

LEGISLATIVE COUNCIL BRIEF

Road Tunnels (Government) Ordinance
(Chapter 368)

Road Traffic Ordinance
(Chapter 374)

Tsing Sha Control Area Ordinance
(Chapter 594)

FREE-FLOW TOLLING (MISCELLANEOUS AMENDMENTS) BILL 2021

INTRODUCTION

At the meeting of the Executive Council on 16 March 2021, the Council ADVISED and the Chief Executive ORDERED that the Free-Flow Tolling (Miscellaneous Amendments) Bill 2021 (“the Bill”) , at **Annex A**, should be introduced into the Legislative Council (“LegCo”).

A

JUSTIFICATIONS

2. At present, a motorist using a government tolled tunnel¹ or Tsing Sha Control Area (“TSCA”) (hereafter collectively referred to as “Tolled Tunnels”) may stop at a toll booth to pay the toll manually by tendering cash or prepaid toll tickets to a toll collector, or using the “stop-and-go” electronic payment facilities installed thereat. Alternatively, a motorist who drives a vehicle with an Autotoll tag issued by the Autotoll Limited (a private company) may pass through an Autotoll booth without stopping, with the toll payable deducted from a prepaid account.

3. The Hong Kong Smart City Blueprint published in December 2017 promulgated, among others, the development of toll tag (previously known as “in-vehicle unit”) for allowing motorists to pay tunnel tolls by remote means through an automatic tolling system, namely the “free-flow tolling system” (“FFTS”). In the Smart City Blueprint 2.0 published in December 2020, one of the Smart Mobility

¹ Covering Cross-Harbour Tunnel, Eastern Harbour Crossing (“EHC”), Lion Rock Tunnel, Shing Mun Tunnels, Aberdeen Tunnel, Tate’s Cairn Tunnel and will cover the two Build-Operate-Transfer (“BOT”) tunnels, viz. Western Harbour Crossing (“WHC”) and Tai Lam Tunnel (“TLT”), upon expiry of their BOT franchises in August 2023 and May 2025 respectively.

initiatives is the implementation of FFTS at Tolled Tunnels by early 2024². FFTS is a technology-based solution to enable collection of tunnel tolls without requiring a motor vehicle to stop at a toll booth, mainly by making use of the Radio Frequency Identification (“RFID”) technology, with the support of the Automatic Number Plate Recognition (“ANPR”) technology³. Upon implementation of FFTS, the use of a Tolled Tunnel by a motor vehicle will be detected by the FFTS field equipment (i.e. boothless tolling facilities) through reading of a toll tag, which is a self-adhesive RFID sticker, affixed on the windscreen of the motor vehicle⁴ (as shown at **Annex B**).

4. FFTS will bring convenience to motorists by facilitating their payment of tolls in a more efficient manner without the need to stop at a toll booth for manual toll payment, thereby minimising disruption to traffic flow at toll plazas. FFTS could also benefit the commuting public as the existing toll booths (including both toll booths for manual payment and Autotoll booths) at toll plazas will be demolished, potentially freeing up space for other transport-related purposes such as enhancement of existing bus stops. Further, while technically FFTS is similar to the existing service offered by the Autotoll Limited, motorists will not be required to pay administrative fees on a recurrent basis for using FFTS in future. After FFTS is implemented at all Tolled Tunnels, it will become the only toll collection mode for Tolled Tunnels.

Key Elements of the Proposal

5. Currently, the management, operation and maintenance of Tolled Tunnels as well as the charging of tolls for use of Tolled Tunnels are governed by the Road Tunnels (Government) Ordinance (Cap. 368) (“RT(G)O”) and the Tsing Sha Control Area Ordinance (Cap. 594) (“TSCAO”). It is necessary to amend the two Ordinances and their subsidiary legislation in order to implement FFTS at Tolled Tunnels. In addition, to provide the legal backing for toll tags, including their issue, replacement and use under FFTS, amendments to the Road Traffic Ordinance (Cap. 374) (“RTO”) and its subsidiary legislation are required. The legislative proposals are detailed in the ensuing paragraphs.

² Except for WHC and TLT where FFTS will be implemented thereat after the Government’s takeover of these tunnels in August 2023 and May 2025 respectively.

³ ANPR technology will capture the images of a vehicle’s number plate and recognise the vehicle registration mark (“VRM”) automatically.

⁴ The windscreens of a few vehicle models contain metal oxide with no clear zone, which may affect the detection of toll tags by the boothless tolling facilities. For these vehicles, their VRMs can be recognised through ANPR technology. For motorcycles without windscreen, a toll tag can be affixed on a non-metallic tag holder attached to the motorcycle.

(a) Issue of Toll Tags

6. Under FFTS, the Government will issue a toll tag called the vehicle-specific toll tag (“VTT”). As suggested by its name, each VTT is related to a particular vehicle, which will be issued mainly to the registered owner of a licensed vehicle⁵ on application. The first issue of a VTT to a particular licensed vehicle will be free-of-charge, whereas the re-issuance (including replacement) of VTT for a particular licensed vehicle will in general be charged a fee calculated on a full cost-recovery basis. A payment means may be registered in association with the VTT, including a bank account, a credit card or a stored-value facility.

7. To suit individual motorists’ needs, the Government will provide an alternative form of toll tag which is specific to the class of the vehicle concerned (“TT”) (e.g. private cars, goods vehicles, light buses, etc.) instead of the vehicle itself. Since the Transport Department (“TD”) or its Toll Service Provider (“TSP”)⁶ will not be able to ascertain whether a TT is the first one issued to a particular vehicle and any person (including but not limited to a vehicle owner) may procure a TT of any vehicle class given that a TT is not linked to a particular vehicle, procurement of a TT will be charged with a fee calculated on a full cost-recovery basis. Similar to a standard Octopus card, a TT can be procured by any person at designated outlets without any documentary proof (including the purchaser’s relationship with a vehicle). The stored value account associated with the TT can be topped up anonymously at the designated service outlets.

8. To provide legal backing for the issue and replacement of toll tags, we **propose** amending RTO for empowering the Secretary for Transport and Housing (“STH”) to make a new regulation (“the new Toll Tag Regulation”) to specify the relevant details. We also **propose** providing for new offences relating to toll tags,

⁵ International circulation permits (“ICPs”) are issued to Mainland/Macao cross-boundary vehicles with approved Regular Quota for travelling from Guangdong/Macao to Hong Kong, or to motor vehicles which are brought in by visitors from places outside Hong Kong. ICP holders may also apply for VTT for their vehicles for which the ICPs are issued. For vehicles running on roads with trade licences or movement permits, they will not be issued with VTT and will be detected by ANPR technology under FFTS. Trade licences are issued to repairers or dealers of vehicles, and one trade licence can be used on different vehicles that are in the holder’s possession in the course of business, though on separate occasions. In other words, a trade licence is not linked to a particular vehicle. Movement permits are issued to vehicles which are not licensed and not normally used on roads but are only driven for the purpose of proceeding from one place to another. The registered owner of a vehicle or, if the vehicle is used under an ICP, trade licence or movement permit, the holder of the relevant permit/licence will be the “responsible person” of the vehicle whose liability for toll payment will be explained in paragraph 11 of this brief.

⁶ TD will engage a TSP through open tender for handling toll-related matters under FFTS, including issuance of toll tags (for both VTT and TT), toll collection, toll recovery as well as provision of account management and customer services. While TD will also be empowered to handle these matters, this brief will only refer to “TSP” for simplicity.

including forging or interfering with toll tags, affixing incorrect toll tags (e.g. affixing a TT of a wrong vehicle class or affixing a VTT assigned to another vehicle), not affixing toll tags in a manner promulgated by TD, driving a motor vehicle with an incorrect toll tag, etc. under RTO and the new Toll Tag Regulation as appropriate. The new Toll Tag Regulation will be made by STH upon passage of the Bill. The earliest target is to make the Regulation once the 2021/22 legislative session commences, depending on the progress of the scrutiny of the Bill in LegCo.

(b) Toll Collection and Recovery under FFTS

9. When a vehicle affixed with a toll tag (either VTT or TT) passes through a Tolled Tunnel after implementation of FFTS, its use of the tunnel will be detected by the boothless tolling facilities and an appropriate toll will then be charged to and automatically debited from the payment account associated with the VTT, or the stored-value account associated with the TT. We **propose** that where the automated payment cannot be successfully made⁷, a toll payment notification (as an administrative measure) be issued by TSP to the responsible person⁸ through electronic means, reminding him/her to make toll payment in arrears through designated channels within a grace period of seven business days⁹.

10. For a vehicle that is neither affixed with a VTT nor a TT, its use of a Tolled Tunnel will be detected by the ANPR technology. After the detection, the data of the vehicle will be sent to the FFTS backend system. TSP will also send a toll payment notification to the responsible person¹⁰ through electronic means as an administrative arrangement, reminding him/her to settle the toll within the grace period. Illustrations showing the workflow of detection and payment for vehicles with and without toll tags are at **Annex C**.

11. Under the existing Road Tunnels (Government) Regulations (Cap. 368A) (“RT(G)R”) and Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B) (“TSCA(TFC)R”), the toll payment liability rests with the driver. After implementation of FFTS, since the boothless tolling facilities will only capture and store data of VTTs/TTs and images of vehicles passing through a Tolled Tunnel, there is practical difficulty to identify the driver at the time the vehicle passes through a

⁷ For instance, automated payment cannot be made successfully if the responsible person has not set up an automated payment account for the VTT or due to rejection from financial institutions; or because there is insufficient balance in the stored-value payment account associated with a TT.

⁸ See paragraph 11 of this brief.

⁹ The grace period counts from the date on which the vehicle enters the Tolled Tunnel.

¹⁰ See paragraph 11 of this brief.

Tolled Tunnel. We thus **propose** that the registered vehicle owner¹¹ (or the holder of the ICP, trade licence or movement permit under which the vehicle is used)¹² be the “responsible person” of the vehicle and be held liable for toll payment under the Bill. This notwithstanding, certain measures are proposed to reduce the potential impact on the responsible person, including -

- (a) there is an express provision in the Bill to the effect that the right of a responsible person to seek recovery of tolls and surcharges from any person (e.g. the hirer/driver) under any arrangement made in respect of the vehicle is not prejudiced by the imposition of toll liability on the responsible person under the Bill; and
- (b) the penalty against toll evasion in the existing legislation¹³ will be revised to the effect that failure to pay tolls will no longer be punishable by imprisonment.

12. In order to recover tolls payable effectively and efficiently under FFTS and having regard to the existing arrangements prescribed in TSCA(TFC)R, we **propose** providing for the following mechanism for toll recovery (including imposition of surcharges) and toll dispute in the Bill -

- (a) after the use of a Tolled Tunnel, a grace period of seven business days will be allowed for payment of the toll, before a statutory surcharge notice may be issued by TSP. In other words, after becoming aware of his/her alleged toll liability (for instance, on receipt of the administrative toll payment notification), the responsible person may seek clarification from TSP to review his/her payment liability within the grace period before a surcharge notice may be issued by TSP;
- (b) if the responsible person fails to settle the toll payable within the grace period (upon TSP’s maintaining the demand for the toll despite the responsible person’s request for review, where applicable), TSP

¹¹ This proposal has made reference to the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) where fixed penalty notices are issued to the registered owner who may not be in charge of the vehicle concerned at the time of a prescribed traffic contravention (e.g. parking contravention).

¹² Footnote 5 of this brief explains “ICP”, “trade licence” and “movement permit”.

¹³ Pursuant to RT(G)R, toll evasion at government tolled tunnels is an offence and is liable to a fine of \$5,000 and to imprisonment for six months. As regards TSCA, TSCA(TFC)R provides that a convicted driver is liable to a fine at level 2 (\$5,000) and to imprisonment for six months. Under the Bill, we propose removing imprisonment from the penalties in relation to toll evasion at all Tolled Tunnels, irrespective of the actual implementation programme of FFTS at any particular tunnel or Control Area.

will send a statutory surcharge notice to the responsible person by ordinary mail, imposing two tiers of surcharges (i.e. the initial surcharge and further surcharge) with respective payment deadlines¹⁴;

- (c) upon receipt of the surcharge notice, the responsible person has the statutory right to dispute his/her toll liability within 42 calendar days from the date of issue of the surcharge notice. Where the responsible person has so disputed liability, TSP will look into the case and decide whether to cancel the surcharge notice. If TSP decides to uphold the surcharge notice, a notice of rejection will be served by TSP on the responsible person, demanding for the unpaid toll as well as the initial and further surcharges of \$175 and \$350 respectively;
- (d) if the responsible person fails to respond to the surcharge notice or the notice of rejection, and the outstanding toll and surcharges remain unsettled, TSP will refer the case to TD for follow-up actions. TD will, in the name of the Secretary for Justice (“SJ”)¹⁵, make an application to a magistrate. On proof of the responsible person’s default on toll and the surcharges, the magistrate may issue a court order in the absence of the responsible person, demanding him/her to settle within 14 calendar days the outstanding sums plus a penalty equal to the amount of the further surcharge (i.e. \$350);
- (e) on the other hand, if the responsible person further disputes his/her liability upon receipt of the notice of rejection, TD will, in the name of SJ, make an application to the magistrate for issuing a summons to the responsible person for a court hearing of a complaint. If, after hearing of the complaint, the magistrate determines that the substance of the complaint is proved, the magistrate will order settlement of the outstanding payment and may impose a penalty of an amount not less than the amount of the further surcharge (i.e. \$350) and not more than \$5,000; and
- (f) the magistrate may also order TD to take no actions on the responsible person’s application for vehicle transfer and vehicle licence, and order the responsible person to pay the cost of the court

¹⁴ The initial surcharge is set on full cost-recovery basis (at \$175 applicable to all Tolled Tunnels) whereas the further surcharge is set with punitive effect (doubling the initial surcharge, i.e. \$350). The unpaid toll plus the initial surcharge should be settled within 21 calendar days from the date of issue of the surcharge notice. After the expiry of the 21-day period, the further surcharge will be in force. The unpaid toll plus the initial and further surcharges should be settled within another 21-calendar day period.

¹⁵ Arrangement will be made for SJ to appoint TD officers to conduct legal proceedings mentioned in paragraphs 12(d), (e) and (f).

proceedings. If the sums ordered to be paid remain unpaid for over one month, TD may, in the name of SJ, make an application to the magistrate for an order directing that the sum adjudged to be paid and additional sum and costs in the proceedings be levied on any goods and chattels of the person by distress and sale thereof.

13. We also **propose** specifying in the law that any request for refund of a sum paid as toll must be lodged within 60 calendar days from the date on which the toll is allegedly incurred. For this purpose, TSP will keep usage records of Tolled Tunnels for at most 90 calendar days after the use of the tunnel is recorded, save for cases where the responsible person disputes his/her toll payment liability or if the outstanding toll and/or surcharge(s) are not settled within the 90-calendar day period.

14. Specifically, we **propose** amending RT(G)O, TSCAO and their subsidiary legislation to provide for -

- (a) designation of the toll area of a Tolled Tunnel as operated in boothless mode (i.e. FFTS has been implemented at the toll area);
- (b) installation of boothless tolling facilities to enable detection of motor vehicles using Tolled Tunnels under FFTS;
- (c) toll collection and recovery mechanisms set out in paragraphs 9 to 13 above;
- (d) remuneration arrangements for TSP and financial penalties imposed on TSP for breach of a toll service agreement; and
- (e) related offences such as preventing the use of Tolled Tunnels from being detected by FFTS, causing any tolling facilities to operate in a manner that results in underpayment of appropriate toll, etc.

(c) Collection of Email Address or Mobile Phone Number from Responsible Persons

15. FFTS is part of the Government's effort in making Hong Kong a smart city, and quick settlement of toll is expected at the instance when a vehicle passes through a Tolled Tunnel. In line with this, we consider it not efficient to inform a responsible person, by post, of the outstanding toll for settlement before the expiry of the grace period. As outlined in paragraphs 9 and 10 above, a toll payment notification is proposed to be sent by electronic means. It is thus necessary to mandate all responsible persons to provide to TD their email addresses or mobile phone numbers in vehicle-related applications under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) ("RT(R&L)R") (such as an application for registration of a vehicle or for a vehicle licence). Similar to the existing statutory requirement for provision of address proof, TD may suspend the processing of an application if the

applicant is unable to provide an email address or a mobile phone number. With reference to the existing practice in respect of changes of particulars, we also **propose** obliging responsible persons to provide an updated email address or mobile phone number within 72 hours of change to the Commissioner for Transport (“C for T”), and failure to do so will be an offence subject to a fine at level 1 (i.e. \$2,000).

16. Subject to passage of the Bill, TD plans to start collecting email addresses or mobile phone numbers from responsible persons from October 2021 onwards when they submit vehicle-related applications.

(d) Empty Taxi Lane at EHC

17. Currently, taxis carrying no passengers when using EHC are charged at a concessionary toll of \$15 (as opposed to the normal toll of \$25 for taxis with passengers). In order to enjoy the concession, drivers of empty taxis need to pay tolls manually at toll booths to facilitate visual inspection by toll collectors. To enable empty taxis to continue to enjoy the concessionary toll at EHC after FFTS is implemented, there will be an exclusive lane (i.e. “empty taxi lane”) designated under the Road Traffic (Traffic Control) Regulations (Cap. 374G) (“RT(TC)R”) as a prohibited zone for all vehicles except taxis carrying no passengers at EHC¹⁶. Taxis passing through the empty taxi lane will be charged at a toll of \$15 through detection by the boothless tolling facilities of FFTS. Appropriate traffic signs need to be erected in the prohibited zone. Therefore, we **propose** adding a new traffic sign “except taxis carrying no passengers” to RT(TC)R. In case a passenger-carrying taxi or a vehicle other than taxi uses the empty taxi lane, enforcement actions may be taken against misuse of the empty taxi lane on two fronts, firstly, the offences for “contravention of traffic signs”¹⁷ and “entering the prohibited zone”¹⁸; and, secondly, “failure to pay the appropriate toll” for passenger-carrying taxis according to the toll recovery procedures set out in paragraph 12 above.

(e) Exemption from Toll Payment

18. Similar to the existing non-FFTS arrangements, we **propose** that certain types of vehicles, such as vehicles driven by disabled persons, government vehicles,

¹⁶ The designation will be made, by notice published in the Gazette, pursuant to regulation 14(1) of RT(TC)R. Regulation 14(5) of RT(TC)R operates to prohibit any person from driving, in the above prohibited zone, a vehicle other than a taxi carrying no passengers.

¹⁷ Pursuant to regulation 18(4) of RT(G)R, a person not conforming to a traffic sign prescribed under RT(TC)R commits an offence and is liable to a fine of \$5,000 and to imprisonment for three months.

¹⁸ Pursuant to regulation 61(2) of RT(TC)R, any person entering a prohibited zone in contravention of regulation 14(5) of RT(TC)R commits an offence and is liable to a fine of \$2,000.

vehicles used by tunnel operators in the course of duty, franchised buses¹⁹ and any other vehicles determined by C for T, be exempted from toll payment after implementation of FFTS. The toll exemption applicable to these specified categories of vehicles will be effected at the FFTS backend system through detection of their VTTs.

19. Further, to cater for special circumstances (e.g. in case of emergency), we **propose** empowering C for T under RT(G)R and TSCA(TFC)R to waive payment of tolls, in whole or in part, for certain description of vehicles under circumstances considered suitable by C for T, irrespective of whether FFTS has been implemented. We also **propose** specifying in the two aforementioned Regulations that C for T may exercise discretion to extend the grace period of seven business days for settlement of unpaid tolls under FFTS for special cases.

(f) Mandating the Use of Toll Tags in Future

20. It is the Government's vision to mandate the use of toll tags with automated payment for all licensed motor vehicles in future. We **propose** empowering C for T under the new Toll Tag Regulation to specify a date for effecting the mandatory requirement of using toll tags for FFTS.

Implementation Plan

21. After passage of the Bill, TD will work in collaboration with other relevant departments to complete the necessary preparatory tasks, including engagement of TSP, continued development of the FFTS backend system, procurement of the boothless tolling facilities, collection of email addresses or mobile phone numbers of responsible persons, etc., before FFTS is implemented at various tunnels starting from end 2022 so as to ensure a smooth transition from the existing booth-mode toll collection to the boothless mode under FFTS. Tentatively, FFTS will be implemented at the Lion Rock Tunnel, Shing Mun Tunnels and TSCA first, which currently charge flat tolls and are in geographical proximity. The other tunnels, including the Aberdeen Tunnel, Cross-Harbour Tunnel, EHC and Tate's Cairn Tunnel, which are among the most heavily used ones, will be covered later whereby appropriate traffic and transport arrangements as well as other preparatory work such as abolition of toll booths and adjustment of vehicle-passing lanes would be carried out prior to FFTS implementation. FFTS will be implemented at WHC and TLT after the Government's takeover of them upon the expiry of their respective franchises in August 2023 and May 2025.

¹⁹ While the toll for franchised bus is exempted, the exempted toll is saved under the Franchised Bus Toll Exemption Fund for reducing the magnitude of fare increase during application.

OTHER OPTIONS

22. The proposal cannot be implemented without legislative amendments. There is no other option.

THE BILL

23. The main provisions of the Bill are as follows -

- (a) **Parts 2 and 4** amend RT(G)O and TSCAO to provide for designation of toll areas of Tolled Tunnels as operated in boothless mode; appointment of toll service officers for toll collection and recovery under FFTS; remuneration to, and financial penalties to be imposed on, TSP as well as evidentiary provisions (i.e. proof of matters by records and certificates). Opportunity is also taken to adapt colonial references in RT(G)O;
- (b) **Parts 3, 5 and 6** amend RT(G)R, the Tsing Sha Control Area (General) Regulation (Cap. 594A) and TSCA(TFC)R -
 - (i) to confine the driver's liability for non-payment of a toll to booth mode cases;
 - (ii) to provide, in relation to boothless mode cases, -
 - (A) for the responsible person's liability for a toll;
 - (B) for the collection and recovery mechanism and procedures set out in paragraphs 9 to 13 above (in this connection, a collecting authority (which means C for T or a TSP) is responsible for functions performed before court proceedings, including serving, cancelling or withdrawing a surcharge notice or a notice of rejection and for handling claims for refunds);
 - (C) for installation of boothless tolling facilities at Tolled Tunnels, and specification of the associated offences;
- (c) **Part 7** amends RTO to provide for STH's powers to make regulations relating to toll tags and for new offences relating to toll tags (mentioned in paragraph 8 above); and empowers C for T and the Commissioner of Police to retrieve data stored in toll tags;
- (d) **Part 8** makes consequential amendments to the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) to provide for the inclusion of the toll specified in the relevant legislation in the taxi fare, instead of the "toll paid by the driver during hiring";

- (e) **Part 9** amends RT(R&L)R to require responsible persons to provide email addresses or mobile phone numbers in vehicle-related applications and to stipulate the associated offences (see paragraphs 15 and 16 above); and
- (f) **Part 10** amends RT(TC)R to provide for the sign indicating the prohibited zone except for taxis carrying no passengers (see paragraph 17 above).

LEGISLATIVE TIMETABLE

24. The legislative timetable is as follows –

Publication in the Gazette	19 March 2021
First Reading and commencement of Second Reading debate	24 March 2021
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

25. The Bill is in conformity with the Basic Law, including provisions concerning human rights. The civil service, economic, financial, and sustainability implications of the Bill are set out at **Annex D**. The proposal has no environmental, family, gender or productivity implications. The Bill will not affect the current binding effect of RT(G)O, RTO and TSCAO as well as their subsidiary legislation.

D

PUBLIC CONSULTATION

26. We consulted the Transport Advisory Committee (“TAC”) on 15 December 2020. TAC members welcomed the proposed implementation of FFTS and considered that it would be an important milestone for building Hong Kong into a smart city. On 5 January 2021, we consulted the LegCo Panel on Transport on the proposal, and members of the Panel generally supported the proposal. Some Panel members asked if the implementation programme could be expedited; while others enquired about the implementation details, such as enforcement of the empty taxi lane at EHC and whether FFTS and Autotoll would co-exist at a tunnel. TD has also launched a public engagement exercise since December 2020 to enhance public awareness and understanding of toll tags and FFTS, and has arranged engagement meetings with the

transport trades and other stakeholders (e.g. the disabled group) as well as exhibitions at TD's licensing offices.

27. At the engagement meetings, some vehicle trades expressed concerns about the splitting of tolls between responsible persons and drivers, in particular those owners and rentee-drivers of commercial vehicles (e.g. taxis, red minibuses or goods vehicles) as these vehicles are often leased to multiple drivers during different periods or different shifts of a day. To this end, TD will introduce administrative measures and technologies that facilitate toll splitting or toll payment diversion²⁰.

PUBLICITY

28. A press release will be issued and a spokesperson will be available to answer media enquiries. After passage of the Bill, TD will step up publicity efforts through various channels for enhancing community awareness of FFTS and securing the support of vehicle owners to use toll tags.

