

TSING SHA CONTROL AREA BILL

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A BILL

To

Provide for—

- (a) the determination of the boundaries of the Tsing Sha Control Area;
- (b) the management, operation and maintenance of the Control Area (including the regulation of vehicular and pedestrian traffic in the Control Area and the charging of tolls for the use of the toll area in the Control Area and other fees or charges);
- (c) the imposition of financial penalties on operators of the Control Area; and
- (d) other ancillary and related matters (including a related amendment to the Road Traffic (Public Service Vehicles) Regulations).

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Tsing Sha Control Area Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

- “authorized officer” (獲授權人員) means a person appointed by the Commissioner under section 9;
- “Commissioner” means the Commissioner for Transport;
- “Control Area” (管制區) means the area delineated as “Tsing Sha Control Area” on a plan deposited under section 7, and includes—
- (a) in the case of any road, viaduct, bridge or tunnel wholly located in that area, the entirety of that road, viaduct, bridge or tunnel; and
 - (b) in the case of any road, viaduct, bridge or tunnel partially located in that area, the part located in that area;
- “court” (法院) includes a magistrate;
- “dangerous goods” (危險品) has the meaning assigned to it by section 2 of the Dangerous Goods Ordinance (Cap. 295);
- “Director” means the Director of Highways;
- “driver” (駕駛人), in relation to a vehicle, means any person who is in charge of or assisting in the control of the vehicle;
- “driving licence” (駕駛執照) has the meaning assigned to it by section 2 of the Road Traffic Ordinance (Cap. 374);
- “function” (職能) includes a power and a duty;
- “gross vehicle weight” (車輛總重) has the meaning assigned to it by section 2 of the Road Traffic Ordinance (Cap. 374);
- “installation” (裝置) includes—
- (a) any pipe, conduit, cable or mobile phone transmission system;
 - (b) any traffic sign, light signal, road marking or lantern;
 - (c) any emergency telephone, public address system, image capturing device, image recording device or vehicle detection device;
- “light signal” (交通燈) has the meaning assigned to it by regulation 2(1) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G);
- “management agreement” (管理協議) means an agreement entered into by any person with the Government for the management, operation or maintenance of the Control Area;
- “motor vehicle” (汽車) has the meaning assigned to it by section 2 of the Road Traffic Ordinance (Cap. 374);
- “operator” (營運者) means a person who has entered into a management agreement with the Government;
- “owner” (車主)—
- (a) in relation to a motor vehicle, means—
 - (i) the registered owner of the vehicle; or
 - (ii) if the vehicle is the subject of a hiring agreement or hire purchase agreement, the person in possession of the vehicle under the agreement; or

- (b) in relation to a vehicle other than a motor vehicle, means the person who keeps and uses the vehicle;
- “place” (放置), in relation to a road marking, includes paint, mark or affix;
- “register” (登記冊) means the register of vehicles maintained by the Commissioner under regulation 4(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E);
- “registered owner” (登記車主), in relation to a vehicle, means the person registered as the owner of the vehicle under the Road Traffic Ordinance (Cap. 374);
- “road” (道路) has the meaning assigned to it by section 2 of the Road Traffic Ordinance (Cap. 374), and includes the road surface and adjacent pedestrian access (if any) of any viaduct, bridge (whether comprising one or more levels or decks) or tunnel;
- “road marking” (道路標記) has the meaning assigned to it by section 2 of the Road Traffic Ordinance (Cap. 374);
- “road works” (道路工程) has the meaning assigned to it by regulation 2(1) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G);
- “Secretary” (局長) means the Secretary for the Environment, Transport and Works;
- “toll” (使用費) means a toll prescribed by regulations made under section 26 for the use of the toll area;
- “toll area” (收費區) means the part of the Control Area delineated as such on a plan deposited under section 7;
- “toll booth” (收費亭) means any structure erected in the Control Area for the purpose of collecting tolls;
- “traffic sign” (交通標誌) has the meaning assigned to it by section 2 of the Road Traffic Ordinance (Cap. 374);
- “tunnel” (隧道) means any part of the Control Area delineated as such on a plan deposited under section 7;
- “tunnel area” (隧道範圍) means any part of the Control Area delineated as such on a plan deposited under section 7;
- “vehicle” (車輛) has the meaning assigned to it by section 2 of the Road Traffic Ordinance (Cap. 374).

(2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the performance or discharge of a duty.

(3) For the avoidance of doubt, if more than one plan has been deposited under section 7—

- (a) a reference to “Control Area” in this Ordinance shall be construed as a reference to the area delineated as “Tsing Sha Control Area” on the plan last so deposited;
- (b) a reference to “toll area” in this Ordinance shall be construed as a reference to the part of the Control Area delineated as “toll area” on the plan last so deposited; and

- (c) a reference to “tunnel” or “tunnel area” in this Ordinance shall be construed as a reference to any part of the Control Area delineated as “tunnel” or “tunnel area” respectively on the plan last so deposited.

3. Application

(1) Except where otherwise expressly provided, this Ordinance applies to vehicles and persons in the service of the Government.

(2) A vehicle, person or thing that is partly in the Control Area is regarded as being wholly in the Control Area, but this subsection does not apply if the vehicle, person or thing is also partly in the Tsing Ma Control Area within the meaning of the Tsing Ma Control Area Ordinance (Cap. 498).

