File Ref : THB(T)CR 1/4651/99

#### 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 <u>Annex A</u>) 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 2<sup>1</sup> or Schedule 3<sup>2</sup> 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 circumstances<sup>3</sup>.
- 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

<sup>&</sup>lt;sup>1</sup> Applicable from operating date up to 31 December 2010 or during period of 13 years beginning on operating date.

<sup>&</sup>lt;sup>2</sup> Applicable on or after 1 January 2011 or after expiry of 13 years beginning on operating date up to expiry of franchise period.

<sup>&</sup>lt;sup>3</sup> If the net revenue of the company in any year –

<sup>(</sup>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

<sup>(</sup>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 increases<sup>4</sup> 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 <u>Annex C</u>.
- 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 The NRS shows that the company's actual net revenue for mechanism. 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 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 <u>Annex</u> D.

- 3

<sup>&</sup>lt;sup>4</sup> 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 Crossin	g Ordinance (	Amendment of	of Schedule 1	) Notice 201
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Section 1 1

## 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

#### Annex A

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

Section 3		2
Category	Vehicle	Toll \$
4.	(a) Light goods vehicles and special purvehicles of a permitted gross very weight not exceeding 5.5 tonnes	ehicle
	(b) In a vehicle specified in paragraph each additional axle in excess of 2	
5.	(a) Medium goods vehicles and sp purpose vehicles of a permitted vehicle weight exceeding 5.5 tonne not exceeding 24 tonnes	gross es but
	(b) In a vehicle specified in paragraph each additional axle in excess of 2	
6.	(a) Heavy goods vehicles and spurpose vehicles of a permitted vehicle weight exceeding 24 tonnes	gross
	(b) In a vehicle specified in paragraph each additional axle in excess of 2	
7.	Public and private single-decked buses	190
8.	Public and private double-decked buses .	280".

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

Commissioner for Transport

2 L July 2013

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

#### **Explanatory Note**

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

(page 1 of 5)

Chapter: 436 Title: WESTERN HARBOUR Gazette

CROSSING ORDINANCE Number:

Section: **45** Heading: **Giving effect to anticipated** Version Date: 30/06/1997

toll increases

(1) The Company may, during the franchise period and in accordance with this section and the project agreement, depending on its net revenue in a particular year, and subject to this Part, give effect to a toll increase on each specified date.

- (2) Where in respect of a year ending immediately before a specified date, the net revenue of the Company is less than the upper estimated net revenue, the Company may apply in writing to the Secretary to increase the tolls by the amount of the appropriate anticipated toll increase.
- (3) Any application under subsection (2) shall be made at the same time the statement of net revenue in respect of the relevant year is submitted under section 43(1).
- (4) Where an application is made under this section the Secretary shall, subject to subsection(5), inform the Company, not later than 21 days before the day on which a toll increase, if given effect to, may take place 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.
- (5) Where the Secretary is not satisfied with the statement of net revenue submitted in respect of a year as regards which an application under this section is made-
  - (a) if the amount of the net revenue in dispute does not affect the eligibility of the Company to give effect to a toll increase under this Part, subsection (4) shall apply; and
  - (b) in any other case, if pursuant to negotiation or reference to an independent expert as described in section 43(5), it is agreed that the net revenue is such or the decision of the expert as regards the net revenue is such, as to render the Company eligible for a toll increase under this Part, the Secretary shall inform the Company not later than 21 days before the date on which the toll increase may be given effect to, that the Company may give effect to a toll increase or that a payment shall be made under section 49 to the Company from the Fund.

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Chapter: 436 Title: WESTERN HARBOUR Gazette

CROSSING ORDINANCE Number:

Section: 45 Heading: Giving effect to anticipated Version Date: 30/06/1997

toll increases

(6) For the purposes of subsection (5)(b), the date on which a toll increase may be given effect to is the date on which under the terms of the project agreement, a toll increase, if any, may be given effect to after-

- (a) an agreement is reached as regards a statement of net revenue by negotiation between the Secretary and the Company; or
- (b) a determination is made by an expert as regards such a statement, as may be appropriate.