ENQUIRIES

29. Any enquiry on this brief can be addressed to Ms Vivien LI, Principal Assistant Secretary for Transport and Housing (Transport), at 3509 8192.

Transport and Housing Bureau
17 March 2021

²⁰ Including provision of statement of transaction records to responsible persons, diversion of payment accounts using mobile applications, and the adoption of "two-piece device" such that tolls could be charged automatically to a pre-registered payment account of the driver after the driver's piece is duly connected to the holder and is used in a vehicle affixed with a VTT.

Free-Flow Tolling (Miscellaneous Amendments) Bill 2021

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A BILL To

Amend the Road Tunnels (Government) Ordinance and the Tsing Sha Control Area Ordinance to provide for the operation of tunnels and control area under those Ordinances without toll booths, and for the collection and recovery of tolls payable for the use of tunnels and control area so operated; and to amend the Road Traffic Ordinance to provide for the issue and use of devices for the detection of vehicles for the collection of tolls, and for related purposes.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Free-Flow Tolling (Miscellaneous Amendments) Ordinance 2021.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Part 9 comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 to 10 are amended as set out in those Parts.

Part 2

**Amendments to Road Tunnels (Government)
Ordinance (Cap. 368)**

3. Long title amended

The long title—

Repeal

“management”

Substitute

“management, operation and maintenance”.

4. Part 1 heading added

Before section 1—

Add

“Part 1

Preliminary”.

5. Section 2 amended (interpretation)

(1) Section 2(1), definition of *operator*—

Repeal

“an agreement with the Government for the management of a tunnel to which this Ordinance applies”

Substitute

“a management agreement with the Government”.

(2) Section 2(1), Chinese text, definition of 獲授權人員—

Repeal the full stop**Substitute a semicolon.**

(3) Section 2(1)—

Add in alphabetical order

“additional charge (額外收費) includes a surcharge, punitive or otherwise;

booth mode tunnel (有亭收費隧道) means—

- (a) a tolled tunnel in respect of which no designation under section 8B(1) has effect for traffic flow in any direction; or
- (b) a tolled tunnel in respect of which no designation under section 8B(1) has effect for traffic flow in one direction only, but only in so far as the traffic flow in that direction is concerned;

boothless mode tunnel (無亭收費隧道) means—

- (a) a tolled tunnel in respect of which a designation under section 8B(1) has effect for traffic flow in both directions; or
- (b) a tolled tunnel in respect of which a designation under section 8B(1) has effect for traffic flow in one direction only, but only in so far as the traffic flow in that direction is concerned;

boothless tolling facilities (無亭收費設施) means facilities installed for the collection of tolls through the detection and identification of vehicles passing through a boothless mode tunnel;

business day (營業日) means a day that is not—

- (a) a general holiday;
- (b) a Saturday; or

- (c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

document (文件) includes any form of input into, or output from, an information system and any writing or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

function (職能) includes a power and a duty;

management agreement (管理協議) means an agreement entered into by a person with the Government for the management, operation and maintenance of a tunnel named in Schedule 1 but excludes a toll service agreement;

registered address (登記地址) means the address of a registered owner that appears, in respect of any vehicle registered in the registered owner's name, in the register of vehicles maintained under regulation 4(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E);

toll (隧道費), in relation to a tunnel named in Schedule 1, means a toll, prescribed by regulations made under section 20, for the use of the tunnel;

toll area (收費區), in relation to a tunnel named in Schedule 1, means the part of the tunnel area delineated as such on a plan deposited under section 7;

toll service agreement (隧道費服務協議) means an agreement entered into by a person with the Government for the person to undertake functions relating to the collection and recovery of tolls for the use of a boothless mode tunnel;

toll service officer (收費服務人員) means a person appointed to be a toll service officer under section 14AA;

toll service provider (隧道費服務商) means a person who has entered into a toll service agreement with the Government and includes, in the case of emergency, any person for the time being authorized by the Authority to perform functions relating to the collection and recovery of tolls for the use of a boothless mode tunnel;

toll tag (繳費貼) has the meaning given by section 6A(5) of the Road Traffic Ordinance (Cap. 374);

tolled tunnel (收費隧道) means a tunnel for the use of which a toll is payable under regulations made under section 20;”.

(4) Section 2—

Repeal subsection (2)

Substitute

“(2) To avoid doubt, if, in relation to a tunnel named in Schedule 1, more than one plan has been deposited under section 7—

- (a) a reference to tunnel or tunnel area in this Ordinance is a reference to the area delineated and marked as “tunnel area” and “隧道區” on the plan last so deposited; and
- (b) a reference to toll area in this Ordinance is a reference to the part of the tunnel area delineated and marked as “toll area” and “收費區” on the plan last so deposited.”.

(5) After section 2(2)—

Add

“(3) In this Ordinance, a reference to the use of a boothless mode tunnel by a vehicle, in relation to the liability for a toll, is a reference to the use of the tunnel by the vehicle on or after entering the toll area of the tunnel.

(4) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the performance or discharge of a duty.

(5) To avoid doubt, a reference to the collection and recovery of tolls, in relation to a boothless mode tunnel, includes the operation of boothless tolling facilities.”.

6. **Section 3 amended (application)**

Section 3(2)—

Repeal

“Governor”

Substitute

“Chief Executive”.

7. **Part 2 heading added**

After section 5—

Add

“Part 2

Boundaries and Plans”.

8. **Sections 6, 7 and 8 substituted**

Sections 6, 7 and 8—

Repeal the sections

Substitute

“6. Boundaries and plans

- (1) In relation to a tunnel, the Authority—
 - (a) must determine the boundaries of—
 - (i) the tunnel; and
 - (ii) in the case of a boothless mode tunnel, the toll area; and
 - (b) may, in consultation with the Director, vary the boundaries of the tunnel or (if applicable) its toll area.
- (2) In relation to each tunnel, the Director must prepare a plan delineating the boundaries of the tunnel and (if applicable) its toll area as determined under subsection (1)(a).
- (3) If the boundaries of a tunnel, or the toll area of a tunnel, are varied under subsection (1)(b), the Director must prepare a plan delineating the boundaries of the tunnel and (if applicable) its toll area as varied.

7. Certification and deposit of plans

- (1) The Director must—
 - (a) assign a number to a plan prepared under section 6(2) in relation to a tunnel;
 - (b) sign and date the plan; and
 - (c) certify the plan as being a plan of the tunnel delineating the boundaries of the tunnel and (if applicable) its toll area as determined.
- (2) If a plan is prepared under section 6(3) in relation to a tunnel, the Director must—
 - (a) assign a number to the plan;
 - (b) sign and date the plan; and

- (c) certify the plan as being a plan of the tunnel delineating the boundaries of the tunnel and (if applicable) its toll area as varied.
- (3) A plan numbered, signed, dated and certified under subsection (1) or (2) must be deposited by the Authority in the Land Registry.
- (4) A plan deposited in relation to a tunnel under subsection (3) supersedes any plan previously deposited in relation to the tunnel under that subsection.
- (5) The Authority must, as soon as practicable after depositing a plan under subsection (3), publish a notice in the Gazette that the plan has been so deposited.

8. Proof of plans

In any proceedings before any court, a document, purporting to be a copy of a plan of a tunnel delineating the boundaries of the tunnel and (if applicable) its toll area and certified by the Director, is on its production and in the absence of evidence to the contrary—

- (a) presumed to be a copy of such a plan and so certified; and
- (b) admissible as evidence of those boundaries on the date of certification.

8A. Transitional provisions relating to plans

- (1) In this section—

pre-existing plan (原有圖則) means the last plan of a tunnel deposited under section 7 as in force immediately before the commencement date of section 8 of the Free-Flow Tolling (Miscellaneous Amendments) Ordinance 2021 (of 2021).

- (2) For the purposes of this Ordinance, a pre-existing plan of a tunnel, and the boundaries of the tunnel as delineated on the plan, are to be treated as if they were respectively a plan last deposited in relation to the tunnel under section 7, and the boundaries of the tunnel as delineated on the latter plan.
- (3) Without limiting subsection (2)—
 - (a) a pre-existing plan may be superseded under section 7; and
 - (b) section 8 applies to a document purporting to be a copy of a pre-existing plan of a tunnel, until it is superseded under section 7, in the same way as section 8 applies to a document purporting to be a copy of a plan prepared and certified under sections 6 and 7.”.

9. **Part 3 heading, section 8B and Part 4 heading added**

Before section 9—

Add

“Part 3

Booth Mode and Boothless Mode Tunnels

8B. Designation of boothless mode tunnel

- (1) The Authority may, by notice published in the Gazette, designate that a tolled tunnel is to be operated without toll booths, with effect from a date specified in the notice.
- (2) For the purposes of subsection (1), the Authority—

- (a) may make different designations in respect of a tolled tunnel for traffic flow in different directions; and
- (b) may specify that the designation under a notice takes effect from different dates in respect of a tolled tunnel for traffic flow in different directions.
- (3) A designation under subsection (1) does not prevent tolls from being collected, in the case of emergency or in special circumstances, by any means approved by the Authority.
- (4) A notice published under subsection (1) is not subsidiary legislation.

Part 4

Enforcement”.

10. **Section 9A substituted**

Section 9A—

Repeal the section

Substitute

“9A. Directions to operator and toll service provider

- (1) If the Secretary for Transport and Housing (*Secretary*) considers the public interest so requires, the Secretary may give directions of a general character in writing to an operator in relation to the performance of the functions of the operator, or of authorized officers employed by the operator, under this Ordinance.
- (2) An operator must comply with the directions given under subsection (1).

- (3) Directions given under subsection (1)—
 - (a) may be given—
 - (i) in relation to all tunnels or any particular tunnel; or
 - (ii) to all operators or any particular operator; and
 - (b) may be different for different tunnels and different operators.
- (4) If the Secretary considers the public interest so requires, the Secretary may give directions of a general character in writing to a toll service provider in relation to the performance of the functions of the toll service provider, or of toll service officers employed by the toll service provider, under this Ordinance.
- (5) A toll service provider must comply with the directions given under subsection (4).
- (6) Directions given under subsection (4)—
 - (a) may be given—
 - (i) in relation to all boothless mode tunnels or any particular boothless mode tunnel; or
 - (ii) to all toll service providers or any particular toll service provider; and
 - (b) may be different for different boothless mode tunnels and different toll service providers.”.

11. Section 14AA added

After section 14—

Add**“14AA. Boothless mode tunnel: appointment of toll service officer**

The Authority may in writing appoint any public officer, any person employed by the toll service provider or any other person to be a toll service officer for the purpose of assisting in the performance of functions relating to the collection and recovery of tolls for the use of a boothless mode tunnel.”.

12. Sections 14A and 14B substituted

Sections 14A and 14B—

Repeal the sections**Substitute****“14A. Evidence of facilities-related matter by record and test certificate**

- (1) In any criminal or civil proceedings under this Ordinance—
 - (a) evidence of a matter specified in paragraph (a), (b) or (c) of the definition of *facilities-related matter* in subsection (7) may be given by the production of—
 - (i) a specified record of the matter and a record production certificate; and
 - (ii) a test record of the prescribed facilities producing the specified record and a test certificate; and
 - (b) evidence of a matter specified in paragraph (d) of the definition of *facilities-related matter* in subsection (7) may be given by the production of a test record of the prescribed facilities concerned and a test certificate.

- (2) In any criminal or civil proceedings under this Ordinance, the following are, on their production by or on behalf of the Authority, admissible in evidence without further proof—
- (a) documents purporting to be a specified record and a record production certificate;
 - (b) documents purporting to be a test record and a test certificate.
- (3) A document purporting to be a specified record or a test record and produced under subsection (1) is, in the absence of evidence to the contrary, presumed to be such record.
- (4) A document purporting to be a record production certificate or a test certificate and produced under subsection (1) is, in the absence of evidence to the contrary, presumed to be signed by a person authorized by the Authority.
- (5) A document produced under subsection (1) is evidence of the matters contained in it.
- (6) If any documents are admitted as evidence for the purposes of subsection (1)(a)(i) or (ii) or (b), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings—
- (a) summon the person who signed the document purporting to be the relevant record production certificate or the relevant test certificate; and
 - (b) examine the person as to the subject matter of the documents admitted.
- (7) In this section—

facilities-related matter (設施相關事宜) means—

- (a) a vehicle passing through, at a particular time, a toll booth of a booth mode tunnel;
- (b) a vehicle using a boothless mode tunnel at a particular time;
- (c) a vehicle exceeding a speed limit, indicated by a traffic sign, at a particular time; or
- (d) any matter relating to the functioning or condition of any automatic toll collection facilities, boothless tolling facilities or toll tag as at a particular time;

prescribed facilities (訂明設施)—

- (a) in relation to a matter specified in paragraph (a) or (b) of the definition of *facilities-related matter*—
 - (i) means any facilities designed or adapted for recording the matter and producing a record of the matter; and
 - (ii) includes any facilities designed or adapted for capturing or recording an image of a vehicle passing through any part of a tunnel, or for producing the image or a print of the image, or for both of those purposes;
- (b) in relation to a matter specified in paragraph (c) of the definition of *facilities-related matter*—
 - (i) means any facilities designed or adapted for recording the matter and producing a record of the matter; and
 - (ii) includes any facilities designed or adapted for measuring the speed of a vehicle; and
- (c) in relation to a matter specified in paragraph (d) of the definition of *facilities-related matter*, means any automatic toll collection facilities, boothless tolling facilities or toll tag;

record production certificate (紀錄製備證明書), in relation to a specified record, means a certificate that certifies the circumstances in which the record was produced and that is—

- (a) in a form specified by the Authority;
- (b) signed by a person authorized in that behalf by the Authority; and
- (c) in the same document containing the record or in another document;

specified record (指明紀錄), in relation to a facilities-related matter, means a record, in a form specified by the Authority, of the matter that is produced by using any prescribed facilities;

test certificate (測試證明書), in relation to any prescribed facilities, means a certificate that certifies the testing, inspection or servicing of the facilities and that is—

- (a) in a form specified by the Authority;
- (b) signed by a person authorized in that behalf by the Authority; and
- (c) in the same document containing the test record or in another document;

test record (測試紀錄), in relation to any prescribed facilities, means a record, in a form specified by the Authority, of the testing of the functioning, inspection or servicing of the facilities.

14B. Evidence of miscellaneous matters by certificates

- (1) In any criminal or civil proceedings under this Ordinance—

- (a) evidence of a prescribed matter may be given by the production of a specified certificate of the matter; and
- (b) a document purporting to be a specified certificate is, on its production by or on behalf of the Authority—
 - (i) admissible in evidence, without further proof; and
 - (ii) in the absence of evidence to the contrary, presumed to be signed by a person authorized by the Authority.

(2) A document produced under subsection (1) is evidence of the matters contained in it.

(3) If any document is admitted as evidence for the purposes of this section, the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings—

- (a) summon the person who signed the document; and
- (b) examine the person as to the subject matter of the document.

(4) In this section—

prescribed matter (訂明事宜) means any of the following—

- (a) whether a tunnel, in so far as traffic flow in a direction is concerned, is at a particular time—
 - (i) a booth mode tunnel; or
 - (ii) a boothless mode tunnel;
- (b) any matter contained in a record kept under this Ordinance or the Road Traffic Ordinance (Cap. 374);

- (c) whether any sum payable under this Ordinance has been paid as at a particular date;
- (d) whether any notice, summons or other document required or authorized to be served under this Ordinance has been served and, if so, the date on which and the manner in which it has been served;
- (e) whether a person on whom any notice, summons or other document has been served has, before a particular date, given any response and, if so, the particulars of the response;
- (f) the particulars of any record or information kept by or for the Government or toll service provider in relation to the collection and recovery of tolls, except for any facilities-related matter as defined by section 14A(7);
- (g) a matter prescribed for the purposes of this definition;

specified certificate (指明證明書), in relation to a prescribed matter, means a certificate of the matter that is—

- (a) in a form specified by the Authority; and
- (b) signed by a person authorized in that behalf by the Authority.”.

13. Section 16 amended (disposal of abandoned vehicles)

Section 16(3)(b)(ii) and (5)—

Repeal

“Crown”

Substitute

“Government”.

14. Part 5 heading added

After section 17—

Add

“Part 5

**Management, Regulations, Financial Penalties,
etc.”.**

15. Section 20 amended (regulations)

- (1) Section 20(1)—

Repeal

“Governor in Council”

Substitute

“Chief Executive in Council”.

- (2) Section 20(1)—

Repeal paragraphs (m), (ma), (mb) and (mc)

Substitute

- “(m) the payment and recovery of—
- (i) tolls payable for the use of a tunnel;
 - (ii) the additional charges and penalties in respect of a failure to pay any toll or additional charge or any part of any toll or additional charge; and
 - (iii) the costs in connection with the recovery of the sums referred to in subparagraphs (i) and (ii);
- (ma) a direction by a court that a person’s application for registration, permit or licence, in respect of any vehicle, under the Road Traffic Ordinance (Cap. 374), is to be refused or is not to be acted on if the person is liable for

any sum referred to in paragraph (m) and the sum remains unpaid;

(mb) the waiving, exemption, reduction or refund of the tolls, additional charges, fees or charges prescribed by regulations made under this section;

(mc) authorizing the Authority—

(i) to waive, exempt, reduce or refund the tolls, additional charges, fees or charges prescribed by regulations made under this section; or

(ii) to modify any requirements as to the means or methods by which or the time by which the tolls, additional charges, fees or charges are payable;

(md) the means and methods for the collection of tolls for the use of a tunnel, including the means and methods other than by the collection of cash at toll booths (such as the use of automatic toll collection facilities, boothless tolling facilities, or tickets for the payment of tolls) and connected matters (including the installation of automatic toll collection facilities and boothless tolling facilities, and the regulation of the use of the facilities);”.

(3) Section 20(1)(qa)—

Repeal

“; and”

Substitute a semicolon.

(4) After section 20(1)(qa)—

Add

“(qb) prohibiting the tampering of, interference with, unauthorized access or damage to, or defacement or alteration of, any installation, structure, building,

facility, utility, equipment, appliance, system, record, information, vehicle or other article that—

(i) is in a tunnel area;

(ii) relates to the management, operation and maintenance of a tunnel; or

(iii) relates to the collection and recovery of tolls; and”.

(5) After section 20(2)—

Add

“(3) Subsections (4) and (5) have effect without limiting the other provisions of this section.

(4) Any regulation made under this section—

(a) may provide that a person specified in the regulation as the responsible person of a vehicle is liable to the Government for any toll payable in respect of the vehicle for the use of a boothless mode tunnel;

(b) may provide that the provisions referred to in paragraph (a) have effect regardless of whether another person is the driver of the vehicle when the liability for the toll is incurred;

(c) may provide that different tolls are payable for the use of a tunnel for different classes of vehicles; and

(d) may confer, on a toll service provider, any functions relating to the collection and recovery of tolls including—

(i) serving a notice that imposes any additional charge in respect of a failure to pay any toll or additional charge or any part of any toll or additional charge;

- (ii) cancelling a notice referred to in subparagraph (i);
 - (iii) serving a notice on a person informing the person that an application may be made, or summons may be issued, against the person for recovering any toll or additional charge or any part of any toll or additional charge payable by the person;
 - (iv) withdrawing a notice referred to in subparagraph (iii); and
 - (v) refunding any sum received as the toll paid in respect of a vehicle if the toll service provider is satisfied that no liability has been incurred, in respect of the vehicle, to pay the sum.
- (5) Any regulation made under this section may provide that, in any proceedings for recovering any toll, additional charge and any other sum—
- (a) the case may be proved by the production of records and certificates under sections 14A and 14B in the absence of evidence to the contrary; and
 - (b) an order may be made against the defendant, or the proceedings may otherwise be disposed of, in the absence of the defendant if the defendant has been duly served with—
 - (i) for proceedings commenced by a complaint—the summons in relation to the complaint; or
 - (ii) for any other proceedings—the notice of the proceedings.”.

16. Section 20A added

After section 20—

Add**“20A. Offence of unlawful disclosure of information**

- (1) A person commits an offence if the 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 tunnel.
- (2) For subsection (1), the person has lawful authority if—
 - (a) the person discloses the information—
 - (i) in order to perform a function under this Ordinance;
 - (ii) for the purposes of proceedings brought under this Ordinance;
 - (iii) in relation to performing a function, or for enabling or facilitating any thing or work to be done by any person, under any law of Hong Kong;
 - (iv) in compliance with a court order; or
 - (v) with the consent of each person who is entitled to have the information kept confidential; or
 - (b) the disclosure of the information by the person is in accordance with or incidental to the person’s duty as any public officer, toll service provider or toll service officer.
- (3) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4.”.

17. Section 21 amended (saving)

- (1) Section 21—

Renumber the section as section 21(1).

- (2) section 21(1)—

Repeal

“Crown”

Substitute

“Government”.

- (3) After section 21(1)—

Add

“(2) This Ordinance does not affect the powers or rights of the Government or any public officer under a management agreement or a toll service agreement.”.

18. Section 22A amended (remunerations, etc., under management agreements)

- (1) Section 22A, heading—

Repeal

“Remunerations, etc., under management agreements”

Substitute

“If no section 8B(1) designation for tolled tunnel, moneys received may be retained for remuneration”.

- (2) Section 22A(1)—

Repeal

“an agreement entered into by an operator with the Government for the management of a tunnel to which this Ordinance applies”

Substitute

“a management agreement entered into by an operator in relation to a booth mode tunnel”.

- (3) Section 22A(2)—

Repeal

“an agreement” (wherever appearing)

Substitute

“a management agreement”.

- (4) After section 22A(2)—

Add

“(3) This section does not apply to any moneys raised or received in respect of the use of a tolled tunnel on or after a designation under section 8B(1) has taken effect in respect of the tunnel for traffic flow in at least one direction.”.

19. Sections 22B to 22F added

After section 22A—

Add**“22B. If section 8B(1) designation effective for tolled tunnel, moneys received may be paid as remuneration**

- (1) If the terms of a specified agreement have been approved by the Financial Secretary for the purposes of this section, a part or percentage of the toll-related receipts constituting the sum payable to the contractor under the specified agreement—

- (a) does not form part of the general revenue for the purposes of section 3(1) of the Public Finance Ordinance (Cap. 2); and

- (b) may be paid by the Authority to the contractor in accordance with the specified agreement.

(2) In this section—

Cap. 594 (《第 594 章》) means the Tsing Sha Control Area Ordinance (Cap. 594);

contractor (承辦商) means—

- (a) in relation to a specified agreement that is a management agreement—the operator concerned; or
- (b) in relation to a specified agreement that is a toll service agreement—the toll service provider concerned;

earliest designation day (最早指定日), in relation to a tolled tunnel, means the earliest day on which a designation under section 8B(1) has taken effect in respect of the tunnel for traffic flow in at least one direction;

specified agreement (指明協議) means any of the following agreements that applies to any specified Government infrastructure—

- (a) a management agreement;
- (b) a toll service agreement;

specified Government infrastructure (指明政府基建) means—

- (a) a tolled tunnel in respect of which a designation under section 8B(1) has taken effect for traffic flow in at least one direction;
- (b) a tunnel for the use of which no toll is payable; or
- (c) the Tsing Sha Control Area in respect of which a designation under section 8A(1) of Cap. 594 has

taken effect for traffic flow in at least one direction;

toll-related receipts (隧道費相關收入), in relation to a specified agreement, means all moneys raised or received for the purposes of the Government, whether directly paid to the Government or otherwise, as any of the following—

- (a) a toll received for the use, of a tolled tunnel to which the specified agreement applies, on or after the earliest designation day for the tunnel (whether or not the use is in a direction of traffic flow for which a designation under section 8B(1) has effect);
- (b) an additional charge paid in respect of a failure to pay a toll referred to in paragraph (a) or an additional charge;

Tsing Sha Control Area (青沙管制區) means the Control Area as defined by section 2(1) of Cap. 594.

- (3) The reference in subsection (1) to the sum payable to the contractor under the specified agreement means the aggregate of any remuneration of, or reimbursement to, the contractor payable under the specified agreement in respect of any specified Government infrastructure to which the specified agreement applies.
- (4) Any remuneration or reimbursement taken into account for the purposes of section 22A must not be taken into account for the purposes of subsection (3).

22C. Financial penalties imposed on toll service provider

- (1) If a toll service provider fails to comply with any requirement of this Ordinance or is in breach of a toll service agreement, the Authority may—

- (a) where the failure or breach is capable of being remedied—
 - (i) impose, with the approval of the Chief Executive in Council, a financial penalty on the toll service provider in respect of each such failure or breach; and
 - (ii) impose a further financial penalty on the toll service provider in respect of each continuing failure or breach; and
- (b) where the failure or breach is not capable of being remedied, impose, with the approval of the Chief Executive in Council, a financial penalty on the toll service provider in respect of each such failure or breach.
- (2) The Authority may not impose a financial penalty under subsection (1) unless the Authority—
 - (a) has notified the toll service provider in writing of the relevant failure or breach; and
 - (b) if it is capable of being remedied, has afforded the toll service provider a reasonable opportunity to comply with the requirement or remedy the breach.
- (3) If a financial penalty is imposed, the Authority must serve on the toll service provider a notice in writing—
 - (a) specifying the amount of the financial penalty; and
 - (b) requiring the toll service provider to pay the financial penalty to the Government within 30 days after the date on which the notice is served.
- (4) A financial penalty imposed under subsection (1)(a)(i) must not exceed the amount specified in Division 1 of Part 1 of Schedule 1A.