4. Application of other Ordinances, etc.

(1) Unless expressly excluded or modified by this Ordinance, the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) apply to and operate in relation to the Control Area as if the Control Area were a road.

(2) For the purposes of any law, the Control Area (except those parts to which access to the public is restricted by the Commissioner, the Director or an operator) is a public place.

PART 2

BOUNDARIES AND PLANS

5. Determination of boundaries

(1) The Commissioner shall determine the boundaries of—

- (a) the Control Area;
- (b) the toll area;
- (c) the tunnels; and
- (d) the tunnel areas.

(2) The Commissioner may from time to time vary the boundaries of the Control Area, toll area, tunnels or tunnel areas.

6. Preparation of plans

(1) The Director of Lands shall prepare a plan delineating the boundaries of the Control Area, toll area, tunnels and tunnel areas as determined under section 5(1).

(2) If any boundary is varied under section 5(2), the Director of Lands shall prepare a plan delineating the boundaries of the Control Area, toll area, tunnels and tunnel areas as varied, and that plan supersedes the original plan, or any previous variation of it.

7. Certification and deposit of plans

(1) The Commissioner shall—

- (a) assign a number to the plan prepared under section 6(1);
- (b) sign and date the plan;
- (c) certify the plan as being a plan delineating the boundaries of the Control Area, toll area, tunnels and tunnel areas; and
- (d) deposit the plan in the Land Registry.

(2) If a plan is prepared under section 6(2), the Commissioner shall—

- (a) assign a number to the plan;
- (b) sign and date the plan;
- (c) certify the plan as being a plan delineating the boundaries of the Control Area, toll area, tunnels and tunnel areas as varied; and
- (d) deposit the plan in the Land Registry.

(3) The Commissioner shall, as soon as practicable after he deposits a plan under subsection (1) or (2), publish a notice in the Gazette that the plan has been so deposited.

8. Proof of plans

In any proceedings before any court—

- (a) a document purporting to be a copy of a plan delineating the boundaries of the Control Area, toll area, tunnels and tunnel areas and certified by the Commissioner is admissible as evidence of those boundaries on the date of certification; and
- (b) if a document referred to in paragraph (a) is produced, it is not necessary to prove the signature of the Commissioner or that the person who certified it was the Commissioner on the date of certification.

PART 3

ENFORCEMENT

*Appointment of authorized officers***9. Commissioner may appoint authorized officers**

The Commissioner may appoint in writing any public officer or any person employed by an operator as an authorized officer.

10. Uniform and identification of authorized officers

An authorized officer on duty shall—

- (a) wear a uniform of such a design as may be approved by the Commissioner of Police;
- (b) carry such proof of identity as may be approved by the Commissioner;
- (c) carry such proof of his appointment as an authorized officer as may be approved by the Commissioner; and
- (d) promptly produce his proof of identity and proof of his appointment to any person who on reasonable grounds requests him to do so.

11. Directions of authorized officers to be complied with

(1) A person in the Control Area shall comply with any order, direction, requirement or instruction which—

- (a) is given or made by an authorized officer in the Control Area in the course of the performance of his functions under this Ordinance; and
- (b) relates to the management, operation or maintenance of the Control Area or control, restriction and safety of traffic in the Control Area.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

12. Obstruction of authorized officers

A person who obstructs an authorized officer in the performance of his functions under this Ordinance commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

Powers of authorized officers and related matters

13. Powers of authorized officers

- (1) An authorized officer may, in the Control Area—
 - (a) for the purpose of collecting any toll, fee or charge or requiring payment of such toll, fee or charge if the driver of a vehicle has failed to pay such toll, fee or charge in full;
 - (b) for the purpose of preventing or detecting, in the Control Area, the commission of an offence under this Ordinance, the Road Traffic Ordinance (Cap. 374) or the Road Traffic (Driving-offence Points) Ordinance (Cap. 375); or
 - (c) if he reasonably suspects that the driver of a vehicle—
 - (i) has, in the Control Area, committed an offence under this Ordinance, the Road Traffic Ordinance (Cap. 374) or the Road Traffic (Driving-offence Points) Ordinance (Cap. 375); or
 - (ii) has been involved in an accident in the Control Area,exercise such of the powers specified in subsection (2) as may be appropriate for that purpose or those circumstances.
- (2) For the purposes of subsection (1), an authorized officer may—
 - (a) direct the driver of a vehicle—
 - (i) to stop the vehicle; or
 - (ii) to proceed to such place in the Control Area as the officer may direct and to stop there;
 - (b) require any person to give his name and address and to produce any document in his possession which is or contains proof of that information;
 - (c) require the driver of a vehicle—
 - (i) to produce his driving licence for examination; or
 - (ii) to give the name and address of the registered owner of the vehicle if that information is within his knowledge;
 - (d) enter, examine and search a vehicle and any thing on the vehicle if he reasonably suspects that the vehicle is carrying dangerous goods in contravention of this Ordinance; and

(e) detain, if necessary by the use of reasonable force, a driver or a vehicle, or both, until the driver or the vehicle, or both, can be delivered into the custody of a police officer.

(3) For the purpose of regulating vehicular or pedestrian traffic, an authorized officer may, in the Control Area, direct the driver of a vehicle—

(a) to stop the vehicle; or

(b) to proceed to such place in the Control Area as the officer may direct and to stop there.

