

**立法會**  
*Legislative Council*

LC Paper No. CB(4)1006/14-15(04)

Ref : CB4/BC/2/14

**Bills Committee on Peak Tramway (Amendment) Bill 2015**  
**Meeting on 18 May 2015**

**Background brief on the peak tramway**

**Purpose**

This paper provides background information on the Peak Tramway (Amendment) Bill 2015 ("the Bill"). It also summarizes the major views and concerns expressed by Members during previous discussions on the subject.

**Background**

*Operating right before 2014*

2. The peak tramway has been in operation since 1888 and is a popular tourist and recreational facility for both visitors and local people. Currently, it is run and operated by the Peak Tramways Company, Limited ("PTC"). Its 1.4 kilometre-long tram track runs on government land, with its termini, at both ends of the track, situated on sites owned by PTC. When the operating right of PTC was examined by the Executive Council in 1980s, PTC was granted an operating right from 1 January 1984 for 10 years plus an extension of 10 years subject to payment of a premium of \$2.79 million and commitment from PTC to modernize the peak tramway system. At the same time, the fares of the peak tramway were de-regulated.

3. In November 2003, the Chief Executive ("CE") in Council approved the granting of a 10-year extension to PTC to run and operate the peak tramway from 1 January 2004 to 31 December 2013 in accordance with section 2A of the Peak Tramway Ordinance (Cap. 265) ("the Ordinance") 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.

### *Interim arrangements of operating right in 2014-2015*

4. In anticipation of the expiry of the operating right on 31 December 2013, PTC had since late 2012 started approaching the Government for an extension. According to the Administration, it was the previous understanding of the Administration 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 Administration and PTC, and upon further examination of the legislation by and advice from the Department of Justice, it came to the Administration's attention that sections 2A(5) and 2A(6) were one-off provisions and would not allow further extensions beyond 2013. The Administration needed to amend the Ordinance to enable CE in Council to grant the operating right for the peak tramway again to PTC.

5. At the meeting of the Panel on Transport on 19 July 2013, members were consulted on the Administration's proposal to amend the Ordinance to enable continuation of the operation of the peak tramway service by PTC after 31 December 2013, for an interim period till 31 December 2015. The Administration has taken a two-stage approach for the legislative amendment exercise. The first was to amend the Ordinance so that a two-year operating right could be granted to PTC as an interim measure. In the second stage, the Administration has studied and decided during the proposed two-year interim period the long-term arrangements including assessing the merits and feasibility of PTC's proposed upgrading proposal 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 proposal.

6. On 11 September 2013, the Administration introduced the Peak Tramway (Amendment) Bill 2013 ("the 2013 Bill") into LegCo in order to empower CE in Council to grant an operating right to PTC for a two-year interim period. The Bills Committee on Peak Tramway (Amendment) Bill 2013 was then formed on 11 October 2013 to scrutinize the 2013 Bill. Subsequently, LegCo passed the 2013 Bill on 20 November 2013. According to the Administration<sup>1</sup>, CE in Council on 10 December 2013 approved the granting of a right to run and operate the peak tramway to PTC for a period of two years, from 1 January 2014 to 31 December 2015, under the Ordinance. PTC has to pay to the Administration a non-refundable lump-sum full market premium of \$25 million for the Government land on which the track of the peak tramway lies.

---

<sup>1</sup> Source: The Administration's press release on "Executive Council grants interim operating right to peak tramway" issued on 10 December 2013

*Operating right beyond 2016 and improvement proposal of PTC*

7. At the meeting of the Panel on Economic Development on 23 March 2015, the Administration sought members' view on its proposal to amend the Ordinance to provide for the granting of future operating right commencing 1 January 2016 and the legal basis for other long-term arrangements of peak tramway operation. Subsequently, the Bill was published in the Gazette on 24 April 2015.

