

LEGISLATIVE COUNCIL BRIEF

Road Tunnels (Government) (Amendment) Bill 2017

INTRODUCTION

At the meeting of the Executive Council on 27 June 2017, the Council ADVISED and the Chief Executive ORDERED that the Road Tunnels (Government) (Amendment) Bill 2017 (“the Bill”) at **Annex A** should be introduced into the Legislative Council (“LegCo”).

JUSTIFICATIONS

2. On the expiry of the Build-Operate-Transfer (“BOT”) franchise, TCT will vest in the Government and become a Government tunnel on 11 July 2018. We need to provide the necessary legal backing for TCT to operate and be managed as a Government tunnel. The governing legislation of TCT as a BOT tunnel will also need to be repealed.

3. Similar to the arrangements for the takeover of the Eastern Harbour Crossing (“EHC”) upon its franchise expiry in August 2016, the Government’s takeover of TCT will be a technical exercise involving a change of the tunnel ownership as well as the establishment of legal backing and management mode for its continued operation. There will be no major change to the actual tunnel operation. For example, the prevailing toll levels as well as road traffic regulations in terms of traffic signs and restrictions, etc. will not be affected. In other words, from a tunnel user’s point of view, there will be no major difference before and after the Government’s takeover of TCT.

4. Same as the other Government tunnels, TCT, upon the Government’s takeover, should be subsumed under the legal framework of the Road Tunnels (Government) Ordinance (Cap. 368) (“the Ordinance”) and its subsidiary legislation. The Bill seeks to add TCT to the list of tunnels to which the Ordinance applies. It also makes a number of amendments to the Road Tunnels (Government) Regulations

(Cap. 368A) (“the Regulations”), including incorporating the existing tolls chargeable for using TCT, adding TCT to the schedules of removal fee¹ and permit fee² for vehicles passing through Government tunnels, allowing the continued use of certain traffic signs at TCT, and providing for an exemption from the prohibition against vehicles conveying dangerous goods in TCT and other Government tunnels under emergency situations.

5. The Tate’s Cairn Tunnel Ordinance (Cap. 393) (“TCT Ordinance”) and its subsidiary legislation provide the legal backing for TCT as a BOT tunnel. The Bill seeks to repeal the legislation concerned on the expiry of the BOT franchise.

6. The Bill also provides for the necessary savings and transitional arrangements to ensure that the repeal of the TCT Ordinance and its subsidiary legislation will not affect any right, privilege or liability acquired, accrued or incurred regarding matters relating to TCT which the Government may need to pursue after the repeal. For example, a motorist who crosses the continuous double lines in the tunnel area commits an offence under the Tate’s Cairn Tunnel By-laws (Cap. 393B) (“TCT By-laws”), the conviction of which will result in, amongst others, driving-offence points being incurred under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375). The transitional provisions in the Bill enable the Government to continue to take prosecution action against the motorist concerned who has committed the offence prior to the repeal of the TCT By-laws and result in corresponding driving-offence points being incurred once the motorist is convicted, even if the prosecution is brought after the repeal of the TCT By-laws.

7. In addition, the Bill includes consequential amendments to repeal the references to the TCT Ordinance or the TCT franchisee in other legislation. For example, references to the TCT Ordinance and its

¹ Any vehicle causing an obstruction in a Government tunnel will be removed and the owner of the vehicle may be charged a removal fee.

² Any vehicle with oversized height or weight requires a permit to pass through a Government tunnel. A permit fee shall be paid on the issue of a permit.

subsidiary legislation in the Specification of Public Offices Notice (Cap. 1C) will be repealed³.