(4) If an authorized officer reasonably suspects that, by reason of the length, width, height or gross vehicle weight of a vehicle, a permit is required under this Ordinance for driving the vehicle in the Control Area, he may, in the Control Area—

(a) direct the driver of the vehicle—

(i) to stop the vehicle; or

(ii) to proceed to such place in the Control Area as the officer may direct and to stop there; and

(b) measure the length, width, height or gross vehicle weight of the vehicle.

(5) A person who fails to comply with a direction given under subsection (2)(a), (3) or (4)(a), or a requirement made under subsection (2)(b) or (c), commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

14. Obligation to give information

(1) In this section, “specified offence” (指明罪行) means an offence under this Ordinance, the Road Traffic Ordinance (Cap. 374) or the Road Traffic (Driving-offence Points) Ordinance (Cap. 375).

(2) If an authorized officer suspects that the driver of a vehicle has committed a specified offence in the Control Area, the officer may, within 6 months after the date of the alleged offence—

(a) require the person suspected of being the driver of the vehicle at the time of the alleged offence to give his name, address and driving licence number; and

(b) require any other person, including the registered owner of the vehicle, to give the following particulars—

(i) the name, address and driving licence number of the person who was the driver of the vehicle at the time of the alleged offence; and

(ii) his relationship (if any) to the driver.

(3) A requirement made of a person under subsection (2) may be made orally or by means of a notice served personally or by post on him.

(4) If an authorized officer makes an oral requirement under subsection (2) of a person—

- (a) if that person was the driver of the vehicle at the time of the alleged offence, he shall give his name, address and driving licence number to the authorized officer; or
- (b) if that person was not the driver of the vehicle at the time of the alleged offence, he shall give the information required under subsection (2) either orally or in writing within 21 days after the date of the requirement to an authorized officer specified by the authorized officer who made the requirement.

(5) If a requirement under subsection (2) is made of a person by means of a notice, he shall—

- (a) make a written statement, in such form as may be specified in the notice, giving the name, address and driving licence number of the person who was the driver of the vehicle at the time of the alleged offence and his relationship (if any) to the driver;
- (b) sign the statement; and
- (c) provide, within 21 days of the service of the notice on him, the statement to an authorized officer specified in the notice.

(6) Subject to subsection (7), a person who fails to comply with a requirement made of him under subsection (2) in accordance with subsection (4) or (5) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(7) In any proceedings for an offence under subsection (6), it is a defence for the person charged to prove that he did not know, and could not with reasonable diligence have ascertained, the name, address or driving licence number, as may be applicable, of the person who was the driver of the vehicle at the time of the alleged offence.

15. Proof of identity of driver

If, in any proceedings for an offence under this Ordinance, there is produced to the court a statement which—

- (a) purports to have been signed by the person charged;
- (b) was provided in accordance with section 14(5); and
- (c) states that the person charged was the driver of the relevant vehicle at the time of the offence,

the court shall admit the statement as prima facie evidence that the person charged was the driver of the vehicle at the time of the offence.

16. Additional powers of authorized officers relating to hawker and littering offences

(1) In this section—

“hawker offence” (小販罪行) has the meaning assigned to it by section 83 of the Public Health and Municipal Services Ordinance (Cap. 132);

“littering offence” (拋垃圾罪行) means an offence under section 4(1), 9 or 9A of the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK).

(2) If an authorized officer reasonably suspects that a person in the Control Area has committed a hawker offence or a littering offence in the Control Area, he may—

(a) require the person to give his name and address and to produce any document in his possession which is or contains proof of that information; and

(b) detain, if necessary by the use of reasonable force, that person until the person can be delivered into the custody of an officer of the Food and Environmental Hygiene Department authorized in that behalf or a police officer.

(3) A person who fails to comply with a requirement made under subsection (2)(a) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

17. Making false statements and omitting material particulars

(1) A person who makes a false statement in giving any information or particulars required under section 13, 14 or 16 commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(2) In any proceedings for an offence under subsection (1), it is a defence for the person charged to prove that he did not know and had no reason to believe the statement to be false.

(3) A person who omits any material particular in giving any information or particulars required under section 13, 14 or 16 commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(4) In any proceedings for an offence under subsection (3), it is a defence for the person charged to prove that he did not know, and could not with reasonable diligence have ascertained, the material particular required.

*Image capturing, image recording and image printing devices
and photographic process*

**18. Certificates of image capturing, image recording
and image printing devices**

(1) A document in such form as may be specified by the Commissioner purporting—

- (a) to be a record of the testing of the functioning, inspection or servicing of an image capturing or image recording device, with or without any associated image printing device, used for the purpose of capturing or recording and, where appropriate, reproducing the images of any vehicle which passes through a toll booth without the payment of a toll, or which exceeds a speed limit, specified in the document; and
- (b) to be certified as to such testing, inspection or servicing by a person authorized in that behalf by the Commissioner,

shall be admitted as evidence in any proceedings before any court on its production without further proof.

