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**Paper for the House Committee meeting on 30 November 2018**

**Report of the Subcommittee on Peak Tramway (Safety)  
(Amendment) Regulation 2018 and Peak Tramway Ordinance  
(Amendment of Section 3(3)) Notice 2018**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Peak Tramway (Safety) (Amendment) Regulation 2018 and Peak Tramway Ordinance (Amendment of Section 3(3)) Notice 2018 ("the Subcommittee").

**Background**

2. Following the enactment of the Peak Tramway (Amendment) Ordinance 2015 in November 2015, the Chief Executive in Council ("CE-in-C") may grant an operating right of the peak tramway<sup>1</sup> to a suitable operator from time to time in any manner that CE-in-C thinks fit. Each operating right should not exceed 10 years. The operating right is subject to terms agreed between the Government and the operator. Under sections 2B(5) and (6) of the Peak Tramway Ordinance (Cap. 265), CE-in-C must grant the operating right to the holder for a further period of not exceeding 10 years if the operator can satisfy CE-in-C that it is committed to and is capable of implementing an upgrading plan conducive to maintaining the peak tramway as an important tourism and recreational facility.

The grant of the first 10-year operating right

3. In December 2015, the CE-in-C approved under section 2B(1) of Cap. 265 the grant of the first 10-year operating right of the peak tramway to

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<sup>1</sup> The peak tramway has been in operation since 1888 and is a popular tourism and recreational facility for locals and tourists alike. Currently, it is run and operated by Peak Tramways Company Limited ("PTC"). Its 1.4-km tram track and four intermediate stations 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 PTC.

Peak Tramways Company Limited ("PTC") commencing on 1 January 2016. The Government had discussed in that context with PTC issues relating to its plan to replace and upgrade the existing tramway system. Subsequently, PTC formally submitted an application for a 10-year extension of its operating right (i.e. the second 10-year operating right from 2026 to 2035) together with an upgrading plan at an estimated cost of some \$650 million in support of its application in accordance with Cap. 265.

#### The grant of the second 10-year operating right

4. On 10 October 2018, the Government announced that CE-in-C has approved the grant of the second 10-year operating right of the peak tramway to PTC commencing on 1 January 2026.<sup>2</sup> Under the upgrading plan, PTC will increase the tramcar capacity by over 75% from 120 passengers to 210 passengers; construct a covered, temperature-controlled queuing and waiting area for about 1 300 passengers at the Lower Terminus at Garden Road; and renovate the Upper Terminus platform areas. PTC aims to commence the upgrading works in late 2018, for completion in 2021.

5. CE-in-C has also approved granting PTC the use of three additional pieces of Government land with an area of about 426 square metres adjacent to the existing tramway area for implementing the part of the upgrading plan aiming to increase the holding capacity of the Lower Terminus and improve the waiting environment for passengers. The additional Government land would be granted to PTC at nominal land premium and nil administrative fee.

6. Under the second 10-year operating right, PTC will continue to pay to the Government annually a sum of consideration equivalent to 12% of its total annual revenue received in the year for the occupation and use of the additional Government land on top of the existing Government land on which the track of the peak tramway and the four intermediate stations lie.

#### Legislative Amendments

7. CE-in-C and the Secretary for Commerce and Economic Development ("SCED") made the Peak Tramway (Safety) (Amendment) Regulation 2018 ("the Regulation") and Peak Tramway Ordinance (Amendment of Section 3(3)) Notice 2018 ("the Notice") respectively to implement the upgrading plan. The legislative amendments which were gazetted on 12 October 2018 were tabled before the Legislative Council at its meeting of 24 October 2018 and were subject to the negative vetting procedure.

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<sup>2</sup> Source: Press release issued by the Government on 10 October 2018

### *The Regulation*

8. The Regulation amends the Peak Tramway (Safety) Regulations (Cap. 265A) to:

- (a) introduce flexibility about the number of compartments for a tramcar by amending the definition of "tramcar"; and
- (b) increase the maximum number of passengers that a tramcar may carry from 120 to 210.

9. The Regulation comes into operation on a day to be appointed by SCED by notice published in the Gazette.

### *The Notice*

10. Under section 3 of Cap. 265, during the period for which the operating right of the peak tramway is granted, the company has the rights, among others, to occupy the tramway area which, as defined in section 3(3) of Cap. 265, means the area delineated and coloured yellow on the plan numbered MH2528c signed on behalf of the Director of Lands and deposited in the Land Registry ("the Plan"), and to construct, etc. the tramway. Since the existing tramway area is unleased and unallocated Government land, the control on building works under the Buildings Ordinance (Cap. 123) is at present not applicable to such area.

