

**BILLS COMMITTEE ON
LAND (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2002
MEETING ON 1 APRIL 2003**

Follow-up to meeting on 18 March 2003

In the Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2002 on 18 March 2003, the Administration was requested to follow up on certain issues. The following are the information provided on these issues.

Question (a) Whether a member of the Review Panel/Review Board who with the intent to conceal the fact that he had an interest in a particular subject under review would constitute an offence in law.

Answer (a) According to the relevant provisions in the Bill, no person having an interest in the subject of review can be nominated or appointed to the Review Board. However, no offence can be committed by a person who just conceals an interest to gain nomination to the Board.

But if remuneration or other forms of benefit would be gained by being a member of the Review Board (such as a refund by Director of Highways of economic cost), then if a person deliberately conceals the fact that he has an interest in the subject, is appointed to the Review Board and obtains the benefit, he may commit an offence of fraud under s. 16A of the Theft Ordinance (Cap. 210) or an offence of obtaining pecuniary advantage by deception under s. 18 of Cap. 210.

Question (b) To provide a progress update on the excavation works behind Regal Hong Kong.

Answer (b) The works behind Regal Hong Kong is part of the Wan Chai East and North Point Sewerage Project. The 'Awaiting for underground cable/pipes diversion', indicated on the publicity board in late February 2003,

involved the diversion of a water main to make way for the construction of a shaft. The water main diversion was completed on 25 March 2003.

The area being occupied is for the construction a 6m deep shaft and some sewers and manholes. The shaft, which is 4m x 4m on plan, and located partly on the carriageway, will be a receiving pit for a 600mm diameter sewer installed by trenchless pipe jacking method. The location of the receiving pit is dictated by the alignment of the sewer, which in turn is dictated by the location of the existing underground services. The works at this location is targeted for completion by early 2004.

The adoption of trenchless pipe jacking method is already a great improvement over the traditional open cutting method in the construction of sewers, in terms of disturbance to the public. Drainage Services Department has also put in great effort to reduce the space occupied.

The temporary traffic management schemes to minimize impact on traffic have been vet and approved by a Traffic Management Liaison Group. The group comprises representatives from Drainage Services Department, Transport Department, HK Police, Highways Department, District Office and Bus Companies.

We will closely monitor the progress of the works.

Annex

Members' attention is drawn to the Committee Stage Amendment attached to this Information Paper as Annex.

ETWB
25 March 2003

Annex

NFSIU/LANDCSA/#69291v12.doc
1st draft: 29.11.2002
1st draft (revised): 02.12.2002
2nd draft: 13.01.2003
2nd draft (revised): 14.01.2003
3rd draft : 28.01.2003
3rd draft (revised): 06.02.2003
3rd draft (2nd revised): 08.02.2003
3rd draft (3rd revised): 10.02.2003
4th draft: 21.03.2003
4th draft (revised): 27.03.2003

LAND (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary
for the Environment, Transport and Works

Clause

Amendment Proposed

1(2) By adding "the Environment, Transport and" before
"Works".

2 (a) In paragraph (a), by deleting the proposed
definition of "excavation permit" and
substituting -

"excavation permit" (挖掘准許證) means an
excavation permit issued under section
10A;"

(b) In paragraph (b) -

(i) in the proposed definition of
"contractor", by deleting " a principal
excavation permit or principal" and
substituting "an excavation permit or";

(ii) by deleting the proposed definition of

"emergency excavation permit" and
substituting -

"emergency excavation permit (緊急挖掘
准許證) means an emergency
excavation permit issued under
section 10B";

- (iii) in the proposed definition of
"permittee", by deleting "a principal
excavation permit or principal" and
substituting "an excavation permit or";
- (iv) by deleting the proposed definitions of
"principal emergency excavation
permit", "principal excavation permit",
"secondary emergency excavation
permit" and "secondary excavation
permit".;
- (v) in the proposed definition of "Review
Board", by deleting "established under
section 10M" and substituting
"constituted under section 10N".

