

Chapter:	215	EASTERN HARBOUR CROSSING ORDINANCE	Gazette Number	Version Date
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		Long title		30/06/1997
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To grant franchises for the construction of a combined road and rail tunnel across the eastern harbour, for the construction of a railway line through the tunnel and of other railway works and the regulation of the construction and maintenance of the works to be constructed; for the payment of tolls to the franchise holder for the use by motor vehicles of the tunnel and the regulation of vehicular traffic in relation to such use; for the transfer by the franchise holder of its right to operate the railway line to the Mass Transit Railway Corporation, and for matters ancillary thereto and connected therewith.

(Enacted 1986)

[1 August 1986] *L.N. 184 of 1986*

(Originally 47 of 1986)

Part:	I	PRELIMINARY		30/06/1997
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Section:	1	Short title		30/06/1997
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This Ordinance may be cited as the Eastern Harbour Crossing Ordinance.

(Enacted 1986)

Section:	2	Interpretation	L.N. 38 of 2011	01/06/2011
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(1) In this Ordinance, unless the context otherwise requires-

"Commissioner" means, subject to subsection (2), the Commissioner for Transport;

"construction works" (建造工程) means all works carried out or to be carried out under the project agreement and all works required to carry them out;

"court" (法院、法庭) includes a magistrate; (Added 29 of 1999 s. 2)

"design" (設計) means the design of the construction works or of any part or component thereof and includes plans and engineering information in support of that design;

"Director" means, subject to subsection (2), the Director of Highways;

"discharge date" (解除義務日期) means the date when the guarantors cease to have any obligations under the guarantee agreement;

"engineering information" (工程資料) includes geotechnical and other necessary reports;

"guarantee agreement" (保證協議) means the agreement designated as the guarantee agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;

"guarantors" (保證人) means the New Hong Kong Tunnel Consortium comprising the following members or such other persons as may undertake the obligations of guarantors under the guarantee agreement-

Kumagai Gumi Company Limited  
China International Trust and Investment Corporation  
Paul Y. Construction Company Limited  
Lilley Construction Limited;

"immersed tube" (沉管) means the immersed cellular structure crossing Victoria Harbour from the sea-wall at Cha Kwo Ling to the sea-wall at Quarry Bay and containing 5 conduits-

- (a) 2 conduits each containing 2 road traffic lanes;
- (b) 2 conduits each containing one single track railway line; and
- (c) one conduit for services and utilities,

- and includes the protective rock armouring;
- "land" (土地) includes land under the sea;
- "motor vehicle" (汽車) means any mechanically propelled vehicle for use on roads;
- "operating agreement" (經營協議) means the agreement designated as the operating agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;
- "plan" (圖則) means-
- (a) the plan numbered 1765 signed by the Director and deposited in the Land Registry, Victoria; and (Amended 8 of 1993 s. 2)
  - (b) any new plan deposited in accordance with section 3(3);
- "project" (工程項目) means the project, the subject of the project agreement, for the following works to be undertaken by the Road Company-
- (a) the construction of the immersed tube;
  - (b) reclamation and other works on or affecting the foreshore or sea-bed;
  - (c) the construction of approach roads and temporary and permanent alterations to existing roads;
  - (d) the construction of the railway works; and
  - (e) the construction of other buildings, and structures, and the undertaking of other works necessary for the proper carrying out of the project agreement;
- "project agreement" (工程項目協議) means the agreement designated as the project agreement for the purposes of this definition by the Secretary by notice in the Gazette and any subsequent agreement amending or supplementing that agreement;
- "Rail Company" (鐵路公司) means-
- (a) subject to paragraph (b)-
    - (i) the New Hong Kong Tunnel Company Limited;
    - (ii) in the event of an assignment under section 7(1) by the New Hong Kong Tunnel Company Limited to the Eastern Harbour Crossing Company Limited of the benefit of the franchise granted under section 5(1) and upon such assignment, the Eastern Harbour Crossing Company Limited in place of the New Hong Kong Tunnel Company Limited;
  - (b) in the event of the benefit of the franchise granted under section 5(1) being assigned to, or vested in, a person other than the New Hong Kong Tunnel Company Limited or the Eastern Harbour Crossing Company Limited under or in accordance with this Ordinance (otherwise than by way of transfer under section 8), such other person in place of either of those companies;
- "rail operating date" (鐵路開始經營日期) means the date notified in the Gazette under section 64(1);
- "railway" (鐵路) means the railway constructed or to be constructed by the carrying out of the railway works;
- "railway works" (鐵路工程) means-
- (a) the extension of the Mass Transit Railway's existing Kwun Tong Line on a viaduct as far as a new overhead station at Lam Tin, then in twin tunnels or at ground level to the north landfall of the immersed tube, then through the immersed tube on 2 single track lines to the south landfall of the immersed tube and continuing in twin tunnels to a terminus at the existing Quarry Bay Station;
  - (b) at Quarry Bay Station, 2 railway station tunnels together with a rail cross-over in a tunnel on the south side of Quarry Bay Station;
  - (c) a new overhead station at Lam Tin with pedestrian access by bridge across Kwun Tong Road, together with escalators to the Lam Tin Estate and modifications to the existing Quarry Bay Station providing a passenger interchange between the Island Line and the twin station tunnels constructed on the extension to the Kwun Tong Line; and
  - (d) all electrical, mechanical and civil works required as a result of the extension of the Kwun Tong Line to Quarry Bay for the operation of the railway;
- "Road Company" (道路公司) means-
- (a) subject to paragraph (b), the New Hong Kong Tunnel Company Limited;
  - (b) in the event of the benefit of the franchise granted under section 4(1) being assigned to, or vested in, a person other than the New Hong Kong Tunnel Company Limited under or in accordance with this Ordinance, such other person in place of that company;

"road operating date" (道路開始經營日期) means the date notified in the Gazette under section 44(1);  
 "road tunnel" (行車隧道) means the conduits of the immersed tube which contain road traffic lanes;  
 "road tunnel area" (行車隧道區) means the area delineated and coloured red on the plan;  
 "Secretary" (局長) means the Secretary for Transport and Housing; (Replaced L.N. 106 of 2002. Amended L.N. 130 of 2007)  
 "start of construction" (開始建造日期) means the date upon which the construction works are commenced as agreed, or as determined, under section 16(1);  
 "toll structure" (隧道費構築物) means any structure erected by the Road Company for the purposes of section 59;  
 "utility" (公用設施) means any electric power cable, telephone cable or other cable used in communication, any telecommunications apparatus, and any pipe used in the supply of water, gas or oil, or for drainage or sewerage, together with any duct for such cable or pipe and any ancillary apparatus or works.

(Amended 11 of 2007 s. 36)

(2) Any reference to the Director or the Commissioner in any provision of this Ordinance shall be deemed to include any public officer whom the Director or Commissioner, as the case may be, authorizes to exercise his functions under that provision.

(3) Any function to be exercised by the Governor in Council under this Ordinance may, where the Governor is of the opinion that the matter is one of urgency, be exercised by the Governor.

(4) A reference in this Ordinance to arbitration under the Arbitration Ordinance (Cap 609) shall be deemed, for the purposes of the Arbitration Ordinance (Cap 609), to be a reference by an arbitration agreement, as defined for the purposes of that Ordinance, to 2 arbitrators, one appointed by each party. (Amended 17 of 2010 s. 112)

(5) (Repealed 11 of 2007 s. 36)

(Enacted 1986)

Section:	2A	Interpretation: references to "Mass Transit Railway Corporation" and "Corporation"	L.N. 200 of 2007	02/12/2007
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(1) In relation to any time before the appointed day, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires, a reference to "Mass Transit Railway Corporation" or "Corporation" is a reference to the Mass Transit Railway Corporation established by section 3(1) of the Mass Transit Railway Corporation Ordinance (Cap 270) that was repealed by section 64(1) of the Mass Transit Railway Ordinance (Cap 556).

(2) In relation to any time on or after the appointed day, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires-

- (a) a reference to "Mass Transit Railway Corporation" or "Corporation" is a reference to "MTRCL"; and
- (b) a reference to "Mass Transit Railway Corporation Ordinance (Cap 270)" or a provision of the Mass Transit Railway Corporation Ordinance (Cap 270) is a reference to "Mass Transit Railway Ordinance (Cap 556)" or the provision to the corresponding effect in the Mass Transit Railway Ordinance (Cap 556).

(3) In relation to any time on or after the appointed day but before the Merger Date, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires-

- (a) a reference to "地下鐵路公司" is a reference to "地鐵有限公司"; and
- (b) a reference to "《地下鐵路公司條例》(第270章)" or a provision of 《地下鐵路公司條例》(第270章) is a reference to "《地下鐵路條例》" or the provision to the corresponding effect in 《地下鐵路條例》.

(4) In relation to any time on or after the Merger Date, in this Ordinance or in any notice or other document made under this Ordinance, unless the context otherwise requires-

- (a) a reference to "地下鐵路公司" is a reference to "港鐵公司"; and
- (b) a reference to "《地下鐵路公司條例》(第270章)" or a provision of 《地下鐵路公司條例》(第270章) is a reference to "《香港鐵路條例》(第556章)" or the provision to the corresponding effect in 《香港鐵路條例》(第556章).

(5) In this section-

"appointed day" (指定日期) has the same meaning as in section 2(1) of the Mass Transit Railway Ordinance (Cap 556);

"Merger Date" (合併日期) has the same meaning as in section 2(1) of the Mass Transit Railway Ordinance (Cap 556);

"MTRCL" means the MTR Corporation Limited as defined in section 2(1) of the Mass Transit Railway Ordinance (Cap 556);

"《地下鐵路條例》" was the Chinese short title of the Mass Transit Railway Ordinance (Cap 556) immediately before the Merger Date;

"地鐵有限公司" was the Chinese name of MTRCL immediately before the Merger Date;

"港鐵公司" has the same meaning as in section 2(1) of the Mass Transit Railway Ordinance (Cap 556).

(Added 11 of 2007 s. 36)

Section:	3	Variation of plan		30/06/1997
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(1) The Director may, with the agreement of the Road Company, cause the boundaries of the road tunnel area to be varied from time to time.

(2) Where any such boundaries are so varied, the Director shall prepare a new plan fixing the location of and delineating the road tunnel area.

