

立法會
Legislative Council

LC Paper No. CB(1)1538/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/SS/4/04/1

**Subcommittee to Study the Eastern Harbour Crossing Ordinance
(Amendment of Schedule) Notice 2005**

**Meeting on
Tuesday, 26 April 2005, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon LAU Kong Wah, JP (Chairman)
Hon Fred LI Wah-ming, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
- Member absent** : Hon LEE Cheuk-yan
- Public Officers
Attending** : Ms Annie CHOI
Deputy Secretary for the Environment, Transport and Works
- Mr Clement LAU
Principal Assistant Secretary for the Environment,
Transport and Works (Acting)
- Mr LEE Kwong-ming
Chief Treasury Accountant (Transport)
Environment, Transport and Works Bureau
- Mr TO Kam-biu
Chief Engineering/Transport Planning
Transport Department

Miss LUI Ying
Principal Transport Officer/Management
Transport Department

- Attendance by invitation** : The Chinese University of Hong Kong
Dr Raymond SO
Associate Professor, Department of Finance
New Hong Kong Tunnel Company Limited
Ms Becky FUNG
Project Manager
- Clerk in attendance** : Mr Andy LAU
Chief Council Secretary (1)2
- Staff in attendance** : Ms Connie FUNG
Assistant Legal Adviser 3
Ms Anita SIT
Senior Council Secretary (1)9

Action

I Meeting with the Administration and other relevant parties

- (LC Paper No. CB(1)1363/04-05(01) - A letter dated 20 April 2005 from Dr SO Wai-man, Associate Professor of the Department of Finance of the Chinese University of Hong Kong regarding the calculation of internal rate of return on equity by the New Hong Kong Tunnel Company Limited
- LC Paper No. CB(1)1363/04-05(02) - Letter dated 21 April 2005 from New Hong Kong Tunnel Company Limited responding to the letter from Dr SO Wai-man, Associate Professor of the Department of Finance of the Chinese University of Hong Kong)

Members noted that the following papers were tabled at the meeting –

Action

- (a) letter dated 25 April 2005 from the Chairman of New Hong Kong Tunnel Company Limited (NHKTC) providing further information on the way the internal rate of return on equity is calculated and a summary of the NHKTC cash flow;
- (b) letter dated 25 April 2005 from NHKTC responding to the letter from Democratic Alliance for Betterment of Hong Kong; and
- (c) submission from Dr Raymond SO, Associate Professor of the Department of Finance of the Chinese University of Hong Kong regarding the calculation of internal rate of return on equity by NHKTC.

(Post-meeting note: The above papers were issued to members vide LC Paper No. CB(1)1388/04-05 dated 27 April 2005.)

2. The Subcommittee deliberated (index of proceedings attached at **Annex A**).
3. The Administration and NHKTC were requested to provide the following information before 12:00 noon on 28 April 2005-

By NHKTC

- (a) The company's response to the request for deferring the toll increase of the EHC to 1 June 2005;
- (b) The company's loan agreement with the lending banks, particularly the part relating to the restrictions for payment of dividends, and the dividend policy adopted by the company; and
- (c) The company's response to the suggestion made by Dr Raymond SO on the alternative means of financing to enable greater dividend payments.

By the Administration

- (a) Why IRR on equity was selected as a means to measure the reasonableness of the company's remuneration but not other approaches, including the suggestion from Dr Raymond SO;
- (b) The Administration's assessment on the reliability and accuracy of the financial and traffic information prepared by the company for the purpose of the toll increase;
- (c) The Administration's comment on the letter from the Democratic Alliance for Betterment of Hong Kong dated 25 April 2005;
- (d) Details of the Administration's assessment on the traffic impacts on the three road harbour crossings upon the toll increase of the EHC; and

Action

- (e) The Administration's response to a member's suggestion of diverting some franchised buses operating at Cross-Harbour Tunnel to other road harbour crossings, and providing convenient interchange arrangements for affected passengers as from 3 May 2005 onwards.

