

II. REPORT

The date of First Reading of the Bill is 24 March 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: THB(T)CR 1/4651/2019) issued by the Transport and Housing Bureau on 17 March 2021 for further details.

Object of the Bill

2. The Bill seeks to:
 - (a) amend the Road Tunnels (Government) Ordinance (Cap. 368) and the Tsing Sha Control Area Ordinance (Cap. 594) and their subsidiary legislation to provide for the operation of tunnels and control area under those Ordinances without toll booths ("boothless mode"), and for the collection and recovery of tolls payable for the use of tunnels and control area so operated; and
 - (b) amend the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation to provide for the issue and use of devices for the detection of vehicles for collection of tolls, and for related purposes.

Background

3. At present, a motorist using a government tolled tunnel¹ or Tsing Sha Control Area (collectively referred to as "Tolled Tunnels") may pay the tunnel toll by stopping at a toll booth to pay the toll manually, using the "stop-and-go" electronic payment facilities or passing through an Autotoll booth by using an Autotoll tag issued by the Autotoll Limited ("booth mode"). The management, operation and maintenance of Tolled Tunnels as well as the charging of tolls for using the Tolled Tunnels are governed by Cap. 368, Cap. 594 and their subsidiary legislation.

4. According to paragraph 3 of the LegCo Brief, one of the Smart Mobility initiatives of the Smart City Blueprint 2.0, which was published in December 2020, is the implementation of the free-flow tolling system ("FFTS") at Tolled Tunnels by early 2024. Upon implementation of FFTS, the use of a

¹ Government tolled tunnels are Cross-Harbour Tunnel, Eastern Harbour Crossing, Lion Rock Tunnel, Shing Mun Tunnels, Aberdeen Tunnel and Tate's Cairn Tunnel. According to footnote 1 of the LegCo Brief, Tolled Tunnels will also cover the two Build-Operate-Transfer ("BOT") tunnels, i.e. Western Harbour Crossing and Tai Lam Tunnel, upon expiry of their BOT franchises in August 2023 and May 2025 respectively.

Tolled Tunnel by a motor vehicle will be detected by FFTS field equipment (i.e. boothless tolling facilities) through reading of a toll tag affixed on the windscreen of the motor vehicle for the purpose of collection of tolls. The Bill is introduced into LegCo by the Administration to provide for the legal backing for the implementation of FFTS at Tolled Tunnels.

Provisions of the Bill

5. The Bill contains 10 Parts. The major provisions of the Bill are summarized in the ensuing paragraphs.

Implementation of FFTS at Tolled Tunnels (Parts 2 and 4)

6. To enable the implementation of FFTS at Tolled Tunnels, Parts 2 and 4 of the Bill seek to amend Cap. 368 and Cap. 594, among others, to:

- (a) empower the Commissioner for Transport ("Commissioner") to designate a Tolled Tunnel to be operated in boothless mode by notice published in the Gazette (such notice would not be subsidiary legislation and hence not subject to amendment by LegCo) (clauses 9 and 40);
- (b) empower the Commissioner to appoint any public officer, any person employed by the toll service provider² or any other person to be a toll service officer to assist in the performance of functions relating to the collection and recovery of tolls for the use of a boothless mode Tolled Tunnel (clauses 11 and 42);
- (c) expand the power of the Chief Executive in Council to make regulations under section 20 of Cap. 368 and section 26 of Cap. 594 to cover certain matters relating to the operation of a boothless mode Tolled Tunnel (including the use and installation of boothless tolling facilities, and imposing additional charges, penalties and costs in connection with the recovery of tolls); such regulations would be subsidiary legislation subject to scrutiny of LegCo pursuant to the negative vetting procedure (clauses 15 and 51);
- (d) impose a financial penalty on a toll service provider for its failure to comply with any requirement of Cap. 368 or Cap. 594 or breach of a toll service agreement (clauses 19, 20 and 48 and 58); and

² Toll service provider is proposed in clauses 5 and 37 of the Bill to mean a person who has entered into a toll service agreement with the Government and would include, 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 a boothless mode tunnel.

- (e) provide that it would be an offence punishable by a fine at level 4 (i.e. \$25,000) if a person, without lawful authority, discloses to another person information obtained or received by or accessible to the person, in connection with performing any function relating to the collection and recovery of tolls payable for the use of a boothless mode Tolled Tunnel (clauses 16 and 53).