(3) Every new plan prepared in accordance with subsection (2) shall be numbered, dated, signed by the Director and deposited in the Land Registry. (Amended 8 of 1993 s. 2)

(4) Whenever a new plan is deposited under subsection (3), the Director shall cause a notification of such deposit to be published in the Gazette.

(Enacted 1986)

Part:	II	THE FRANCHISES		30/06/1997
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Section:	4	The road franchise		30/06/1997
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(1) Subject to this Ordinance, the Road Company shall have the franchise to-

(a) construct the immersed tube;

(b) construct all other works comprised in the project, other than the railway works;

(c) keep in place the works referred to in paragraphs (a) and (b), (other than works which are, under the project agreement, to be handed over to the Government) for the purpose specified in paragraph (d) and for the period specified in subsection (2), and

(d) operate the road tunnel area for the public, upon payment to the Road Company of the tolls specified in Part IX and the Schedule, for the period specified in subsection (2).

(2) The period referred to in subsection (1) is the period that commences at the start of construction and ends on the thirtieth anniversary of the start of construction.

(Enacted 1986)

Section:	5	The rail franchise		30/06/1997
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(1) Subject to this Ordinance, the Rail Company shall have the franchise to-

(a) construct the railway works;

(b) keep in place the railway works for the purpose specified in paragraph (c) (other than works which are, under the project agreement or the operating agreement, to be handed over to the Government, or the Mass Transit Railway Corporation otherwise than by transfer under section 8) and for the period specified in subsection (2); and

(c) operate, for the use of the public, a railway transport service on the railway for the period specified in subsection (2).

(2) The period referred to in subsection (1) is the period that commences at the start of construction and ends 18 years and 6 months after the rail operating date.

(Enacted 1986)

Section:	6	Effect of franchises		30/06/1997
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The franchises granted by sections 4(1) and 5(1) shall be deemed to include all wayleaves and other rights necessary to render such grant effective, but subject thereto nothing in those sections shall be construed as conferring on the Road Company or the Rail Company any title, right or interest in the land on which the construction works are, or are to be, constructed.

(Enacted 1986)

Part:	III	ASSIGNMENTS, MORTGAGES ETC.	L.N. 106 of 2002	01/07/2002
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Section:	7	Assignment of rail franchise	L.N. 106 of 2002	01/07/2002
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(1) The New Hong Kong Tunnel Company Limited, being then the Rail Company, may, at any time before the rail operating date, assign to the Eastern Harbour Crossing Company Limited the benefit of the franchise granted to it under section 5(1):

Provided that no assignment under this section shall affect the obligations of the New Hong Kong Tunnel Company Limited under the project agreement or of the guarantors under the guarantee agreement.

(2) The New Hong Kong Tunnel Company Limited shall notify the Secretary for Transport of any assignment under this section as soon as practicable after the execution thereof.

(3) The Secretary for Transport shall, upon receiving notification under subsection (2), give notice in the Gazette of the date of an assignment under subsection (1).

(Enacted 1986. Amended L.N. 106 of 2002)

Section:	8	Transfer of rail operating rights		30/06/1997
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The right to keep in place the railway works and to operate a railway transport service granted by section 5(1)(b) and (c) shall, on or before the rail operating date, be transferred by the Rail Company to the Mass Transit Railway Corporation, in accordance with the terms of the operating agreement, for the remainder of the period specified in section 5(2) which is unexpired at the time of transfer:

Provided that nothing done under this section shall affect the obligations of the Rail Company under this Ordinance.

(Enacted 1986)

Section:	9	Prohibition on assignment etc. of franchise rights		30/06/1997
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(1) Subject to sections 7, 8 and 10 neither the Road Company nor the Rail Company shall assign, subgrant, underlet or otherwise dispose of its rights under this Ordinance or enter into any agreement for such disposal except with the prior consent of the Governor in Council and in accordance with the terms of his consent:

Provided that where such disposal is necessary or desirable to enable effect to be given to any arrangements entered into for the purpose of complying with any notice given under section 68 and the Governor in Council is satisfied that-

(a) the arrangements are adequate for the purpose; and

(b) the person to whom the rights are to be disposed is a person in whom such rights may properly be vested or to whom such rights may properly be transferred,

such consent shall not be withheld.

(2) The Secretary shall give notice in the Gazette of the date of any disposal authorized under subsection (1), the name of the person to whom the rights are disposed, the nature of the disposal and the date thereof.

(Enacted 1986)

Section:	10	Mortgages and charges		30/06/1997
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(1) Nothing in section 9 shall prevent either the Road Company or the Rail Company from securing the payment or repayment of any moneys owing by it under any agreement or arrangement entered into for the purpose of providing moneys to finance-

- (a) the designing and carrying out of the construction works;
- (b) the undertaking of any obligation imposed on that company by this Ordinance, the project agreement or the operating agreement; or
- (c) such other purposes as the Financial Secretary may, by prior notice in writing to the company concerned, permit,

by means of any assignment by way of mortgage or other charge or similar arrangement of the rights granted to it under Part II:

Provided that no such mortgage or charge in so far as it relates to such rights, shall be enforced, whether by order of any court or otherwise, except with the consent of the Governor in Council and in accordance with the terms of his consent.

(2) Nothing in section 9 or subsection (1) shall apply to any mortgage, charge, assignment or other arrangement entered into-

- (a) by the Road Company, which secures any debt or obligation of that company, upon the right to receive the tolls under Part IX; or
- (b) by the Rail Company, which secures any debt or obligation of that company, upon the right to receive any payments under the operating agreement.

(3) Where the enforcement of any mortgage or charge to which subsection (1) applies has the effect of transferring the franchise granted by section 4(1) or 5(1) from a person who was the Road Company or, as the case may be, the Rail Company, immediately prior to the transfer to any other person who thereby becomes the Road Company or, as the case may be, the Rail Company, the Secretary shall give notice thereof in the Gazette.

(4) A notice under subsection (3) shall specify the name of such other person, the nature of the right transferred and the date of the transfer.

(Enacted 1986)

Part:	IV	PROVISIONS RELATING TO THE ROAD COMPANY AND THE RAIL COMPANY		30/06/1997
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Section:	11	Directors of the Road Company		30/06/1997
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(1) A majority of the directors of the Road Company shall be persons who are ordinarily resident in Hong Kong.

(2) The Governor shall have power, notwithstanding any provision of the Companies Ordinance (Cap 32) or any other law, the memorandum or articles of the Road Company or other instrument, to appoint 2 directors to the board of the Road Company.

(Enacted 1986)

Section:	12	Minimum paid-up share capital		30/06/1997
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(1) On the road operating date the issued and fully paid-up share capital of the Road Company shall be-

- (a) if no assignment has taken place under section 7(1), not less than \$1100000000; and
- (b) if such assignment has taken place, not less than \$750000000.

(2) On the road operating date the issued and fully paid-up share capital of the Rail Company shall be, if an assignment has taken place under section 7(1), not less than \$350000000.

(Enacted 1986)

Section:	13	The Government's equity in the Road Company		30/06/1997
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(1) The Government shall be entitled-

- (a) prior to the event described in paragraph (b), to hold 5 per cent of the shares; and
- (b) upon the opening for use by the public of a trunk road connection from the vicinity of Shatin passing through a tunnel under or in the vicinity of Tate's Cairn to East Kowloon, to hold an additional 2.5 per cent of the shares.

(2) Within 14 days after the occurrence of a relevant event the Road Company shall procure the transfer of shares to the Government of sufficient shares to ensure that, upon such transfer, the Government holds the shares which, immediately after that event, it is by subsection (1) entitled to hold.

(3) Shares transferred to the Government under this section shall be fully paid up and free from encumbrances and shall be held on behalf of the Government by the Financial Secretary Incorporated.

(4) For the purposes of this section-

- (a) shares shall be deemed to be held by the Government notwithstanding that, after they have been transferred to the Government under this section, the Government may subsequently have disposed of them;
- (b) a "relevant event" takes place-
  - (i) on the commencement of this Ordinance;
  - (ii) at the time, prior to the event described in subsection (1)(b), when any shares additional to shares issued on or before such commencement are issued;
  - (iii) upon the event described in subsection (1)(b) taking place; or
  - (iv) on any change in the identity of the Road Company;
- (c) "shares" (股份) means the ordinary voting shares of the Road Company.

(Enacted 1986)

Section:	14	Tax provisions		30/06/1997
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For the purposes of Part VI of the Inland Revenue Ordinance (Cap 112)-

- (a) the Road Company shall throughout the continuance of the franchise granted by section 4(1) be deemed to be the owner of and to have the relevant interest in the works which it has the right to keep in place under section 4(1)(c);
- (b) the Rail Company shall throughout the continuance of the franchise granted by section 5(1) be deemed to be the owner of and to have the relevant interest in the works which it has the right to keep in place under section 5(1)(b);
- (c) upon the assignment of the benefit of the franchise granted under section 5(1) to the Eastern Harbour Crossing Company Limited under section 7(1), any capital expenditure, as defined for the purposes of Part VI of the Inland Revenue Ordinance (Cap 112), incurred by the New Hong Kong Tunnel Company Limited (being then the Rail Company) on the works referred to in paragraph (b) shall be deemed to have been incurred by the Eastern Harbour Crossing Company Limited at the time of the assignment:

Provided that any allowance granted under that Part in respect of the expenditure deemed to have been incurred shall be reduced by any allowance granted under that Part to any other person in respect of the same expenditure.

(Enacted 1986)

Part:	V	DUTIES OF THE ROAD COMPANY AND THE GOVERNMENT IN CARRYING OUT THE PROJECT		30/06/1997
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Section:	15	Construction works to be carried out at the expense of the Road Company		30/06/1997
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(1) The Road Company shall, at its own expense, carry out the construction works in accordance with the project agreement and this Ordinance and within the period specified in section 17.

(2) For the purposes of section 5(1)(a) any railway works constructed by the Road Company in pursuance of the duty imposed by this section shall be deemed to have been carried out on behalf of and for the benefit of the Rail Company, and nothing in subsection (1) of this section shall prevent the expense referred to in that subsection being

apportioned between the Road Company and the Rail Company in such reasonable manner as they may agree.  
(Enacted 1986)

Section:	16	Start of construction		30/06/1997
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(1) The Road Company shall not commence the construction works before such date as may be agreed between the Director and the Road Company or, in the absence of agreement, as the Director may determine.

(2) The Director shall cause a notice to be published in the Gazette specifying the date of commencement of the construction works as agreed or determined under subsection (1).

