

LEGISLATIVE COUNCIL BRIEF

Peak Tramway Ordinance (Chapter 265)

LONG-TERM ARRANGEMENTS OF THE PEAK TRAMWAY OPERATION

PEAK TRAMWAY (AMENDMENT) BILL 2015

INTRODUCTION

At the meeting of the Executive Council on 21 April 2015, the Council ADVISED and the Acting Chief Executive ORDERED that –

- A
- (a) the Peak Tramway (Amendment) Bill 2015 (“the Bill”), at **Annex A**, which seeks to confer on the Chief Executive in Council the power to grant future operating right of the peak tramway after end-2015 and provide for the long-term arrangements of the peak tramway, should be introduced into the Legislative Council (“LegCo”); and
 - (b) the 10-year operating right commencing 2016 should be granted to the Peak Tramways Company Limited (“PTC”), the incumbent operator which also owns the two sites on which the two termini of the peak tramway are located and which has a good safety and service track record in operating the peak tramway, subject to negotiation and the approval of the Chief Executive in Council after the passage of the Bill.

JUSTIFICATIONS

(A) *The need for legislative amendments*

2. The Ordinance was last amended in 2013, when the right to operate the peak tramway was to expire on 31 December 2013. Then, PTC made an application to the Government to continue to operate the service, and indicated that it had plans to make heavy long-term investment to increase

the capacity of the facility and improve its service¹. PTC asked whether the Government could grant them an operating right of 20 years so that the upgrading plan would be financially viable. Since detailed legal analysis subsequently found that the Ordinance did not provide for any post-2013 arrangements, the Government, with the support of the LegCo, decided to adopt a two-stage approach to handle the issues :

- (a) first stage: to amend the Ordinance in order to grant a two-year interim operating right (from 1 January 2014 to 31 December 2015) to PTC. This part of the legislative amendment exercise was completed. PTC was granted the operating right upon payment of a premium sum to the Government; and
- (b) second stage (to be carried out during the two-year interim operating right): to look into the feasibility and merits of PTC's upgrading plan. At the same time, the Government also needs to study and decide on how the operating right of the peak tramway shall be granted, extended and terminated when necessary in the long run, taking into account the operator's plan to enhance the facilities and improve service. Upon completion of the study, the Government needs to further amend the Ordinance to provide for the long-term arrangements of the peak tramway to facilitate its continued operation after end-2015. We are now proceeding with the tasks under the second stage.

3. When the Panel on Economic Development and the Panel on Transport were consulted in mid-2013 on the interim operating right, key views expressed by LegCo Members included –

- (a) the need to improve peak tramway service and facilities, particularly to increase the capacity of the tramcars and to make better queuing arrangements at the Garden Road terminus; and
- (b) the need to put in place a mechanism to allow the operating right to change hands smoothly from one operator to another where necessary.

¹ PTC's upgrading plan comprises road, civil engineering, drainage and other works. The key features are :

- (a) replacement of tramcars with new ones that can increase carrying capacity by over 60%;
- (b) substantial improvement of the two termini to expand holding capacity and improve 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.

(B) Key legislative amendments

(a) Granting of future operating right commencing from 1 January 2016 onwards and related issues

4. The interim operating right of the peak tramway will expire after end-2015, and the Ordinance is now silent on the granting of post-2015 operating right. We propose adding provisions to the Ordinance to empower the Chief Executive in Council to grant future operating right commencing on or after 1 January 2016 to any suitable operator (which can be PTC or any other body corporate the Chief Executive in Council sees fit), in a manner and for a period (not exceeding the limit prescribed in the law) as the Chief Executive in Council thinks fit. Such power may be used repeatedly so that from time to time the incumbent² or a new operator may be granted a new operating right. The terms on which the operating right is to be granted will be subject to approval by the Chief Executive in Council, having regard to the proposed terms put to the Chief Executive in Council following discussion between the Government and the operator. When considering the granting of the operating right, the Chief Executive in Council must take into account all relevant factors, including but not limited to the proposed terms put to the Chief Executive in Council for consideration and any representation made by the applicant, the financial capability of the applicant, its ability to maintain the peak tramway as an important tourism and recreational facility, and its past performance in operating tramway facilities (where applicable).

5. As regards the duration of the operating right, we propose using 10 years as the basis. Since the 1980s, the operating right was granted and extended on a 10-year basis on each occasion. A 10-year operating period is of a reasonable duration, giving the operator some business and financial certainty. The Government may, when warranted, update the terms of the operating right on each occasion of granting or extending an operating right, having regard to the circumstances at the time. Whilst a 10-year operating period is generally sufficient from an operator's point of view, if an operator plans to make major investment to upgrade its facilities and service operations, a longer operating period may be needed to ensure the viability of its planned investment. In fact, as observed from the legislative provisions in the 1980s, a longer operating right was granted in a "10-plus-10-year" manner to cater for the needs of an upgrading plan at the time. Based on these considerations and to allow some flexibility for the granting of future operating rights, we propose stipulating in the law that –

- (a) each operating right should last not more than 10 years; and

² An incumbent may be granted a new operating right according to paragraph 5(a) below or an extended operating right according to paragraph 5(b) below.

- (b) each operating right under (a) may be extended for a further period of not exceeding 10 years (i.e. the total period of an operating right could be up to 20 years). To be granted such an extension, the operator must submit evidence on its upgrading plan to the Chief Executive in Council within a specified timeframe and through this satisfy the Chief Executive in Council that it is committed to and has the ability to undertake the upgrading plan to enhance the facilities and improve the service of the peak tramway.

