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Paper for the House Committee meeting on 11 January 2019

**Report of the Subcommittee on Three Regulations to Exempt the Toll for
Franchised Buses Using Government Tunnels as well as
the Tsing Ma and Tsing Sha Control Areas**

Purpose

This paper reports on the deliberations of the Subcommittee on Three Regulations to Exempt the Toll for Franchised Buses Using Government Tunnels as well as the Tsing Ma and Tsing Sha Control Areas ("the Subcommittee").

Background

2. According to the Administration, franchised buses assume a pivotal role in the public transport system and they, as mass carriers, should not be made to pay hefty tunnel and road tolls as their routings are determined by the Government based on transport planning.¹ Owing to the rising operating costs of franchised buses, five out of the six bus franchisees have already submitted fare increase applications to the Administration.² Against the above

¹ On average, tunnel toll accounts for about 7% of the franchised bus operating cost (about 3% being toll of government tunnels and roads and 4% being toll of Build-Operate-Transfer tunnels).

² According to footnote 1 of the Legislative Council Brief (File Ref.: THB(T)CR 1/4651/2018) issued by the Transport and Housing Bureau on 28 November 2018, the five bus franchisees are Citybus Limited (Franchise for Hong Kong Island and Cross-Harbour Bus Network) ("CTB(F1)"), New World First Bus Services Limited ("NWFB"), The Kowloon Motor Bus Company (1933) Limited ("KMB"), Long Win Bus Company Limited and New Lantao Bus Company (1973) Limited. The Government has been processing the fare increase applications in accordance with established procedures. On 8 January 2019, the Chief Executive in Council announced the approved fare scale (for implementation on 20 January 2019) for the routes of CTB(F1), NWFB and KMB as detailed at Annexes A to C to the Legislative Council Brief (File Ref.: THB(T)CR 3/5595/00) issued by the Transport and Housing Bureau on 8 January 2019.

background, the Chief Executive ("CE") announced in her Policy Address 2018 to exempt or to pay the toll for franchised buses using tolled tunnels (including both Government and Build-Operate-Transfer ("BOT") ones) as well as Tsing Ma and Tsing Sha Control Areas ("the Two Control Areas") with a view to relieving the fare increase pressure of franchised bus operators and benefiting the general public.

3. Under the proposal, each franchised bus operator will set up its own dedicated fund account, known as the "Franchised Bus Toll Exemption Fund" ("the Fund") for keeping the toll saved. The toll saved under the Fund will be used for relieving the fare increase pressure of the corresponding bus franchisee in future. The Administration will also set a cap for each Fund.³ If individual franchised bus operators do not face the pressure for the fare increase in the coming few years, the toll savings exceeding the cap will be distributed to their passengers through fare concession. The Transport Department ("TD") will enter into an agreement with each of the franchised bus operators to set up the Fund under the respective account of the operator concerned. Among others, necessary monitoring and auditing mechanism will be put in place.

4. As the first step, the Administration will amend the relevant regulations to exempt franchised buses from paying the toll of government tunnels as well as the Two Control Areas. According to the Administration, the revenue forgone by this toll exemption is about \$280 million per year based on 2017 figures.

5. Regarding the two tunnels which are still operating under the BOT model (i.e. Western Harbour Crossing ("WHC") and Tai Lam Tunnel ("TLT")), the Administration proposes that, as the next step, the Government will pay the toll on behalf of the franchised bus operators, and the franchised bus operators should then set aside such toll saving to their Funds. For WHC, the relevant arrangement forms part of the packaged deal alongside the proposal on rationalization of traffic distribution among the three harbour-crossing tunnels and can take effect on 1 January 2020 if the deal materializes and subject to the funding approval from the Finance Committee. Meanwhile, the Administration is exploring with the operator of TLT on the same arrangement for franchised buses using the tunnel (i.e. the Government pays the relevant toll and any toll saving will be set aside to the bus franchisees' Funds).

³ The Administration's current proposal is to set the cap at 10% of the annual fare revenue of the franchised bus operator concerned.