(2) On the production of a document before a court under subsection (1)—

- (a) the court shall, in the absence of evidence to the contrary, presume—
 - (i) that the document was signed at the time and place specified in it by a person authorized by the Commissioner;
 - (ii) that the facts stated in the document relating to the testing of the functioning, inspection or servicing of the device specified in the document are true; and
 - (iii) that the record of the facts stated in the document was made and compiled at the time stated in it;
- (b) the document is evidence of all matters contained in it; and
- (c) the image and print, if any, produced by using the device is evidence of all matters contained in the image and print.

(3) If any document is admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the subject matter of the document.

19. Certificates as to photographic process

(1) A document in such form as may be specified by the Commissioner purporting to be signed by a person appointed under subsection (3) and purporting to be a certificate as to the processing of exposed film received and

processed by him shall, together with the photographic prints or photographic enlargements referred to in the document, be admitted as evidence in any proceedings before any court on its production without further proof.

(2) On the production of a document before a court under subsection (1)—

(a) the court shall, in the absence of evidence to the contrary, presume—

(i) that the signature to the document is genuine; and

(ii) that the person signing the document was appointed under subsection (3) at the time when he signed it; and

(b) the document is evidence of all matters contained in it.

(3) The Commissioner may appoint in writing such persons as he thinks fit to carry out the processing of exposed film and to sign certificates referred to in subsection (1) in relation to such processing.

(4) If any document is admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the subject matter of the document.

PART 4

MANAGEMENT

20. Installations without approval

(1) A person shall not install, place, lay or erect any installation in, under or above any part of the Control Area—

(a) in the case of an installation within the meaning of paragraph (a) of the definition of “installation” in section 2(1), without the prior written approval of the Director of Lands; or

(b) in the case of an installation within the meaning of paragraph (b) or (c) of that definition, without the prior written approval of the Commissioner.

(2) An approval given for the purposes of subsection (1)(a) or (b) shall be subject to the payment of such charges and to such conditions, as the Director of Lands or the Commissioner, as the case may be, may impose.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

21. Closure of road, etc. in Control Area

(1) In this section, “emergency works” (緊急工程) includes any repairs or works not capable of being foreseen by the Secretary but the undertaking and completion of which is necessary for the safety of persons and vehicles in the Control Area.

(2) Without prejudice to section 4 of the Roads (Works, Use and Compensation) Ordinance (Cap. 370), the Secretary may authorize the closure of a road or any part of a road in the Control Area for such period as he considers necessary in the case of any emergency works exceeding, or likely to exceed, a period of 14 days.

(3) The Government does not incur any liability in respect of any closure authorized under subsection (2) and no person has any right against the Government or any other person to restrain such closure.

22. Vehicles, etc. causing obstruction

(1) If any vehicle or thing—

- (a) is causing an obstruction to traffic in the Control Area;
- (b) is otherwise likely to render the use of the Control Area unsafe; or
- (c) is parked or left in the Control Area in contravention of this Ordinance or the Road Traffic Ordinance (Cap. 374),

the Commissioner or an operator may, at the risk of its owner, take all reasonable steps to remove it to such place or impound it at such place, including any road, as the Commissioner or the operator thinks fit and, if necessary in the opinion of the Commissioner or the operator, may store the vehicle or thing safely.

(2) A motor vehicle removed or impounded under subsection (1) shall be returned to its registered owner on payment, before it is sold or disposed of under subsection (5), to the Commissioner or the operator of—

- (a) the removal charge or impounding charge, or both, as may be appropriate; and
- (b) the storage charge (if applicable),

prescribed by regulations made under section 26.

(3) If a motor vehicle removed or impounded under subsection (1) is not claimed within 3 days, the Commissioner or the operator shall serve on its registered owner a notice in writing which states that unless he—

- (a) pays to the Commissioner or the operator the removal charge or impounding charge, or both, as may be appropriate, and the storage charge (if applicable) prescribed by regulations made under section 26; and

- (b) claims the vehicle within 14 days of the service of the notice on him,

the vehicle may be sold or otherwise disposed of as the Commissioner thinks fit.

(4) A notice under subsection (3) shall be served by sending it to the registered owner at the address shown on the register by registered post or recorded delivery.

(5) If a motor vehicle removed or impounded under subsection (1) is not claimed within 14 days of the service of a notice under subsection (3), it may be sold or otherwise disposed of as the Commissioner thinks fit.

(6) If, within a period of 6 months of any sale or disposal of a motor vehicle under subsection (5), a person satisfies the Commissioner that at the time of the sale or disposal, he was the registered owner of the motor vehicle, the Commissioner shall pay to him the proceeds of sale or disposal, if any, less—

- (a) the removal charge or impounding charge, or both, as may be appropriate, and the storage charge (if applicable) prescribed by regulations made under section 26; and
- (b) all expenses incurred for and incidental to the sale or disposal.

(7) A thing (including a vehicle other than a motor vehicle) removed or impounded under subsection (1) shall be dealt with as follows—

- (a) if the thing is perishable, noxious or otherwise offensive, it may be sold or otherwise disposed of as the Commissioner or the operator thinks fit;
- (b) subject to paragraph (a), the thing shall be retained by the Commissioner or the operator for a period of 3 months after the removal or impounding, and if at the end of that period it remains unclaimed, it may be sold or otherwise disposed of as the Commissioner thinks fit; or
- (c) the thing shall be returned to its owner if the owner proves his ownership to the satisfaction of the Commissioner or the operator before it is sold or disposed of under paragraph (a) or (b).

