

**For discussion
on 19 May 2017**

Legislative Council Panel on Transport

Takeover Arrangements of Tate's Cairn Tunnel

Purpose

This paper briefs Members on the legislative amendments and arrangements for the Government to take over the ownership of the Tate's Cairn Tunnel ("TCT") upon the expiry of the TCT franchise on 11 July 2018.

Background

2. TCT, location as shown in the Annex, 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 Build-Operate-Transfer ("BOT")¹ tunnel. The Government awarded a 30-year BOT franchise to Tate's Cairn Tunnel Company Limited ("the franchisee") and enacted the Tate's Cairn Tunnel Ordinance ("TCT Ordinance") (Cap. 393) in 1988 to govern the construction, operation and maintenance of TCT during the franchise period.

3. The Government will take over TCT on 11 July 2018 on the expiry of its BOT franchise.

Takeover of TCT

4. Similar to the arrangements for the takeover of the Eastern Harbour Crossing ("EHC") on its franchise expiry in August 2016, the Government's

¹ Under a BOT tunnel arrangement, a franchisee is responsible for the construction, operation and maintenance of the tunnel concerned during the franchise period. Upon the expiry of the franchise, the tunnel will vest in the Government. The two major principles of the Government in adopting the BOT mode in constructing and operating tunnels are: (i) the Government should encourage private participation and optimise the use of public resources; and (ii) 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.

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.

Legislative Amendments

5. TCT will become a Government tunnel upon the franchise expiry. In line with the operation of other Government tunnels, the operation of TCT will be subsumed under the legal framework of the Road Tunnels (Government) Ordinance (Cap. 368) and its subsidiary legislation. The TCT Ordinance and its subsidiary legislation, which provide the legal backing for the existing operation of TCT as a BOT tunnel, will be repealed upon the Government's takeover of TCT. We are preparing the Road Tunnels (Government) (Amendment) Bill 2017 ("Amendment Bill") for this purpose and target to introduce the Amendment Bill into the Legislative Council ("LegCo") as soon as practicable.

6. The Amendment Bill seeks to add TCT to the list of tunnels to which the Road Tunnels (Government) Ordinance applies. It also amends the Road Tunnels (Government) Regulations (Cap. 368A), including incorporating the existing tolls chargeable for using TCT, adding TCT to the schedules of removal fee² and permit fee³ 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.

7. The Amendment Bill also provides for necessary savings and transitional arrangements to ensure that the repeal of the TCT Ordinance and Tate's Cairn Tunnel By-laws (Cap. 393B) ("TCT By-laws") 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

² Any vehicle causing an obstruction in a Government tunnel will be removed and the owner of the vehicle may be charged a removal fee.

³ 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.

area commits an offence under the 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 Amendment Bill enable the Government to continue to take prosecution action against the motorist concerned and result in corresponding driving-offence points being incurred once the motorist is convicted, even if the offence was committed prior to the repeal of the TCT By-laws.

8. In addition, the Amendment Bill will include consequential amendments to repeal the references to the TCT Ordinance or the franchisee in other legislation. For example, references to the TCT Ordinance and its subsidiary legislation in the Specification of Public Offices Notice (Cap. 1C) will be repealed⁴.

9. At present, the TCT By-laws provide an exemption that the Tunnel Manager⁵ may allow vehicles to carry dangerous goods of Categories 2 and 5⁶ under emergency situations. 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”) and EHC. 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. In other words, 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 other than using WHC, which requires the prior agreement of WHC franchisee, greatly constraining the Government’s ability to respond to unforeseen incidents and emergencies. As such, we propose that the exemption under emergency situations be retained and extended to all Government tunnels. The exemption will only be granted in emergency situations when transport by seaway is not workable, and be

⁴ The relevant provisions in the Specification of Public Offices Notice (Cap. 1C) specify the public offices (namely the Secretary for Transport and Housing and the Commissioner for Transport) for the purposes of exercising powers or perform duties under the TCT Ordinance and the TCT By-laws.

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

⁶ According to the Dangerous Goods (Application and Exemption) Regulations (Cap. 295A), dangerous goods Category 2 refers to compressed gases and Category 5 refers to substances giving off inflammable vapours.

approved with any necessary conditions by the Commissioner for Transport in consultation with relevant Government departments. The exemption, if granted, will also be executed with close supervision by the concerned Government departments and contractors operating the tunnels.

Management Mode

10. In line with the practice of other Government tunnels (including EHC which was recently taken over by the Government in August 2016), TCT will be managed by a Government's contractor under the supervision of the Transport Department ("TD") and other concerned departments. TD will grant, through an open tender, a management, operation and maintenance ("MOM") contract for the operation and management of the TCT upon the franchise expiry. TD has already started the preparation of the tender process and the MOM contract is expected to be awarded by end-2017. This will allow the MOM contractor adequate time to gear up for the takeover.

11. To ensure a smooth takeover of TCT, the Government considers it in the public interest to retain as far as practicable the existing employees of the franchisee who are essential to the operation of TCT. As such, there will be terms in the MOM contract requiring the contractor to undertake to make first offer of employment to these staff members. They are mostly frontline and technical employees, amounting to over 80% of staff members in the operations, engineering and maintenance departments. This arrangement will not only ensure that the MOM contractor will have a suitable workforce possessing the necessary knowhow to operate TCT, but also avoid any possible manpower drain of the franchisee towards the end of the franchise period to the detriment of a safe and efficient operation of TCT in the run-up to the takeover.

Tunnel tolls

12. The toll levels of TCT will remain unchanged upon the Government's takeover. This notwithstanding, the Government will review the toll level of TCT in the context of the study⁷ 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, the Lion Rock Tunnel ("LRT"), and the Eagle's Nest Tunnel and Sha Tin Heights Tunnel ("Route 8K")). The locations of the six tunnels are

⁷ Agreement No. CE 31/2016 (TT) Toll Rationalisation Study of Three Road Harbour Crossings and Three Land Tunnels between Kowloon and Sha Tin – Feasibility Study.

shown in the **Annex**. 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.

13. 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. Similar tendencies are also observed in the eastern areas pairing TCT and EHC, and in the western areas pairing Route 8K and WHC.

14. 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 submit toll adjustment proposals for discussion at the LegCo Panel on Transport within the 2017-18 legislative year.

15. Separately, TD will continue to closely monitor the traffic situation at TCT and put in place appropriate traffic management measures as and when necessary. TD will also liaise closely with the existing franchisee and the future MOM contractor to ensure that TCT will continue its smooth and efficient operation throughout the transition.

Advice Sought

16. Members' views are sought on the legislative amendments and arrangements for the Government to take over the ownership of TCT.

Transport and Housing Bureau
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