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Paper for the House Committee meeting on 26 January 2018
Report of the Bills Committee on Road Tunnels (Government)
(Amendment) Bill 2017

Purpose

This paper reports on the deliberations of the Bills Committee on Road Tunnels (Government) (Amendment) Bill 2017 ("the Bills Committee").

Background

2. The Tate's Cairn Tunnel ("TCT") which links Diamond Hill of Eastern Kowloon and Siu Lek Yuen of Sha Tin was opened to traffic in June 1991. It is one of the existing Build-Operate-Transfer ("BOT") tunnels in Hong Kong which have not been taken over by the Government.¹ Under the Tate's Cairn Tunnel Ordinance (Cap. 393) ("TCT Ordinance"), Tate's Cairn Tunnel Company Limited (hereafter referred to as "the franchisee") was granted in 1988 a 30-year franchise to construct and operate TCT. Under section 48 of TCT Ordinance, the assets of the franchisee will vest in the Government upon expiry of the franchise. In other words, the Government will take over TCT on 11 July 2018 upon the franchise expiry.

The Bill

3. The Road Tunnels (Government) (Amendment) Bill 2017 ("the Bill") was published in the Gazette on 7 July 2017 and received its First Reading at

¹ The Government had taken over two BOT tunnels, namely, the Cross-Harbour Tunnel and the Eastern Harbour Crossing in 1999 and 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 Tai Lam Tunnel and Yuen Long Approach Road (also known as "Route 3"), the franchises of which will expire in August 2023 and May 2025 respectively.

the Legislative Council meeting of 12 July 2017. The Bill is introduced to provide legal backing for the continued operation and management of TCT as a Government tunnel from 11 July 2018 upon the expiry of the franchise. The Bill seeks to:

- (a) amend the Road Tunnels (Government) Ordinance (Cap. 368) ("the Ordinance") and its subsidiary legislation to extend their application to TCT;
- (b) incorporate the existing tolls chargeable in respect of TCT into the Road Tunnels (Government) Regulations (Cap. 368A) ("the Regulations");
- (c) repeal TCT Ordinance and its subsidiary legislation; and
- (d) provide for savings and transitional arrangements, and consequential amendments.

The Bill also seeks to provide for an exemption to allow, upon permission granted by the Commissioner for Transport with conditions as necessary, specified vehicles to convey dangerous goods in Government tunnels in emergency situations.

4. The main provisions of the Bill are set out as follows:

- (a) Part 2 (clause 3) of the Bill seeks to amend 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 seeks to add TCT to Schedule 1 to the Ordinance;
- (b) Part 3 (clauses 4 to 9) of the Bill seeks to 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. Clauses 4 to 8 of the Bill seek to make various amendments to the Regulations to extend their application to TCT, and to provide for the exemption to allow specified vehicles to convey dangerous goods in Government tunnels under emergency situations;
- (c) Clause 9 of the Bill seeks to amend Schedule 2 to the Regulations to incorporate the existing tolls for the use of TCT chargeable under 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 seeks to repeal TCT Ordinance and its subsidiary legislation;
- (e) Clause 11 of the Bill seeks to provide for the necessary savings and transitional arrangements; and
- (f) Division 2 of Part 4 (clauses 12 to 20) seeks to provide for consequential amendments to several Ordinances and subsidiary legislation.

The Bills Committee

5. At the House Committee meeting on 6 October 2017, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is in the **Appendix**. Under the chairmanship of Ir Dr Hon LO Wai-kiwok, the Bills Committee has held one meeting with the Administration.

Deliberations of the Bills Committee

6. The Bills Committee notes the Administration's view that 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. The Administration stresses that the takeover will bring no major change to the actual tunnel operation from a tunnel user's point of view. In particular, the prevailing toll levels as well as road traffic regulations in terms of traffic signs and restrictions, etc. will not be affected. The Bills Committee is in support of the Bill.

Rationalization of tunnel tolls and traffic distribution

7. Clause 9 of the Bill seeks to amend Schedule 2 to the Regulations to incorporate the existing tolls for the use of TCT chargeable under TCT Ordinance. Noting that the prevailing toll level of TCT will remain unchanged upon the Government's takeover of the tunnel, Mr MA Fung-kiwok has enquired about the progress of the Administration's study on the toll adjustment options to achieve better traffic distribution among the three road harbour crossings ("RHCs") and the three land tunnels between Kowloon and Sha Tin.

8. The Administration has advised that the Transport Department ("TD") has commenced a study on the rationalization of traffic distribution among the

three RHCs, namely the Cross-Harbour Tunnel ("CHT"), the Eastern Harbour Crossing ("EHC") and the Western Harbour Crossing ("WHC"), and the three land tunnels between Kowloon and Sha Tin, namely TCT, the Lion Rock Tunnel and the Eagle's Nest Tunnel and Sha Tin Heights Tunnel ("toll rationalization study"), and would formulate toll adjustment proposals in a holistic manner based on the study's findings. It had briefed the Panel on Transport ("the Panel") on the preliminary findings of the toll rationalization study in November 2017 and would put forward to the Panel the proposed toll adjustment options tentatively in July 2018.