II Any other business

- 4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
13 May 2005

**Proceedings of the meeting of
the Subcommittee to Study the Eastern Harbour Crossing Ordinance
(Amendment of Schedule) Notice 2005
Tuesday, 26 April 2005, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I – Meeting with the Administration and other relevant parties</i>			
000000-000213	Chairman	Opening remarks	
000214-000713	Dr Raymond SO Chairman	<p>- Queries raised by Dr SO regarding the calculation of internal rate of return (IRR) on equity for New Hong Kong Tunnel Company Limited (NHKTC)-</p> <p>(a) why IRR on equity was used as the yardstick for determining the “reasonable but not excessive remuneration” for NHKTC;</p> <p>(b) how the IRR of 8.4% up to 2003 as set out in NHKTC’s 2003 annual report was arrived at; and</p> <p>(c) why NHKTC did not pay out all or most of the profits earned to shareholders as dividends but retained a large portion of the profits, given that the IRR on equity hinged on the amount of dividends paid to shareholders.</p>	
000714-001615	Ms Becky FUNG Chairman Dr Raymond SO	<p>Ms FUNG’s explanation that NHKTC’s dividend policy was to distribute as much dividend as possible subject to the availability of cash funds and the restrictions stipulated in the loan agreement (for the loan that partially financed the building of the tunnel) between NHKTC and its creditors, and that the amount of cash funds available for the past five years were shown in the respective balance sheets, which could be accessed by the public on NHKTC’s website</p> <p>- Ms FUNG’s explanation that NHKTC had fully repaid the loan in 2001 and thereafter had distributed as much dividend as possible based on the cash funds available</p> <p>- Dr SO’s query that the retention of a large amount of retained profits in effect was an injection of equity</p>	

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		<ul style="list-style-type: none"> - Dr SO's query why NHKTC did not borrow short-term loans since 2001 to enable it to pay out most of its retained profits to shareholders as dividends; in so doing, NHKTC could solve the problem of inadequate cash funds for greater dividend payments. - Ms FUNG's explanation that any financing would require charges on NHKTC's assets, and the tunnel was the major asset of NHKTC; restrictions would be imposed on the company's dividend payment arrangements under any new loan agreement - Ms FUNG's explanation that the shareholders' equity plus retained profits represented the assets held by the company and the major asset held by the company was the Tunnel itself, which would be written down to zero by 2016 when the Tunnel had to be returned to the Government with no payment in return 	
001616-002154	Mr Jeffrey LAM Dr Raymond SO	<ul style="list-style-type: none"> - Mr LAM's enquiry about Dr SO's experience in financial management of commercial operations - Mr LAM's enquiry about Dr SO's view on the treatment of retained profits vis-à-vis dividend payment based on prudent commercial principles - Dr SO's response to Mr LAM's enquiries with the following points made - <ul style="list-style-type: none"> (a) NHKTC's retained profits as at 31 December 2003 stood at \$460 million which represented a large portion of shareholders' equity of \$750 million; (b) the smaller the amount of dividend payment, the lower the IRR on equity would be; and (c) NHKTC could raise short-term loans for dividend payment purposes. 	
002155-003633	Mr CHAN Kam-lam Admin Ms Becky FUNG Chairman	<ul style="list-style-type: none"> - Mr CHAN's enquiry about the Administration's position on the queries raised by Dr SO - The Administration's advice that IRR on equity was the yardstick commonly used 	Ms FUNG agreed that NHKTC would provide information on the balance of "cash and cash equivalent" since 1986

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		<p>for determining the appropriate rate of return for operators of roads or tunnels built and operated under Build-Operate-Transfer franchises</p> <ul style="list-style-type: none"> - The Administration's advice that it had reviewed the IRR calculations presented by NHKTC and did not find any problem with the calculations, and that the Administration also did not find particular problems with the financial management aspects including the dividend policy of the company - The Administration's advice that it had engaged financial experts to provide advice on financial matters in both the 1997 and 2005 Arbitrations. For the 2005 Arbitration, the Deutsche Bank was the financial consultant for the Government and the team was led by the director and head of the mergers and acquisition department of the Bank - Mr CHAN's request for further financial information to be provided by NHKTC - Ms FUNG's explanation that NHKTC did not consider it appropriate for the company to borrow funds in order to pay more dividends as so doing would make the company subject to restrictions on disposal of assets including dividend payments - Ms FUNG's confirmation that since 2001 when NHKTC had fully repaid the loan, it had paid as much dividend as possible to shareholders based on the cash funds available - The Chairman's enquiry and Ms FUNG's explanation on how the IRR of 8.4% up to 2003 was calculated - The Administration's advice that- <ul style="list-style-type: none"> (a) the method for determining the reasonable but not excessive remuneration for NHKTC had not been prescribed in the franchise agreement; (b) IRR on equity was the basis of the toll variation mechanisms for the 	