6. In addition, we propose making technical amendments to the definition of “company” and update the definition of “Secretary” in the Ordinance. For historical reasons, the term “company” is defined in the Ordinance as “the Peak Tramways Company Limited”. This prevents a party other than PTC from operating the peak tramway and should be revised so that all interested parties, as long as they meet the Government’s requirements, may become the operator. As the peak tramway has basically become a tourism and recreational facility since the 1980s³, we consider it more appropriate for the Commerce and Economic Development Bureau (“CEDB”) to be the policy bureau overseeing this facility. The definition of “Secretary” will consequentially be updated from the “Secretary for Transport and Housing” to the “Secretary for Commerce and Economic Development”.

(b) Termination of operating right and exit arrangements

7. The Bill seeks to provide for a mechanism for the Chief Executive in Council to terminate the operating right before its expiry on 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. Before the Chief Executive in Council makes a termination order, the operator would be afforded an opportunity to consider making written representation to the Council for its case to be heard.⁴

8. The Bill also seeks to provide for an exit mechanism to allow the operating right to change hands smoothly, in the event that any of the above situations under paragraph 7 or when a new operating right (on expiry of an existing one) will no longer be granted to the same operator. The two

³ Since peak tramway was no longer a public transport facility and primarily became a recreational facility, the Government decided to de-regulate its fare in the 1980s. This positioning was explained by the then Secretary for Transport to LegCo in December 1985 when he moved the second reading of the Peak Tramway (Amendment) Bill 1985.

⁴ In addition, the winding up of the operator is also a default which may trigger termination of an existing operating right by the Chief Executive in Council.

terminus sites on Garden Road and at the Peak⁵, premises on the terminus sites, as well as the other assets essential to the operation of the peak tramway (e.g. the tram tracks, tramcars, and power and haulage systems) are all presently owned by PTC. As the law stands, the Government lacks the legal power to compel PTC to sell or lease the two sites and the other assets to the Government or other parties⁶. The exit mechanism in the Bill seeks to provide for, among other things, the transfer arrangements of assets essential to peak tramway operation to facilitate its continued operation. The key elements of the exit mechanism are as follows –

- (a) under any of the situations involving safety failure or failure to comply with the terms of an operating right on the part of the operator as mentioned in paragraph 7, the Government can require the operator to take remedial or effective preventive actions to avoid the same situation from recurring;
- (b) if the operator fails to satisfy the Government with its remedial or preventive actions, the Government may report the matter to the Chief Executive in Council and inform the operator of its intention to terminate the operating right. The operator could make representation to the Chief Executive in Council as to why its operating right should not be terminated;
- (c) the Chief Executive in Council will then decide if the operating right of the operator should be terminated, having regard to the Government's report and the operator's written representation; and
- (d) if the operating right is to expire or is to be terminated and no further operating right is to be granted to the operator, the Chief Executive in Council may require the owner of the terminus sites, related premises and other assets essential to peak tramway operation (e.g. tramcars and tram tracks) to lease the relevant parts of the terminus sites and premises and sell the other assets that it owns to any party designated by the Chief Executive 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.

9. Our objective of proposing different treatments for the two terminus sites (on Garden Road and at the Peak) and the other assets is to enable the

⁵ The lease for the Garden Road site will expire in 2039, renewable for another 75 years till 2114; that for the Peak site is non-renewable and will expire in 2031.

⁶ Except under two specific circumstances as described in the Ordinance, namely –
(a) discontinuance of peak tramway service for six months or more for reasons within PTC's control; or
(b) when PTC becomes insolvent.

new operator to gain access to assets essential to the operation of the peak tramway to minimise the risk of service disruption if and when exit is triggered. Generally speaking, a mandatory sale requirement would be more straightforward as opposed to a mandatory lease requirement. However, a new operator would have to pay a hefty sum if it is required to purchase the terminus sites and premises upon entry. This could in turn raise the entry barrier and would not be conducive to introducing competition when necessary. If the Government were to fund the purchase, a significant sum of public fund would be involved. Thus, we propose a mandatory lease arrangement for the two terminus sites and related premises and a mandatory sale arrangement for the other assets essential to peak tramway operation. It should be noted that the mandatory lease requirement above does not forbid the owner from selling the relevant parts of the sites and buildings to the new operator should it prefer to do so. Meanwhile, PTC, the owner of the two terminus sites, has indicated its willingness to lease (but not sell) the relevant parts of the sites and buildings in case of an exit.

10. It should be noted that under our proposal, real value compensation shall be made to the owner in the case of mandatory sale, in accordance with the Basic Law. Meanwhile, rent payable for the terminus sites and related premises would be at market rate. Dispute, if any, over the sum of compensation and any other terms under the mandatory sale and lease arrangements would be subject to arbitration or resolved at the Lands Tribunal. Pending settlement of the dispute, the law would provide for the new operator to take possession of the land and assets first, to avoid service disruption. The Department of Justice (“DoJ”) has confirmed that these 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.

11. There are views that the handover arrangement would be made easier if the Government could own all the land required for the operation of peak tramway (instead of just the track land). To this end, we have considered building two new termini on government land or even constructing a new peak tramway altogether on government land. We would advise against taking these options. While geotechnically, subject to detailed study, it may be feasible to build two new termini in front of the existing ones on government land, construction of such facility would take time to complete. During the construction, service suspension is inevitable. As to the option of building a new peak tramway altogether on government land, this should be a non-starter, when land in its vicinity is in short supply, costs would be a considerable concern, and construction would take even longer to complete and hence service suspension would be longer. Ultimately, even if land, costs and service suspension were not an issue of concern, the idea would probably not work when the existing peak tramway, given its long history, has become an heritage of Hong Kong difficult to replicate.