8. At present, the TCT By-laws provide an exemption from prohibition against vehicles conveying dangerous goods of Categories 2 and 5⁴ under emergency situations with the permission of the Tunnel Manager⁵. Similar legal provisions were also found in the by-laws governing other BOT tunnels, namely Western Harbour Crossing (“WHC”), Tai Lam Tunnel, Cross-Harbour Tunnel (“CHT”) (before its takeover) and EHC (before its takeover). When the CHT and EHC were taken over by the Government, the provision to allow passage of dangerous goods under emergency situations was not reprovisioned under the Road Tunnels (Government) Regulations. Currently, the supply of dangerous goods to the Hong Kong Island is by means of seaway with the dangerous goods vehicles conveyed by vehicular ferries. There is no alternative road-based means to transfer necessary dangerous goods (such as medical oxygen, liquefied petroleum gas, diesel fuel and petroleum) to the Hong Kong Island under emergency situations (for example, if the vehicular ferry pier in North Point is damaged and cannot be used) other than using WHC, which requires the prior agreement of WHC franchisee. This greatly constrains the Government’s ability to respond to unforeseen incidents and emergencies. Therefore, we propose that the exemption under emergency situations be retained and extended to all Government tunnels. The exemption will only apply to emergency situations (e.g. when transport by seaway is not workable), and the permission will be granted by the Commissioner for Transport with any necessary conditions imposed in consultation with relevant Government departments. The permission, if granted, will be executed with close supervision by the

³ The relevant provisions in the Specification of Public Offices Notice (Cap. 1C) specify the Secretary for Transport and Housing and the Commissioner for Transport as the specified public officer for the purposes of the TCT Ordinance and the TCT By-laws such that they may delegate their powers conferred by or duties imposed by the TCT Ordinance and TCT By-laws to any other public officer or the person for the time being holding any office designated by them under section 43 of the Interpretation and General Clauses Ordinance (Cap. 1).

⁴ According to the Dangerous Goods (Application and Exemption) Regulations (Cap. 295A), dangerous goods of Category 2 refer to the compressed gases specified in the Schedule and dangerous goods of Category 5 refer to the substances giving off inflammable vapours specified in the Schedule.

⁵ The Tunnel Manager refers to the person appointed by the TCT franchisee to manage and control TCT.

concerned Government departments and contractors operating the tunnels.

THE BILL

9. The main provisions of the Bill are set out as follows –
- (a) **Part 2** (clause 3) of the Bill amends the Ordinance. Section 3(1) of the Ordinance provides that it applies to the tunnels named in Schedule 1 to the Ordinance. Clause 3 of the Bill adds TCT to the Schedule;
 - (b) **Clauses 4 to 8** of the Bill amend the Regulations. The Regulations provide for, among other things, the control and regulation of vehicular traffic and users in the tunnels named in Schedule 1 to the Ordinance. Part 3 of the Bill makes various amendments to the Regulations to extend their application to TCT, and to provide for the exemption from the prohibition against vehicles conveying dangerous goods in Government tunnels under emergency situations;
 - (c) **Clause 9** of the Bill amends Schedule 2 to the Regulations to incorporate the existing tolls for the use of TCT chargeable under the TCT Ordinance and to prescribe the same removal fee and permit fee for passing through TCT as for other Government tunnels;
 - (d) **Clause 10** of the Bill repeals the TCT Ordinance and its subsidiary legislation;
 - (e) **Clause 11** of the Bill provides for the necessary savings and transitional arrangements; and
 - (f) **Division 2 of Part 4** (Clauses 12 to 20) contains consequential amendments to several Ordinances and subsidiary legislation.

LEGISLATIVE TIMETABLE

10. The legislative timetable will be –

| | |
|--|----------------|
| Publication in the Gazette | 7 July 2017 |
| First Reading and commencement of Second Reading debate | 12 July 2017 |
| Resumption of Second Reading debate, committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

11. On economic implications, the proposal will help ensure a smooth and seamless transition of TCT from its franchisee to the Government. This will facilitate a safe and orderly traffic flow at one of the major traffic links between the New Territories and Kowloon East.

12. On financial implications, the proposal will enable the Government to collect toll direct from users of TCT at the existing levels. According to the audited accounts of TCT's franchisee, the toll income for the year ended 30 June 2016 is \$496.3 million. In line with the practice of other Government tunnels, it is proposed that the Government will pay an annual management fee to the MOM contractor of TCT, and the management fee will be netted off from the Government's toll income.

13. The proposal has no civil service, environmental, sustainability, productivity, competition, family or gender implications. It is in conformity with the Basic Law, including the provisions concerning human rights; and will not affect the current binding effect of the Ordinance and the Regulations.

