

# 立法會

## *Legislative Council*

LC Paper No. CB(4)154/17-18(05)

Ref. : CB4/BC/8/16

### **Bills Committee on Road Tunnels (Government) (Amendment) Bill 2017**

#### **Background brief**

#### **Purpose**

This paper provides background information on the Road Tunnels (Government) (Amendment) Bill 2017 ("the Bill"). It also summarizes the major views and concerns expressed by members of the Panel on Transport ("the Panel") on the Government's takeover arrangements for the Tate's Cairn Tunnel ("TCT").

#### **Background**

##### Tate's Cairn Tunnel

2. TCT is among the existing three Build-Operate-Transfer ("BOT") tunnels in Hong Kong.<sup>1</sup> Tate's Cairn Tunnel Company Limited ("TCTC") was granted a franchise under the Tate's Cairn Tunnel Ordinance (Cap. 393) ("TCTO") to build and operate TCT for 30 years starting from July 1988, inclusive of the construction period. The tunnel, which was built at a cost of \$2 billion and linking Diamond Hill of Eastern Kowloon and Siu Lek Yuen of Sha Tin, was opened to traffic in June 1991. The franchise granted to TCTC will expire in July 2018.

3. In 2016, TCT had an average daily throughput of 59 209 vehicles, against its design capacity of 78 500 vehicles. From 1 January 2016, tolls have been adjusted to a range between \$15 and \$35 for different vehicle types. There are three alternatives to TCT, namely, the Lion Rock Tunnel, the Shing

---

<sup>1</sup> The Government had taken over two BOT tunnels, namely the Cross-Harbour Tunnel in 1999 and the Eastern Harbour Crossing in 2016 upon expiry of their respective franchises. At present, in addition to TCT, there are two other BOT tunnels, namely the Western Harbour Crossing and Route 3 (i.e. Tai Lam Tunnel), the franchises of which will expire in August 2023 and May 2025 respectively.

Mun Tunnels as well as the Eagle's Nest Tunnel and Sha Tin Heights Tunnel ("Route 8K").

4. One of the key features of the BOT franchises is the toll adjustment mechanism. For TCT, the legislation has provided that the tolls may be varied by agreement between the Government and the franchisee. If an agreement cannot be reached, either party may submit the question of the variation of tolls for arbitration. So far, TCT has had eight toll increases that came into effect in May 1995, November 1996, January 2000, August 2005, November 2008, December 2010, August 2013, and January 2016 respectively. The Government and TCTC have been able to reach agreement without resorting to arbitration in respect of all the eight toll increase applications.

5. In considering TCTC's applications for toll increases, the Administration would seek the views of the Panel and the Transport Advisory Committee, before seeking the approval of Chief Executive ("CE")-in-Council for the applications. After an agreement on revision to toll levels is reached between CE-in-Council and TCTC, the Commissioner for Transport ("C for T") shall amend the Schedule to TCTO by notice in the Gazette as soon as practicable.<sup>2</sup> However, according to the Administration, the power of C for T to make the Gazette notice on the toll increase of TCT does not cover the determination of toll levels and the timing for implementation of the new tolls. Similarly, the Legislative Council cannot repeal the notices as the exercise of such power is also inconsistent with the power of C for T to make the Gazette notice.

#### Takeover arrangements of other Build-Operate-Transfer tunnels

6. Under a BOT tunnel arrangement, a franchisee is responsible for the construction, operation and maintenance of the tunnel concerned during the franchise period. The two major principles of the Government in adopting the BOT mode in constructing and operating tunnels are:

- (a) the Government should encourage private participation and optimize the use of public resources; and
- (b) as investors are required to make substantial upfront capital investment, they should be given the opportunity to make a reasonable return on their investment while bearing the commercial risk.

---

<sup>2</sup> Such a notice is an item of subsidiary legislation subject to the negative vetting procedure of the Legislative Council.

