

立法會 *Legislative Council*

LC Paper No. CB(4)1057/20-21

Ref. : CB4/BC/4/20

Paper for the House Committee meeting on 4 June 2021

Bills Committee on Free-Flow Tolling (Miscellaneous Amendments) Bill 2021

Purpose

This paper reports on the deliberations of the Bills Committee on Free-Flow Tolling (Miscellaneous Amendments) Bill 2021 ("the Bills Committee").

Background

2. At present, a motorist using a government tolled tunnel¹ or Tsing Sha Control Area ("TSCA") (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 the Tolled Tunnels as well as the charging of tolls for using the Tolled Tunnels are governed by the Road Tunnels (Government) Ordinance (Cap. 368) ("RT(G)O"), the Tsing Sha Control Area Ordinance (Cap. 594) ("TSCAO") and their subsidiary legislation.

3. According to the Smart City Blueprint 2.0 published in December 2020, one of the Smart Mobility initiatives is the implementation of the free-flow tolling system ("FFTS") at Tolled Tunnels by early 2024².

¹ Government tolled tunnels are Cross-Harbour Tunnel, Eastern Harbour Crossing ("EHC"), 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 ("WHC") and Tai Lam Tunnel ("TLT"), upon expiry of their BOT franchises in August 2023 and May 2025 respectively.

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.

Upon implementation of FFTS, the use of a 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 Free-Flow Tolling (Miscellaneous Amendments) Bill 2021 ("the Bill") was introduced into the Legislative Council ("LegCo") by the Administration on 24 March 2021 to provide for the legal backing for the implementation of FFTS at Tolled Tunnels.

The Bill

4. The Bill seeks to:

- (a) amend the RT(G)O and the TSCAO and their subsidiary legislation to provide for the operation of the Tolled Tunnels under those Ordinances without toll booths ("boothless mode"), and for the collection and recovery of tolls payable for the use of the Tolled Tunnels so operated; and
- (b) amend the Road Traffic Ordinance (Cap. 374) ("RTO") 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.

The Bills Committee

5. At the House Committee meeting held on 26 March 2021, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Frankie YICK Chi-ming, the Bills Committee has held two meetings with the Administration and received views in writing from the public on the Bill. The membership list of the Bills Committee is in **Appendix I**. A list of the deputations which has given views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

Benefits of implementing FFTS

6. Members in general welcome the implementation of FFTS to bring Hong Kong one step closer to becoming a Smart City. Whilst reckoning the benefits that FFTS will bring to motorists such as convenience, some members have suggested a wider application of the system so as to enable

the development of more smart mobility initiatives. Members have noted that motorists will be issued a vehicle-specific toll tag ("VTT"), or a toll tag which is specific to the class of the vehicle ("TT"), for the collection of toll such that when a vehicle affixed with VTT or TT passes through a Tolled Tunnel, an appropriate toll will be charged automatically from an associated payment account. An enquiry has been made on whether the Administration will explore the further application of VTT or TT on other smart mobility development such as congestion charging.

7. The Administration has advised that it has kept in view latest development in the market, and measures which can offer greater convenience to motorists will be introduced as appropriate. With the enhancement in motorists' experience with the use of VTT or TT after implementation of FFTS, VTT or TT will serve as a good basis for introducing other smart mobility and traffic management initiatives, such as congestion charging which is now under study.

8. In response to the enquiry about the difference between VTT and TT as well as the issuance of VTT to licensed vehicle owners, the Administration has advised that each VTT relates to a particular vehicle, which will be issued mainly to the registered owner of a licensed vehicle or the holder of an international circulation permit ("ICP")³ issued to a vehicle on application. A payment means may be registered in association with the VTT. A TT, on the other hand, is a toll tag specific to the class of the vehicle concerned, e.g. private cars, goods vehicles, light buses, etc. instead of a particular vehicle. A TT can be procured by any person at designated outlets without any documentary proof, and the stored value account associated with the TT can be topped up anonymously at designated service outlets.

