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**Paper for the House Committee Meeting
on 11 October 2019**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 26 July 2019**

**SUBSIDIARY LEGISLATION NOT REQUIRED TO BE TABLED AND
NOT SUBJECT TO AMENDMENT**

**Tai Lam Tunnel and Yuen Long Approach Road
Ordinance (Amendment of Schedule 1) Notice 2019**

(L.N. 96)

L.N. 96 is made by the Commissioner for Transport ("the Commissioner") under section 45(1) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) to replace Schedule 1 to Cap. 474 with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Tai Lam Tunnel and Yuen Long Approach Road ("Route 3 (CPS)") with effect from 1 August 2019.

2. Cap. 474 provides for a toll adjustment mechanism for Route 3 (CPS) as follows:

- (a) Route 3 (CPS) Company Limited ("the Franchisee") may, during the franchise period and subject to the relevant requirements stipulated in Cap. 474, apply in writing to the Secretary for Transport and Housing ("the Secretary") to give effect to an anticipated toll increase on each of three specified dates in Schedule 3 (i.e. 1 January 2003, 1 January 2010 and 1 January 2017) (section 39);
- (b) if the Actual Net Revenue ("ANR") of the Franchisee for any year which is not a year immediately preceding a year in which a specified date occurs is less than the Minimum Estimated Net Revenue ("MENR") for that year as specified in Schedule 4, the Franchisee may apply to the Secretary to give effect to the next anticipated toll increase (section 40);
- (c) where the Franchisee has given effect to all the anticipated toll increases and its ANR for any year occurring before the expiry of the

franchise period is less than its MENR for that year as specified in Schedule 4, it may apply to the Secretary to give effect to an additional toll increase (section 42);

- (d) the amounts of toll increase to which the Franchisee may give effect in respect of different categories of vehicles are set out in Schedule 2 (section 44(5));
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 45(1)); and
- (f) section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply in respect of any such notice; accordingly, any such notice, including L.N. 96, is not required to be tabled at, and is not subject to amendment by, the Legislative Council ("LegCo") (section 45(3)).

3. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR19/3/5591/91) issued by the Transport and Housing Bureau ("THB") in July 2019, the Franchisee's ANR has, since the commissioning of Route 3 (CPS) in 1998, consistently fallen short of the level of MENR as stipulated in Schedule 4 to Cap. 474. The Franchisee has effected 16 statutory toll increases since the commissioning of Route 3 (CPS). The last statutory toll increase for Route 3 (CPS) came into effect on 1 August 2018.

4. The present increase as reflected in L.N. 96, which was applied by the Franchisee in August 2015, is the 17th statutory toll increase. The amounts of increase are in accordance with the amounts specified in Schedule 2 to Cap. 474. According to paragraph 9 of the LegCo Brief, the increase is based on the Franchisee's audited 2014-2015 statement of ANR which shows that the Franchisee's ANR for 2014-2015 was \$925 million, which is lower than MENR of \$1,988 million for that year as specified in Schedule 4 to Cap. 474.

5. According to paragraph 11 of the LegCo Brief, the Franchisee will continue to offer concessions to all categories of vehicles so that the current concessionary tolls (which took effect since 1 January 2019) will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of Route 3 (CPS) will not be affected by the changes in the statutory tolls.

6. A comparison of the Route 3 (CPS) statutory tolls before and after the increase under L.N. 96, and the applicable concessionary tolls, is set out in **Appendix I**.

7. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 96.

8. L.N. 96 came into operation on 1 August 2019.

**Western Harbour Crossing Ordinance (Amendment of
Schedule 1) Notice 2019**

(L.N. 97)

9. L.N. 97 is made by the Commissioner under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) to replace Schedule 1 to Cap. 436 with a new Schedule 1 to reflect the increase of statutory tolls payable for the use of the Western Harbour Crossing ("WHC") with effect from 31 July 2019.