- (5) A further financial penalty imposed under subsection (1)(a)(ii) must not exceed the amount specified in Division 2 of Part 1 of Schedule 1A for each day the relevant failure or breach continues after the date on which the notice of a financial penalty imposed under subsection (1)(a)(i) is served under subsection (3).
- (6) A financial penalty imposed under subsection (1)(b) must not exceed—
 - (a) on the first occasion on which a financial penalty is imposed on the toll service provider, the amount specified in Division 1 of Part 2 of Schedule 1A;
 - (b) on the second occasion on which a financial penalty is imposed on the toll service provider, the amount specified in Division 2 of Part 2 of Schedule 1A; and
 - (c) on the third or a subsequent occasion on which a financial penalty is imposed on the toll service provider, the amount specified in Division 3 of Part 2 of Schedule 1A.
- (7) For the purposes of subsection (6), in determining whether a particular failure or breach (*subject failure or breach*) is the first, second, third or a subsequent occasion on which a financial penalty is being imposed, only occasions, if any, on which a financial penalty has been imposed in respect of a failure or breach that is of the same type as the subject failure or breach are to be taken into account.
- (8) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 1A.

22D. General provisions relating to financial penalties

- (1) A financial penalty imposed under section 22C is recoverable as a civil debt due to the Government, and may be recovered (in whole or in part) by the Government by—
 - (a) deducting or offsetting any sum that may be payable to a toll service provider under a toll service agreement or otherwise; or
 - (b) enforcing any guarantee or letter of credit provided in accordance with a toll service agreement.
- (2) If the actual costs incurred by a toll service provider are to be taken into account in determining any sum payable to the toll service provider under a toll service agreement, the toll service provider's actual costs are to be calculated without regard to any of the following—
 - (a) a financial penalty paid by the toll service provider;
 - (b) any legal costs incurred by the toll service provider in connection with the Government's recovery of a financial penalty.

22E. Protection of Government and public officers

- (1) No criminal or civil liability (other than that imposed under a management agreement) is incurred by the Government or any public officer in respect of the management, operation and maintenance of a tunnel by an operator.
- (2) No criminal or civil liability (other than that imposed under a toll service agreement) is incurred by the Government or any public officer in respect of the collection and recovery of tolls by a toll service provider.

22F. Service of documents concerning toll for use of boothless mode tunnel

- (1) A specified document may be served on or given to a person—
 - (a) in the case of a natural person, by delivering it to the person personally; or
 - (b) in all cases, by leaving it for the person, or sending it by ordinary or registered post in a letter addressed to the person—
 - (i) in the case of a registered owner, at the person's registered address; or
 - (ii) in any other case, at the person's address last known to the Authority.
- (2) In the absence of evidence to the contrary, a specified document served or given in the manner described in subsection (1) is taken to have been served or given and received at the following time—
 - (a) if it is delivered to the person personally, when it is so delivered;
 - (b) if it is left at the person's registered address or address last known to the Authority (as the case requires), on the second business day after the day on which it is so left;
 - (c) if it is sent by ordinary post or registered post to the person's registered address or address last known to the Authority (as the case requires), on the second business day after the day on which it is so sent.
- (3) In this section—

specified document (指明文件) means a notice, order, summons, direction or other document (however

described) to be served or given (however described) for the purposes of this Ordinance—

- (a) by the Authority, a toll service provider or the court on or to another person; and
- (b) for the purposes of the collection and recovery of tolls payable for the use of a boothless mode tunnel or in connection with proceedings arising from a failure to pay such a toll or any additional charge or penalty in respect of a failure to pay such a toll or any additional charge.”.

20. **Schedule 1A added**

After Schedule 1—

Add

“Schedule 1A

[s. 22C]

**Financial Penalties Imposed on Toll Service
Provider**

Part 1

**Failure to Comply or Breach Capable of being
Remedied**

**Division 1—Failure to Comply or Breach—(Amount
Specified for Purposes of Section 22C(4))**

\$10,000

**Division 2—Continuing Failure to Comply or
Breach—(Amount Specified for Purposes of Section
22C(5))**

\$10,000

Part 2

**Failure to Comply or Breach not Capable of
being Remedied**

**Division 1—First Occasion—(Amount Specified for
Purposes of Section 22C(6)(a))**

\$20,000

**Division 2—Second Occasion—(Amount Specified for
Purposes of Section 22C(6)(b))**

\$50,000

**Division 3—Third or Subsequent Occasion—
(Amount Specified for Purposes of Section 22C(6)(c))**

\$100,000”.

Part 3

Amendments to Road Tunnels (Government)
Regulations (Cap. 368 sub. leg. A)

21. Regulation 2 amended (interpretation)

- (1) Regulation 2(1), Chinese text, definition of
- ~~隧道費收費亭~~
-

Repeal the full stop**Substitute a semicolon.**

- (2) Regulation 2(1)—

Add in alphabetical order*“collecting authority* (收費當局) means the Authority or the toll service provider;*complainant* (申訴人) means a person who makes a complaint under regulation 12AAO;*complaint* (申訴) means a complaint made under regulation 12AAO;*defendant* (被告人) means—

- (a) in relation to an application or order made under regulation 12AAL—a person in respect of whom the application or order is made;
- (b) in relation to a complaint—a person who has been served with a summons in relation to the complaint under regulation 12AAO(3); or
- (c) in relation to an order made on a complaint—a person in respect of whom the order is made;

further surcharge (額外附加費) means a further surcharge imposed under regulation 12AAF(3);*initial surcharge* (首筆附加費) means an initial surcharge imposed under regulation 12AAF(1);*international circulation permit* (國際通行許可證) has the meaning given by regulation 2(1) of the Registration and Licensing Regulations;*judgment amount* (判決款額) means an amount ordered by a magistrate to be paid by a person (other than a complainant) under these regulations, whether by way of unpaid toll, initial or further surcharge, penalty or costs;*movement permit* (車輛行駛許可證) has the meaning given by regulation 2(1) of the Registration and Licensing Regulations;*notice of rejection* (否決通知)—see regulation 12AAJ(1);*prescribed facilities* (訂明設施) has the meaning given by section 14A(7) of the Ordinance;*Registration and Licensing Regulations* (《登記及領牌規例》) means the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E);*responsible person* (負責人), in relation to a motor vehicle, means—

- (a) unless paragraph (b) applies—the registered owner of the vehicle; or
- (b) if the vehicle is used under an international circulation permit, a movement permit or a trade licence—the holder of the international circulation permit, movement permit or trade licence (as the case requires);

surcharge notice (附加費通知)—see regulation 12AAG;*toll* (隧道費) means the toll referred to in regulation 12;

trade licence (試車牌照) has the meaning given by regulation 2(1) of the Registration and Licensing Regulations;”.

22. Regulation 3 amended (prescribed signs and road markings)

Regulation 3(1)(a), after “, 7,”—

Add

“7A,”.

23. Regulation 9 amended (general restrictions)

Regulation 9(1)(b)—

Repeal

everything after “hour”

Substitute

“except—

- (i) where prevented by another vehicle; or
- (ii) at a toll booth (in the case of a booth mode tunnel) or another place where a lesser speed is unavoidable;”.

24. Part III heading substituted

Part III, heading—

Repeal the heading

Substitute

“Part III

Tolls, Surcharges and Recovery Proceedings”.

25. Part III, Division 1 heading added

Before regulation 12—

Add

“Division 1—General Provisions”.

26. Regulation 12 substituted

Regulation 12—

Repeal the regulation

Substitute

“12. Liability for, and amount of, toll

- (1) The toll payable for each occasion of use of a tunnel by a vehicle is the appropriate toll specified in Part 1, 2, 3 or 3A of Schedule 2.
- (2) No toll is payable under paragraph (1) in respect of—
 - (a) a Government vehicle;
 - (b) a vehicle used by an operator in the course of the operator’s duty;
 - (c) a vehicle that is driven by a disabled person and is exempted by the Authority from the operation of paragraph (1); or
 - (d) a vehicle or trailer being towed by another vehicle.
- (3) Buses in respect of which a franchise is in force under the Public Bus Services Ordinance (Cap. 230) are exempted from the operation of paragraph (1).
- (4) The Authority may exempt any vehicle from the operation of paragraph (1) if the Authority considers it in the public interest to do so.
- (5) The Authority may waive the toll payable under paragraph (1) in the event of an emergency or in special circumstances.

- (6) An exemption under paragraph (4) or a waiver under paragraph (5)—
 - (a) may be given in respect of a vehicle or class of vehicles;
 - (b) may be—
 - (i) the same for all cases;
 - (ii) different for different cases or classes of cases; or
 - (iii) different for the same class of cases for different purposes;
 - (c) may be given either unconditionally or subject to any specified conditions, and either wholly or to such an extent as is specified; and
 - (d) may apply at all times or at particular times or periods of time.
- (7) An instrument by which an exemption under paragraph (4), or a waiver under paragraph (5), is given is not subsidiary legislation.”.

27. Regulation 12AA added

After regulation 12—

Add**“12AA. Payment of tolls for use of booth mode tunnels and boothless mode tunnels**

- (1) Division 2 applies in relation to the collection and recovery of tolls payable for the use of a booth mode tunnel.

- (2) Division 3 applies in relation to the collection and recovery of tolls payable for the use of a boothless mode tunnel.”.

28. Part III, Divisions 2 and 3, and Part IIIA heading added

Before regulation 12A—

Add**“Division 2—Provisions Applicable to Booth Mode Tunnel****12AAB. Driver liable if toll not paid**

- (1) Subject to paragraphs (2) and (3), no person—
 - (a) may drive a vehicle past a toll booth other than an autotoll booth unless—
 - (i) the person stops and pays to the toll collector on duty at the booth the appropriate toll for the vehicle;
 - (ii) the person stops and tenders to the toll collector on duty at the booth such toll ticket as may be approved by the Authority appropriate to the vehicle;
 - (iii) if an electronic payment facility is in operation at the booth—the person stops and pays the appropriate toll for the vehicle by using the facility; or
 - (iv) the person stops and tenders to the toll collector on duty at the booth such approval in writing as may be provided by the Authority indicating that the vehicle is

- allowed passage through a tunnel without payment of the appropriate toll; or
- (b) may drive a vehicle past an autotoll booth unless the appropriate toll for the vehicle is paid by debiting the account of the holder of an electronic toll pass opened with the Authority or the operator of the tunnel under regulation 12A.
- (2) Paragraph (1)(a) does not apply to a vehicle of the kind specified in regulation 14(1) or (1A), but the toll payable in respect of such a vehicle may be paid in such manner as the Authority may direct.
- (3) Paragraph (1) does not apply if, in the event of an emergency or in special circumstances, the Authority directs that the appropriate toll payable for the use of a tunnel by a vehicle is to be paid otherwise than as provided in that paragraph. The appropriate toll payable in respect of a vehicle must be paid in such manner as the Authority may direct.
- (4) A person who contravenes paragraph (1) commits an offence and is liable on conviction to a fine at level 2.

Division 3—Provisions Applicable to Boothless Mode Tunnel

Subdivision 1—Toll Payment Requirements and Surcharges

12AAC. Responsible person liable for toll

- (1) On each occasion of use of a tunnel by a vehicle, the responsible person of the vehicle is liable for a toll payable for the use, which toll must be paid in full—

- (a) by automated payment made in accordance with arrangements made with a collecting authority; or
- (b) by a means of payment specified under paragraph (3) within 7 business days after the vehicle enters the tunnel on the occasion of use.
- (2) Despite paragraph (1), the Authority may, in the event of an emergency or in special circumstances, give approval for any toll payable in respect of a vehicle for the use of a tunnel on any occasion to be paid by any means of payment and within any period, and the responsible person must pay, or cause to be paid, the toll accordingly.
- (3) For the purposes of paragraph (1)(b), the Authority—
- (a) may, by notice published in the gazette, specify a means of payment for tolls payable for the use of a tunnel; and
- (b) may, for the purposes of subparagraph (a), specify different means of payment for different cases or different classes of cases.
- (4) A notice published under paragraph (3)(a) is not subsidiary legislation.

12AAD. Whether absence of knowledge or consent etc. constitutes defence

In any proceedings under this Division against the responsible person of a vehicle for the recovery of any unpaid toll, initial or further surcharge, penalty or other sum in respect of the use of a tunnel by the vehicle on an occasion—

- (a) subject to subparagraph (b), it is no defence—

- (i) that the use by the vehicle on the occasion was without the knowledge or consent of the responsible person; or
- (ii) that the vehicle was, at the time of the use on the occasion, driven by or in the charge of a person other than the responsible person; and
- (b) it is a defence if the responsible person proves that, at the time of use by the vehicle on the occasion, the vehicle—
 - (i) was taken and driven away without the responsible person's consent by a person other than a driver employed by the responsible person; or
 - (ii) was stolen.

12AAE. Refund of sum received as toll

- (1) This regulation applies if it is stated in the collecting authority's record in relation to a vehicle (*vehicle A*)—
 - (a) that vehicle A has used a tunnel on a particular occasion (*stated occasion of use*); and
 - (b) that a sum has been paid to the collecting authority as the toll payable in respect of vehicle A for the stated occasion of use (*paid sum*).
- (2) A collecting authority is not under an obligation to make a refund in respect of the paid sum unless—
 - (a) a claim is made to the collecting authority in accordance with this regulation; and
 - (b) the collecting authority is satisfied that—
 - (i) vehicle A was not the vehicle using the tunnel concerned on the stated occasion of use; or

- (ii) the responsible person of vehicle A was, for any other reason, under no liability to pay the paid sum to the collecting authority.
- (3) A claim for refund of a paid sum may only be made by the responsible person of vehicle A.
- (4) A claim for refund of a paid sum must be made by notice in the form specified by the collecting authority, and the notice—
 - (a) must state the reasons for the claim; and
 - (b) must be sent to the collecting authority before the expiry of 60 days after the stated occasion of use (*60-day period*).
- (5) Paragraphs (3) and (4) are taken to have been complied with in respect of a paid sum if, before the expiry of the 60-day period, the responsible person of vehicle A, by written notice to the collecting authority, disputes that vehicle A used the tunnel concerned on the stated occasion of use.
- (6) Regulation 12AAW applies to a refund made pursuant to a claim made under this regulation.
- (7) In this regulation—
 - collecting authority's record* (收費當局紀錄), in relation to a vehicle, means a record of a collecting authority that contains particulars of payment of tolls incurred in respect of the vehicle and is accessible—
 - (a) to the responsible person of the vehicle; and
 - (b) if the responsible person requests that another person be given access to the record, to that other person.

12AAF. Initial and further surcharges imposed for non-payment of toll

- (1) If a toll payable for the use of a tunnel by a vehicle is not paid in accordance with regulation 12AAC, the responsible person is liable to pay to the collecting authority an initial surcharge, of the amount specified in item 1 of Part 2 of Schedule 3, for the non-payment.
- (2) The initial surcharge, in addition to the unpaid toll, must be paid in full by the expiry of 21 days after the date on which a surcharge notice relating to the toll is served (*service date*).
- (3) If the responsible person fails to comply with paragraph (2), the responsible person is also liable to pay to the collecting authority a further surcharge, of the amount specified in item 2 of Part 2 of Schedule 3.
- (4) The further surcharge, in addition to the unpaid toll and initial surcharge, must be paid in full by the expiry of 42 days after the service date.

Subdivision 2—Surcharge Notice, Dispute of Liability and Notice of Rejection**12AAG. Surcharge notice**

- (1) A collecting authority may serve a notice (*surcharge notice*) if—
 - (a) a toll is payable for the use of a tunnel by a vehicle; and
 - (b) the toll has not been paid in full by the means of payment, and within the time, specified in regulation 12AAC.

- (2) The surcharge notice must be served on the person who was the responsible person of the vehicle at the time when the toll was incurred (*recipient*).
- (3) The surcharge notice must be in a form specified by the Authority and must—
 - (a) state the date of the notice;
 - (b) state the name of the collecting authority;
 - (c) state the vehicle registration mark, trade plate number or movement permit number of the vehicle;
 - (d) state the date and time at which the vehicle used the tunnel and the toll to which the surcharge notice relates was incurred;
 - (e) state the amount of the toll for which the recipient is liable and which remains unpaid;
 - (f) state the amount of the initial surcharge that is payable, in addition to the unpaid toll, by the recipient within 21 days after the service of the surcharge notice (*21-day period*);
 - (g) state that, if the recipient fails to pay the unpaid toll and the initial surcharge in full by the expiry of the 21-day period, a further surcharge is also payable, in addition to the unpaid toll and initial surcharge, by the recipient within 42 days after the service of the surcharge notice (*42-day period*);
 - (h) state the amount of the further surcharge;
 - (i) state the means of payment by which the unpaid toll, the initial surcharge and (if applicable) the further surcharge must be paid;
 - (j) state that, if the recipient wishes to dispute the liability for any of the unpaid toll and initial and

- further surcharges, the recipient must, within the 42-day period—
- (i) notify the collecting authority in writing; and
 - (ii) make written representations to the collecting authority to that effect;
- (k) state the address (including, if appropriate, any email address or fax number, as well as the postal address) to which the notification and representations must be sent and the form in which the representations must be made;
- (l) state that the collecting authority may disregard any such notification and representations received by it after the expiry of the 42-day period;
- (m) state that any such notification and representations do not affect the imposition of the further surcharge as referred to in subparagraph (g);
- (n) state that if the recipient neither makes payment, nor gives notification, in accordance with the surcharge notice, an application may be made under regulation 12AAL for recovering the unpaid toll and initial and further surcharges; and
- (o) state that a magistrate may, by an order under regulation 12AAL, require the recipient to pay, in addition to the unpaid toll and initial and further surcharges, a penalty and costs and may also give a direction referred to in regulation 12AAM.
- (4) A surcharge notice may contain such other information as the collecting authority considers appropriate.

12AAH. Notification of dispute of liability

- (1) If a collecting authority serves a surcharge notice on a person (*recipient*) under section 12AAG, and the recipient wishes to dispute liability for any of the unpaid toll and initial and further surcharges, the recipient must, within 42 days after the service of the surcharge notice (*42-day period*)—
 - (a) notify the collecting authority in writing; and
 - (b) make written representations to the collecting authority to that effect.
- (2) The collecting authority may disregard any such notification and representations that it receives after the expiry of the 42-day period.

12AAL. Cancellation of surcharge notice

- (1) If a collecting authority is satisfied that a surcharge notice served on a person should be cancelled, it must—
 - (a) cancel the surcharge notice and notify the person of the decision in writing; and
 - (b) refund any sum of money paid in compliance with the surcharge notice.
- (2) The cancellation of a surcharge notice under paragraph (1) does not prevent the collecting authority from serving a fresh surcharge notice on the person or another person in respect of toll payable for the use of a tunnel on the same or another occasion.
- (3) Regulation 12AAW applies to a refund made under paragraph (1)(b).

12AAJ. Notice of rejection

- (1) If—

- (a) a person on whom a surcharge notice was served (*recipient*) has notified the collecting authority that the recipient disputes liability for any of the unpaid toll and initial and further surcharges to which the surcharge notice relates; but
 - (b) the collecting authority is not satisfied that the surcharge notice should be cancelled,
- the collecting authority may serve on the recipient a notice referred to the paragraph (2) (*notice of rejection*).
- (2) The notice of rejection must—
- (a) state that the collecting authority is not satisfied that the surcharge notice should be cancelled, and state the collecting authority's reasons;
 - (b) state that the collecting authority demands that the recipient must pay, in full, the unpaid toll and initial and further surcharges to which the surcharge notice relates and which remain unpaid (*unpaid sums*);
 - (c) state that the recipient must notify the collecting authority if the recipient wishes to dispute liability for any of the unpaid sums;
 - (d) state that the payment or notification must be made or given by whichever is the later of the following (*deadline*)—
 - (i) the expiry of 42 days after the service of the surcharge notice;
 - (ii) the expiry of 7 days after the service of the notice of rejection;
 - (e) state that if the recipient neither makes payment, nor gives notification, in accordance with the notice of rejection, an application may be made

- under regulation 12AAL for recovering the unpaid sums;
 - (f) state that if the recipient notifies the collecting authority by the deadline that the recipient disputes liability, summons may be issued against the recipient for proceedings under Subdivision 4 before a magistrate for recovering the unpaid sums; and
 - (g) state that, in disposing of any application or proceedings referred to in subparagraph (e) or (f), a magistrate may order the recipient to pay, in addition to the unpaid sums, a penalty and costs and may also give a direction referred to in regulation 12AAM.
- (3) A notice of rejection may contain such other information as the collecting authority considers appropriate.
- (4) A notice of rejection is not to be served under paragraph (1) after the expiry of 6 months after the date on which the toll to which the notice relates was incurred.

12AAK. Withdrawal of notice of rejection.

- (1) If a notice of rejection has been served on a person, the collecting authority may withdraw the notice at any time—
- (a) before an order is made under regulation 12AAL in relation to the person; or
 - (b) before proceedings under Subdivision 4 are commenced against the person.
- (2) If a notice of rejection is withdrawn, the collecting authority must—
- (a) serve a notice of the withdrawal on the person; and

- (b) refund any sum of money paid in compliance with the notice of rejection.
- (3) The withdrawal of a notice of rejection under paragraph (1) does not prevent the collecting authority from serving a fresh notice of rejection on the person or another person in respect of toll payable for the use of a tunnel on the same or another occasion.
- (4) Regulation 12AAW applies to a refund made under paragraph (2)(b).

Subdivision 3—Recovery Proceedings before Issue of Summons

12AAL. Application to magistrate if surcharge notice or notice of rejection is not responded to

- (1) An application may be made to a magistrate for an order under paragraph (3) in respect of a person if—
 - (a) the person—
 - (i) has been served with a surcharge notice;
 - (ii) has not paid, in full, the unpaid toll and initial and further surcharges to which the surcharge notice relates; and
 - (iii) has not notified the collecting authority, in accordance with the surcharge notice, that the person wishes to dispute liability for any of the sums to which the surcharge notice relates; or
 - (b) the person—
 - (i) has been served with a notice of rejection;

- (ii) has not paid, in full, the unpaid toll and initial and further surcharges to which the notice of rejection relates; and
 - (iii) has not notified the collecting authority, in accordance with the notice of rejection, that the person wishes to dispute liability for any of the sums to which the notice of rejection relates.
- (2) The application must be made in the name of the Secretary for Justice and must be accompanied by the documents specified in paragraph (4).
 - (3) A magistrate hearing an application made in accordance with this regulation in respect of a person (*defendant*)—
 - (a) must order the defendant to pay, within 14 days after being served with notice of the order, in full—
 - (i) the unpaid toll and initial and further surcharges to which the surcharge notice or the notice of rejection (as the case requires) relates and which remain unpaid;
 - (ii) a penalty of an amount equal to the amount of the further surcharge; and
 - (iii) any additional sum by way of costs; and
 - (b) may also give a direction referred to in regulation 12AAM and make or give any other order or direction that the magistrate considers appropriate.
 - (4) For an application under this regulation for recovering any toll for the use of a tunnel by a vehicle in a particular direction (*specified direction*) at a particular time (*material time*) and for any related initial and further surcharges, the documents specified for the purposes of paragraph (2) are—

- (a) if paragraph (1)(a) applies—
 - (i) a copy of the surcharge notice; and
 - (ii) a certificate, produced under section 14B of the Ordinance, stating that—
 - (A) the surcharge notice has been served on the defendant in accordance with section 22F of the Ordinance; and
 - (B) the defendant had not notified the collecting authority that the defendant wished to dispute liability for any of the sums to which the surcharge notice relates by the expiry of the period of 42 days after the service of the surcharge notice;
- (b) if paragraph (1)(b) applies—
 - (i) a copy of the notice of rejection; and
 - (ii) a certificate, produced under section 14B of the Ordinance, stating that—
 - (A) the notice of rejection has been served on the defendant in accordance with section 22F of the Ordinance; and
 - (B) the defendant had not notified the collecting authority that the defendant wished to dispute liability for any of the sums to which the notice of rejection relates by the deadline (within the meaning of regulation 12AAJ(2)(d)); and
- (c) in all cases—
 - (i) a certificate, produced under section 14B of the Ordinance, stating that, at the material

- time, the tunnel, for traffic flow in the specified direction, was a boothless mode tunnel;
- (ii) a record and a certificate, produced under section 14A of the Ordinance, stating that a vehicle, identified by a toll tag used in connection with the vehicle or by vehicle registration mark, trade plate number or movement permit number, was detected by prescribed facilities to have used the tunnel in the specified direction at the material time;
- (iii) a certificate, produced under section 14B of the Ordinance, either—
 - (A) stating that the defendant was the registered owner of the vehicle at the material time, and stating the defendant's registered address; or
 - (B) stating that the defendant was the holder of the international circulation permit, movement permit or trade licence under which the vehicle was used at the material time, and stating the defendant's address last known to the Authority; and
- (iv) a certificate, produced under section 14B of the Ordinance, stating that the toll for the use of the tunnel at the material time by the vehicle and related initial and further surcharges (as appropriate) remain wholly or partly unpaid, and stating the particulars of the unpaid sums.

