

LEGISLATIVE COUNCIL BRIEF

Western Harbour Crossing Ordinance (Chapter 436) Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2019

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 2019 (“the Notice”) (at Annex A) to show the new statutory tolls of the Western Harbour Crossing (“WHC”). The actual tolls (or concessionary tolls) payable by users of WHC will remain unchanged.

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 of 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 (“the Secretary”) 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 of the Ordinance provides that if all the six anticipated toll increases have been effected, the Company may apply for additional toll increases.

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 or Schedule 3 to the Ordinance¹ for various categories of vehicles. Tolls adjusted according to this mechanism are usually referred to as “statutory tolls”. A copy of the relevant provisions of the Ordinance is at Annex B.

5. The Ordinance also provides for the establishment of the Western Harbour Crossing Toll Stability Fund (“the Fund”), and for the payment of specified sums by the Company into the Fund under prescribed circumstances².

6. Pursuant to section 45(4) of the Ordinance³, where an application for a statutory toll increase is made by the Company, the Secretary 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.

¹ Schedule 2 is applicable from operating date up to 31 December 2010 or during period of 13 years beginning on operating date, while Schedule 3 is applicable on or after 1 January 2011 or after expiry of 13 years beginning on operating date up to expiry of franchise period.

² 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.

³ According to sections 46(2) and 48(2) of the Ordinance, section 45(4) of the Ordinance shall apply in relation to an application under sections 46(1) and 48(1) respectively.

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(b) above. As such, upon receipt of an application for statutory toll increase by the Company, the Government will agree that the Company may give effect to the appropriate toll increase, after being satisfied that the statement of net revenue ("NRS") in respect of the relevant year is accurate.

8. The Company has effected 17 statutory toll increases since the commissioning of WHC⁴. 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 submitted⁵. The Company submitted its audited 2015/16 NRS and applied for an additional toll increase in August 2016. 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 2015/16 was \$1,467 million⁶; this is lower than the minimum estimated net revenue of \$2,891 million for that year as specified in Schedule 5 to the Ordinance. We subsequently informed the Company in writing in October 2016 that we noted their application for toll increase based on the 2015/16 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 2016 (vide LC Paper No. CB(4)52/16-17(01)).

⁴ Apart from the impending statutory toll increase, the Company has also applied for two additional toll increases based on the 2016/17 NRS and 2017/18 NRS respectively which are permitted under section 48 of the Ordinance. The Company has not decided on the date(s) for the new statutory toll levels to take effect in respect of these additional toll increases.

⁵ Section 48(3) of the Ordinance provides that the date on which a toll increase applied for under section 48(1), if permitted, may be given effect to is 1 January next following the year in respect of which the application is made. Section 51(2) of the Ordinance however provides that the Company may defer the coming into effect of a toll increase to which it may give effect to such date as may be agreed between the Company and the Secretary.

⁶ Rounded to the nearest million.

10. In June 2019, the Company informed the Government that based on its 2015/16 NRS, it would like to have the new statutory toll levels to take effect on 31 July 2019. According to section 52(1) of the Ordinance, the Commissioner for Transport shall publish in the Gazette the Notice to show the new statutory tolls of WHC which will take effect on 31 July 2019.

11. Currently, 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. This 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.

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 2019
Commencement	31 July 2019

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, gender, family or civil service implications. The Notice does not affect the current binding effect of the Ordinance.

PUBLICITY

15. A press release will be issued on 25 July 2019.

ENQUIRIES

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

**Transport and Housing Bureau
July 2019**

Western Harbour Crossing Ordinance (Amendment of Schedule 1) Notice 2019

(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 2019.

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	150
2.	Private cars, electrically powered passenger vehicles, taxis	255

Category	Vehicle	Toll \$
3.	Public and private light buses	310
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	360
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	255
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	560
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	255
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	770
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	255
7.	Public and private single-decked buses	310
8.	Public and private double-decked buses	460”



Commissioner for Transport

23 July 2019

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 CROSSING ORDINANCE

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

- (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.

Chapter: 436 Title: WESTERN HARBOUR CROSSING ORDINANCE

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

- (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 CROSSING ORDINANCE

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).

(Enacted 1993)

Chapter: 436 Title: WESTERN HARBOUR CROSSING ORDINANCE
Section: 48 Heading: **Creation of additional toll increases** Version Date: 30/06/1997

- (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.