7. Upon the expiry of the franchise, the tunnel will vest in the Government. A recent takeover of the BOT franchise by the Government took place in August 2016 upon expiry of the 30-year franchise of the Eastern Harbour Crossing ("EHC"), which has since then vested in the Government and become a Government tunnel. On this, the Government introduced the Eastern Harbour Crossing Legislation (Amendment) Bill 2015,<sup>3</sup> the main object of which was to amend the Road Tunnels (Government) Ordinance (Cap. 368) and its subsidiary legislation to extend their application to EHC and incorporate the existing tolls chargeable under the Eastern Harbour Crossing Ordinance (Cap. 215). The Bill also sought to repeal Cap. 215 and its subsidiary legislation, and provide for other transitional matters and related amendments.

8. According to the Administration, similar to the arrangements on the expiry of the BOT franchise of the Cross-Harbour Tunnel ("CHT") in 1999, the Government's takeover of EHC brought no change to the actual tunnel operation. In particular, the toll levels were not affected. The road traffic regulations in terms of traffic signs, procedures to apply for permits to carry dangerous goods, etc. were also not affected. Generally speaking, from a tunnel user's point of view, there was no difference before and after the Government's takeover.

9. In line with the practice of other Government tunnels including CHT, the Transport Department granted, through open tender, a management, operation and maintenance ("MOM") contract for EHC's operation and management upon expiry of the franchise.

### **Road Tunnels (Government) (Amendment) Bill 2017**

10. The Bill was published in the Gazette on 7 July 2017 and received its First Reading at the Council meeting of 12 July 2017. The Bill seeks to provide the necessary legal backing for TCT to operate and be managed as a Government tunnel on the expiry of the BOT franchise on 11 July 2018.

11. Similar to the arrangements for the takeover of EHC as mentioned in paragraphs 7 and 8 above, the Government's takeover of TCT will bring no major change to the actual tunnel operation. The prevailing toll levels will not be affected. The road traffic regulations in terms of traffic signs and restrictions and so forth will also not be affected.

12. The Bill also seeks to repeal TCTO and its subsidiary legislation, which is the governing legislation of TCT as a BOT tunnel. In addition, the Bill provides for the necessary savings and transitional arrangements, and includes consequential amendments to repeal the references to TCTO or the franchisee in other legislation.

---

<sup>3</sup> The Bill was passed at the Council meeting of 19 May 2016.

## **Major views and concerns of Panel members**

13. Members of the Panel were consulted on the legislative amendments and arrangements for the Government to take over the ownership of TCT at the meeting on 19 May 2017. When considering the application for the last toll increase by TCTC at the Panel meeting on 17 April 2015, members also expressed views on the takeover arrangements for TCT. The major views and concerns expressed by members at the two abovesaid meetings are summarized in the ensuing paragraphs.

### Toll levels of the Tate's Cairn Tunnel

14. Members expressed serious concern about the toll levels of TCT and passed a motion in this regard. They suggested in the motion that upon taking over of TCT by the Government in July 2018, the Government should bring the toll levels of TCT in line with those of Lion Rock Tunnel and Route 8K, instead of waiting for the outcome of the toll rationalization study.<sup>4</sup> As such, the travelling expenses of the public would be reduced and a better traffic diversion effect could be achieved.

15. The Administration explained that due to the geographical locations of the tunnels, there was a natural pairing effect on the use of the three road harbour crossings and the three land tunnels. The rationalization of traffic distribution among the three land tunnels would therefore impact on the usage of the three road harbour crossings, and vice versa. Hence, toll adjustment proposals, including that for TCT, should be formulated under the toll rationalization study for rationalizing traffic distribution among the six tunnels in a holistic manner. The Administration considered that toll levels of TCT should remain unchanged for the time being upon the Government's takeover.

16. Some members of the Panel also asked about the details of the toll rationalization study, such as the timetable, survey methodology, types of data collected, scenario analysis, and background of the consultant and so on. The Administration advised that the toll rationalization study commenced in early January 2017. The consultant had collected relevant data, such as traffic flow at the six tunnels and areas in the vicinity of the tunnels, for analyzing the impact of various toll adjustment options. The Administration planned to consult the Panel on the toll adjustment proposals within the 2017-2018 legislative year.