(Enacted 1986)

Section:	17	Period within which works must be completed		30/06/1997
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(1) Subject to this section, the Road Company shall complete the construction works within 42 months from the start of construction or within such extended period as may be approved by the Governor in Council.

(2) If the Road Company fails, or appears to be likely to fail, to complete the construction works within the period specified in subsection (1), the Governor in Council shall, in considering whether or not to exercise its powers under subsection (1), take into account the extent to which the construction works have been carried out and whether such failure was or is occasioned by circumstances beyond the control of the Road Company (the want of sufficient funds not being regarded as a circumstance beyond its control).

(3) The Director may, by notice to the Road Company, allow such time additional to the time specified in subsection (1) as he may determine in the event of-

- (a) storm, flood, natural disaster or other similar event;
- (b) war, insurrection or riot;
- (c) the interruption of the works due to the non-availability of equipment or materials essential to the construction works or the interruption for reasons beyond the control of the Road Company of the supply of equipment or materials to the works;
- (d) any default or unreasonable delay by the Government or its agents in doing anything they are required to do by this Ordinance;
- (e) the undertaking by the Road Company at the request of the Government of any works which are not construction works at the commencement of this Ordinance, where such undertaking delays the carrying out of the construction works;
- (f) any direction under section 32(2) which is inconsistent with any approval or exemption previously given by the Director under Part VI;
- (g) any other event which, in the opinion of the Director, could not reasonably have been foreseen by the Road Company at the time when it entered into the project agreement,

and he shall allow such time where this is required by the terms of any agreement between the Government and the Road Company for the execution of any works by the Road Company which are not construction works at the commencement of this Ordinance, and any period of time so allowed shall be deemed to extend the period specified in subsection (1) or, as the case may be, that period as extended under that subsection by the period so determined.

(Enacted 1986)

Section:	18	Determination of date of completion		30/06/1997
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For the purposes of section 17(1) the date when the Road Company shall be deemed to have completed the construction works shall be either the road operating date or the rail operating date, whichever event last occurs.

(Enacted 1986)

Section:	19	Land required for the project		30/06/1997
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(1) The Government shall, upon the start of construction or such other date, whether earlier or later, as may be agreed between the Road Company and the Director, permit the Road Company, its contractors and agents without charge to enter for the purpose of carrying out, and to carry out, the construction works-

- (a) the land where the construction works are to be undertaken; and

(b) any land contiguous thereto, as agreed between the Road Company and the Director or, in the absence of such agreement, as the Director may determine, being land temporarily required to facilitate the undertaking of the construction works.

(2) The Government shall, upon the start of construction or such other date as may be agreed between the Road Company and the Director, permit the Road Company to enter for the purpose of carrying out, and to carry out, the construction works, land other than the land referred to in subsection (1) on payment of such sum, and on such reasonable terms and conditions, as the Director of Lands may determine:

Provided that in determining any such sum the Director of Lands shall be guided by the practice of the Government in relation to the making of similar land available to persons other than the Road Company. (Amended L.N. 291 of 1993)

(3) Nothing in this section shall apply to any land which, under the project agreement, is to be obtained by the Road Company other than from the Government nor relieve the Road Company from making any payment it is required to make under section 20 in respect of land to which this section relates.

(Enacted 1986)

Section:	20	Liability of Road Company in respect of land made available		30/06/1997
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- (1) The Road Company shall be liable to the Government for-
- (a) all compensation payable, and all costs and expenses (including legal costs and expenses) incurred by the Government in-
    - (i) resuming any land, or any easement or right therein, required for the purposes of the project;
    - (ii) obtaining vacant possession of any such land,
 including all such compensation, costs or expenses which are payable under any Ordinance, or by reason of the order of any court, award of an arbitrator or by virtue of any agreement, composition or arrangement with any person, or for which the Government is otherwise liable, and whether the liability to pay such compensation, costs or expenses arose before or after the commencement of this Ordinance; and
  - (b) all costs, expenses, and payments, whether referred to in paragraph (a) or not, incurred or made by the Government, which the Road Company has undertaken to refund to the Government under the project agreement or otherwise.
- (2) Any amount for which the Road Company is liable under subsection (1) shall become payable-
- (a) if liability arises prior to the road operating date, upon that date; and
  - (b) if liability arises on or after the road operating date, and the amount of the liability is certified under section 78, upon presentation of the certificate to the Road Company.

(3) For the purposes of subsection (1) the Government shall be deemed to have been liable to pay compensation where it has made payments of a character usually made by the Government in the case of land resumption or clearance, notwithstanding that the payments may have been expressed to be on an ex gratia basis or have been paid otherwise than by reason of a legal obligation.

(Enacted 1986)

Part:	VI	THE CARRYING OUT OF THE CONSTRUCTION WORKS	L.N. 130 of 2007	01/07/2007
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Section:	21	Authorization under this Part sufficient authority to carry out works	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) Subject to subsection (3) any construction works which may be carried out lawfully under this Part and in accordance with any approval or exemption thereunder may be carried out without further authority notwithstanding anything to the contrary in any Ordinance:

Provided that nothing in this section shall authorize anything to be done in contravention of section 13 of the

Summary Offences Ordinance (Cap 228).

(2) Subject to subsection (3) the Buildings Ordinance (Cap 123) shall not apply in relation to the construction works.

(3) The Secretary for Development may, by notice in the Gazette, apply the Buildings Ordinance (Cap 123), or any provision thereof, to any of the construction works: (Amended 23 of 2002 s. 126; L.N. 130 of 2007)

Provided that nothing in this subsection shall apply to any such works which are civil engineering works.

(Enacted 1986)

Section:	22	Road Company to submit a construction programme	30/06/1997
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(1) As soon as practicable after the commencement of this Ordinance, the Road Company shall submit to the Director for his approval a programme for the carrying out of the construction works and the construction works shall be carried out in accordance with such programme as so approved.

(2) The Director may approve or disapprove the programme submitted under subsection (1) or approve it in part and disapprove it in part.

(3) The Road Company may at any time apply to the Director for a variation of the programme approved under subsection (2) and any variation approved by the Director under this subsection shall be deemed to form part of the programme approved under subsection (2).

(Enacted 1986)

Section:	23	No works to commence without authority	30/06/1997
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Subject to sections 16 and 29, the undertaking of any part or component of the construction works shall not commence until-

- (a) its design has been submitted to the Director for his approval under section 25;
- (b) the design so submitted has been approved under section 25(3) or has been exempted from approval under section 25(1);
- (c) the method of its construction has been approved under section 27;
- (d) where the works are to be carried out by a contractor, the terms of any contract between the Road Company and such contractor have been approved under section 28 or do not require such approval by virtue of that section.

(Enacted 1986)

Section:	24	Road Company to submit designs	30/06/1997
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(1) As soon as practicable after the commencement of this Ordinance, the Road Company shall submit to the Director for his approval under section 25 the design of the construction works.

(2) Such design may relate to the whole of the construction works or may be prepared in divisions in accordance with subsection (3).

(3) Where the design is prepared in divisions, each division shall relate to such part of the construction works and be prepared in such order as may be agreed between the Director and the Road Company or, in the absence of such agreement, as the Director may determine.

(Enacted 1986)

Section:	25	Approval and exemption of designs by the Director	30/06/1997
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(1) Upon receipt of a design submitted to him for his approval under this section the Director may, by endorsement thereon, exempt that design from the provisions of this section.

(2) Where the design is not exempted from the provisions of this section the procedures for the approval of that design by the Director shall be such as may be agreed between the Director and the Road Company or, in the absence of such agreement, as the Director may determine.

(3) After due completion of the procedures referred to in subsection (2), or such of those procedures as the Director may consider appropriate in any particular case, the Director may approve or disapprove the design or may approve it in part and disapprove it in part.

(4) The Director may defer consideration of a design under this section if the design forms part of, or is related to, any works to which a notice under section 30(3) or section 31 relates until such time as the notice is complied with to his satisfaction.

(Enacted 1986)

Section:	26	Alteration of approved or exempted designs		30/06/1997
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(1) Any design approved under section 25(3) or exempted from approval under section 25(1) may be altered or added to with the approval of the Director and in accordance with the terms of that approval.

(2) Any alteration or addition that is approved under this section shall be deemed to form part of the design so approved or exempted from approval.

(Enacted 1986)

Section:	27	Approval of methods of construction		30/06/1997
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There shall be submitted, where practicable with any design submitted to the Director for his approval under section 25 and in any case prior to the undertaking of any part of the construction works to which the design relates, particulars of the methods of construction to be employed; and the Director may approve or disapprove those methods or may approve them in part and disapprove them in part.

(Enacted 1986)

Section:	28	Approval of construction contracts		30/06/1997
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The Road Company shall not enter into any contract for the carrying out of the construction works or any part thereof unless the terms of the contract have first been approved by the Director:

Provided that nothing in this section shall apply to-

- (a) the financial terms of the contract, or any terms which are otherwise unrelated to the nature or quality of the construction works to be carried out under the contract; or
- (b) any contract or terms which the Director may, by notice in writing to the Road Company, exempt from the requirements of this section.

(Enacted 1986)

Section:	29	Minor or incidental works may be carried out without submission of design		30/06/1997
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The Director may authorize the Road Company to carry out any construction works which, in his opinion, are of a minor or incidental character without the submission to him of designs under section 25, and section 23 shall not apply in relation to such works.

(Enacted 1986)

Section:	30	Provisions supplementary to sections 22 to 29		30/06/1997
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Expanded Cross Reference:

22, 23, 24, 25, 26, 27, 28, 29

(1) In the exercise of any discretion granted to him by sections 22 to 29 the Director shall have regard to-

- (a) the project;
- (b) sound engineering practice and other proper engineering matters;
- (c) the safety of persons and property,

and also, in the case of the exercise by him of his discretion under sections 23 to 29, the construction programme approved by him under section 22.

(2) Where the Director refuses, whether in whole or in part, any approval under the powers granted to him by sections 22 to 29 he shall give to the Road Company reasons in writing for that refusal and when he grants any approval he may do so subject to such terms, being terms reasonable in the circumstances, as he may specify in giving

that approval.

(3) Where it appears that the construction works or any part of them have been, or are being, carried out otherwise than as authorized by this Part or in accordance with the terms of any approval or exemption granted thereunder, the Director may, by notice in writing to the Road Company, require-

- (a) work on the construction works, or any part of them, to cease; or
- (b) the demolition of the construction works or any part of them, and their reconstruction in accordance with the provisions of this Part or such terms.