(C) Granting of a 10-year operating right commencing 2016

12. PTC is the current operator and owns the two terminus sites and other assets essential to the peak tramway operation. PTC has already indicated to the Government its intention to continue providing peak tramway service upon the expiry of the current operating right in end-2015. As mentioned in paragraph 2 above, PTC has also indicated to the Government its plan to enhance the peak tramway system and improve its existing facilities. To make the upgrading plan financially viable, PTC would like to have a 20-year operating right. PTC has completed its first stage of consultancy study for the upgrading plan and formulated its preliminary design proposal. The current initial estimated cost of the entire plan is about \$600 million. Under the plan, tramcar capacity will be increased by over 60% from 120 passengers to 200 passengers. The Garden Road terminus and the Peak terminus will be expanded and redeveloped to cope with the need of longer tramcars and improve the queuing and waiting arrangements. These measures would address the concerns of the Panels in 2013 (see paragraph 3 above) and March 2015 (see paragraph 19 below). PTC is now carrying out preparatory work for the next stage of consultancy study which will look into the detailed feasibility of the upgrading plan. Its target is to submit an application to the Government for the second 10-year operating right in 2016 as per the legal requirements set out in paragraph 5(b) above. The upgrading plan will be implemented in phases once it is confirmed to be feasible. It is expected to be completed in about 4 to 5 years' time.

13. Since the upgrading plan will help enhance the attractiveness of the peak tramway as a major tourism and recreational destination in Hong Kong, various departments have studied the preliminary design proposal of the upgrading plan. Initially, they find the plan worthy of support and do not envisage any insurmountable difficulties in implementation⁷. As a matter of fact, PTC has a good track record in terms of service quality and safety performance over the years. Peak tramway is also one of the internationally recognised icons of Hong Kong. In view of the above, we plan to 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 paragraph 5 above. This 10-year operating right would be granted to PTC, subject to the agreement between the Government and PTC on its terms, LegCo's passage of the legislative amendments and the Chief Executive in Council's agreement. Upon granting of this operating right, PTC can then formally apply for a 10-year extension of it (i.e. 10-plus-10 years) alongside the submission of the upgrading plan with proven feasibility. If the Chief Executive in Council, upon receiving information submitted by PTC, is satisfied that PTC is committed to undertaking the upgrading plan and has the capability to do so, the operating right will then be extended by

⁷ Whether the upgrading plan is actually feasible will be subject to PTC's detailed feasibility study on the engineering details. The departments will examine the findings of the study upon its completion.

10 years⁸.

14. If it turns out that the Government and PTC cannot agree on the terms of the 10-year operating right commencing 2016, the Government will grant the operating right through tendering upon LegCo's passage of the legislative amendments. It is envisaged that the terms of this 10-year operating right would include the arrangements relating to premium, commitments with respect to peak tramway service, and the detailed arrangements of the exit mechanism.

15. The current operating right will expire in end-2015. Regardless whether the upgrading plan would be implemented at the end, if the 10-year operating right commencing 1 January 2016 is to be granted by tendering, the procedure can only commence upon completion of the second-stage legislative amendment exercise. The entire tender exercise would take time to complete. It may involve transfer of assets. If PTC (the current operator and the owner of the terminus sites, related premises and other assets of the peak tramway) cannot provide service during the interim period when tendering is underway, peak tramway service may need to be suspended. Yet, if PTC can have the 10-year operating right commencing 1 January 2016, service disruption can be avoided. Notwithstanding, as explained in paragraphs 7 and 8 above, our proposed legislative amendments will put in place an exit mechanism to allow entry of new operators when needed.

THE BILL

16. The main provisions of the Bill are –

- (a) **Clause 1** sets out the short title and provides for commencement.
- (b) **Clause 3** updates the long title.
- (c) **Clause 5** repeals section 2A of the Ordinance. That section confers a one-off power to grant the operating right up to 31 December 2015. **Clause 6** adds a new section (section 2B) to empower the Chief Executive in Council to grant the operating right from 1 January 2016 onwards. The power may be exercised more than once. The right may be granted for a further period in accordance with the new section 2B(5).

⁸ If the upgrading plan is eventually found to be infeasible, or the Government is not convinced that PTC is committed and capable of implementing the upgrading plan, the operating right will not be extended by another 10 years.

- (d) **Clause 7** makes technical amendments to section 3 of the Ordinance.
- (e) **Clause 13** adds several provisions to empower the Secretary for Commerce and Economic Development to take action if the operator is or has been in default (new sections 8A to 8D). The Chief Executive in Council is also empowered to terminate the operating right (new section 8E) if the operator is or has been in default.
- (f) **Clause 15** adds several provisions to empower the Chief Executive 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.
- (g) There are references to the Secretary for Transport and Housing in the Ordinance which need to be updated to the Secretary for Commerce and Economic Development. A definition is also added (**clause 4(3)**) to define the Secretary for Commerce and Economic Development to shorten those references (**clauses 8 to 12, 16 to 21 and 24**).
- (h) Sections 9, 10, 11 and 36 of the Ordinance are obsolete. **Clauses 14 and 22** repeal those sections. **Clause 27** repeals the Grant of Right to Run and Operate Tramway Notice (Cap. 265 sub. leg. C) which is rendered obsolete on the grant of the operating right under the new section 2B.
- (i) An obsolete reference to the Crown in section 7A(8) of the Ordinance is replaced (**clause 11(4)**).