Collection and recovery of tolls under FFTS (Parts 3, 5 and 6)

7. In relation to Tolled Tunnels operated in boothless mode, Parts 3, 5 and 6 of the Bill mainly seek to amend the Road Tunnels (Government) Regulations (Cap. 368A), the Tsing Sha Control Area (General) Regulation (Cap. 594A) and the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B) to:

- (a) provide that the responsible person of the vehicle (i.e. the registered owner of the vehicle or the holder of the international circulation permit, movement permit or trade licence if the vehicle is used under such a permit or licence) would be liable to pay for a toll for the use of a Tolled Tunnel; and to provide for a mechanism for collection and recovery of the toll, surcharges and penalties (clauses 28 and 71);
- (b) empower the Commissioner to install or permit the installation of boothless tolling facilities and any ancillary facilities at a Tolled Tunnel for it to be operated as a boothless mode tunnel (clauses 30 and 62); and
- (c) provide for related offences (such as preventing the detection by boothless tolling facilities of the use of a Tolled Tunnel by a vehicle, causing any boothless tolling facilities to fail to operate or to operate in a manner that results in underpayment of an appropriate toll) which would be punishable by a fine at level 2 (i.e. \$5,000) and imprisonment for six months (clauses 32 and 62).

8. In relation to Tolled Tunnels operated in booth mode, under the existing regulations 12 and 18 of Cap. 368A and section 3 of Cap. 594B, the toll payment liability rests with the driver using a Tolled Tunnel, and non-payment of a toll is an offence punishable by a fine at level 2 (i.e. \$5,000) and imprisonment for six months. Parts 3 and 6 of the Bill seek to amend Cap. 368A and Cap. 594B to the effect that non-payment of a toll would no longer be punishable by imprisonment (clauses 28 and 69).

Issue and use of a toll tag (Part 7)

9. Part 7 of the Bill seeks to amend Cap. 374 to, among others, empower the Secretary for Transport and Housing ("Secretary") to make

regulations to provide for the issue, replacement and cancellation of toll tags and the related charges, and 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 (clause 77). Such regulations would be subsidiary legislation subject to scrutiny of LegCo pursuant to the negative vetting procedure.

10. Clause 80 of the Bill seeks to make it an offence if a person, without lawful authority or reasonable excuse, 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 etc. A person who commits such an offence would be liable to a fine at level 3 (i.e. \$10,000) and to imprisonment for three years.

Other related amendments (Parts 8, 9 and 10)

11. Part 9 of the Bill mainly seeks to amend the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) to:

- (a) require a person to provide, in addition to other particulars such as name and address, an e-contact means (i.e. the person's electronic mail address or mobile phone number) in certain circumstances, including transfer of ownership of a registered motor vehicle, and application for international circulation permits, trade licences and movement permits; and
- (b) require a person to provide updated particulars including his e-contact means within 72 hours of change to the Commissioner.

12. Part 10 of the Bill seeks to add a new traffic sign to Schedule 1 to the Road Traffic (Traffic Control) Regulations (Cap. 374G) to the effect that the traffic lane with such new traffic sign would be designated to be used by taxis carrying no passengers (which would be charged a lower toll).

13. Part 8 of the Bill seeks to make consequential amendments to the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) to replace references to "toll paid by the driver during the hiring" by references to the toll specified in the relevant legislation.

Commencement

14. Except Part 9 of the Bill (relating to the proposed amendments to Cap. 374E as stated in paragraph 11 above) which would come into operation on a day to be appointed by the Secretary by notice published in the Gazette, the Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance.

Public Consultation

15. According to paragraph 26 of the LegCo Brief, the Administration 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. The Transport Department ("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.

Consultation with LegCo Panel

16. As advised by the Clerk to the Panel on Transport, the Administration has consulted the Panel on 5 January 2021. Members in general expressed support for the Administration's proposal to implement FFTS at Tolled Tunnels. Some members enquired about the implementation details, including enforcement of the empty taxi lane at the Eastern Harbour Crossing, whether FFTS and Autotoll would co-exist at a tunnel, mandating the use of toll tags in future, and measures of toll splitting between vehicle owners and drivers. Having noted that failure to pay toll would no longer be subject to the penalty of imprisonment, a few members opined that heavy penalties should be imposed on non-compliant vehicle owners to achieve a stronger deterrent effect.

Conclusion

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new mechanism for tunnel toll payment, Members may consider whether a Bills Committee should be formed to study the Bill in detail.

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