

立法會

Legislative Council

LC Paper No. LS107/99-00

**Paper for the House Committee Meeting
of the Legislative Council
on 17 March 2000**

**Legal Service Division Further Report on
Resolution under section 30 of the Discovery Bay
Tunnel Link Ordinance (Cap. 520)**

Members may recall that the Legal Service Division made a report to the House Committee on 3 March 2000 on the motion to seek the Legislative Council's approval of the Discovery Bay Tunnel Link Bylaw ("the Bylaw") made by the Discovery Bay Road Tunnel Company Limited ("the Company") pursuant to section 30 of the Discovery Bay Tunnel Link Ordinance (Cap. 520) ("the principal Ordinance") (LegCo Paper No. LS99/99-00 refers). The Bylaw provides for matters such as the order and safety in the tunnel area; the payment of tolls; and the prohibition and restriction of certain types of vehicles to enter or remain in the tunnel area.

2. At the House Committee meeting, we informed Members that we were seeking clarification from the Administration on certain technical points, in particular, issues relating to "specified vehicles" and "permitted vehicles", whether the Bylaw applies to the State and the legal basis for making the Bylaw apply to the Government when the principal Ordinance itself may not apply to the State by virtue of section 66(1) of the Interpretation and General Clauses Ordinance (Cap. 1).

3. After the House Committee meeting, the Secretary for Transport has withdrawn the notice for moving the motion to approve the Bylaw at the Council meeting on 15 March 2000 so that Members would have more time to study the Bylaw.

4. We have now received the Administration's reply. The gist of its reply is summarized as follows:

- (a) Section 66(1) of Cap. 1 provides that no Ordinance shall in any manner whatsoever affect the right of or be binding on the State unless it is therein expressly provided or unless it appears by necessary implication that the State is bound thereby. "State" is defined in Cap. 1 to include the Government. Section 26 of this Bylaw provides that the Bylaw shall apply to vehicles and persons in the public service of the Government except where otherwise provided. Although the principal Ordinance does not contain express provisions which bind the State, the Administration

considers that the principal Ordinance does apply to the Government by necessary implication. Under section 24(11) of the principal Ordinance, the Company shall not charge a toll or fee for "a vehicle carrying persons who are employed by or in the service of the Government and which are performing duties in the tunnel area or in relation to an emergency or the enforcement of the law". A toll or fee is, therefore, by implication chargeable for a Government vehicle that does not fall within that description in section 24(11). In other words, when using the Discovery Bay Tunnel Link ("the Tunnel Link") as an ordinary user, the Government is by necessary implication subject to obligations imposed under the principal Ordinance that are applicable to other users in general, including the obligations imposed by the Bylaw made under the principal Ordinance. Bylaws on other private tunnels, like the Western Harbour Crossing Bylaw (Cap. 436 sub. leg.), contain a provision similar to section 26 of this Bylaw;

- (b) Although the Bylaw applies to the Government by necessary implication, there is nothing in the principal Ordinance (whether by express provisions or by necessary implication) to suggest that the principal Ordinance and the Bylaw made thereunder are binding on State organs. Accordingly, the Administration is of the view that the principal Ordinance and the Bylaw do not apply to State organs or their vehicles by virtue of section 66(1) of Cap. 1; and
- (c) Section 16 of the Bylaw provides that no person shall drive a vehicle through a toll booth or an autotoll booth unless he proves to the satisfaction of the tunnel officer that the vehicle is a specified vehicle or permitted vehicle. Operationally, the Company will require all vehicles intending to pass through the Tunnel link to stop immediately before the toll booths (be they autotoll or non-autotoll booths). The tunnel officers will check whether the vehicle concerned falls within the classes or descriptions of a "specified vehicle" or a "permitted vehicle". It is only when the tunnel officers are satisfied that the vehicle concerned is a "specified vehicle" or "permitted vehicle" would the vehicle be allowed to proceed to a toll booth (whether an autotoll booth or a non-autotoll booth) to pay the toll for using the Tunnel Link. Vehicles which are not specified vehicles or permitted vehicles will be refused entry and will be turned away before they reach the toll booths.

5. With the above clarifications, we are satisfied that the legal and drafting aspects of the Bylaw are in order.

Prepared by

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