LEGISLATIVE AMENDMENT TIMETABLE

17. The Bill will be published in the Gazette on 24 April 2015 and introduced into LegCo on 6 May 2015.

IMPLICATIONS OF THE PROPOSAL

18. The proposal has financial, civil service, economic and environmental implications as set out at **Annex B**. It does not have significant sustainability implications, and has no productivity or family implications. The proposal is in conformity with the Basic Law, including the provisions

concerning human rights and protection for private property. It will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

19. We consulted the LegCo Panel on Economic Development, joined by Members of the Panel on Transport, on 23 March 2015 on the legislative proposals, and our plan to enter into direct negotiation with PTC with a view to granting it, subject to negotiation outcome and approval of the Chief Executive in Council in due course, the 10-year operating right commencing January 2016. The Panel was supportive of our proposals and plan, while asking some questions about details, in particular those related to the proposed exit mechanism. Seeing the need and importance for the Government to do its best to avoid service disruption, some Members asked if the exit mechanism could achieve its intended purpose of ensuring a smooth transfer of operating right as and when necessary. The specific concern was that under the proposed exit mechanism, the terminus sites – now owned by the PTC – would be subject to mandatory lease, and in the event that the lease terms became a subject of dispute, then despite the arbitration arrangement, the entry of a new operator would be delayed. Members therefore asked if alternatives such as building an entirely new peak tramway, all on government land, or procuring the existing terminus sites through public funding could be considered at least as a contingency arrangement. We explained to Members that the two alternatives were not practicable, as explained in paragraphs 9 and 11 above. Some Members reminded us of the need to ensure that any exit mechanism which would be put in place should be in compliance with the requirements for protection of private property as stipulated in the Basic Law. We assured Members that DoJ had studied the matter carefully and confirmed that the proposed exit mechanism was consistent with Articles 6 and 105 of the Basic Law, as mentioned in paragraph 10 above. Members also raised some questions about the details of the upgrading plan, and they were keen to know how the plan could improve the present queueing situation. On the proposed transfer of policy responsibility from THB to CEDB, no Members raised any objection. The Member representing the tourism constituency suggested that the proposed transfer should take effect as soon as possible. The Member was informed that the transfer would be effective once the bill was passed.

PUBLICITY

20. A press release will be issued on the introduction of the Bill on 22 April 2015. A spokesperson will be available for answering media enquiries.

BACKGROUND

21. The peak tramway has been in operation since 1888 and is an icon of Hong Kong. Over the past few decades, it has become a popular tourism and recreational facility for locals and tourists alike. Its 1.4-km tram track and four intermediate stations⁹ are constructed on government land, while the termini at both ends of the track on Garden Road and at the Peak are situated on sites owned by the PTC. The peak tramway was initially built to provide public transport service. However, it has since the 1980s been essentially a tourism and recreational facility. It is no longer a mode of public transport, a function basically taken up instead by franchised buses, minibuses, coaches and taxis since. Fares of the peak tramway have also been de-regulated on account of that. Since the 1980s, the peak tramway has been operated by the PTC on the strength of an operating right granted by the Governor/Chief Executive in Council under Section 2A of the Ordinance, subject to terms agreed between the Government and PTC. In 2013, THB coordinated the legislative amendment exercise to provide for the two-year interim operating right commencing January 2014, pending deliberations and decisions on the long-term arrangements of the peak tramway.

ENQUIRIES

22. 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
22 April 2015

⁹ They are on Kennedy Road, MacDonnell Road, May Road and Barker Road.

Peak Tramway (Amendment) Bill 2015

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A BILL

To

Amend the Peak Tramway Ordinance 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 the operation of the Peak Tramway; for the transfer of the policy responsibility for the Ordinance to the Secretary for Commerce and Economic Development; for the repeal or amendment of obsolete provisions and subsidiary legislation of the Ordinance.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Peak Tramway (Amendment) Ordinance 2015.
- (2) This Ordinance, except sections 5, 12(4) and 13, comes into operation on the day on which this Ordinance is published in the Gazette.
- (3) Sections 5, 12(4) and 13 come into operation on 1 January 2016.

2. Enactments amended

- (1) The Peak Tramway Ordinance (Cap. 265) is amended as set out in Part 2.

- (2) The enactments specified in Part 3 are amended as set out in that Part.
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Part 2

Amendments to Peak Tramway Ordinance

3. Long title amended

The long title, after “Tramway”—

Add

“; to provide for the grant and termination of the operating right of the Peak Tramway; to regulate the operation of the Peak Tramway”.

4. Section 2 amended (interpretation)

(1) Section 2, definition of *company*—

Repeal

“the Peak Tramways Company Limited”

Substitute

“the body corporate to which the operating right is granted under this Ordinance”.

(2) Section 2, definition of *tramway*—

Repeal

“cars and trucks”

Substitute

“tramcars”.

(3) Section 2—

Add in alphabetical order

“*operating right* (經營權) means the right to operate the tramway;

Secretary (局長) means the Secretary for Commerce and Economic Development;”.

5. **Section 2A repealed (right to run and operate the tramway)**

Section 2A—

Repeal the section.

