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Paper for the House Committee meeting on 9 October 2015

Report of the Bills Committee on Peak Tramway (Amendment) Bill 2015

Purpose

This paper reports on the deliberations of the Bills Committee on Peak Tramway (Amendment) Bill 2015 ("the Bills Committee").

Background

Existing legislation and enforcement

Operating right before 2014

2. The peak tramway has been in operation since 1888. It has become a popular tourism and recreational facility for both visitors and local people. The 1.4 kilometre-long tram track and the four intermediate stations of the peak tramway run on Government land, and its termini at both ends of the track are situated on sites owned by the incumbent operator, the Peak Tramways Company, Limited ("PTC"). Under section 2A(1) of the Peak Tramway Ordinance (Cap. 265) ("the Ordinance"), PTC was granted a 10-year operating right from 1 January 1984 subject to the payment of a non-refundable premium of \$2.79 million. PTC was granted an extension of the operating right for a further period of 10 years upon the then Secretary for Transport's satisfaction of PTC's commitment to modernize and improve the peak tramway and ancillary equipment. In addition, the fares of the peak tramway were de-regulated.

3. In November 2003, the Chief Executive ("CE") in Council approved the granting of another 10-year extension to PTC to run and operate the peak tramway from 1 January 2004 to 31 December 2013 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 approached the Government for an extension in late 2012. According to the Administration, PTC also indicated that it had a plan to improve the peak tramway system and services. As regards the arrangements of the operating right, it was previously understood by the Administration and PTC that section 2A(5) and 2A(6) of the Ordinance provided the 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 CE in 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 ("DoJ"), it came to the Administration's attention that section 2A(5) and 2A(6) were one-off provisions and would not allow any further extension beyond 2013. The Administration needed to amend the Ordinance to enable CE in Council to grant the operating right for the peak tramway beyond 2013.

5. Following consultation with the Panel on Transport on 19 July 2013, the Administration has taken a two-stage approach for the legislative amendment exercise. The first stage was to amend the Ordinance so that a two-year operating right starting 1 January 2014 could be granted to PTC as an interim measure. In the second stage, the Administration would, during the two-year interim period, study and decide on the long-term arrangements of peak tramway operation including assessing the merits and feasibility of PTC's proposed upgrading plan for the peak tramway system and services, how the operating right should be granted, extended and, where necessary, ended in the long run having regard to the upgrading plan.

6. On 9 October 2013, the Administration introduced the Peak Tramway (Amendment) Bill 2013 ("the 2013 Bill") into the Legislative Council ("LegCo") to empower CE in Council to grant an operating right to PTC for two years. A Bills Committee was formed on 11 October 2013 to scrutinize the 2013 Bill. Subsequently, LegCo passed the 2013 Bill on 20 November 2013. 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 had to pay to the Administration a non-refundable lump-sum full market premium of \$25 million for the Government land on which the track and the intermediate stations of the peak tramway lie.

Operating right beyond 2015 and upgrading proposal of PTC

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

8. According to the relevant LegCo Brief (File ref.: THB(T)CR 2/5591/75), the Bill seeks to, amongst other things, provide for an exit mechanism to allow the operating right to change hands smoothly. The exit mechanism proposes a mandatory lease arrangement ("MLA") for the essential premises¹ to be let at market rent and a mandatory sale arrangement for the essential equipment² to be acquired at a sum equal to the prevailing real value of the equipment. Dispute, if any, over the sum of rent/compensation and any other terms under the mandatory sale and lease arrangements will be subject to arbitration (if there is an agreement by the parties) or resolved at the Lands Tribunal (if there is no agreement on arbitration). DoJ has confirmed that these two arrangements are consistent with the requirements for protection of private property as enshrined in Articles 6 and 105 of the Basic Law ("BL6"³ and "BL105"⁴). PTC has indicated its willingness to lease (but not sell) the relevant parts of the sites and buildings in case of an exit.

9. PTC has 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 upgrading plan, the EDEV 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 as set out in PTC's submission (LC Paper No. CB(4)1208/14-15(03)) –

¹ The term "essential premises" is defined in the Bill to mean any land, structure, or building that is considered by CE in Council to be essential to operating the tramway.

² The term "essential equipment" is defined in the Bill to mean any tramcar, motive power works, plant, machinery, apparatus or article that is considered by the CE in Council to be essential to operating the tramway.