(Enacted 1993)

Chapter: 436 Title: WESTERN HARBOUR CROSSING ORDINANCE
Section: 52 Heading: **Amendment of Schedule 1** Version Date: 30/06/1997

- (1) Where a toll is increased in accordance with this Part and the project agreement, the Commissioner shall by notice published in the Gazette amend Schedule 1, with effect from the date on which the increase comes into effect, to vary the relevant toll.
- (2) For the avoidance of doubt it is declared that the Company shall not give effect to more than 1 increase in the tolls in 1 year.
- (3) Section 34 of the Interpretation and General Clauses Ordinance (Cap 1) shall not apply in respect of a notice under subsection (1).

(Enacted 1993)

Chapter: 436 Title: WESTERN HARBOUR CROSSING ORDINANCE
Schedule: 3 Heading: **Increases in Western Harbour Crossing Tolls** Version Date: 10/04/2014

		[sections 34 & 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)
(Format changes—E.R. 2 of 2014)

Chapter: 436 Title: WESTERN HARBOUR CROSSING ORDINANCE
Schedule: 5 Heading: **Estimated Net Revenue** Version Date: 10/04/2014
(\$000000's)

Year Ending 31 July in	Minimum Estimated Net Revenue	Upper Estimated Net Revenue	[section 42] 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)
(Format changes—E.R. 2 of 2014)

Western Harbour Tunnel Company Limited
Position regarding Statutory Toll Increase

Accounting Year	Statement of Actual Net Revenue			Whether the company has applied for statutory toll increase?	Effective date of gazetted statutory toll increase
	Minimum Estimated Net Revenue HK\$ million	Actual 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	The Company forfeited the right to effect anticipated toll increase
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
2003/2004	880	400	480	Yes creation of additional toll increase under S.48 of the Ordinance	31.7.2007

Accounting Year	Statement of Actual Net Revenue			Whether the company has applied for statutory toll increase?	Effective date of gazetted statutory toll increase
	Minimum Estimated Net Revenue HK\$ million	Actual Net Revenue / (Deficit) HK\$ million	Shortfall HK\$ million		
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	31.7.2014
2011/2012	1,821	1,081	740	Yes creation of additional toll increase under S.48 of the Ordinance	31.7.2015

Accounting Year	Statement of Actual Net Revenue			Whether the company has applied for statutory toll increase?	Effective date of gazetted statutory toll increase
	Minimum Estimated Net Revenue HK\$ million	Actual Net Revenue / (Deficit) HK\$ million	Shortfall HK\$ million		
2012/2013	2,212	1,179	1,033	Yes creation of additional toll increase under S.48 of the Ordinance	31.7.2016
2013/2014	2,573	1,294	1,279	Yes creation of additional toll increase under S.48 of the Ordinance	31.7.2017
2014/2015	2,733	1,320	1,413	Yes creation of additional toll increase under S.48 of the Ordinance	31.7.2018
2015/2016	2,891	1,467	1,424	Yes creation of additional toll increase under S.48 of the Ordinance	31.7.2019
2016/2017	3,507	1,572	1,935	Yes creation of additional toll increase under S.48 of the Ordinance	[To be decided]
2017/2018	4,018	1,669	2,349	Yes creation of additional toll increase under S.48 of the Ordinance	[To be decided]

Existing and New Tolls of WHC

	Existing Tolls ^(Note)		New Tolls (with effect from 31 July 2019)		
	Statutory	Concessionary	Statutory	Concessionary	Actual Increase
Motorcycles and motor tricycles	\$140	\$25	\$150	\$25	\$0
Private cars and electrically powered passenger vehicles	\$240	\$75	\$255	\$75	\$0
Taxis	\$240	\$70	\$255	\$70	\$0
Public and private light buses	\$290	\$85	\$310	\$85	\$0
Light goods vehicles	\$340	\$85	\$360	\$85	\$0
Medium goods vehicles	\$525	\$110	\$560	\$110	\$0
Heavy goods vehicles	\$725	\$140	\$770	\$140	\$0
Single-decked buses	\$290	\$140	\$310	\$140	\$0
Double-decked buses	\$430	\$200	\$460	\$200	\$0
Additional axle in excess of two for goods vehicles	\$240	\$30	\$255	\$30	\$0

Note : Existing statutory tolls took effect from 31 July 2018; concessionary tolls took effect from 1 June 2019.