(8) If, within a period of 6 months of any sale or disposal of a thing (including a vehicle other than a motor vehicle) under subsection (7)(a) or (b), the former owner or the person formerly entitled to the beneficial ownership of the thing can prove his ownership to the satisfaction of the Commissioner, the Commissioner shall pay to him the proceeds of sale or disposal, if any, less all expenses incurred for and incidental to the sale or disposal.

(9) A payment under subsection (6) or (8) to a person is subject to the person providing the Commissioner with an indemnity in retention as the Commissioner may reasonably require.

(10) Unless subsection (6) or (8) applies, the proceeds of sale or disposal, if any, shall be paid into the general revenue after the expiration of 6 months from the date of the relevant sale or disposal.

(11) Save as provided in this section, the Commissioner or an operator incurs no liability (other than liability for gross negligence or wilful default) to any person in respect of a vehicle or thing removed or impounded and stored (if applicable) under this section as bailees or otherwise.

23. Disposal of abandoned vehicles

(1) In this section, “vehicle” (車輛) includes any load carried by or on a vehicle.

(2) If a vehicle has remained stationary in the Control Area—

- (a) in such a position;
- (b) in such condition;
- (c) for such time; or
- (d) in such circumstances,

that there is reason to believe that the vehicle has been abandoned, an authorized officer may serve on its owner a notice in writing requiring him to remove it.

(3) A notice under subsection (2) shall be addressed to the owner of the vehicle and shall be served—

- (a) in the case of a registered owner, by sending it to him at the address shown on the register by registered post or recorded delivery; or
- (b) by affixing it to the vehicle.

(4) A notice under subsection (2) shall—

- (a) require the owner of the vehicle to remove the vehicle from the Control Area—
 - (i) if the notice is sent by registered post or recorded delivery, within 7 days of its service on him; or
 - (ii) if the notice is affixed to the vehicle, within 7 days of the date on which it is so affixed; and

(b) state that—

- (i) unless the vehicle is so removed by its owner, the vehicle will be removed to a place specified in the notice or impounded at such place and, if necessary in the opinion of the Commissioner or an operator, will be stored safely; and
- (ii) unless he—
 - (A) claims the vehicle within 14 days from the date of the removal or the date of impounding (whichever is the earlier if the vehicle is both removed and impounded); and

(B) in the case of a motor vehicle, pays to the Commissioner or an operator the removal charge or impounding charge, or both, as may be appropriate, and the storage charge (if applicable) prescribed by regulations made under section 26,

it may be sold or otherwise disposed of as the Commissioner thinks fit.

(5) If the vehicle is not removed as required by a notice under subsection (2), the Commissioner or an operator may, at the risk of its owner, take all reasonable steps to remove it to the place specified in the notice or impound it at such place and, if necessary in the opinion of the Commissioner or the operator, may store the vehicle safely.

(6) A motor vehicle removed or impounded under subsection (5) shall be returned to its registered owner on payment, before it is sold or disposed of under subsection (8), to the Commissioner or the operator of—

(a) the removal charge or impounding charge, or both, as may be appropriate; and

(b) the storage charge (if applicable),
prescribed by regulations made under section 26.

(7) A vehicle other than a motor vehicle removed or impounded under subsection (5) shall be returned to its owner if the owner proves his ownership to the satisfaction of the Commissioner or the operator before it is sold or disposed of under subsection (8).

(8) If a vehicle removed or impounded under subsection (5) is not claimed within the period specified in the notice under subsection (4)(b)(ii)(A), it may be sold or otherwise disposed of as the Commissioner thinks fit.

(9) If, within a period of 6 months of any sale or disposal of a motor vehicle under subsection (8), a person satisfies the Commissioner that at the time of the sale or disposal, he was the registered owner of the motor vehicle, the Commissioner shall pay to him the proceeds of sale or disposal, if any, less—

(a) the removal charge or impounding charge, or both, as may be appropriate, and the storage charge (if applicable) prescribed by regulations made under section 26; and

(b) all expenses incurred for and incidental to the sale or disposal.

(10) If, within a period of 6 months of any sale or disposal of a vehicle other than a motor vehicle under subsection (8), the former owner or the person formerly entitled to the beneficial ownership of the vehicle can prove his ownership to the satisfaction of the Commissioner, the Commissioner shall pay to him the proceeds of sale or disposal, if any, less all expenses incurred for and incidental to the sale or disposal.

(11) A payment under subsection (9) or (10) to a person is subject to the person providing the Commissioner with an indemnity in retention as the Commissioner may reasonably require.

(12) Unless subsection (9) or (10) applies, the proceeds of sale or disposal, if any, shall be paid into the general revenue after the expiration of 6 months from the date of the relevant sale or disposal.

(13) Save as provided in this section, the Commissioner or an operator incurs no liability (other than liability for gross negligence or wilful default) to any person in respect of a vehicle removed or impounded and stored (if applicable) under this section as bailees or otherwise.

PART 5

FINANCIAL PENALTIES

24. Financial penalties imposed on operator

(1) In this section, “relevant authority” (有關當局), in relation to a failure to comply with any requirement of this Ordinance or a breach of a management agreement—

- (a) where the failure or breach relates to the management or operation of the Control Area, means the Commissioner; and
- (b) where the failure or breach relates to the maintenance of the Control Area, means the Director.