3 By deleting the proposed section 2A(3) and (4) and
substituting -

"(3) If the Authority considers that a public
officer, in carrying out his duties in the service
of the Government, has done an act or made an

omission in contravention of Part III, the Authority shall -

(a) report the matter to the Secretary for the Environment, Transport and Works; and

(b) in the report, advise him, that the act or omission has, as the case may be -

(i) been terminated to the Authority's

satisfaction; or

(ii) not been terminated to the Authority's satisfaction.

(4) On receiving a report under subsection (3) where paragraph (b)(ii) of that subsection is applicable, the Secretary for the Environment, Transport and Works shall investigate the matter to which the report relates and ascertain if the public officer concerned is continuing to contravene Part III or has stopped the contravention.

(5) If an investigation under subsection (4) shows that the public officer concerned is continuing to contravene Part III, the Secretary

for the Environment, Transport and Works shall ensure that the best practicable steps are taken to -

- (a) stop the contravention; and
- (b) avoid the recurrence of any like contravention if he considers that the public officer concerned or any other public officer, is likely to commit the like contravention.

(6) If -

(a) either -

- (i) a report under subsection (3) is received where paragraph (b)(i) of that subsection is applicable; or

- (ii) an investigation under subsection (4) shows that the public officer concerned has stopped the contravention; but

(b) the Secretary for the Environment, Transport and Works considers that the public officer concerned or any

other public officer, is likely to commit a like contravention, then the Secretary for the Environment, Transport and Works shall ensure that the best practicable steps are taken to avoid the recurrence of the like contravention."

- 4 (a) In the proposed section 8(1), by adding -
- "Secretary (局長) means the Secretary for the Environment, Transport and Works;"
- (b) By deleting the proposed section 9 and substituting -

"9. Application of certain provisions

"(1) Section 10B, 10C, 10D(1A), 10E, 10K, 10L, 10M, 10N, 10NA, 10R, 18B and 18C only apply in the case of an excavation in a street.

(2) Sections 10AA and 10OA only apply in the case of an excavation in unleased land, other than streets."

- (c) In the proposed section 10 -
- (i) by deleting subsections (1) and (2) and substituting -

"(1) Except under and in accordance with a prospecting licence, mining licence or sand

removal permit, or a lease, licence, deed, memorandum of appropriation or engineering conditions for land allocation issued by the Director of Lands, a person shall not make or maintain any excavation in unleased land unless -

(a) either -

(i) he is the holder of an excavation permit or emergency excavation permit; or

(ii) he is the contractor of the holder of an excavation permit or emergency excavation permit; and

(b) he so makes or maintains the excavation under and in accordance with the permit.

(2) Subject to subsection (6), a person who contravenes subsection (1) by making or maintaining an excavation in unleased land without being -

(a) the holder of an excavation permit or emergency excavation permit;
or

(b) the contractor of the holder of an excavation permit or emergency excavation permit,

shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 6 months." ;

- (ii) in subsection (3), by deleting "issued to him";
 - (iii) in subsection (4)(a), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";
 - (iv) in subsection (5)(a), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";
 - (v) in subsection (7), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".
- (d) In the proposed section 10A -
- (i) in the heading, by deleting "principal";
 - (ii) in subsection (1), by deleting "a permit, to be known as the principal" and substituting "an";
 - (iii) in subsection (2), by deleting "A principal" and substituting "An";
 - (iv) in subsection (3), by deleting "a principal" and substituting "an";
 - (v) in subsection (4) -

(A) in paragraph (a), by deleting
"a principal" and
substituting "an";

(B) by deleting paragraph (b) and
substituting -

"(b) the permittee of
the permit is
unable to have
access to -

(i) a reasonably
substantial
portion of the
street
concerned for
the purpose of
making or
maintaining
the
excavation,
after the
commencement
of the period
for which the
permit is
valid but

before the commencement of the excavation, for reason other than the fault of the permittee, the contractor for the excavation or their employees; or

- (ii) a reasonably substantial portion of the land concerned, other than a street, for the purpose of making or maintaining the

excavation,
after the
commencement
of the period
for which the
permit is
valid, for
reason other
than the fault
of the
permittee,
the
contractor
for the
excavation or
their
employees."

