 (“the Bill”). This letter gives the information requested.

Compliance with Articles 6 and 105 of Basic Law

The detailed justifications as to why the mandatory lease and sale arrangements are in compliance with Article 6 and Article 105 of the Basic Law are set out at **Annex**.

Commencement of Clauses 5, 12(4) and 13 of the Bill

The commencement date of Clauses 5, 12(4) and 13 of the Bill will fall on 1 January 2016, instead of on the day on which the Bill is published in the Gazette as per other clauses, for the following reasons –

- (a) Clause 5 – this clause repeals section 2A of the Peak Tramway Ordinance (“the Ordinance”, Cap. 265). As the current two-year interim operating right, granted on the strength of section 2A(7) and (8) of the Ordinance, will only expire on 31 December 2015, we need to keep section 2A till that date. The earliest date where section 2A can be repealed would thus be 1 January 2016.

- (b) Clauses 12(4) and 13 – Clause 13 sets out our proposed exit mechanism under which exit would be triggered in the event of default scenarios specified in section 8A in the Bill. The exit mechanism is not applicable to the current interim operating right. Clause 13 should thus not come into effect until after that right expires on 31 December 2015, i.e. on 1 January 2016. The same applies to Clause 12(4), which works together with Clause 13.

Please let me know if further information is required.

Yours sincerely,



(Miss Carrie Chang)

for Secretary for Transport and Housing

c.c. Department of Justice (Attn: Mr Gilbert Mo and Ms Daphne Siu)

Annex

Article 6 of Basic Law (“BL 6”) reads “*the Government shall protect the right of private ownership of property in accordance with law*”. Article 105 of Basic Law (“BL 105”) reads “*the Government shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.*”

2. The Department of Justice (“DoJ”) advises that the mandatory lease and sale arrangements are in compliance with BL 6 and BL 105.

3. The Peak Tramway Ordinance (Cap. 265) (“the Ordinance”), upon amendment, would stipulate that the lessee under the mandatory lease must pay rental to the lessor for the essential premises (including land) and the rental would be equivalent to “*an amount equal to the open market rental that the lessor may reasonably expect to receive*”. By leasing the essential premises at market rental, it can minimize the potential impairment to the Peak Tramways Company Limited's property¹. If there is a dispute over the amount of rental, the dispute is to be resolved by arbitration (if there is an agreement by the parties) or by the Lands Tribunal (if there is no agreement on arbitration). Such mandatory lease arrangements, as stipulated under sections 11B and 11D of our Bill, are therefore consistent with BL 6 and BL 105.

4. In a similar manner, the Chief Executive in Council would also be empowered under the Ordinance to order mandatory sale of the essential equipment, and the purchaser must pay compensation to the vendor (i.e. the owner) of the essential equipment. The sum of compensation would be “*an amount equal to the prevailing real value to be assessed as at the date on which the ownership of the equipment is transferred from the*

¹ As explained in paragraph 21 of the Legislative Council Brief, the two termini (on Garden Road and at the Peak respectively) are situated at sites owned by the Peak Tramways Company Limited, whereas the tram track and four intermediate stations are constructed on government land.

vendor to the purchaser; or the date on which the purchaser takes possession of the equipment, whichever is earlier". The sum of compensation, if in dispute, would be subject to arbitration (if there is an agreement by the parties) or determined by the Lands Tribunal (if there is no agreement on arbitration). Mandatory sale is akin to expropriation and is likely to be regarded as "deprivation" under BL 6 and BL 105, which requires real value compensation to be paid without undue delay to the property owner. Since the sum of compensation to the vendor of the essential equipment, under our proposals, is to be assessed at real value, the proposed mandatory sale arrangement is therefore considered to be consistent with BL 6 and BL 105.

- End -