³ BL 6 reads "*The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law.*".

⁴ BL 105 reads "*The Hong Kong Special Administrative Region 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. The ownership of enterprises and investments from outside the Region shall be protected by law.*".

- (a) longer tramcars increasing the current capacity by 66% from 120 to 200 passengers;
- (b) the provision of extensive weather protected queueing areas;
- (c) the installation of a complete new haulage and signalling system;
- (d) a renovation of the Upper Terminus, the control room and engine room; and
- (e) the replacement of all the track rails for the heavier tramcars and major track foundation and bridge reinforcement.

The Bill

10. 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 the Secretary for Commerce and Economic Development ("SCED"). Key amendments proposed under the Bill include –

- (a) references to the Secretary for Transport and Housing ("STH") in the Ordinance are proposed to be amended to SCED. A definition is also proposed to be 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 enable the CE in Council to grant the operating right to any body corporate that CE in Council sees fit;
- (c) clause 5 repeals section 2A of the Ordinance on the right to run and operate the tramway;
- (d) clause 6 adds a new section (section 2B(1)) to empower CE in Council to grant the operating right from 1 January 2016 onwards for a period not exceeding 10 years. This power may be exercised more than once. Further, each right granted under section 2B may be extended for a further period not exceeding 10 years in accordance with the new section 2B(5);

- (e) clause 13 adds several provisions in section 8 to empower SCED to take action if the operator is or has been in default⁵ (new sections 8A to 8D). CE in Council is also empowered to terminate the operating right (new section 8E) if the operator is or has been in default;
- (f) clause 14 repeals sections 9, 10 and 11 of the Ordinance⁶;
- (g) clause 15 adds sections 11A to 11D to empower CE in Council to make orders if the operating right is to expire or 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 tramway⁷.

The Bills Committee

11. At the House Committee meeting on 8 May 2015, members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is at **Appendix I**. Under the chairmanship of Hon Jeffrey LAM Kin-fung, the Bills Committee has held four meetings and received views from deputations at one of the meetings. The three deputations which have given views to the Bills Committee are PTC, Civic Party ("CP") and Liberal Party ("LP").

Deliberations of the Bills Committee

12. The Bills Committee supports the policy direction of the Bill. Members also welcome the transfer of the policy responsibility for the Ordinance from STH to SCED. The issues of concern raised by members and deputations in the course of deliberation are summarized in the ensuing paragraphs.

⁵ 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.

⁶ Sections 9, 10 and 11 are related to discontinuance of tramway by company, proceedings in case of insolvency of company and purchase by Government of tramway respectively.

⁷ The owner of the terminus sites, related premises and other assets essential to peak tramway operation may be required to lease the essential premises (i.e. any land, structure or building that is considered by CE in Council to be essential to operating the tramway) and sell the essential equipment (i.e. any tramcar, motive power works, plant, machinery, apparatus or article that is considered by CE in Council to be essential to operating the tramway) 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 essential premises leased and a sum for the essential equipment purchased (if any) to the owner.

Compliance with Articles 6 and 105 of the Basic Law

13. Some members and the Legal Adviser to the Bills Committee ("the Legal Adviser") have raised concerns about the compliance of the proposed MLA for essential premises under the Bill with BL6 and BL105 and the mandatory sale arrangements for essential equipment. Members have also invited the Administration to explore the feasibility of implementing the proposed MLA through non-legislative means. LP considers that the proposed MLA may not be able to protect the right of private property owner. CP also expresses concern that the proposed MLA may be subject to legal challenge and should be dealt with prudently.

MLA

14. Some members consider that even if arrangements can be made in the Bill to lease the essential premises at market rent, there is still potential impairment to the owner's property in that, for example, the owner must (i) let the essential premises to the new operator designated by the Government; (ii) agree to any proposed alteration to the structure therein; and (iii) allow the tenancy to continue even if the new operator does not comply with certain lease terms.

15. As explained by the Administration, the proposed MLA of the essential premises has been introduced to allow the operating right of the peak tramway to change hands where necessary. It can prevent a *de facto* position of PTC being the only body that may operate the peak tramway owing to the absence of an exit mechanism in the law. MLA will not amount to deprivation of property under BL105 because the ownership of the premises concerned will still be vested with PTC. PTC has the right to receive market rent, or if it so prefers, sell the premises. Indeed, PTC finds the MLA to be a more palatable arrangement when compared to a compulsory acquisition of the essential premises.