(vi) in subsection (5), by deleting "any" and
substituting "Subject to section 10K,
any" -

(e) By adding -

"10AA. Exemption

(1) Any person who intends to make and
maintain an excavation in unleased land may apply
to the Authority in writing to exempt the

excavation from complying with all or any provision of this Part and shall set out the reasons for the application.

(2) Upon receipt of an application made under subsection (1), the Authority may by notice in writing exempt the excavation referred to in the application from all or any provision of this Part if the Authority is of the opinion that the excavation -

- (a) is minor;
- (b) will not involve or is unlikely to involve lateral support or substantial work in terms of the extent, duration and size of the excavation and the area that will be or is likely to be affected by the excavation;
- (c) will not cause or is unlikely that the excavation concerned will cause any inconvenience or danger to the public;
- (d) will not cause or is

unlikely that the excavation concerned will cause any delay to traffic; and

(e) will not pose or is unlikely that the excavation concerned will pose a danger to any underground apparatus or properties."

(f) In the proposed section 10B -

- (i) in the heading by deleting "principal";
- (ii) in subsection (1), by deleting "a permit, to be known as the principal" and substituting "an";
- (iii) in subsection (2), by deleting "A principal" and substituting "An";
- (iv) in subsection (3), by deleting "a principal" and substituting "an";
- (v) in subsection (6), by deleting "any" and substituting "Subject to section 10K, any";
- (vi) in subsection (7) -
 - (A) in paragraph (a), by deleting "a principal" and substituting "an";

(B) by deleting paragraph (b) and substituting -

"(b) the permittee of the permit is unable to have access to a reasonably substantial portion of the land concerned for the purpose of making or maintaining the excavation, after the date of the report of the emergency incident concerned to the Authority under subsection (3) but before the commencement of the excavation, for reason other than the fault of the permittee, the contractor for the excavation or their employees,".

(g) In the proposed section 10C -

(i) in subsection (1), by deleting "a principal" where it twice appears and

substituting "an";

(ii) in subsection (2) -

(A) by deleting "a principal" and substituting "an";

(B) by deleting "the principal" wherever it appears and substituting "an";

(iii) in subsection (3), by deleting "a principal" and substituting "an";

(iv) in subsection (4), by deleting "a principal" and substituting "an";

(v) in subsection (5), by deleting "a principal" and substituting "an".

(h) In the proposed section 10D -

(i) by deleting subsection (1) and substituting -

"(1) The Authority may refuse to issue an excavation permit or emergency excavation permit if -

(a) he reasonably believes that the person making the application for the issue of the

permit -

- (i) is not a
fit and
proper
person to
make or
maintain
any
excavation
in
unleased
land;
- (ii) cannot
comply
with the
conditions
imposed
under the
permit;
- (iii) does not
have
sufficient
financial
resources
to make or

maintain
an
excavation
to which
the permit
relates;

(b) in the opinion of
the Authority,
the application
to which the
permit relates is
unreasonable;

(c) having regard to
the circumstances
of the case, the
issue of the
permit is, in the
opinion of the
Authority,
inappropriate in
such
circumstances.

(1A) In addition to the
grounds specified in subsection
(1), the Authority may -

(a) refuse to issue an excavation permit or emergency excavation permit if -

(i) the person who makes the application for the issue of the permit fails to submit the application within the time limit specified by the Authority under section 18C; or

(ii) the street to which the

permit
relates is a
newly
constructed
street
specified by
the Authority
under section
18C;

(b) refuse to extend
the period for
which an
excavation permit
is valid if the
person who makes
the application
for the extension
fails to submit
the application
within the time
limit specified
by the Authority
under section
18C." ;

(ii) in subsection (2), by adding "or extend

the period for which a permit is valid"
after "permit".

