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Paper for the House Committee meeting on 8 April 2016

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

Purpose

This paper reports on the deliberations of the Bills Committee on Eastern Harbour Crossing Legislation (Amendment) Bill 2015 ("the Bills Committee").

Background

2. At present, the operation and regulation of Eastern Harbour Crossing ("EHC") is subject to the Eastern Harbour Crossing Ordinance (Cap. 215). Under section 4 of Cap. 215, the franchise granted to the New Hong Kong Tunnel Company Limited to construct and operate EHC is valid for a period of 30 years from the start of the construction. Under section 70 of Cap. 215, the assets of the Company will vest in the Government upon expiry of the franchise. According to the Administration, the 30-year franchise of EHC will expire on 7 August 2016. The Administration considers it necessary to provide for legal backing for EHC to operate and be managed as a Government tunnel.

The Bill

3. Currently, the Road Tunnels (Government) Ordinance (Cap. 368) provides for the control and regulation of vehicular and pedestrian traffic in Government tunnels and the management of such tunnels. The Schedule to Cap. 368 sets out the tunnels to which Cap. 368 is applicable. The Road Tunnels (Government) Regulations (Cap. 368A) provide for, among other things, traffic control (such as traffic signs and issuance of permits), tolls and fees in respect of Government tunnels.

4. The Bill mainly seeks to add EHC to the Schedule (which would be renumbered as Schedule 1) to Cap. 368 so that, if the Bill is passed, Cap. 368 would apply to EHC from 7 August 2016 onwards. Further, Cap. 215 and its subsidiary legislation are proposed to be repealed consequentially.

5. The Bill also seeks to amend Cap. 368A to provide for, among other things, the following —

- (a) the requirements relating to the operation of EHC, including the traffic signs and road markings for use at EHC and the types of vehicles which require a permit to use EHC; and
- (b) the tolls, removal fees and permit fees chargeable on vehicles using EHC. In particular, the existing tolls for EHC are proposed to be incorporated into Schedule 2 to Cap. 368A. The proposed removal and permit fees in respect of EHC would align with those of other Government tunnels.

6. The Bill also provides for savings and transitional arrangements in the new Schedule 2 to Cap. 368. These provisions would operate to the effect that if an offence provided under the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215E) is committed before Cap. 215E is repealed, certain provisions of other Ordinances would continue to apply in relation to such an offence as if Cap. 215E had not been repealed. The proposed transitional arrangements would operate to the effect that certain traffic signs specified in Cap. 215E that have been erected for the use of EHC before 7 August 2016 would continue to be applicable on and after that date.

7. Division 2 of Part 4 of the Bill provides for consequential amendments to various Ordinances following the repeal of Cap. 215 and its subsidiary legislation.

The Bills Committee

8. At the House Committee meeting on 18 December 2015, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is at **Appendix I**. Under the chairmanship of Hon CHAN Kam-lam, the Bills Committee has held three meetings, including two to discuss with the Administration.

Deliberations of the Bills Committee

9. The Bills Committee notes the Administration's view that the Bill is technical in nature and does not involve any policy change and that the arrangements made under the Bill are generally similar to the arrangements made in respect of the Cross-Harbour Tunnel ("CHT") upon the expiry of the relevant Build-Operate-Transfer ("BOT") franchise in 1999. The Administration stresses that the Government's takeover of EHC will bring no material change to the actual tunnel operation from a tunnel user's point of view. In particular, the prevailing toll levels will not be affected. The Bills Committee is in support of the Bill.

Toll levels of EHC

10. Clause 18 of the Bill amends Schedule 2 to Cap. 368A to incorporate the existing tolls chargeable for the use of EHC under Cap. 215. At the first meeting of the Bills Committee, members had a discussion on whether any Committee stage amendment ("CSA") to the tolls proposed under the Bill would be admissible under the Rules of Procedure of the Legislative Council ("RoP"). The Legal Adviser to the Bills Committee has advised that it would be for the President to decide whether any CSA is admissible under RoP and, in making the decision, the President may take into account all the relevant matters, including the long title, the Explanatory Memorandum of the Bill, the Legislative Council Brief and other relevant factors. The Bills Committee has requested the Administration to provide its preliminary view on whether the Administration considers any CSA to the tolls proposed under the Bill would be admissible under RoP. The Administration is of the view that any proposed CSA to amend the tolls under the Bill would be outside the scope of the Bill and hence inadmissible under RoP 57(4)(a).