10. Cap. 436 provides for a toll adjustment mechanism for WHC which is similar to that for Route 3 (CPS) as described in paragraph 2 above. The mechanism under Cap. 436 is summarized as follows:

- (a) Western Harbour Tunnel Company Limited ("the Company") may, during the franchise period and subject to the relevant requirements stipulated in Cap. 436, apply in writing to the Secretary to give effect to an anticipated toll increase on each of six specified dates in Schedule 4 (i.e. 1 January 2001, 1 January 2005, 1 January 2009, 1 January 2013, 1 January 2017 and 1 January 2021) (section 45);
- (b) where in respect of any year which is not a year ending immediately before a specified date, the net revenue ("NR") of the Company is less than MENR for that year as stipulated in Schedule 5, the Company may apply to the Secretary to give effect to the next anticipated toll increase (section 46);
- (c) where the Company has given effect to all the anticipated toll increases and its NR in respect of any year before the expiry of the franchise period is less than MENR for that year as specified in Schedule 5, the Company may apply to the Secretary to give effect to an additional toll increase (section 48);
- (d) the amounts of toll increase to which the Company may give effect for different categories of vehicles on or after 1 January 2011 are specified in Schedule 3 (section 50);
- (e) where a toll is increased, the Commissioner must by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll (section 52(1)); and

- (f) section 34 of Cap. 1 does not apply in respect of any such notice; accordingly, any such notice, including L.N. 97, is not required to be tabled at, and is not subject to amendment by, LegCo (section 52(3)).

11. According to paragraphs 7 and 8 of the LegCo Brief (File Ref: THB(T)CR 1/4651/99) issued by THB in July 2019, the Company's actual NR has, since the commissioning of WHC in 1997, consistently fallen short of the level of MENR as specified in Schedule 5 to Cap. 436. The Company has effected 17 statutory toll increases since the commissioning of WHC. The last statutory toll increase for WHC came into effect on 31 July 2018.

12. The present increase as reflected in L.N. 97, which was applied by the Company in August 2016, is the 18th statutory toll increase. The amounts of increase are in accordance with the amounts specified in Schedule 3 to Cap. 436. According to paragraph 9 of the LegCo Brief, the increase is based on the Company's audited 2015-2016 statement of NR which shows that the Company's actual NR for 2015-2016 was \$1,467 million, which is lower than MENR of \$2,891 million for that year as specified in Schedule 5 to Cap. 436.

13. According to paragraph 11 of the LegCo Brief, the Company will continue to offer concessions to all categories of vehicles so that the current concessionary tolls (which took effect since 1 June 2019) will be maintained notwithstanding the present increase in statutory tolls. Therefore, users of WHC will not be affected by the changes in the statutory tolls.

14. A comparison of the WHC statutory tolls before and after the increase under L.N. 97, and the applicable concessionary tolls, is set out in **Appendix II**.

15. As advised by the Clerk to the Panel on Transport, the Administration has not consulted the Panel on L.N. 97.

16. L.N. 97 came into operation on 31 July 2019.

Concluding observations

17. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 96 and L.N. 97.

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Appendix I

Tai Lam Tunnel and Yuen Long Approach Road Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 1 August 2019	
1.	Motorcycles, motor tricycles	90	95	22
2.	Private cars, electrically powered passenger vehicles, taxis	95	100	48
3.	Public and private light buses	270	285	100
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	270	285	49
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	100	105	0
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	280	295	55
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	100	105	0
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	300	315	60
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	100	105	0
7.	Public and private single-decked buses	270	285	143
8.	Public and private double-decked buses	285	300	168

Western Harbour Crossing Tolls

Category	Vehicle	Statutory tolls (\$)		Concessionary tolls (\$)
		Before increase	w.e.f. 31 July 2019	
1.	Motorcycles, motor tricycles	140	150	25
2.	Private cars, electrically powered passenger vehicles	240	255	75
	Taxis	240	255	70
3.	Public and private light buses	290	310	85
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	340	360	85
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	240	255	30
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	525	560	110
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	240	255	30
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	725	770	140
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	240	255	30
7.	Public and private single-decked buses	290	310	140
8.	Public and private double-decked buses	430	460	200