- (i) By deleting the proposed section 10E and
substituting -

**"10E. Late application for extension
of excavation permit**

(1) Without prejudice to section 10D(1A),
where -

- (a) a permittee applies for an
extension of the validity period
of an excavation permit beyond
the time limit specified for such
excavation under section 18C but
before the expiry date of the
permit;
- (b) the application is accompanied by
the appropriate prescribed fee
based on the duration of the
period applied for by the
permittee; and
- (c) the Authority has not made his
decision on or before the expiry
date of the permit,

the permit shall, unless sooner terminated under
this Ordinance and subject to subsection (2), be

deemed to be extended up to the expiry of the period applied for by the permittee.

(2) The Authority shall determine the period for which an excavation permit deemed to be extended under subsection (1) shall be valid and may revise the expiry date of the permit to a date which is earlier than the expiry date in subsection (1).

(3) The Authority shall serve a notice of his determination under subsection (2) on the permittee concerned.

(4) If the period determined by the Authority under subsection (2) is shorter than the period applied for by the permittee concerned, he shall refund any extra prescribed fee to the permittee without interest."

(j) In the proposed section 10F, by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".

(k) In the proposed section 10G -

(i) in subsection (1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";

(ii) in subsection (2), by deleting "a

principal excavation permit or
principal" and substituting "an
excavation permit or".

(l) In the proposed section 10H -

(i) in subsection (1), by deleting "a
principal excavation permit or
principal" and substituting "an
excavation permit or";

(ii) in subsection (2), by deleting "a
principal excavation permit or
principal" and substituting "an
excavation permit or".

(m) In the proposed section 10I(2), by deleting "a
principal excavation permit or principal" and
substituting "an excavation permit or".

(n) In the proposed section 10J -

(i) in subsection (1), by deleting "a
principal excavation permit or
principal" and substituting "an
excavation permit or";

(ii) in subsection (2), by deleting "A
principal excavation permit or
principal" and substituting "An
excavation permit or";

(iii) by deleting subsection (3);

- (iv) in subsection (4), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";
- (v) in subsection (5), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".
- (o) In the proposed section 10K -
 - (i) in the heading, by deleting "principal";
 - (ii) in subsection (1) -
 - (A) by deleting "a principal" and substituting "an";
 - (B) in paragraph (a)(i), by deleting "principal";
 - (iii) in subsection (2) -
 - (A) by deleting paragraph (a) and substituting -
 - "(a) the permittee of an excavation permit completes an excavation to which the permit relates before the expiry date of the permit or the extended period of the permit;"

- (B) by adding "(if any)" after
"economic costs";
- (C) by deleting "extended period" and
substituting "permit or the
extended period of the permit, as
the case may be".

(p) In the proposed section 10L -

(i) in subsection (1) -

- (A) by adding "or a public officer of
equivalent rank with engineering
qualifications relevant to the
excavation concerned" after
"Senior Engineer";
- (B) in paragraph (a), by deleting "a
principal" and substituting "an";
- (C) by deleting paragraphs (c) and (d)
and substituting -

"(c) the duration of an extended
period of an excavation
permit extended under section
10A(3) if he exercises the
Director of Highways' power
under that section;

(d) the duration of an extended
period of an excavation

permit extended under section 10A(4) if he exercises the Director of Highways' power under that section;

(e) the duration of an extended period of an excavation permit extended under section 10C(4) if he exercises the Director of Highways' power under that section;

(f) the duration of an extended period of an excavation permit extended under section 10E(2) if he exercises the Director of Highways' power under that section;

(g) whether an extension is caused by reasons mentioned in section 10K(1)(b) if he exercises the Director of Highways's power under that section 10K(1);

(h) whether the reasons mentioned in section 10K(1)(b) hindered the progress of an excavation

to which the excavation permit relates if he exercises the Director of Highway's power under section 10K(1);

(i) whether a permittee has satisfied the matters in section 10K(2)(a), (b) and (c) if he exercises the Director of Highways' power under section 10K(2)."