PUBLIC CONSULTATION

14. We consulted the LegCo Panel on Transport ("the Panel") on 19 May 2017 on the proposed legislative amendments. The Panel did not raise any objection to the legislative proposals. Panel Members

were more concerned about the timeframe within which the Government would adjust the toll levels of TCT to achieve a better traffic distribution among TCT, Lion Rock Tunnel (“LRT”) and the Eagle’s Nest Tunnel and Sha Tin Heights Tunnel (“Route 8K”). A motion was passed at the Panel meeting to request the Government to bring the toll levels of TCT in line with those of LRT and Route 8K upon taking over TCT, instead of awaiting the outcome of the toll rationalisation study (see paragraph 15 below).

15. The Government is reviewing the toll level of TCT in the context of an on-going study on the rationalisation of traffic distribution among the three road harbour crossings (“RHCs”) (namely CHT, EHC and WHC) and the three land tunnels between Kowloon and Sha Tin (namely TCT, LRT and Route 8K). The locations of the six tunnels are shown in **Annex B**.

16. Due to the geographical locations of the tunnels, there is a natural pairing effect on the use of the RHCs and the three land tunnels. TD’s analysis shows that the majority of the cross-harbour traffic coming through LRT prefers CHT over EHC or WHC. A similar tendency is also observed in the eastern areas pairing TCT and EHC, and in the western areas pairing Route 8K and WHC. According to TD’s preliminary analysis, at present about 15% of the cross-harbour traffic also uses one of the three land tunnels. Such traffic constitutes about 20% of the total traffic of the three land tunnels.

17. The rationalisation of traffic distribution among the three RHCs will therefore impact on the usage of the three land tunnels, and vice versa. As such, the Government plans to formulate toll adjustment proposals for rationalising the traffic distribution among the six tunnels in a holistic manner. The Government has undertaken earlier to put the toll adjustment proposals for discussion at the Panel within the 2017-18 legislative year. In the meantime, the Government will not be adjusting the tolls of TCT upon the Government’s takeover of the tunnel.

PUBLICITY

18. We will issue a press release on 7 July 2017. A spokesperson will be available for answering media enquiries.

BACKGROUND

19. TCT, location as shown in **Annex B**, connects Sha Tin and Diamond Hill and serves as one of the major traffic links between the New Territories and Kowloon East. TCT is a BOT tunnel. The Government awarded a 30-year BOT franchise to Tate's Cairn Tunnel Company Limited and enacted the TCT Ordinance in 1988 to govern the construction, operation and maintenance of TCT during the franchise period.

ENQUIRIES

20. Any enquiries concerning the brief can be directed to Mr Tony Li, Principal Assistant Secretary for Transport and Housing (Transport) at 3509 8192.

Transport and Housing Bureau
5 July 2017

Road Tunnels (Government) (Amendment) Bill 2017

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A BILL

To

Amend the Road Tunnels (Government) Ordinance and its subsidiary legislation to extend their application to the Tate’s Cairn Tunnel and incorporate the existing tolls chargeable under the Tate’s Cairn Tunnel Ordinance; to provide for an emergency exemption from the prohibition against vehicles conveying dangerous goods in tunnels; to repeal the Tate’s Cairn Tunnel Ordinance and its subsidiary legislation; and to provide for transitional matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. **Short title and commencement**
 - (1) This Ordinance may be cited as the Road Tunnels (Government) (Amendment) Ordinance 2017.
 - (2) This Ordinance comes into operation on 11 July 2018.
2. **Enactments amended**

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

Part 2

**Amendment to Road Tunnels (Government) Ordinance
(Cap. 368)**

3. Schedule 1 amended (tunnels to which this Ordinance applies)

Schedule 1, after item 6—

Add

“6A. Tate’s Cairn Tunnel”.

Part 3

**Amendments to Road Tunnels (Government)
Regulations (Cap. 368 sub. leg. A)**

4. Regulation 2 amended (interpretation)

Regulation 2(2)—

Repeal

“or 3”

Substitute

“, 3 or 3A”.

