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5 October 2005

Mr Vincent FONG
General Manager
Route 3 (CPS) Company Limited
Rooms 4129-33
41/F, Sun Hung Kai Centre
30 Harbour Road
Wanchai
Hong Kong

Dear Mr FONG,

**Subcommittee to Study
Tate's Cairn Tunnel Ordinance (Replacement of Schedule) Notice 2005 and
Tai Lam Tunnel and Yuen Long Approach Road Ordinance
(Replacement of Schedule 1) Notice 2005**

Follow-up to the meeting on 5 October 2005

Thank you for attending the meeting held this morning and responding to matters raised by members, which include, among others things, your company's financial position and performance relating to the operation of the Tai Lam Tunnel. On the instruction of the Chairman of the Subcommittee, I write to invite your company to provide a written response to the following issues.

On the three undertakings made by the then Secretary for Transport (S for T) during the resumption of the Second Reading debate on the Tai Lam Tunnel and Yuen Long Approach Road Bill on 24 May 1995, members of the Subcommittee have noted the Administration's view that the assurances given by the then S for T were to some extent not consistent with the provisions of the Project Agreement and the Tai Lam Tunnel and Yuen Long Approach Road Ordinance, and the Administration finds it impracticable to implement the assurances in the manner suggested by the then S for T. Whilst appreciating the need to comply with the relevant provisions of the Project Agreement and the Ordinance, members consider it important for your company to seek to enhance the transparency of your company's financial position and performance so as to ensure protection of the interests of the public. Members have therefore requested your company to take the following actions:

- (a) To consider disclosing the required information set out in the first two undertakings made by the then S for T so as to enhance transparency and enable the Administration to fulfil the undertakings (Please refer the attached extract from the Hansard of the LegCo meeting on 24 May 1995); and
- (b) To provide the Subcommittee with the amount of direct investment (exclusive of bank loans) by your company in the project and the amount of bank loans secured by your company.

On the instruction of the Chairman, your company is invited to provide its written response as early as possible so that the response could be incorporated in the Subcommittee's report to be issued to all members of the House Committee on 12 October 2005 (two days before the House Committee meeting on 14 October 2005). Given the tight timeframe, I should be grateful if your company would let me have its written response (in both Chinese and English) **on or before 7 October 2005**. Please forward the soft copy of the written response to Ms May LEUNG at mleung@legco.gov.hk.

On behalf of the Chairman, may I thank your company for your assistance in the work of the Subcommittee.

Yours sincerely,

(Miss Salumi CHAN)
Clerk to Subcommittee

Encl.

c.c. Hon LAU Kong-wah, JP (Chairman)

out by the Government instead of contracting it out to a consortium? Such arguments are really very strange. Amongst the projects which have been granted fund for construction by the Finance Committee, many are undertaken by the Government, and which were approved unanimously by both the Liberal Party and the Democratic Party. So do we become supporters of socialism whenever we approve any infrastructural project to be undertaken by the Government? These arguments actually cannot hold water. Let me ask Members to think about this, the question now is a simple one, which is whether or not we want to have the function of monitoring. Those who want it will vote in favour of us, whereas those who do not want it will vote against us. It is as simple as that. Why talk about -ism this or -ism that?

SECRETARY FOR TRANSPORT: Mr President, may I first express the Administration's sincere thanks to the Honourable Mrs Miriam LAU and all other honourable Members who served on the Bills Committee to vet the Tai Lam Tunnel and Yuen Long Approach Road Bill. I am grateful for their tremendous input and efforts in examining the Bill, and for completing their work so expeditiously. May I also thank honourable Members for the views they have expressed this afternoon. In this respect, the Honourable WONG Wai-yan's criticism that the Administration has failed to keep the Council informed is, in my view, unfounded. The Administration in fact provided three sitreps to the Legislative Council Transport Panel before the Bill was introduced, and the very fact that the Bills Committee has been able to complete its deliberations to allow the Second Reading to be resumed today is indicative of the fact that there has been adequate time to study the Bill.

Proposed terms of the franchise

The Bill seeks to award a franchise to the Route 3 (Country Park Section) Company to build and operate the Tai Lam Tunnel and Yuen Long Approach Road. Under the proposed terms of the franchise contained in the Bill, the franchisee is committed to building the project, at its own expense, within a very aggressive construction programme of 38 months. The budgeted project cost is \$7,254 million, and any cost overrun will have to be fully borne by the proposed franchisee and will not be part of the construction cost on which the permitted return is based. In other words, cost overruns will not be passed onto the road-users.

I must emphasize that the package offered by the Route 3 (CPS) Company is the best available, achieved through a competitive tendering exercise. The proposed BOT franchise will allow this urgently needed project to be completed in the shortest possible time and at the lowest cost. The tolls proposed by the franchisee will provide a low and stable toll regime. The Administration has no hesitation in commending this Bill to the Legislative Council. Some Members have referred to land hoardings in northwest New Territories by the Sun Hung Kai Group. This is totally irrelevant. The project has no associated property development right whatsoever.

Measures to enhance transparency

During the discussion in the Bills Committee, honourable Members sought various assurances regarding transparency and the operation of the Toll Stability Fund. I am happy, on behalf of the Administration, to provide these assurances. Honourable Members quite rightly expressed concern that there should be transparency in the operation of the franchise. The Administration fully agrees that there should be transparency and we will adopt the following steps to enhance the transparency of the franchisee's plans and performance:

- (a) we will require the tabling in the Legislative Council in July each year (before the summer recess) the franchisee's plan as embodied in its three-year rolling projection of net revenue and its annual budget of operating costs, together with a statement;
- (b) we will table in the Legislative Council in October each year the franchisee's annual audited statement of Actual Net Revenue, and will make a statement on that occasion on both the figures and any application for a toll increase; and
- (c) the Administration will brief the Legislative Council Transport Panel on the Administration's findings before deciding by the end of October whether a toll increase should be agreed or whether we should proceed to arbitration. Honourable Members will then have the opportunity to debate the findings if they so wish.

Members have also expressed concern regarding the management and use of the Toll Stability Fund, in particular as regards the Financial Secretary's power under clause 31(4) to transfer excess money in the Fund to General Revenue, and the discretionary power of the Toll Stability Fund Management Committee under clause 43 to use the Fund in deferring toll increases.

Although the Financial Secretary has powers under clause 31(4) of the Bill to transfer money from the Fund to General Revenue, he will not do so unless he is of the opinion that the amount to be transferred is in excess of what is required for deferring future toll increases for the rest of the franchise period. The Administration does not, therefore, envisage that there will ever be a need to re-transfer sums from General Revenue back to the Fund as a result of there being insufficient money left in the Fund for the purpose of deferring toll increases.

Nonetheless, to allay Members' concern, the Administration agrees that before any money is transferred from the Toll Stability Fund to General Revenue under clause 31(4), the Administration will first seek the views of the Legislative Council Transport Panel and provide a full explanation for such a transfer. The Administration also undertakes that should moneys be transferred out of the Toll Stability Fund to General Revenue under clause 31(4) of the Bill, this will not lead to any toll increase resulting from there being insufficient