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By Fax (3904 1774)

1 April 2021

Ms Vivien LI
Principal Assistant Secretary for Transport
and Housing (Transport)2
Transport and Housing Bureau
21/F, East Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Ms LI,

Free-Flow Tolling (Miscellaneous Amendments) Bill 2021

I am scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, I should be grateful if you could clarify the following matters.

Clauses 9 and 40

It is proposed that the Commissioner for Transport ("Commissioner") would be empowered to designate a government tolled tunnel or Tsing Sha Control Area (collectively referred to as "Tolled Tunnels") to be operated without toll booths by notice published in the Gazette. It is noted that the Commissioner may make different designations in respect of a Tolled Tunnel for traffic flow in different directions.

However, it appears that the Commissioner would not be empowered in the Bill to make different designations in respect of a Tolled Tunnel for traffic flow in the same direction. Without such power, it appears that different tunnel toll payment methods could not co-exist for the traffic flow in the same direction of a Tolled Tunnel if the Bill is passed. Please provide justification for such an arrangement.

Clauses 16 and 53

It is proposed under clauses 16 and 53 of the Bill that it would be an offence if a person, without lawful authority, discloses to another person information obtained or received by or accessible to the person, in connection with performing any function relating to the collection and recovery of tolls payable for the use of a boothless mode Tolled Tunnel ("relevant information"). It is noted that a person would be regarded as having lawful authority to disclose the relevant information if any specified requirement is satisfied. As personal data (including that of vehicle owners) would be involved, please clarify:

- (a) whether the Data Protection Principles ("DPPs") under the Personal Data (Privacy) Ordinance (Cap. 486) should be complied with before disclosing any relevant information under clauses 16 and 53;
- (b) if the answer to question (a) above is in the affirmative, what measures would be adopted to ensure that the disclosure would be in compliance with DPPs; and
- (c) whether the exemptions under Cap. 486 (i.e. sections 58, 59, 60B and 63C) would fall within the ambit of lawful authority under clauses 16 and 53.

It is further noted that "without reasonable excuse" is not an element of the offence under clauses 16 and 53. Please clarify why the Administration has decided not to make "without reasonable excuse" as an element of the offence under clauses 16 and 53.

Clauses 19 (proposed section 22C) and 48 (proposed section 24A)

It is proposed that a financial penalty would be imposed on a toll service provider for its failure to comply with any requirement of the Road Tunnels (Government) Ordinance (Cap. 368) or the Tsing Sha Control Area Ordinance (Cap. 594), or breach of a toll service agreement. Different amounts of financial penalty would be imposed on a toll service provider for the failure or breach which is capable of being remedied and for that which is not capable of being remedied. It is noted that if the failure or breach is capable of being remedied, a financial penalty may not be imposed unless the relevant toll service provider has been afforded "a reasonable opportunity" to comply with the requirement or remedy the breach. Please clarify:

- (a) who would be empowered to determine whether the failure or breach is capable of being remedied or not;
- (b) the criteria for deciding whether the failure or breach is capable of being remedied or not; and
- (c) under what circumstances the relevant toll service provider would be regarded as having had a reasonable opportunity to comply with the requirement or remedy the breach.

Please further clarify:

- (d) except the financial penalty proposed under clauses 19 and 48 of the Bill, whether there would be other consequence (including suspension or termination of a toll service agreement) for a toll service provider who fails to comply with any relevant requirement or is in breach of the toll service agreement, especially if such failure or breach is continuous or occurs frequently; and
- (e) if the answer to question (d) above is in the affirmative, whether an express provision is needed in the Bill to specify such other consequence.

Clauses 28 (proposed 12AAD) and 71 (proposed 4B)

With respect to the defence under the proposed section 12AAD(b) of the Road Tunnels (Government) Regulations (Cap. 368A) and the proposed section 4B(b) of the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B), please clarify the relevant burden and standard of proof, in particular whether the burden on the defendant is only an "evidential burden" (i.e. sufficient evidence is adduced to raise an issue) and what evidence would be required to establish such a defence. Please also consider whether express provisions on the standard of proof would be added to the Bill for the sake of clarity.

Clause 92

It is proposed under Regulation 59A of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) that the Commissioner may require a person to produce proof of his address and e-contact means (i.e. the person's electronic mail address or mobile phone number) in certain circumstances. What documents would be accepted by the Commissioner as sufficient proof of one's e-contact means, in particular his electronic mail address?

I look forward to receiving your reply in both English and Chinese as soon as possible, preferably by **13 April 2021**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alvin Chui', with a stylized flourish at the end.

(CHUI Ho-yin, Alvin)
Assistant Legal Adviser

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