

LEGISLATIVE COUNCIL BRIEF

Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Chapter 474)

Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2019

INTRODUCTION

Pursuant to section 45(1) of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) (“the Ordinance”), the Commissioner for Transport will publish in the Gazette the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Amendment of Schedule 1) Notice 2019 (“the Notice”) (at Annex A) to show the new statutory tolls of Tai Lam Tunnel and Yuen Long Approach Road (“Route 3”). The actual tolls (or concessionary tolls) payable by users of Route 3 will remain unchanged.

BACKGROUND AND JUSTIFICATIONS

2. Section 39 of the Ordinance provides for a specified toll adjustment mechanism for Route 3, under which the franchisee (“the Company”) may, depending on its net revenue in a particular year, give effect to a toll increase on three specified dates (i.e. 1 January of 2003, 2010 and 2017). If the actual net revenue of the Company for the year immediately preceding the year in which a specified date occurs is less than its *maximum* estimated net revenue for that year as stipulated in Schedule 4 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 40 of the Ordinance provides that if the actual net revenue of the Company for any year is less than the *minimum* estimated net revenue for that year as stipulated in Schedule 4 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 42 of the Ordinance provides that if all the three 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 to the Ordinance 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 Tai Lam Tunnel and Yuen Long Approach Road Toll Stability Fund (“the Fund”), and for the payment of a specified sum by the Company into the Fund under prescribed circumstances¹.

6. Pursuant to section 39(4) of the Ordinance², 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 43 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 Route 3 in 1998, the Company’s actual net revenue has consistently fallen short of the level of the minimum estimated net revenue stipulated in Schedule 4 to the Ordinance. Therefore, the Fund does not have any balance to pay to the Company under section 43 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 Actual Net Revenue (“NRS”) in respect of the relevant year is accurate.

¹ If the actual net revenue of the Company for any year exceeds the maximum estimated net revenue for that year, the Company shall pay into the Fund the difference between the actual net revenue and the maximum estimated net revenue.

² According to sections 40(2) and 42(2) of the Ordinance, section 39(4) of the Ordinance shall apply in relation to an application under sections 40(1) and 42(1) respectively.

8. The Company has effected 16 statutory toll increases since the commissioning of Route 3³. A table summarising the history of the Company's position regarding statutory toll increase is at Annex C.

9. Section 39 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 submitted⁴. The Company submitted its audited 2014/15 NRS and applied for an additional toll increase in August 2015. 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 2014/15 was \$925 million⁵; this is lower than the minimum estimated net revenue of \$1,988 million for that year as specified in Schedule 4 to the Ordinance. We subsequently informed the Company in writing in October 2015 that we noted their application for toll increase based on the 2014/15 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 2015 (vide LC Paper No. CB(4)142/15-16(02)).

10. In July 2019, the Company informed the Government that based on its 2014/15 NRS, it would like to have the new statutory toll levels to take effect on 1 August 2019. According to section 45(1) of the Ordinance, the Commissioner for Transport shall publish in the Gazette the Notice to show the new statutory tolls of Route 3 which will take effect on 1 August 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

³ Apart from the impending statutory toll increase, the Company has also applied for three additional toll increases based on the 2015/16 NRS, 2016/17 NRS and 2017/18 NRS respectively which are permitted under section 42(1) 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.

⁴ Section 42(3) of the Ordinance provides that the date on which a toll increase applied for under section 42(1), if permitted, may be given effect to is 1 January next following the year in respect of which the application is made. Section 44(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.

⁵ Rounded to the nearest million.

maintained and users of Route 3 will not be affected by the changes in the statutory tolls. The new statutory and concessionary tolls of Route 3 as compared with the current tolls are at Annex D.

THE NOTICE

12. The Notice sets out the new statutory tolls of Route 3 for different categories of vehicles.

LEGISLATIVE TIMETABLE

13. The legislative timetable is as follows -

Publication in the Gazette	26 July 2019
Commencement	1 August 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

**Tai Lam Tunnel and Yuen Long Approach Road
Ordinance (Amendment of Schedule 1) Notice 2019**

(Made by the Commissioner for Transport under section 45(1) of the Tai
Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474))

1. Commencement

This Notice comes into operation on 1 August 2019.