11. After receiving the Administration's view, some members of the Bills Committee, including Mr WONG Yuk-man and Mr TANG Ka-piu, consider that with the expiry of the BOT franchise of EHC, the Administration should take the opportunity to adjust the tolls of EHC for the benefits of the travelling public. Mr WU Chi-wai also considers that it is high time for the Administration to review the tolling strategy of the three road harbour crossings ("RHCs") with a view to rationalizing the traffic distribution among the three tunnels. Each of the said members has proposed CSAs in respect of the tolls. The Bills Committee has held a meeting (the third meeting) to consider their proposed CSAs and to listen to the Administration's response.

12. The Bills Committee notes that at present, the toll levels of EHC are higher than the respective toll levels of CHT. Mr WONG Yuk-man considers that EHC tolls should be aligned with the existing toll levels of CHT. He will move CSAs to this effect.

13. Mr TANG Ka-piu also indicates that he will move a CSA to adjust the toll of EHC for public and private double-decked buses to make it in line with that of CHT. In his opinion, a reduction in toll will make room for bus companies to reduce bus fares which will benefit the travelling public. Given that the frequency of franchised bus services is monitored by the Transport Department, such reduction in toll would not aggravate the traffic conditions at EHC.

14. The Administration has reiterated that the purpose of the Bill is mainly to provide the necessary legal backing for EHC to operate and be managed as a Government tunnel after the expiry of the BOT franchise on 7 August 2016. The long title of the Bill clearly states that it is a bill to, inter alia, "[a]mend the Road Tunnels (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". The substantive provisions and the Explanatory Memorandum of the Bill also clearly reflect this policy intention. The Administration considers that any proposed amendment to amend the tolls of EHC in the Bill is not relevant to the subject matter of the Bill and hence outside the scope of the Bill within the meaning of RoP 57(4)(a).

15. Mr WU Chi-wai considers that it is high time for the Administration to critically review the tolling strategy of the three RHCs. In order to require the Administration to work out a plan to rationalize the traffic distribution among the three RHCs and to report to the Legislative Council ("LegCo") within a specified time frame, he will move a CSA to include a sunset clause in the Bill which has the effect of terminating the existing toll structure and levels chargeable in respect of EHC by 31 January 2018. He considers that 18 months, i.e. from the expiry of the BOT franchise of EHC in August 2016 to January 2018, would be a reasonable period for the Administration to complete its study on the rationalization of cross-harbour traffic and to introduce relevant legislative proposal on toll adjustment to LegCo. He welcomes the Administration to further discuss with him the time required. Subsequently, Mr WU informs the Bills Committee that since the Administration has not contacted him further regarding his CSA, he will move a series of CSAs to the effect that five dates, namely 31 January 2018, 31 July 2018, 31 July 2019, 31 July 2020 and 2 September 2023, would be set to terminate the existing toll structure and levels chargeable of EHC. The first four dates would allow the Administration to have respectively 18 months, 24 months, 36 months and 48 months to introduce legislative proposals on toll adjustment to LegCo. The last date is the expiry date of the franchise for the Western Harbour Crossing.

16. The Administration considers the CSAs not necessary, given that at the meeting of the Panel on Transport on 6 November 2015, the Secretary for

Transport and Housing ("STH") already unequivocally indicated that the Government would commence a study on the rationalization of cross-harbour traffic involving the adjustment of toll levels. With the commissioning of the Central-Wan Chai Bypass, the Government will examine and devise toll adjustment options by looking at all three RHCs in a holistic manner. These options will then be thoroughly discussed by LegCo and the community. On 18 February 2016, STH 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 Administration would embark on a study of the overall strategy and feasible options for the rationalization of traffic among the three RHCs.

17. The Administration also considers that any CSA to terminate the existing toll structure and levels chargeable in respect of EHC by a certain date would have the effect of altering the subject matter of the Bill and is outside the scope of the Bill. Further, Mr WU Chi-wai's CSAs also have charging effect under RoP 57(6) on the grounds that they impose a new and distinct function on the Government, and forego Government revenue which may be collected under existing statutory authority.

Consequences in case the Bill were not passed before the expiration of the BOT franchise

18. In the course of deliberation, the Bills Committee notes the Administration's response to the question raised by the Legal Adviser to the Bills Committee on the possible legal implications if the Bill could not be passed before the prorogation of the Fifth LegCo.