16. Further, DoJ has reviewed whether MLA can satisfy the "proportionality test" (if applicable) under which in non-deprivation cases, any interference with property rights will need to strike a balance between the general interest of society and protection of the individual's rights. According to *Hysan Development Co. Ltd. & Ors v Town Planning Board* (CACV 232 & 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 individual and legal persons. Therefore, MLA as proposed in the Bill is consistent with the protection of rights to use and dispose of property "in accordance with law" as required under BL105.

The Administration further assured members that, even assuming that the "proportionality test" applies, since the MLA is able to balance the general interests of society (to establish a mechanism to prevent monopoly by a single operator and to avoid disruption of peak tramway service) and the protection of the owner's rights (to receive the rent of essential premises at market value), MLA can satisfy the "proportionality test". Members have noted that the aforementioned case is being appealed to the Court of Final Appeal.

17. Members have noted that the Government seeks to protect the interest of property owner as far as possible by requiring the lessee of MLA to pay market rent to the lessor for the essential premises (including land). Dispute, if any, arising from the rental amount will be resolved through arbitration or at the Lands Tribunal. The Administration has stressed that pending settlement of the dispute, the Bill will provide for the new operator to take possession of the "essential premises" first to avoid service disruption.

18. Notwithstanding this, some members consider the asset values of the two terminus sites are being affected by MLA as non-essential premises will be subject to less favourable terms or the entire sites cannot be put to redevelopment. The Administration has explained that the operation of the peak tramway can be regarded as a complementary facility to attract and bring potential customers to the Peak Tower which is owned by the same company controlling PTC. For the terminus site at the Garden Road, the offices at the upper floors have essentially no direct functional relation with the terminus. The Administration further advised that the proposed MLA is only applicable to the part of the two sites which are mainly used as termini and engine room and should not affect the other parts of the sites. The Administration further explains that the Garden Road terminus site and the Peak terminus site were last re-developed in the 1980s and 1990s respectively, during which peak tramway service continued to operate in accordance with the statutory requirements and the terms of the operating right. The Bill has not proposed any changes in this aspect. The Administration stressed that peak tramway operation will not affect the right of the land owner to, if it so desires, pursue redevelopment of the sites in accordance with the terms of the land grants.

19. Some members consider it more straight-forward for the new operator to buy the essential premises from the owner to avoid having to negotiate or deal with disputes, if any, over the market rent at the end of each MLA period. The Administration has explained that the Bill does not forbid the market force to come into play. If the owner can reach an agreement with the new operator on their own accord in respect of selling or leasing of the essential premises, CE in Council will not need to exercise the power to order a mandatory lease. The Administration agrees to amend the proposed sections 11B and 11C to reflect

such policy intent in the Bill. Specifically, amendments will be made to the two sections such that the power under 11B(1) and 11C(1) must not be exercised unless CE in Council is satisfied that there is a substantial risk that the operation of the tramway will be disrupted if power is not exercised.

20. Some members consider that the Government can acquire the premises and lease them to the new operator. The Administration explains that the buying option will mean that the new operator may have to pay a hefty sum upon entry, which will in turn raise the entry threshold and will not be conducive to introducing competition where necessary. If the Government is to fund the purchase of the essential premises, a significant amount of public fund will be involved. Indeed, PTC has expressed objection to any compulsory acquisition of its land or premises which, in its opinion, will be an unjust encroachment of private property.

Mandatory sale arrangement

21. Members have noted the Administration's advice that the proposed mandatory sale arrangement is akin to expropriation which is likely to be regarded as "deprivation" under BL105, and the law requires real value compensation be paid without undue delay to the asset owner. Since the sum of compensation to the asset owner, as required in the Bill, is to be assessed at real value, the proposed mandatory sale arrangement is considered to be consistent with BL6 and BL105.

"In accordance with law"

22. Members noticed that both BL6 and BL105 require the Government to protect the right of private ownership of property "*in accordance with law*". According to the Administration, the expression of "*in accordance with law*" in BL105 mandates the principle of legal certainty and incorporates the requirements that the relevant law must be adequately accessible to citizens and formulates with sufficient precision to enable the citizens to regulate his conduct. Therefore, "*in accordance with law*" means that the Government cannot arbitrarily restrict the property rights of individuals or legal persons. Yet, BL105 permits the Government to restrict property rights or deprive properties "*in accordance with law*" through legislation as and when necessary. The proposed MLA is a restriction imposed "*in accordance with law*" by the Government on property rights through legislation.