5. Regulation 3 amended (prescribed signs and road markings)

(1) After regulation 3(1C)—

Add

“(1D) Without prejudice to paragraph (1), the Authority may, for the purposes of regulating and controlling traffic, display at the tunnel area of the Tate’s Cairn Tunnel a traffic sign of the type shown in Figure No. 17 or No. 23 prescribed in Schedule 1.”.

(2) Regulation 3(3)—

Repeal

“or (1C)”

Substitute

“, (1C) or (1D)”.

(3) Regulation 3(6)—

Repeal

“or (1C)”

Substitute

“, (1C) or (1D)”.

6. Regulation 11 amended (prohibition against vehicles conveying dangerous goods)

(1) Regulation 11(1)—

Repeal

everything before “drive”

Substitute

“(1) Subject to paragraphs (2) and (3), a person must not”.

(2) After regulation 11(2)—

Add

“(3) Paragraph (1) does not apply in relation to a specified vehicle if it is being moved in an emergency in accordance with the conditions of a permission granted by the Authority for the vehicle.

(4) For the purposes of paragraph (3), the Authority may permit a specified vehicle to be moved in a tunnel in an emergency subject to any conditions that the Authority considers appropriate.

(5) In this regulation—

specified vehicle (指明車輛) means a vehicle that falls within the description of paragraph (1)(b), (c), (d) or (e).”.

7. Regulation 12 amended (tolls)

Regulation 12(1)—

Repeal

everything before “at a”

Substitute

“(1) The appropriate toll specified in Part 1, 2, 3 or 3A of Schedule 2 for the use of a tunnel by a vehicle must be paid”.

8. Regulation 19 amended (powers of an operator)

Regulation 19, after “(1C)”—

Add

“, (1D)”.

9. Schedule 2 amended (tolls and fees)

(1) Schedule 2, Part 1, heading—

Repeal

“and Eastern Harbour Crossing”

Substitute

“, Eastern Harbour Crossing and Tate’s Cairn Tunnel”.

(2) Schedule 2, after Part 3—

Add**“Part 3A****Tolls (for Tate’s Cairn Tunnel)**

| Column 1 | Column 2 | Column 3 |
|----------|-------------------------------|----------|
| Item | Vehicle | Tolls |
| 1. | Motor cycles, motor tricycles | \$15 |
| 2. | Private cars, taxis | \$20 |

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Part 3
Clause 9

6

| Column 1 | Column 2 | Column 3 |
|----------|---|----------|
| Item | Vehicle | Tolls |
| 3. | Public light buses | \$23 |
| 4. | Private light buses | \$24 |
| 5. | Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes | \$24 |
| 6. | Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes | \$28 |
| 7. | Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes but not exceeding 38 tonnes | \$28 |
| 8. | Public and private single-decked buses | \$32 |
| 9. | Public and private double-decked buses | \$35 |
| 10. | For vehicles with more than 2 axles, each additional axle in excess of 2 | \$24". |

(3) Schedule 2, Part 4, section 2, Table, after item 6—

Add

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Part 3
Clause 9

7

“6A. Tate’s Cairn Tunnel \$140 \$175 \$215”.
(4) Schedule 2, Part 5, after item 6—
Add
“6A. Tate’s Cairn Tunnel \$82”.

Part 4**Repeal, Savings, Transitional and Consequential Provisions****Division 1—Amendments to Road Tunnels (Government) Ordinance (Cap. 368)****10. Sections 25 and 26 added**

After section 24—

Add**“25. Tate’s Cairn Tunnel Ordinance and its subsidiary legislation repealed**

The following enactments are repealed—

- (a) the Tate’s Cairn Tunnel Ordinance (Cap. 393);
- (b) the Tate’s Cairn Tunnel Regulations (Cap. 393 sub. leg. A);
- (c) the Tate’s Cairn Tunnel By-laws (Cap. 393 sub. leg. B);
- (d) the Tate’s Cairn Tunnel (Designation of Agreements) Notice (Cap. 393 sub. leg. C); and
- (e) the Tate’s Cairn Tunnel (Commencement of Construction Works) Notice (Cap. 393 sub. leg. D).