(Enacted 1986)

Section:	31	Other powers of the Director		30/06/1997
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(1) The Director may by notice in writing to the Road Company require it to provide such information as may be specified in the notice about-

- (a) the progress of the construction works, or any part thereof;
- (b) the identity of any contractor or sub-contractor engaged in the project and the terms of any contract with him other than such terms as are described in proviso (a) of section 28;
- (c) any other matter relevant to the project,

and the Road Company shall comply with the notice within the time specified therein, being a time reasonable in the circumstances.

(2) The Director may in relation to the carrying out of the construction works by notice in writing to the Road Company require it to take such steps as may be specified in the notice for-

- (a) the safety of any works including the guarding and lighting thereof;
- (b) the avoidance or abatement, whether in part or in whole, of nuisances;
- (c) the protection of the environment;
- (d) the taking of samples of any materials used or to be used in the construction in such circumstances as may be specified in the notice and the taking of such subsequent steps and the supplying of such information in respect of those samples as may be specified;
- (e) preventing interference with the operation of the Mass Transit Railway, ensuring the safe operation of that Railway or otherwise for protecting that Railway; or
- (f) otherwise to ensure that all of the construction works are executed in a proper and safe manner,

and it shall be the duty of the Road Company to comply with any such notice.

(Enacted 1986)

Section:	32	Precautions to be taken against the obstruction of shipping or aircraft	L.N. 326 of 2000	01/01/2001
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(1) During the carrying out of the construction works the Road Company shall-

- (a) mark, keep open, and keep clear of obstruction caused by the carrying out of the construction works, such shipping channels as may be notified by the Director of Marine;
- (b) keep open and clear of obstruction caused by the carrying out of the construction works such approaches to Kai Tak Airport as may be notified by the Director-General of Civil Aviation. (Amended L.N. 326 of 2000)

(2) If the Director after consultation with-

- (a) the Director of Marine, is of the opinion that any part of the construction works or plant associated therewith is obstructing any shipping channel notified under subsection (1)(a); or
- (b) the Director-General of Civil Aviation, is of the opinion that any part of the construction works or plant associated therewith is obstructing any approaches notified under subsection (1)(b), (Amended L.N. 326 of 2000)

he may direct the Road Company to discontinue work on any such part of the construction works and to remove any such construction works or plant, either forthwith or within such time as he may specify, and work on such construction works shall not be resumed except with the prior permission of the Director and subject to such conditions as he may impose.

(3) If the Road Company fails to remove any works or plant in accordance with a direction under subsection (2) the Director may do so.

(4) Where the Director carries out any works under subsection (3), the cost of so doing shall be recoverable by

the Government as a debt owing by the Road Company to the Government.

(Enacted 1986)

Section:	33	Restoration of sea-bed and works area		30/06/1997
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(1) On the completion of the construction works, or as soon as is reasonably practicable thereafter, the Road Company at its own expense and to the reasonable satisfaction of the Director shall-

- (a) bring the sea-bed affected thereby into conformity with designs approved by the Director under section 25;
- (b) deal with land affected by the carrying out of the construction works in such way as may be required by such designs; and
- (c) restore all other land affected by the carrying out of the construction works as near as possible to its condition prior to the undertaking of those works.

(2) If the Road Company fails to effect any works in accordance with subsection (1) the Director may effect the same.

(3) Where the Director carries out any works under subsection (2), the cost of so doing shall be recoverable by the Government as a debt owing by the Road Company to the Government.

(Enacted 1986)

Section:	34	Diversion of cables, pipes etc.		30/06/1997
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(1) This section shall apply where it is necessary or expedient to divert any utility to permit the carrying out of the construction works to proceed unimpeded.

(2) The Director may at the request of the Road Company divert, or permit the Road Company at its own expense to divert, any utility that is under the control of the Government or any agency of the Crown, and no such utility shall be diverted by the Road Company without the authority of the Director.

(3) Where the Director diverts a utility in response to a request under subsection (2), the cost of such diversion shall be recoverable by the Government as a debt owing by the Road Company to the Government.

(4) The Director may, by notice in writing to the owner or person having control of any utility, order him-

- (a) to divert the utility in such manner as may be specified in the order; and additionally or alternatively
- (b) to render any cable, pipe, apparatus or thing forming part of such utility, or ancillary thereto, safe for diversion.

(5) If the owner or other person fails to comply with any order under subsection (4) the Director may effect the diversion.

(6) The costs incurred by any person in complying with a direction under subsection (4) shall be payable by the Road Company to that person in such amount as may be agreed between the Road Company and that person or, failing agreement, as may be determined by the Director.

(Enacted 1986)

Section:	35	Other obligations of the Road Company		30/06/1997
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(1) The Road Company shall ensure that all fill for reclamation works undertaken in pursuance of the project is from a source, and of a quality, approved by the Director.

(2) Subject to the Sand Ordinance (Cap 147), any spoil dredged from the sea-bed during the carrying out of the construction works shall be disposed of by the Road Company at its own expense by removing to such marine dumping ground or other place as the Director may direct.

(3) Rock excavated for the carrying out of the construction works shall not be crushed into aggregates or aggregate derivatives for sale, or sold, without the prior approval of the Director and in accordance with the terms of such approval; any such terms may require payment to the Government, whether by way of royalty on the sale or otherwise, as a consideration for the grant of the approval.

(4) The Road Company shall at its own expense make good all damage occasioned by the carrying out of the construction works to all sea-walls, public roads, storm drains, water mains or other public property in such manner as the Director may direct.

(5) As soon as practicable after the date of completion as determined under section 18, the Road Company shall at its own expense supply the Director with as many sets (not exceeding 10) of the drawings of the construction works

as constructed as the Director may require and in such form as he may require.

(Enacted 1986)

Part:	VII	CONTINUING OBLIGATIONS AND PROVISIONS IN RESPECT OF THE CONSTRUCTION WORKS: REGULATIONS		30/06/1997
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Section:	36	Defects		30/06/1997
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(1) Subject to subsections (2) and (3) the Road Company shall be liable at all times until the expiration or revocation of the franchise granted to it by section 4(1) to make good any defect in the construction works as soon as practicable after the defect becomes apparent and to the reasonable satisfaction of the Director.

(2) On and after the rail operating date and until the expiration or revocation of the franchise granted by section 5(1) the Rail Company shall be liable at all times to make good any defect in the railway works as soon as practicable after the defect becomes apparent and to the reasonable satisfaction of the Director.

(3) Where the Rail Company is liable to make good any defect by reason of the provisions of subsection (2), the liability of the Road Company to make good any defect under subsection (1) shall not arise unless the Director is of the opinion that the Rail Company has failed or unreasonably delayed to discharge its obligations under subsection (2) in respect of those defects and he notifies the Road Company in writing of the defect and of such failure or delay.

(4) The Director may, by notice in writing, require the Road Company or, as the case may be, the Rail Company, to effect such works as he considers necessary to make good any defect that it is liable to make good under this section and any damage to the construction works arising from such defect.

(5) Nothing in this section shall-

(a) impose any liability on-

(i) the Road Company to make good any defect or damage arising from such defect which becomes apparent in the railway works after the expiration of the franchise granted to the Rail Company by section 5(1); or

(ii) the Road Company or the Rail Company to-

(A) discharge any obligation imposed on the Mass Transit Railway Corporation by the operating agreement;

(B) undertake any work to remedy any defect, or damage to the construction works arising from such defect, beyond the work reasonably required to remedy such defect or damage; or

(C) remedy any defect which does not, or is unlikely to, adversely affect the design life, operation, use or safety of the construction works; or

(b) restrict or otherwise affect the obligations of the Road Company or the Rail Company under the operating agreement in respect of defects or repairs.

(Enacted 1986)

Section:	37	Repair of immersed tube and road works		30/06/1997
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(1) The Road Company shall keep in a state of repair until the expiration or revocation of the franchise granted by section 4(1) and to the satisfaction of the Director-

(a) the fabric of the immersed tube including all sealing elements and the common wall separating the road conduits from the railway conduits and the rock armouring; and

(b) all works, whether within or outside the immersed tube, which it has the right to keep in place under section 4(1)(c).

(2) The Director may, by notice in writing, require the Road Company to effect such repairs and alterations to the structures or works it is required by subsection (1) to keep in a state of repair as he considers necessary for the proper repair thereof and for the obviation of fire and other hazards therein.

(3) Where in pursuance of the obligation imposed on it by subsection (1)(a), the Road Company carries out any works on the fabric of the immersed tube after the revocation or expiration of the franchise granted to the Rail Company by section 5(1), the Government shall be liable to pay to the Road Company one third of the costs reasonably incurred by the Road Company on those works.

(4) Any sum payable by the Government under subsection (3) shall be paid out of general revenue.

(Enacted 1986)

Section:	38	Provisions supplementary to sections 36 and 37		30/06/1997
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(1) Where any works are effected by the Road Company or the Rail Company under section 36 or 37, the provisions of Part VI shall apply in respect of the carrying out of such works as though the same were the carrying out of the construction works with such modifications as the circumstances of the case may require or as the Director may determine and, in the case of works carried out by the Rail Company, as if that company were the Road Company and references in Part VI to the Road Company were construed accordingly.

(2) The Director shall not exercise his powers under section 36 or 37 in such manner as would require the Road Company or, as the case may be, the Rail Company, to carry out any works to a standard which is substantially higher than that-

(a) required by-

(i) any relevant approval or exemption under Part VI; or

(ii) standards generally prevailing,

when the construction works were first carried out;

(b) which may be reasonably justified having regard to the age of the construction works at the time when such works as so required are to be carried out.

(3) If the Road Company or, as the case may be, the Rail Company fails to comply with any requirement of the Director under section 36 or 37 within a reasonable time after the receipt of notice of the requirement, the Director may effect the necessary works.

(4) If at any time there exist, in the opinion of the Director, any circumstances requiring the immediate carrying out of any works which the Road Company or, as the case may be, the Rail Company is required by section 36 or 37 to carry out, he may require the Road Company or, as the case may be, the Rail Company, to effect the same forthwith or, if he thinks fit, he may forthwith effect the same with or without notice to the Road Company or, as the case may be, the Rail Company.