(2) If an operator fails to comply with any requirement of this Ordinance or is in breach of a management agreement, the relevant authority may—

- (a) where the failure or breach is capable of being remedied—
 - (i) impose, with the approval of the Chief Executive in Council, a financial penalty on the operator in respect of each such failure or breach; and
 - (ii) impose a further financial penalty on the operator in respect of each continuing failure or breach; and
- (b) where the failure or breach is not capable of being remedied, impose, with the approval of the Chief Executive in Council, a financial penalty on the operator in respect of each such failure or breach.

(3) The relevant authority shall not impose a financial penalty under subsection (2) unless he—

- (a) has notified the operator in writing of the relevant failure or breach; and
- (b) if it is capable of being remedied, has afforded the operator a reasonable opportunity to comply with the requirement or remedy the breach.

(4) If a financial penalty is imposed, the relevant authority shall serve on the operator a notice in writing specifying the amount of the financial penalty and requiring the operator to pay it to the Government within 30 days beginning on the date on which the notice is served.

(5) A financial penalty imposed under subsection (2)(a)(i) shall not exceed the amount specified in Division 1 of Part 1 of the Schedule.

(6) A further financial penalty imposed under subsection (2)(a)(ii) shall not exceed the amount specified in Division 2 of Part 1 of the Schedule for each day the relevant failure or breach continues after the date on which the notice of a financial penalty imposed under subsection (2)(a)(i) is served under subsection (4).

(7) A financial penalty imposed under subsection (2)(b) shall not exceed—

- (a) on the first occasion on which a financial penalty is imposed on the operator, the amount specified in Division 1 of Part 2 of the Schedule;
- (b) on the second occasion on which a financial penalty is imposed on the operator, the amount specified in Division 2 of Part 2 of the Schedule; and
- (c) on the third or a subsequent occasion on which a financial penalty is imposed on the operator, the amount specified in Division 3 of Part 2 of the Schedule.

(8) For the purposes of subsection (7), in determining whether a particular failure or breach (“the relevant failure or breach”) is the first, second, third or a subsequent occasion on which a financial penalty is being imposed, only occasions, if any, on which a financial penalty has been imposed in respect of a failure or breach which is of the same type as the relevant failure or breach shall be taken into account.

25. General provisions relating to financial penalties

(1) A financial penalty imposed under section 24 is recoverable as a civil debt due to the Government, and may be recovered (in whole or in part) by the Government—

- (a) deducting or offsetting any sum that may be payable to an operator under a management agreement or otherwise; or
- (b) enforcing any guarantee or letter of credit provided in accordance with a management agreement.

(2) The operator shall not, in calculating his costs for the purpose of determining any sum payable to him under a management agreement on a cost-related basis, take into account any financial penalty paid or any legal costs incurred by him in connection with the recovery of a financial penalty under subsection (1).

(3) In subsection (2), “cost-related basis” (與成本掛鈎的基準) means a basis whereby the actual costs incurred by an operator are taken into account in determining any sum payable by the Government to the operator under a management agreement.

(4) This section and section 24 do not affect the powers (including rights) of the Government under a management agreement, including the right to terminate that management agreement and the right to recover liquidated or unliquidated damages.

PART 6

POWERS TO MAKE REGULATIONS AND AMEND SCHEDULE

26. Regulations

(1) The Chief Executive in Council may make regulations for all or any of the following purposes—

- (a) prescribing, and providing for the payment of, tolls payable for the use of the toll area;
- (b) prescribing, and providing for the payment of, additional charges (including surcharges) in respect of any failure to pay a toll or any part of a toll;
- (c) prescribing, and providing for the payment of, fees in respect of the escort of vehicles in the Control Area;
- (d) providing for entitlement to changes given for overpayment of tolls and prescribing, and providing for the payment of, administration fees in respect of changes given for overpayment of tolls;
- (e) prescribing, and providing for the payment of, fees in respect of the issue of permits for the use of the Control Area by certain vehicles;
- (f) providing for the payment of fees in respect of the processing of applications for permits referred to in paragraph (e) and empowering the Commissioner to determine such fees;
- (g) prescribing, and providing for the payment of, fees and charges in respect of the removal, impounding and storage of vehicles under this Ordinance;

- (k) providing for the towing of or drawing of vehicles by motor vehicles in the Control Area;
- (l) regulating the manner of loading vehicles and securing of loads on vehicles in the Control Area;
- (m) providing for the maximum weight to be transmitted to any road in the Control Area by any vehicle or any description of vehicles or by any part or parts of such a vehicle or vehicles in contact with that road;
- (n) providing for the control or restriction of animals in the Control Area;
- (o) providing for the escort of vehicles in the Control Area;
- (p) providing for the exemption of persons, vehicles or any description of vehicles from any regulation;
- (q) authorizing the Commissioner, the Director or the Commissioner of Police to exempt persons, vehicles or any description of vehicles from any regulation, whether by approval, permit or otherwise;
- (r) authorizing the Director to determine, and providing for the payment and collection of, fees and charges in respect of the provision of traffic signs, light signals, road markings or lanterns for use in the Control Area;
- (s) regulating the manner in which road works and other works of repair may be carried out in the Control Area;
- (t) regulating the painting or affixing of any poster, placard or bill or other matter in the Control Area;
- (u) prohibiting the tampering or interference with any installation, structure, building, facility, utility, equipment, appliance, vehicle or other article in the Control Area;
- (v) prohibiting the entry to or the presence of any person in any building or other facility in the Control Area without approval or permission;
- (w) providing for such other matters as may be necessary or expedient to give effect to the provisions of this Ordinance.