26. Savings and transitional arrangements for Road Tunnels (Government) (Amendment) Ordinance 2017

Schedule 3 provides for the savings and transitional arrangements that relate to the Road Tunnels (Government) (Amendment) Ordinance 2017 (of 2017).”.

11. Schedule 3 added

After Schedule 2—

Add**“Schedule 3**

[s. 26]

Savings and Transitional Arrangements for Road Tunnels (Government) (Amendment) Ordinance 2017**1. Interpretation**

In this Schedule—

specified Regulations (《指明規例》) means the Road Tunnels (Government) Regulations (Cap. 368 sub. leg. A);

TCT By-laws (《大老山隧道附例》) means the Tate’s Cairn Tunnel By-laws (Cap. 393 sub. leg. B) as in force immediately before 11 July 2018;

TCT Ordinance (《大老山隧道條例》) means the Tate’s Cairn Tunnel Ordinance (Cap. 393) as in force immediately before 11 July 2018.

2. Savings for royalty payments

If a royalty payable under section 9(1)(b) of the TCT Ordinance has not been paid before 11 July 2018, that Ordinance continues to apply in relation to the royalty as if it had not been repealed.

3. Section 18E of Magistrates Ordinance continues to apply

Section 18E of the Magistrates Ordinance (Cap. 227) continues to apply on and after 11 July 2018 in relation to an offence under the TCT By-laws that was committed before that date as if the By-laws had not been repealed.

4. Road Traffic (Driving-offence Points) Ordinance continues to apply

The Road Traffic (Driving-offence Points) Ordinance (Cap. 375) continues to apply on and after 11 July 2018 in relation to an offence under the TCT By-laws that was committed before that date as if the By-laws had not been repealed.

5. Transitional arrangements for certain traffic signs

- (1) For the purposes of this section, a traffic sign is a pre-existing traffic sign if it was—
 - (a) erected in the tunnel area of the Tate’s Cairn Tunnel before 11 July 2018; and
 - (b) in force immediately before that date.
- (2) A pre-existing traffic sign of the type shown in Figure No. 5 in the Schedule to the TCT By-laws is, on and after 11 July 2018, regarded for all purposes as a traffic sign of the type shown in Figure No. 17 in Schedule 1 to the specified Regulations.
- (3) A pre-existing traffic sign of the type shown in Figure No. 8 in the Schedule to the TCT By-laws is, on and after 11 July 2018, regarded for all purposes as a traffic sign of the type shown in Figure No. 8 in Schedule 1 to the specified Regulations.
- (4) A pre-existing traffic sign of the type shown in Figure No. 14 in the Schedule to the TCT By-laws is, on and after 11 July 2018, regarded for all purposes as a traffic

sign of the type shown in Figure No. 405 in Schedule 1 to the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G).

6. Schedule 3 not in derogation of section 23 of Interpretation and General Clauses Ordinance

The provisions in this Schedule are in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).”

Division 2—Consequential Amendments

Subdivision 1—Amendments to Specification of Public Offices Notice (Cap. 1 sub. leg. C)

12. Schedule amended (specification of public offices)

- (1) The Schedule—

Repeal

“Commissioner for Transport

Tate’s Cairn Tunnel Ordinance (Cap. 393).

Commissioner for Transport

Tate’s Cairn Tunnel Regulations (Cap. 393 sub. leg. A).

Commissioner for Transport

Tate’s Cairn Tunnel By-laws (Cap. 393 sub. leg. B).”

- (2) The Schedule—

Repeal

“Secretary for Transport and Housing

Tate’s Cairn Tunnel Ordinance (Cap. 393).”

**Subdivision 2—Amendment to Prevention of Bribery Ordinance
(Cap. 201)**

13. Schedule 1 amended (public bodies)

Schedule 1—

Repeal item 65.

Subdivision 3—Amendment to Magistrates Ordinance (Cap. 227)

14. Third Schedule amended (offences to which defendant may plead guilty by letter)

Third Schedule—

Repeal paragraph 14.