(5) Subject to section 37(3), the expense of any works carried out under section 36 or 37 shall be borne by the Road Company or, as the case may be, the Rail Company (being the person under the duty to carry out those works) and, where any such works are effected by the Director, the expense thereof shall be recoverable from the Road Company or, as the case may be, the Rail Company by the Government as a debt owing by it to the Government:

Provided that where section 36(3) applies the Road Company and the Rail Company shall be jointly and severally liable to the Government on such debt.

(Enacted 1986)

Section:	39	Closure of immersed tube		30/06/1997
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(1) The Road Company may, and if required by the Director shall, close or partially close the immersed tube whenever this is necessary to enable any works to be effected by reason of any obligation imposed by this Part.

(2) It shall be the duty of the Mass Transit Railway Corporation, when required by the Director, to give effect to such closure in so far as it affects the railway.

(3) The Road Company shall not, except in an emergency, effect any such closure under subsection (1) without prior notification in writing to the Commissioner where any road traffic lane is to be closed.

(4) Whenever a closure is effected under subsection (1) in pursuance of a requirement of the Director, the immersed tube or such part thereof as is affected shall not be reopened without the prior consent in writing of the Director.

(Enacted 1986)

Section:	40	Utilities through the immersed tube		30/06/1997
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(1) Notwithstanding anything to the contrary in any other Ordinance-

(a) no person other than the Mass Transit Railway Corporation may install any utility within the conduits of the immersed tube containing the railway lines without the consent of the Corporation and, in the case of installation by any person other than the Corporation or the Road Company, the further consent of the Road Company; and

(b) no person other than the Road Company may elsewhere in the immersed tube install any utility without the consent of the Road Company.

(2) The Road Company shall not give any permission for the purpose of subsection (1)(b) unless the Commissioner has first approved the giving thereof and the terms and conditions (other than provision as to charges) of the permission.

(3) The Commissioner shall not give his approval under subsection (2) unless he is satisfied that the safety of persons using or employed in the vicinity of the immersed tube, and the passage of motor vehicles through the road tunnel, will not be prejudiced by such installation.

(4) Where the Mass Transit Railway Corporation gives any permission for the purposes of subsection (1) it may do so subject to such terms and conditions as it may think fit to impose:

Provided that nothing in this subsection shall authorize the Corporation to charge for such permission.

(5) The Road Company and the Mass Transit Railway Corporation shall afford reasonable access to any utility in the immersed tube by the owner or person having the control of that utility.

(6) References in subsection (1) to the installation of a utility by the Corporation or by the Road Company are references to the installation of that utility for the use by the Corporation or, as the case may be, by the Road Company.

(Enacted 1986)

Section:	41	Director may enter tunnel area and works area for certain purposes		30/06/1997
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(1) The Director may at any time enter any place where construction works or other works undertaken in connection with the project have been or are being carried out-

- (a) to ascertain whether the construction works are dangerous or liable to become unsafe or dangerous;
- (b) to inspect or test any machinery, equipment or plant therein;
- (c) to ascertain whether the Road Company or the Rail Company is complying with the provisions of this Ordinance or the project agreement in relation to the construction or repair of the construction works;
- (d) to effect any works authorized under this Ordinance.

(2) The Road Company, the Rail Company and the Mass Transit Railway Corporation shall afford the Director such facilities as he may require for the purposes of subsection (1).

(Enacted 1986)

Section:	42	Information to be supplied by the Road Company and the Rail Company to the Director		30/06/1997
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For the purpose of enabling the Director to ascertain any arrangements which have been made or are about to be made by the Road Company or the Rail Company for the fulfillment of its obligations under this Part, the Road Company or, as the case may be, the Rail Company shall, when required by the Director, forthwith furnish him with such information as to any matter relevant to such arrangements as he may require.

(Enacted 1986)

Section:	43	Power to make regulations		30/06/1997
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The Governor in Council may make regulations for all or any of the following matters-

- (a) the provision by the Road Company of adequate, efficient, safe and continuous facilities for the passage of motor vehicles through the road tunnel area;
- (b) the safety of persons using or employed in the immersed tube and road tunnel area, and, without prejudice to the generality of the foregoing in relation to fire hazards, for preventing any concentrations of carbon monoxide or other dangerous gases;
- (c) lighting, including emergency lighting, and visibility in the road tunnel area;
- (d) the noise level in the vicinity of any ventilation plant associated with the road tunnel;
- (e) the powers of the personnel provided by the Road Company for the control, restriction and safety of traffic in the road tunnel area;
- (f) the circumstances under and extent to which police officers may take over the control and restriction of traffic in the road tunnel area;

- (g) priority of vehicles in passage through the road tunnel area;
- (h) any records required to be kept by the Road Company in addition to those specified in section 53;
- (i) prescribing anything which under this Ordinance is to be or may be prescribed;
- (j) such other purposes as may be necessary or expedient to carry out effectively the provisions of this Ordinance.

(Enacted 1986)

Part:	VIII	THE ROAD TUNNEL		30/06/1997
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Section:	44	Road operating date		30/06/1997
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(1) The road tunnel and its approach roads shall be opened to the use of the public on a date\* determined by the Commissioner and notified by him in the Gazette. (\* 21.9.1989-see G.N.(E.) 132 of 1989)

(2) The date notified under subsection (1) shall be as soon as practicable after the Director has issued to the Commissioner and the Road Company a certificate stating that in his opinion the road tunnel and approach roads intended to be opened for public use are in a condition fit therefor.

(Enacted 1986)

Section:	45	Road Company to provide tunnel facilities		30/06/1997
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Subject to this Ordinance, on and after the road operating date and, throughout the continuance under section 4(2) of the franchise granted by that section, the Road Company shall provide and operate, to the satisfaction of the Commissioner, adequate, efficient and safe facilities for the passage of motor vehicles through the road tunnel.

(Enacted 1986)

Section:	46	Right to use of tunnel facilities		30/06/1997
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Subject to this Ordinance-

- (a) the road tunnel shall be used for the passage of motor vehicles upon payment of the tolls specified in the Schedule; and
- (b) the Road Company shall not without reasonable grounds prevent or refuse the use of the road tunnel for such purpose.

(Enacted 1986)

Section:	47	Control and safety of tunnel traffic		30/06/1997
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(1) The Road Company shall, to the satisfaction of the Commissioner, provide personnel and facilities for the control and safety of motor vehicles and persons in the road tunnel area.

(2) The provision of such personnel and facilities shall be at the expense of the Road Company.

(Enacted 1986)

Section:	48	Application of other laws		30/06/1997
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(1) Save to the extent that they are inconsistent with any regulations under section 43 or by-laws under section 54, the provisions of the Road Traffic Ordinance (Cap 374) shall apply to the roads in the tunnel area as if they were roads within the meaning of that Ordinance.

(2) The road tunnel area shall be a public place for the purposes of any law.

(Enacted 1986)

Section:	49	Operation of road tunnel area by Government	L.N. 38 of 2011	01/06/2011
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(1) The Governor in Council may, if he is satisfied that it is necessary to do so in the interests of public security, order that the Government shall take over the operation of the road tunnel area or any part thereof together

with such of the property of the Road Company as is necessary therefor, and continue such operation until the Governor in Council otherwise orders.

(2) The Government shall pay to the Road Company for any loss or damage suffered by that company by reason of any order under subsection (1), such amount as may be agreed between the Government and that company, or in default of such agreement such amount as may be determined by arbitration under the Arbitration Ordinance (Cap 609). (Amended 17 of 2010 s. 112)

(3) Any period during which the Government operates the road tunnel area or any part of that area shall be computed in and not deducted from the periods specified in section 4(2).

(Enacted 1986)

Section:	50	Closure of road tunnel for safety reasons	30/06/1997
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(1) The Road Company may, and if so required by the Commissioner shall, close or partially close the road tunnel to the use of the public whenever such action appears to be reasonably necessary for the safety of persons using or employed in the road tunnel area, for routine maintenance or for cleaning.

(2) Save when required by the Commissioner to close or partially close the road tunnel, the Road Company shall notify the Commissioner forthwith of any closure unless the Commissioner, by reason of his having been informed in advance of such closure, has waived his right to such notification.

(Enacted 1986)

Section:	51	Advertising in road tunnel area	30/06/1997
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(1) The Road Company may, with the prior approval of the Commissioner in writing, use, or permit the use of any part of the road tunnel area for advertising purposes on such conditions as to charges and otherwise as may be determined by the Company.

(2) Part IX of the Public Health and Municipal Services Ordinance (Cap 132) shall not apply to the use of any part of the road tunnel area for advertising purposes.

(3) The Commissioner shall not give his approval under subsection (1) unless he is satisfied that the safety of persons using or employed in the road tunnel area, and the passage of vehicles through the road tunnel, will not be prejudiced by such advertising.

(Enacted 1986)

Section:	52	Commissioner may enter road tunnel for inspection purposes	30/06/1997
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(1) The Commissioner may, without payment of tolls or other charges to the Road Company, enter the road tunnel area at any time after the road operating date to ascertain whether the Road Company is-

- (a) providing adequate and efficient facilities for the safe and efficient passage of motor vehicles and the occupants thereof through the tunnel and for the control and safety of traffic in the road tunnel area; or
- (b) otherwise complying with the provisions of this Ordinance other than the provisions of Part VII.

(2) The Road Company shall afford the Commissioner such facilities as he may require for the purposes of subsection (1).

(Enacted 1986)

Section:	53	Records and information	30/06/1997
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(1) The Road Company shall maintain the following records-

- (a) an up to date set of drawings of the construction works, which shall include all such alterations and additions as may, from time to time, be made to the construction works;
- (b) the times during which each toll gate is open;
- (c) the number of motor vehicles using the road tunnel, specifying the different classes of such vehicles, their direction through the road tunnel, and providing continuous and cumulative figures thereof;
- (d) the amount collected as tolls and the numbers and prices of toll tickets (if any) issued;
- (e) all accidents and stoppages to traffic therein;
- (f) the personnel employed in connection with the operation of the road tunnel, including details as to the

nature, location and times of such employment;

(g) such other records as may be prescribed by regulations under section 43.

(2) The Road Company shall permit the Commissioner to inspect, examine and copy all such records and any toll tickets and accounts kept by it in connection therewith, and shall afford facilities for such inspection, examination or copying as may from time to time be required by the Commissioner.