The three regulations to exempt the toll for franchised buses using government tunnels as well as the Tsing Ma and Tsing Sha Control Areas (L.N. 237 to L.N. 239 of 2018)

6. The Road Tunnels (Government) (Amendment) (No. 2) Regulation 2018 (L.N. 237), the Tsing Ma Control Area (Tolls, Fees and Charges) (Amendment) Regulation 2018 (L.N. 238) and the Tsing Sha Control Area (Tolls, Fees and Charges) (Amendment) Regulation 2018 (L.N. 239) ("the Three Regulations") are made by CE in Council to amend the Road Tunnels (Government) Regulations (Cap. 368A), the Tsing Ma Control Area (Tolls, Fees and Charges) Regulation (Cap. 498A) and the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B) respectively.

7. The Three Regulations were published in the Gazette on 30 November 2018 and tabled before the Legislative Council ("LegCo") on 5 December 2018 for negative vetting. They exempt buses in respect of which a franchise is in force under the Public Bus Services Ordinance (Cap. 230) from payment of tolls for using tunnels to which the Road Tunnels (Government) Ordinance (Cap. 368) applies (currently are Aberdeen Tunnel, Cross-Harbour Tunnel, Eastern Harbour Crossing, Lion Rock Tunnel, Shing Mun Tunnels, Tate's Cairn Tunnel and Tseung Kwan O Tunnel), as well as the Lantau Link of the Tsing Ma Control Area and the toll area of the Tsing Sha Control Area to which the Tsing Ma Control Area Ordinance (Cap. 498) and the Tsing Sha Control Area Ordinance (Cap. 594) apply respectively. The Three Regulations will come into operation on 17 February 2019.

The Subcommittee

8. The House Committee agreed on 7 December 2018 that a subcommittee should be formed to study the Three Regulations. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon Frankie YICK Chi-ming, the Subcommittee has held one meeting with the Administration to examine the Three Regulations.

9. By a resolution passed at the Council meeting of 12 December 2018, the scrutiny period of the Three Regulations has been extended from that meeting to that of 23 January 2019.

Deliberations of the Subcommittee

10. The Subcommittee in general supports the implementation of the toll exemption for franchised buses using government tolled tunnels as well as the Two Control Areas with a view to relieving fare increase pressure and

benefiting the general public. However, some members raise various enquiries and concerns. The deliberations of the Subcommittee are summarized in the ensuing paragraphs.

Coverage of the toll exemption

11. Some members, including the Chairman, the Deputy Chairman and Mr CHAN Han-pan, take the view that the Administration should include non-franchised buses (residents' service) ("RS") and green minibuses ("GMBs") in the toll exemption proposal. They point out that like franchised buses, RS and GMBs are facing the problem of rising operating costs, and their fares and routings are also regulated by the Government. If only franchised buses are exempted from paying the toll, the fares of RS and GMBs will become less competitive and hence the Administration's objective to maintain the delicate balance among various public transport services will not be achieved. The Subcommittee notes that some RS and GMB operators have indicated that they will decrease fares immediately to benefit passengers if they are included in the toll exemption proposal.

12. The Administration responds that as franchised buses are road-based mass carriers with high carrying capacity, they should be accorded with priority to have the tunnel and road toll exemption. The Administration will adopt the concept of "Congestion Charging" and study the toll levels of government tolled tunnels and the Two Control Areas for all vehicle classes in order to enable efficient people carriers and vehicles that support economic activities to enjoy lower tolls while vehicles with low carrying capacity would need to pay higher tolls. After conducting relevant studies, the Administration will further consider if the exemption arrangement should be extended.

13. The Administration further advises that as compared with franchised buses, there are only a small number of GMB routes plying through tolled tunnels. GMBs also have a lower carrying capacity and the Administration has to carefully consider if it is appropriate to have such an arrangement as franchised bus toll exemption applied to them. As for non-franchised buses, the Administration advises that the services provided by the operators are generally arranged through negotiations between the passenger groups and operators themselves. Fare levels and rate of fare adjustment are subject to their mutual consent rather than the control of TD. Thus, even if the tunnel and road tolls for non-franchised buses can be lowered or exempted in the future, TD does not have the regulatory tools to ensure that the operators will set aside their funds, like those of franchised buses, with a view to relieving the future fare increase pressure, or to ensure that the operators will reduce fares.

14. As regards the suggestion of Mr CHAN Han-pan on abolishing the toll for using the Tsing Ma Control Area by all kinds of vehicles, the Administration advises that it targets to implement toll exemption for franchised buses only at this stage.