6. **Sections 2B and 2C added**

Before section 3—

Add

“2B. Grant of the operating right

- (1) The Chief Executive in Council may, on application and in any manner that the Chief Executive in Council thinks fit, grant the operating right to a body corporate—
 - (a) on terms agreed between the Government and the body corporate; and
 - (b) for a period not exceeding 10 years.
- (2) The operating right may be granted under subsection (1) to—
 - (a) the body corporate holding the operating right granted previously under subsection (1) or (5) or any other provision of this Ordinance; or
 - (b) a body corporate that does not hold the operating right.
- (3) In deciding whether or not to grant the operating right to a body corporate under subsection (1), the Chief Executive in Council must take into account all relevant matters, including—
 - (a) the terms proposed by the body corporate;

- (b) any representation made by the body corporate;
 - (c) whether the body corporate will be able to maintain the tramway as an important tourism and recreational facility;
 - (d) the financial capability of the body corporate; and
 - (e) any relevant experience and performance of the body corporate in operating the tramway or any similar facility.
- (4) Subsection (5) applies if—
- (a) the operating right is granted under subsection (1) for a period (*current period*); and
 - (b) the holder of the operating right applies for the grant of the operating right for a further period.
- (5) The Chief Executive in Council must, subject to subsection (6), grant the operating right to the holder—
- (a) on terms agreed between the Government and the holder; and
 - (b) for a further period not exceeding 10 years beginning on the expiry of the current period.
- (6) The Chief Executive in Council must not grant the operating right under subsection (5) unless the Chief Executive in Council is satisfied by evidence submitted by the holder that—
- (a) the holder is committed to implementing a plan for modernizing and improving the tramway and ancillary equipment and facilities;
 - (b) the holder is capable of implementing the plan; and
 - (c) the implementation of the plan will be conducive to maintaining the tramway as an important tourism and recreational facility.

- (7) The operating right may only be granted to a body corporate within the meaning of *company* in section 2(1) of the Companies Ordinance (Cap. 622).
- (8) The operating right has effect subject to this Ordinance.
- (9) To avoid doubt, the power under subsection (1) or (5) may be exercised in relation to a body corporate more than once.

2C. Application for operating right

- (1) An application for the operating right must be—
 - (a) made in writing to the Secretary; and
 - (b) accompanied by the information or materials that the applicant wishes to put forward in support of the application.
- (2) An application made after 1 January 2016 by the holder of the operating right for the grant of the operating right for a further period under section 2B(1) or (5) may only be made before—
 - (a) if the current period for which the operating right is granted is longer than 3 years—the last 3 years of the period; or
 - (b) if the current period for which the operating right is granted is 3 years or less—a date specified by the Secretary for this subsection.”.

7. Section 3 amended (power to construct and work certain tramways)

- (1) Section 3—
 - Repeal subsection (1)**
 - Substitute**

- “(1) During the period for which the operating right is granted, the company has—
 - (a) the right to occupy the tramway area for the purposes of the operating right; and
 - (b) the right to construct, maintain, work and use the tramway and all structures, equipment, works and conveniences connected with the tramway.
- (1A) The rights under subsection (1) are subject to the terms referred to in section 2B(1)(a) or (5)(a).
- (1B) Sections 4, 5, 10 and 10A of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) do not apply to the tramway area.”.
- (2) Section 3(2)—
 - Repeal**
 - “authorized by this Ordinance”
 - Substitute**
 - “referred to in subsection (1)”.
- (3) Section 3(2)—
 - Repeal**
 - “Lots 768, 762 and 858, as shown on plan No. MH2528b dated 23 September 1985 deposited in the Land Registry, Victoria and signed on behalf of the Director of Lands and on behalf of the company”
 - Substitute**
 - “Lot 1104, as shown on the Plan”.
- (4) Section 3(2), proviso—
 - Repeal**
 - “said plan” (wherever appearing)

Substitute

“Plan”.

- (5) After section 3(2)—

Add

“(3) In this section—

Plan (《圖則》) means the plan numbered MH2528c signed on behalf of the Director of Lands and deposited in the Land Registry;

tramway area (纜車軌道範圍) means the area delineated and coloured yellow on the Plan.

- (4) The Secretary may, by notice published in the Gazette, amend the definition of
- Plan*
- in subsection (3) by replacing the reference to the plan in the definition with a reference to another plan.”.

8. Section 4 amended (power to alter levels of ground etc.)

Section 4—

Repeal

“for Transport and Housing”.

9. Section 5 amended (power to make additional structures, equipment, etc.)

Section 5—

Repeal

“for Transport and Housing” (wherever appearing).

10. Section 7 amended (protection of sewers, etc.)

Section 7—

Repeal

“for Transport and Housing” (wherever appearing).

11. Section 7A amended (power to enter adjoining lands, etc.)

- (1) Section 7A(1)—

Repeal

“for Transport and Housing”.

- (2) Section 7A(2)—

Repeal

“Secretary for Transport and Housing’s”

Substitute

“Secretary’s”.

- (3) Section 7A(3)—

Repeal

“for Transport and Housing” (wherever appearing).

- (4) Section 7A(8)—

Repeal

“Crown”

Substitute

“Government”.

12. Section 8 amended (settlement of differences between company and Director)

- (1) Section 8, heading—

Repeal

“Director”

Substitute

“Secretary”.

- (2) Section 8—

Renumber the section as section 8(1).

- (3) Section 8(1)—

Repeal

“for Transport and Housing” (wherever appearing).

- (4) After section 8(1)—

Add

“(2) This section does not apply if the company is in default within the meaning of section 8A.”.