9. On members' concern about the administrative cost of FFTS and the comment that the cost shall not be too high that it might outweigh the benefits, the Administration has advised that the cost of administering FFTS would mainly include the engagement of a Toll Service Provider ("TSP") for handling toll-related matters, procurement and maintenance of backend systems and tolling facilities. As the tender for TSP has not been invited, cost details cannot be provided at this stage. Upon implementation of FFTS, toll collection efficiency will be significantly enhanced, and traffic flow at the toll plazas and connected trunks could be smoothed, thereby shortening the journey time and bringing benefits to the commuting public.

³ 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.

Implementation of FFTS

10. According to the Administration, FFTS is expected to be rolled out at the Tolled Tunnels starting from end 2022. During the transitional period, FFTS will be implemented at certain Tolled Tunnels while some other Tolled Tunnels will remain in booth-mode. There are concerns whether the coexistence of booth-mode and boothless mode of toll collection during the transitional period will cause confusion to motorists.

11. Regarding the implementation arrangement, the Administration has explained that FFTS is expected to be implemented at the Tolled Tunnels starting from end 2022. It may first be implemented at the Lion Rock Tunnel, Shing Mun Tunnels and TSCA which charge flat tolls for different classes of vehicles and are in geographical proximity. Other remaining tunnels, including the Aberdeen Tunnel, Cross Harbour Tunnel, EHC and Tate's Cairn Tunnel, which are among the most heavily used ones, will roll out FFTS as soon as practicable as well. Such an arrangement will allow appropriate traffic arrangement and preparation work to be carried out to ensure a smooth transition from booth mode to boothless mode at the Tolled Tunnels. It is now targeted that FFTS will be implemented at the majority of the Tolled Tunnels in the first quarter of 2024⁴, but TD will strive to compact the programme so as to shorten the transitional period as far as possible. Clear instructions will be given when FFTS is rolled out at a Tolled Tunnel to minimize any possible confusion to motorists.

12. To enable the implementation of FFTS at Tolled Tunnels, clauses 9 and 40 of the Bill seek to amend RT(G)O and TSCAO for empowering the Commissioner for Transport ("C for T") to designate a Tolled Tunnel to be operated in boothless mode by a notice published in the Gazette. The Legal Adviser has pointed out that relevant provisions of the clauses have not provided C for T with the authority to make different designations in respect of a Tolled Tunnel for traffic flow in the same direction. Clarifications have been sought on whether it is the Administration's intent of not allowing the co-existence of different toll collection modes for traffic flow in the same direction of a Tolled Tunnel.

13. The Administration has explained that in order to achieve greater operational efficiency and minimize confusion to motorists, it is the intent of the Administration that there will not be co-existence of different toll collection modes for traffic flow in the same direction of a Tolled Tunnel once FFTS has been implemented thereat. However, there is possibility that different toll collection modes will be adopted for traffic flow in

⁴ Except for WHC and TLT, with details at footnote 2.

different directions of a Tolled Tunnel during the transitional period. TD will strive to minimize the duration of the co-existence of different collection modes at a Tolled Tunnel for the avoidance of confusion to motorists.

14. Referring to Schedule 1 to RT(G)O specifying the Tolled Tunnels which are currently governed by RT(G)O and will be covered in the implementation of FFTS, an enquiry has been raised on whether the two BOT tunnels, viz. WHC and TLT will be added to the Schedule before the expiry of their respective franchises for early implementation of FFTS thereat. The Administration has advised that WHC and TLT will be added to Schedule 1 to RT(G)O, and FFTS will be implemented at the two tunnels, after the Government's takeover of the two tunnels upon expiry of their respective franchises in August 2023 and May 2025.

15. Noting that the space at toll plaza currently occupied by toll booths will be freed up for transport-related purposes, there are comments that TD shall make prior planning about the utilization of the space. The Administration has advised that preparatory work such as adjustment of vehicle-passing lanes is now being planned. As it is observed buses queuing up at bus stops for picking up/dropping off passengers have contributed to congestion, space that will be freed up by demolition of the existing toll booths is expected to be utilized for enhancement of the existing bus stops.

