

LEGISLATIVE COUNCIL BRIEF

**Western Harbour Crossing Ordinance (Chapter 436)
Western Harbour Crossing Ordinance
(Amendment of Schedule 1) Notice 2013**

INTRODUCTION

Pursuant to section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436) (“the Ordinance”), the Commissioner for Transport will publish in the Gazette the Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2013 (at Annex A) to show the new statutory tolls of the Western Harbour Crossing (“WHC”). The actual tolls of WHC will remain unchanged and tunnel users will not be affected.

BACKGROUND AND JUSTIFICATIONS

2. Section 45 of the Ordinance provides for a specified toll adjustment mechanism for WHC, under which the franchisee (“the company”) may, depending on its net revenue in a particular year, give effect to a toll increase on six specified dates (i.e., 1 January on 2001, 2005, 2009, 2013, 2017 and 2021). Where, in respect of a year ending immediately before a specified date, the actual net revenue of the company is less than the upper estimated net revenue for that year as stipulated in Schedule 5 to the Ordinance, the company may apply in writing to the Secretary for Transport and Housing to increase the tolls on the specified date; such toll increase is known as “anticipated toll increase”.

3. In addition, section 46 of the Ordinance provides that if in any year the actual net revenue of the company is less than the minimum estimated net revenue for that year as stipulated in Schedule 5 to the Ordinance, the company may apply for a toll increase prior to the specified dates (i.e. to advance an anticipated toll increase). Further, section 48 provides that if all the six anticipated toll increases have been effected, the company may apply for additional toll increases. A copy of sections 45, 46, 48 and Schedule 5 is at Annex B.

4. Under all the scenarios described in paragraphs 2 and 3 above, the magnitude of each toll increase must not exceed that stipulated in Schedule 2¹ or Schedule 3² to the Ordinance (a copy of Schedule 3 is at Annex B) for various categories of vehicles. Tolls adjusted according to this mechanism are usually referred to as “statutory tolls”.

5. The Ordinance also provides for the establishment of the Western Harbour Crossing Toll Stability Fund (“Fund”), and for the payment of specified sums by the company into the Fund under prescribed circumstances³.

6. Pursuant to section 45 of the Ordinance, where an application for a statutory toll increase is made by the company, the Secretary for Transport and Housing shall inform the company either –

- (a) that it may give effect to the appropriate toll increase; or
- (b) that a payment shall be made under section 49 to the company from the Fund.

The objective of (b) above is to obviate the need for, or defer, any statutory toll increase when there is money in the Fund.

7. Since the commissioning of WHC in 1997, the company’s actual net revenue has consistently fallen short of the level of the minimum estimated net revenue stipulated in Schedule 5 to the Ordinance. Therefore, the Fund does not have any balance to pay to the company under section 49 of the Ordinance as set out in paragraphs 5 and 6 above. As such, upon receipt of an application for statutory toll increase by the company, the Government would agree that the company may give effect to the appropriate toll increase, after

¹ Applicable from operating date up to 31 December 2010 or during period of 13 years beginning on operating date.

² Applicable on or after 1 January 2011 or after expiry of 13 years beginning on operating date up to expiry of franchise period.

³ If the net revenue of the company in any year –

- (a) exceeds the upper estimated net revenue but does not exceed the maximum estimated net revenue, the company shall pay into the Fund 50% of the amount in excess of the upper estimated net revenue; or

- (b) exceeds the maximum estimated net revenue, the company shall pay into the Fund the amount in excess of the maximum estimated net revenue and an amount equal to 50% of the difference between the upper estimated net revenue and the maximum estimated net revenue.

satisfying itself that the statement of net revenue (“NRS”) in respect of the relevant year is accurate.

8. By 31 July 2006, the company has effected all the anticipated toll increases⁴ and has since applied for and been permitted six additional toll increases; the impending statutory toll increase will be the seventh additional toll increase. A table summarising the history of the company’s position regarding statutory toll increase is at Annex C.

9. Section 45 of the Ordinance provides that any statutory toll increase application shall be made at the same time the NRS in respect of the relevant year is submitted. The company submitted its audited 2009/10 NRS and applied for an additional toll increase in August 2010. We have carefully examined the NRS in accordance with the requirement under the toll adjustment mechanism. The NRS shows that the company’s actual net revenue for 2009/10 was \$867 million; this is lower than the minimum estimated net revenue of \$2,028 million for that year as specified in Schedule 5 to the Ordinance. We have subsequently informed the company in writing in October 2010 that we noted their application for toll increase based on the 2009/10 NRS and confirmed the NRS to be accurately calculated and duly audited. We also passed a copy of the NRS submitted by the company to the Panel on Transport of the Legislative Council for information in October 2010 (vide LC Paper No. CB(1)250/10-11(01)).

