

立法會
Legislative Council

LC Paper No. LS98/16-17

**Paper for the House Committee Meeting
on 6 October 2017**

**Legal Service Division Report on
Road Tunnels (Government) (Amendment) Bill 2017**

I. SUMMARY

- | | |
|---|--|
| 1. The Bill | The Bill seeks to: <ul style="list-style-type: none">(a) amend the Road Tunnels (Government) Ordinance (Cap. 368) and its subsidiary legislation to extend their application to the Tate's Cairn Tunnel ("TCT");(b) incorporate the existing tolls chargeable in respect of TCT into the Road Tunnels (Government) Regulations (Cap. 368A);(c) repeal the Tate's Cairn Tunnel Ordinance (Cap. 393) and its subsidiary legislation;(d) provide for an exemption to allow specified vehicles to convey dangerous goods in Government tunnels in emergency situations; and(e) provide for transitional matters. |
| 2. Public Consultation | It is not stated in the relevant Legislative Council Brief that the public has been consulted. |
| 3. Consultation with LegCo Panel | The Administration consulted the Panel on Transport on 19 May 2017 on the legislative proposals. Panel members had no objection to the proposed legislative amendments. A motion was passed at the meeting in relation to the toll level of TCT after the Government's takeover of TCT. |
| 4. Conclusion | The Legal Service Division is making enquiries with the Administration on certain legal aspects of the Bill and will report further if necessary. In the light of the views expressed at the above Panel meeting, Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail. |

II. REPORT

The date of First Reading of the Bill is 12 July 2017. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: THB(T)CR 1/1/4651/94) issued by the Transport and Housing Bureau dated 5 July 2017 for further details.

Object of the Bill

2. The Bill seeks to:

- (a) amend the Road Tunnels (Government) Ordinance (Cap. 368) and its subsidiary legislation to extend their application to the Tate's Cairn Tunnel ("TCT");
- (b) incorporate the existing tolls chargeable in respect of TCT into the Road Tunnels (Government) Regulations (Cap. 368A);
- (c) repeal the Tate's Cairn Tunnel Ordinance (Cap. 393) and its subsidiary legislation;
- (d) provide for an exemption to allow specified vehicles to convey dangerous goods in Government tunnels in emergency situations; and
- (e) provide for savings and transitional arrangements, and consequential amendments.

Background

3. Under Cap. 393, the Tate's Cairn Tunnel Company Limited ("the Company") was granted a franchise to construct and operate TCT for a period of 30 years. Under section 9(1)(b) of Cap. 393, the Company is required to pay a royalty to the Government during the franchise period. Under section 48 of Cap. 393, the assets of the Company will vest in the Government upon expiry of the franchise. According to paragraph 2 of the LegCo Brief, TCT will vest in the Government and become a Government tunnel on 11 July 2018. The Bill is introduced to provide legal backing for TCT to operate and be managed as a Government tunnel.

Provisions of the Bill

Amendments to Cap. 368 and Cap. 368A and repeal of Cap. 393 and its subsidiary legislation

4. Cap. 368 provides for the control and regulation of vehicular and pedestrian traffic in Government tunnels and the management of such tunnels. Schedule 1 to Cap. 368 sets out the tunnels to which Cap. 368 are applicable. Cap. 368A provides for, among other things, traffic control and regulation, tolls and fees in respect of Government tunnels.

5. The Bill seeks to add TCT to Schedule 1 to Cap. 368 so that, if the Bill is passed, Cap. 368 would apply to TCT from 11 July 2018 onwards. Further, Cap. 393 and its subsidiary legislation are proposed to be repealed consequentially under Division 1 of Part 4 of the Bill.

6. The Bill also seeks to amend Cap. 368A to, among other things:

- (a) empower the Commissioner for Transport ("Commissioner") as the Authority to display certain traffic signs at the tunnel area of TCT for the purposes of regulating and controlling traffic (clause 5); and
- (b) provide for the tolls, removal fees and permit fees chargeable on vehicles using TCT. In particular, the existing tolls for TCT are proposed to be incorporated into the new Part 3A of Schedule 2 to Cap. 368A. It is noted that the proposed removal and permit fees in respect of TCT would align with those of other Government tunnels (clause 9).

Emergency exemption from the prohibition against vehicles conveying dangerous goods in Government tunnels

7. Currently, regulation 11 of Cap 368A, in general, prohibits vehicles conveying certain dangerous goods referred to in the Schedule to the Dangerous Goods (Application and Exemption) Regulations (Cap. 295A) from passing through Government tunnels.

8. The Bill seeks to provide for an exemption in regulation 11, which would allow certain specified vehicles conveying certain dangerous goods to pass through Government tunnels under emergency situations with the Commissioner's permission which would be granted subject to any conditions that the Commissioner considers appropriate (clause 6). The effect of this

amendment, if passed, is that the exemption would apply to all Government tunnels named in Schedule 1 to Cap. 368.

Savings and transitional provisions

9. Division 1 of Part 4 of the Bill provides for savings and transitional arrangements as set out in the new Schedule 3 to Cap. 368 to the effect that:

- (a) if a royalty payable under section 9(1)(b) of Cap. 393 by the Company to the Government has not been paid before 11 July 2018, Cap. 393 would continue to apply in relation to the royalty as if Cap. 393 had not been repealed;
- (b) if an offence provided under the Tate's Cairn Tunnel By-laws (Cap. 393B) is committed before Cap. 393B is repealed, certain provisions of other Ordinances would continue to apply to such offence as if Cap. 393B had not been repealed; and
- (c) certain traffic signs specified in Cap. 393B that were erected for the use of TCT before 11 July 2018 and in force immediately before that date would continue to be applicable on and after that date.

Consequential amendments

10. Division 2 of Part 4 of the Bill provides for consequential amendments to various Ordinances and subsidiary legislation following the repeal of Cap. 393 and its subsidiary legislation.

Commencement

11. The Bill, if passed, would come into operation on 11 July 2018.

Public consultation

12. It is not stated in the LegCo Brief that the public has been consulted.

Consultation with LegCo Panel

13. As advised by the Clerk to the Panel on Transport, the Administration briefed members of the Panel on 19 May 2017 on the takeover

arrangements of TCT. The Panel noted that the takeover would be a technical exercise involving a change of tunnel ownership as well as the legal backing and management mode for its operation. Upon the takeover, TCT would be subsumed under the legal framework of Cap. 368. Other relevant subsidiary legislation would also be amended consequentially. Members did not raise objection to the proposed legislative amendments. They were more concerned whether the Administration would, upon the takeover, lower the tolls of TCT to align with those of the alternative tunnels, i.e. Lion Rock Tunnel, and Eagle's Nest Tunnel and Sha Tin Heights Tunnel.¹ A motion was passed at the Panel meeting in this regard.

Conclusion

14. The Legal Service Division is making enquiries with the Administration on certain legal aspects of the Bill and will report further if necessary. In the light of the views expressed at the above Panel meeting, Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

Prepared by

CHUI Ho-yin, Alvin
Assistant Legal Adviser
Legislative Council Secretariat
3 October 2017

LS/B/30/16-17

¹ Lion Rock Tunnel is one of the Government Tunnels controlled and regulated under Cap. 368. Eagle's Nest Tunnel and Sha Tin Heights Tunnel are controlled and regulated under the Tsing Sha Control Area Ordinance (Cap. 594). Vehicles using these three tunnels are charged a flat toll of \$8.