Toll collection and recovery under FFTS

16. Members have noted the concerns raised by the transport trades regarding toll collection and recovery under FFTS. Firstly, toll payment liability will rest with the registered vehicle owners⁵ ("responsible persons") instead of the driver upon implementation of FFTS. Since some vehicle owners may rent their vehicles to rentee-drivers, concerns have been raised on the legal liability of the responsible persons. Secondly, there are concerns on the toll splitting arrangement 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 and different shifts of a day. In addition, it is noted that Clause 28 of the Bill seeks to amend section 12 of the Road Tunnels (Government) Regulations (Cap. 368A) ("RT(G)R") to provide for a toll recovery mechanism under which 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. The trades have

⁵ 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.

considered the grace period too short for them to check and settle the outstanding toll between the responsible persons and rentee-drivers.

17. In addressing the above concerns of the trades, the Administration has explained the following:

- (a) the FFTS boothless tolling facilities will only capture and store data of VTTs or TTs and images of a vehicle when the vehicle passes through a Tolled Tunnel. There is practical difficulty to identify the driver for toll payment. However, there is an express provision in the Bill that the right of a responsible person to seek recovery of tolls and surcharges from any person is not prejudiced by the imposition of toll liability on the responsible person under the Bill; and
- (b) TD will introduce administrative measures and technologies that will facilitate toll splitting or toll payment diversion between a vehicle owner and driver, including the adoption of "two-piece device" where tolls will be charged automatically to a pre-registered payment account of the driver when the driver's component of the "two-piece device" is inserted into the holder installed in a vehicle affixed with a VTT. Alternatively, vehicle owners can request the provision of transaction statements for checking records of tolls paid, and rentee-drivers can use mobile apps for the diversion of payment accounts.

18. The Bills Committee notes that the Administration has taken into account views expressed by the trades, and will move an amendment to extend the grace period from seven to 14 business days.

19. Under the existing legislation, a failure to pay a toll for the use of a Tolled Tunnel (including government tolled tunnels and TSCA) is punishable by imprisonment. Pursuant to RT(G)R, toll evasion at government tolled tunnels is at present an offence and is liable to a fine of \$5,000 and imprisonment for six months. As regards TSCA, the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B) ("TSCA(TFC)R") provides that a convicted driver is liable to a fine at level 2 (i.e. \$5,000) and imprisonment for six months. Members have noted that the Administration will remove imprisonment from the penalties in relation to toll evasion at all Tolled Tunnels. Enquiries have been made on the frequency of toll evasion in the past, and by what means TD can ascertain non-payment of toll is caused by technical error of not reading VTT or TT properly when a vehicle passes through a Tolled Tunnel, or by the deliberate intent of the driver concerned to evade toll payment.

20. The Administration has advised that the occurrence of toll evasion was not frequent in the past. The number of cases of toll evasion as a ratio to the average vehicular flow of the government tolled infrastructures⁶ was 0.102%, 0.064% and 0.042% in 2020, 2019 and 2018 respectively. Given that the percentage of toll evasion cases has all along been low, the Administration considers the fine penalty of \$5,000 (in addition to the initial and further surcharges of \$175 and \$350 respectively) appropriate in terms of proportionality. Under FFTS, in case a vehicle is not affixed with a toll tag, or the toll tag is not affixed properly, its use of a Tolled Tunnel will be detected by the Automatic Number Plate Recognition technology where the data of the vehicle will be sent to the backend system of FFTS for requesting toll payment from the responsible person within the grace period specified in the Bill. While a new offence for forging or interfering with toll tags has been provided for in the newly added section 111A of RTO under Clause 80 of the Bill, other new offences relating to toll tags, including affixing incorrect toll tags, not affixing toll tags in a manner promulgated by TD etc., will be provided for under a new regulation to be made by the Secretary for Transport and Housing upon passage of the Bill.

21. On the defence provisions in the proposed section 12AAD(b) of RT(G)R and the proposed section 4B(b) of TSCA(TFC)R under clauses 28 and 71 of the Bill, the Legal Adviser has sought clarification regarding the relevant burden and standard of proof, in particular whether the burden on the defendant is only an "evidential burden" (i.e. sufficient evidence is adduced to raise an issue), and what evidence may be required to establish such a defence.