13. Sections 8A to 8E added

After section 8—

Add**“8A. When is the company in default**

For the purposes of sections 8B, 8C and 8E, the company is in default if—

- (a) it fails to, or there is a substantial likelihood of it failing to, operate and maintain the tramway properly, which results, or is likely to result, in—
 - (i) a substantial breakdown of the tramway system;
 - (ii) persons who travel on the tramway or who are on the tramway station or termini being endangered in a manner that may result in serious injury to or death to those persons; or
 - (iii) serious injury to or death of those persons;
- (b) it fails to comply with a term on which the operating right is granted;

- (c) it appears insolvent to the extent that it is unable to maintain the tramway as an important tourism and recreational facility; or

- (d) any of the following circumstances occurs—

- (i) a petition is presented for the winding up of the company under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);
- (ii) the company has passed a resolution for voluntary winding up within the meaning of section 228(2) of that Ordinance;
- (iii) a winding-up statement is delivered under section 228A(1) of that Ordinance to the Registrar of Companies in relation to the company.

8B. Secretary’s power in case of default

- (1) This section applies if the company is or has been in default in the manner specified in section 8A(a), (b) or (c).
- (2) The Secretary may issue a notice to the company requiring it to—
 - (a) remedy the default; and
 - (b) take effective measures to the satisfaction of the Secretary to prevent the default from recurring.
- (3) The Secretary may conduct an inquiry into the financial condition of the company if the company is or has been in default in the manner specified in section 8A(c).
- (4) The Secretary must not issue a notice under subsection (2) on the ground that the company is or has been in default in the manner specified in section 8A(c) unless

the Secretary considers, after conducting an inquiry under subsection (3), that the company is insolvent to the extent that it is unable to maintain the tramway as an important tourism and recreational facility.

- (5) A notice under subsection (2) must specify the period within which the requirement must be complied with.
- (6) The period must be reasonable in the circumstances.
- (7) If the company needs more time to comply with the requirement in the notice, it may apply in writing to the Secretary for an extension of the period.
- (8) On an application under subsection (7), the Secretary may extend the period for such time that the Secretary considers reasonable in the circumstances.
- (9) A period may be extended more than once under subsection (8).

8C. Notice of intention to terminate operating right

- (1) This section applies if the Secretary—
 - (a) is of the opinion that the company has failed to comply with a notice issued to it under section 8B(2); and
 - (b) reports to the Chief Executive in Council that the company has failed to comply with the notice.
- (2) The Chief Executive in Council may direct the Secretary to issue a notice to the company if it appears to the Chief Executive in Council that—
 - (a) the company is or has been in default in the manner specified in section 8A(a), (b) or (c); and
 - (b) a notice issued under section 8B(2) for the default has not been complied with.

- (3) A notice issued under subsection (2) must—
 - (a) inform the company of the intention of the Chief Executive in Council to terminate the operating right granted to the company;
 - (b) be accompanied by—
 - (i) a copy of the notice issued under section 8B(2); and
 - (ii) a summary of the report referred to in subsection (1)(b); and
 - (c) point out the right to make representation under section 8D(1).

8D. Company may make representation

- (1) If a notice is issued under section 8C(2), the company may make a written representation to the Chief Executive in Council to show cause why an order should not be made under section 8E(1)(a).
- (2) The representation must be made within—
 - (a) 28 days after the date of issue of the notice; or
 - (b) any further period the Chief Executive in Council allows.

8E. Order of termination

- (1) The Chief Executive in Council may—
 - (a) by order terminate the operating right granted to the company if satisfied that—
 - (i) the company is or has been in default in the manner specified in section 8A(a), (b) or (c);

- (ii) the procedures prescribed by sections 8B and 8C have been followed in relation to the default;
- (iii) no sufficient cause has been shown under section 8D(1) why the order should not be made; and
- (iv) it is just and reasonable to make the order; or
- (b) by order terminate the operating right granted to the company if—
 - (i) the company is in default in the manner specified in section 8A(d); and
 - (ii) it appears to the Chief Executive in Council that the company is unable to maintain the tramway as an important tourism and recreational facility.
- (2) Before exercising the power under subsection (1)(a), the Chief Executive in Council must consider—
 - (a) the extent to which the default was or is caused by circumstances beyond the control of the company;
 - (b) any representation made under section 8D(1); and
 - (c) any other relevant matters.
- (3) Before exercising the power under subsection (1)(b), the Chief Executive in Council must consider all relevant matters.”.

14. Sections 9, 10 and 11 repealed

Sections 9, 10 and 11—

Repeal the sections.**15. Sections 11A to 11D added**

Before section 12—

Add**“11A. Application of sections 11B and 11C**

Sections 11B and 11C apply if—

- (a) the operating right is to expire or is to be terminated under this Ordinance; and
- (b) the operating right is not to be granted for a further period to the company.