- (5) An application under this regulation may be made in the absence of the defendant and the Secretary for Justice may appoint any person or class of persons to make the application.
- (6) If any order or direction is made or given under paragraph (3), the magistrate must cause notice of the order or direction to be served on the defendant.

12AAM. Direction to refuse applications for vehicle licence, registration of vehicle, etc.

- (1) This regulation applies if—
 - (a) a person is liable for any unpaid toll and initial and further surcharges which remain unpaid, as—
 - (i) the registered owner of a vehicle; or
 - (ii) the holder of the following under which a vehicle is used—
 - (A) an international circulation permit or a movement permit; or
 - (B) a trade licence; and
 - (b) consequently, a magistrate makes an order under regulation 12AAL(3), 12AAN(8) or (11), 12AAQ(4) or 12AAR(6) (*order*), for the person (*judgment debtor*) to pay a judgment amount.
- (2) When making the order, the magistrate may give a direction that, for so long as the judgment debtor fails to pay the judgment amount in full—
 - (a) (if paragraph (1)(a)(i) applies) the Authority—
 - (i) is to take no action under regulation 17(3), (3A), (4) or (5) of the Registration and Licensing Regulations on receipt of any

- notice of transfer of ownership of the vehicle; and
- (ii) is to refuse to license the vehicle under regulation 21(3), (5) or (6) of those Regulations;
- (b) (if paragraph (1)(a)(ii)(A) applies) the Authority—
 - (i) is to take no action under regulation 31 or 53 of the Registration and Licensing Regulations on receipt of an application for an international circulation permit or a movement permit in respect of the vehicle; and
 - (ii) is to refuse to register the vehicle under the Registration and Licensing Regulations; or
- (c) (if paragraph (1)(a)(ii)(B) applies) the Authority is to take no action under regulation 43 of the Registration and Licensing Regulations on receipt of the judgment debtor's application for a trade licence.
- (3) If the judgment amount under the order is not paid within 24 hours after the giving of the direction under paragraph (2), the magistrate must cause notice of the order and the direction to be sent to the Authority.
- (4) A direction under paragraph (2) ceases to have effect if the judgment debtor produces to the Authority a receipt or other evidence to prove that the judgment amount has been paid in full.
- (5) A direction under paragraph (2)(a) ceases to have effect if—
 - (a) the judgment debtor sells or otherwise disposes of the vehicle; and

- (b) the new owner of the vehicle is, at the time of the delivery of the notice of transfer of ownership of the vehicle under regulation 17 of the Registration and Licensing Regulations, in possession of a valid certificate of clearance.
- (6) A certificate of clearance is a certificate issued by the Authority stating that no notice of a valid direction under paragraph (2)(a) appears in the records of the Authority in respect of the vehicle.
- (7) For the purposes of paragraph (5)(b), a certificate of clearance is valid for not more than 72 hours from the time of issue; but no day that is a general holiday is taken into account in computing that period of 72 hours.

12AAN. Review and rescission of regulation 12AAL(3) order

- (1) This regulation applies if an order is made under regulation 12AAL(3) (*specified order*) against a person on the basis that the person neither makes payment, nor gives notification, in accordance with a surcharge notice or notice of rejection served on the person.
- (2) A magistrate may rescind the specified order if, on the person's application, the magistrate is satisfied that the surcharge notice or notice of rejection has not come to the personal notice of the person without any fault on the part of the person.
- (3) An application for the purposes of paragraph (2) must be made within 14 days after the date on which the specified order came to the personal notice of the applicant.
- (4) The applicant must give reasonable notice of the application to the Authority.

- (5) An application for the purposes of paragraph (2) may be made in person or by counsel or solicitor and the magistrate, for the purpose of securing the attendance of witnesses and generally for conducting the proceedings, has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).
- (6) Paragraphs (7) and (8) apply if the magistrate rescinds a specified order relating to an unpaid toll because the surcharge notice has not come to the personal notice of the applicant.
- (7) If the applicant wishes to dispute liability for the unpaid toll, the magistrate must order that the matter be determined in accordance with Subdivision 4.
- (8) If the applicant does not wish to dispute liability for the unpaid toll, the magistrate—
 - (a) must also make an order in the following terms—
 - (i) that the applicant must pay the unpaid toll in full within 14 days after the date on which the order is made; and
 - (ii) that, if the applicant fails to pay the unpaid toll in full within that period, the applicant immediately becomes liable to pay, in addition to the unpaid toll—
 - (A) an initial surcharge and a further surcharge; and
 - (B) a penalty of an amount equal to the amount of the further surcharge; and
 - (b) may further give a direction referred to in regulation 12AAM and make or give any other order or direction that the magistrate considers appropriate.

- (9) Paragraphs (10) and (11) apply if the magistrate rescinds a specified order relating to any unpaid toll and initial and further surcharges (*unpaid sums*) because the notice of rejection has not come to the personal notice of the applicant.
- (10) If the applicant wishes to dispute liability for any of the unpaid sums, the magistrate must order that the matter be determined in accordance with Subdivision 4.
- (11) If the applicant does not wish to dispute liability for any of the unpaid sums, the magistrate—
 - (a) must also make an order in the following terms—
 - (i) that the applicant must pay the unpaid sums in full within 14 days after the date on which the order is made; and
 - (ii) that, if the applicant fails to pay the unpaid sums in full within that period, the applicant immediately becomes liable to pay, in addition to the unpaid sums, a penalty of an amount equal to the amount of the further surcharge; and
 - (b) may further give a direction referred to in regulation 12AAM and make or give any other order or direction that the magistrate considers appropriate.
- (12) A magistrate may for good cause, on an application by the Authority at any time, rescind any specified order.

Subdivision 4—Issue of Summons and Subsequent Recovery Proceedings

12AAO. Complaint to magistrate if liability is disputed

- (1) If—
 - (a) a person has been served with a notice of rejection relating to any unpaid toll and initial and further surcharges and the person has notified the collecting authority, in accordance with the notice of rejection, that the person wishes to dispute liability for any of the sums; or
 - (b) a magistrate, having rescinded an order made under regulation 12AAL(3) against a person, makes an order under regulation 12AAN(7) or (10) regarding a person's dispute of liability for any unpaid toll and initial and further surcharges,

the matter is to be determined in accordance with this Subdivision by a magistrate in a summary way on complaint made in the name of the Secretary for Justice.
- (2) A complaint is not to be made later than—
 - (a) if paragraph (1)(a) applies—the expiry of 6 months after the person notifies the collecting authority, in accordance with the notice of rejection, that the person wishes to dispute liability; or
 - (b) if paragraph (1)(b) applies—the expiry of 6 months after the date on which the order under regulation 12AAN(7) or (10) is made.
- (3) A summons issued in relation to a complaint under paragraph (1) must be served on the person referred to in that paragraph.

- (4) The Secretary for Justice may appoint any person or class of persons to make a complaint.

12AAP. Payment of unpaid toll and surcharges after service of summons

- (1) Proceedings on a complaint terminate if the defendant—
- (a) pays to any magistrate's court, not later than 2 clear business days before the day specified in the summons for the defendant's appearance at the hearing of the complaint, in full—
 - (i) the unpaid toll and initial and further surcharges to which the complaint relates;
 - (ii) a penalty of an amount equal to the amount of the further surcharge; and
 - (iii) the sum of \$500 by way of costs; and
 - (b) produces the summons when making the payment.
- (2) For calculating the number of clear business days in paragraph (1)(a), the day specified in the summons for the appearance of the defendant is to be excluded.

12AAQ. Proceedings in absence of defendant

- (1) If the defendant does not appear at the time and place appointed for the hearing of a complaint, or at any adjourned hearing, the magistrate may, subject to this regulation, proceed to hear and determine the complaint in the absence of the defendant.
- (2) The magistrate must not hear the complaint in the absence of the defendant unless—
- (a) a certificate of service of the summons on the defendant is produced under section 14B of the Ordinance and the magistrate is satisfied that the

summons was served a reasonable time before the time appointed for the hearing; or

- (b) the defendant has appeared on a previous occasion to answer the complaint.
- (3) Regulation 12AAS applies to the proof of the complaint.
- (4) If the substance of the complaint is proved, the magistrate hearing the complaint—
- (a) must order the defendant to pay in full, within 14 days after being served with notice of the order, the unpaid toll and initial and further surcharges to which the complaint relates;
 - (b) may also order the defendant to pay within the 14 days—
 - (i) a penalty of an amount as the magistrate may determine which must not be less than the amount of the further surcharge and must not exceed \$5,000; and
 - (ii) any additional sum by way of costs; and
 - (c) may further give a direction referred to in regulation 12AAM and make or give any other order or direction that the magistrate considers appropriate.
- (5) If any order or direction is made or given under paragraph (4), the magistrate must cause notice of the order or direction to be served on the defendant.

12AAR. Hearing of complaint in presence of defendant

- (1) This regulation applies if a defendant is present at a hearing of a complaint and does not admit the truth of the complaint.
- (2) Regulation 12AAS applies to the proof of the complaint.

- (3) The magistrate is to require the defendant to state the nature of the defendant's defence.
- (4) If the defendant does not, immediately on the magistrate's requirement under paragraph (3), expressly put in issue any allegation of fact contained in a document purporting to be a record or certificate and produced under section 14A or 14B of the Ordinance, the defendant may not at any later stage dispute or adduce evidence to contradict any such fact contained in the document, without the leave of the magistrate.
- (5) After the magistrate makes a requirement under paragraph (3) and the defendant has stated, or has been given an opportunity to state, the nature of the defendant's defence, the magistrate—
 - (a) may proceed to the hearing of the complaint and adjudicate on the complaint; or
 - (b) may adjourn the proceedings and may issue a summons for the appearance of any witness.
- (6) If the substance of a complaint is proved, the magistrate must order the defendant to pay, in full, the unpaid toll and initial and further surcharges to which the complaint relates.
- (7) If an order is made under paragraph (6) against a defendant who, having appeared at a hearing of a complaint, offers no defence or a defence that is frivolous or vexatious—
 - (a) the magistrate may also order the defendant to pay a penalty of an amount determined by the magistrate; and

- (b) the amount of the penalty must not be less than the amount of the further surcharge and must not exceed \$5,000.
- (8) A magistrate making an order under paragraph (6) may further give a direction referred to in regulation 12AAM and make or give any other order or direction that the magistrate considers appropriate.

12AAS. Proof of complaint by certificates

When a complaint, made for recovering any toll for the use of a tunnel by a vehicle in a particular direction (*specified direction*) at a particular time (*material time*) and any related initial and further surcharges, is heard by a magistrate under regulation 12AAQ or 12AAR, the substance of the complaint may be proved by the production of all of the following, in the absence of evidence to the contrary—

- (a) a certificate, produced under section 14B of the Ordinance, stating that, at the material time, the tunnel, for traffic flow in the specified direction, was a boothless mode tunnel;
- (b) a record and a certificate, produced under section 14A of the Ordinance, stating that the vehicle, identified by a toll tag used in connection with the vehicle or by the vehicle registration mark, trade plate number or movement permit number, was detected by prescribed facilities to have used the tunnel in the specified direction at the material time;
- (c) a certificate, produced under section 14B of the Ordinance, either—

- (i) stating that the defendant was the registered owner of the vehicle at the material time, and stating the defendant's registered address; or
- (ii) stating that the defendant was the holder of the international circulation permit, movement permit or trade licence under which the vehicle was used at the material time, and stating the defendant's address last known to the Authority;
- (d) a certificate, produced under section 14B of the Ordinance, stating that the toll for the use of the tunnel at the material time by the vehicle and related initial and further surcharges (as appropriate) remain wholly or partly unpaid, and stating the particulars of the unpaid sums.

12AAT. Costs order

- (1) If a magistrate dismisses a complaint, the magistrate may at the same time make an order for the payment of costs by the complainant of an amount that the magistrate considers appropriate.
- (2) If, on a complaint, a magistrate orders the defendant to pay any unpaid toll or initial or further surcharge (with or without a penalty), the magistrate may also order the defendant to pay costs of an amount that the magistrate considers appropriate.

12AAU. Discontinuance of complaint

The complainant may, without the leave of the magistrate, discontinue a complaint against a defendant at any stage of the proceedings by giving a notice in writing to the defendant and to the magistrate concerned.

12AAV. Distress in cases of non-payment of judgment amount

- (1) If a person is ordered under regulation 12AAL(3), 12AAN(8) or (11), 12AAQ(4) or 12AAR(6) to pay a judgment amount (each order is referred to as a *specified order*), a magistrate, on an application made in the name of the Secretary for Justice (*application*), may order that the amounts specified in paragraph (2) be levied on any goods and chattels of the person by distress and sale.
- (2) The amounts specified for paragraph (1) are—
 - (a) either—
 - (i) if the application relates to 1 specified order—any part of the judgment amount of the specified order that remains unpaid after the expiry of 1 month after the date of the specified order; or
 - (ii) if the application relates to 2 or more specified orders—the aggregate of any part of the judgment amount of each specified order that remains unpaid after the expiry of 1 month after the date of the specified order;
 - (b) an additional sum, by way of costs for making the application (but not any further proceedings), of an amount determined by the magistrate which must not be less than \$50 and must not exceed an amount equal to—
 - (i) if subparagraph (a)(i) applies—the total amount of the initial and further surcharges payable under the specified order; or
 - (ii) if subparagraph (a)(ii) applies—the aggregate of the total amount of the initial and further

- surcharges payable under each specified order; and
- (c) any subsequent costs in the proceedings including the costs of an application under this regulation.
- (3) For the purposes of regulation 12AAM, the sums referred to in paragraph (2)(b) and (c) must be treated as if they were included in the judgment amount.
- (4) The application may be made in the absence of that person and the Secretary for Justice may appoint any person or class of persons to make the application.

Subdivision 5—Miscellaneous Provisions

12AAW. Discharge of collecting authority's obligation to refund

- (1) This regulation applies if a sum was paid to the collecting authority to discharge the liability of a responsible person of a vehicle for any toll, initial or further surcharge, penalty or cost payable under this Division.
- (2) Any obligation of the collecting authority to refund the sum is discharged by the collecting authority refunding the sum—
- (a) if the sum was paid to the collecting authority out of an account—by paying the sum into the account; or
- (b) whether or not subparagraph (a) applies—by paying the sum to the responsible person.
- (3) This regulation applies—
- (a) regardless of the identity of the person by whom, or the means by which, the sum concerned was paid to the collecting authority; and

- (b) regardless of whether any arrangement for payment or reimbursement referred to in regulation 12AAX(1) exists.

12AAX. No prejudice to payment or reimbursement arrangement

- (1) This Division does not prejudice any arrangement made in respect of a vehicle for either or both of the following—
- (a) the payment of a specified sum by another person to discharge the responsible person's liability;
- (b) the reimbursement by another person to the responsible person for paying a specified sum.
- (2) Without limiting paragraph (1), if—
- (a) either—
- (i) an amount was formerly paid by another person to a collecting authority purporting to discharge the responsible person's liability for a specified sum; or
- (ii) an amount was formerly paid by another person to the responsible person purporting to reimburse the responsible person for paying a specified sum; and
- (b) any amount is refunded by a collecting authority to the responsible person in respect of the specified sum,
- regulation 12AAW does not prejudice any right which that other person may have, against the responsible person, in respect of the refunded amount.
- (3) In this regulation—

specified sum (指明款項) means any of the following sums for which the responsible person of a vehicle is liable under this Division—

- (a) any toll incurred for the use of a tunnel by the vehicle;
- (b) any initial and further surcharges, penalty and costs payable under this Division in connection with the toll or its recovery.

Part IIIA

Installation of Facilities, Removal Fees, Permits, Exemptions, Offences, etc.”.

29. Regulation 12A amended (automatic toll collection facilities)

- (1) Regulation 12A, heading—

Repeal

“Automatic”

Substitute

“Booth mode tunnel: automatic”.

- (2) Regulation 12A(1)—

Repeal

“booth as he”

Substitute

“booth at a booth mode tunnel as the Authority”.

- (3) Regulation 12A(1)—

Repeal

“a tunnel”

Substitute

“the tunnel”.

- (4) Regulation 12A(1)—

Repeal

“facilities as he”

Substitute

“facilities as the Authority”.

30. Regulation 12B added

After regulation 12A—

Add

“12B. Boothless mode tunnel: installation of boothless tolling facilities

The Authority may install or permit the installation of boothless tolling facilities and any ancillary facilities at a tunnel for it to be operated as a boothless mode tunnel.”.

31. Regulation 18 amended (offences and penalties)

Regulation 18(1)—

Repeal

“12(2),”.

32. Regulation 18A added

After regulation 18—

Add

“18A. Offences relating to boothless tolling facilities etc.

- (1) A person must not—

- (a) prevent the detection by boothless tolling facilities of the use of a tunnel by a vehicle;

- (b) cause any boothless tolling facilities—
 - (i) to fail to operate; or
 - (ii) to operate in a manner that results in underpayment of an appropriate toll;
 - (c) tamper or interfere with, or cause damage to or defacement or alteration of, any boothless tolling facilities; or
 - (d) tamper or interfere with, or cause damage to or defacement or alteration of, or access without lawful authority, any record, information or system kept or operated by or for the Government or toll service provider in relation to the collection and recovery of tolls.
- (2) A person who contravenes paragraph (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.
- (3) This regulation does not affect the operation of regulations 17 and 18.”.

33. Regulation 19 amended (powers of an operator)

Regulation 19—

Repeal

“12(3),”

Substitute

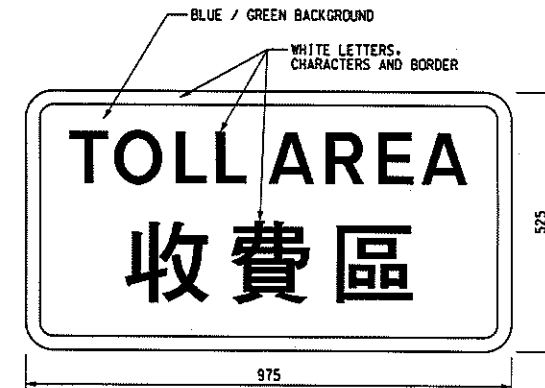
“12AAB(2) and (3),”.

34. Schedule 1 amended (traffic signs and road markings)

Schedule 1, after Figure No. 7—

Add

“FIGURE NO. 7A

TOLL AREA

This sign indicates the start of the toll area.”.

35. Schedule 2 amended (tolls and fees)

- (1) Schedule 2, Part 2—

Repeal item 10**Substitute**

“10. For vehicles with more than 2 axles—

- (a) if the tunnel is a booth mode tunnel \$10 for each additional axle in excess of 2
- (b) if the tunnel is a boothless mode tunnel No additional toll”.

- (2) Schedule 2, Part 3—

Repeal item 2

Substitute

"2. Taxis in which no passenger is carried when using the tunnel where—

- | | |
|--|--------|
| (a) if the tunnel is a booth mode tunnel—the tolls for the use of the tunnel are settled at toll booths other than autotoll booths | \$15 |
| (b) if the tunnel is a boothless mode tunnel—the taxis enter the toll area through a traffic lane designated as a prohibited zone for all vehicles except taxis carrying no passengers, at which the traffic sign of the type shown in Figure No. 113 in Schedule 1 to the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) is used in conjunction with the supplementary plate of the type shown in Figure No. 403A in that Schedule | \$15". |

(3) Schedule 2, Part 3—

Repeal item 10**Substitute**

"10. For vehicles with more than 2 axles—

- | | |
|--|--|
| (a) if the tunnel is a booth mode tunnel | \$25 for each additional axle in excess of 2 |
| (b) if the tunnel is a boothless mode tunnel | No additional toll". |

(4) Schedule 2, Part 3A—

Repeal item 4**Substitute**

"4. Private light buses—

- | | |
|--|--------|
| (a) if the tunnel is a booth mode tunnel | \$24 |
| (b) if the tunnel is a boothless mode tunnel | \$23". |

(5) Schedule 2, Part 3A—

Repeal item 10**Substitute**

"10. For vehicles with more than 2 axles—

- | | |
|--|--|
| (a) if the tunnel is a booth mode tunnel | \$24 for each additional axle in excess of 2 |
| (b) if the tunnel is a boothless mode tunnel | No additional toll". |

36. **Schedule 3 added**

After Schedule 2—

Add

“Schedule 3

[reg. 12AAF]

Surcharges Applicable to Boothless Mode Tunnel**Part 1****Interpretation**

1. In relation to the responsible person of a vehicle that used a boothless mode tunnel—

T amount (隧道費款額) means an amount of toll payable for the use of the tunnel by the vehicle on a single occasion which is not paid in full in accordance with regulation 12AAC;

T+ amount (隧道費連首筆附加費總額) means an amount that—

- (a) comprises—
 - (i) a *T amount*; and
 - (ii) the initial surcharge payable under regulation 12AAF(2) for the *T amount*; and
- (b) is not paid in full by the expiry of 21 days after the date on which a surcharge notice relating to the *T amount* is served.

Part 2**Amounts of Surcharges**

Column 1	Column 2	Column 3
Item	Particulars	Amount
1.	Initial surcharge for every <i>T amount</i>	\$175
2.	Further surcharge for every <i>T+ amount</i>	\$350”.

Part 4

Amendments to Tsing Sha Control Area Ordinance
(Cap. 594)

37. Section 2 amended (interpretation)

(1) Section 2(1), definition of *installation*—**Repeal paragraph (c)****Substitute**

- “(c) any emergency telephone or public address system; and
- (d) any image capturing device, image recording device or vehicle detection device, or any facilities designed or adapted for recording, or producing a record of, any of the following—
- (i) a vehicle passing through any toll booth of the toll area or otherwise using the toll area;
 - (ii) a vehicle exceeding a speed limit, indicated by a traffic sign;”.

(2) Section 2(1), definition of *management agreement*, after “Area”—**Add**

“but excludes a toll service agreement”.

(3) Section 2(1), Chinese text, definition of 職能—

Repeal the full stop**Substitute a semicolon.**

(4) Section 2(1)—

Add in alphabetical order

“*additional charge* (額外收費) includes a surcharge, punitive or otherwise;

boothless tolling facilities (無亭收費設施) means facilities installed for the collection of tolls through the detection and identification of vehicles passing through the toll area operated in boothless mode;

business day (營業日) means a day that is not—

- (a) a general holiday;
- (b) a Saturday; or
- (c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

document (文件) includes any form of input into, or output from, an information system and any writing or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

registered (已登記、登記) means registered under the Road Traffic Ordinance (Cap. 374);

registered address (登記地址) means the address of a registered owner that appears, in respect of any vehicle registered in the registered owner's name, in the register;

toll area operated in booth mode (以有亭模式營運的收費區) means—

- (a) the toll area in respect of which no designation under section 8A(1) has effect for traffic flow in any direction; or
- (b) the toll area in respect of which no designation under section 8A(1) has effect for traffic flow in one direction only, but only in so far as the traffic flow in that direction is concerned,

and a reference to the toll area being operated in booth mode is to be construed accordingly;

toll area operated in boothless mode (以無亭模式營運的收費區) means—

- (a) the toll area in respect of which a designation under section 8A(1) has effect for traffic flow in both directions; or
- (b) the toll area in respect of which a designation under section 8A(1) has effect for traffic flow in one direction only, but only in so far as the traffic flow in that direction is concerned,

and a reference to the toll area being operated in boothless mode is to be construed accordingly;

toll service agreement (使用費服務協議) means an agreement entered into by a person with the Government for the person to undertake functions relating to the collection and recovery of tolls for the use of the toll area operated in boothless mode;

toll service officer (收費服務人員) means a person appointed to be a toll service officer under section 17A;

toll service provider (使用費服務商) means a person who has entered into a toll service agreement with the Government and includes, in the case of emergency, any person for the time being authorized by the Commissioner to perform functions relating to the collection and recovery of tolls for the use of the toll area operated in boothless mode;

toll tag (繳費貼) has the meaning given by section 6A(5) of the Road Traffic Ordinance (Cap. 374);”.

(5) After section 2(3)—

Add

“(4) To avoid doubt, a reference to the collection and recovery of tolls, in relation to the toll area operated in boothless mode, includes the operation of boothless tolling facilities.”.

38. Section 6 amended (preparation of plans)

Section 6(2)—

Repeal

“, and that plan supersedes the original plan, or any previous variation of it”.

39. Section 7 amended (certification and deposit of plans)

After section 7(2)—

Add

“(2A) A plan deposited under subsection (2) supersedes any plan previously deposited under that subsection.”.