Subdivision 4—Amendment to Road Traffic Ordinance (Cap. 374)

15. Schedule 11 amended (offences specified for the purposes of section 72A)

Schedule 11—

Repeal

“33, 33A, 33D, 34,”.

Subdivision 5—Amendments to Road Traffic (Driving-offence Points) Ordinance (Cap. 375)

16. Schedule amended (offence)

(1) The Schedule—

Repeal

“Tate’s Cairn Tunnel By-laws (Cap. 393 sub. leg. B)”.

(2) The Schedule—

Repeal items 33, 33A, 33B, 33C and 33D.

(3) The Schedule—

Repeal

“Tate’s Cairn Tunnel By-laws (Cap. 393 sub. leg. B) as it was in force immediately before 20 July 2012”.

(4) The Schedule—

Repeal items 34, 35 and 36.

**Subdivision 6—Amendment to Legislative Council Ordinance
(Cap. 542)**

17. Schedule 1A amended (composition of the transport functional constituency)

Schedule 1A—

Repeal item 135.

Subdivision 7—Amendments to Resolution made and passed by Legislative Council under section 72A(10) of Road Traffic Ordinance and section 4(3) of Road Traffic (Driving-offence Points) Ordinance on 29 May 2013 (L.N. 100 of 2013)

18. Paragraph (d) amended

(1) Paragraph (d)—

Repeal

“1(4), (7)”

Substitute

“1(7)”.

(2) Paragraph (d)—

Repeal

“1(8), (9), (14)”

Substitute

“1(14)”.

19. Schedule 1 amended (amendments to Road Traffic Ordinance)

Schedule 1, section 1—

Repeal subsection (4).

20. Schedule 2 amended (amendments to Road Traffic (Driving-offence Points) Ordinance)

Schedule 2, section 1—

Repeal subsections (8) and (9).

Explanatory Memorandum

The main object of this Bill is to amend the Road Tunnels (Government) Ordinance (Cap. 368) (*principal Ordinance*) and its subsidiary legislation—

- (a) to extend their application to the Tate’s Cairn Tunnel and incorporate the existing tolls chargeable under the Tate’s Cairn Tunnel Ordinance (Cap. 393) (*TCT Ordinance*); and
- (b) to provide for an emergency exemption from the prohibition against vehicles conveying dangerous goods in tunnels.

Part 1—Preliminary

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 2 introduces the enactments that are amended by the Bill.

Part 2—Amendment to principal Ordinance

4. Section 3(1) of the principal Ordinance provides that the principal Ordinance applies to the tunnels named in Schedule 1 to the principal Ordinance (*applicable tunnels*). Clause 3 amends that Schedule by adding to it the Tate’s Cairn Tunnel.

Part 3—Amendments to Road Tunnels (Government) Regulations (Cap. 368 sub. leg. A) (*principal Regulations*)

