

LEGISLATIVE COUNCIL BRIEF

Road Tunnels (Government) Ordinance (Chapter 368)
Tsing Ma Control Area Ordinance (Chapter 498)
Interpretation and General Clauses Ordinance (Chapter 1)
Tsing Sha Control Area Ordinance (Chapter 594)

**ROAD TUNNELS (GOVERNMENT)
(AMENDMENT) (No. 2) REGULATION 2018**

**TSING MA CONTROL AREA (TOLLS, FEES AND CHARGES)
(AMENDMENT) REGULATION 2018**

**TSING SHA CONTROL AREA (TOLLS, FEES AND CHARGES)
(AMENDMENT) REGULATION 2018**

INTRODUCTION

At the meeting of the Executive Council on 20 November 2018, the Council **ADVISED** and the Chief Executive **ORDERED** that -

- (a) the Road Tunnels (Government) (Amendment) (No. 2) Regulation 2018 (at **Annex A**) be made under section 20 of the Road Tunnels (Government) Ordinance (Cap. 368);
- (b) the Tsing Ma Control Area (Tolls, Fees and Charges) (Amendment) Regulation 2018 (at **Annex B**) be made under section 27(1) of the Tsing Ma Control Area Ordinance (Cap. 498) and section 29 of the Interpretation and General Clauses Ordinance (Cap. 1); and
- (c) the Tsing Sha Control Area (Tolls, Fees and Charges) (Amendment) Regulation 2018 (at **Annex C**) be made under section 26(1) of the Tsing Sha Control Area Ordinance (Cap. 594),

to exempt the toll for franchised buses using Government tunnels as well as the Tsing Ma and Tsing Sha Control Areas.

JUSTIFICATIONS

Toll Exemption and the setting up of “Franchised Bus Toll Exemption Funds” by the operators

2. As mass carriers, franchised buses assume a pivotal role in the public transport system. Currently, more than four million commuter trips are handled by franchised buses every day, representing more than 30% of all daily commuter trips. The operating costs of franchised buses are on the rise and franchised bus operators are facing various degrees of fare increase pressure. In fact, five out of the six franchisees have submitted fare increase applications to the Government.¹ On average, tunnel toll accounts for about 7% of the franchised bus operating cost (about 3% being toll of government tunnels and roads and 4% being toll of Build-Operate-Transfer (“BOT”) tunnels). From the point of view of road space management, franchised buses, as efficient mass carriers, should not be made to pay hefty tunnel tolls. Furthermore, the routings of franchised buses are not determined by the operators, but by the Government based on transport planning considerations. While we will continue to rationalise the bus service network with a view to enhancing operational efficiency, the Chief Executive announced in her Policy Address 2018 to exempt or to pay the toll for franchised buses using tolled tunnels (including both government and BOT ones) as well as the Tsing Ma and Tsing Sha Control Areas with a view to relieving fare increase pressure and benefiting the general public.

3. Under the proposal, each franchised bus operator will set up its own dedicated fund account, known as the “Franchised Bus Toll Exemption Fund” (“the Fund”), for keeping the toll saved. The balance in the Fund is reserved for relieving fare increase pressure of the corresponding franchised bus operator. When the franchised bus operator applies for fare increase and the Chief Executive-in-Council considers that there is a justifiable need to increase the fare, the franchised bus operator will be required to offset the increase by first using the balance in the Fund. Hence, the magnitude of the fare increase shouldered by the passengers will be lowered, and the public can enjoy a more affordable yet efficient franchised bus service.

4. At the same time, we propose to set a cap on the Fund. If individual franchised bus operators do not face pressure for fare increase in the coming

¹ Citybus Limited (Franchise for Hong Kong Island and Cross-Harbour Bus Network) and New World First Bus Services Limited applied for fare increases of 12% in August last year. Kowloon Motor Bus Company (1933) Limited and Long Win Bus Company Limited applied for fare increases of 8.5% in September this year. New Lantao Bus Company (1973) Limited also applied for fare increase of 9.8% in September this year. The Government is processing the fare increase applications in accordance with established procedures.

few years, toll savings of these operators exceeding the cap would be distributed to their passengers through fare concession.²