40. Part 2A added

After Part 2—

Add

“Part 2A

Modes of Operation

8A. Designation of boothless mode operation

- (1) The Commissioner may, by notice published in the Gazette, designate that the toll area is to be operated without toll booths, with effect from a date specified in the notice.
- (2) For the purposes of subsection (1), the Commissioner—

- (a) may make different designations in respect of the toll area for traffic flow in different directions; and
- (b) may specify that the designation under a notice takes effect from different dates in respect of the toll area for traffic flow in different directions.
- (3) A designation under subsection (1) does not prevent tolls from being collected, in the case of emergency or in special circumstances, by any means approved by the Commissioner.
- (4) A notice published under subsection (1) is not subsidiary legislation.”.

41. Part 3 heading amended (enforcement)

Part 3, Chinese text, heading—

Repeal

“執行”

Substitute

“執法”.

42. Cross-heading and section 17A added

After section 17—

Add*“Toll service officer for operation in boothless mode***17A. Appointment of toll service officer for toll collection in boothless mode operation**

The Commissioner may in writing appoint any public officer, any person employed by the toll service provider or any other person to be a toll service officer for the purpose of assisting in the performance of functions relating to the collection and

recovery of tolls for the use of the toll area operated in boothless mode.”.

43. Cross-heading before section 18 substituted

Cross-heading before section 18—

Repeal the cross-heading**Substitute***“Records and certificates as evidence of facilities-related matters and other matters”.***44. Sections 18 and 19 substituted**

Sections 18 and 19—

Repeal the sections**Substitute****“18. Evidence of facilities-related matter by record and test certificate**

(1) In any criminal or civil proceedings under this Ordinance—

(a) evidence of a matter specified in paragraph (a), (b) or (c) of the definition of *facilities-related matter* in subsection (7) may be given by the production of—

(i) a specified record of the matter and a record production certificate; and

(ii) a test record of the prescribed facilities producing the specified record and a test certificate; and

(b) evidence of a matter specified in paragraph (d) of the definition of *facilities-related matter* in

subsection (7) may be given by the production of a test record of the prescribed facilities concerned and a test certificate.

- (2) In any criminal or civil proceedings under this Ordinance, the following are, on their production by or on behalf of the Commissioner, admissible in evidence without further proof—
 - (a) documents purporting to be a specified record and a record production certificate;
 - (b) documents purporting to be a test record and a test certificate.
- (3) A document purporting to be a specified record or a test record and produced under subsection (1) is, in the absence of evidence to the contrary, presumed to be such record.
- (4) A document purporting to be a record production certificate or a test certificate and produced under subsection (1) is, in the absence of evidence to the contrary, presumed to be signed by a person authorized by the Commissioner.
- (5) A document produced under subsection (1) is evidence of the matters contained in it.
- (6) If any documents are admitted as evidence for the purposes of subsection (1)(a)(i) or (ii) or (b), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings—
 - (a) summon the person who signed the document purporting to be the relevant record production certificate or the relevant test certificate; and
 - (b) examine the person as to the subject matter of the documents admitted.

(7) In this section—

facilities-related matter (設施相關事宜) means—

- (a) a vehicle passing through, at a particular time, a toll booth of the toll area operated in booth mode;
- (b) a vehicle using the toll area operated in boothless mode at a particular time;
- (c) a vehicle exceeding a speed limit, indicated by a traffic sign, at a particular time; or
- (d) any matter relating to the functioning or condition of any automatic toll collection facilities, boothless tolling facilities or toll tag as at a particular time;

prescribed facilities (訂明設施)—

- (a) in relation to a matter specified in paragraph (a) or (b) of the definition of ***facilities-related matter***—
 - (i) means any facilities designed or adapted for recording the matter and producing a record of the matter; and
 - (ii) includes any facilities designed or adapted for capturing or recording an image of a vehicle passing through any part of the toll area, or for producing the image or a print of the image, or for both of those purposes;
- (b) in relation to a matter specified in paragraph (c) of the definition of ***facilities-related matter***—
 - (i) means any facilities designed or adapted for recording the matter and producing a record of the matter; and
 - (ii) includes any facilities designed or adapted for measuring the speed of a vehicle; and

- (c) in relation to a matter specified in paragraph (d) of the definition of *facilities-related matter*, means any automatic toll collection facilities, boothless tolling facilities or toll tag;

record production certificate (紀錄製備證明書), in relation to a specified record, means a certificate that certifies the circumstances in which the record was produced and that is—

- (a) in a form specified by the Commissioner;
- (b) signed by a person authorized in that behalf by the Commissioner; and
- (c) in the same document containing the record or in another document;

specified record (指明紀錄), in relation to a facilities-related matter, means a record, in a form specified by the Commissioner, of the matter that is produced by using any prescribed facilities;

test certificate (測試證明書), in relation to any prescribed facilities, means a certificate that certifies the testing, inspection or servicing of the facilities and that is—

- (a) in a form specified by the Commissioner;
- (b) signed by a person authorized in that behalf by the Commissioner; and
- (c) in the same document containing the test record or in another document;

test record (測試紀錄), in relation to any prescribed facilities, means a record, in a form specified by the Commissioner, of the testing of the functioning, inspection or servicing of the facilities.

19. Evidence of miscellaneous matters by certificates

- (1) In any criminal or civil proceedings under this Ordinance—

- (a) evidence of a prescribed matter may be given by the production of a specified certificate of the matter; and
- (b) a document purporting to be a specified certificate is, on its production by or on behalf of the Commissioner—
 - (i) admissible in evidence, without further proof; and
 - (ii) in the absence of evidence to the contrary, presumed to be signed by a person authorized by the Commissioner.

- (2) A document produced under subsection (1) is evidence of the matters contained in it.

- (3) If any document is admitted as evidence for the purposes of this section, the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings—

- (a) summon the person who signed the document; and
- (b) examine the person as to the subject matter of the document.

- (4) In this section—

prescribed matter (訂明事宜) means any of the following—

- (a) whether the toll area, in so far as traffic flow in a direction is concerned, is operated at a particular time in—
 - (i) booth mode; or
 - (ii) boothless mode;

- (b) any matter contained in a record kept under this Ordinance or the Road Traffic Ordinance (Cap. 374);
- (c) whether any sum payable under this Ordinance has been paid as at a particular date;
- (d) whether any notice, summons or other document required or authorized to be served under this Ordinance has been served and, if so, the date on which and the manner in which it has been served;
- (e) whether a person on whom any notice, summons or other document has been served has, before a particular date, given any response and, if so, the particulars of the response;
- (f) the particulars of any record or information kept by or for the Government or toll service provider in relation to the collection and recovery of tolls, except for any facilities-related matter as defined by section 18(7);
- (g) a matter prescribed for the purposes of this definition;

specified certificate (指明證明書), in relation to a prescribed matter, means a certificate of the matter that is—

- (a) in a form specified by the Commissioner; and
- (b) signed by a person authorized in that behalf by the Commissioner.”.

45. Section 20 amended (installations without approval)

Section 20(1)(b)—

Repeal

“(b) or (c)”

Substitute

“(b), (c) or (d)”.

46. Section 23A added

Part 4, after section 23—

Add

“23A. If section 8A(1) designation effective for toll area, moneys received may be paid as remuneration

- (1) If the terms of a specified agreement have been approved by the Financial Secretary for the purposes of this section, a part or percentage of the toll-related receipts constituting the sum payable to the contractor under the specified agreement—

- (a) does not form part of the general revenue for the purposes of section 3(1) of the Public Finance Ordinance (Cap. 2); and
- (b) may be paid by the Commissioner to the contractor in accordance with the specified agreement.

- (2) In this section—

Cap. 368 (《第 368 章》) means the Road Tunnels (Government) Ordinance (Cap. 368);

Cap. 368 tolled tunnel (《第 368 章》收費隧道) means a tolled tunnel as defined by section 2(1) of Cap. 368;

Cap. 368 tunnel (《第 368 章》隧道) means a tunnel as defined by section 2(1) of Cap. 368;

contractor (承辦商) means—

- (a) in relation to a specified agreement that is a management agreement—the operator concerned; or

- (b) in relation to a specified agreement that is a toll service agreement—the toll service provider concerned;

earliest designation day (最早指定日) means the earliest day on which a designation under section 8A(1) has taken effect in respect of the toll area for traffic flow in at least one direction;

specified agreement (指明協議) means any of the following agreements that applies to any specified Government infrastructure—

- (a) a management agreement;
(b) a toll service agreement;

specified Government infrastructure (指明政府基建) means—

- (a) the Control Area if a designation under section 8A(1) has taken effect in respect of the toll area for traffic flow in at least one direction;
(b) a Cap. 368 tolled tunnel in respect of which a designation under section 8B(1) of Cap. 368 has taken effect for traffic flow in at least one direction; or
(c) a Cap. 368 tunnel for the use of which no toll is payable under Cap. 368;

toll-related receipts (使用費相關收入), in relation to a specified agreement, means all moneys raised or received for the purposes of the Government, whether directly paid to the Government or otherwise, as any of the following—

- (a) a toll received for the use of the toll area on or after the earliest designation day for the toll area (whether or not the use is in a direction of traffic

flow for which a designation under section 8A(1) has effect);

- (b) an additional charge paid in respect of a failure to pay a toll referred to in paragraph (a) or an additional charge.

- (3) The reference in subsection (1) to the sum payable to the contractor under the specified agreement means the aggregate of any remuneration of, or reimbursement to, the contractor payable under the specified agreement in respect of any specified Government infrastructure to which the specified agreement applies.”.

47. Section 24 amended (financial penalties imposed on operator)

Section 24(5), (6) and (7)—

Repeal

“the Schedule” (wherever appearing)

Substitute

“Schedule 1”.

48. Section 24A added

After section 24—

Add

“24A. Financial penalties imposed on toll service provider

- (1) If a toll service provider fails to comply with any requirement of this Ordinance or is in breach of a toll service agreement, the Commissioner may—
- (a) where the failure or breach is capable of being remedied—

- (i) impose, with the approval of the Chief Executive in Council, a financial penalty on the toll service provider in respect of each such failure or breach; and
 - (ii) impose a further financial penalty on the toll service provider in respect of each continuing failure or breach; and
- (b) where the failure or breach is not capable of being remedied, impose, with the approval of the Chief Executive in Council, a financial penalty on the toll service provider in respect of each such failure or breach.
- (2) The Commissioner may not impose a financial penalty under subsection (1) unless the Commissioner—
 - (a) has notified the toll service provider in writing of the relevant failure or breach; and
 - (b) if it is capable of being remedied, has afforded the toll service provider a reasonable opportunity to comply with the requirement or remedy the breach.
- (3) If a financial penalty is imposed, the Commissioner must serve on the toll service provider a notice in writing—
 - (a) specifying the amount of the financial penalty; and
 - (b) requiring the toll service provider to pay the financial penalty to the Government within 30 days after the date on which the notice is served.
- (4) A financial penalty imposed under subsection (1)(a)(i) must not exceed the amount specified in Division 1 of Part 1 of Schedule 2.
- (5) A further financial penalty imposed under subsection (1)(a)(ii) must not exceed the amount specified in Division 2 of Part 1 of Schedule 2 for each day the

- relevant failure or breach continues after the date on which the notice of a financial penalty imposed under subsection (1)(a)(i) is served under subsection (3).
- (6) A financial penalty imposed under subsection (1)(b) must not exceed—
 - (a) on the first occasion on which a financial penalty is imposed on the toll service provider, the amount specified in Division 1 of Part 2 of Schedule 2;
 - (b) on the second occasion on which a financial penalty is imposed on the toll service provider, the amount specified in Division 2 of Part 2 of Schedule 2; and
 - (c) on the third or a subsequent occasion on which a financial penalty is imposed on the toll service provider, the amount specified in Division 3 of Part 2 of Schedule 2.
- (7) For the purposes of subsection (6), in determining whether a particular failure or breach (*subject failure or breach*) is the first, second, third or a subsequent occasion on which a financial penalty is being imposed, only occasions, if any, on which a financial penalty has been imposed in respect of a failure or breach that is of the same type as the subject failure or breach are to be taken into account.”.

49. Section 25 substituted

Section 25—

Repeal the section
Substitute

“25. General provisions relating to financial penalties

- (1) A financial penalty imposed under section 24 or 24A is recoverable as a civil debt due to the Government, and may be recovered (in whole or in part) by the Government by—
 - (a) deducting or offsetting any sum that may be payable to a contractor under a specified agreement or otherwise; or
 - (b) enforcing any guarantee or letter of credit provided in accordance with a specified agreement.
- (2) If the actual costs incurred by a contractor are to be taken into account in determining any sum payable to the contractor under a specified agreement, the contractor's actual costs are to be calculated without regard to any of the following—
 - (a) a financial penalty paid by the contractor;
 - (b) any legal costs incurred by the contractor in connection with the Government's recovery of a financial penalty.
- (3) In this section—

contractor (承辦商) means—

 - (a) in relation to any financial penalty imposed under section 24—an operator; or
 - (b) in relation to any financial penalty imposed under section 24A—a toll service provider;

specified agreement (指明協議) means—

 - (a) in relation to any financial penalty imposed under section 24—a management agreement; or
 - (b) in relation to any financial penalty imposed under section 24A—a toll service agreement.”

50. Part 6 heading amended (powers to make regulations and amend Schedule)

Part 6, English text, heading—

Repeal

“SCHEDULE”

Substitute

“SCHEDULES”.

51. Section 26 amended (regulations)

(1) Section 26(1)—

Repeal paragraphs (a) and (b)**Substitute**

- “(a) prescribing, and providing for the payment and recovery of—
- (i) tolls payable for the use of the toll area;
 - (ii) the additional charges and penalties in respect of a failure to pay any toll or additional charge or any part of any toll or additional charge; and
 - (iii) the costs in connection with the recovery of the sums referred to in subparagraphs (i) and (ii);
- (b) providing for a direction by a court that a person's application for registration, permit or licence in respect of any vehicle, under the Road Traffic Ordinance (Cap. 374), is to be refused or is not to be acted on if the person is liable for any sum referred to in paragraph (a) and the sum remains unpaid;”.

(2) Section 26(1)(d)—

Repeal

“tolls and”

Substitute

“tolls for the use of the toll area operated in booth mode and”.

- (3) Section 26(1)(d)—

Repeal

“tolls;”

Substitute

“such tolls;”.

- (4) Section 26(1)(h)—

Repeal the full stop**Substitute a semicolon.**

- (5) After section 26(1)(h)—

Add

“(i) authorizing the Commissioner—

- (i) to waive, exempt, reduce or refund the tolls, additional charges, fees or charges prescribed by regulations made under this subsection; or
- (ii) to modify any requirements as to the means or methods by which or the time by which the tolls, additional charges, fees or charges are payable.”.

- (6) Section 26(2)—

Repeal paragraph (a)**Substitute**

“(a) providing for—

- (i) the means and methods for the collection of tolls for the use of the toll area, including the means and methods other than by the collection of cash at toll booths (such as the use of automatic toll collection

facilities, boothless tolling facilities, or tickets for the payment of tolls); and

- (ii) connected matters (including the installation of automatic toll collection facilities and boothless tolling facilities, and the regulation of the use of the facilities);”.

- (7) Section 26(2)—

Repeal paragraph (u)**Substitute**

“(u) prohibiting the tampering of, interference with, unauthorized access or damage to, or defacement or alteration of, any installation, structure, building, facility, utility, equipment, appliance, system, record, information, vehicle or other article that—

- (i) is in the Control Area;
- (ii) relates to the management, operation and maintenance of the Control Area; or
- (iii) relates to the collection and recovery of tolls;”.

- (8) After section 26(4)—

Add

“(5) Subsections (6) and (7) have effect without limiting the other provisions of this section.

- (6) Any regulation made under subsection (1)—

- (a) may provide that a person specified in the regulation as the responsible person of a vehicle is liable to the Government for any toll payable in respect of the vehicle for the use of the toll area operated in boothless mode;
- (b) may provide that the provisions referred to in paragraph (a) have effect regardless of whether

- another person is the driver of the vehicle when the liability for the toll is incurred;
- (c) may provide that different tolls are payable for the use of the toll area for different classes of vehicles; and
 - (d) may confer, on a toll service provider, any functions relating to the collection and recovery of tolls including—
 - (i) serving a notice that imposes any additional charge in respect of a failure to pay any toll or additional charge or any part of any toll or additional charge;
 - (ii) cancelling a notice referred to in subparagraph (i);
 - (iii) serving a notice on a person informing the person that an application may be made, or summons may be issued, against the person for recovering any toll or additional charge or any part of any toll or additional charge payable by the person;
 - (iv) withdrawing a notice referred to in subparagraph (iii); and
 - (v) refunding any sum received as toll paid in respect of a vehicle if the toll service provider is satisfied that no liability has been incurred, in respect of the vehicle, to pay the sum.
- (7) Any regulation made under subsection (1) may provide that, in any proceedings for recovering any toll, additional charge and any other sum—

- (a) the case may be proved on the production of records and certificates under sections 18 and 19 in the absence of evidence to the contrary; and
- (b) an order may be made against the defendant, or the proceedings may otherwise be disposed of, in the absence of the defendant if the defendant has been duly served with—
 - (i) for proceedings commenced by a complaint—the summons in relation to the complaint; or
 - (ii) for any other proceedings—the notice of the proceedings.”.

52. Section 27 amended (amendment of Schedule)

- (1) Section 27, English text, heading—

Repeal**“Schedule”****Substitute****“Schedules”.**

- (2) Section 27—

Repeal**“the Schedule”****Substitute****“Schedules 1 and 2”.****53. Section 27A added**

Part 7, before section 28—

Add

“27A. Offence of unlawful disclosure of information

- (1) A person commits an offence if the 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 the toll area operated in boothless mode.
- (2) For subsection (1), the person has lawful authority if—
 - (a) the person discloses the information—
 - (i) in order to perform a function under this Ordinance;
 - (ii) for the purposes of proceedings brought under this Ordinance;
 - (iii) in relation to performing a function, or for enabling or facilitating any thing or work to be done by any person, under any law of Hong Kong;
 - (iv) in compliance with a court order; or
 - (v) with the consent of each person who is entitled to have the information kept confidential; or
 - (b) the disclosure of the information by the person is in accordance with or incidental to the person's duty as any public officer, toll service provider or toll service officer.
- (3) A person who commits an offence under subsection (1) is liable on conviction to a fine at level 4.”

54. Sections 28 and 29 substituted

Sections 28 and 29—

Repeal the sections**Substitute****“28. Directions to operator and toll service provider**

- (1) If the Secretary considers the public interest so requires, the Secretary may give directions of a general character in writing to an operator in relation to the performance of the functions of the operator, or of authorized officers employed by the operator, under this Ordinance.
- (2) An operator must comply with the directions given under subsection (1).
- (3) If the Secretary considers the public interest so requires, the Secretary may give directions of a general character in writing to a toll service provider in relation to the performance of the functions of the toll service provider, or of toll service officers employed by the toll service provider, under this Ordinance.
- (4) A toll service provider must comply with the directions given under subsection (3).

29. Protection of Government and public officers

- (1) No criminal or civil liability (other than that imposed under a management agreement) is incurred by the Government or any public officer in respect of the management, operation and maintenance of the Control Area by an operator.
- (2) No criminal or civil liability (other than that imposed under a toll service agreement) is incurred by the Government or any public officer in respect of the collection and recovery of tolls by a toll service provider.”

55. Section 29A added

After section 29—

Add**“29A. Service of documents concerning toll for use of toll area operated in boothless mode**

- (1) A specified document may be served on or given to a person—
 - (a) in the case of a natural person, by delivering it to the person personally; or
 - (b) in all cases, by leaving it for the person, or sending it by ordinary or registered post in a letter addressed to the person—
 - (i) in the case of a registered owner, at the person’s registered address; or
 - (ii) in any other case, at the person’s address last known to the Commissioner.
- (2) In the absence of evidence to the contrary, a specified document served or given in the manner described in subsection (1) is taken to have been served or given and received at the following time—
 - (a) if it is delivered to the person personally, when it is so delivered;
 - (b) if it is left at the person’s registered address or address last known to the Commissioner (as the case requires), on the second business day after the day on which it is so left;
 - (c) if it is sent by ordinary post or registered post to the person’s registered address or address last known to the Commissioner (as the case requires), on the

second business day after the day on which it is so sent.

(3) In this section—

specified document (指明文件) means a notice, order, summons, direction or other document (however described) to be served or given (however described) for the purposes of this Ordinance—

- (a) by the Commissioner, a toll service provider or the court on or to another person; and
- (b) for the purposes of the collection and recovery of tolls payable for the use of the toll area operated in boothless mode or in connection with proceedings arising from a failure to pay such a toll or any additional charge or penalty in respect of a failure to pay such a toll or any additional charge.”.

56. Section 30 amended (saving)

After section 30(2)—

Add

“(3) This Ordinance does not affect the powers or rights of the Government or any public officer under a management agreement or a toll service agreement.”.

57. Schedule amended (financial penalties)

(1) The Schedule—

Renumber the Schedule as Schedule 1.

(2) Schedule 1, heading, after “PENALTIES”—

Add

“IMPOSED ON OPERATOR”.

58. **Schedule 2 added**
After Schedule 1—
Add

“Schedule 2

[ss. 24A & 27]

**Financial Penalties Imposed on Toll Service
Provider****Part 1****Failure to Comply or Breach Capable of being
Remedied****Division 1—Failure to Comply or Breach—(Amount
Specified for Purposes of Section 24A(4))**

\$10,000

**Division 2—Continuing Failure to Comply or
Breach—(Amount Specified for Purposes of Section
24A(5))**

\$10,000

Part 2**Failure to Comply or Breach not Capable of
being Remedied****Division 1—First Occasion—(Amount Specified for
Purposes of Section 24A(6)(a))**

\$20,000

**Division 2—Second Occasion—(Amount Specified for
Purposes of Section 24A(6)(b))**

\$50,000

**Division 3—Third or Subsequent Occasion—
(Amount Specified for Purposes of Section 24A(6)(c))**

\$100,000”.

Part 5**Amendments to Tsing Sha Control Area (General)
Regulation (Cap. 594 sub. leg. A)****59. Section 2 amended (interpretation)**Section 2(1), definition of *agent*—**Repeal**

“tolls,”

Substitute

“a toll for the use of the toll area operated in booth mode.”

60. Part 4, Division 1 added

Part 4, before section 17—

Add**“Division 1—Operation in Booth Mode****16A. Application of Division 1**

This Division applies in relation to the collection of tolls for the use of the toll area operated in booth mode.”

61. Section 19 amended (prohibition against interference with or falsification of electronic toll passes)

Section 19(1)(a) and (2)(a), Chinese text—

Repeal

“竄改”

Substitute

“更改”.

62. Part 4, Division 2 added

Part 4, after section 19—

Add**“Division 2—Operation in Boothless Mode****19A. Application of Division 2**

This Division applies in relation to the collection of tolls for the use of the toll area operated in boothless mode.

19B. Installation of boothless tolling facilities

The Commissioner may install or permit the installation of boothless tolling facilities and any ancillary facilities in the toll area for it to be operated in boothless mode.

19C. Offences relating to boothless tolling facilities etc.

(1) A person must not—

- (a) prevent the detection by boothless tolling facilities of the use of the toll area by a vehicle;
- (b) cause any boothless tolling facilities—
 - (i) to fail to operate; or
 - (ii) to operate in a manner that results in underpayment of an appropriate toll;
- (c) tamper or interfere with, or cause damage to or defacement or alteration of, any boothless tolling facilities; or
- (d) tamper or interfere with, or cause damage to or defacement or alteration of, or access without lawful authority, any record, information or system kept or operated by or for the Government or toll

service provider in relation to the collection and recovery of tolls.

- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.”

Part 6

Amendments to Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594 sub. leg. B)

63. **Part 1 heading added**
The Regulation—
Add

“Part 1

Preliminary”.

64. **Section 2 amended (interpretation)**
- (1) Section 2, Chinese text, definition of ~~機動三輪車~~—
Repeal the full stop
Substitute a semicolon.
- (2) Section 2—
Add in alphabetical order
“*collecting authority* (收費當局) means the Commissioner or the toll service provider;
complainant (申訴人) means a person who makes a complaint under section 4M;
complaint (申訴) means a complaint made under section 4M;
defendant (被告人) means—
(a) in relation to an application or order made under section 4J—a person in respect of whom the application or order is made;

- (b) in relation to a complaint—a person who has been served with a summons in relation to the complaint under section 4M(3); or
- (c) in relation to an order made on a complaint—a person in respect of whom the order is made;

further surcharge (額外附加費) means a further surcharge imposed under section 4D(3);

initial surcharge (首筆附加費) means an initial surcharge imposed under section 4D(1);

international circulation permit (國際通行許可證) has the meaning given by regulation 2(1) of the Registration and Licensing Regulations;

judgment amount (判決款額) means an amount ordered by a magistrate to be paid by a person (other than a complainant) under this Regulation, whether by way of unpaid toll, initial or further surcharge, penalty or costs;

movement permit (車輛行駛許可證) has the meaning given by regulation 2(1) of the Registration and Licensing Regulations;

notice of rejection (否決通知)—see section 4H(1);

prescribed facilities (訂明設施) has the meaning given by section 18(7) of the Ordinance;

Registration and Licensing Regulations (《登記及領牌規例》) means the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E);

responsible person (負責人), in relation to a motor vehicle, means—

- (a) unless paragraph (b) applies—the registered owner of the vehicle; or

- (b) if the vehicle is used under an international circulation permit, a movement permit or a trade licence—the holder of the international circulation permit, movement permit or trade licence (as the case requires);

surcharge notice (附加費通知)—see section 4E;

toll (使用費) means the toll referred to in section 3;

trade licence (試車牌照) has the meaning given by regulation 2(1) of the Registration and Licensing Regulations;”.

