

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

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29 February 2016

Ms Shirley CHAN
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms CHAN,

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

Thank you for your letter dated 23 February 2016. Having consulted the Department of Justice, our response to the draft Committee Stage amendments (“CSAs”) to the Eastern Harbour Crossing Legislation (Amendment) Bill 2015 (“the Bill”) proposed by Hon WU Chi-wai and Hon WONG Yuk-man are set out below.

Draft CSA proposed by Hon WU Chi-wai

The draft CSA proposed by Hon WU Chi-wai is a sunset clause that “Part 3 Tolls (for Eastern Harbour Crossing)” of Schedule 2 to the Road Tunnels (Government) Regulation (Cap. 368A) (“the Regulations”) (to be added by Clause 18 of the Bill) will cease to have effect on 31 January 2018.

Scope

Rule 57(4)(a) of the Rules of Procedure of the Legislative Council (“RoP”) 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 intent. The Government’s policy intent to incorporate and retain the existing tolls has also been made clear in the Legislative Council (“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.

The effect of the proposed CSA is to terminate the existing toll structure and levels chargeable in respect of the Eastern Harbour Crossing (“EHC”) by 31 January 2018. In this sense, there would be a change to the existing tolls, whilst the subject matter of the Bill is to make no change. Since the proposed CSA would have the effect of altering the subject matter of the Bill, we are of the view that it is outside the scope of the Bill.

Charging effect

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

“[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.”*

We consider that the proposed CSA has charging effect on the grounds that it (i) imposes a new and distinct function on the Government; and (ii) foregoes Government revenue which may be collected under existing statutory authority.

(i) New and distinct function on the Government

A clear principle has been established in the LegCo President's past rulings that a CSA will have a charging effect within the meaning of rule 57(6) of the RoP if it imposes a new and distinct function on the Government. The expression "new and distinct function", in the context of LegCo procedure, is an abbreviated form for saying that the effect of the relevant amendment is to create a new function or power for, or to impose a new duty on, the Government and that the discharge of such function or duty, or the exercise of such power would incur public expenditure in respect of which no provision of public money has been made under existing law.

While the proposed CSA would not directly oblige the Chief Executive in Council to review and adjust the toll levels of EHC, as a natural consequence of the lapse of the chargeable tolls in respect of EHC (if the CSA is passed), the Government would have a duty to review and determine the new tolls of EHC before a specified deadline i.e. 31 January 2018. Hence, we consider that the proposed CSA imposes a new and distinct function on the Government which incurs public expenditure.

(ii) Foregoing Government revenue which may be collected under existing statutory authority

The proposed CSA will have the effect of foregoing EHC tolls chargeable by the Government by 31 January 2018. In other words, the proposed CSA has the effect of making the tolls which could be collected by the Government no longer collectible on and after 31 January 2018. We are thus of the view that the proposed CSA has a charging effect within the meaning of Rule 57(6) of the RoP.

Apart from our above assessments of the CSA from the scope and charging effect perspectives, we would like to stress that the amendment is not necessary. At the LegCo Panel on Transport meeting on 6 November 2015, the Secretary for Transport and Housing (“the Secretary”) already unequivocally indicated that the Government would commence a study on the rationalisation of cross-harbour traffic involving the adjustment of toll levels. With the commissioning of the Central-Wan Chai Bypass, the Government would examine and devise toll adjustment options by looking at all three road harbour crossings in a holistic manner. These options will then be thoroughly discussed by the LegCo and the community. On 18 February 2016, the Secretary also stated clearly in his speech for Debate on Motion of Thanks to the Chief Executive's Policy Address that upon the takeover of EHC, the Government will embark on a study of the overall strategy and feasible options for the rationalisation of traffic among the three road harbour crossings.

Draft CSA proposed by Hon WONG Yuk-man

Proposed CSAs in respect of clause 7(2) of the Bill

Clause 7(2) of the Bill adds paragraph (1B) to regulation 3 of the Regulations. The drafting of paragraph (1B) is basically consistent with the existing regulation 3(1A). We consider that the drafting of paragraph (1B) is clear and plain. The proposal that “without prejudice” be amended to “without affecting” does not bring any substantive change to the provision. We consider the proposed CSA unnecessary.

Proposed CSAs in respect of clause 20 of the Bill

Hon WONG Yuk-man proposed that in the Chinese text of the definition of “《東隧附例》” in Schedule 2 to the Road Tunnels (Government) Ordinance (Cap. 368), “指在緊接” be deleted and substituted by “指緊接”. We consider that the character “在”, being a “介詞”, is used in the provision to indicate the time at which the relevant event (i.e. “緊接被廢除前”) happens. The drafting conforms to grammatical rules. It is consistent with our drafting convention. We consider the proposed CSA unnecessary.

Hon WONG Yuk-man also proposed that in the Chinese text of sections 2 and 3 of that Schedule, “犯” be deleted and substituted by “干犯”. Both “干” and “犯” can be used as verbs and they have the same meaning of “抵觸、違反”. We consider that in the relevant context, the meaning of “犯” is clear and the usage is consistent with existing offence provisions. We propose CSAs be made by deleting “干” from the Chinese text of sections 2 and 3 of that Schedule.

Yours sincerely,



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for Secretary for Transport and Housing

c.c. Hon CHAN Kam-lam, SBS, JP
Department of Justice
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(Chairman of Bills Committee)
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