22. The Administration has advised that the defences in the proposed provisions are not criminal in nature. The said defences are designed to be advanced by a responsible person in toll recovery proceedings and they are not defences to any criminal offences. With reference to similar provisions in the existing laws, the Administration is of the view that a responsible person shall prove, on the balance of probabilities, the defences in the said provisions and no express provision on standard of proof is required in the Bill. Requiring the responsible person to prove the defence he/she advanced on the balance of probabilities also serves to achieve the policy intent of ensuring a timely and efficient recovery of tolls, and help to minimize chances of abuse of such defences by defendants.

⁶ Including the Tolled Tunnels (except WHC and TLT), Tseung Kwan O Tunnel and Lantau Link, as the latter two remained tolled infrastructures from 2018 to 2020 (the tolls of Lantau Link have been waived since 27 December 2020). For Tseung Kwan O Tunnel, as announced in the 2019 Policy Address, its tolls will be waived upon the commissioning of Tseung Kwan O – Lam Tin Tunnel.

Financial penalties imposed on TSP

23. Members have noted that under clauses 19 and 48 of the Bill (proposed section 22C to RT(G)O and proposed section 24A to TSCAO) financial penalties will be imposed if TSP fails to comply with any requirement of RT(G)O or TSCAO or is in breach of toll service agreement. Different levels of financial penalty are proposed for failure or breach which is capable of being remedied and for that which is not. Members have sought clarifications on the differences between failure or breach that can be remedied vis-à-vis that cannot.

24. The Administration has advised that C for T may consider if the failure or breach is capable of being remedied. C for T will make assessment on a case-by-case basis, with due regard to the nature of the failure or breach, in particular whether it can be set right with the acquisition of a reasonable amount of resources by TSP. For instance, if a failure or breach is attributable to manpower shortage, it may be regarded as capable of being remedied as TSP may engage additional manpower resources to remedy the situation. On the other hand, if TSP has failed to report a fault which renders the usage of all Tolled Tunnels by vehicles undetected for a significant period of time, such a failure may amount to a breach not capable of being remedied.

25. There is a suggestion that the breach or non-compliance involving matters relating to staff remunerations/benefits or occupational health and safety should result in financial penalty on TSP, or even suspension or termination of service. The Administration has advised that in the course of providing services in relation to toll-related matters, TSP is required to comply with the requirements stipulated in RT(G)O, TSCAO as well as toll service agreement. Separately, TSP is also required to observe other legal requirements such as those stipulated under the Employment Ordinance (Cap. 57), Employees Compensation Ordinance (Cap. 282) and Occupational Health and Safety Ordinance (Cap. 509), among others. If TSP fails to observe or perform any of its material obligations stipulated in the toll service agreement (e.g. failure to transfer the toll revenue collected to the Government when due), TD may terminate the contract before the original expiry date.

Empty taxi lane at EHC

26. Members have noted that currently, taxis carrying no passengers using EHC are charged at a concessionary toll of \$15, as opposed to the normal toll of \$25 for taxis with passengers. Drivers of empty taxis need to pay at manual toll booths to facilitate visual inspection by toll collectors

in order to enjoy the concession. After implementation of FFTS, there will be an exclusive lane designated at EHC under the Road Traffic (Traffic Control) Regulations (Cap. 374G) as a prohibited zone for all vehicles except empty taxis carrying no passengers for them to continue to enjoy the concessions. Some members have considered the arrangement superfluous and will unnecessarily increase the administrative cost. They have suggested unifying the toll charged for taxis with or without passengers at a flat rate of \$15, and to align the toll level paid by taxi drivers at all government tolled tunnels at a concessionary rate.

27. The Administration has explained that the object of the Bill is to provide a legal framework for the implementation of FFTS. It has no intention to alter the existing toll levels of EHC. Furthermore, the Administration is mindful of the impact of a toll change on the redistribution of the traffic among different government tolled tunnels.

Re-deployment of toll collectors

28. As FFTS will become the only toll collection mode for Tolled Tunnels after its full implementation, a few members have expressed concern that FFTS will eliminate the job of collecting toll manually at toll booths, rendering toll collectors to become unemployed as a result. As most toll collectors have been working in the same job for a long time, some members have expressed concern that they may face difficulties in finding a new job. A member has suggested the Administration to consider offering financial compensation to these affected employees to help them ride over the difficult times.