65. Part 2 heading added

After section 2—

Add

“Part 2

Tolls, Surcharges and Recovery Proceedings”.

66. Part 2, Division 1 heading added

Before section 3—

Add

“Division 1—General Provisions”.

67. Section 3 substituted

Section 3—

Repeal the section
Substitute

“3. Liability for, and amount of, toll

- (1) The toll payable for each occasion of use of the toll area by a vehicle is the appropriate toll specified in Schedule 1, and the liability to pay the toll arises once the vehicle has entered the toll area.
- (2) No toll is payable under subsection (1) in respect of—
 - (a) a Government vehicle;
 - (b) a vehicle used by an operator in the course of the operator’s duty;
 - (c) a vehicle that is driven by a disabled person and is exempted by the Commissioner from the operation of subsection (1); or
 - (d) a vehicle or trailer being towed by another vehicle.
- (3) Buses in respect of which a franchise is in force under the Public Bus Services Ordinance (Cap. 230) are exempted from the operation of subsection (1).
- (4) The Commissioner may exempt any vehicle from the operation of subsection (1) if the Commissioner considers it in the public interest to do so.
- (5) The Commissioner may waive the toll payable under subsection (1) in the event of an emergency or in special circumstances.
- (6) An exemption under subsection (4) or a waiver under subsection (5)—
 - (a) may be given in respect of a vehicle or class of vehicles;
 - (b) may be—
 - (i) the same for all cases;
 - (ii) different for different cases or classes of cases; or

- (iii) different for the same class of cases for different purposes;
 - (c) may be given either unconditionally or subject to any specified conditions, and either wholly or to such an extent as is specified; and
 - (d) may apply at all times or at particular times or periods of time.
- (7) An instrument by which an exemption under subsection (4), or a waiver under subsection (5), is given is not subsidiary legislation.”.

68. Section 3A added

After section 3—

Add**“3A. Payment of tolls when operation in booth mode and boothless mode**

- (1) Division 2 applies in relation to the collection and recovery of tolls payable for the use of the toll area operated in booth mode.
- (2) Division 3 applies in relation to the collection and recovery of tolls payable for the use of the toll area operated in boothless mode.”.

69. Part 2, Division 2 added

Before section 4—

Add

“Division 2—Provisions Applicable to Booth Mode Operation**3B. Driver liable if toll not paid**

- (1) Unless the Commissioner determines otherwise in the event of an emergency or in special circumstances, the toll payable in respect of a vehicle for each occasion of use of the toll area must be paid in full in a manner specified in subsection (2) before the vehicle is driven out of the toll area.
- (2) The toll—
 - (a) must be paid to the toll collector on duty at a toll booth that is not an autotoll booth—
 - (i) in cash;
 - (ii) by tendering one or more toll tickets of the appropriate values; or
 - (iii) partly in cash and partly by tendering one or more toll tickets of the appropriate values;
 - (b) must be paid by using an electronic payment facility that is in operation at a toll booth; or
 - (c) must be paid by driving the vehicle past an autotoll booth and debiting the account of an electronic toll pass maintained in respect of the vehicle.
- (3) If subsection (1) is contravened in respect of a vehicle, the driver of the vehicle commits an offence and is liable on conviction to a fine at level 2.”.

70. Section 4 amended (surcharge)

- (1) Section 4, heading—
Repeal

“Surcharge”**Substitute****“Surcharge imposed for non-payment of toll”.**

- (2) Section 4(1)—

Repeal**“section 3”****Substitute****“section 3B”.**

- (3) Section 4(2)—

Repeal**“section 3(3)”****Substitute****“section 3B(3)”.**

- (4) Section 4(3)—

Repeal**“and to imprisonment for 6 months”.****71. Part 2, Division 3 added**

After section 4—

Add

“Division 3—Provisions Applicable to Boothless Mode Operation

Subdivision 1—Toll Payment Requirements and Surcharges

4A. Responsible person liable for toll

- (1) On each occasion of use of the toll area by a vehicle, the responsible person of the vehicle is liable for a toll payable for the use, which toll must be paid in full—
 - (a) by automated payment made in accordance with arrangements made with a collecting authority; or
 - (b) by a means of payment specified under subsection (3) within 7 business days after the vehicle enters the toll area on the occasion of use.
- (2) Despite subsection (1), the Commissioner may, in the event of an emergency or in special circumstances, give approval for any toll payable in respect of a vehicle for the use of the toll area on any occasion to be paid by any means of payment and within any period, and the responsible person must pay, or cause to be paid, the toll accordingly.
- (3) For the purposes of subsection (1)(b), the Commissioner—
 - (a) may, by notice published in the gazette, specify a means of payment for tolls payable for the use of the toll area; and
 - (b) may, for the purposes of paragraph (a), specify different means of payment for different cases or different classes of cases.

- (4) A notice published under subsection (3)(a) is not subsidiary legislation.

4B. Whether absence of knowledge or consent etc. constitutes defence

In any proceedings under this Division against the responsible person of a vehicle for the recovery of any unpaid toll, initial or further surcharge, penalty or other sum in respect of the use of the toll area by the vehicle on an occasion—

- (a) subject to paragraph (b), it is no defence—
 - (i) that the use by the vehicle on the occasion was without the knowledge or consent of the responsible person; or
 - (ii) that the vehicle was, at the time of the use on the occasion, driven by or in the charge of a person other than the responsible person; and
- (b) it is a defence if the responsible person proves that, at the time of use by the vehicle on the occasion, the vehicle—
 - (i) was taken and driven away without the responsible person's consent by a person other than a driver employed by the responsible person; or
 - (ii) was stolen.

4C. Refund of sum received as toll

- (1) This section applies if it is stated in the collecting authority's record in relation to a vehicle (*vehicle A*)—
 - (a) that vehicle A has used the toll area on a particular occasion (*stated occasion of use*); and

- (b) that a sum has been paid to the collecting authority as the toll payable in respect of vehicle A for the stated occasion of use (*paid sum*).
- (2) A collecting authority is not under an obligation to make a refund in respect of the paid sum unless—
 - (a) a claim is made to the collecting authority in accordance with this section; and
 - (b) the collecting authority is satisfied that—
 - (i) vehicle A was not the vehicle using the toll area on the stated occasion of use; or
 - (ii) the responsible person of vehicle A was, for any other reason, under no liability to pay the paid sum to the collecting authority.
- (3) A claim for refund of a paid sum may only be made by the responsible person of vehicle A.
- (4) A claim for refund of a paid sum must be made by notice in the form specified by the collecting authority, and the notice—
 - (a) must state the reasons for the claim; and
 - (b) must be sent to the collecting authority before the expiry of 60 days after the stated occasion of use (*60-day period*).
- (5) Subsections (3) and (4) are taken to have been complied with in respect of a paid sum if, before the expiry of the 60-day period, the responsible person of vehicle A, by written notice to the collecting authority, disputes that vehicle A used the toll area on the stated occasion of use.
- (6) Section 4U applies to a refund made pursuant to a claim made under this section.
- (7) In this section—

collecting authority's record (收費當局紀錄), in relation to a vehicle, means a record of a collecting authority that contains particulars of payment of tolls incurred in respect of the vehicle and is accessible—

- (a) to the responsible person of the vehicle; and
- (b) if the responsible person requests that another person be given access to the record, to that other person.

4D. Initial and further surcharges imposed for non-payment of toll

- (1) If a toll payable for the use of the toll area by a vehicle is not paid in accordance with section 4A, the responsible person is liable to pay to the collecting authority an initial surcharge, of the amount specified in item 1 of Part 2 of Schedule 2A, for the non-payment.
- (2) The initial surcharge, in addition to the unpaid toll, must be paid in full by the expiry of 21 days after the date on which a surcharge notice relating to the toll is served (*service date*).
- (3) If the responsible person fails to comply with subsection (2), the responsible person is also liable to pay to the collecting authority a further surcharge, of the amount specified in item 2 of Part 2 of Schedule 2A.
- (4) The further surcharge, in addition to the unpaid toll and initial surcharge, must be paid in full by the expiry of 42 days after the service date.

Subdivision 2—Surcharge Notice, Dispute of Liability and Notice of Rejection

4E. Surcharge notice

- (1) A collecting authority may serve a notice (*surcharge notice*) if—
 - (a) a toll is payable for the use of the toll area by a vehicle; and
 - (b) the toll has not been paid in full by the means of payment, and within the time, specified in section 4A.
- (2) The surcharge notice must be served on the person who was the responsible person of the vehicle at the time when the toll was incurred (*recipient*).
- (3) The surcharge notice must be in a form specified by the Commissioner and must—
 - (a) state the date of the notice;
 - (b) state the name of the collecting authority;
 - (c) state the vehicle registration mark, trade plate number or movement permit number of the vehicle;
 - (d) state the date and time at which the vehicle used the toll area and the toll to which the surcharge notice relates was incurred;
 - (e) state the amount of the toll for which the recipient is liable and which remains unpaid;
 - (f) state the amount of the initial surcharge that is payable, in addition to the unpaid toll, by the recipient within 21 days after the service of the surcharge notice (*21-day period*);

- (g) state that, if the recipient fails to pay the unpaid toll and the initial surcharge in full by the expiry of the 21-day period, a further surcharge is also payable, in addition to the unpaid toll and initial surcharge, by the recipient within 42 days after the service of the surcharge notice (*42-day period*);
- (h) state the amount of the further surcharge;
- (i) state the means of payment by which the unpaid toll, the initial surcharge, and (if applicable) the further surcharge must be paid;
- (j) state that, if the recipient wishes to dispute the liability for any of the unpaid toll and initial and further surcharges, the recipient must, within the 42-day period—
 - (i) notify the collecting authority in writing; and
 - (ii) make written representations to the collecting authority to that effect;
- (k) state the address (including, if appropriate, any email address or fax number, as well as the postal address) to which the notification and representations must be sent and the form in which the representations must be made;
- (l) state that the collecting authority may disregard any such notification and representations received by it after the expiry of the 42-day period;
- (m) state that any such notification and representations do not affect the imposition of the further surcharge as referred to in paragraph (g);
- (n) state that if the recipient neither makes payment, nor gives notification, in accordance with the surcharge notice, an application may be made

under section 4J for recovering the unpaid toll and initial and further surcharges; and

- (o) state that a magistrate may, by an order under section 4J, require the recipient to pay, in addition to the unpaid toll and initial and further surcharges, a penalty and costs and may also give a direction referred to in section 4K.
- (4) A surcharge notice may contain such other information as the collecting authority considers appropriate.

4F. Notification of dispute of liability

- (1) If a collecting authority serves a surcharge notice on a person (*recipient*) under section 4E, and the recipient wishes to dispute liability for any of the unpaid toll and initial and further surcharges, the recipient must, within 42 days after the service of the surcharge notice (*42-day period*)—
 - (a) notify the collecting authority in writing; and
 - (b) make written representations to the collecting authority to that effect.
- (2) The collecting authority may disregard any such notification and representations that it receives after the expiry of the 42-day period.

4G. Cancellation of surcharge notice

- (1) If a collecting authority is satisfied that a surcharge notice served on a person should be cancelled, it must—
 - (a) cancel the surcharge notice and notify the person of the decision in writing; and
 - (b) refund any sum of money paid in compliance with the surcharge notice.

- (2) The cancellation of a surcharge notice under subsection (1) does not prevent the collecting authority from serving a fresh surcharge notice on the person or another person in respect of toll payable for the use of the toll area on the same or another occasion.
- (3) Section 4U applies to a refund made under subsection (1)(b).

4H. Notice of rejection

- (1) If—
 - (a) a person on whom a surcharge notice was served (*recipient*) has notified the collecting authority that the recipient disputes liability for any of the unpaid toll and initial and further surcharges to which the surcharge notice relates; but
 - (b) the collecting authority is not satisfied that the surcharge notice should be cancelled,
 the collecting authority may serve on the recipient a notice referred to in subsection (2) (*notice of rejection*).
- (2) The notice of rejection must—
 - (a) state that the collecting authority is not satisfied that the surcharge notice should be cancelled, and state the collecting authority's reasons;
 - (b) state that the collecting authority demands that the recipient must pay, in full, the unpaid toll and initial and further surcharges to which the surcharge notice relates and which remain unpaid (*unpaid sums*);
 - (c) state that the recipient must notify the collecting authority if the recipient wishes to dispute liability for any of the unpaid sums;

- (d) state that the payment or notification must be made or given by whichever is the later of the following (*deadline*)—
 - (i) the expiry of 42 days after the service of the surcharge notice;
 - (ii) the expiry of 7 days after the service of the notice of rejection;
 - (e) state that if the recipient neither makes payment, nor gives notification, in accordance with the notice of rejection, an application may be made under section 4J for recovering the unpaid sums;
 - (f) state that if the recipient notifies the collecting authority by the deadline that the recipient disputes liability, summons may be issued against the recipient for proceedings under Subdivision 4 before a magistrate for recovering the unpaid sums; and
 - (g) state that, in disposing of any application or proceedings referred to in paragraph (e) or (f), a magistrate may order the recipient to pay, in addition to the unpaid sums, a penalty and costs and may also give a direction referred to in section 4K.
- (3) A notice of rejection may contain such other information as the collecting authority considers appropriate.
 - (4) A notice of rejection is not to be served under subsection (1) after the expiry of 6 months after the date on which the toll to which the notice relates was incurred.

4I. Withdrawal of notice of rejection

- (1) If a notice of rejection has been served on a person, the collecting authority may withdraw the notice at any time—
 - (a) before an order is made under section 4J in relation to the person; or
 - (b) before proceedings under Subdivision 4 are commenced against the person.
- (2) If a notice of rejection is withdrawn, the collecting authority must—
 - (a) serve a notice of the withdrawal on the person; and
 - (b) refund any sum of money paid in compliance with the notice of rejection.
- (3) The withdrawal of a notice of rejection under subsection (1) does not prevent the collecting authority from serving a fresh notice of rejection on the person or another person in respect of toll payable for the use of the toll area on the same or another occasion.
- (4) Section 4U applies to a refund made under subsection (2)(b).

Subdivision 3—Recovery Proceedings before Issue of Summons**4J. Application to magistrate if surcharge notice or notice of rejection is not responded to**

- (1) An application may be made to a magistrate for an order under subsection (3) in respect of a person if—
 - (a) the person—
 - (i) has been served with a surcharge notice;

- (ii) has not paid, in full, the unpaid toll and initial and further surcharges to which the surcharge notice relates; and
 - (iii) has not notified the collecting authority, in accordance with the surcharge notice, that the person wishes to dispute liability for any of the sums to which the surcharge notice relates; or
- (b) the person—
 - (i) has been served with a notice of rejection;
 - (ii) has not paid, in full, the unpaid toll and initial and further surcharges to which the notice of rejection relates; and
 - (iii) has not notified the collecting authority, in accordance with the notice of rejection, that the person wishes to dispute liability for any of the sums to which the notice of rejection relates.
- (2) The application must be made in the name of the Secretary for Justice and must be accompanied by the documents specified in subsection (4).
- (3) A magistrate hearing an application made in accordance with this section in respect of a person (*defendant*)—
 - (a) must order the defendant to pay, within 14 days after being served with notice of the order, in full—
 - (i) the unpaid toll and initial and further surcharges to which the surcharge notice or the notice of rejection (as the case requires) relates and which remain unpaid;
 - (ii) a penalty of an amount equal to the amount of the further surcharge; and

- (iii) any additional sum by way of costs; and
 - (b) may also give a direction referred to in section 4K and make or give any other order or direction that the magistrate considers appropriate.
- (4) For an application under this section for recovering any toll for the use of the toll area by a vehicle in a particular direction (*specified direction*) at a particular time (*material time*) and for any related initial and further surcharges, the documents specified for the purposes of subsection (2) are—
 - (a) if subsection (1)(a) applies—
 - (i) a copy of the surcharge notice; and
 - (ii) a certificate, produced under section 19 of the Ordinance, stating that—
 - (A) the surcharge notice has been served on the defendant in accordance with section 29A of the Ordinance; and
 - (B) the defendant had not notified the collecting authority that the defendant wished to dispute liability for any of the sums to which the surcharge notice relates by the expiry of the period of 42 days after the service of the surcharge notice;
 - (b) if subsection (1)(b) applies—
 - (i) a copy of the notice of rejection; and
 - (ii) a certificate, produced under section 19 of the Ordinance, stating that—
 - (A) the notice of rejection has been served on the defendant in accordance with section 29A of the Ordinance; and

- (B) the defendant had not notified the collecting authority that the defendant wished to dispute liability for any of the sums to which the notice of rejection relates by the deadline (within the meaning of section 4H(2)(d)); and
- (c) in all cases—
 - (i) a certificate, produced under section 19 of the Ordinance, stating that, at the material time, the toll area was operated, for traffic flow in the specified direction, in boothless mode;
 - (ii) a record and a certificate, produced under section 18 of the Ordinance, stating that a vehicle, identified by a toll tag used in connection with the vehicle or by vehicle registration mark, trade plate number or movement permit number, was detected by prescribed facilities to have used the toll area in the specified direction at the material time;
 - (iii) a certificate, produced under section 19 of the Ordinance, either—
 - (A) stating that the defendant was the registered owner of the vehicle at the material time, and stating the defendant's registered address; or
 - (B) stating that the defendant was the holder of the international circulation permit, movement permit or trade licence under which the vehicle was used at the material time, and stating the defendant's address last known to the Commissioner; and

- (iv) a certificate, produced under section 19 of the Ordinance, stating that the toll for the use of the toll area at the material time by the vehicle and related initial and further surcharges (as appropriate) remain wholly or partly unpaid, and stating the particulars of the unpaid sums.
- (5) An application under this section may be made in the absence of the defendant and the Secretary for Justice may appoint any person or class of persons to make the application.
- (6) If any order or direction is made or given under subsection (3), the magistrate must cause notice of the order or direction to be served on the defendant.

4K. Direction to refuse applications for vehicle licence, registration of vehicle, etc.

- (1) This section applies if—
 - (a) a person is liable for any unpaid toll and initial and further surcharges which remain unpaid, as—
 - (i) the registered owner of a vehicle; or
 - (ii) the holder of the following under which a vehicle is used—
 - (A) an international circulation permit or a movement permit; or
 - (B) a trade licence; and
 - (b) consequently, a magistrate makes an order under section 4J(3), 4L(8) or (11), 4O(4) or 4P(6) (*order*), for the person (*judgment debtor*) to pay a judgment amount.

- (2) When making the order, the magistrate may give a direction that, for so long as the judgment debtor fails to pay the judgment amount in full—
- (a) (if subsection (1)(a)(i) applies) the Commissioner—
 - (i) is to take no action under regulation 17(3), (3A), (4) or (5) of the Registration and Licensing Regulations on receipt of any notice of transfer of ownership of the vehicle; and
 - (ii) is to refuse to license the vehicle under regulation 21(3), (5) or (6) of those Regulations;
 - (b) (if subsection (1)(a)(ii)(A) applies) the Commissioner—
 - (i) is to take no action under regulation 31 or 53 of the Registration and Licensing Regulations on receipt of an application for an international circulation permit or a movement permit in respect of the vehicle; and
 - (ii) is to refuse to register the vehicle under the Registration and Licensing Regulations; or
 - (c) (if subsection (1)(a)(ii)(B) applies) the Commissioner is to take no action under regulation 43 of the Registration and Licensing Regulations on receipt of the judgment debtor's application for a trade licence.
- (3) If the judgment amount under the order is not paid within 24 hours after the giving of the direction under

- subsection (2), the magistrate must cause notice of the order and the direction to be sent to the Commissioner.
- (4) A direction under subsection (2) ceases to have effect if the judgment debtor produces to the Commissioner a receipt or other evidence to prove that the judgment amount has been paid in full.
 - (5) A direction under subsection (2)(a) ceases to have effect if—
 - (a) the judgment debtor sells or otherwise disposes of the vehicle; and
 - (b) the new owner of the vehicle is, at the time of the delivery of the notice of transfer of ownership of the vehicle under regulation 17 of the Registration and Licensing Regulations, in possession of a valid certificate of clearance.
 - (6) A certificate of clearance is a certificate issued by the Commissioner stating that no notice of a valid direction under subsection (2)(a) appears in the records of the Commissioner in respect of the vehicle.
 - (7) For the purposes of subsection (5)(b), a certificate of clearance is valid for not more than 72 hours from the time of issue; but no day that is a general holiday is taken into account in computing that period of 72 hours.

4L. Review and rescission of section 4J(3) order

- (1) This section applies if an order is made under section 4J(3) (*specified order*) against a person on the basis that the person neither makes payment, nor gives notification, in accordance with a surcharge notice or notice of rejection served on the person.
- (2) A magistrate may rescind the specified order if, on the person's application, the magistrate is satisfied that the

surcharge notice or notice of rejection has not come to the personal notice of the person without any fault on the part of the person.

- (3) An application for the purposes of subsection (2) must be made within 14 days after the date on which the specified order came to the personal notice of the applicant.
- (4) The applicant must give reasonable notice of the application to the Commissioner.
- (5) An application for the purposes of subsection (2) may be made in person or by counsel or solicitor and the magistrate, for the purpose of securing the attendance of witnesses and generally for conducting the proceedings, has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).
- (6) Subsections (7) and (8) apply if the magistrate rescinds a specified order relating to an unpaid toll because the surcharge notice has not come to the personal notice of the applicant.
- (7) If the applicant wishes to dispute liability for the unpaid toll, the magistrate must order that the matter be determined in accordance with Subdivision 4.
- (8) If the applicant does not wish to dispute liability for the unpaid toll, the magistrate—
 - (a) must also make an order in the following terms—
 - (i) that the applicant must pay the unpaid toll in full within 14 days after the date on which the order is made; and
 - (ii) that, if the applicant fails to pay the unpaid toll in full within that period, the applicant

immediately becomes liable to pay, in addition to the unpaid toll—

- (A) an initial surcharge and a further surcharge; and
 - (B) a penalty of an amount equal to the amount of the further surcharge; and
- (b) may further give a direction referred to in section 4K and make or give any other order or direction that the magistrate considers appropriate.
- (9) Subsections (10) and (11) apply if the magistrate rescinds a specified order relating to any unpaid toll and initial and further surcharges (*unpaid sums*) because the notice of rejection has not come to the personal notice of the applicant.
 - (10) If the applicant wishes to dispute liability for any of the unpaid sums, the magistrate must order that the matter be determined in accordance with Subdivision 4.
 - (11) If the applicant does not wish to dispute liability for any of the unpaid sums, the magistrate—
 - (a) must also make an order in the following terms—
 - (i) that the applicant must pay the unpaid sums in full within 14 days after the date on which the order is made; and
 - (ii) that, if the applicant fails to pay the unpaid sums in full within that period, the applicant immediately becomes liable to pay, in addition to the unpaid sums, a penalty of an amount equal to the amount of the further surcharge; and

- (b) may further give a direction referred to in section 4K and make or give any other order or direction that the magistrate considers appropriate.
- (12) A magistrate may for good cause, on an application by the Commissioner at any time, rescind any specified order.

Subdivision 4—Issue of Summons and Subsequent Recovery Proceedings

4M. Complaint to magistrate if liability is disputed

- (1) If—
 - (a) a person has been served with a notice of rejection relating to any unpaid toll and initial and further surcharges and the person has notified the collecting authority, in accordance with the notice of rejection, that the person wishes to dispute liability for any of the sums; or
 - (b) a magistrate, having rescinded an order made under section 4J(3) against a person, makes an order under section 4L(7) or (10) regarding a person's dispute of liability for any unpaid toll and initial and further surcharges,

the matter is to be determined in accordance with this Subdivision by a magistrate in a summary way on complaint made in the name of the Secretary for Justice.

- (2) A complaint is not to be made later than—
 - (a) if subsection (1)(a) applies—the expiry of 6 months after the person notifies the collecting authority, in accordance with the notice of rejection, that the person wishes to dispute liability; or

- (b) if subsection (1)(b) applies—the expiry of 6 months after the date on which the order under section 4L(7) or (10) is made.
- (3) A summons issued in relation to a complaint under subsection (1) must be served on the person referred to in that subsection.
- (4) The Secretary for Justice may appoint any person or class of persons to make a complaint.