11B. Mandatory lease of essential premises

- (1) The Chief Executive in Council may order the person (*lessor*) who owns any essential premises to lease the premises to a party (*lessee*) designated by the Chief Executive in Council.
- (2) An order made under subsection (1) may contain directions that are reasonably required for ensuring compliance with subsection (10).
- (3) Subject to this Ordinance, the terms of the lease are to be agreed between the lessor and the lessee.
- (4) The period of the lease—
 - (a) is to be determined by the Chief Executive in Council; and
 - (b) may begin, whether or not any term of the lease has yet to be agreed on.
- (5) If an order is made under subsection (1), the lessee may, on the commencement of the lease, take possession of the essential premises for the purposes of operating the tramway in accordance with—

- (a) this Ordinance; and
 - (b) the terms of the operating right granted to the lessee under section 2B(1) or (5).
- (6) Subsection (5) applies whether or not any term of the lease has yet to be agreed on.
- (7) An order made under subsection (1) may, on an application by the Secretary to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.
- (8) The lease confers on the lessee a right to—
- (a) use the essential premises for the undertaking; and
 - (b) maintain the premises in a condition that is appropriate for use for the undertaking.
- (9) The lessee must pay rent to the lessor for the essential premises of an amount equal to the open market rent—
- (a) that the lessor may reasonably expect to receive under a lease of the premises; and
 - (b) that is to be determined in accordance with the terms of the lease.
- (10) The lessor must ensure that when the lessee takes possession of the essential premises, the premises are in a condition that is suitable for operating the tramway in accordance with—
- (a) this Ordinance; and
 - (b) the terms referred to in section 2B(1)(a) or (5)(a) that apply immediately before the lease commences.
- (11) In this section—

essential premises (必要處所) means any land, structure or building that is considered by the Chief Executive in Council to be essential to operating the tramway.

11C. Mandatory sale of essential equipment

- (1) The Chief Executive in Council may order the person (*vendor*) who owns an essential equipment to sell the equipment to a party (*purchaser*) designated by the Chief Executive in Council.
- (2) An order made under subsection (1) may contain directions that are reasonably required for ensuring compliance with subsection (8).
- (3) Subject to this Ordinance, the terms of the sale are to be agreed between the vendor and the purchaser.
- (4) If an order is made under subsection (1), the purchaser may, on the expiry or termination of the period of the operating right during which the order is made, take possession of the essential equipment for the purposes of operating the tramway in accordance with—
- (a) this Ordinance; and
 - (b) the terms of the operating right granted to the purchaser under section 2B(1) or (5).
- (5) Subsection (4) applies whether or not any term of the sale has yet to be agreed on.
- (6) An order made under subsection (1) may, on an application by the Secretary to the Court of First Instance, be enforced by an order of the Court as if it were a judgment or order of the Court.
- (7) The purchaser must pay a sum to the vendor for the essential equipment of an amount equal to the prevailing real value of the equipment to be assessed as at—

- (a) the date on which the ownership of the equipment is transferred from the vendor to the purchaser; or
 - (b) the date on which the purchaser takes possession of the equipment,
- whichever is earlier.
- (8) The vendor must ensure that when the purchaser takes possession of the essential equipment, the equipment is in a condition that is suitable for operating the tramway in accordance with—
- (a) this Ordinance; and
 - (b) the terms referred to in section 2B(1)(a) or (5)(a) that apply when the order is made.
- (9) In this section—
- essential equipment* (必要設備) means any tramcar, motive power, works, plant, machinery, apparatus or article that is considered by the Chief Executive in Council to be essential to operating the tramway.

11D. Resolution of disagreement over terms of lease or sale

- (1) This section applies if—
- (a) the lessor and the lessee under a lease effected because of an order under section 11B(1) fail to agree on the rent payable under section 11B(9) or any other term of the lease; or
 - (b) the vendor and the purchaser under a sale effected because of an order under section 11C(1) fail to agree on the sum payable under section 11C(7) or any other term of the sale.
- (2) The matter that is not agreed on must be determined—

- (a) if the lessor and the lessee agree, or the vendor and the purchaser agree, to resolve the matter by arbitration—by arbitration under the Arbitration Ordinance (Cap. 609); or
 - (b) if there is no agreement for resolving the matter by arbitration—by the Lands Tribunal.
- (3) For an arbitration under subsection (2)(a)—
- (a) the lessor and the lessee, or the vendor and the purchaser, are regarded as having made an arbitration agreement within the meaning of the Arbitration Ordinance (Cap. 609); and
 - (b) the terms of the agreement are regarded as including a provision that the matter is to be determined by a single arbitrator or such number of arbitrators as the lessor and the lessee, or the vendor and the purchaser, may agree.”.

16. Section 12 amended (motive power, etc.)

Section 12—

Repeal

“for Transport and Housing” (wherever appearing).

17. Section 14B amended (appointment of inspectors)

Section 14B(1)—

Repeal

“for Transport and Housing”.

18. Section 14D amended (Secretary for Transport and Housing may order that defects be remedied)

- (1) Section 14D, heading—

Repeal

“for Transport and Housing”.

- (2) Section 14D(1)—

Repeal

“for Transport and Housing” (wherever appearing).

- (3) Section 14D(4)—

Repeal

“for Transport and Housing” (wherever appearing).

19. Section 14E amended (closure of tramway for safety reasons)

Section 14E—

Repeal

“for Transport and Housing” (wherever appearing).

20. Section 14F amended (closure of tramway for repairs or alterations)

Section 14F(2)—

Repeal

“for Transport and Housing”.

21. Section 15 amended (regulations)

- (1) Section 15(1)(b)—

Repeal

“for Transport and Housing”.

- (2) Section 15(1)(d)(i)—

Repeal

“for Transport and Housing”.

22. Section 36 repealed (saving)

Section 36—

Repeal the section.

Part 3**Consequential Amendments****Division 1—Amendment to Lands Tribunal Ordinance
(Cap. 17)**

23. Schedule amended (Ordinances under which matters may be submitted to the Tribunal for determination)

The Schedule—

Add

“265. Peak Tramway Ordinance.”.