Pay and benefits of the existing frontline staff of the franchisee

9. Mr LUK Chung-hung has expressed concern about the protection of the interests of the existing frontline staff of the franchisee, especially those with long years of service. He has particularly asked how the Administration would ensure that their pay and benefit, in particular their leave entitlements, commensurate with their seniority could be retained after the takeover.

10. The Administration has advised that in designing the tender document for the first management, operation and maintenance contract for TCT after the Government's takeover, TD has already included terms requiring the successful tenderer to make first offer of employment to the frontline staff members in the operations, engineering and maintenance departments of the franchisee at the existing salary and major staff benefit levels (including annual leave entitlements). The Administration has stressed that this arrangement will not only provide appropriate protection to the existing staff, but also ensure the smooth operation of TCT before and after the Government's takeover. In particular, TD will remind the successful tenderer to consider granting leave commensurate with individual staff members' seniority in the franchisee.

Legal and drafting aspects

11. The Bills Committee has noted the Administration's response to the enquiries raised by the Legal Adviser to the Bills Committee on the legal and drafting issues of the Bill, as set out in paragraphs 12 to 16 below.

Vehicles conveying dangerous goods in Government tunnels

12. Clause 6 of the Bill seeks to amend the Regulations to provide for an exemption in regulation 11, which would allow vehicles conveying dangerous

goods of Category 2 or 5² to pass through the Government tunnels under emergency situations with permission from the Commissioner for Transport. Noting that the proposed amendment to regulation 11 does not cover vehicles conveying dangerous goods of Category 1,³ the Legal Adviser to the Bills Committee has sought the reasons for excluding such vehicles from the proposed amendment to regulation 11.

13. The Administration has advised that the supply of dangerous goods to the Hong Kong Island is currently 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 which are classified as Categories 2 and 5 (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. This greatly constrains the Government's ability to respond to unforeseen incidents and emergencies. Therefore, the Administration proposes, in clause 6 of the Bill, to amend regulation 11 of the Regulations so that the exemption for vehicles conveying dangerous goods of Categories 2 and 5 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 necessary conditions imposed.

14. The Administration has further advised that dangerous goods of Category 1 are classified as "explosives and blasting agents". They are prohibited from being conveyed into any of the Government tunnels under the Regulations or any of the BOT tunnels under the respective by-laws. Only fire services vehicles, ambulances, police vehicles and vehicles used for defence purposes may be exempted in the course of urgent duty. For safety reasons and given that there is no specific need as in the case for dangerous goods of Categories 2 and 5, the Administration does not seek to change the existing requirements in the Regulations.

15. Currently, by-law 19 of the Tate's Cairn Tunnel By-laws (Cap. 393B) ("TCT By-laws") empowers the operator of TCT to fix the hours during which

² 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.

³ According to the Dangerous Goods (Application and Exemption) Regulations, dangerous goods of Category 1 refer to the explosives and blasting agents specified in the Schedule.

vehicles conveying dangerous goods of Categories 3, 4, 6 to 10⁴ or other dangerous substances may enter the tunnel area of TCT. As TCT By-laws would be repealed if the Bill is passed and no corresponding amendment is proposed to be made to regulation 11A of the Regulations, which confers the same power as that prescribed in by-law 19 of TCT By-laws on the operators of CHT and EHC, the Legal Adviser to the Bills Committee has enquired about the reasons for not incorporating such power into regulation 11A of the Regulations.

16. The Administration responded that conveyance of dangerous goods of Categories 3, 4, 6 to 10 in Government tunnels (other than CHT and EHC) is currently not subject to restriction. For CHT and EHC, regulation 11A of the Regulations confers power on the tunnel operators to grant permission and specify the hours for the conveyance of dangerous goods of Categories 3, 4, 6 to 10. This is because CHT and EHC are RHCs. Unlike other land tunnels, they do not have open air alternative routes and any traffic incident in either of these RHCs will cause more serious traffic congestions on their adjacent trunk roads. Hence, there is a need to restrict the conveyance of dangerous goods of Categories 3, 4, 6 to 10 through CHT and EHC except under permission and in specified hours. Since TCT is a land tunnel, the Administration considers it more appropriate to follow the arrangements for other Government land tunnels and hence has not incorporated the power prescribed in by-law 19 of TCT By-laws into regulation 11A of the Regulations.

Resumption of Second Reading debate on the Bill

17. The Bills Committee will not propose any Committee Stage amendments to the Bill and raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 7 February 2018.

Advice sought

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

Council Business Division 4
Legislative Council Secretariat
24 January 2018

⁴ According to the Schedule to the Dangerous Goods (Application and Exemption) Regulations, the categories of dangerous goods are corrosive substances (Category 3), poisonous substances (Category 4), substances which become dangerous by interaction with water (Category 6), strong supporters of combustion (Category 7), readily combustible substances (Category 8), substances liable to spontaneous combustion (Category 9) and other dangerous substances (Category 10).

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

Membership list

Chairman Ir Dr Hon LO Wai-kwok, SBS, MH, JP

Members Hon Frankie YICK Chi-ming, SBS, JP
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Han-pan, JP
Dr Hon Elizabeth QUAT, BBS, JP
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon LAM Cheuk-ting
Hon CHAN Chun-ying
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Hon Jeremy TAM Man-ho

(Total : 14 Members)

Clerk Ms Wendy JAN

Legal Adviser Mr Alvin CHUI