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**Legal Service Division Report on
Subsidiary Legislation Gazetted on 28 July 2017**

**SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND NOT
SUBJECT TO AMENDMENT**

**Tai Lam Tunnel and Yuen Long Approach Road Ordinance
(Amendment of Schedule 1) Notice 2017**

(L.N. 145)

L.N. 145 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 Cap. 474 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 (CPS)") with effect from 1 August 2017.

2. Cap. 474 provides for a toll adjustment mechanism for Route 3 (CPS) as follows:

- (a) Route 3 (CPS) Company Limited ("the Franchisee") may, during the franchise period and subject to the relevant requirements stipulated in Cap. 474, apply in writing to the Secretary for Transport and Housing ("the Secretary") to give effect to an anticipated toll increase on each of three specified dates in Schedule 3 (i.e. 1 January 2003, 1 January 2010 and 1 January 2017) (section 39);
- (b) if the Actual Net Revenue ("ANR") of the Franchisee for any year which is not a year immediately preceding a year in which a specified date occurs is less than the Minimum Estimated Net Revenue ("MENR") for that year as specified in Schedule 4, the Franchisee may apply to the Secretary to give effect to the next anticipated toll increase (section 40);
- (c) where the Franchisee has given effect to all the anticipated toll increases and its ANR for any year occurring before the expiry of the franchise period is less than its MENR for that year as specified in Schedule 4, it may apply to the Secretary to give effect to an additional toll increase (section 42);

- (d) the amounts of toll increase to which the Franchisee may give effect in respect of different categories of vehicles are specified in Schedule 2 (section 44(5));
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 45(1)); and
- (f) section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply in respect of any such notice; accordingly, any such notice, including L.N. 145, is not required to be tabled at, and is not subject to amendment by, the Legislative Council ("LegCo") (section 45(3)).

3. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 19/3/5591/91) issued by the Transport and Housing Bureau ("THB") in July 2017, the Franchisee's ANR has, since the commissioning of Route 3 (CPS) in 1998, consistently fallen short of the level of MENR as specified in Schedule 4 to Cap. 474. By 19 June 2005, the Franchisee has effected all the anticipated toll increases and has since applied for and been permitted 11 additional toll increases. The last statutory toll increase for Route 3 (CPS) came into effect on 1 August 2016.

4. The present increase as reflected in L.N. 145, which was applied by the Franchisee in August 2013, is the 12th additional toll increase. The amounts of increase are in accordance with the amounts specified in Schedule 2 to Cap. 474. According to paragraph 9 of the LegCo Brief, it is based on the Franchisee's audited 2012-2013 statement of ANR which shows that the Franchisee's ANR for 2012-2013 was \$850 million, which is lower than MENR of \$2,129 million for that year as specified in Schedule 4 to Cap. 474.

5. According to paragraph 11 of the LegCo Brief, the Franchisee will continue to offer concessions to all categories of vehicles so that the current concessionary tolls¹ will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of Route 3 (CPS) will not be affected by the changes in the statutory tolls.

6. A comparison of the Route 3 (CPS) statutory tolls before and after the increase under L.N. 145, and the applicable concessionary tolls, is at **Annex I**.

7. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 145.

8. L.N. 145 came into operation on 1 August 2017.

¹ The current concessionary tolls took effect from 1 January 2017.

**Western Harbour Crossing Ordinance (Amendment of
Schedule 1) Notice 2017**

(L.N. 146)

9. L.N. 146 is made by the Commissioner under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) to replace Schedule 1 to Cap. 436 with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Western Harbour Crossing ("WHC") with effect from 31 July 2017.

10. Cap. 436 provides for a toll adjustment mechanism for WHC which is similar to that for Route 3 (CPS) as described in paragraph 2 above. The mechanism under Cap. 436 is summarized as follows:

- (a) Western Harbour Tunnel Company Limited ("the Company") may, during the franchise period and subject to the relevant requirements stipulated in Cap. 436, apply in writing to the Secretary to give effect to an anticipated toll increase on each of six specified dates in Schedule 4 (i.e. 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021) (section 45);
- (b) where in respect of any year which is not a year ending immediately before a specified date, the net revenue of the Company is less than MENR for that year as specified in Schedule 5, the Company may apply to the Secretary to give effect to the next anticipated toll increase (section 46);
- (c) 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 MENR for that year as specified in Schedule 5, the Company may apply to the Secretary to give effect to an additional toll increase (section 48);
- (d) 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);
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 52(1)); and
- (f) section 34 of Cap. 1 does not apply in respect of any such notice; accordingly, any such notice, including L.N. 146, is not required to be tabled at, and is not subject to amendment by, LegCo (section 52(3)).

11. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 1/4651/99) issued by THB in July 2017, the Company's ANR has, since the commissioning of WHC in 1997, consistently fallen short of the level of MENR

as specified in Schedule 5 to Cap. 436. By 31 July 2006, the Company has effected five anticipated toll increases² and has since applied for and been permitted 10 additional toll increases. The last statutory toll increase for WHC came into effect on 31 July 2016.

12. The present increase as reflected in L.N. 146, which was applied by the Company in August 2014, is the 11th additional toll increase. The amounts of increase are in accordance with the amounts specified in Schedule 3 to Cap. 436. According to paragraph 9 of the LegCo Brief, it is based on the Company's audited 2013-2014 statement of net revenue which shows that the Company's ANR for 2013-2014 was \$1,294 million, which is lower than MENR of \$2,573 million for that year as specified in Schedule 5 to Cap. 436.

13. According to paragraph 11 of the LegCo Brief, the Company will continue to offer concessions to all categories of vehicles so that the current concessionary tolls³ will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of WHC will not be affected by the changes in the statutory tolls.

14. A comparison of the WHC statutory tolls before and after the increase under L.N. 146, and the applicable concessionary tolls, is at **Annex II**.

15. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 146.

16. L.N. 146 came into operation on 31 July 2017.

Concluding Observations

17. No difficulties have been identified in relation to the legal and drafting aspects of the above items of subsidiary legislation.

Encl

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² The Company has forfeited its right once to effect anticipated toll increase.

³ The current concessionary tolls took effect from 1 January 2017.

Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 1 August 2017	
1.	Motorcycles, motor tricycles	80	85	20
2.	Private cars, electrically powered passenger vehicles, taxis	85	90	44
3.	Public and private light buses	240	255	100
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	240	255	45
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	90	95	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	250	265	50
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	90	95	0
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	270	285	55
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	90	95	0
7.	Public and private single-decked buses	240	255	130
8.	Public and private double-decked buses	255	270	153

Western Harbour Crossing Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 31 July 2017	
1.	Motorcycles, motor tricycles	120	130	25
2.	Private cars, electrically powered passenger vehicles	210	225	65
	Taxis	210	225	60
3.	Public and private light buses	250	270	75
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	300	320	75
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	210	225	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	455	490	100
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	210	225	30
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	635	680	130
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	210	225	30
7.	Public and private single-decked buses	250	270	120
8.	Public and private double-decked buses	370	400	170