

Peak Tramway (Amendment) Ordinance 2015

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 16 OF 2015



C. Y. LEUNG
Chief Executive
5 November 2015

An Ordinance 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.

[6 November 2015]

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 Section 2A repealed (right to run and operate the tramway)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

- (3) The Chief Executive in Council must determine an application for the operating right without unreasonable delay.”.

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) 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.
- (3) An order made under subsection (1) may contain directions that are reasonably required for ensuring compliance with subsection (11).
- (4) Subject to this Ordinance, the terms of the lease are to be agreed between the lessor and the lessee.
- (5) 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.
- (6) 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).
- (7) Subsection (6) applies whether or not any term of the lease has yet to be agreed on.

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- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.
- (12) 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) 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.
- (3) An order made under subsection (1) may contain directions that are reasonably required for ensuring compliance with subsection (9).
- (4) Subject to this Ordinance, the terms of the sale are to be agreed between the vendor and the purchaser.
- (5) 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).
- (6) Subsection (5) applies whether or not any term of the sale 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 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.
- (9) 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.
- (10) 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(10) 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(8) 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.