

立法會
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Paper for the House Committee meeting on 28 June 2013

**Report of the Subcommittee on Tate's Cairn Tunnel Ordinance
(Amendment of Schedule) Notice 2013**

Purpose

This paper reports on the deliberations of the Subcommittee on Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013.

Background

2. Tate's Cairn Tunnel Company Limited ("TCTC") was granted a franchise under the Tate's Cairn Tunnel Ordinance (Cap. 393) ("TCTO") to build and operate Tate's Cairn Tunnel ("TCT") for 30 years starting from July 1988, inclusive of the construction period. The tunnel was opened to traffic in June 1991. The franchise granted to TCTC would expire in July 2018.

3. Section 36(3) of TCTO provides that the tolls specified in the Schedule to TCTO may be varied by agreement between the Chief Executive-in-Council (CE-in-Council) and TCTC. If an agreement cannot be reached, either party may resort to arbitration. TCTO has not set out the criteria for determining toll adjustments. It only stipulates that if the matter is submitted for arbitration, the arbitrator shall be guided by the need to ensure that TCTC is reasonably but not excessively remunerated for its obligations under TCTO.

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4. At the meeting of the Executive Council on 7 May 2013, the Council advised and the Chief Executive ("CE") ordered that TCTC's application for toll increases should be approved. It was also decided that

the new tolls should take effect from 1 August 2013. The Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013 (L.N. 70) reflecting the increase of the tolls payable under TCTO was gazetted on 16 May 2013 and tabled in LegCo on 22 May 2013.

5. A comparison of the current and new tolls is set out in **Appendix I**.

The Subcommittee

6. At the meeting of the House Committee on 24 May 2013, Members decided to form a subcommittee to examine the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013. The membership list of the Subcommittee is in **Appendix II**. Under the chairmanship of Hon James TIEN Pei-chun, the Subcommittee has held one meeting with the Administration and representatives of TCTC.

7. The scrutiny period of the Notice has been extended to 10 July 2013 by resolution of the Council on 19 June 2013.

Deliberations of the Subcommittee

8. The Subcommittee notes that according to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the power of LegCo to amend subsidiary legislation has to be consistent with the power to make such subsidiary legislation. As section 36 of TCTO provides that the tolls shall be varied in compliance with the agreement or arbitral award as made and that the power of the Commissioner for Transport ("C for T") to make notice is merely to amend the Schedule subsequent to such agreement or arbitral award, C for T should not have the power to determine toll levels and the timing for implementation of the new tolls. Consequently, the Subcommittee notes that there is little room for LegCo to repeal or to amend the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013, other than making minor technical amendments.

9. The Subcommittee has taken the opportunity to examine the reasonableness of the magnitude of the toll increases; and has proposed to TCTC the provision of concessionary tolls such as early bird discounts to motorists to attract more users.

Financial position of TCTC

10. In reply to the Subcommittee's enquiry on the justifications for TCTC's proposed increase of tolls, the Administration has advised that TCTC expected to achieve an Internal Rate of Return ("IRR") of 13.02% over the 30-year franchise period. The Subcommittee also notes that TCTC's target IRR is the lowest among the four Build-Operate-Transfer (BOT) tunnels¹ in Hong Kong. For example, the Eastern Harbour Crossing aims at a target IRR of 16.5%.

11. Some members have observed that TCTC's nominal IRR would only be increased from 6.61% to 6.76% over the 30-year franchise period with the proposed toll increases. The real IRR of TCTC would only be 3.38% after discounting the inflation factor according to the Administration's estimation. Some members are of the view that TCTC should consider freezing the toll prior to the expiry of the franchise in 2018 due to the mild effect on the overall IRR so as to win the favour and support of the public and motorists.

12. Some Subcommittee members consider TCTC's weighted average rate of toll increases of 11.1% too high, given the relatively low inflation economic conditions in the last few years. They have enquired about the reasonableness of the toll increases. The Administration has explained that the weighted average rate of toll increases of 11.1% proposed by TCTC, indeed covering the period since the last toll increases from 25 December 2010 up to the end of June 2013, is even lower than the cumulative change in the Composite Consumer Price Index which is estimated to be 12.3% for the same period of about two-and-a-half years. It is also lower than the change in the median monthly household income, which has increased by 15.3% from \$18,300 for the fourth quarter of 2010 to \$21,100 for the fourth quarter of 2012. Therefore the proposed weighted average rate of toll increases of 11.1% is not considered unreasonable or excessive. TCTC also advises that TCTC first submitted an application in March 2012 for a toll increase of \$3 for private cars and proportionate increases for other vehicle types, ranging from \$2 for motorcycles to \$6 for double-decker buses and the current weighted average rate of toll increases is already lower than the original one which stands at 19.6%.

¹ BOT tunnels are owned and managed by franchisees over a franchise period, and their operations are governed by their respective legislation.

13. In assessing the application for toll increases, the Subcommittee is of the view that the Administration should make the process more transparent and explain its rationale to members of the public. The Subcommittee agrees that the Administration has duly exercised its discretion according to the guiding principle of ensuring that TCTC is reasonably but not excessively remunerated, in approving the toll increases.

14. In respect of the impact of the toll increases to alternative routes, TCTC has estimated that with its proposed toll increases, about 500 vehicles would be diverted to the Lion Rock Tunnel and less than 100 vehicles would be diverted to Eagle's Nest Tunnel and Sha Tin Heights Tunnel each day. Members have taken the opportunity to urge TCTC to consider the introduction of concessionary tolls to motorists, such as off-peak hour or early bird discounts, to attract more users after the toll increases. TCTC has indicated that they have already considered various factors and incorporated concessions in the proposed toll increases and that members' views would be taken into account for future planning.

15. Having considered the explanation given by the Administration and representative of TCTC, the Subcommittee has concluded that there should be a balance struck between respecting the spirit of contract, allowing the franchise company to have reasonable return according to provisions of the TCTO, and safeguarding public interest by ensuring that the toll levels should be affordable and acceptable to the public.

16. The Subcommittee will not move any amendments to the Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013.

Advice sought

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

Tate's Cairn Tunnel Tolls

Category	Vehicle	Current Tolls (\$) (effective from 25 December 2010)	Toll (\$) (as from 1 August 2013)	Percentage Increase
1.	Motorcycles, motor tricycles	12	13	8%
2.	Private cars, electrically powered passenger vehicles, taxis	15	17	13%
3.	Public light buses	21	23	10%
4.	Private light buses	22	24	9%
5.	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	22	24	9%
6.	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	26	28	8%
7.	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes but not exceeding 38 tonnes	26	28	8%
8.	Public and private single-decker buses	29	31	7%
9.	Public and private double-decker buses	32	34	6%
10.	Each additional axle in excess of 2	19	21	11%

**Subcommittee on Tate's Cairn Tunnel Ordinance
(Amendment of Schedule) Notice 2013**

Membership List

Chairman Hon James TIEN Pei-chun, GBS, JP

Members Hon Frankie YICK Chi-ming (since 3 June 2013)
 Hon WU Chi-wai, MH
 Hon TANG Ka-piu

(Total : 4 Members)

Clerk Ms Sophie LAU

Legal Adviser Ms Wendy KAN