Effectiveness of relieving the pressure of bus fare increase

15. Some members point out that under the current Fare Adjustment Arrangement for franchised buses ("FAA"), the actual rate of increase in bus fares approved by CE in Council may be lower than the rate requested by franchised bus operators. They express concern that the setting up of the Fund may encourage franchised bus operators to apply for fare increase more frequently, and CE in Council may tend to approve the fare increase applications at a rate requested by franchised bus operators more easily as the rate of increase to be borne by passengers may be mitigated by the Fund. As a result, the public may not benefit from the toll exemption for franchised buses.

16. The Administration responds that under FAA, the Government will take into account a basket of factors in assessing a bus fare increase application, including changes in operating costs and revenue, and public acceptability and affordability. When processing any fare increase application, CE in Council will consider all the factors under FAA in a holistic manner and the Fund per se will not increase the approved rate of fare adjustment.

17. The Subcommittee enquires about how the toll saved by franchised bus operators will lower the magnitude of the fare increase shouldered by passengers.

18. The Administration advises that when the franchised bus operator applies for fare increase and CE in Council considers that there is a justifiable need to increase the fare, the franchised bus operator will be required to offset the increase by first using the balance in the Fund set up by respective franchised bus operator. Based on the figures in 2017, the total government toll paid by the franchised bus operators accounts for about 3% of their total operating costs. Therefore, broadly speaking, the average magnitude of relieving the fare increase will be about 3%.

Franchised Bus Toll Exemption Fund

Usage of the toll saved by the franchised bus operators

19. Some members, including Dr KWOK Ka-ki, Mr WU Chi-wai and Mr Andrew WAN, suggest that instead of setting up the Fund to mitigate the general fare increases by franchised buses, the Administration should consider requiring the franchised bus operators to use the toll saved to reduce fares for

particular groups of passengers such as students, the elderly or the disabled, as well as selected long-haul bus routes using tunnels. They ask whether the setting up of the Fund is part of the legislative amendments under the Three Regulations.

20. The Administration confirms that setting up the Fund will not require legislative amendments and will be implemented administratively through agreement with the franchised bus operators. It also explains that when determining the fares of franchised buses, the Administration will take into account a basket of factors in a holistic manner, instead of determining the fare levels according to the operating costs of individual bus routes, such as whether they will use tolled tunnels.⁴ If the fares of bus routes using tolled tunnels and roads are reduced directly, it will be unfair to passengers of routes crossing non-tolled tunnels and roads, and inconsistent with the bus fare setting mechanism as a whole. The Administration considers it appropriate to use the toll saved to mitigate the overall fare increase rates of franchised bus operators to benefit all passengers.

21. The Administration also points out that under the current proposal, if individual franchised bus operators do not face pressure for fare increase in the coming few years, toll savings of these operators exceeding the cap will be distributed to their passengers through fare concession. The Administration will discuss with respective franchised bus operators how the particular groups of passengers mentioned by members above can be benefited from the fare concession.

Proposed mechanism of ceasing to draw from the Franchised Bus Toll Exemption Fund

22. The Subcommittee notes that if a franchised bus operator draws from the Fund to mitigate the fare increase approved by the Administration but is able to improve its financial position subsequently due to improved operating environment, the Administration proposes that the operator shall cease to draw from the Fund. The Subcommittee enquires on the details of this arrangement, in particular whether the franchised bus operator will be asked to cease drawing from the balance in the Fund when it earns a small amount of profits.

⁴ For example, both Route 269C (Tin Shui Wai — Kwun Tong) and Route 258X (Tuen Mun (Po Tin Estate) — Kwun Tong) ply between New Territories West and Kwun Tong. Although Route 269C goes via the tolled TLT and Route 258X goes via Tuen Mun Road which is an untolled road, the present fares for both routes are the same at \$18.4. Another example is that both Route 68X (Hung Shui Kiu (Hung Fuk Estate) — Mongkok (Park Avenue)) and Route 63X (Hung Shui Kiu (Hung Fuk Estate) — Jordan (West Kowloon Station)) ply between Hung Shui Kiu and Yau Tsim Mong District. While the former goes via the tolled TLT and the latter goes via the untolled Tuen Mun Road, the present fares for both routes are the same at \$14.2.