---

<sup>4</sup> The Administration would review the toll level of TCT in the context of the study on the rationalization of traffic distribution among the three road harbour crossings (namely CHT, EHC and Western Harbour Crossing) and the three land tunnels between Kowloon and Sha Tin (namely TCT, Lion Rock Tunnel, and Route 8K).

Operation and management of the Tate's Cairn Tunnel after the Government's takeover

17. Some members of the Panel expressed concern about the operation and management of TCT after the Government's takeover. They enquired about the tender assessment criteria for the granting of the MOM contract, and whether the Administration would encourage the MOM contractor to introduce more advanced technology to enhance tunnel services, including improving the toll collection system. Given that buses had to queue up for a long time waiting to pull in at the TCT bus interchange during peak hours, some members requested the Administration to consider expanding the TCT bus interchange.

18. The Administration explained that they would take into account a number of factors, instead of simply selecting the bidder submitting the lowest price proposal, to grant the MOM contract. In addition, to facilitate smooth transition, the Administration would liaise with the TCT franchisee to ensure that the conditions of all tunnel facilities could meet a certain standard upon the takeover. Further, the Administration would install "stop-and-go" electronic payment facilities at TCT, which were expected to be put into operation in about 2021. The Administration would also review the utilization rate and design of bus bays at the TCT bus interchange, and consider modification works where necessary.

Protection of the interests of existing tunnel staff

19. When discussing the takeover arrangements for TCT, some members of the Panel were concerned about the protection of the interests of the existing frontline employees of the TCT franchisee. As most of the frontline employees had long years of service, some members asked how the Administration would ensure that their pay and benefits including leave entitlements commensurate with their seniority could be retained. There was also a view that the Administration should make provisions in the MOM contract requiring the contractor to guarantee that the pay, benefits and conditions of service including working hours of the tunnel staff after the takeover would be no less favourable than before.

20. The Administration assured the Panel that there would be provisions in the MOM contract relating to the protection of the employment and salary levels of the existing tunnel staff. Furthermore, the fringe benefits proposed to be offered by tenderers to the employees would be one of the assessment criteria in the tender evaluation. Proposals which offered better fringe benefits to tunnel staff would score higher marks. That said, it would also be necessary to strike a balance between protection of the benefits of tunnel staff and the business operation of the MOM contractor.

## **Latest developments**

21. At the House Committee meeting on 6 October 2017, Members agreed to form a Bills Committee to study the Bill.

## **Relevant papers**

22. A list of relevant papers is in **Appendix**.

Council Business Division 4  
Legislative Council Secretariat  
2 November 2017

## Bills Committee on Road Tunnels (Government) (Amendment) Bill 2017

## List of relevant papers

Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
17.4.2015	Panel on Transport	Administration's paper on application for toll increase by Tate's Cairn Tunnel Company Limited	CB(4)763/14-15(04) <a href="http://www.legco.gov.hk/yr14-15/english/panels/tp/papers/tp20150417cb4-763-4-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/tp/papers/tp20150417cb4-763-4-e.pdf</a>
		Tate's Cairn Tunnel Company Limited's paper on toll increase application	CB(4)763/14-15(05) <a href="http://www.legco.gov.hk/yr14-15/english/panels/tp/papers/tp20150417cb4-763-5-e.pdf">http://www.legco.gov.hk/yr14-15/english/panels/tp/papers/tp20150417cb4-763-5-e.pdf</a>
		Minutes of meeting	CB(4)1418/14-15 <a href="http://www.legco.gov.hk/yr14-15/english/panels/tp/minutes/tp20150417.pdf">http://www.legco.gov.hk/yr14-15/english/panels/tp/minutes/tp20150417.pdf</a>
6.11.2015	Panel on Transport	Administration's paper on takeover arrangements of Eastern Harbour Crossing	CB(4)119/15-16(05) <a href="http://www.legco.gov.hk/yr15-16/english/panels/tp/papers/tp20151106cb4-119-5-e.pdf">http://www.legco.gov.hk/yr15-16/english/panels/tp/papers/tp20151106cb4-119-5-e.pdf</a>
		Administration's follow-up paper	CB(4)263/15-16(01) <a href="http://www.legco.gov.hk/yr15-16/chinese/panels/tp/papers/tp20151106cb4-263-1-ec.pdf">http://www.legco.gov.hk/yr15-16/chinese/panels/tp/papers/tp20151106cb4-263-1-ec.pdf</a>

Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(4)513/15-16  <a href="http://www.legco.gov.hk/yr15-16/english/panels/tp/minutes/tp20151106.pdf">http://www.legco.gov.hk/yr15-16/english/panels/tp/minutes/tp20151106.pdf</a>
12.1.2016, 16.2.2016 & 1.3.2016	Bills Committee on Eastern Harbour Crossing Legislation (Amendment) Bill 2015	Legislative Council brief on Eastern Harbour Crossing Legislation (Amendment) Bill 2015	THB(T) 4/4651/85  <a href="http://www.legco.gov.hk/yr15-16/english/bills/brief/b20151211_brf.pdf">http://www.legco.gov.hk/yr15-16/english/bills/brief/b20151211_brf.pdf</a>
		Legal Service Division report on Eastern Harbour Crossing Legislation (Amendment) Bill 2015	LS18/15-16  <a href="http://www.legco.gov.hk/yr15-16/english/hc/papers/hc20151218ls-18-e.pdf">http://www.legco.gov.hk/yr15-16/english/hc/papers/hc20151218ls-18-e.pdf</a>
		Minutes of meetings	CB(4)526/15-16  <a href="http://www.legco.gov.hk/yr15-16/english/bc/bc101/minutes/bc10120160112.pdf">http://www.legco.gov.hk/yr15-16/english/bc/bc101/minutes/bc10120160112.pdf</a>  CB(4)707/15-16  <a href="http://www.legco.gov.hk/yr15-16/english/bc/bc101/minutes/bc10120160216.pdf">http://www.legco.gov.hk/yr15-16/english/bc/bc101/minutes/bc10120160216.pdf</a>  CB(4)906/15-16  <a href="http://www.legco.gov.hk/yr15-16/english/bc/bc101/minutes/bc10120160301.pdf">http://www.legco.gov.hk/yr15-16/english/bc/bc101/minutes/bc10120160301.pdf</a>



Date of meeting	Panel/ Committee	Minutes/Paper	LC Paper No.
8.4.2016	House Committee	Report of the Bills Committee on Eastern Harbour Crossing Legislation (Amendment) Bill 2015	CB(4)811/15-16 <a href="http://www.legco.gov.hk/yr15-16/english/hc/papers/hc20160408cb4-811-e.pdf">http://www.legco.gov.hk/yr15-16/english/hc/papers/hc20160408cb4-811-e.pdf</a>
19.5.2017	Panel on Transport	Administration's paper on takeover arrangements of Tate's Cairn Tunnel	CB(4)1021/16-17(07) <a href="http://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170519cb4-1021-7-e.pdf">http://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170519cb4-1021-7-e.pdf</a>
		Administration's follow-up papers	CB(4)1278/16-17(01) <a href="http://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170519cb4-1278-1-e.pdf">http://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170519cb4-1278-1-e.pdf</a>  CB(4)1441/16-17(01) <a href="http://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170519cb4-1441-1-e.pdf">http://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170519cb4-1441-1-e.pdf</a>
		Minutes of meeting	CB(4)13/17-18 <a href="http://www.legco.gov.hk/yr16-17/english/panels/tp/minutes/tp20170519.pdf">http://www.legco.gov.hk/yr16-17/english/panels/tp/minutes/tp20170519.pdf</a>