**2. Tai Lam Tunnel and Yuen Long Approach Road Ordinance
amended**

The Tai Lam Tunnel and Yuen Long Approach Road Ordinance
(Cap. 474) is amended as set out in section 3.

3. Schedule 1 substituted

Schedule 1—

Repeal the Schedule

Substitute

“Schedule 1

[ss. 2(1), 27, 28, 30 & 45]

**Tai Lam Tunnel and Yuen Long Approach Road
Tolls**

Category	Vehicle	Toll \$
1.	Motorcycles, motor tricycles	95
2.	Private cars, electrically powered passenger vehicles, taxis	100
3.	Public and private light buses	285
4.	(a) Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	285
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	105
5.	(a) Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	295
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	105
6.	(a) Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes	315
	(b) In a vehicle specified in paragraph (a), each additional axle in excess of 2	105
7.	Public and private single-decked buses	285
8.	Public and private double-decked buses	300”.



Commissioner for Transport

23 July 2019

Explanatory Note

This Notice replaces Schedule 1 to the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) to show the new tolls.

Chapter: 474 Title: TAI LAM TUNNEL AND YUEN LONG APPROACH
ROAD ORDINANCE

Section: 39 Heading: **Giving effect to anticipated toll increases** Version Date: 30/06/1997

- (1) Subject to and in accordance with this Part and the project agreement, the Company may, during the franchise period, give effect to a toll increase on each specified date.
- (2) If the Actual Net Revenue of the Company for the year immediately preceding the year in which a specified date occurs, is less than its Maximum Estimated Net Revenue for that year, the Company may apply in writing to the Secretary to increase the tolls by the amount of the appropriate anticipated toll increase.
- (3) An application under subsection (2) shall be made at the same time the statement of Actual Net Revenue for the relevant year is submitted under section 37(1).
- (4) Where the Secretary receives an application under subsection (3), he shall, subject to subsection (5), inform the Company, not later than 21 days before the day on which an anticipated 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 43 to the Company from the Fund.
- (5) If the Secretary is not satisfied with the statement of Actual Net Revenue submitted for a year in respect of which an application under this section is made-
 - (a) where the amount of the Actual 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 after negotiation or reference to an independent expert as described in section 37(5)-
 - (i) it is agreed that the amount of the Actual Net Revenue; or
 - (ii) the decision of the expert as regards the amount of the Actual Net Revenue,

as the case may be, 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 day 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 43 to the Company from the Fund.

Chapter: 474 Title: TAI LAM TUNNEL AND YUEN LONG APPROACH
ROAD ORDINANCE

Section: 39 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 Actual 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 1995)

Chapter: 474 Title: TAI LAM TUNNEL AND YUEN LONG APPROACH
ROAD ORDINANCE

Section: 40 Heading: **Advancement of toll increases** Version Date: 30/06/1997

- (1) If the Actual Net Revenue of the Company for any year is less than the Minimum Estimated Net Revenue for that year, and that year is not a year immediately preceding a year in which a specified date occurs, the Company may apply to the Secretary to give effect to the next anticipated toll increase.
- (2) Section 39(3), (4), (5) and (6) 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 1995)

Chapter: 474 Title: TAI LAM TUNNEL AND YUEN LONG APPROACH
ROAD ORDINANCE

Section: 42 Heading: **Creation of additional toll increases** Version Date: 30/06/1997

- (1) Where the Company has given effect to all the anticipated toll increases pursuant to section 39(1) or 40(1) and the Actual Net Revenue of the Company for any year occurring before the expiry of the franchise period is less than its Minimum Estimated Net Revenue for that year, the Company may apply to the Secretary to give effect to an additional toll increase.
- (2) Section 39(3), (4), (5) and (6) 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 1995)

Chapter: 474 Title: TAI LAM TUNNEL AND YUEN LONG APPROACH
ROAD ORDINANCE

Section: 45 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 1995)

Chapter: 474 Title: TAI LAM TUNNEL AND YUEN LONG APPROACH
ROAD ORDINANCE

Schedule: 2 Heading: **INCREASES IN TAI LAM TUNNEL AND YUEN LONG
APPROACH ROAD TOLLS** Version Date: 12/11/2015