23. The Administration advises that under its current proposal, the franchised bus operator shall cease to draw from the Fund in the following two scenarios: (a) the franchised bus operator could still make a profit for the past three consecutive years even if, hypothetically, no mitigating funding were drawn from the Fund; or (b) the operator could make a profit higher than the Weighted Average Cost of Capital of the franchised bus industry (currently at 9.7%) in one year. However, if the cessation of the drawdown from the Fund would render the operator a justifiable case to submit a fare increase application to the Government, the Commissioner for Transport may exercise her discretion to consider allowing the operator not to cease the drawdown from the Fund.

Administrative cost

24. The Subcommittee expresses concern about the administrative cost of implementing the toll exemption and asks whether additional staffing resource is required to monitor the use of the Fund. There is also a view that the Fund should not be left idle and measures should be taken to increase the balance of the Fund.

25. The Administration advises that additional staffing resources have been provided to TD to carry out its various tasks. These staff members are also responsible for monitoring the overall financial position of the franchised bus operators, as well as the use of the Funds.

26. The Administration further advises that TD will enter into an agreement with each of the franchised bus operators to set up the Fund under the respective account of the operator concerned. The administrative cost must not be deducted from the Fund. The Administration will discuss with respective franchised bus operators measures to minimize the administrative cost as appropriate.

Impact of toll exemption on demand for franchised bus services

27. The Subcommittee enquires whether the toll exemption will increase the demand for franchised bus services or divert more traffic to the respective tunnels and the Two Control Areas.

28. The Administration explains that since the routings of franchised buses and service frequencies are determined by the Government based on transport planning considerations, the toll exemption will not generate more traffic in the respective tunnels and the Two Control Areas. The Administration will regularly review the capacity of franchised bus service in the annual bus route planning programmes to ensure that the bus service can meet the passenger demand.

Other views

29. In response to a member's suggestion of adopting information technologies to collect tolls at government tunnels and roads, the Administration advises that it will study how information technologies can be adopted for collecting tolls at new tunnels and roads to increase efficiency.

30. The Subcommittee notes that the Three Regulations do not deal with the Administration's proposal to pay the toll of WHC and TLT on behalf of the franchised bus operators. The Subcommittee also notes that after the Government's takeover of the above two tunnels when their franchises expire in 2023 and 2025 respectively, legislative amendments will be required to provide the necessary legal basis for the continued operation and management of such tunnels as government tunnels, and to repeal the legislation governing the operation of the tunnels under the BOT model. In other words, relevant legislative amendments have to be put to LegCo to include the tunnels concerned in the legal framework of the Road Tunnels (Government) Ordinance (Cap. 368) and its subsidiary legislation. Only when such legislative amendments are agreed by LegCo and subsequently come into operation, the arrangement of exempting the franchised buses from paying the tolls can then be applicable to the tunnel concerned.

Recommendation

31. The Subcommittee raises no objection to the Three Regulations but passed the following motion:

"As non-franchised buses (residents' service ('RS')) and green minibuses ('GMBs'), same as franchised buses, are facing the problem of rising operating costs, and the fares and routings of non-franchised buses (RS) and GMBs are also regulated by the Government, this Subcommittee calls upon the Government to include non-franchised buses (RS) and GMBs in the plan to exempt the toll for using government tunnels as well as the Tsing Ma and Tsing Sha Control Areas with a view to relieving their fare increase pressure."

32. With the understanding that the suggestion set out in the motion may have charging effect for the purposes of Rule 31(1) of the Rules of Procedure in reducing Government revenue which may be collected under statutory authority (i.e. Cap. 368A), the Subcommittee will not propose amendment to the Three Regulations in this regard but requests the Administration to note the suggestion. The Administration's response to the above motion is in paragraphs 12 and 13 of this report, as well as LC Paper No.

CB(4)367/18-19(02) issued to the Subcommittee members on 24 December 2018.

Advice sought

33. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
10 January 2019

Subcommittee on Three Regulations to Exempt the Toll for Franchised Buses Using Government Tunnels as well as the Tsing Ma and Tsing Sha Control Areas

Membership list

Chairman Hon Frankie YICK Chi-ming, SBS, JP

Deputy Chairman Hon YIU Si-wing, BBS

Members Hon Michael TIEN Puk-sun, BBS, JP
Hon WU Chi-wai, MH
Hon CHAN Han-pan, BBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon Andrew WAN Siu-kin
Hon LUK Chung-hung, JP
Hon Jeremy TAM Man-ho
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