

**For discussion
on 23 March 2015**

Legislative Council Panel on Economic Development

Long-term Arrangements of the Peak Tramway Operation

Purpose

This paper seeks Members' view on our proposal to amend the Peak Tramway Ordinance (Cap. 265) ("the Ordinance") to provide for the granting of future operating right commencing on and after 1 January 2016 and the legal basis for other long-term arrangements of peak tramway operation. This paper also seeks Members' view on the Government's intention to engage the Peak Tramways Company Limited ("PTC") for discussion on the continued provision of peak tramway service by the company for a 10-year period commencing 1 January 2016.

Background

2. 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 stations¹ 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.

The need to amend the Ordinance

3. 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

¹ They are on Kennedy Road, MacDonnell Road, May Road and Barker Road.

increase the capacity of the facility and improve its service². 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 Legislative Council (“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.

4. When we consulted the Panel on Economic Development and the Panel on Transport on the two-stage legislative amendment exercise in 2013, the key views expressed were :

² 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 the holding capacity and improve the 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.

- (a) there would be a 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) there would be a need to put in place a mechanism to allow the operating right to change hands smoothly from one operator to another where necessary.

The Proposal

(I) Framework of our legislative amendments

(i) Granting of the operating right commencing 2016

5. The interim operating right of the peak tramway will expire in end-2015. We propose to add a provision to the Ordinance to empower the Chief Executive in Council to grant future operating rights commencing respectively on 1 January 2016 and afterwards to a suitable operator in an appropriate manner, as long as the duration of the operating right does not exceed the limit prescribed under the Ordinance. Such power to grant operating right can be exercised repeatedly. The terms on which an 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 whether to grant an operating right, the Chief Executive in Council must consider all relevant matters. Examples of such matters include the terms that the applicant is willing to accept (following its discussion with the Government), its financial capability, and its past performance in operating tramway facilities (if applicable).

6. As regards the duration of the operating right, we propose using 10 years as the basis. This arrangement would help maintain the stability of peak tramway service. The Government can also, where warranted, update the terms of the operating right on each occasion of granting or extension of the operating right, or introduce a new operator having regard to the circumstances at the time. Since the 1980s, the operating right was granted or extended on a 10-year basis on each occasion in accordance with the Ordinance then in force. That Ordinance also provided for a longer operating right to be granted if the operator had plans to undertake an upgrading plan that involved heavy investment and that sought to enhance peak tramway facilities. This was to ensure the financial viability of such plans. Indeed, a longer operating right was granted in a “10-plus-10-year” manner in the past according to the legal provisions at the time.

7. Based on the above considerations and to allow some flexibility for the granting of future operating right, we propose to stipulate in the Ordinance that:

- (a) each operating right should last not more than 10 years; and
- (b) each operating right under (a) may be extended for one further period of not exceeding 10 years (i.e. the total period of an operating right could be up to 20 years). The condition to meet for this extension to be granted is that the operator must submit information on its upgrading plan to the Government within a specified timeframe and the Government has to be satisfied with the operator's commitment and ability to undertake the upgrading plan to enhance the facilities and improve the service of the peak tramway.

8. In addition, we will make technical amendments to the definition of the "company" and update the definition of the "Secretary" in the Ordinance. The former will be changed from "the Peak Tramways Company Limited" to "the body corporate to which the operating right is granted" so that the Ordinance can better cater for operational needs. As pointed out in paragraph 2 above, the peak tramway has basically become a tourism and recreational facility since the 1980s. We therefore consider it more appropriate for the Commerce and Economic Development Bureau 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".

(ii) Termination of operating right and related arrangements

9. We propose amending the Ordinance to provide that the Chief Executive Council can have the power to consider terminating an operating right before its expiry on grounds of safety, an incumbent operator's failure to comply with the terms on which the operating right is granted, or possible insolvency of the incumbent operator on account of evidence shown.

10. We also propose amending the Ordinance to provide that an "exit mechanism" can be triggered when any of the above situations arises or when a new operating right (on expiry of an existing one) will no longer be granted to the same operator. Key elements of the exit mechanism are as follows :

- (a) under any of the situations mentioned in paragraph 9 above, 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 can make representation to the Chief Executive in Council;
- (c) the Chief Executive in Council will then decide if the operating right of the company should be terminated, having regard to the Government's report and the operator's representation; and
- (d) 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 to 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 and pay a sum for the other assets to the owner. Any disputes about the rent/sum under such mandatory lease/sale arrangements would be subject to arbitration or referred to the Lands Tribunal.

11. The objective of putting in place the mandatory lease/sale arrangements as described in paragraph 10(d) above is to enable the new operator to gain access to the assets essential to peak tramway operation (including the terminus sites and related premises) to minimise the risk of service disruption when exit is triggered in the course of transfer of operating right. Generally speaking, a mandatory sale arrangement would be more straightforward as opposed to a mandatory lease arrangement. However, a new operator would have to pay a hefty sum if he/she is required to purchase the terminus sites and related premises upon entry. This would in turn raise the entry barrier and would not be conducive to introducing competition where necessary. On the other hand, if the Government is to purchase the terminus sites and related premises, a significant amount 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 the peak tramway operation.

(II) The 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 3(b) 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 a key concern of LegCo mentioned in paragraph 4 above. 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 7(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. The upgrading plan will help enhance the attractiveness of the peak tramway as a major tourism and recreational destination in Hong Kong. The 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 implementation³. 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. 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. the operating right will last a total of 10-plus-10 years) alongside the submission of the upgrading plan with proven feasibility. If the Chief Executive in Council, upon receiving

³ 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.

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 10 years⁴.

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. 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 operating right (of 10 years) commencing 1 January 2016, disruption to peak tramway service can be avoided. Notwithstanding, as explained in paragraphs 10 and 11 above, our proposed legislative amendments will put in place an exit mechanism to allow the entry of new operators when needed.

Advice sought

16. The Government plans to submit the bill on our proposed legislative amendments to LegCo in May 2015. Members' views are sought on the proposal as set out in paragraphs 5 to 15 above.

**Transport and Housing Bureau
March 2015**

⁴ 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.