10. In June 2013, the company informed the Government that based on its 2009/10 NRS, it would like to have the new statutory toll levels to take effect on 31 July 2013. The Commissioner for Transport will in accordance with section 52(1) of the Ordinance, publish in the Gazette the Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2013 to show the new statutory tolls of WHC which will take effect on 31 July 2013.

11. The company offers concessions to all categories of vehicles. Therefore, the actual tolls (or concessionary tolls) are lower than the statutory levels. The company will continue to offer the prevailing concessions to all types of vehicles after the present statutory toll increase has taken effect. That means that the current concessionary tolls will be maintained and tunnel users will not be affected by the changes in the statutory tolls. The new statutory and concessionary tolls of WHC as compared with the current tolls are at Annex D.

⁴ It has forfeited its right once to effect anticipated toll increase.

THE NOTICE

12. The Notice sets out the new statutory tolls of WHC for different categories of vehicles.

LEGISLATIVE TIMETABLE

13. The legislative timetable is as follows -

Publication in the Gazette	26 July 2013
Commencement	31 July 2013

IMPLICATIONS

14. The statutory toll increase is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial, economic, environmental, sustainability, productivity, competition, family or civil service implications. The Notice does not affect the binding effect of the Ordinance.

PUBLICITY

15. A press release will be issued on 26 July 2013.

ENQUIRIES

16. Any enquiries concerning this Brief can be directed to Ms Cordelia Lam, Principal Assistant Secretary for Transport and Housing (Transport) at 3509 8192.

Transport and Housing Bureau
July 2013

Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2013

(Made by the Commissioner for Transport under section 52(1) of the Western Harbour Crossing Ordinance (Cap. 436))

1. Commencement

This Notice comes into operation on 31 July 2013.

2. Western Harbour Crossing Ordinance amended

The Western Harbour Crossing Ordinance (Cap. 436) is amended as set out in section 3.

3. Schedule 1 substituted

Schedule 1—

Repeal the Schedule

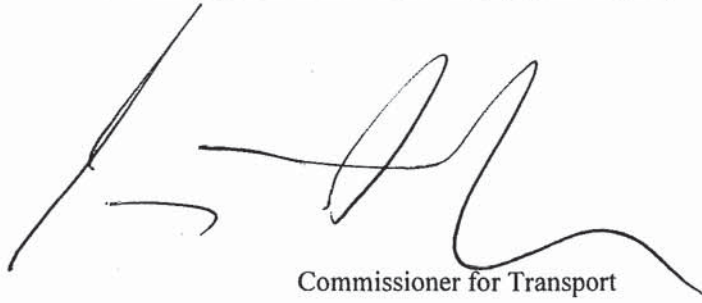
Substitute

“Schedule 1 [ss. 2(1), 33, 34, 36 & 52]

Western Harbour Crossing Tolls

Category	Vehicle	Toll \$
1.	Motorcycles, motor tricycles.....	90
2.	Private cars, electrically powered passenger vehicles, taxis.....	165
3.	Public and private light buses	190

Category	Vehicle	Toll \$
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes.....	240
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2.....	165
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes.....	350
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2.....	165
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	500
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2.....	165
7.	Public and private single-decked buses.....	190
8.	Public and private double-decked buses	280”.



Commissioner for Transport

22 July 2013

Explanatory Note

This Notice replaces Schedule 1 to the Western Harbour Crossing Ordinance (Cap. 436) to show the new tolls.

Chapter: 436 Title: WESTERN HARBOUR Gazette
CROSSING ORDINANCE Number:
Schedule: 3 Heading: **INCREASES IN WESTERN** Version Date: 30/06/1997
HARBOUR CROSSING
TOLLS

[sections 34, 49 & 50]

(on or after 1 January 2011 or after expiry of 13 years beginning on
operating date up to expiry of franchise period)

Category	Vehicle	Increase \$
1.	Motorcycles, motor tricycles	10
2.	Private cars, electrically powered passenger vehicles, taxis	15
3.	Public and private light buses	20
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	20
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	15
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	35
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	15
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	45
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	15
7.	Public and private single-decked buses	20
8.	Public and private double-decked buses	30

(Enacted 1993)

Chapter: 436 Title: WESTERN HARBOUR Gazette
CROSSING ORDINANCE Number:
Schedule: 5 Heading: ESTIMATED NET Version Date: 30/06/1997
REVENUE (\$000000's)

[section 42]