5. A franchised bus operator may draw from the Fund to mitigate the fare increase approved by Government in future. If the operator subsequently is able to improve its financial position due to improved operating environment (e.g. as a result of a sustained period of lower than expected fuel price), we propose that the operator shall cease to drawdown from the balance in the Fund so that the Fund could accumulate again for future use. In this connection, the Transport Department will closely monitor the financial position of the concerned franchised bus operator (including the current and forecast financial status, challenges faced by the franchised bus industry, and the overall economic situation, etc.) and maintain close contact with the operators.³

6. The Transport Department will enter into an agreement with each of the franchised bus operators to set up the Fund under the respective account of the concerned operator, putting in place the proposed arrangements outlined in paragraphs 3 to 5 above as well as the necessary monitoring and auditing mechanisms.

Exempting Toll of Government Tunnels and Roads as First Step

7. As a first step, we will amend the relevant regulations to exempt franchised buses from paying the toll of Government tunnels as well as the Tsing Ma and Tsing Sha Control Areas with effect from 17 February 2019. **Annex D** shows the government toll paid by the concerned franchised bus operators in 2017.

8. Regarding the two tunnels which are still operating under the BOT model (i.e. Western Harbour Crossing (“WHC”) and Tai Lam Tunnel (“TLT”)), we propose that, as the next step, the Government pay the toll on behalf of the franchised bus operators, and the franchised bus operators should then set aside such toll saving to the Fund. As regards WHC, the relevant

² Our current proposal is to set the cap at 10% of the annual fare revenue of the concerned franchised bus operator. It is estimated that it would take about two to five years for the franchised bus operators to have the toll saved, if they need not use the saving for mitigating fare increase, reached the cap of the respective Fund if only the tolls of government tunnels and roads are exempted. The accumulation of the Fund would be faster if the toll exemption is extended to BOT tunnels at a later stage.

³ Our proposal is that, unless otherwise agreed by the Commissioner for Transport, the operator shall cease to drawdown the mitigating funding from the Fund in the following two scenarios: (a) the franchised bus operator could still make a profit for the past three consecutive years even if, hypothetically, no mitigating funding were drawn from the balance of the Fund; or (b) the operator could make a profit higher than the Weighted Average Cost of Capital of the franchised bus industry (currently at 9.7%) in one year. However, if the cessation of the drawdown from the Fund would render the operator a justifiable case to submit a fare increase application to the Government, the Commissioner for Transport may exercise her discretion to consider allowing the operator not to cease the drawdown from the Fund.

arrangement forms part of the packaged deal alongside the proposal on rationalisation of traffic distribution among the harbour-crossing tunnels and can take effect on 1 January 2020 if the deal materialises. Meanwhile, the Government is exploring with the operator of TLT on the same arrangement for franchised buses using the tunnel (i.e. the Government pays the relevant toll).

THE AMENDMENT REGULATIONS

Road Tunnels (Government) (Amendment) (No. 2) Regulation 2018

9. A new **section 12(4)** is added to the Road Tunnels (Government) Regulation (Cap. 368 sub. leg. A) to provide that franchised buses are exempted from toll for using the tunnels to which Cap. 368 apply.

Tsing Ma Control Area (Tolls, Fees and Charges) (Amendment) Regulation 2018

10. A new **section 3(4A)** is added to the Tsing Ma Control Area (Tolls, Fees and Charges) Regulation (Cap. 498 sub. leg. A) to provide that franchised buses are exempted from toll for using the Lantau Link as defined in section 2 of Cap. 498.

Tsing Sha Control Area (Tolls, Fees and Charges) (Amendment) Regulation 2018

11. A new **section 3(5)** is added to the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594 sub. leg. B) to provide that franchised buses are exempted from toll for using the toll area of the Tsing Sha Control Area.

LEGISLATIVE TIMETABLE

12. The legislative timetable is as follows –

Publication in the Gazette	30 November 2018
Tabling at the Legislative Council ("LegCo") for negative vetting	5 December 2018
Commencement of the Amendment Regulations	17 February 2019

IMPLICATIONS OF THE PROPOSAL

13. The proposal has financial, civil service, economic and sustainability implications as set out in **Annex E**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Amendment Regulations will not affect the current binding effect of the Ordinance. The proposal has no environmental, family, gender or productivity implications.