(3) For the purpose of enabling the Commissioner to ascertain any arrangements which have been, or are about to be, made by the Road Company for the fulfilment of its obligations under this Part, Part IV or IX or any regulations under section 43 the Road Company shall, at the request of the Commissioner, forthwith furnish him with information relevant to such fulfilment, including information relating to the organization of the Road Company, as he may require.

(Enacted 1986)

Section:	54	Power to make by-laws		30/06/1997
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- (1) Subject to this Ordinance, the Road Company may make by-laws for all or any of the following matters-
  - (a) order and safety, public health, and the prevention and abatement of nuisances in the road tunnel area;
  - (b) the control, restriction and safety of traffic in the road tunnel area;
  - (c) the regulation of the speed of traffic using the road tunnel area;
  - (d) the regulation of the types, dimensions, condition and loading of vehicles which may use the road tunnel area;
  - (e) the regulation of the use by vehicles in the road tunnel area of lights, horns, sirens and other equipment;
  - (f) the regulation and prevention of the carriage into or through the road tunnel area of any offensive, noxious or dangerous goods;
  - (g) the collection of tolls in respect of the use of the road tunnel;
  - (ga) the regulation of the use of automatic toll collection facilities; (Added 49 of 1993 s. 2)
  - (h) the purchase, issue and collection of toll tickets in respect of such use;
  - (i) the towing away or removal of any vehicle or thing causing obstruction in the road tunnel area and the imposition of charges in respect of any such towage or removal and of any storage, detention or service of such vehicle or thing;
  - (j) the protection of any property owned or controlled by the Road Company from damage or injury;
  - (k) the employment and organization of personnel provided by the Road Company for the control, restriction and safety of traffic in the road tunnel area and approach roads;
  - (l) any other conditions subject to which the road tunnel area may be used by the public for the passage of motor vehicles; and
  - (m) any other matter relating to the control, operation and management of the road tunnel area which it is necessary or expedient to provide for.

(2) Where a by-law made under subsection (1) provides for the issue of a permit for any purpose, the by-law may prescribe a fee to be paid in respect of such permit.

(3) All by-laws made under subsection (1) shall be subject to the approval of the Legislative Council.

(4) Any by-laws made under subsection (1) may provide that a contravention of specified provisions thereof shall be an offence and may provide penalties therefor not exceeding a fine of \$2000.

(5) The Road Company shall cause printed copies of all by-laws made under this section to be kept at the registered office of the Road Company and to be available for sale at a reasonable charge to every person applying therefor.

(6) The Legislative Council may by resolution amend the figure specified in subsection (4).

(Enacted 1986)

Part:	IX	COLLECTION OF TOLLS		30/06/1997
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Section:	55	Road Company to charge approved tolls for use of road tunnel	L.N. 38 of 2011	01/06/2011
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(1) Subject to this Ordinance, the Road Company may demand and collect tolls in respect of the passage of motor vehicles through the road tunnel.

- (2) The tolls that may be collected under subsection (1) shall be those specified in the Schedule.
- (3) The tolls specified in the Schedule may be varied-
- (a) by agreement between the Governor in Council and the Road Company; or
  - (b) in default of agreement by submission of the question of the variation of tolls to arbitration under the Arbitration Ordinance (Cap 609) by either the Governor in Council or the Road Company. (Amended 17 of 2010 s. 112)

(4) On a submission to arbitration under subsection (3), the arbitrators shall be guided by the need to ensure that the carrying out by the Road Company of its obligations, or the exercise of its rights, under this Ordinance is reasonably but not excessively remunerative to the Road Company, having regard to-

- (a) any material change in the economic conditions of Hong Kong since the enactment of this Ordinance or, as the case may be, since tolls were last determined under this section;
- (b) the dismissal of any appeal by the Road Company made under section 75;
- (c) any material change in any other circumstances affecting the exercise by the Road Company of its rights under the franchise granted by section 4(1);
- (d) the effect of the introduction of, or alteration in, any tax or levy imposed on the use of the road tunnel;
- (e) the principle that tolls or future rights to tolls should not be used to finance the construction of the railway works or to discharge directly or indirectly any obligation imposed on the Rail Company by this Ordinance; and
- (f) any other relevant matter.

(5) Where under subsection (3)-

- (a) the Governor in Council and the Road Company agree to a variation of the tolls; or
- (b) in an award pursuant to submission to arbitration it is determined that the tolls should be varied,

the tolls specified in the Schedule shall be varied in compliance with such agreement or award, as the case may be.

(6) The Commissioner shall, by notice in the Gazette, as soon as is practicable after such agreement or award as is referred to in subsection (5) amend the Schedule.

(Enacted 1986)

Section:	56	Description of motor vehicle		30/06/1997
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The description of motor vehicles mentioned in the Schedule shall be interpreted in accordance with the definitions and classes of motor vehicles mentioned in section 2 of the Road Traffic Ordinance (Cap 374).

(Enacted 1986)

Section:	57	Display of notices of tolls and sale thereof		30/06/1997
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(1) The Road Company shall, to the satisfaction of the Commissioner, cause to be displayed at both ends of the road tunnel, in conspicuous places, notices stating the toll payable in respect of each category of motor vehicle.

(2) The Road Company shall cause printed copies of the list of the tolls currently chargeable by the Road Company to be kept at the registered office of the Road Company and to be sold at a reasonable charge to every person applying therefor.

(Enacted 1986)

Section:	58	Road Company may not charge tolls greater than those as fixed or varied		30/06/1997
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The Road Company shall not charge any person a toll greater than the appropriate toll specified in the Schedule.

(Enacted 1986)

Section:	59	Road Company may erect toll structures, etc.		30/06/1997
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For the purpose of collecting tolls the Road Company may erect in the road tunnel area such toll gates, toll houses and other structures as it considers necessary.

(Enacted 1986)

Part:	X	TRAFFIC OFFENCES: SUPPLEMENTARY PROVISIONS	29 of 1999	01/09/1999
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Section:	60	Obligation to give information relating to the driving of vehicles	29 of 1999	01/09/1999
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(1) Without prejudice to section 63 of the Road Traffic Ordinance (Cap 374), where the driver of a motor vehicle is suspected of having committed an offence against this Ordinance in the road tunnel area, any person (including both the registered owner of the vehicle and the person suspected of being the driver of the vehicle at the time of the alleged offence) shall, on demand made within 6 months after the date of the alleged offence, give to a tunnel officer in the manner prescribed in this section the name, address and driving licence number of the person driving the vehicle at the time of the alleged offence and his relationship (if any) to the driver. (Amended 29 of 1999 s. 2)

(2) A demand under subsection (1) may be made orally or by means of a notice served personally or by post on the person on whom it is made.

(3) Where a demand under subsection (1) is made orally to any person he shall-

(a) if he was the driver of the vehicle at the time of the alleged offence-

(i) give immediately his name and address; and

(ii) give the number of his driving licence to a specified tunnel officer within 21 days after the date of the demand; and

(b) if he was not the driver of the vehicle at the time of the alleged offence, give the information required under subsection (1) to a specified tunnel officer either orally or in writing within 21 days after the date of the demand.

(4) A notice under subsection (2) shall require the person to whom it is addressed-

(a) to furnish, within 21 days after the date of the notice, to a tunnel officer specified therein, a written statement, in such form as may be specified in the notice, giving the name, address and driving licence number of the person driving the vehicle at the time of the alleged offence and his relationship (if any) to the driver; and

(b) to sign the said statement.

(5) Subject to subsection (6), any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$4000 and to imprisonment for 6 months.

(6) In proceedings for an offence under subsection (5), it shall be a defence to show that the accused person did not know, and could not with reasonable diligence have ascertained, the name or address or driving licence number of the person driving the vehicle at the time of the alleged offence.

(Enacted 1986)

Section:	60A	Making false statements and omitting material particulars	29 of 1999	01/09/1999
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(1) A person who makes a false statement in supplying particulars required under section 60 commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(2) In proceedings for an offence under subsection (1), it is a defence for the accused person to show that he did not know and had no reason to believe the statement to be false.

(3) A person who omits any material particular required under section 60 commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(4) In proceedings for an offence under subsection (3), it is a defence for the accused person to show that he did not know, and could not with reasonable diligence have ascertained, the particular required.

(Added 29 of 1999 s. 2)

Section:	61	Proof in summary proceedings of identity of driver		30/06/1997
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If, in any summary proceedings for an offence under this Ordinance, there is produced to the court a statement which-

(a) purports to have been signed by the accused person;

(b) was furnished in accordance with a notice served on him under section 60; and  
(c) states that the accused person was the driver of the vehicle at the time of the offence,  
the court shall admit the statement as prima facie evidence that the accused person was the driver of the vehicle at the time of the offence.

(Enacted 1986)

Section:	61A	Certificates of image recording and printing devices	29 of 1999	01/09/1999
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(1) A document in such form as may be specified by the Commissioner purporting-  
(a) to be a record of the testing of the functioning, inspection or servicing of an image recording device (with or without any associated image printing device) used for the purpose of recording and, where appropriate, reproducing the images of vehicles passing through a toll booth and specified in the document; and  
(b) to be certified as to such testing, inspection or servicing by a person authorized in this behalf by the Road Company,  
shall be admitted as evidence in any criminal or civil proceedings before any court on its production without further proof.

(2) On the production of a document under subsection (1)-  
(a) the court before which it is produced shall, in the absence of evidence to the contrary, presume-  
(i) that it was signed at the time and place specified in it by a person authorized by the Road Company;  
(ii) that the facts stated in the document relating to the testing of the functioning, inspection or servicing of the image recording device and the associated image printing device, if any, specified in it are true; and  
(iii) that the record of the facts stated in the document was made and compiled at the time stated in it;  
(b) the document shall be evidence of all other matters contained in it; and  
(c) the recording and print, if any, produced by using the image recording device and the associated image printing device, where appropriate, shall be evidence of all matters contained in them.  
(3) Where any document is produced and admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the matter the subject of the document.