8. According to the relevant Legislative Council brief (File ref.: THB(T)CR 2/5591/75), PTC has already indicated to the Government its intention to continue providing peak tramway services upon the expiry of the current operating right in end 2015 and its plan to enhance the peak tramway system and improve its existing facilities. To better understand PTC's improvement proposal, the Panel conducted a site visit to the peak tramway terminus at Garden Road on 9 April 2015 whereby participating Members were briefed on the details of the proposal that are set out as below –

- (a) replacement of longer tramcars with air conditioning and increased capacity, from existing 120 to 200 passengers;
- (b) both termini will be upgraded and renovated to support the extended tramcars and provide a comfortable space for queuing; and
- (c) a full upgrade of the existing facilities, namely the new haulage system, system track renewal and foundation and bridge reinforcement.

9. PTC has completed its first stage of consultancy study and it is now carrying out preparatory work for the next stage of consultancy study which will look into detailed feasibility of the improvement proposal. The current initial estimated cost is about HK\$600 million. The improvement proposal will be implemented in phases once it is confirmed to be feasible.

10. Various government departments concerned have studied the preliminary design of PTC's improvement proposal. Initially, they found the proposal worthy of support and did not envisage any insurmountable difficulties in implementation. To make the improvement proposal financially viable, PTC would like to have a 20-year operating right. Upon granting a new 10-year operating right commencing 1 January 2016, PTC will then formally apply for a 10-year extension (i.e. the operating right will last a total of 10-plus-10 years) alongside the submission of the upgrading proposal with proven feasibility.

## The Bill

11. The Bill seeks to provide for the grant and termination of the operating right of the peak tramway, for the mandatory lease or sale of properties that are essential to its operation, and for the transfer of the policy responsibility for the Ordinance to Secretary for Commerce and Economic Development ("SCED"). The main provisions of the Bill are –

- (a) there are references to the Secretary for Transport and Housing in the Ordinance which need to be updated to SCED. A definition is also added (clause 4(3)) to define SCED to shorten those references (clauses 8 to 12, 16 to 21 and 24);
- (b) clause 4 updates the definition of "company" so as to remove the de facto monopoly position of PTC;
- (c) clause 6 adds a new section (section 2B) to empower the CE in Council to grant the operating right from 1 January 2016 onwards for a period not exceeding 10 years. The power may be exercised more than once. The right may be granted for a further period not exceeding 10 years in accordance with the new section 2B(5);
- (d) clause 13 adds several provisions to empower SCED to take action if the operator is or has been in default<sup>2</sup> (new section 8A to 8D). The CE in Council is also empowered to terminate the operating right (new section 8E) if the operator is or has been in default; and
- (e) clause 15 adds several provisions to empower CE in Council to make orders if the operating right is to be terminated. The orders are to effect a mandatory lease of premises (new section 11B) and a mandatory sale of equipment (new section 11C) if the premises and equipment are essential to the operation of the peak tramway<sup>3</sup>.

12. According to the relevant Legislative Council brief (File ref.: THB(T)CR 2/5591/75), the Department of Justice ("DoJ") has confirmed that the mandatory sale and lease arrangement are consistent with the requirements for protection of private property as enshrined in Articles 6 and 105 of the Basic Law. Meanwhile, PTC has indicated that it is willing to lease (but not sell) the relevant parts of the sites and buildings in case of an exit.

---

<sup>2</sup> Such default may include grounds of safety, the incumbent operator's failure to comply with the terms on which an operating right is granted, or possible insolvency of the incumbent operator on account of evidence shown.

<sup>3</sup> The owner of the terminus sites, related premises and other assets essential to peak tramway operation (e.g. tramcars and tram tracks) may be required to lease the relevant parts of the terminus sites and premises and sell the other assets that it owns to any party designated by CE in Council ("designated party", such as the new operator). The designated party shall pay rent for the terminus sites and related premises leased and a sum for the other assets purchased (if any) to the owner.