23. The Administration has advised that the terms in the land lease of the terminus sites allow the use of the sites for the purposes in connection with the operation of the peak tramway but PTC can choose not to use the sites for such

a purpose. It may use them for other purposes permissible in the land leases subject to compliance of the relevant Outline Zoning Plan approved by the Town Planning Board.

Precedents and references

24. In response to members' concern, the Administration has provided information on local and overseas⁸ legislation providing for a MLA. There are several local examples relating to transport services, namely Part IV of the Public Bus Services Ordinance (Cap. 230), Part V of the Ferry Services Ordinance (Cap. 104), and Part IV of the Mass Transit Railway Ordinance (Cap. 556) ("the three ordinances"). These ordinances contain provisions providing for the Government to take possession of properties of individuals or legal persons under certain circumstances for a period of time specified. The Government has not exercised any of the relevant statutory powers to take possession of private properties. The Administration has used the three ordinances to show that the idea of MLA is not unprecedented. That said, the Administration further elaborates that there are differences between MLA proposed in the Bill and the above examples. There are also differences amongst the quoted examples (such as in terms of the duration of the possession and the situation under which the power would be exercised⁹). Members have noted that in case CE in Council cannot identify a suitable operator upon the expiry or termination of the existing operating right from the market, the Bill does not preclude the operating right to be granted to an entity affiliated with the Government. Members also note that the extension of the operating right of the peak tramway is also determined by CE in Council under the proposed section 2B.

25. The Administration explains that prior to the passage of the Peak Tramway (Amendment) Bill 1985, the Ordinance provided an exit arrangement and conferred to the then Governor in Council the right to mandatorily buy back the undertaking of the peak tramway within six months after the expiration of 28 years from the time when PTC was empowered to construct the tramway, and within six months after the expiration of every subsequent period of seven years. Yet, the Ordinance no longer includes any provision on exit arrangement after passage of the Peak Tramway (Amendment) Bill 1985. The Bill basically seeks to reinstate the exit arrangement which was absent in the

⁸ Overseas legislation includes "Rent Stabilization Code" of New York, and "Telecommunications Act of 1986" of the United States, and the former was considered in the court case of *"The Greystone Hotel Co. v. The City of New York Edward Hochman"*.

⁹ Some of them are used in case of emergencies, whilst others for revocation of franchises or franchises having expired without renewal.

Ordinance for the past 30 years. The proposed MLA is the most practical and practicable solution for the problem of a lack of exit mechanism in the Ordinance.

26. There is a concern that the proposed MLA will become a precedent bringing significant impacts on public facilities and services as well as on private property rights. In the course of discussion, members have noted that in the context of law-making, precedents are serving as references. In response to the concern, the Administration has stressed that although references to previous practices or arrangements may be made in preparing a legislative proposal, the proposal will be subject to LegCo's scrutiny so that Members may study whether reference made or arrangement adopted in a proposal is appropriate and adequate. As such, if the Administration proposes to adopt the idea of the proposed MLA for any legislative proposal in future, LegCo may study the proposal to decide if the proposed MLA is an appropriate and adequate arrangement to be implemented in that proposal.

Implementation of MLA through land lease modification and in operating right

27. Some members remark that the protection of property right is the cornerstone of the rule of law. They consider it more appropriate to implement the proposed MLA by having PTC agreeing to surrender its present land grant in respect of the relevant plots of land designated for peak tramway operation to the Government, and asking the Government to make a re-grant to PTC containing the terms of the proposed MLA. This will obviate the need to make the requirements in the law.

28. As explained by the Administration, even if the lessee of the land lease of the terminus sites, i.e. PTC at present, agrees to modify the leases of the two terminus sites, a land lease, like any other contract, does not have any binding effect on non-contracting parties (such as the new peak tramway operator in this case). As such, the requirement for the lessee under MLA (i.e. the new operator) to pay market rent for the essential premises as well as the dispute resolution mechanism under the proposed section 11D cannot be enforced on any non-contracting party. In fact, the empowerment of the Lands Tribunal to handle disputes over the terms of mandatory lease can only be effected through legislative means. Moreover, PTC has advised that it will take at least several years for it and the Government to reach an agreement on land lease modification, which may involve complex and sensitive matters such as the land use requirement and payment of premium. It is also uncertain if the terms under the land lease as modified can also bind PTC's successor in land title. There is so far no case law under the common law that provides a clear answer to this question.