19. In gist, the Administration is of the view that in the absence of the necessary legal backing as proposed by the Bill, although EHC will vest in the Government upon the expiration of the relevant franchise, EHC cannot be managed or operated as a Government tunnel. Any attempt by the Government to collect tolls from vehicles passing EHC in the absence of any statutory authority could be subject to legal challenge. The Government has no power under Cap. 215 to stand in the place of the EHC franchisee to appoint authorised personnel to regulate traffic at EHC. The Administration has further advised that at present the traffic at EHC and its connecting roads during peak hours is already very congested. Given the heavy traffic in the Kwun Tong area, a minor traffic incident could trigger serious and prolonged traffic congestion as in the case of the recent traffic gridlock happened on 22 January 2016. If the Bill were not passed before the expiry of the BOT franchise, in the absence of the necessary legal backing, the smooth operation of EHC as a strategic road crossing will be in jeopardy. The traffic conditions at EHC and the nearby road networks will be substantially aggravated, creating traffic congestion that will have serious impact on the 680 000 living population and 540 000 working population in the Eastern District, Kwun Tong and Tseung

Kwan O in particular, and potentially in other parts of Hong Kong as well given the inter-connectedness of the road network.

20. Noting the Administration's views and advice, members of the Bills Committee have expressed grave concern about the potential impact on motorists and the travelling public. Members urge the Administration to formulate traffic and transport contingency plans to deal with different scenarios and circumstances. They are also concerned about the job security of existing staff of the EHC tunnel operator and call on the Administration to put in place adequate measures to safeguard the well-being of the existing EHC staff. Members are also concerned about the distribution of traffic among the three RHCs and request the Administration to formulate an appropriate tolling strategy to rationalize the distribution of traffic among the three RHCs. Where appropriate, toll adjustments should be effected.

21. Pursuant to the Administration's response, the Legal Adviser to the Bills Committee has sought the basis of the Administration's view as mentioned in paragraph 19 above in the light of the common law principle that the rightful owner of a property has all the rights to manage and use the property, including the collection of a charge or a fee for such use and the power to appoint personnel to manage the property. According to the Administration, given that there is no provision under Cap. 215 to empower the Government to collect tolls, the Administration refers to *McCarthy & Stone (Development) Ltd v Richmond Upon Thames London Borough Council* [1992] 2 AC 48 and states that clear and express statutory provision is required upon the franchise expiry to provide the legal backing to put the authority of the Government to collect tolls for using EHC beyond doubt. As for the power to manage and regulate traffic at EHC, the Administration is of the view that although the Government may operate or manage EHC under the Road Traffic Ordinance (Cap. 374), it can do so only to the extent that the provisions in Cap. 374 are not inconsistent with the regulations or by-laws made under Cap. 215. Under Cap. 215, only the franchisee has the right to appoint or employ personnel to manage and regulate traffic at EHC and there is no provision which empowers the Government to do so. As such, the legal backing proposed under the Bill is required for such appointment of personnel.

Referral to the Panel on Transport for follow-up

22. Given the ambit of the Bill, the Chairman and certain members of the Bills Committee consider that the wider traffic and transport policy issues and the related operational matters of EHC fall outside the purview of the Bills Committee. As such, these issues (including issues referred to in paragraphs 19 and 21 above) should more appropriately be followed up by the Panel on Transport. After deliberation, the Bills Committee agrees that the Panel on Transport will be in a better position to take up the related matters where appropriate.

Committee stage amendments

23. Apart from the CSAs mentioned in paragraphs 11, 12, 13 and 15 above, Mr WONG Yuk-man has indicated that he will propose some CSAs to improve the drafting of the Bill. The Administration has also indicated that it will consider proposing CSAs to achieve consistency in drafting. The latest version of CSAs from Mr WU Chi-wai and Mr WONG Yuk-man were circulated to members on 31 March 2016 and 6 April 2016 respectively. The CSAs proposed by Mr WU Chi-wai, Mr WONG Yuk-man and Mr TANG Ka-piu are at **Appendices II to IV** respectively. The Bills Committee will not propose any CSAs to the Bill.

Resumption of Second Reading debate on the Bill

24. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 20 April 2016.

Advice sought

25. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4
Legislative Council Secretariat
7 April 2016

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

Membership list

Chairman Hon CHAN Kam-lam, SBS, JP

Members Hon LEE Cheuk-yan
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH
Hon CHAN Han-pan, JP
Hon KWOK Wai-keung
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon Christopher CHUNG Shu-kun, BBS, MH, JP

(Total : 12 members)

Clerk Ms Shirley CHAN

Legal Adviser Miss Evelyn LEE

Appendix II

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable WU Chi-wai, MH

<u>Clause</u>	<u>Amendment Proposed</u>
10	By renumbering the clause as 10(1).
10	By adding— “(2) After regulation 12(1)— Add “(1A) Part 3 of Schedule 2 ceases to have effect at midnight on 31 January 2018.”.”.