(3) Any regulation made under this section may provide that a contravention of any provision of the regulation constitutes an offence punishable by a fine not exceeding level 2 and imprisonment for a term not exceeding 6 months.

(4) Any regulation made under this section may—

- (a) exclude or modify the application to or operation in relation to the Control Area of the Road Traffic Ordinance (Cap. 374), the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) or any other Ordinance;

- (b) make different provisions for different circumstances and provide for a particular case or class of cases;
- (c) be made so as to apply only in specified circumstances;
- (d) prescribe fees for the purposes of the regulation; and
- (e) contain such incidental, supplementary, consequential, transitional or saving provision as may be necessary or expedient in consequence of the regulation.

27. Amendment of Schedule

The Chief Executive in Council may by notice published in the Gazette amend the Schedule.

PART 7

ADMINISTRATIVE AND SUPPLEMENTARY PROVISIONS

28. Secretary may give directions to operator

The Secretary may, if he considers the public interest so requires, give directions of a general character in writing to an operator in relation to the performance of the functions under this Ordinance of the operator or authorized officers employed by the operator, and the operator shall comply with those directions.

29. Limitation of liability

No liability (other than that imposed under a management agreement) is incurred by the Government or any public officer in respect of the management, operation or maintenance of the Control Area by an operator.

30. Saving

(1) This Ordinance does not restrict, derogate from or otherwise interfere with—

- (a) any function under any law of any person in the service of the Government; or
- (b) the performance of any such function by any such person.

(2) This Ordinance does not affect any rights of ownership in any installation, structure, building, facility, utility, equipment, appliance, vehicle or other article owned by, or vested in, the Government.

PART 8

RELATED AMENDMENTS

Road Traffic (Public Service Vehicles) Regulations

31. Taxi fares

Item 4 of Schedule 5 to the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D) is amended by adding—

“(vib) For every hiring involving the use of the toll area within the meaning of the Tsing Sha Control Area Ordinance (of 2007) The toll paid by the driver of the taxi during the hiring for the use of the toll area.”.

SCHEDULE

[ss. 24 & 27]

FINANCIAL PENALTIES

PART 1

FAILURE TO COMPLY OR BREACH CAPABLE OF BEING REMEDIED

**Division 1—Failure to comply or breach
(amount specified for the purposes of section 24(5)
of this Ordinance)**

\$10,000

**Division 2—Continuing failure to comply or breach
(amount specified for the purposes of section 24(6)
of this Ordinance)**

\$10,000

PART 2**FAILURE TO COMPLY OR BREACH NOT CAPABLE OF BEING REMEDIED**

Division 1—First occasion
(amount specified for the purposes of section 24(7)(a)
of this Ordinance)

\$20,000

Division 2—Second occasion
(amount specified for the purposes of section 24(7)(b)
of this Ordinance)

\$50,000

Division 3—Third or subsequent occasion
(amount specified for the purposes of section 24(7)(c)
of this Ordinance)

\$100,000

Explanatory Memorandum

The main object of this Bill is to provide for the management, operation and maintenance of the road network, known as the “Tsing Sha Control Area” (“Control Area”), between Sha Tin and Tsing Yi via Cheung Sha Wan.

Part 1—Preliminary

2. Clause 1 provides for the short title of the Bill (when enacted) and empowers the Secretary for the Environment, Transport and Works (“Secretary”) to appoint a day on which the Bill (when enacted) shall come into operation.
3. Clause 2 sets out the main definitions for the purposes of the Bill.
4. Clause 3 provides for the application of the Bill to vehicles and persons in the service of the Government and vehicles, persons or things partly in the Control Area.
5. Clause 4 provides for the application to and operation in relation to the Control Area of the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and provides that the Control Area is a public place.

Part 2—Boundaries and plans

6. Clause 5 provides that the Commissioner for Transport (“Commissioner”) shall determine, and may vary, the boundaries of the Control Area and the boundaries of the toll area, tunnels and tunnel areas in the Control Area.

7. Clause 6 provides that the Director of Lands shall prepare the plans of the Control Area.

8. Clause 7 provides that the plans of the Control Area shall be certified and deposited in the Land Registry by the Commissioner. The Commissioner shall also publish in the Gazette notices of the deposit of plans.

9. Clause 8 provides for admissibility of copies of plans certified by the Commissioner as evidence in any proceedings before a court.

Part 3—Enforcement

10. Clause 9 provides that the Commissioner may appoint any public officer or any person employed by an operator as an authorized officer.

11. Clause 10 provides for the uniform and identification of authorized officers.

12. Clause 11 provides that a person in the Control Area shall comply with orders, directions, requirements or instructions of an authorized officer which are given or made in the course of the performance of his functions and relate to the management, operation or maintenance of the Control Area or control, restriction and safety of traffic in the Control Area. A failure to comply with such orders, directions, requirements or instructions constitutes an offence punishable by a fine at level 2 (currently \$5,000) and imprisonment for 6 months.