11. The Notice amends the definition of the Plan in section 3(3) of Cap. 265 by replacing "MH2528c" with "MH2528d". The legal effect of the Notice is that:

- (a) a portion of the existing tramway area will cease to form part of the area under the new plan numbered MH2528d; and
- (b) when the area which has ceased to form part of the tramway area as stated in paragraph (a) above, together with certain additional land, is granted to PTC by way of a land lease, the building and construction works to be carried out on such area will be subject to the regulation of the Building Authority under Cap. 123.

12. The Notice will come into operation on 31 December 2018.

## **The Subcommittee**

13. At the House Committee meeting held on 19 October 2018, Members agreed that a subcommittee should be formed to study the Regulation and the Notice. The membership list of the Subcommittee is in **Appendix**.

14. Under the chairmanship of Hon Jeffrey LAM, the Subcommittee held two meetings with the Administration.

15. To allow more time for the Subcommittee to prepare its report for the House Committee, Hon Jeffrey LAM, on behalf of the Subcommittee, moved a motion at the Council meeting of 14 November 2018 to extend the scrutiny period of the Regulation and the Notice to the Council meeting of 12 December 2018.

## **Deliberations of the Subcommittee**

16. While members understand that the legislative amendments proposed by the Administration are technical in nature and have no objection against improving the peak tram service, they are concerned about the policy considerations relating to the grant of the second 10-year operating right of the peak tramway to PTC, in particular about the improvements to be brought about by the upgrading plan on passengers' comfort, the fairness and transparency in granting additional Government land to PTC at a nominal land premium and nil administrative fee, and monitoring by the Administration on the progress of the upgrading plan to ensure its timely completion. Details of the Subcommittee's deliberations are set out in the ensuing paragraphs.

### Improvements to be brought about by the upgrading plan

17. Members, including Mr YIU Si-wing, Mr Tony TSE, Mr Frankie YICK, Dr KWOK Ka-ki and Mr WONG Ting-kwong, have enquired about the improvements to be brought about by the upgrading plan on the peak tram passenger space, queuing arrangements, waiting time and waiting areas. Dr KWOK is particularly concerned about the waiting arrangement at the Upper Terminus as he considers it unacceptable that PTC has made passengers wait for the peak tram on an uncovered walkway outside the Upper Terminus. He has urged PTC to address the problem as soon as possible. Mr YICK has noted that a temporary canopy has been erected outside the Upper Terminus to shelter passengers and suggested that the Administration may consider extending the canopy as an interim measure to relieve the problem.

18. The Administration has advised that, according to the consultancy study commissioned by PTC, the waiting time for the peak tramway service at the Upper Terminus will be reduced by about 90% after the completion of the

upgrading plan. The new peak tram will provide more space to standing passengers due to the wider gangways at the tramcar doors. Apart from making improvements to the Lower Terminus as set out in paragraph 4 above, PTC will improve the Upper Terminus by widening and lengthening the boarding platform to provide sufficient waiting area for a full tram-load of 210 passengers. There will also be an indoor, air-conditioned waiting area for 80 passengers prior to the ticket gates. After the completion of the upgrading plan, the new peak tram's hourly capacity will exceed the demand, and hence queues will not normally build-up at the Upper Terminus.

19. Regarding interim measures to improve the waiting environment at the Upper Terminus, the Administration has advised that since the road in between the Peak Tower and the Peak Galleria is an emergency vehicle access, there is a constraint to extend the canopy outside the Upper Terminus further. Signage indicating the estimated waiting time are put along the queue for visitors' information. With a view to reducing the waiting time, PTC is developing a timed ticket online sales programme aimed at making the visitor demand more even throughout the day.

#### Grant of additional land to PTC by the Administration

20. Noting that PTC will be granted a Short-Term Tenancy and followed by a Special Purpose Lease ("SPL") for the additional Government land at a nominal land premium and nil administrative fee for implementing the upgrading plan, Mr HUI Chi-fung has questioned the fairness and transparency of these arrangements and requested the Administration to provide a separate assessment on the rent/land premium for the additional land granted to PTC.

21. The Administration has advised that to enable PTC to embark upon the construction works of the upgrading plan as soon as possible, a Short-Term Tenancy will be granted to PTC as an interim arrangement, pending Government's negotiations with PTC on the detailed terms and conditions of SPL to ensure that PTC will occupy the additional Government land and the new Lower Terminus area for operation of the peak tram services in accordance with Cap. 265. The use of SPL will make the land so granted "leased land" which will come under the proper regulation of Cap. 123.

22. The Administration has further explained that the additional Government land will be granted to PTC at nominal land premium and nil administrative fee because in formulating the annual consideration payable by PTC based on a rate of 12% of its total revenue generated, the value for PTC's use of the Government land, including the additional land, has already been reflected. There is no separate assessment on the rent/land premium for the additional land granted to PTC. Moreover, the additional land granted to PTC is adjacent to the tramway and of very low development potential.