29. Noting the Administration's explanation, some members have further suggested implementing MLA through alternative non-legislative means, e.g. by drawing on the model of a Deed of Mutual Covenant ("DMC") where the rights and responsibilities of the tenants of a building are bound by DMC. The Administration has advised that the suggestion is infeasible because as far as DMC is concerned, all co-owners are bound to observe the land-related covenants in DMC by virtue of section 41 of the Conveyancing and Property Ordinance (Cap. 219). Nevertheless, as the tenants of the co-owners are not contracting party to DMC, they are only bound to comply with the restrictive covenants (e.g. no pet-keeping), but not the positive covenants (e.g. to pay the arrears of management fees). As such, even if the property owner agrees to modify the land leases to include a provision requiring the lessee under MLA to pay rent at market rate, such a provision will have no binding effect on the new operator who is not a contracting party to the land lease and DMC.

30. There are views that the Administration may incorporate MLA requirements as part of the terms of the operating right to bind the new operator. According to the Administration, this may necessitate negotiation with each new operator every time the operating right changes hand. As the outcome of each negotiation cannot be predicted, such uncertainty would not be conducive to maintaining the continuity of peak tramway service and thus render the exit arrangement ineffectual.

31. Some members do not subscribe to the Administration's explanation. Hon Paul TSE considers it more desirable to implement the proposed MLA through land lease modification. Hon Frankie YICK opines that protection of private property right under BL105 should be effected in such a way that no one including the Government can impose any requirement further to the land grant on the property concerned. To buy time for implementing MLA by way of land lease modification, Mr YICK has suggested granting an interim operating right to PTC for a further two years. Hon YIU Si-wing points out that the operation of peak tramway involves public interest and considers that the granting of operating right upon its expiry at the end of 2015 should not be deferred.

Grant of the operating right – public consultation

32. During the clause-by-clause examination of the Bill, members have exchanged views on whether CE in Council is required to consider the views of the public, such as those expressed by LegCo, the Central and Western District Council, and other organizations when it decides whether or not to grant the operating right to a body corporate. With reference to the case of *Hong Kong*

Television Network Limited, some members have considered it necessary to set out the requirement explicitly in proposed section 2B(3) of the Bill, in addition to the five matters listed therein. CP also considers that public views should be one of the matters to be considered by CE in Council.

33. The Administration has explained that according to the legal drafting convention, "CE in Council must take into account all relevant matters, including –" in proposed section 2B(3) means that the matters to be taken into consideration are not confined to the five matters in that section. As such, there is no need to amend the provision. As a matter of course, the Administration will consult LegCo before the granting of an operating right according to established practice. Indeed, this is exactly what the Administration has done before putting forth the Bill which, amongst other things, provides for the granting of the operating right commencing 1 January 2016 onwards. In March 2015, EDEV Panel was also consulted on the Administration's plan to discuss with PTC, on a without prejudice basis, the possibility of granting PTC a new 10-year operating right commencing 1 January 2016. The Administration has agreed that STH will undertake in his speech to be delivered during the resumption of the Second Reading debate of the Bill to consult LegCo before making a recommendation to CE in Council on the granting of the operating right. He will also explain that, in due course, if and when PTC applies for the second 10-year operating right together with its upgrading plan and after the Government has made an assessment on the application and upgrading plan, the Administration will consult LegCo before making a recommendation to CE in Council for its consideration along with all the submissions received.

Application for operating right

34. Some members support the suggestion of requiring the Administration to submit its recommendation to CE in Council in relation to an application for the operating right of the peak tramway within a specified period of time, and notify the applicant about the outcome to give business certainty.

35. As explained by the Administration, it will act according to section 70 of the Interpretation and General Clauses Ordinance (Cap. 1) which provides that "*Where no time is prescribed or allowed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises*" when granting new operating rights in future. Taking into account members' concern, the Administration proposes to move an amendment to add a provision to proposed section 2C(2) to specify that CE in Council must determine an application for the operating right without unreasonable delay.