**Division 2—Amendment to Peak Tramway (Safety)
Regulations (Cap. 265 sub. leg. A)**

24. Section 2 amended (interpretation)

Section 2—

Repeal the definition of *Secretary*.

**Division 3—Amendments to Peak Tramway By-laws (Cap.
265 sub. leg. B)**

25. By-law 3 amended (interpretation)

- (1) By-law 3, definition of *tramcar*—

Repeal

“, cars and trucks”.

- (2) By-law 3—

Repeal the definition of *Company*.

26. Substitution of “company” for “Company”

- (1) The following provisions, English text—

- (a) by-law 2;
- (b) by-law 3, definition of *official*;
- (c) by-law 4;
- (d) by-law 9;
- (e) by-law 15;
- (f) by-law 18;
- (g) by-law 19;
- (h) by-law 20;
- (i) by-law 21;
- (j) by-law 22;
- (k) by-law 28;
- (l) by-law 29—

Repeal

“Company” (wherever appearing)

Substitute

“company”.

- (2) The following provisions, English text—

- (a) by-law 15, heading;
- (b) by-law 30, heading—

Repeal

“Company”

Substitute

“company”.

- (3) The following provisions, English text—

- (a) by-law 20;
- (b) by-law 32—

Repeal

“Company’s”

Substitute

“company’s”.

**Division 4—Repeal of Grant of Right to Run and Operate
Tramway Notice (Cap. 265 sub. leg. C)**

27. **Grant of Right to Run and Operate Tramway Notice repealed**
Grant of Right to Run and Operate Tramway Notice—
Repeal the Notice.
-

Explanatory Memorandum

The main object of this Bill is to amend the Peak Tramway Ordinance (Cap. 265) (*Ordinance*) to put in place a mechanism for the grant of the operating right of the Peak Tramway after December 2015. The Bill also provides for the transfer of the policy responsibility for the Ordinance from the Secretary for Transport and Housing to the Secretary for Commerce and Economic Development.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 updates the long title.
4. Clause 5 repeals section 2A of the Ordinance. That section confers a one-off power to grant the operating right up to 31 December 2015. Clause 6 adds a new section (section 2B) to empower the Chief Executive in Council to grant the operating right from 1 January 2016 onwards. The power may be exercised more than once. The right may be granted for a further period in accordance with the new section 2B(5).
5. Clause 7 makes technical amendments to section 3 of the Ordinance.
6. Clause 13 adds several provisions to empower the Secretary for Commerce and Economic Development to take action if the operator is or has been in default (new sections 8A to 8D). The Chief Executive in Council is also empowered to terminate the operating right (new section 8E) if the operator is or has been in default.
7. Clause 15 adds several provisions to empower the Chief Executive 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.

8. There are references to the Secretary for Transport and Housing in the Ordinance which need to be updated to the Secretary for Commerce and Economic Development. A definition is also added (clause 4(3)) to define the Secretary for Commerce and Economic Development to shorten those references (clauses 8 to 12, 16 to 21 and 24).
9. Sections 9, 10, 11 and 36 of the Ordinance are obsolete. Clauses 14 and 22 repeal those sections. Clause 27 repeals the Grant of Right to Run and Operate Tramway Notice (Cap. 265 sub. leg. C) which is rendered obsolete on the grant of the operating right under the new section 2B.
10. An obsolete reference to the Crown in section 7A(8) of the Ordinance is replaced (clause 11(4)).

Implications of the proposal

Financial and civil service implications

The payment of the premium for the operating right by the operator will increase the general revenue of the Government. The sum should reflect the full value of the government land on which the tram track lies and the four intermediate stations are located, after taking into account various relevant factors.

2. The Transport and Housing Bureau (“THB”) has all along been absorbing the workload relating to peak tramway, including that arising from the granting of the operating right of the peak tramway carried out every 10 years or so, within its existing resources. The proposed legislative amendments are to provide the Chief Executive in Council with the power to grant future operating rights and set out the long-term arrangements to ensure the continued operation of the peak tramway and its smooth transition from one operator to another where necessary. The transfer of policy responsibility from THB to the Commerce and Economic Development Bureau (“CEDB”) should therefore not entail financial or civil service implications on both bureaux in the near future. Yet, subject to the passage of the legislative amendments with the new exit mechanism, there may be a need to engage a new operator, say, through tendering, some years later. Besides, additional resources may be required to resolve disputes arising from mandatory lease/sale. Such additional workload is new. Taking into account the complexities of the above and other possible tasks involved, CEDB may need to bid for additional manpower and financial resources in accordance with the established mechanism as and when necessary.

3. Separately, we are now proposing that if there are any disputes over the terms under the mandatory lease/sale arrangements under paragraph 10 of the main paper, such disputes may be resolved by arbitration or referred to the Lands Tribunal. We envisage that exit, and for that matter, such kind of disputes would not be frequent. Yet, under the established arrangements agreed between the Judiciary and the Government, the Government will provide any such additional resources to the Judiciary, through the established resource allocation mechanism as necessary.

Economic implications

4. The proposal will help ensure the continued operation of peak tramway, which will preserve one of the major local tourist attractions and thus be conducive to maintaining Hong Kong's attractiveness to tourists. The proposed exit mechanism will also help remove the de facto monopoly position of the Peak Tramways Company Limited and allow for the possibility of new entrant in the market. This will strengthen the incentives for the incumbent operator to improve its services, thereby benefiting the users.

Environmental implications

5. 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 reduce road-side emission.