PUBLIC CONSULTATION

14. The LegCo Panel on Transport was briefed on 19 October and 16 November 2018 on the proposal together with other 2018 Policy Address initiatives in relation to public transport. Members in general welcomed the proposal.

PUBLICITY

15. A spokesperson will be available to answer media enquiries.

BACKGROUND

16. The existing tolls of government tunnels and roads charged on franchised buses are provided under Schedule 2 to the Road Tunnels (Government) Regulations (Cap. 368 sub. leg. A), Schedule 1 to the Tsing Ma Control Area (Tolls, Fees and Charges) Regulation (Cap. 498 sub. leg. A) and Schedule 1 to the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594 sub. leg. B). Relevant information is summarised at **Annex F**.

ENQUIRIES

17. Any enquiry on this brief can be directed to Miss Crystal YIP, Principal Assistant Secretary for Transport and Housing (Transport) at 3509 8171.

Transport and Housing Bureau
28 November 2018

**Road Tunnels (Government) (Amendment) (No. 2)
Regulation 2018**

(Made by the Chief Executive in Council under section 20 of the Road
Tunnels (Government) Ordinance (Cap. 368))

1. Commencement

This Regulation comes into operation on 17 February 2019.

2. Road Tunnels (Government) Regulations amended

The Road Tunnels (Government) Regulations (Cap. 368 sub. leg.
A) are amended as set out in section 3.

3. Regulation 12 amended (tolls)

After regulation 12(3)—

Add

“(4) Buses in respect of which a franchise is in force under
the Public Bus Services Ordinance (Cap. 230) are
exempted from the operation of paragraphs (1) and (2)
and, accordingly, no toll is payable for their use of a
tunnel.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2018

Explanatory Note

This Regulation amends the Road Tunnels (Government) Regulations (Cap. 368 sub. leg. A) to exempt franchised buses from toll for using the tunnels to which the Road Tunnels (Government) Ordinance (Cap. 368) applies.

**Tsing Ma Control Area (Tolls, Fees and Charges)
(Amendment) Regulation 2018**

(Made by the Chief Executive in Council under section 27(1) of the Tsing Ma Control Area Ordinance (Cap. 498) and section 29 of the Interpretation and General Clauses Ordinance (Cap. 1))

1. Commencement

This Regulation comes into operation on 17 February 2019.

2. Tsing Ma Control Area (Tolls, Fees and Charges) Regulation amended

The Tsing Ma Control Area (Tolls, Fees and Charges) Regulation (Cap. 498 sub. leg. A) is amended as set out in section 3.

3. Section 3 amended (tolls)

After section 3(4)—

Add

“(4A) Buses in respect of which a franchise is in force under the Public Bus Services Ordinance (Cap. 230) are exempted from the operation of subsection (1) and, accordingly, no toll is payable for their use of the Lantau Link.”

Clerk to the Executive Council

COUNCIL CHAMBER

2018

Explanatory Note

This Regulation amends the Tsing Ma Control Area (Tolls, Fees and Charges) Regulation (Cap. 498 sub. leg. A) to exempt franchised buses from toll for using the Lantau Link as defined by section 2 of the Tsing Ma Control Area Ordinance (Cap. 498).

**Tsing Sha Control Area (Tolls, Fees and Charges)
(Amendment) Regulation 2018**

(Made by the Chief Executive in Council under section 26(1) of the Tsing Sha Control Area Ordinance (Cap. 594))

1. Commencement

This Regulation comes into operation on 17 February 2019.

2. Tsing Sha Control Area (Tolls, Fees and Charges) Regulation amended

The Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594 sub. leg. B) is amended as set out in section 3.

3. Section 3 amended (tolls)

After section 3(4)—

Add

“(5) Buses in respect of which a franchise is in force under the Public Bus Services Ordinance (Cap. 230) are exempted from the operation of subsection (1) and, accordingly, no toll is payable for their use of the toll area.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2018

Explanatory Note

This Regulation amends the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594 sub. leg. B) to exempt franchised buses from toll for using the toll area of the Tsing Sha Control Area.