29. The Administration has advised that TD will discuss with the existing Tolled Tunnel operators on the provision of suitable training for toll collectors to take up other tunnel posts as far as possible. In addition, upon appointment of TSP, TD will liaise with the appointed TSP for suitable positions that may be offered to toll collectors. TD will offer assistance to the affected employees as and when necessary, such as making referrals to the Employees Retraining Board to facilitate toll collectors to acquire new and enhanced skills for more diversified employment opportunities.

Protection of personal data privacy

30. By virtue of clauses 16 and 53 of the Bill, it is proposed that it will be an offence if a person, without lawful authority, discloses information obtained or received in connection with his/her performance of any function relating to the collection and recovery of tolls payable for the use of the Tolled Tunnels. Members have enquired about the practical steps

taken by TD to ensure that the Data Protection Principles ("DPPs") under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") will be duly complied with, particularly DDP4 which specifies that a data user needs to take practicable steps to safeguard personal data from unauthorized or accidental access, processing, erasure, loss or use.

31. The Administration has advised that TD consulted the Privacy Commissioner for Personal Data on the FFTS framework. TD will specify clearly in the toll service agreement requirements in relation to personal data to ensure that TSP will take appropriate actions to comply with DPPs under PDPO. On authorization to access information, TD will ensure that TSP will only authorize specific grade(s) of staff who are responsible for processing toll-payment-related matters to access information required, and for that purpose only.

32. Members have noted that TSP will be required under the toll service agreement to engage an external auditor for a detailed privacy impact assessment before the launch of FFTS. Afterwards, TSP will need to arrange an annual privacy audit to ensure that adequate data protection measures are in place in relation to the collection and recovery of tolls. In response to an enquiry on whether it is a mandatory requirement for TSP to engage two separate auditors for conducting the privacy impact assessment and the annual privacy audit to ensure integrity and due diligence, the Administration has advised that TSP can specify different auditors for conducting the assessment and the annual audit. In monitoring the compliance of TSP with toll service agreement in relation to the conduct of the privacy impact assessment and the annual privacy audit, TD will ensure that relevant legal requirements are complied with in the process, and the principles of professionalism and integrity are upheld. If two separate auditors are to be engaged, TD will also look into the roles of the two auditors and whether there will be any issues of conflict of interests.

Legal drafting of the Bill

33. Referring to the proposed section 22F(2)(c) of RT(G)O and proposed section 29A(2)(c) of TSCAO under clauses 19 and 55 of the Bill, a member has opined that the provisions are unclear in determining when a specified document, such as a surcharge notice is taken to have been served (送達) by post. Under the proposed section, a specified document will be taken to have been served (送達) "if it is sent by ordinary post or registered post...on the second business day after the day on which it is so sent". As "the day on which it is so sent" may not be easily ascertained, a suggestion has been made on making reference to the date of postmark on the mail for determining when the relevant notice is served.

34. The Administration has explained that, generally speaking, TSP shall issue and post each surcharge notice on the same date, and hence a surcharge notice may be taken to have been served on the second business day after the date of the notice. When considering the provisions on "service of documents", similar provisions in the Laws of Hong Kong have been taken into account, as well as the usual lead time between the collecting authority mailing the surcharge notice and the responsible person receiving it. The Administration has also pointed out that the proposed section 22F(2)(c) of RT(G)O and section 29A(2)(c) of TSCAO are qualified by the phrase "in the absence of evidence to the contrary". This can cater for delay caused, for example, by the special working arrangement of the Post Office during an epidemic. In other words, if a responsible person only receives a surcharge notice some time after the date of the notice, he/she may make use of the date of the postmark as evidence when raising dispute against the deadlines for paying unpaid toll plus the initial surcharge (and further surcharge, as the case requires).

Resumption of Second Reading debate

35. The Bills Committee supports the Administration's proposal of resuming the Second Reading debate on the Bill at the Council meeting on 23 June 2021.

Committee Stage amendments

36. The Administration will propose amendments to the Bill for the following two purposes:

- (a) empowering C for T to designate a time, rather than a date, for a government tolled tunnel under RT(G)O and the toll area of TSCA under TSCAO to change from booth mode to boothless mode; and
- (b) extending the grace period for toll payment from seven to 14 business days.