(Added 29 of 1999 s. 2)

Section:	61B	Certificates as to photographic process	29 of 1999	01/09/1999
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(1) A document in such form as may be specified by the Commissioner purporting to be signed by a person duly appointed under subsection (2) and purporting to be a certificate as to the processing of exposed film received and processed by him shall, together with the photographic prints or photographic enlargements referred to in the document, be admitted in evidence in any criminal or civil proceedings before any court on its production without further proof, and-

(a) in the absence of evidence to the contrary, the court before which such document is produced shall presume that the signature to the document is genuine and that the person signing it was duly appointed under subsection (2) at the time when he signed it; and  
(b) such document shall be evidence of all matters contained in it.  
(2) The Road Company may appoint in writing such persons as it thinks fit to carry out the processing of exposed film and to sign certificates under subsection (1) in relation to the processing.  
(3) Where any document is produced and admitted as evidence under subsection (1), the court may, if it thinks fit, on its own motion or on the application of any party to the proceedings, summon the person who signed the document and examine him as to the matter the subject of the document.

(Added 29 of 1999 s. 2)

Section:	62	Proof of plan		30/06/1997
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(1) In any prosecution for an offence against this Ordinance, a copy of the plan, certified by the Commissioner to be a copy of such plan, shall be conclusive proof of the road tunnel area.

(2) Any such copy purporting to be certified by the Commissioner shall be deemed, until the contrary is proved, to have been certified by him.

(Enacted 1986)

Section:	63	Definitions and application		30/06/1997
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(1) In this Part-

"driver" (駕駛人), in relation to any motor vehicle, means any person who is in charge of or assisting in the control of such vehicle;

"driving licence" (駕駛執照) means a licence issued in accordance with regulations made under section 8 of the Road Traffic Ordinance (Cap 374);

"owner" (車主) includes the person in whose name a vehicle is registered under the Road Traffic Ordinance (Cap 374) and the person by whom the vehicle is kept and used and, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, means the person in possession of the vehicle under that agreement;

"tunnel officer" (隧道人員) means any person employed by the Road Company for the control, restriction and safety of traffic in the road tunnel area.

(2) The powers conferred on a tunnel officer by section 60, other than the power to make a demand by serving a notice under subsection (2) of that section, may be exercised only within the road tunnel area.

(Enacted 1986)

Part:	XI	OPERATION OF THE RAILWAY		30/06/1997
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Section:	64	Rail operating date		30/06/1997
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(1) The railway shall be opened to the use of the public on a day\* determined by the Chief Secretary and notified by him in the Gazette. (\* 5.8.1989-see L.N. 280 of 1989)

(2) The Chief Secretary shall not determine a date for the purposes of subsection (1) until-

(a) an inspector appointed under section 23A of the Mass Transit Railway Corporation Ordinance (Cap 270) has certified the railway is fit for use; and

(b) the Director has issued to the Chief Secretary and the Rail Company a certificate stating that in his opinion the railway works are fit for use,

and the Chief Secretary shall determine that date as soon as is practicable thereafter.

(Enacted 1986)

Section:	65	Application of Mass Transit Railway Corporation Ordinance (Cap. 270)		30/06/1997
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(1) Upon the rail operating date, the railway shall for the purposes of the Mass Transit Railway Corporation Ordinance (Cap 270) become part of the Mass Transit Railway and the provisions of that Ordinance shall apply to the railway and its operation and the buildings and structures appurtenant to the railway as if the railway and those buildings and structures had been constructed by the Mass Transit Railway Corporation for the Mass Transit Railway.

(2) Notwithstanding that an inspection for the purposes of section 64(2)(a) may take place prior to the rail operating date, the provisions of sections 23A, 23B and any relevant regulations under section 24 of the Mass Transit Railway Corporation Ordinance (Cap 270) shall apply in relation to the inspection and the powers of the inspector in connection therewith in the same manner as they would if the Ordinance was then, by subsection (1), applicable.

(Enacted 1986)

Section:	66	Rail Company may charge the Mass Transit Railway Corporation for the use of the railway		30/06/1997
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Subject to this Ordinance and the operating agreement, the Rail Company may charge the Mass Transit Railway

Corporation for the use of-

- (a) the railway works; and
- (b) rolling stock and other things (including services), provided by the Rail Company to the Corporation, in accordance with the terms of the operating agreement.

(Enacted 1986)

Part:	XII	DEFAULT AND EXPIRATION OF THE FRANCHISES	L.N. 158 of 1998	01/04/1998
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Section:	67	Default	L.N. 158 of 1998	01/04/1998
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For the purposes of this Part-

- (a) the Road Company shall be deemed to be in default if-
    - (i) it has failed or there is a substantial likelihood of its failing to complete the construction works within the period allowed by section 17;
    - (ii) there has been a substantial failure by it to discharge its obligations under the project agreement;
    - (iii) it has failed or there is a substantial likelihood of its failing to operate the road tunnel in accordance with this Ordinance; or
    - (iv) the guarantors, having been called upon under the guarantee agreement-
      - (A) fail to respond to such call within a reasonable period of time; or
      - (B) are in material breach of any of the provisions of the guarantee agreement;
  - (b) the Rail Company shall be deemed to be in default if-
    - (i) it fails to transfer to the Mass Transit Railway Corporation the rights granted to it under section 5(1)(b) and (c) in accordance with section 8; or
    - (ii) there has been a substantial failure by it to comply with its obligations under the operating agreement;
  - (c) the Road Company or the Rail Company, as the case may be, shall be deemed to be in default if-
    - (i) there has been a substantial failure by it to comply with any of the provisions of this Ordinance; or
    - (ii) (Repealed 76 of 1996 s. 80)
    - (iii) it fails to comply with a notice under section 68,
- and the expression "default" (失責行為) shall be construed accordingly.

(Enacted 1986)

Section:	68	Defaults capable of remedy		30/06/1997
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(1) This section shall apply in the case of any default where it appears to the Secretary that the default is capable of being remedied.

(2) In the case of any default to which this section applies, the Secretary shall serve-

- (a) in the case of a default prior to the discharge date, on-
  - (i) the Road Company;
  - (ii) the guarantors; and
  - (iii) any agent nominated under subsection (3); and
- (b) in the case of a default on or after the discharge date, on-
  - (i) the company in default; and
  - (ii) any agent nominated under subsection (3),

a notice calling upon the company in default, within such time as may be specified in the notice or such further time as the Secretary may allow, being a time reasonable in the circumstances to remedy the default or to take measures or make arrangements to the satisfaction of the Secretary to ensure that such default is remedied:

Provided that such time shall not be less than 28 days.

(3) Any financier or, where a financier is a member of a consortium of financiers, that consortium, may, for the purposes of subsection (2), at any time nominate to the Secretary an agent and specify an address for service of that agent in Hong Kong.

(4) In this section "financier" (融資人) means any person who has provided credit or agreed to act as surety or

guarantor for or otherwise provided financial support to the Road Company or the Rail Company for the purposes of the project or to enable either company to carry out its obligations under this Ordinance, the project agreement or the operating agreement.

(5) The arrangements referred to in subsection (2) may, without derogation from the generality of that subsection, include arrangements for the disposal of the rights of the Road Company or, as the case may be, the Rail Company under this Ordinance, to another person in accordance with section 9.

(Enacted 1986)

Section:	69	Revocation of the grant	30/06/1997
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(1) If-

- (a) the Secretary has reported to the Governor in Council that there has been a failure to comply with a notice served by him under section 68(2); or
- (b) it appears to the Governor in Council that-
  - (i) at any time prior to the discharge date, the Road Company is in default; or
  - (ii) on or after the discharge date, the Road Company or the Rail Company is in default,

the Governor in Council may direct the Secretary to serve a notice under subsection (2).

(2) The notice referred to in subsection (1) shall-

- (a) if given in relation to a default arising before the discharge date, be served on the persons specified in section 68(2)(a); and
- (b) if given in relation to a default arising on or after the discharge date, be given to the persons specified in section 68(2)(b),

and shall specify whether it is given under subsection (1)(a) or (b) and, if given under subsection (1)(a), give particulars of the notice referred to in that subsection and brief particulars of the report of the Secretary and, if given under subsection (1)(b), specify the nature of the default, and shall require-

- (i) the Road Company, in the case of a failure or default specified in subsection (1) occurring prior to the discharge date; and
- (ii) the company concerned, in the case of a failure or default specified in subsection (1) occurring on or after the discharge date,

to show cause in writing to the Governor in Council, within 28 days after the date of the service why he should not exercise his powers under subsection (4).

(3) Any person upon whom a notice is served under subsection (2) and any other person who is a shareholder of the company in default or a financier within the meaning of section 68 may, within the period specified in subsection (2), or such further period as the Governor in Council may allow, make representations to the Governor in Council, to show cause why the Governor in Council should not exercise his powers under subsection (4).

(4) After considering any representations made under subsection (3) and if the Governor in Council is of the opinion that insufficient cause has been shown why the Governor in Council should not exercise his powers under this section, the Governor in Council may by order-

- (a) where it appears to the Governor in Council that a notice should have been served under section 68 and was not, or the terms of any notice served were unreasonable, direct the Secretary to serve a notice or, as the case may be, a further notice, under that section in such terms as the Governor in Council may determine unless it appears to the Governor in Council that the default is no longer capable of being remedied; or
- (b) in any other case-
  - (i) in the case of a default taking place prior to the discharge date, revoke the franchises granted by Part II;
  - (ii) in the case of a default taking place on or after the discharge date-
    - (A) in the case of a default by the Road Company, revoke the franchise granted by section 4(1); or
    - (B) in the case of a default by the Rail Company, revoke the franchise granted by section 5(1), and such revocation shall take effect from the date specified in the order.

(5) Where the Governor in Council exercises his powers under subsection (4)(b) he may further order that the franchise revoked, or where the franchises of both the Road Company and the Rail Company are revoked, that the franchise of either or both of those companies, be regranted to such other person (being a person willing and able to accept such re-grant) on such terms and conditions, being terms and conditions consistent with this Ordinance, as he

may think fit, and upon the publication of that order in the Gazette such franchises or franchise shall vest in such other person and the provisions of this Ordinance shall apply to such person as being the Road Company or, as the case may be, Rail Company.

(6) An order made under-

- (a) subsection (4)(a) shall be directed to the Secretary and a copy thereof shall be attached to the Secretary's notice under section 68(2);
- (b) subsection (4)(b) shall be served on-
  - (i) the Road Company and the guarantors, if given under sub-paragraph (i) of that subsection;
  - (ii) the Road Company, if given under sub-paragraph (ii)(A) of that subsection; or
  - (iii) the Rail Company, if given under sub-paragraph (ii)(B) of that subsection,

and shall, as soon as practicable thereafter, be published in the Gazette.

