

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

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來函檔號 YOUR REF.:

4 February 2016

Ms Sophie LAU
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms LAU,

**Bills Committee on Eastern Harbour
Crossing Legislation (Amendment) Bill 2015**

Follow-up to the Meeting on 12 January 2016

Thank you for your letter dated 14 January 2016 conveying the Bills Committee's request raised at its meeting on 12 January 2016. The Bills Committee would like the Government to provide preliminary views on any proposed amendments to amend the tolls in the Eastern Harbour Crossing Legislation (Amendment) Bill 2015 ("the Bill") in the context of Rule 57(4) and (6) of the Rules of Procedure of the Legislative Council ("RoP"). Having consulted the Department of Justice, our response is set out below.

Purpose of the Bill

The purpose of the Bill is mainly¹ to provide the necessary legal

¹ The Bill also seeks to repeal the Eastern Harbour Crossing Ordinance ("EHC Ordinance") (Cap. 215) and its subsidiary legislation on the expiry of the BOT franchise; provide for necessary savings and transitional arrangements; and make consequential amendments to repeal the references to the EHC Ordinance or the franchisee in other legislation.

backing for the Eastern Harbour Crossing (“EHC”) to operate and be managed as a Government tunnel after the expiry of the Build-Operate-Transfer franchise on 7 August 2016. The LegCo Brief of the Bill states clearly that the Government’s takeover of EHC will generally bring no change to the actual tunnel operation from a user’s point of view. In particular, the prevailing tolls will not be affected.

Scope rule

Rule 57(4)(a) of the RoP, which is usually referred to as the “scope rule”, provides that “[a]n amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates”.

The subject matter of the Bill is clearly stated in the long title which states that it is a bill to, inter alia, “[a]mend the Road Tunnel (Government) Ordinance and its subsidiary legislation to extend their application to the Eastern Harbour Crossing and ***incorporate the existing tolls chargeable under the Eastern Harbour Crossing Ordinance***” (emphasis added). The substantive provisions and the Explanatory Memorandum of the Bill also clearly reflect this policy intention. The Government’s policy intent to incorporate (and retain) the existing tolls has also been made clear in the LegCo Brief, as well as in the speech delivered by the Secretary for Transport and Housing in moving the Second Reading of the Bill on 16 December 2015.

It is well established that when the President of LegCo is considering whether a proposed amendment complies with the requirement of Rule 57(4)(a) of the RoP, he takes into consideration the long title, the substantive provisions and the Explanatory Memorandum of the bill, the LegCo Brief and all other relevant factors. In the light of the considerations set out above, we take the view that any proposed amendment to amend the tolls of EHC in the Bill is not relevant to the subject matter of the Bill. It is therefore outside the scope of the Bill and inadmissible under Rule 57(4)(a) of the RoP.

Charging effect rule

Rule 57(6) of the RoP, which is usually referred to as the “charging effect rule”, provides that –

“[a]n amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by –

- (a) the Chief Executive; or*
- (b) a designated public officer; or*
- (c) a Member, if the Chief Executive consents in writing to the proposal.”*

As explained above, we consider that any amendment to revise the tolls would be outside the scope of the Bill and inadmissible under Rule 57(4)(a) of the RoP. Hence, it may not be necessary to consider Rule 57(6) of the RoP.

Yours sincerely,



(Ms Cordelia LAM)

for Secretary for Transport and Housing

c.c. Hon CHAN Kam-lam, SBS, JP	(Chairman of Bills Committee)
Department of Justice	(Attn: Miss Emma WONG)
Transport Department	(Attn: Ms Macella LEE)
Hong Kong Police Force	(Attn: Mr Matthew LINDSAY)
LegCo Chief Council Secretary (4)1	(Attn: Mr Anthony CHU)
LegCo Senior Council Secretary (4)5	(Attn: Ms Shirley TAM)
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