The proposed amendments to the Bill and a mark-up copy showing the amendments against the existing provisions of the Bill are in **Appendix III and IV** respectively.

37. The Bills Committee has not raised objection to the above amendments.

Advice Sought

38. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4
Legislative Council Secretariat
3 June 2021

**Bills Committee on Free-Flow Tolling (Miscellaneous Amendments)
Bill 2021**

Membership list

Chairman Hon Frankie YICK Chi-ming, SBS, JP

Members Hon CHAN Han-pan, BBS, JP
Hon SHIU Ka-fai, JP
Hon Wilson OR Chong-shing, MH
Hon LUK Chung-hung, JP
Hon Tony TSE Wai-chuen, BBS, JP

(Total : 6 members)

Clerk Ms Sophie LAU

Legal adviser Mr Alvin CHUI

**Bills Committee on Free-Flow Tolling (Miscellaneous Amendments)
Bill 2021**

**List of organizations/individuals which/who have given views to
the Bills Committee**

1. Hong Kong Logistics Association
2. Hong Kong Tunnel and Highway Employees' General Union

Free-Flow Tolling (Miscellaneous Amendments) Bill 2021

Committee Stage

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
9	In the proposed section 8B(1), by deleting “date” and substituting “time”.
9	In the proposed section 8B(2)(b), by deleting “dates” and substituting “times”.
18(4)	In the proposed section 22A(3), by deleting “on or after a designation under section 8B(1) has taken” and substituting “at or after the time a designation under section 8B(1) takes”.
19	In the proposed section 22B(2), in the definition of <i>earliest designation day</i> — (a) by deleting “ <i>day</i> (最早指定日)” and substituting “ <i>time</i> (最早指定時間)”; (b) by deleting “day on which a designation under section 8B(1) has taken” and substituting “time at which a designation under section 8B(1) takes”.
19	In the proposed section 22B(2), in the definition of <i>toll-related receipts</i> , in paragraph (a), by deleting “on or after the earliest designation day” and substituting “at or after the earliest designation time”.
28	In the proposed regulation 12AAC(1)(b), by deleting “7” and substituting “14”.
40	In the proposed section 8A(1), by deleting “date” and substituting “time”.
40	In the proposed section 8A(2)(b), by deleting “dates” and substituting “times”.

- 46 In the proposed section 23A(2), in the definition of *earliest designation day*—
- (a) by deleting “*day* (最早指定日)” and substituting “*time* (最早指定時間)”;
 - (b) by deleting “day on which a designation under section 8A(1) has taken” and substituting “time at which a designation under section 8A(1) takes”.
- 46 In the proposed section 23A(2), in the definition of *toll-related receipts*, in paragraph (a), by deleting “on or after the earliest designation day” and substituting “at or after the earliest designation time”.
- 71 In the proposed section 4A(1)(b), by deleting “7” and substituting “14”.

**Mark-up of Committee Stage Amendments
against Existing Provisions of the Bill**

**Amendments to Clause 9, i.e. proposed section 8B of the Road Tunnels
(Government) Ordinance (Cap. 368)**

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 ~~time 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 ~~times 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.

Amendments to Clause 18(4), i.e. proposed section 22A of Cap. 368

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 at or after the time a designation under section 8B(1) takes 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.”.

Amendments to Clause 19, i.e. proposed section 22B of Cap. 368

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 time (最早指定時間)~~day~~ (最早指定日), in relation to a tolled tunnel, means the earliest time at which a designation under section 8B(1) takes ~~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~~ at or after the earliest designation time 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).

Amendment to Clause 28, i.e. proposed regulation 12AAC of the Road Tunnels (Government) Regulations (Cap. 368A)

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 147 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.

Amendments to Clause 40, i.e. proposed section 8A of the Tsing Sha Control Area Ordinance (Cap. 594)

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 time 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 times 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.”.

Amendments to Clause 46, i.e. proposed section 23A of Cap. 594

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 time (最早指定時間) ~~**day** (最早指定日)~~ means the earliest time at which a designation under section 8A(1) takes effect ~~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 at or after the earliest designation time ~~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.”.

Amendment to Clause 71, i.e. proposed section 4A of the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B)

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 147 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.