Order of termination when the company is in default

36. Members have noted the Legal Adviser's advice that according to the proposed section 8E(3), CE in Council must consider all relevant matters before exercising the power under the proposed section 8E(1)(b). In light of the aforesaid, the Legal Adviser has requested the Administration to clarify the relevant matters that CE in Council will take into account in the said circumstances. The Administration has advised that when the company is in default under proposed section 8A(a) to (c), the Administration needs to look into the situation, including the extent of the default, and considers the company's representation before taking actions in accordance with proposed sections 8B, 8C and 8E. Meanwhile, whether there is a default which falls under proposed section 8A(d) is a matter of fact. The proposed section 8E will thus automatically be triggered. As a related matter, the Administration has no objection to members' proposal in respect of the Chinese text of proposed section 8A (a): to replace "維持" with "維修保養".

Way forward

37. According to PTC, if the Bill is passed in its present form, it intends to apply to the Government for the grant of the operating right for an initial period of 10 years commencing 1 January 2016, and once the right is granted, it will immediately apply for the renewal of such operating right for a further period of 10 years from 1 January 2026, together with a submission of its upgrading plan for formal approval by the Government. PTC expects to implement the upgrading plan of the peak tramway and its infrastructure for completion in four to five years' time. A deputation, i.e. LP, expresses concern on the need to preserve the natural environment of the peak area during the upgrading work.

38. The Administration has advised that the bureaux/departments concerned will examine carefully PTC's upgrading plan, including the environmental impacts of the proposed measures. In keeping with the established practice, the Administration will consult LegCo on PTC's application for the second 10-year operating right, it being that consultation with LegCo on the grant of the first 10-year operating right has already been completed. That should include details of PTC's upgrading plan. In response to the call for an interim review during the 20-year operating period, the Administration has undertaken to report to LegCo the performance of peak tramway service at an appropriate juncture, such as before the grant or extension of an operating right.

Committee Stage amendments

39. The Administration proposes to move Committee Stage amendments ("CSAs") to the Bill as detailed in paragraphs 19, 35 and 36. A full set of the draft CSAs to be moved by the Administration is in **Appendix II**. The Bills Committee has not raised objection to these CSAs.

40. Hon Tony TSE has also indicated his intention to consider moving CSA(s) to the Bill (LC Paper No. CB(4)1376/14-15(01)).

Follow-up actions by the Administration

41. The Administration has agreed to take the following actions –

- (a) to undertake in the speech of STH to be delivered during the resumption of the Second Reading debate on the Bill to consult LegCo before making a recommendation to CE in Council on the granting of an operating right (either in reliance on section 2B(1) or 2B(5)) along with all the submissions received (paragraph 33);
- (b) in line with paragraph 41(a), to consult LegCo on PTC's application for the second 10-year operating right (commencing in 2026), it being that the consultation with LegCo on the grant of the first 10-year operating right (commencing in 2016) has already been completed. The consultation regarding the second 10-year operating right will take place if and when PTC makes an application for it together with its upgrading plan and after the Government has made an assessment on the application and upgrading plan (paragraph 33); and
- (c) to report to LegCo the performance of peak tramway service at an appropriate juncture, such as before the grant or extension of an operating right (paragraph 38).

Resumption of Second Reading debate on the Bill

42. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 28 October 2015, subject to the moving of the CSAs by the Administration.

Advice sought

43. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4
Legislative Council Secretariat
8 October 2015

Bills Committee on Peak Tramway (Amendment) Bill 2015

Membership list

Chairman

Hon Jeffrey LAM Kin-fung, GBS, JP

Members

Hon CHAN Kam-lam, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon Paul TSE Wai-chun, JP
Hon Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
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
Hon Tony TSE Wai-chuen, BBS

(Total : 13 members)

Clerk

Ms Debbie YAU

Legal Adviser

Miss Evelyn LEE

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
6	In the proposed section 2C, by adding— "(3) The Chief Executive in Council must determine an application for the operating right without unreasonable delay."
13	In the proposed section 8A(a), in the Chinese text, by deleting "維持" and substituting "維修保養".
15	In the proposed section 11B, by adding— "(1A) The power under subsection (1) must not be exercised unless the Chief Executive in Council is satisfied that there is a substantial risk that the operation of the tramway will be disrupted if the power is not exercised."
15	In the proposed section 11C, by adding— "(1A) The power under subsection (1) must not be exercised unless the Chief Executive in Council is satisfied that there is a substantial risk that the operation of the tramway will be disrupted if the power is not exercised."