[sections 28 & 44]

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

(Format changes – E.R. 3 of 2015)

Chapter: 474 Title: TAI LAM TUNNEL AND YUEN LONG APPROACH
ROAD ORDINANCE

Schedule: 4 Heading: **ESTIMATED NET
REVENUE (\$000,000's)** Version Date: 30/06/1997

[section 36]

Year ending on 31 July in	Minimum Estimated Net Revenue	Maximum Estimated Net Revenue
1999	45	202
2000	101	253
2001	149	339
2002	264	430
2003	479	774
2004	648	1095
2005	762	1285
2006	877	1488
2007	1236	1602
2008	1494	1670
2009	1605	1819
2010	1863	2159
2011	2066	2344
2012	2140	2348
2013	2129	2551
2014	2059	2648
2015	1988	2571
2016	1899	2483
2017	2040	2439
2018	2146	2419
2019	2068	2348
2020	1953	2234
2021	1856	2125
2022	1715	1976
2023	1625	1895
2024	1524	1757
2025	929	1098

Note 1: In this Schedule "year" shall be construed with reference to the definition of "year" in section 36 of this Ordinance.

Note 2: The period specified in the last item of column 1 may be varied in accordance with the project agreement.

(Enacted 1995)

Route 3 (CPS) 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		
1998/1999	45	(271)	316	Yes advancement of anticipated toll increase from 1.1.2003 under S.40 of the Ordinance	1.4.2000
1999/2000	101	(68)	169	Yes advancement of anticipated toll increase from 1.1.2010 under S.40 of the Ordinance	1.4.2001
2000/2001	149	55	94	Yes advancement of anticipated toll increase from 1.1.2017 under S.40 of the Ordinance	19.6.2005
2001/2002	264	238	26	Yes creation of additional toll increase under S.42 of the Ordinance	17.9.2006
2002/2003	479	286	193	Yes creation of additional toll increase under S.42 of the Ordinance	19.8.2007
2003/2004	648	361	287	Yes creation of additional toll increase under S.42 of the Ordinance	28.12.2008

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	762	371	391	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2009
2005/2006	877	420	457	Yes creation of additional toll increase under S.42 of the Ordinance	4.9.2010
2006/2007	1,236	460	776	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2011
2007/2008	1,494	593	901	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2012
2008/2009	1,605	578	1,027	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2013
2009/2010	1,863	629	1,234	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2014
2010/2011	2,066	703	1,363	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2015
2011/2012	2,140	774	1,366	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2016

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	2,129	850	1,279	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2017
2013/2014	2,059	904	1,155	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2018
2014/2015	1,988	925	1,063	Yes creation of additional toll increase under S.42 of the Ordinance	1.8.2019
2015/2016	1,899	952	947	Yes creation of additional toll increase under S.42 of the Ordinance	[To be decided]
2016/2017	2,040	1,005	1,035	Yes creation of additional toll increase under S.42 of the Ordinance	[To be decided]
2017/2018	2,146	1,050	1,096	Yes creation of additional toll increase under S.42 of the Ordinance	[To be decided]

Annex D**Existing and New Tolls of Route 3**

	Existing Tolls ^(Note)		New Tolls (with effect from 1 August 2019)		
	Statutory	Concessionary	Statutory	Concessionary	Actual Increase
Motorcycles and motor tricycles	\$90	\$22	\$95	\$22	\$0
Private cars, electrically powered passenger vehicles and taxis	\$95	\$48	\$100	\$48	\$0
Public and private light buses	\$270	\$100	\$285	\$100	\$0
Light goods vehicles	\$270	\$49	\$285	\$49	\$0
Medium goods vehicles	\$280	\$55	\$295	\$55	\$0
Heavy goods vehicles	\$300	\$60	\$315	\$60	\$0
Single-decked buses	\$270	\$143	\$285	\$143	\$0
Double-decked buses	\$285	\$168	\$300	\$168	\$0
Additional axle in excess of two for goods vehicles	\$100	\$0	\$105	\$0	\$0

Note : Existing statutory tolls took effect from 1 August 2018; concessionary tolls took effect from 1 January 2019.