

**立法會**  
**Legislative Council**

LC Paper No. LS74/13-14

**Legal Service Division Report on  
Subsidiary Legislation Gazetted on 25 July 2014**

**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 2014**

**(L.N. 112)**

L.N. 112 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 that Ordinance 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)). L.N. 112 comes into operation on 1 August 2014.

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, 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 (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 stated 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 set out 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. 112, is not required to be tabled at, and is not subject to amendment by, the Legislative Council (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 2014, the Franchisee's ANR has, since the commissioning of Route 3 (CPS) in 1998, consistently fallen short of the level of MENR as stipulated in Schedule 4. By 19 June 2005, the Franchisee has effected all the anticipated toll increases and has since applied for and been permitted eight additional toll increases. The last statutory toll increase for Route 3 (CPS) came into effect on 1 August 2013.

4. The present increase as reflected in L.N. 112, which was applied by the Franchisee in August 2010, is the ninth additional toll increase. The amounts of increase are in accordance with the amounts stated in Schedule 2. It is based on the Franchisee's audited 2009/10 statement of ANR which shows that the Franchisee's ANR for 2009/10 was \$629 million, which is lower than MENR of \$1,863 million for that year as specified in Schedule 4.

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 tolls<sup>1</sup> 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. 112, 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. 112.

8. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 112.

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<sup>1</sup> The current concessionary tolls took effect from 1 January 2013.

**Western Harbour Crossing Ordinance  
(Amendment of Schedule 1) Notice 2014**

**(L.N. 113)**

9. L.N. 113 is made by the Commissioner under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) to replace Schedule 1 to that Ordinance with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Western Harbour Crossing (WHC). L.N. 113 comes into operation on 31 July 2014.

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 as follows -

- (a) Western Harbour Tunnel Company Limited (the Company) may, during the franchise period and subject to the relevant requirements, apply in writing to the Secretary to give effect to an anticipated toll increase on each of six specified dates (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 stipulated 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 to for different categories of vehicles on or after 1 January 2011 are set out 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. 113, is not required to be tabled at, and is not subject to amendment by, the Legislative Council (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 2014, the actual net revenue of the Company has, since the commissioning of WHC in 1997, consistently fallen short of the level of MENR as specified in Schedule 5. By 31 July 2006, the Company has effected five anticipated toll increases<sup>2</sup> and has since applied for and been permitted seven additional toll increases. The last statutory toll increase for WHC came into effect on 31 July 2013.

12. The present increase as reflected in L.N. 113, which was applied by the Company in August 2011, is the eighth additional toll increase. The amounts of increase are in accordance with the amounts stated in Schedule 3. It is based on the Company's audited 2010/11 statement of net revenue which shows that the Company's actual net revenue for 2010/11 was \$1,009 million, which is lower than MENR of \$1,892 million for that year as specified in Schedule 5.

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 tolls<sup>3</sup> 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. 113, 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. 113.

16. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 113.

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31 July 2014

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<sup>2</sup> The Company has forfeited its right once to effect anticipated toll increase.

<sup>3</sup> The current concessionary tolls took effect from 1 January 2013.

Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 1 August 2014	
1.	Motorcycles, motor tricycles	65	70	20
2.	Private cars, electrically powered passenger vehicles, taxis	70	75	36
3.	Public and private light buses	195	210	100
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	195	210	38
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	75	80	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	205	220	43
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	75	80	0
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	225	240	48
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	75	80	0
7.	Public and private single-decked buses	195	210	115
8.	Public and private double-decked buses	210	225	135

Western Harbour Crossing Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 31 July 2014	
1.	Motorcycles, motor tricycles	90	100	25
2.	Private cars, electrically powered passenger vehicles	165	180	55
	Taxis	165	180	50
3.	Public and private light buses	190	210	65
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	240	260	65
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	165	180	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	350	385	90
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	165	180	30
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	500	545	120
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	165	180	30
7.	Public and private single-decked buses	190	210	100
8.	Public and private double-decked buses	280	310	140