

立法會
Legislative Council

LC Paper No. LS91/11-12

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 27 July 2012**

**LEGAL NOTICES NOT REQUIRED TO BE TABLED AND NOT
SUBJECT TO AMENDMENT**

**Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474)
Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment
of Schedule 1) Notice 2012 (L.N. 136)**

L.N. 136 is made by the Commissioner for Transport (the Commissioner) under section 45(1) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) to replace Schedule 1 to the Ordinance with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Tai Lam Tunnel and Yuen Long Approach Road (Route 3). L.N. 136 came into operation on 1 August 2012.

2. Cap. 474 provides for a toll adjustment mechanism in respect of Route 3. Under section 39(1), Route 3 (CPS) Company Limited (the Franchisee) may, during the franchise period, give effect to an anticipated toll increase on each of three specified dates (i.e. 1 January 2003, 1 January 2010 and 1 January 2017) referred to in Schedule 3. However, under section 40(1), if the Franchisee's Actual Net Revenue (ANR) for any year, which is not a year ending immediately before a specified date, is less than the Minimum Estimated Net Revenue (MENR) for that year as specified in Schedule 4, the Franchisee may apply to the Secretary for Transport and Housing (the Secretary) to give effect to the next anticipated toll increase. Under section 42(1), where the Franchisee has given effect to all the anticipated toll increases pursuant to section 39(1) or 40(1) and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year, it may apply to the Secretary for an additional toll increase. Schedule 2 specifies the amounts of toll increase to which the Franchisee may give effect in respect of different categories of vehicles.

3. Under section 45(1), where a toll is increased under the mechanism described in paragraph 2 above, the Commissioner shall by notice published in the Gazette amend Schedule 1 to vary the tolls for different categories of

vehicles using Route 3. Section 45(3) provides that section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply in respect of such notice. Accordingly, L.N. 136 is not required to be tabled before, and is not subject to amendment by, the Legislative Council.

4. The amounts of increase of statutory tolls reflected in L.N. 136 are in accordance with the amounts specified in Schedule 2 to Cap. 474. The last statutory toll increase for Route 3 came into effect on 1 August 2011 (L.N. 130 of 2011). According to paragraph 9 of the Information Note issued by the Transport and Housing Bureau (THB) on 27 July 2012 (File Ref: THB(T)CR 19/3/5591/91), the Franchisee will continue to offer concessions to all types of vehicles so that the current concessionary tolls¹ will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of Route 3 will not be affected by any actual increase in tolls.

5. A comparison of the Route 3 statutory tolls before and after the increase, and the applicable concessionary tolls, is at **Annex I**.

6. As stated in paragraph 3 of the Information Note, since the operation of Route 3 in 1998, the Franchisee's actual net revenue has consistently fallen short of the specified levels. The current toll increase is based on the Franchisee's 2007/08 Net Revenue Statement (NRS) which shows that its ANR for 2007/08 was \$593 million, which is lower than the MENR of \$1,494 million for that year specified in Schedule 4 to Cap. 474. According to paragraph 8 of the Information Note, by 19 June 2005, the Franchisee has effected all the anticipated toll increases and has since then effected six additional toll increases. The present increase is the seventh additional toll increase.

Western Harbour Crossing Ordinance (Cap. 436)

Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2012 (L.N. 137)

7. L.N. 137 is made by the Commissioner under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) to replace Schedule 1 to the Ordinance with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Western Harbour Crossing (WHC). L.N. 137 came into operation on 31 July 2012.

8. Cap. 436 provides for WHC a toll adjustment mechanism similar to that of Route 3 described in paragraphs 2 and 3 above. Under section 45(1),

¹ The current concessionary tolls took effect from 1 January 2011.

Western Harbour Tunnel Company Limited (the Company) may, during the franchise period, give effect to an anticipated toll increase on each of six specified dates (i.e. 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021) referred to in Schedule 4. However, whenever the Company's net revenue in any year, which is not a year ending immediately before a specified date, is less than the MENR for that year as specified in Schedule 5, it may apply to the Secretary to give effect to the next anticipated toll increase (section 46(1)). Under section 48(1), where the Company has given effect to all the anticipated toll increases and its net revenue in respect of any year before the expiry of the franchise period is less than the MENR for that year, it may apply to the Secretary to give effect to an additional toll increase. The amounts of toll increase to which the company may give effect for different categories of vehicles on or after 1 January 2011 are specified in Schedule 3 (section 50(1)).

9. Where a toll is increased in accordance with the mechanism mentioned above, the Commissioner shall by notice published in the Gazette amend Schedule 1 to vary the tolls for different categories of vehicles (section 52(1)). Section 52(3) provides that section 34 of Cap. 1 shall not apply to such notice. Accordingly, L.N. 137 is not required to be tabled before, and is not subject to amendment by, the Legislative Council.

10. The amounts of increase of statutory tolls reflected in L.N. 137 are in accordance with the amounts specified in Schedule 3 to Cap. 436. The last statutory toll increase for WHC came into effect on 31 July 2011 (L.N. 131 of 2011). According to paragraph 9 of the Information Note issued by THB on 27 July 2012 (File Ref: THB(T)CR 1/4651/99), the Company will continue to offer concessions to all types of vehicles so that the current concessionary tolls² will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of WHC will not be affected by any actual increase in tolls.

11. A comparison of the WHC statutory tolls before and after the increase, and the applicable concessionary tolls, is at **Annex II**.

12. As stated in paragraph 3 of the Information Note, since the operation of WHC in 1997, the Company's net revenue has consistently fallen short of the specified levels. The current toll increase is based on the Company's 2008/09 NRS which shows that its net revenue for 2008/09 was \$788 million, which is lower than the MENR of \$1,876 million for that year specified in Schedule 5 to Cap. 436. According to paragraph 8 of the Information Note, by 31 July 2006, the Company has effected all the anticipated toll increases and has since then effected five additional toll increases. The present increase is the sixth additional toll increase.

² The current concessionary tolls took effect from 1 August 2010.

13. The Panel on Transport has not been consulted on the new statutory tolls specified in L.N. 136 and L.N. 137.

14. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 136 and L.N. 137.

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Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 1 August 2012	
1.	Motorcycles, motor tricycles	55	60	20
2.	Private cars, electrically powered passenger vehicles, taxis	60	65	33
3.	Public and private light buses	165	180	100
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	165	180	34
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	65	70	0
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	175	190	40
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	65	70	0
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	195	210	45
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	65	70	0
7.	Public and private single-decked buses	165	180	115
8.	Public and private double-decked buses	180	195	135

Annex II

Western Harbour Crossing Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 31 July 2012	
1.	Motorcycles, motor tricycles	70	80	23
2.	Private cars, electrically powered passenger vehicles	135	150	50
	Taxis	135	150	45
3.	Public and private light buses	150	170	60
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	200	220	60
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	135	150	30
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	280	315	85
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	135	150	30
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	410	455	115
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	135	150	30
7.	Public and private single-decked buses	150	170	90
8.	Public and private double-decked buses	220	250	128