4N. Payment of unpaid toll and surcharges after service of summons

- (1) Proceedings on a complaint terminate if the defendant—
 - (a) pays to any magistrate's court, not later than 2 clear business days before the day specified in the summons for the defendant's appearance at the hearing of the complaint, in full—
 - (i) the unpaid toll and initial and further surcharges to which the complaint relates;
 - (ii) a penalty of an amount equal to the amount of the further surcharge; and
 - (iii) the sum of \$500 by way of costs; and
 - (b) produces the summons when making the payment.
- (2) For calculating the number of clear business days in subsection (1)(a), the day specified in the summons for the appearance of the defendant is to be excluded.

4O. Proceedings in absence of defendant

- (1) If the defendant does not appear at the time and place appointed for the hearing of a complaint, or at any adjourned hearing, the magistrate may, subject to this

- section, proceed to hear and determine the complaint in the absence of the defendant.
- (2) The magistrate must not hear the complaint in the absence of the defendant unless—
 - (a) a certificate of service of the summons on the defendant is produced under section 19 of the Ordinance and the magistrate is satisfied that the summons was served a reasonable time before the time appointed for the hearing; or
 - (b) the defendant has appeared on a previous occasion to answer the complaint.
 - (3) Section 4Q applies to the proof of the complaint.
 - (4) If the substance of the complaint is proved, the magistrate hearing the complaint—
 - (a) must order the defendant to pay in full, within 14 days after being served with notice of the order, the unpaid toll and initial and further surcharges to which the complaint relates;
 - (b) may also order the defendant to pay within the 14 days—
 - (i) a penalty of an amount as the magistrate may determine which must not be less than the amount of the further surcharge and must not exceed \$5,000; and
 - (ii) any additional sum by way of costs; and
 - (c) may further give a direction referred to in section 4K and make or give any other order or direction that the magistrate considers appropriate.
 - (5) If any order or direction is made or given under subsection (4), the magistrate must cause notice of the order or direction to be served on the defendant.

4P. Hearing of complaint in presence of defendant

- (1) This section applies if a defendant is present at a hearing of a complaint and does not admit the truth of the complaint.
- (2) Section 4Q applies to the proof of the complaint.
- (3) The magistrate is to require the defendant to state the nature of the defendant's defence.
- (4) If the defendant does not, immediately on the magistrate's requirement under subsection (3), expressly put in issue any allegation of fact contained in a document purporting to be a record or certificate and produced under section 18 or 19 of the Ordinance, the defendant may not at any later stage dispute or adduce evidence to contradict any such fact contained in the document, without the leave of the magistrate.
- (5) After the magistrate makes a requirement under subsection (3) and the defendant has stated, or has been given an opportunity to state, the nature of the defendant's defence, the magistrate—
 - (a) may proceed to the hearing of the complaint and adjudicate on the complaint; or
 - (b) may adjourn the proceedings and may issue a summons for the appearance of any witness.
- (6) If the substance of a complaint is proved, the magistrate must order the defendant to pay, in full, the unpaid toll and initial and further surcharges to which the complaint relates.
- (7) If an order is made under subsection (6) against a defendant who, having appeared at a hearing of a complaint, offers no defence or a defence that is frivolous or vexatious—

- (a) the magistrate may also order the defendant to pay a penalty of an amount determined by the magistrate; and
 - (b) the amount of the penalty must not be less than the amount of the further surcharge and must not exceed \$5,000.
- (8) A magistrate making an order under subsection (6) may further give a direction referred to in section 4K and make or give any other order or direction that the magistrate considers appropriate.

4Q. Proof of complaint by certificates

When a complaint, made for recovering any toll for the use of the toll area by a vehicle in a particular direction (*specified direction*) at a particular time (*material time*) and any related initial and further surcharges, is heard by a magistrate under section 4O or 4P, the substance of the complaint may be proved by the production of all of the following, in the absence of evidence to the contrary—

- (a) a certificate, produced under section 19 of the Ordinance, stating that, at the material time, the toll area was operated, for traffic flow in the specified direction, in boothless mode;
- (b) a record and a certificate, produced under section 18 of the Ordinance, stating that the vehicle, identified by a toll tag used in connection with the vehicle or by the vehicle registration mark, trade plate number or movement permit number, was detected by prescribed facilities to have used the toll area in the specified direction at the material time;

- (c) a certificate, produced under section 19 of the Ordinance, either—
 - (i) stating that the defendant was the registered owner of the vehicle at the material time, and stating the defendant's registered address; or
 - (ii) stating that the defendant was the holder of the international circulation permit, movement permit or trade licence under which the vehicle was used at the material time, and stating the defendant's address last known to the Commissioner;
- (d) a certificate, produced under section 19 of the Ordinance, stating that the toll for the use of the toll area at the material time by the vehicle and related initial and further surcharges (as appropriate) remain wholly or partly unpaid, and stating the particulars of the unpaid sums.

4R. Costs order

- (1) If a magistrate dismisses a complaint, the magistrate may at the same time make an order for the payment of costs by the complainant of an amount that the magistrate considers appropriate.
- (2) If, on a complaint, a magistrate orders the defendant to pay any unpaid toll or initial or further surcharge (with or without a penalty), the magistrate may also order the defendant to pay costs of an amount that the magistrate considers appropriate.

4S. Discontinuance of complaint

The complainant may, without the leave of the magistrate, discontinue a complaint against a defendant at any stage of the

proceedings by giving a notice in writing to the defendant and to the magistrate concerned.

4T. Distress in cases of non-payment of judgment amount

- (1) If a person is ordered under section 4J(3), 4L(8) or (11), 4O(4) or 4P(6) to pay a judgment amount (each order is referred to as a *specified order*), a magistrate, on an application made in the name of the Secretary for Justice (*application*), may order that the amounts specified in subsection (2) be levied on any goods and chattels of the person by distress and sale.
- (2) The amounts specified for subsection (1) are—
 - (a) either—
 - (i) if the application relates to 1 specified order—any part of the judgment amount of the specified order that remains unpaid after the expiry of 1 month after the date of the specified order; or
 - (ii) if the application relates to 2 or more specified orders—the aggregate of any part of the judgment amount of each specified order that remains unpaid after the expiry of 1 month after the date of the specified order;
 - (b) an additional sum, by way of costs for making the application (but not any further proceedings), of an amount determined by the magistrate which must not be less than \$50 and must not exceed an amount equal to—
 - (i) if paragraph (a)(i) applies—the total amount of the initial and further surcharges payable under the specified order; or

- (ii) if paragraph (a)(ii) applies—the aggregate of the total amount of the initial and further surcharges payable under each specified order; and
- (c) any subsequent costs in the proceedings including the costs of an application under this section.
- (3) For the purposes of section 4K, the sums referred to in subsection (2)(b) and (c) must be treated as if they were included in the judgment amount.
- (4) The application may be made in the absence of that person and the Secretary for Justice may appoint any person or class of persons to make the application.

Subdivision 5—Miscellaneous Provisions

4U. Discharge of collecting authority's obligation to refund

- (1) This section applies if a sum was paid to the collecting authority to discharge the liability of a responsible person of a vehicle for any toll, initial or further surcharge, penalty or cost payable under this Division.
- (2) Any obligation of the collecting authority to refund the sum is discharged by the collecting authority refunding the sum—
 - (a) if the sum was paid to the collecting authority out of an account—by paying the sum into the account; or
 - (b) whether or not paragraph (a) applies—by paying the sum to the responsible person.
- (3) This section applies—

- (a) regardless of the identity of the person by whom, or the means by which, the sum concerned was paid to the collecting authority; and
- (b) regardless of whether any arrangement for payment or reimbursement referred to in section 4V(1) exists.

4V. No prejudice to payment or reimbursement arrangement

- (1) This Division does not prejudice any arrangement made in respect of a vehicle for either or both of the following—
 - (a) the payment of a specified sum by another person to discharge the responsible person's liability;
 - (b) the reimbursement by another person to the responsible person for paying a specified sum.
- (2) Without limiting subsection (1), if—
 - (a) either—
 - (i) an amount was formerly paid by another person to a collecting authority purporting to discharge the responsible person's liability for a specified sum; or
 - (ii) an amount was formerly paid by another person to the responsible person purporting to reimburse the responsible person for paying a specified sum; and
 - (b) any amount is refunded by a collecting authority to the responsible person in respect of the specified sum,

section 4U does not prejudice any right which that other person may have, against the responsible person, in respect of the refunded amount.

- (3) In this section—

specified sum (指明款項) means any of the following sums for which the responsible person of a vehicle is liable under this Division—

- (a) any toll incurred for the use of the toll area by the vehicle;
- (b) any initial and further surcharges, penalty and costs payable under this Division in connection with the toll or its recovery.”.

72. Part 3 heading added

Before section 5—

Add

“Part 3**Miscellaneous Fees and Charges”.****73. Section 6 amended (change and administration fee for change)**

- (1) Section 6, heading, after “for change”—

Add

“if toll area operated in booth mode”.

- (2) Before section 6(1)—

Add

“(1A) This section applies to the toll area operated in booth mode.”.

74. Schedule 1 amended (tolls)

Schedule 1—

Repeal categories 10 and 11

Substitute

“10. Vehicle towing another vehicle—

- | | |
|--|------|
| (a) if toll area is operated in booth mode | \$16 |
| (b) if toll area is operated in boothless mode | \$8 |

11. Vehicle (other than articulated vehicle) towing a trailer—

- | | |
|--|------|
| (a) if toll area is operated in booth mode | \$16 |
| (b) if toll area is operated in boothless mode | \$8” |

75. Schedule 2 heading amended (surcharge)

Schedule 2, heading—

Repeal

“Surcharge”

Substitute

“Surcharges Applicable in so far as Toll Area is Operated in Booth Mode”.

76. Schedule 2A added

After Schedule 2—

Add

“Schedule 2A

[s. 4D]

Surcharges Applicable in so far as Toll Area is Operated in Boothless Mode**Part 1****Interpretation**

1. In relation to the responsible person of a vehicle that used the toll area operated in boothless mode—

T amount (使用費款額) means an amount of toll payable for the use of the toll area so operated by the vehicle on a single occasion which is not paid in full in accordance with section 4A;

T+ amount (使用費連首筆附加費總額) means an amount that—

- (a) comprises—
 - (i) a T amount; and
 - (ii) the initial surcharge payable under section 4D(2) for the T amount; and
- (b) is not paid in full by the expiry of 21 days after the date on which a surcharge notice relating to the T amount is served.

Part 2**Amounts of Surcharges**

Column 1	Column 2	Column 3
Item	Particulars	Amount

Column 1	Column 2	Column 3
Item	Particulars	Amount
1.	Initial surcharge for every T amount	\$175
2.	Further surcharge for every T+ amount	\$350".

Part 7

Amendments to Road Traffic Ordinance (Cap. 374)

77. Sections 6A and 6B added

After section 6—

Add

"6A. Regulation of toll tags

- (1) The Secretary may make regulations—
 - (a) to provide for the issue, replacement and cancellation of toll tags;
 - (b) to provide for the fees that may be charged for the issue and replacement of toll tags and the waiving, exemption, reduction or refund of the fees;
 - (c) to require the use of a toll tag and to regulate the use of a toll tag or any device that functions in a manner similar to a toll tag;
 - (d) to provide for exemption from any regulation; and
 - (e) to provide for matters that are necessary or expedient to facilitate the use of toll tags for the collection and recovery of tolls payable to the Government under any Ordinances.
- (2) Without limiting subsection (1), a regulation made under that subsection—
 - (a) may provide for different types of toll tags;
 - (b) may make different provisions for different types of toll tags; and
 - (c) may provide for—

- (i) a toll tag specifically for a vehicle; and
 - (ii) different types of toll tags for different classes of vehicles.
- (3) Without limiting subsection (1), a regulation made under that subsection may authorize the Commissioner—
- (a) to amend any Schedule to a regulation made under that subsection that provides for the manner in which a toll tag is to be used in connection with a vehicle;
 - (b) to grant exemption from any regulation; and
 - (c) to waive, exempt, reduce or refund the fees that may be charged for the issue and replacement of toll tags.
- (4) Without limiting subsection (1), a regulation made under that subsection may confer, on an agent of the Commissioner, any functions under the regulation, including the issue of a toll tag whether specifically for a vehicle or otherwise.
- (5) In this section and section 6B—
- agent** (代理人), in relation to the Commissioner, means a person appointed as agent by the Commissioner for the purposes of a regulation made under subsection (1);
- specified Government infrastructure** (指明政府基建) means any of the following for the use of which a toll is payable—
- (a) a tunnel within the meaning of section 2(1) of the Road Tunnels (Government) Ordinance (Cap. 368);
 - (b) the Control Area within the meaning of section 2(1) of the Tsing Sha Control Area Ordinance (Cap. 594);

toll tag (繳費貼) means a device issued for the use in connection with a vehicle for enabling the detection of the use by the vehicle of any specified Government infrastructure in so far as it is operated without toll booths.

6B. Directions for purposes of regulations made under section 6A

- (1) If the Secretary considers the public interest so requires, the Secretary may give directions of a general character in writing to an agent of the Commissioner in relation to the performance of the functions of the agent, or of persons employed by the agent, under a regulation made under section 6A.
- (2) An agent of the Commissioner must comply with the directions given under subsection (1)."

78. Section 15 amended (penalties under the regulations)

Section 15, after "6,"—

Add

"6A,".

79. Section 67A amended (power to retrieve electronic data)

- (1) Section 67A(1), definition of *fitted EDRD*—

Repeal

"A)."

Substitute

"A);".

- (2) Section 67A(1)—

Add in alphabetical order

“tag device (繳費貼裝置)” means a toll tag or any device that functions in a manner similar to a toll tag;

“tag-related offence (繳費貼相關罪行)” means—

- (a) an offence under section 111A;
- (b) an offence under a regulation made under section 6A; or
- (c) an offence that—
 - (i) is an offence under the Road Tunnels (Government) Ordinance (Cap. 368) or the Tsing Sha Control Area Ordinance (Cap. 594); and
 - (ii) involves the tampering of, interference with, unauthorized access or damage to, or defacement or alteration of, any installation, facility, equipment, appliance, system, record or information that relates to the collection and recovery of tolls for the use of any specified Government infrastructure as defined by section 6A(5) in so far as it is operated without toll booths.”.

(3) Section 67A—

Repeal subsections (2) and (3)

Substitute

“(2) This section applies to—

- (a) a motor vehicle with a fitted EDRD; or
- (b) a motor vehicle in connection with which a tag device is used or on which a tag device is carried.

(3) During any examination of a motor vehicle specified in subsection (3A), the Commissioner may cause to be retrieved by a vehicle examiner—

- (a) any data stored in the fitted EDRD with the motor vehicle; and
- (b) any data stored in the tag device used in connection with or carried on the motor vehicle.

(3A) The examination of a motor vehicle is one that is carried out—

- (a) under section 78; or
- (b) under an examination order served or caused to be served by the Commissioner or a police officer, under section 79.

(3B) Subsections (4) and (5) apply if a police officer has reasonable cause to believe that—

- (a) a motor vehicle with a fitted EDRD has been involved in an accident or any offence under this Ordinance; or
- (b) a tag device used in connection with or carried on a motor vehicle has been involved with a tag-related offence.”.

(4) Section 67A(4)—

Repeal

everything before “police officer may”

Substitute

“(4) The”.

(5) Section 67A(5)—

Repeal paragraph (b)

Substitute

“(b) during the detention, cause to be retrieved by a vehicle examiner or any person authorized by the Commissioner of Police (as the case requires)—

- (i) in the case of subsection (3B)(a), any data stored in the fitted EDRD; or
- (ii) in the case of subsection (3B)(b), any data stored in the tag device.”.

80. Section 111A added

After section 111—

Add**“111A. Forgery and misuse of toll tag and similar device**

- (1) A person must not, without lawful authority or reasonable excuse—
 - (a) forge a toll tag or make any device that functions in a manner so closely resembling the functioning of a toll tag as to be calculated to deceive;
 - (b) tamper or interfere with a toll tag so that the toll tag, or any data stored in the toll tag, is altered;
 - (c) drive or be in charge of a vehicle in connection with which any of the following is used—
 - (i) a forged toll tag or a device that functions in a manner so closely resembling the functioning of a toll tag as to be calculated to deceive;
 - (ii) a toll tag if it, or any data stored in it, is altered; or
 - (d) have in the person’s possession—
 - (i) a forged toll tag or a device that functions in a manner so closely resembling the functioning of a toll tag as to be calculated to deceive; or
 - (ii) a toll tag if it, or any data stored in it, is altered.

- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3 and to imprisonment for 3 years.”.

Part 8**Amendments to Road Traffic (Public Service Vehicles)
Regulations (Cap. 374 sub. leg. D)****81. Schedule 5 amended (taxi fares)****(1) Schedule 5—****Repeal item 4(iii)****Substitute**

- | | |
|--|---|
| “(iii) For every hiring involving the use of the Lion Rock Tunnel, the Shing Mun Tunnels, the Tseung Kwan O Tunnel, the Tate’s Cairn Tunnel, the Aberdeen Tunnel, the Cross-Harbour Tunnel or the Eastern Harbour Crossing | The appropriate toll for the use of the tunnel concerned, as specified in Part 1, 2, 3 or 3A of Schedule 2 to the Road Tunnels (Government) Regulations (Cap. 368 sub. leg. A). |
| (iiia) For every hiring involving the use of the Tai Lam Tunnel or the Western Harbour Crossing | The toll paid by the driver of the taxi during the hiring for the use of the tunnel concerned.”. |

(2) Schedule 5, item 4(vib)—**Repeal**

“The toll paid by the driver of the taxi during the hiring for the use of the toll area.”

Substitute

“The appropriate toll for the use of the toll area, as specified in Schedule 1 to the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594 sub. leg. B).”.

Part 9**Amendments to Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E)****82. Regulation 2 amended (interpretation)**

Regulation 2(1)—

Add in alphabetical order

“*e-contact means* (電子聯絡方式), in relation to a person, means an electronic mail address or mobile phone number of the person;”.

83. Regulation 5 amended (application for registration)

After regulation 5(1)—

Add

“(1A) An application under subregulation (1) must state the name, address, e-contact means and identity document number of the owner of the motor vehicle.”.

84. Regulation 17 amended (transfer of motor vehicle ownership)

Regulation 17(1)(b)(i)—

Repeal

“name and address”

Substitute

“name, address, e-contact means and identity document number”.

85. Regulation 19 amended (changes of particulars of registered owner or personalized registration mark holder)

Regulation 19(1)—

Repeal

“address”

Substitute

“address, e-contact means”.

86. Regulation 21 amended (licensing of motor vehicles)

After regulation 21(1)—

Add

“(1A) An application under subregulation (1) must state the name, address, e-contact means and identity document number of the owner of the motor vehicle.”.

87. Regulation 31 amended (application for and issue of international circulation permits)

(1) Regulation 31(4)(a)—

Repeal

“name and home address”

Substitute

“name, home address and identity document number”.

(2) Regulation 31(4)(e)—

Repeal

“; and”

Substitute a semicolon.

(3) Regulation 31(4)(f)—

Repeal the full stop

Substitute

“; and”.

- (4) After regulation 31(4)(f)—

Add

“(g) the e-contact means of the person to whom the international circulation permit is to be granted while the person is in Hong Kong.”.

88. Regulation 31A amended (changes of particulars of international circulation permit holder)

Regulation 31A(1)—

Repeal

“address or”

Substitute

“address, e-contact means or”.

89. Regulation 42 amended (application for trade licence)

After regulation 42(1)—

Add

“(1A) An application under subregulation (1) must state the applicant’s name, address, e-contact means and identity document number.”.

90. Regulation 43A added

After regulation 43—

Add

“43A. Changes of particulars of trade licence holder

Within 72 hours after any change of name, address, e-contact means or identity document number of a holder of a trade licence, the holder must send to the Commissioner—

- (a) a written notice of the change; and
- (b) in the case of a change of name or address, the trade licence.”.

91. Regulation 53 amended (movement permits)

- (1) After regulation 53(1)—

Add

“(1A) An application under subregulation (1) must state the name, address, e-contact means and identity document number of the owner of the vehicle concerned.”.

- (2) After regulation 53(3)—

Add

“(3AA) The holder of a movement permit to which a vehicle relates and the driver of the vehicle must each ensure that, if the vehicle is being used in any area where boothless tolling applies, the display movement permit plate requirement is complied with in respect of the vehicle.

(3AAB) The display movement permit plate requirement means that—

- (a) if the vehicle is a motor cycle—a movement permit plate must be displayed on the rearmost part of the motor cycle in a vertical position, so that every letter and numeral of the movement permit plate is vertical and is distinguishable from the rear of the motor cycle; or

- (b) if the vehicle is not a motor cycle—
 - (i) a movement permit plate must be displayed on the foremost part of the vehicle in a vertical position, so that every letter and numeral of the movement permit plate is vertical and is distinguishable from the front of the vehicle; and
 - (ii) a movement permit plate must be displayed on the rearmost part of the vehicle in a vertical position, so that every letter and numeral of the movement permit plate is vertical and is distinguishable from the rear of the vehicle.

(3AAC) For the purposes of subsection (3AAB), a movement permit plate for a movement permit is a plate that—

- (a) is in a form specified by the Commissioner;
- (b) bears the number of the permit; and
- (c) is made at the cost of the holder of the permit.”.

(3) At the end of regulation 53—

Add

“(6) Within 72 hours after any change of name, address, e-contact means or identity document number of a holder of a movement permit, the holder must send to the Commissioner—

- (a) a written notice of the change; and
- (b) in the case of a change of name, the movement permit.

(7) In this regulation—

area where boothless tolling applies (無亭收費區域) means—

- (a) a boothless mode tunnel as defined by section 2(1) of the Road Tunnels (Government) Ordinance (Cap. 368); or
- (b) the toll area operated in boothless mode as defined by section 2(1) of the Tsing Sha Control Area Ordinance (Cap. 594).”.

92. Regulation 59A amended (power of Commissioner to require proof of address)

(1) Regulation 59A, heading, after “address”—

Add

“and e-contact means”.

(2) Regulation 59A—

Renumber the regulation as regulation 59A(1).

(3) Regulation 59A(1)(a)—

Repeal

“his address”

Substitute

“the applicant’s address and e-contact means”.

(4) After regulation 59A(1)—

Add

“(2) Despite anything in these regulations, the Commissioner—

- (a) may, on receiving a notice of transfer of ownership of a registered motor vehicle under regulation 17, require the new owner of the motor vehicle to produce proof of the new owner’s address and e-contact means; and

- (b) may take no action on the notice of transfer of ownership until the production of the proof.”.

93. Regulation 60 amended (offences)

- (1) Regulation 60(1)—

Repeal

“41”

Substitute

“41, 43A”.

- (2) Regulation 60(1)—

Repeal

“50A(4)”

Substitute

“50A(4), 53(3AA) or (6)”.

Part 10

**Amendments to Road Traffic (Traffic Control)
Regulations (Cap. 374 sub. leg. G)**

94. Schedule 1 amended (traffic signs)

- (1) Schedule 1, Figure No. 113, after “403,”—

Add

“403A,”.

- (2) Schedule 1, after Figure No. 403—

Add

“SUPPLEMENTARY
PLATE

FIGURE No. 403A



This plate will be used attached to the sign in Figure No. 113 to indicate the exception of taxis carrying no passengers to the particular prohibition indicated by the sign.

The words “taxis carrying no passengers” and “非載客的士” may be varied to accord with the specified type or class of vehicle excepted.”.

Explanatory Memorandum

This Bill amends the Road Tunnels (Government) Ordinance (Cap. 368) (*RT(G)O*) and the Tsing Sha Control Area Ordinance (Cap. 594) (*TSCAO*), mainly to provide for operation of tunnels and the Tsing Sha Control Area (*TSCA*) under those Ordinances without toll booths, and for the collection and recovery of tolls payable for the use of the tunnels and TSCA so operated. The Bill also amends the Road Traffic Ordinance (Cap. 374), mainly to provide for the issue of toll tags to be used with motor vehicles to enable the use of the tunnels and TSCA by the vehicles to be detected and for the requirement for the use of toll tags.