## **Deliberations by Members**

13. At the meeting of the Panel on Economic Development on 23 March 2015, some members expressed grave concerns about the legal framework of the mandatory lease/sale arrangements in the proposed exit mechanism, such as whether they were in compliance with Article 105 of the Basic Law which sought to protect the right of individuals and legal persons to property and to compensate for lawful deprivation of their property. Other members expressed worry that the proposed mandatory lease might be subject to judicial review in the future.

14. In response, the Administration advised that the objective of putting in place the mandatory lease/sale arrangements was to enable the new operator to gain access to the assets essential to peak tramway operation and to minimize the risk of service disruption. To ease members' concerns about legal issues of the proposed exit mechanism, such as the decisions of arbitration might be subject to possible legal challenges, the Administration advised that counsels of DoJ stood ready to further elaborate on the relevant legal issues at the forthcoming Bills Committee meeting(s) if needed.

15. Furthermore, members expressed concerns on the queuing and waiting arrangement at the termini of the peak tramway as passengers had to wait for a long time without any shelters and suffered when the weather conditions were not good. The Administration responded that PTC had undertaken various measures to improve the queuing and waiting arrangements with the assistance of Government departments concerned. According to PTC's improvement proposal, the Garden Road Terminus would be expanded with its platform extended uphill, so that the indoor area for queuing would significantly be enlarged in the future.

16. Members pointed out that fares of peak tramway should be subject to certain extent of regulation in order to keep its profits at reasonable level. The Administration explained that fares of the peak tramway were de-regulated since 1980s and it considered more appropriate for market forces to decide the peak tramway fares.

17. Members also enquired about the mechanism in determining the amount of premium and whether the premium would be subject to regular review. The Administration advised that PTC was required to pay a non-refundable lump sum full market premium before commencement of its operating right in the past. The Administration was reviewing the previous practice of charging premium in one go and would appoint a financial consultant to advise the best way to charge the premium in the future.

### **Latest developments**

18. The Bill was tabled at the Council meeting on 6 May 2015. The House Committee decided on 8 May 2015 to set up a Bills Committee to scrutinize the Bill.

### **Relevant papers**

19. A list of the relevant papers is set out in the **Appendix**.

Council Business Division 4  
Legislative Council Secretariat  
15 May 2015

## Appendix

### List of relevant papers

Issued by	Meeting date/ Issue date	Paper
LegCo Secretariat	07.05.2015	<a href="#">Legal Service Division Report</a>
Transport and Housing Bureau	22.04.2015	<a href="#">Legislative Council brief</a>
Panel on Economic Development	23.03.2015	<a href="#">Administration's paper on long-term arrangements of the peak tramway operation</a>
Bills Committee on Peak Tramway (Amendment) Bill 2013	10.12.2013	<a href="#">Administration's press release on "Executive Council grants interim operating right to Peak Tramway"</a>
	20.11.2013	<a href="#">Paper for the Legislative Council meeting: Report of the Bills Committee on Peak Tramway (Amendment) Bill 2013</a>
	8.11.2013	<a href="#">Paper for the House Committee meeting: Report of the Bills Committee on Peak Tramway (Amendment) Bill 2013</a>
Panel on Transport	25.10.2013	<a href="#">Legislative Council brief on Peak Tramway (Amendment) Bill 2003</a> <a href="#">Administration's response to issues raised at the meeting on 25 October 2013</a> <a href="#">Minutes of meeting</a>
	19.7.2013	<a href="#">Administration's paper on the operating right of the peak tramway</a> <a href="#">Minutes of meeting</a>
	5.11.2003	<a href="#">Administration's press release on "Peak Tramways Co gets 10-year extension to run peak tram"</a>
	24.10.2003	<a href="#">Administration's paper on application from the Peak Tramways Company Limited for Extension of the Period to run and operate the peak tramway</a> <a href="#">Minutes of meeting</a>