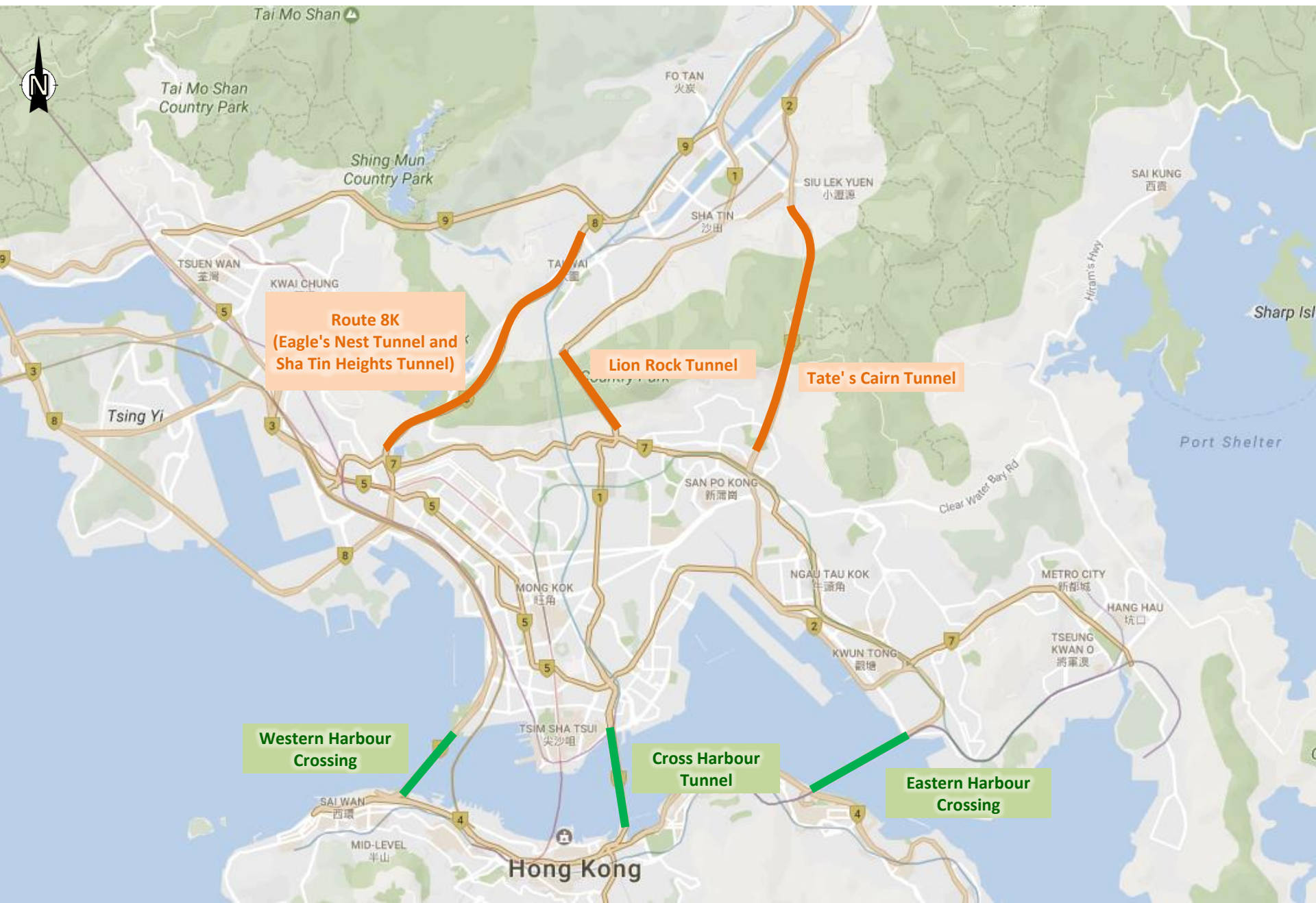
5. The principal Regulations provide for, among other things, the control and regulation of traffic in, and the tolls for, the applicable tunnels. Part 3 amends the principal Regulations to extend their application to the Tate’s Cairn Tunnel. In particular, clause 5 amends regulation 3 of the principal Regulations to empower the

Commissioner for Transport to display certain traffic signs at the tunnel area of the Tate's Cairn Tunnel.

6. Clause 6 amends regulation 11 of the principal Regulations to provide for an emergency exemption from the prohibition under that regulation (prohibition against vehicles conveying dangerous goods).
7. Clause 9 amends Schedule 2 to the principal Regulations to incorporate the existing tolls chargeable for the use of the Tate's Cairn Tunnel under the TCT Ordinance.

Part 4—Repeal, Savings, Transitional and Consequential Provisions

8. Division 1 of Part 4 contains clauses 10 and 11. Clause 10 adds the following new sections to the principal Ordinance—
 - (a) the new section 25 of the principal Ordinance repeals the TCT Ordinance and its subsidiary legislation; and
 - (b) the new section 26 of, and the new Schedule 3 (added by clause 11) to, the principal Ordinance provide for the necessary savings and transitional arrangements.
9. Division 2 of Part 4 contains consequential amendments to several enactments.



**Route 8K
(Eagle's Nest Tunnel and
Sha Tin Heights Tunnel)**

Lion Rock Tunnel

Tate's Cairn Tunnel

**Western Harbour
Crossing**

**Cross Harbour
Tunnel**

**Eastern Harbour
Crossing**

Hong Kong