2. Parts 2 and 4 amend the RT(G)O and the TSCAO. The main purposes are as follows—
 - (a) necessary definitions (such as definitions of *toll service agreement* and *toll service provider*) are added to section 2 of the RT(G)O and section 2 of the TSCAO respectively;
 - (b) new section 8B is added to the RT(G)O and new section 8A is added to the TSCAO to provide for the designation of a tolled tunnel as a boothless mode tunnel and the designation of the toll area of TSCA as being operated in boothless mode;
 - (c) new section 14AA is added to the RT(G)O and new section 17A is added to the TSCAO to provide for the appointment of toll service officer to assist in the performance of functions relating to the collection and recovery of tolls for the use of a tunnel and the TSCA respectively;
 - (d) sections 14A and 14B of the RT(G)O and sections 18 and 19 of the TSCAO on evidence by certificates are repealed and substituted. The substituted provisions are

- cast in general terms to allow for changes in technology in recording the use by a vehicle of a tunnel or the TSCA or a vehicle exceeding a speed limit. Proof of other miscellaneous matters of record by certificates is also provided for;
- (e) new sections 22B, 22C and 22D and new Schedule 1A added to the RT(G)O and new sections 23A and 24A and new Schedule 2 added to the TSCAO (together with amendments to sections 24 and 25 of the TSCAO), provide for remuneration to, and financial penalties imposed on, a toll service provider;
 - (f) to cater for the collection and recovery of tolls incurred in boothless mode cases, section 20 of the RT(G)O and section 26 of the TSCAO on regulation making power are expanded, so that regulations may be made—
 - (i) to impose additional charges, penalties and costs in connection with the recovery of tolls and additional charges;
 - (ii) to provide for a direction by the court for a person's application for registration, licence or permit in respect of a vehicle to be refused if any tolls or related additional charges, penalties or costs remain unpaid by the person;
 - (iii) to empower the Commissioner for Transport (**Commissioner**) to waive, exempt, reduce or refund tolls, additional charges, fees or charges prescribed by regulations;
 - (iv) to provide for the use and installation of boothless tolling facilities and regulation of the use of the facilities;

- (v) to prohibit tampering of and other unlawful act done to boothless tolling facilities and related records; and
 - (vi) to confer, on a toll service provider, any functions relating to the collection and recovery of tolls including serving, cancelling or withdrawing certain statutory notices and handling claims for refunds;
 - (g) new section 22F is added to the RT(G)O and new section 29A is added to the TSCAO to provide for the service of documents in relation to the collection and recovery of tolls in boothless mode cases.
- 3. Existing section 9A of the RT(G)O and existing section 28 of the TSCAO provide for the Secretary for Transport and Housing giving directions to an operator. Existing section 29 of the TSCAO protects the Government from liability arising from an operator's performance of the operator's functions. The substituted section 9A of, and new section 22E, added to the RT(G)O and substituted sections 28 and 29 of the TSCAO apply to an operator and a toll service provider for similar purposes.
 - 4. Parts 3, 5 and 6 amend respectively the Road Tunnels (Government) Regulations (Cap. 368 sub. leg. A) (**Tunnel Regulations**), the Tsing Sha Control Area (General) Regulation (Cap. 594 sub. leg. A) (**TS General Regulation**) and the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594 sub. leg. B) (**TS Tolls Regulation**).
 - 5. Necessary definitions are added to regulation 2(1) of the Tunnel Regulations, section 2(1) of the TS General Regulation and section 2 of the TS Tolls Regulation. Under the Tunnel Regulations and the TS Tolls Regulation, **collecting authority** means the Commissioner or the toll service provider.

6. The existing regulation 12 of the Tunnel Regulations and section 3 of the TS Tolls Regulation are repealed and substituted. The liability for a toll for the use of a tunnel and the TSCA is covered by the substituted regulation 12 and substituted section 3 respectively. Provisions on the driver's liability for non-payment of a toll for a booth mode tunnel or the TSCA operated in booth mode are re-enacted as new regulation 12AAB of the Tunnel Regulations and new section 3B of the TS Tolls Regulation respectively, except that the penalty for the offence for non-payment, in each case, will no longer include imprisonment.
7. Regulations 12AAC to 12AAX of the Tunnel Regulations and sections 4A to 4V of the TS Tolls Regulation provide, in relation to boothless mode tunnel or toll area of the TSCA operated in boothless mode, for the following—
 - (a) the responsible person of the vehicle concerned is to be liable if the toll is not paid within the specified time limit;
 - (b) if the toll is not paid within the specified time limit, an initial surcharge and a further surcharge become payable respectively on the expiry of 21 days and 42 days after the service of a notice (*surcharge notice*) by the collecting authority. The surcharge notice requires the responsible person to pay the unpaid toll and initial surcharge and (if appropriate) further surcharge or dispute liability within 42 days after the service of the surcharge notice;
 - (c) if the responsible person disputes liability within the specified time limit, the collecting authority is to consider the responsible person's representations and decide whether to cancel the surcharge notice;
 - (d) if the collecting authority decides not to cancel the surcharge notice, a notice of rejection is to be served on

- the responsible person demanding for the unpaid toll and initial and further surcharges. If the responsible person stills disputes liability, a complaint may be filed with a magistrate for a hearing;
 - (e) if the responsible person fails to respond to a surcharge notice or a notice of rejection, an application may be made to a magistrate for an order to be made against the responsible person in the responsible person's absence;
 - (f) in relation to a complaint in circumstances referred to in subparagraph (d) or an application in circumstances referred to in subparagraph (e), the case may be proved by records and certificates produced in accordance with the new sections 14A and 14B of the RT(G)O or the new sections 18 and 19 of the TSCAO. If the magistrate orders the responsible person to pay the unpaid toll and initial and further surcharges, the magistrate may further order the responsible person to pay a penalty and costs and may direct the Commissioner to refuse, or not to act on, the responsible person's certain applications involving vehicles until the judgment amount is paid.
8. New regulations 12B and 18A are added to the Tunnel Regulations, and new sections 19A, 19B and 19C are added to the TS General Regulation, to provide for installation of boothless tolling facilities and to prohibit any act that avoids the detection of use of the toll area or results in underpayment of appropriate toll.
9. Part 7 amends the Road Traffic Ordinance (Cap. 374) (*RTO*). The main purposes are as follows—
 - (a) new section 6A added to the RTO, and the amendment to section 15 of the RTO, mainly provide for the power to make regulations to provide for the issue of toll tags and to require the use of toll tags and to regulate the use of toll tags or devices that function in a manner similar

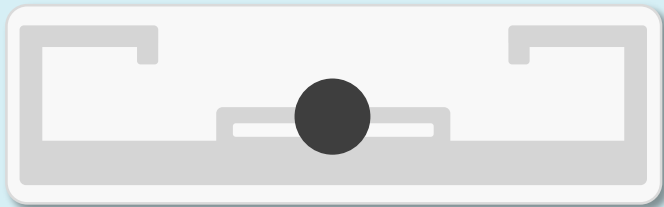
- to toll tags. The functions relating to the issue of toll tags may be conferred on an agent of the Commissioner;
- (b) new section 111A added to the RTO essentially makes it an offence if a person, with intent to deceive, forges a toll tag, alters any data stored in a toll tag or possesses a forged or altered toll tag, or drives a vehicle using a forged or altered toll tag or does similar acts;
 - (c) currently, section 67A of the RTO provides for retrieval of electronic data from certain electronic data recording device fitted to a vehicle involved in an accident or traffic offence. Section 67A is amended to provide for retrieval of data from a toll tag or similar device used in connection with or carried by a vehicle involved in an offence under section 111A of the RTO or a regulation made under section 6A of the RTO or an offence, under the RT(G)O or TSCAO, relating to the detection of the use by a vehicle of certain Government infrastructure.
10. Part 8 makes consequential amendments to the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D). Currently, for every hiring of a taxi involving the use of a tunnel or the TSCA for which a toll is payable to the Government, the taxi fare includes the toll paid by the driver during the hiring. Amendments are made to replace references to “toll paid by the driver during the hiring” by references to the toll specified in the relevant legislation.
11. The Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E) (*Cap. 374E*) currently—
- (a) require certain particulars (including address) to be provided to the Commissioner, in certain circumstances, such as—
 - (i) on a transfer of ownership of a registered motor vehicle (regulation 17); and

- (ii) on a change to the particulars of registered owner or personalized registration mark holder (regulation 19); and
 - (b) empower the Commissioner to require proof of address (regulation 59A).
- 12. Part 9 amends Cap. 374E so that an e-contact means (that is either an electronic mail address or mobile phone number) is also required and proof of the e-contract means may be required.
- 13. New subregulations (3AA) and (3AAB) are added to regulation 53 of Cap. 374E to require a vehicle used under a movement permit, entering a boothless mode tunnel or the toll area, of the TSCA, operated in boothless mode, to display a movement permit number plate. Regulation 60 of Cap. 374E is amended so that a failure to display the number plate constitutes an offence punishable by a fine at level 1.
- 14. Currently, a taxi not carrying any passenger is charged a lower toll for using the Eastern Harbour Crossing. When the tunnel is operated in boothless mode, a traffic lane is to be designated as a prohibited zone for all vehicles except taxis carrying no passengers. A taxi that does not carry any passenger and passes through the lane is to be charged a lower toll. For this purpose, Schedule 1 to the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) is amended to provide for the relevant sign (i.e. the sign in existing Figure No. 113 in that Schedule used in conjunction with the new supplementary plate in Figure No. 403A added to that Schedule).

Toll Tag

Toll Tag

The self-adhesive sticker Toll Tag is affixed on the windscreen of vehicle



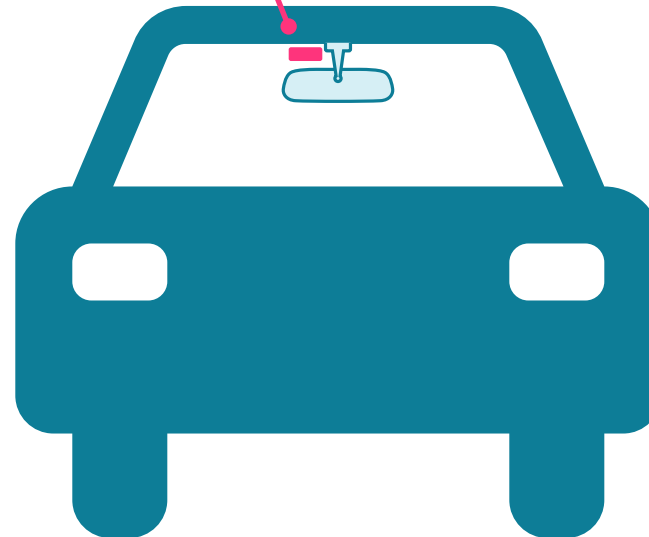
Size Comparison



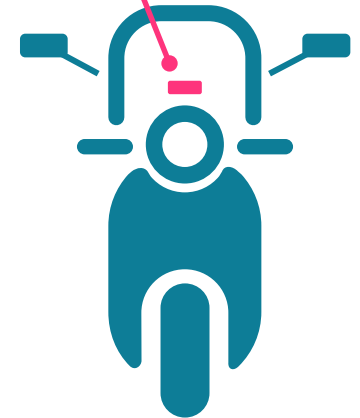
Toll Tag



Credit Card



Private Car



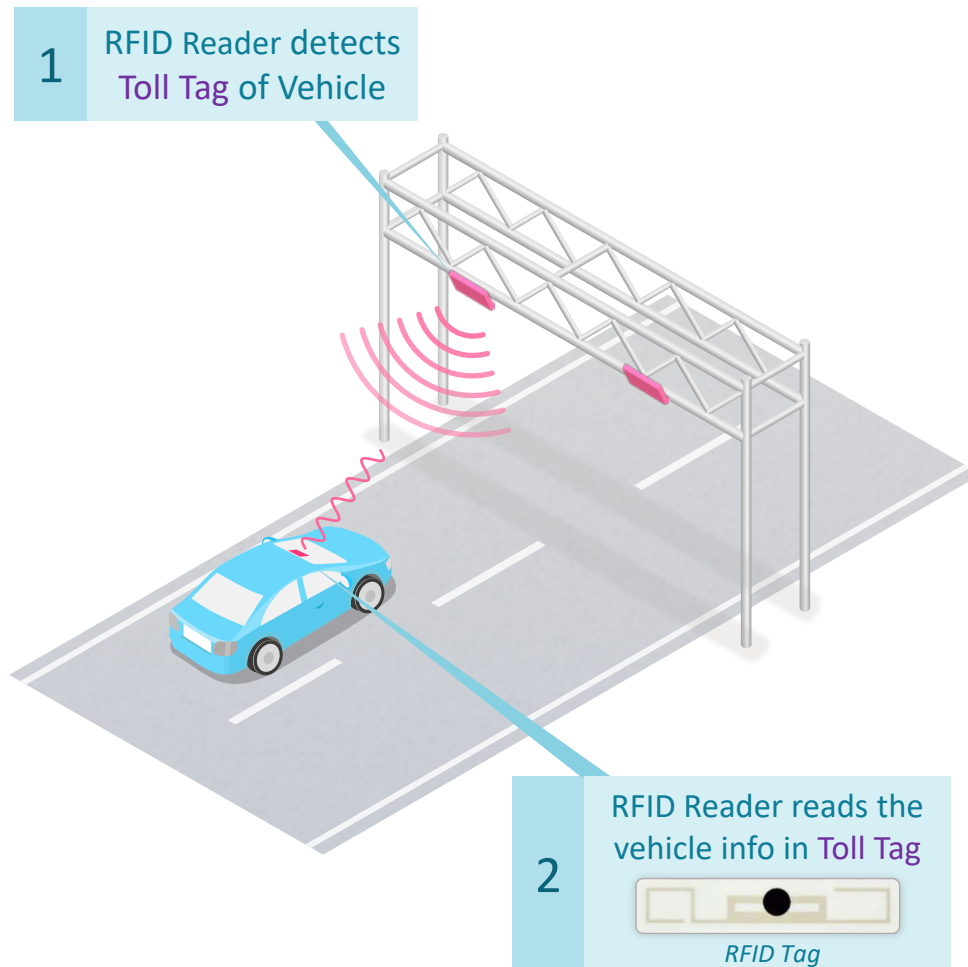
Motorcycle

Free-Flow Tolling System

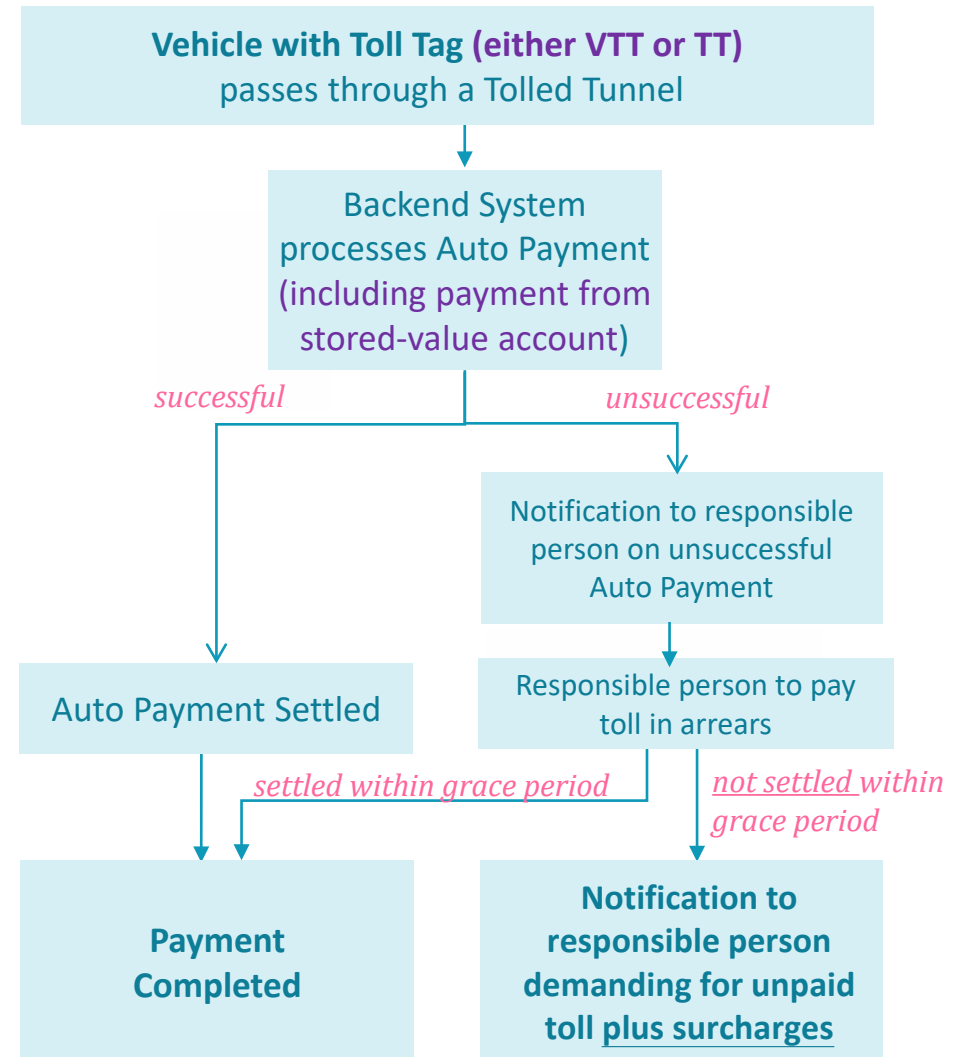
Annex C

Vehicle with Toll Tag

Vehicle Detection



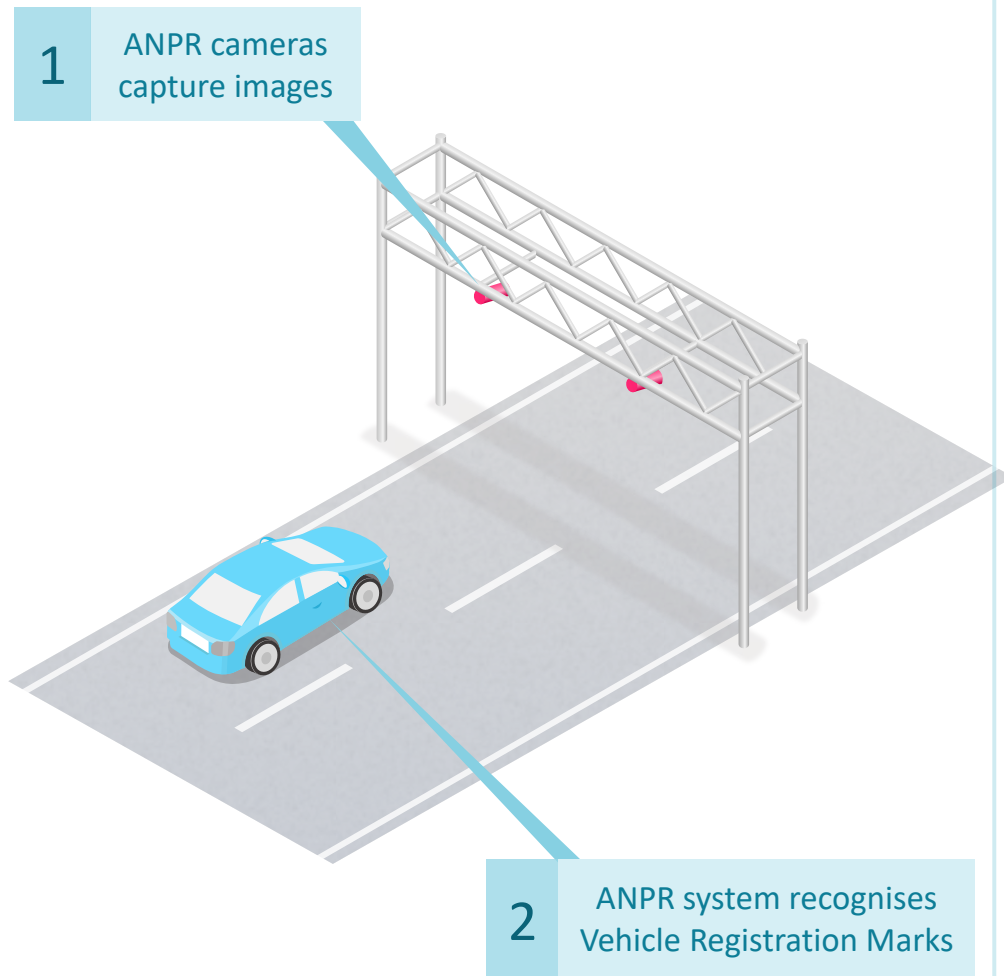
Toll Payment



Free-Flow Tolling System

Vehicle without Toll Tag

Vehicle Detection



Toll Payment



IMPLICATIONS OF THE PROPOSAL

Civil Service Implication

Additional manpower resources are required by the Civil Engineering and Development Department, Electrical and Mechanical Services Trading Fund and Transport Department (“TD”) to handle the workload arising from the proposed implementation of Free-Flow Tolling System (“FFTS”). In this regard, eight permanent and 14 time-limited non-directorate civil service posts have already been created. Further additional manpower resources, if required, will be sought according to the established mechanism.

Economic Implication

2. The proposed implementation of FFTS will enable motorists using a toll tag to pay tolls more efficiently without having to stop at a toll booth for manual toll payment. When fully implemented, FFTS could help alleviate traffic congestion at the toll plazas and in the vicinity of government tolled tunnels and Tsing Sha Control Area (“TSCA”), and in turn reduce the journey time (i.e. time cost) of using the government tolled tunnels and TSCA by the commuting public, public transport operators and transport trades.

Financial Implication

3. TD has created a commitment of \$945.98 million in the 2019-20 Estimates for the capital expenditure on implementing FFTS at government tolled tunnels and TSCA, which covers (a) development and modification of the backend software system; (b) procurement and installation of field equipment and facilities; (c) essential modification of existing toll plazas of government tolled tunnels and TSCA; and (d) procurement of toll tags and readers.

4. Separately, the engagement of a Toll Service Provider (“TSP”) for handling toll-related matters under FFTS, the maintenance of the relevant data acquisition system and backend system as well as the storage of transaction data in the Government Cloud Platform, among others, are expected to incur recurrent expenditure of roughly \$490 million per annum upon the full implementation of FFTS. Among the recurrent expenditure, remuneration and reimbursement payable to TSP amounting to roughly \$340 million per annum will be covered by

the toll-related receipts collected by TSP under the netting-off arrangement¹. Before the full implementation of FFTS at all government tolled tunnels and TSCA, as the toll-related receipts of those government tolled tunnels and TSCA with FFTS implemented will not be sufficient to cover the remuneration and reimbursement payable to TSP, TD has secured a time-limited provision of \$456.4 million from 2022-23 to 2023-24 to meet the shortfall during the transitional period. For the recurrent expenditure not covered by the netting-off arrangement, additional funding, if required, will be sought according to the established mechanism.

5. Depending on the number of toll evasion cases, the proposed toll recovery procedures under the Bill may result in additional workload to the Judiciary. The Government and the Judiciary would sort out the necessary financial and manpower resource requirements and the resources would be provided in accordance with the established mechanism if such needs arise in future.

6. The estimated revenue forgone arising from the free-of-charge issue of the first vehicle-specific toll tag (“VTT”) to licensed vehicles set out in paragraph 6 of the brief is roughly \$23 million on a one-off basis (assuming an adoption rate of 45% of existing licensed vehicles, with the revenue forgone for VTT issued free-of-charge to newly licensed vehicles in future years not yet taken into account). The estimated revenue forgone arising from the proposed toll waivers and combination of toll classes² for the implementation of FFTS is roughly \$37 million per annum³. On the other hand, the estimated revenue generated from the first issue of toll tags which are specific to vehicle classes (“TT”) as set out in

¹ At present, only the remuneration and reimbursement payable to the management, operation and maintenance operators of government tunnels can be netted off by toll-related receipts pursuant to the Road Tunnels (Government) Ordinance (Cap. 368) (“RT(GO”). With the implementation of FFTS, it is proposed under the Bill to amend RT(GO) and the Tsing Sha Control Area Ordinance (Cap. 594) (“TSCAO”) for expanding the scope of the existing netting-off arrangement to cover TSP under RT(GO), and for enabling the netting-off arrangement for TSP and the management, operation and maintenance operator of TSCA under TSCAO respectively.

² Toll waivers and combination of toll classes arising from the implementation of FFTS are proposed, which include (a) waiving of tolls in respect of the additional number of axle(s) in excess of two for vehicles with more than two axles using the Cross-Harbour Tunnel, Eastern Harbour Crossing, Tate’s Cairn Tunnel (“TCT”) and Western Harbour Crossing (“WHC”), (b) waiving of tolls for all vehicles being towed in TSCA; and (c) adjusting the toll of “Private Light Bus” in TCT (i.e. \$24) to be on par with that of “Public Light Bus” (i.e. \$23) when FFTS is implemented thereat.

³ This amount has not yet reflected the amount of estimated revenue forgone arising from the waiving of tolls in respect of the additional number of axle(s) in excess of two for vehicles with more than two axles for WHC which will be taken over by the Government in August 2023, given that the relevant traffic/revenue data are currently not available to the Government.

paragraph 7 of the brief is a one-off of \$14 million and thereafter roughly \$4 million per annum for the re-issuance (including replacement) of VTTs and the issuance of new TTs. In addition to toll tag-related revenue, any surcharges, fines and penalties to be collected arising from the implementation of FFTS will also be credited to the General Revenue Account in accordance with the established practice.

Sustainability Implication

7. The implementation of FFTS, an important Smart Mobility initiative promulgated in the Hong Kong Smart City Blueprint, is imperative to building Hong Kong into a smart city. By enabling vehicles to pay tolls remotely, FFTS will help minimise disruption to traffic flow near the entrance of the tunnels tubes, thereby alleviating traffic congestion and reducing roadside air pollution. The proposal would be beneficial to the sustainability development in Hong Kong with economic implications set out in paragraph 2 above.