23. In response to Mr YIU Si-wing's enquiry, the Administration has advised that the adoption of the current charging mechanism had increased the Government's revenue. Under the current charging mechanism, the Government received some \$15 million as the premium paid by PTC in 2017, while the premium paid by PTC for the last 10-year operating right up to 2013 was over \$30 million.

#### Monitoring of PTC's performance by the Administration

24. Given that the grant of operating right to PTC to operate the peak tramway for another 10 years until 2035 hinged on the upgrading plan proposed by PTC, members, including Mr Tony TSE, Mr HUI Chi-fung and Dr KWOK Ka-ki, are concerned about monitoring by the Administration on the progress of the upgrading plan to ensure its timely completion. Dr KWOK has further enquired whether there is any escape clause under the existing arrangement to allow the Administration to terminate the operating right granted to PTC. Mr HUI has called on the Administration to conduct an interim review of the progress of the upgrading plan during the 20-year operating period.

25. The Administration has informed the Subcommittee that it has formed an inter-departmental working group to examine PTC's upgrading plan and to monitor the works to ensure that the requisite statutory requirements will be complied with in a timely manner. The Administration will maintain close communications with PTC and request PTC to provide progress reports at regular intervals. In case of PTC's failure or default in completing the upgrading plan on time falls within any of the situations of default under section 8A of Cap. 265 (e.g. PTC fails to comply with a term on which the operating right is granted), the mechanism under sections 8B to 8E may come into play. According to section 8B(2), SCED may issue a notice to PTC requiring it to remedy the default and take effective measures to SCED's satisfaction. Should PTC fail to comply with a notice issued to it under section 8B(2) of Cap. 265, CE-in-C may, pursuant to section 8C(3) of Cap. 265, direct SCED to issue a notice to PTC informing it of the intention of CE-in-C to terminate the operating right granted to it.

#### Definition of "tramcar"

26. The Regulation amends the definition of "tramcar" by repealing the term "both compartments" and substitute that with "all compartments" in section 3 of the Regulation. Dr KWOK Ka-ki has enquired about the reasons for using the term "all compartments" instead of specifying the number of compartments of the tramcar.

27. The Administration has advised that the definition of "tramcar" under regulation 2 of Cap. 265A appears in regulations 4, 18, 21 and 28 of Cap. 265A. These provisions concern the duties of surveyor in examining the tramcar

(regulation 4), duties of operator to properly operate the tramcar (regulation 18), as well as duties of company to ensure the safety of tramcar generally (regulation 28). The reason for changing from "both compartments" to "all compartments" is to allow flexibility of the number of compartments. The capacity of a tramcar is limited by regulation 21 of Cap. 265A.

#### Proposed amendment by Mr HUI Chi-fung

28. Mr HUI Chi-fung has expressed concern about the fairness and transparency of the land arrangement to facilitate PTC's upgrading plan, monitoring by Administration to ensure timely completion of PTC's upgrading plan and the further 10-year operating right being too favourable to PTC. Pending the Administration's further response to address his concerns, he will consider proposing an amendment to section 1 of the Notice to postpone its commencement date from 31 December 2018 to 1 June 2019, with a view to allowing the Administration to have an extra five months to discuss with PTC extra provisions under the operating right to further improve the peak tram service and to ensure its timely completion of the upgrading plan. The Subcommittee notes Mr HUI's proposed amendment without further discussion.

29. The Administration objects to Mr HUI Chi-fung's proposed amendment on the ground that it may delay the implementation of the upgrading plan by PTC. The Administration's response to Mr HUI's concerns is set out in paragraphs 20 to 25 above.

30. The legal adviser to the Subcommittee has advised that the admissibility of the motion to amend subsidiary legislation is a matter to be decided by the President of the Legislative Council, including whether the motion is out of order under Rule 30(3)(c) of the Rules of Procedure or has a charging effect for the purpose of Rule 31 of the Rules of Procedure if the proposed amendment is opposed by the Administration.

#### **Recommendation**

31. The Subcommittee has no objection to the Regulation and the Notice, and will not propose any amendment.

#### **Advice sought**

32. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on Peak Tramway (Safety) (Amendment) Regulation 2018 and  
Peak Tramway Ordinance (Amendment of Section 3(3)) Notice 2018**

**Membership list**

**Chairman** Hon Jeffrey LAM Kin-fung, GBS, JP

**Members** Hon WONG Ting-kwong, GBS, JP  
Hon Steven HO Chun-yin, BBS  
Hon Frankie YICK Chi-ming, SBS, JP  
Hon YIU Si-wing, BBS  
Hon CHAN Han-pan, BBS, JP  
Dr Hon KWOK Ka-ki  
Hon HUI Chi-fung  
Hon Tony TSE Wai-chuen, BBS

(Total : 9 members)

**Clerk** Ms Wendy JAN

**Legal adviser** Mr Alvin CHUI