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		<p>Western Harbour Crossing and the Tai Lam Tunnel of Route 3; and</p> <p>(c) IRR on equity was commonly used for determining the rate of return for roads or tunnels built and operated under BOT franchises</p> <p>- The Administration's advice that it had taken into account the IRR for NHKTC over the entire franchise period (instead of the IRR of 8.4% up to 2003) in considering the toll increase application of NHKTC</p>	
003634-004110	Mr Andrew CHENG	<p>- Mr CHENG's request for NHKTC to reconsider deferring the toll increase of EHC and to discuss with the Administration viable measures/options to achieve more balanced traffic distribution among the three road harbour crossings</p>	
000411-004223	Dr Raymond SO Chairman	<p>- Dr SO's comment that the IRR for NHKTC over the past years could be substantially raised if NHKTC had paid more dividends, which could be made possible by obtaining short-term loans from the market</p>	
004224-005443	Ms Becky FUNG Admin Mr Andrew CHENG	<p>- Ms FUNG's explanation that any borrowing from the market required charges on NHKTC's assets and the relevant loan agreement would include terms restricting the financial arrangements of the company including dividend payments</p> <p>- Ms FUNG's response that NHKTC was willing to discuss with the Administration any possible options to achieve a more balanced traffic distribution among the road harbour crossings</p> <p>- Mr CHENG's enquiry and the Administration's advice on the traffic management measures to be taken after the new tolls of EHC had taken effect</p> <p>- Mr CHENG's enquiry and the Administration's response on the progress of the work in examining the various options to achieve a more balanced traffic distribution among the three road harbour crossings</p>	

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005444-010629	Mr Fred LI Admin Ms Becky FUNG	<ul style="list-style-type: none"> - Mr LI's enquiry and the Administration's response to the assessment of the traffic impact of the toll increase of EHC - Mr LI's enquiry and Ms FUNG's response to the impact of the toll increase on the toll income of EHC 	
010690-010840	Ms LI Fung-ying Admin	<ul style="list-style-type: none"> - Ms LI's request for the Administration's written response to the queries raised by Dr SO and the Democratic Alliance for the Betterment of Hong Kong 	The Administration agreed to provide written response by 27 April 2005
010841-012052	Mr WONG Kwok-hing Admin Ms Becky FUNG Dr Raymond SO	<ul style="list-style-type: none"> - Mr WONG's comment that more information should be provided by NHKTC and the Administration to facilitate members' understanding of the financial arrangements of NHKTC, in particular its dividend policy, and the effects of such arrangements on the IRR on equity - Ms FUNG's emphasis that in both the 1997 and 2005 Arbitrations, the financial information and the calculations on the IRR on equity provided by NHKTC had been thoroughly examined by the financial advisers of both sides and the arbitrators, and that no queries had been raised on the reliability and accuracy of the information and calculations - Ms FUNG's explanation on why, for the purposes of making investment decisions and evaluating such decisions, it was important to take into account the time value of money and the timing of cash flows in calculating the IRR on equity and that these factors had not been taken into account in Dr SO's methodology 	The Administration undertook to provide its assessment on the reliability and accuracy of the financial and traffic information prepared by NHKTC for the purpose of the toll increase
012053-012946	Ms Emily LAU Admin Ms Becky FUNG	<ul style="list-style-type: none"> - Ms LAU's view that the Administration had the responsibility to safeguard public interest and thus make due efforts to address the possible problems arising from the toll increase - The Administration's advice that since the last Subcommittee meeting, the Administration had held one further meeting and numerous telephone discussions with the management of NHKTC at which the Administration had again reflected the concerns of Members and the public 	

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		<ul style="list-style-type: none"> - Ms LAU's caution that the toll increase of EHC could become a social crisis if it was not carefully dealt with by the Administration and NHKTC - Ms FUNG's response that whilst NHKTC was prepared to discuss with the Administration possible options to even out the traffic distribution of the road harbour crossings, the company did not plan to further defer the toll increase having regard to the implications on the future toll increase of EHC and the fact that it would take some time before any agreement could be reached between NHKTC and the Government on the matter 	
012947-013203	Chairman Admin Ms Becky FUNG	<ul style="list-style-type: none"> - In response to the Chairman's enquiry, the Administration's confirmation that it had suggested to NHKTC that the toll increase be deferred pending discussions between NHKTC and the Government, but NHKTC had maintained its position on implementing the toll increase as currently scheduled - Ms FUNG's referral to the information provided by NHKTC to the Panel on Transport on 22 April 2005, in which NHKTC had set out some background information on proposals put forward by NHKTC some years ago to even out the traffic distribution of the road harbour crossings 	
013204-014543	Mr CHAN Kam-lam Ms Becky FUNG Admin	<ul style="list-style-type: none"> - Mr CHAN's enquiry about dividend policy of NHKTC and the restrictions to which NHKTC was subject in deciding dividend payments - Mr CHAN's concern that if the traffic flow of EHC was maintained at a low level in future years, NHKTC would seek greater toll increases in future to achieve the IRR on equity of 15%-17% over the franchise period - Mr CHAN's request for the Administration to put up, within one month's time, a concrete proposal to achieve a more balanced traffic distribution among the road harbour crossings 	

