



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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URGENT

By Fax (3904 1774)

18 February 2016

Ms Cordelia LAM
Principal Assistant Secretary for Transport and
Housing (Transport)2
Transport and Housing Bureau
21/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

Dear Ms LAM,

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Thank you for your response (LC Paper No. CB(4)607/15-16(01)) to our letter dated 15 January 2016. We would be grateful if you could clarify the following matters.

It is stated in paragraphs 8 and 18 of the Annex to your letter that if the Bill were not passed, the Eastern Harbour Crossing (EHC) could not be managed and operated as a Government tunnel. In particular, the Government will not be able to collect tolls from vehicles passing through EHC. According to section 70(2)(d) and (4) of the Eastern Harbour Crossing Ordinance (Cap. 215), the assets of the franchisee (which include the EHC) shall vest in the Government upon the expiration of the franchise period. It is appreciated that if the Bill were not passed, then EHC could not be managed and operated as a Government tunnel in accordance with the Road Tunnels (Government) Ordinance (Cap. 368). However, it does not necessarily mean that the

Government would have no power at all to manage EHC. It seems that under common law, the owner of a property has all the rights to manage and use the property, including the imposition of conditions for others to use the property and the collection of a fee or charge for such use. As such, as the ownership of EHC is vested in the Government upon the expiration of the franchise period by virtue of section 70(4) of Cap. 215, please clarify why the Government would not be able to collect tolls from vehicles passing through EHC.

In paragraph 8 of the Annex to your letter, it is stated that while the Government could rely on the provisions of the Road Traffic Ordinance (Cap. 374) and those provisions of Cap. 215 which are not related to the rights and obligations of the franchisee (i.e. the remaining applicable provisions of Cap. 215) to manage EHC, there will be some areas of the tunnel operation not properly covered. Apart from the collection of tolls, please clarify what other areas of the tunnel operation would not be properly covered.

It is stated in paragraph 14 of the Annex to your letter that without the necessary legislative backing as provided by the Bill, the Government does not have the power to appoint authorized personnel to regulate traffic at EHC. According to paragraph 3 of Appendix IV to your response, provisions in Cap. 215 and its subsidiary legislation which are not related to the rights and obligations of the franchisee may continue to survive if the Bill is not passed. As such, please clarify why the Government, as the rightful owner of EHC, does not have the power to manage EHC, including the appointment of personnel to manage and regulate traffic at EHC in the light of section 70(4) of Cap. 215.

Please let us have your reply in both Chinese and English by 24 February 2016.

Yours sincerely,



(Evelyn LEE)
Assistant Legal Adviser

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