13. Clause 12 prohibits any person from obstructing an authorized officer in the performance of his functions. An obstruction constitutes an offence punishable by a fine at level 2 (currently \$5,000) and imprisonment for 6 months.

14. Clause 13 provides for the powers of authorized officers. An authorized officer may exercise his powers in the Control Area as may be appropriate for the relevant purposes or circumstances, including—

- (a) to stop a vehicle;
- (b) to require the giving of information and production of documents;
- (c) to enter, examine and search a vehicle;
- (d) to detain a driver or a vehicle; and

- (e) to measure the length, width, height or gross vehicle weight of a vehicle.

A failure to comply with a direction given or a requirement made under clause 13 constitutes an offence punishable by a fine at level 2 (currently \$5,000) and imprisonment for 6 months.

15. Clause 14 provides for the obligation to give driver information in relation to offences under the Bill, the Road Traffic Ordinance (Cap. 374) or the Road Traffic (Driving-offence Points) Ordinance (Cap. 375). A failure to comply with a requirement made under clause 14 constitutes an offence punishable by a fine at level 2 (currently \$5,000) and imprisonment for 6 months, but it is a defence for the person charged to prove that he did not know, and could not with reasonable diligence have ascertained, the name, address or driving licence number, as may be applicable, of the driver.

16. Clause 15 provides for the admissibility of a statement provided in accordance with clause 14(5) in any proceedings before a court as prima facie evidence that a person charged was the driver of the relevant vehicle.

17. Clause 16 provides for additional powers of authorized officers relating to hawker and littering offences in the Control Area. An authorized officer may require the giving of information and the production of documents and detain the relevant person. A failure to comply with a requirement made under clause 16 constitutes an offence punishable by a fine at level 2 (currently \$5,000) and imprisonment for 6 months.

18. Clause 17 provides that the making of false statements or the omission of material particulars in giving any information or particulars required under clause 13, 14 or 16 constitutes an offence, but it is a defence for the person charged to prove that he did not know and had no reason to believe the statement to be false, or that he did not know, and could not with reasonable diligence have ascertained, the material particular required. The offences are punishable by a fine at level 2 (currently \$5,000) and imprisonment for 6 months.

19. Clause 18 provides for the admissibility of certificates relating to image capturing, image recording and image printing devices as evidence in any proceedings before any court.

20. Clause 19 provides for the admissibility of certificates as to photographic process as evidence in any proceedings before any court.

Part 4—Management

21. Clause 20 prohibits installation in, under or above any part of the Control Area without the prior written approval of the Director of Lands or the Commissioner, as the case may be. A contravention of the prohibition constitutes an offence punishable by a fine at level 2 (currently \$5,000) and imprisonment for 6 months.

22. Clause 21 empowers the Secretary to authorize the closure of any road in the Control Area in the case of any emergency works exceeding, or likely to exceed, a period of 14 days.

23. Clause 22—

- (a) empowers the Commissioner or an operator to remove or impound (and if necessary, to store) any vehicle or thing that—
 - (i) is causing an obstruction to traffic in the Control Area;
 - (ii) is otherwise likely to render the use of the Control Area unsafe; or
 - (iii) is parked or left in the Control Area in contravention of the Bill or the Road Traffic Ordinance (Cap. 374); and
- (b) provides for the disposal of unclaimed vehicles and things.

24. Clause 23 provides for the removal or impounding (and if necessary, the storage) of abandoned vehicles in the Control Area. The clause also provides for the disposal of unclaimed abandoned vehicles.

Part 5—Financial penalties

25. Clause 24 provides for the imposition of financial penalties on an operator in relation to a failure to comply with the Bill or a breach of a management agreement. Financial penalties shall not exceed the amounts specified in the Schedule.

26. Clause 25 contains general provisions relating to financial penalties imposed under clause 24.

Part 6—Powers to make regulations and amend Schedule

27. Clause 26 provides for the powers to make regulations. Clause 26(1) empowers the Chief Executive in Council to make regulations for the purposes of prescribing, and providing for the payment of, tolls and other fees and charges. Clause 26(2) empowers the Secretary to make regulations in relation to the regulation and control of the Control Area (including but not limited to the regulation of vehicular and pedestrian traffic).

28. Clause 27 empowers the Chief Executive in Council to amend the Schedule (financial penalties) by notice published in the Gazette.

Part 7—Administrative and supplementary provisions

29. Clause 28 empowers the Secretary to give directions of a general character in writing to an operator in relation to the performance of the functions of the operator or authorized officers employed by the operator, if the Secretary considers the public interest so requires.

30. Clause 29 limits the liability to be incurred by the Government or public officers in respect of the management, operation or maintenance of the Control Area by an operator.

31. Clause 30 contains saving provisions in relation to—

- (a) functions under any law of persons in the service of the Government; and
- (b) rights of ownership in any installation, structure, building, facility, utility, equipment, appliance, vehicle or other article owned by, or vested in, the Government.

Part 8—Related amendments

32. Clause 31 contains a related amendment to the scale of fares for the hiring of taxis in Schedule 5 to the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D). Item 4 of that Schedule is amended by adding the toll paid by the driver of a taxi during the hiring for the use of the toll area in the Control Area.