(Enacted 1993)

Chapter: 436 Title: WESTERN HARBOUR Gazette

CROSSING ORDINANCE Number:

Section: **46** Heading: **Advancement of toll increases** Version Date: 30/06/1997

- (1) Where in respect of any year the net revenue of the Company is less than the minimum estimated net revenue for that year, and that year is not a year ending immediately before a specified date, the Company may apply to the Secretary to give effect to the next anticipated toll increase.
- (2) Section 45(3), (4) and (5) shall apply in relation to an application under subsection (1).
- (3) The date on which a toll increase under subsection (1) can be given effect to is 1 January next following the year in respect of which the Company makes the application under subsection (1).

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Chapter: 436 Title: WESTERN HARBOUR Gazette CROSSING ORDINANCE Number:

Section: **48** Heading: **Creation of additional toll** Version Date: 30/06/1997

increases

(1) Where the Company has given effect to all the anticipated toll increases referred to in section 45(1) and the net revenue of the Company in respect of any year before the expiry of the franchise period is less than the minimum estimated net revenue for that year, the Company may apply to the Secretary to give effect to an additional toll increase of an amount which is appropriate having regard to section 50.

- (2) Sections 45(3) and (4) shall apply in relation to an application under subsection (1).
- (3) The date on which a toll increase applied for under subsection (1), if permitted, may be given effect to is 1 January next following the year in respect of which the application is made.

# Annex B (page 4 of 5)

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

[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)

		Increase
Category	Vehicle	\$
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

### Annex B

(page 5 of 5)

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.

### Western Harbour Tunnel Company Limited Position regarding Statutory Toll Increase

	Statement of Net Revenue				Effective
Accounting Year	Minimum Estimated Net Revenue HK\$ million	Net Revenue / (Deficit) HK\$ million	Shortfall HK\$ million	The company's position regarding statutory toll increase	date of gazetted statutory toll increase
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

Annex C (page 2 of 2)

	Not E	Revenue Staten	nant		Tice .:
	linimum		lent	The company's position	Effective date of
	stimated	Net Revenue /		regarding	gazetted
	t Revenue	(Deficit)	Shortfall	statutory toll increase	statutory toll
	\$ million	HK\$ million		,	increase
2003/2004	880	400	480	Yes	31.7.2007
2003/2004	000	400	460	(creation of additional	31.7.2007
				toll increase under S.48 of	
				the Ordinance)	
2004/2005	1,190	492	698	Yes	31.7.2008
				(creation of additional	
				toll increase under S.48 of	
				the Ordinance)	
2005/2006	1,455	567	888	Yes	31.7.2009
2003/2000	1,133	307	000	(creation of additional	31.7.2007
				toll increase under S.48 of	
				the Ordinance)	
			004		
2006/2007	1,549	658	891	Yes	31.7.2010
				(creation of additional toll increase under S.48 of	
				the Ordinance)	
				,	
2007/2008	1,623	760	863	Yes	31.7.2011
				(creation of additional	
				toll increase under S.48 of	
				the Ordinance)	
2008/2009	1,876	788	1,088	Yes	31.7.2012
2008/2007	1,070	700	1,000	(creation of additional	31.7.2012
				toll increase under S.48 of	
				the Ordinance)	
2009/2010	2,028	867	1,161	Yes	31.7.2013
				(creation of additional toll increase under S.48 of	
				the Ordinance)	
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	
2011/2012	1,021	1,001	7+0	(creation of additional	
				toll increase under S.48 of	
				the Ordinance)	

 $\underline{\textbf{Annex D}}$  Existing and New Tolls of WHC

	Existin	ag Tolls (Note)	New Tolls (w.e.f. 31 July 2013)			
	Statutory	Concessionary	Statutory	Concessionary	Actual Increase	
Motorcycles and motor tricycles	<b>notor</b> \$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.