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		<ul style="list-style-type: none"> - Ms FUNG's explanation that in the loan agreement for the \$1.8 billion borrowed for building EHC, there were conditions governing NHKTC's dividend payments and loan repayments before the loan was fully repaid. - Ms FUNG's emphasis that there was no question of NHKTC making use of financial management techniques or manipulating financial data to push down the IRR on equity up to 2003 in order to seek toll increase - The Administration's assurance that it would report to the Panel on Transport as soon as there was any substantive progress in identifying and implementing possible options to achieve more balanced distribution of traffic among the road harbour crossings - Mr CHAN's request for information on the traffic volume that NHKTC had to maintain in order to achieve a reasonable remuneration without further toll increase - The Administration's advice that NHKTC's current plan to seek toll increase five years later was made on the assumption that the other two harbour crossings would not implement measures that would affect the traffic distribution among the harbour crossings, and given the intricate relationship between traffic flows and traffic diversion measures, it was difficult to estimate the future level of traffic flow of EHC 	
014544-015615	Mr LEUNG Kwok-hung Ms Becky FUNG Admin	<ul style="list-style-type: none"> - Mr LEUNG's comment that LegCo Members were mainly concerned about the traffic and social impacts of the toll increase of EHC and request for disclosure of the relevant terms in the loan agreement governing the dividend payments of NHKTC - Ms FUNG's response that the loan agreement and all relevant financial information had been thoroughly examined by both parties and their financial advisers at the 1997 and 2005 Arbitrations 	

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		<ul style="list-style-type: none"> - The Administration's confirmation that the Government and its financial experts had examined the financial information of NHKTC in the Arbitrations and it did not find any particular problem with the information - The Administration's comment that the decision on whether and how far the information of the company was to be disclosed to Members vested with the company - The Chairman's remark that if authorized by resolution of the Council, the Subcommittee might exercise the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order NHKTC to produce relevant information in its possession. - Ms FUNG's response that as the loan agreement involved a number of parties, it was not at the discretion of NHKTC to disclose the loan agreement or the terms contained therein. 	
015616-020012	Mr Andrew CHENG	<ul style="list-style-type: none"> - Mr CHENG's suggestions that- <ul style="list-style-type: none"> (a) The Subcommittee might need to engage financial expert(s) to provide independent advice on the issues raised at this meeting (b) The Administration should in one to two weeks reach preliminary agreement with NHKTC that it would defer the toll increase pending further discussion on the options of common ownership of Cross Harbour Tunnel (CHT), EHC and Western Harbour Crossing (WHC) (c) Transport Department should work out with bus companies in the next few days a plan for diverting some franchised buses operating at CHT to EHC or WHC and providing interchange arrangements for affected passengers from 3 May 2005 onwards 	The Administration should provide a response to the suggestion of diverting some franchised buses operating at CHT to EHC or WHC and providing interchange arrangements for affected passengers from 3 May 2005 onwards
020013-020227	Mr WONG Kwok-hing	<ul style="list-style-type: none"> - Mr WONG's comment that it was necessary to adequately address the issues raised by Dr SO and for this 	

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		purpose, the Subcommittee should seek relevant information from NHKTC and should consider the need to engage academics specialized in the relevant field to provide independent advice to the Subcommittee on the issues	
020228-020621	Mr LEUNG Kwok-hung Admin	<ul style="list-style-type: none"> - Mr LEUNG's view that the Subcommittee should not allow NHKTC to increase the tolls of EHC as currently scheduled - The Administration's clarification on its position regarding the toll increase of NHKTC and the disclosure of financial information of NHKTC 	
020622-021336	Chairman Ms Becky FUNG Mr Andrew CHENG Clerk	<ul style="list-style-type: none"> - The Chairman's request for NHKTC to defer the toll increase by about one month pending the provision of further information by NHKTC and examination of the information by the Subcommittee - The Clerk's advice that 28 April 2005 was the deadline for giving notice to extend the scrutiny period from 4 May 2005 to 25 May 2005 - The Chairman's advice that the Subcommittee would hold a meeting at 2:00 pm on 28 April 2005 to further discuss outstanding issues 	Ms FUNG was requested to give a written response to the Chairman's request by noon, 28 April 2005
<i>Agenda Item II – Any other business</i>			
	Chairman	The Chairman's declaration of close of meeting	