Year Ending 31 July in	Minimum Estimated Net Revenue	Upper Estimated Net Revenue	Maximum Estimated Net Revenue
1998	154	336	403
1999	201	399	471
2000	253	461	538
2001	506	768	865
2002	713	1016	1128
2003	794	1106	1221
2004	880	1202	1321
2005	1190	1570	1711
2006	1455	1881	2039
2007	1549	1983	2143
2008	1623	2061	2223
2009	1876	2369	2551
2010	2028	2562	2760
2011	1892	2405	2594
2012	1821	2326	2513
2013	2212	2815	3038
2014	2573	3267	3524
2015	2733	3474	3749
2016	2891	3682	3974
2017	3507	4449	4797
2018	4018	5090	5486
2019	4220	5355	5775
2020	4422	5621	6064
2021	5192	6583	7098
2022	5747	7285	7855
2023	5726	7286	7864

Note: In this Schedule "year" shall be construed having regard to the definition of "year" in section 42 of this Ordinance.

(Enacted 1993)

Western Harbour Tunnel Company Limited
Position regarding Statutory Toll Increase

Accounting Year	Statement of Net Revenue			The company's position regarding statutory toll increase	Effective date of gazetted statutory toll increase
	Minimum Estimated Net Revenue HK\$ million	Net Revenue / (Deficit) HK\$ million	Shortfall HK\$ million		
1997/1998	154	(208)	362	Yes (advancement of anticipated toll increase from 1.1.2001 under S.46 of the Ordinance)	Waived
1998/1999	201	(52)	253	Yes (advancement of anticipated toll increase from 1.1.2005 under S.46 of the Ordinance)	3.12.2000
1999/2000	253	59	194	Yes (advancement of anticipated toll increase from 1.1.2009 under S.46 of the Ordinance)	31.7.2002
2000/2001	506	172	334	Yes (advancement of anticipated toll increase from 1.1.2013 under S.46 of the Ordinance)	24.2.2004
2001/2002	713	299	414	Yes (advancement of anticipated toll increase from 1.1.2017 under S.46 of the Ordinance)	31.7.2005
2002/2003	794	325	469	Yes (advancement of anticipated toll increase from 1.1.2021 under S.46 of the Ordinance)	31.7.2006

Accounting Year	Net Revenue Statement			The company's position regarding statutory toll increase	Effective date of gazetted statutory toll increase
	Minimum Estimated Net Revenue HK\$ million	Net Revenue / (Deficit) HK\$ million	Shortfall HK\$ million		
2003/2004	880	400	480	Yes (creation of additional toll increase under S.48 of the Ordinance)	31.7.2007
2004/2005	1,190	492	698	Yes (creation of additional toll increase under S.48 of the Ordinance)	31.7.2008
2005/2006	1,455	567	888	Yes (creation of additional toll increase under S.48 of the Ordinance)	31.7.2009
2006/2007	1,549	658	891	Yes (creation of additional toll increase under S.48 of the Ordinance)	31.7.2010
2007/2008	1,623	760	863	Yes (creation of additional toll increase under S.48 of the Ordinance)	31.7.2011
2008/2009	1,876	788	1,088	Yes (creation of additional toll increase under S.48 of the Ordinance)	31.7.2012
2009/2010	2,028	867	1,161	Yes (creation of additional toll increase under S.48 of the Ordinance)	31.7.2013
2010/2011	1,892	1,009	883	Yes (creation of additional toll increase under S.48 of the Ordinance)	
2011/2012	1,821	1,081	740	Yes (creation of additional toll increase under S.48 of the Ordinance)	

Existing and New Tolls of WHC

	Existing Tolls ^(Note)		New Tolls (w.e.f. 31 July 2013)		
	Statutory	Concessionary	Statutory	Concessionary	Actual Increase
Motorcycles and motor tricycles	\$80	\$25	\$90	\$25	\$0
Private cars and electrically powered passenger vehicles	\$150	\$55	\$165	\$55	\$0
Taxis	\$150	\$50	\$165	\$50	\$0
Public and private light buses	\$170	\$65	\$190	\$65	\$0
Light goods vehicles	\$220	\$65	\$240	\$65	\$0
Medium goods vehicles	\$315	\$90	\$350	\$90	\$0
Heavy goods vehicles	\$455	\$120	\$500	\$120	\$0
Single-decked buses	\$170	\$100	\$190	\$100	\$0
Double-decked buses	\$250	\$140	\$280	\$140	\$0
Additional axle for goods vehicles	\$150	\$30	\$165	\$30	\$0

Note : Existing statutory tolls took effect from 31 July 2012; concessionary tolls took effect from 1 January 2013.