(Enacted 1986)

Section:	70	Effect of winding up of the companies, termination of franchises etc.		30/06/1997
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(1) All rights and obligations of both the Road Company and the Rail Company under this Ordinance shall determine on-

- (a) the commencement of the voluntary winding up of either company, otherwise than for the purposes of an assignment in accordance with section 9, at any time prior to the discharge date;
- (b) the making of a winding up order in respect of either company prior to the discharge date; and
- (c) the revocation of the franchises under section 69(4)(b)(i).

(2) All rights and obligations of the Road Company under this Ordinance shall determine on-

- (a) the commencement of the voluntary winding up of the company, otherwise than for the purposes of an assignment in accordance with section 9;
- (b) the making of a winding up order in respect of the company;
- (c) the revocation of the franchise granted by section 4(1) under section 69(4)(b)(ii)(A);
- (d) on the expiration of the period specified in section 4(2).

(3) All rights and obligations of the Rail Company under this Ordinance shall determine on-

- (a) the commencement of the voluntary winding up of the company, otherwise than for the purposes of an assignment in accordance with section 9;
- (b) the making of a winding up order in respect of the company;
- (c) the revocation of the franchise granted by section 5(1) under section 69(4)(b)(ii)(B);
- (d) on the expiration of the period specified in section 5(2).

(4) Upon the determination of the rights and obligations of the Road Company or the Rail Company under this section the assets of that company shall vest in the Government.

(Enacted 1986)

Section:	71	Liability of companies and amount payable by the Government on the vesting in it of their assets	L.N. 38 of 2011	01/06/2011
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(1) On the determination of the rights and obligations of both the Road Company and the Rail Company under section 70(1), the Road Company shall thereupon be liable, in addition to the payment of all other sums due to the Government, to pay-

- (a) all sums payable under section 20 notwithstanding that payment of such sums would, but for this paragraph, be suspended under section 20(2)(a); and
- (b) any expenses which may be incurred by the Government-
  - (i) in putting the sea-bed, any land and any uncompleted construction works in a satisfactory order to enable the construction works either to be maintained in a state in which they can be continued at a future time or abandoned as the Director may determine, including any costs of land or sea-bed restoration; and
  - (ii) in putting the construction works in a safe condition.

(2) On the determination of the rights and obligations of-

- (a) the Road Company and the Rail Company under section 70(1);
- (b) the Road Company under section 70(2); or

(c) the Rail Company under section 70(3), the Government shall be liable to pay to the company whose rights and obligations have been determined in respect of the assets of that company vesting in the Government under section 70(4) such amount as may be agreed between the Government and the Road Company or, as the case may be, the Rail Company, as representing the value of such assets to the Government at the time of vesting or, in default of such agreement, such amount as may be determined by arbitration under the Arbitration Ordinance (Cap 609). (Amended 17 of 2010 s. 112)

(3) In determining the value for the purposes of subsection (2)-

- (a) of assets forming part of the railway works, the value of the assets to the Government shall be deemed to be the value they would have had to the Mass Transit Railway Corporation, if these assets had, under section 70(4), vested in the Corporation;
- (b) where the vesting of the assets in the Government is in consequence of a default, there shall be deducted from what would, but for this paragraph, be the value of the assets, such amount as may be agreed or determined in accordance with the provisions of that subsection for-
  - (i) damages occasioned to the Government by such default calculated on the basis that the construction works had been, or are to be, constructed, for the beneficial use of the Government and that the Government is the franchise holder under Part II;
  - (ii) the costs to the Government of obtaining the forfeiture of the franchise or franchises under this Part.

(4) No amount shall be payable to the Road Company or the Rail Company under subsection (2) upon the determination of the rights and obligations of both the Rail Company and the Road Company under section 70(1)(c) where the revocation of the franchises was on the grounds that the Road Company had failed or appeared likely to fail to complete the construction works within the period allowed by section 17.

(Enacted 1986)

Section:	72	Reimbursement of company upon expiration of grant		30/06/1997
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No compensation shall be payable by the Government to-

- (a) the Road Company upon the expiration of the period specified in section 4(2); or
- (b) the Rail Company upon the expiration of the period specified in section 5(2),

save that the Government shall pay to the Road Company or, as the case may be, the Rail Company, the reduced value of any machinery, equipment or plant forming part of the assets (such value being calculated in accordance with Part VI of the Inland Revenue Ordinance (Cap 112)) purchased by that company with the agreement of the Financial Secretary within the 5 years next preceding the expiration of the period of grant and owned by that company on such expiration.

(Enacted 1986)

Section:	73	Government not liable for Road or Rail Company's debts		30/06/1997
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Any vesting of the assets of the Road Company or the Rail Company in the Government under this Part shall not thereby render the Government liable for any debts of the Road Company or the Rail Company.

(Enacted 1986)

Section:	74	Meaning of "assets"		30/06/1997
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In this Part, "assets" (資產) means the structure of the immersed tube, the railway works and all buildings, machinery, equipment and plant ancillary to the construction, operation and maintenance of the railway works and the road tunnel.

(Enacted 1986)

Part:	XIII	SUPPLEMENTARY		30/06/1997
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Section:	75	Appeal by the Road Company or the Rail Company	L.N. 38 of 2011	01/06/2011
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(1) If the Road Company or the Rail Company is aggrieved by any decision to which this section applies it may within 14 days of the notification to it of that decision, or such longer period as the Governor may allow, appeal against such decision by giving written notice to the Governor that it appeals against such decision and in that notice specifying the grounds upon which the appeal is based.

(2) On receipt of a notice of appeal under subsection (1) the Governor-

- (a) shall, if the appeal is against any decision of the Director and the failure of the appeal would result in the company appealing being held to be in default under Part XII or if it appears to the Governor that this would be a probable result of such failure, refer the appeal to arbitration under the Arbitration Ordinance (Cap 609);
- (b) subject to paragraph (a) may, where it appears to him that the issues raised by the appeal are matters of engineering practice, questions of the interpretation of the project agreement or other matters appropriately referred to arbitration, refer the appeal to arbitration under the Arbitration Ordinance (Cap 609),

and in, any other case, the appeal shall be determined by the Governor in Council. (Amended 17 of 2010 s. 112)

(3) On an appeal under this section the Governor may give such instructions as he thinks fit as to the enforcement of the decision appealed against pending the determination or abandonment of the appeal but, subject to such instructions, such decision may, pending such determination or abandonment, be enforced as if no such appeal had been made.

(4) The decision of the arbitrator or Governor in Council on an appeal under this section shall be final.

(5) In this section "decision" (決定) means any requirement, determination or direction made, or the withholding of any consent or approval (including the refusal to allow time under section 17(3)), by the Secretary, the Director or the Commissioner under this Ordinance other than the exercise by the Secretary of his powers under section 68; and this section shall apply to any such decision.

(Enacted 1986)

Section:	76	Foreshore reclamations deemed to be authorized	29 of 1998 s. 105	01/07/1997
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Remarks:

Amendments retroactively made - see 29 of 1998 s. 105

The reclamation of, or other works upon, Government foreshore or sea-bed required to be carried out by the Road Company by section 15 shall be deemed to have been authorized by the Governor under section 10(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap 276).

(Enacted 1986. Amended 29 of 1998 s. 105)

Section:	77	Non-derogation from Government's rights		30/06/1997
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(1) Nothing in this Ordinance, the project agreement or the operating agreement shall affect any rights which the Government or any servant or agent thereof may have to enter upon any land affected by the construction works and do anything thereon which he might have done if those works had not been undertaken except to the extent that the exercise of such rights is limited by any express provision of this Ordinance or those agreements or by necessary implication from their provisions.

(2) Nothing in subsection (1) shall enable the Government, its servants or agents to exercise any such rights as are referred to in that subsection in a manner which would derogate from any rights granted to the Road Company or, as the case may be, the Rail Company, under this Ordinance.

(Enacted 1986)

Section:	78	Certificate as to moneys owing to the Government		30/06/1997
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Where under this Ordinance any person becomes liable in any amount to the Government a certificate purporting to be signed by the Director as to the amount owing shall be evidence of that amount and, subject to any provision to the contrary in this Ordinance, the amount specified in that certificate shall become payable by the person so liable

upon presentation of that certificate to him.

(Enacted 1986)

Section:	79	Enforcement of requirement and directions	L.N. 362 of 1997; 25 of 1998	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Any requirement or direction of the Director or the Commissioner under this Ordinance may be enforced by the Secretary for Justice by order of the Court of First Instance and in accordance with that order:

Provided that nothing in this section shall derogate from any powers which the Director may have under this Ordinance to enforce compliance with such requirement or direction in any other manner.

(Enacted 1986. Amended L.N. 362 of 1997; 25 of 1998 s. 2)

Section:	80	Director to give effect to the project agreement		30/06/1997
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Where this Ordinance confers a discretion or authority upon the Director he shall, in addition to taking into consideration any matters which he is by this Ordinance required or permitted to take into consideration and other proper matters, exercise that discretion or authority so as to give effect to the terms of the project agreement.

(Enacted 1986)

Section:	81	Limitation of public liability		30/06/1997
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No liability shall vest upon the Government or any public officer by reason of the fact that the construction works are carried out in accordance with this Ordinance or that the construction works or the designs, structural details, calculations, method and programme of construction and conditions of contract relating thereto are subject to inspection or approval by a public officer, nor shall anything in this Ordinance make it obligatory for the Director or the Commissioner to inspect the construction works to ascertain that the provisions of this Ordinance are complied with or that any designs, structural details, calculations, or other documents, certificates and notices submitted to him are accurate.

(Enacted 1986)

Schedule:		SCHEDULE	L.N. 37 of 2005	01/05/2005
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[sections 4, 46, 55, 56 & 58]

#### EASTERN HARBOUR CROSSING ROAD TUNNEL TOLLS

Category	Vehicle	Toll
1.	Motorcycles, motor tricycles.....	\$13
2.	Private cars, electrically powered passenger vehicles, taxis.....	\$25
3.	Public and private light buses.....	\$38
4.	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes.....	\$38
5.	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 5.5 tonnes but not exceeding 24 tonnes.....	\$50
6.	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight of or exceeding 24 tonnes but not exceeding 38 tonnes.....	\$75
7.	Public and private single-decker buses.....	\$50
8.	Public and private double-decker buses.....	\$75
9.	Each additional axle in excess of two.....	\$25

(Enacted 1986. Amended L.N. 531 of 1997; L.N. 37 of 2005)