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable WU Chi-wai, MH

<u>Clause</u>	<u>Amendment Proposed</u>
10	By renumbering the clause as 10(1).
10	By adding— “(2) After regulation 12(1)— Add “(1A) Part 3 of Schedule 2 ceases to have effect at midnight on 31 July 2018.””.

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable WU Chi-wai, MH

<u>Clause</u>	<u>Amendment Proposed</u>
10	By renumbering the clause as 10(1).
10	By adding— “(2) After regulation 12(1)— Add “(1A) Part 3 of Schedule 2 ceases to have effect at midnight on 31 July 2019.””.

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable WU Chi-wai, MH

<u>Clause</u>	<u>Amendment Proposed</u>
10	By renumbering the clause as 10(1).
10	By adding— “(2) After regulation 12(1)— Add “(1A) Part 3 of Schedule 2 ceases to have effect at midnight on 31 July 2020.””.

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable WU Chi-wai, MH

<u>Clause</u>	<u>Amendment Proposed</u>
10	By renumbering the clause as 10(1).
10	By adding— “(2) After regulation 12(1)— Add “(1A) Part 3 of Schedule 2 ceases to have effect at midnight on 2 September 2023.””.

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable WONG Yuk-man

<u>Clause</u>	<u>Amendment Proposed</u>
7(2)	In the proposed regulation 3 (1B), by deleting “Without prejudice to” and substituting “Without affecting”.
18(4)	In the proposed Part 3, in item 1, in Column 3, by deleting “\$13” and substituting “\$8”.
18(4)	In the proposed Part 3, in item 2, in Column 2, by deleting everything after “Taxis”.
18(4)	In the proposed Part 3, in item 2, in Column 3, by deleting “\$15” and substituting “\$10”.
18(4)	In the proposed Part 3, in item 3, in Column 2, by deleting everything under Column 2 and substituting “Private cars”.
18(4)	In the proposed Part 3, in item 3, in Column 3, by deleting “\$25” and substituting “\$20”.
18(4)	In the proposed Part 3, in item 4, in Column 3, by deleting “\$38” and substituting “\$10”.
18(4)	In the proposed Part 3, in item 5, in Column 3, by deleting “\$38” and substituting “\$15”.

- 18(4) In the proposed Part 3, in item 6, in Column 3, by deleting “\$50” and substituting “\$20”.
- 18(4) In the proposed Part 3, in item 7, in Column 3, by deleting “\$75” and substituting “\$30”.
- 18(4) In the proposed Part 3, in item 8, in Column 3, by deleting “\$50” and substituting “\$10”.
- 18(4) In the proposed Part 3, in item 9, in Column 3, by deleting “\$75” and substituting “\$15”.
- 18(4) In the proposed Part 3, in item 10, in Column 3, by deleting “\$25” and substituting “\$10”.
- 19 In the proposed section 24, in the Chinese text, in the heading, by deleting “過渡性安排” and substituting “過渡安排”.
- 19 In the proposed section 24, in the Chinese text, by deleting “過渡性安排” and substituting “過渡安排”.
- 20 In the proposed Schedule 2, in the Chinese text, in the heading, by deleting “過渡性安排” and substituting “過渡安排”.
- 20 In the proposed Schedule 2, in the Chinese text, in section 1, in the definition of *EHC By-laws*, by deleting “指在緊接” and substituting “指緊接”.
- 20 In the proposed Schedule 2, in the Chinese text, in section 2, by deleting “干犯” and substituting “犯”.

20 In the proposed Schedule 2, in the Chinese text, in section 3, by deleting “干犯” and substituting “犯”.

20 In the proposed Schedule 2, in the Chinese text, in section 4, in the heading, by deleting “過渡性安排” and substituting “過渡安排”.

New

By adding—

“Subdivision 7—Amendment to Road Traffic (Public Service Vehicles) Regulations (Cap. 374D)

29. Schedule 5 amended (Taxi Fares)

(1) Schedule 5 item 4(iv)(b)—

Repeal

“the Eastern Harbour Crossing or”.

(2) Schedule 5 after item 4(iv)(b)—

Add

“(c) For every hiring which is for a destination across the harbour via the Eastern Harbour Crossing where the hiring does not begin from a cross-harbour taxi stand \$10”.

Eastern Harbour Crossing Legislation (Amendment) Bill 2015

Committee Stage

Amendments to be moved by the Honourable TANG Ka-Piu

<u>Clause</u>	<u>Amendment Proposed</u>
18	By substituting Tolls \$75 in Item 9 of Column 3 of Part 3 of the proposed sub-clause (4) with "\$15".