Annex D

Total government toll paid by franchised bus operators in 2017

Tunnel/Road	KMB	LW	CTB(F1)	CTB(F2)	NWFB	NLB	Total
1. Cross-harbour Tunnel	23,290,975	0	9,370,405	415,325	13,572,285	0	46,648,990
2. Eastern Harbour Crossing	41,871,301	0	16,231,775	275,300	20,606,804	0	78,985,180
3. Lion Rock Tunnel	10,244,696	0	534,968	18,768	41,560	0	10,839,992
4. Tate's Cairn Tunnel	70,605,417	0	3,585,091	118	8,864,742	0	83,055,368
5. Tsing Sha Control Area	2,062,824	254,976	329,584	128	156,464	0	2,803,976
6. Shing Mun Tunnel	4,731,570	956,515	2,430	11,680	10	0	5,702,205
7. Aberdeen Tunnel	694,580	0	5,161,175	26,445	1,248,160	0	7,130,360
8. Tseung Kwan O Tunnel	1,188,054	0	63,765	198,183	693,789	0	2,143,791
9. Tsing Ma Control Area	0	26,163,570	2,400	18,105,165	620	2,070	44,273,825
Total government toll paid	154,689,417	27,375,061	35,281,593	19,051,112	45,184,434	2,070	281,583,687
[% of operating costs]	[2.46%]	[5.77%]	[2.73%]	[4.72%]	[4.15%]	[0.00%]	[2.91%]
[% of fare revenue]	[2.32%]	[5.36%]	[2.90%]	[3.58%]	[4.35%]	[0.00%]	[2.78%]

Legend: KMB - Kowloon Motor Bus Company (1933) Limited
 LW - Long Win Bus Company Limited
 CTB(F1) – Citybus Limited (Franchise for Hong Kong Island and Cross-Harbour Bus Network)
 CTB(F2) – Citybus Limited (Franchise for Airport and North Lantau Bus Network)
 NWFB – New World First Bus Services Limited
 NLB – New Lantao Bus Company (1973) Limited

**Financial, Civil Service,
Economic and Sustainability Implications**

Financial and Civil Service Implications

Based on the 2017 figures, the revenue foregone by the Government for exempting the toll of all Government tunnels and the Tsing Ma and Tsing Sha Control Areas on franchised buses is about \$280 million per year. The Transport Department has secured additional manpower to administer the initiative in accordance with the established resources allocation mechanism.

Economic and Sustainability Implications

2. The proposed exemption of toll for franchised buses would help relieve the fare increase pressure. Hence, the public can enjoy a more affordable franchised bus service. The extent to which the proposal would help mitigate fare increase would depend on the balance as accumulated in and drawn from the Fund for that purpose and the approved rate of fare increase. The proposal is a form of subsidy to the franchised bus operators, and as in the case of all subsidy schemes, the franchised bus operators may arguably have less incentive to improve their operating efficiency over time if all things being unchanged. That said, there is also a productivity gain element in the long-standing fare adjustment arrangement for franchised buses, which provides incentives for franchised bus operators to improve efficiency and productivity.

Annex F

**The existing tolls of
Government tunnels and roads charged on franchised buses**

Government tunnels and roads	Toll
Aberdeen Tunnel	\$5
Lion Rock Tunnel	\$8
Shing Mun Tunnels	\$5
Tseung Kwan O Tunnel	\$3
Cross-Harbour Tunnel	<ul style="list-style-type: none">● Public and private single-decked buses: \$10● Public and private double-decked buses: \$15● For vehicles with more than two axles: each additional axle in excess of two: \$10
Eastern Harbour Crossing	<ul style="list-style-type: none">● Public and private single-decked buses: \$50● Public and private double-decked buses: \$75● For vehicles with more than two axles: each additional axle in excess of two: \$25
Tate's Cairn Tunnel	<ul style="list-style-type: none">● Public and private single-decked buses: \$32● Public and private double-decked buses: \$35● For vehicles with more than two axles: each additional axle in excess of two: \$24
Tsing Ma Control Area	<ul style="list-style-type: none">● Public and private single-decked buses: \$20● Public and private double-decked buses: \$30
Tsing Sha Control Area	\$8