(ii) by deleting subsection (2) and substituting -

"(1A) The Engineer who made an assessment under subsection (1) shall serve a notice of the result of his assessment on the permittee concerned.

(2) A permittee who is aggrieved by an assessment made in respect of him under subsection (1) may -

(a) within 28 days from the date of service of the notice under subsection

(1A), apply in writing to a public officer of the rank of Chief Engineer or Government Engineer or a public officer of equivalent rank with engineering qualifications relevant to the excavation concerned (collectively referred to as "the Chief Engineer") in the Highways Department for a review of the Engineer's assessment;

(b) set out the result of his own assessment in an application made under paragraph (a)."

(iii) in subsection (3), by deleting "notify the permittee concerned of the result of his review" and substituting "serve a notice of the result of his review on the permittee concerned";

(iv) by deleting subsections (5) and (6) and

substituting -

"(5) After receipt of an application under subsection (2), if the Chief Engineer fails to serve a notice of the result of his review on the permittee concerned within the time specified in subsection(3), then -

- (a) where subsection (2)(b) is applicable, the result of the permittee's assessment shall be taken to be the result of the Chief Engineer's review; or
- (b) in any other case, the assessment made by the Engineer under subsection (1) on the subject matter of the application shall be taken to be the result of the Chief Engineer's review,

and the Chief Engineer may, in

accordance with the result of the review, exercise any of the powers conferred on him under subsection (4).

(5A) A permittee who is aggrieved by a decision made in respect of him under subsection (4) may -

(a) within 28 days from the date of service of the notice under subsection (3), apply in writing to the Director of Highways for a review of the Chief Engineer's decision;

(b) set out the result of his own assessment in an application made under paragraph (a).

(6) On receipt of an application under subsection (5A), the Director of Highways shall notify the Secretary who will set up a Review Board in accordance with section 10N."

- (v) in subsection (7), by deleting "(5)" and substituting "(5A)";
- (vi) by deleting subsection (9);
- (vii) by deleting subsection (10) and substituting -

"(10) The Director of Highways shall serve a notice of the Review Board's decision on the permittee concerned within 14 days from the date of the decision of the Review Board.";

- (viii) in subsection (12) -
 - (A) by deleting "Director of Highways" and substituting "Review Board";
 - (B) in paragraph (b), by deleting "(5)" and substituting "(5A)";
- (ix) by adding -

"(12A) After receipt of an application under subsection (5A), if the Director of Highways fails to serve a notice of the Review Board's decision on the applicant within the time specified in subsection (10), then -

- (a) where subsection (5A)(b)

is applicable, the result of the permittee's assessment shall be taken to be the decision of the Review Board; or

(b) in any other case, the decision made by the Chief Engineer under subsection (4) on the subject matter of the application shall be taken to be the decision of the Review Board,

and the Director of Highways may, in accordance with the decision, exercise any of the powers conferred on it under subsection (12)."

(x) by deleting subsection (13) and substituting -

"(13) Except a decision relating to an assessment made under subsection (1)(d), (g), (h) or (i), the following decision

shall be final -

- (a) any decision made under subsection (12), or
- (b) any decision taken to be the decision of the Review Board under subsection (12A)."

(q) By deleting the proposed sections 10M and 10N and substituting -

"10M. Review Panel

(1) The Secretary may appoint a panel of not more than 20 persons ("the Review Panel") whom he considers suitable to sit as members of a Review Board to review the Chief Engineer's decision under section 10L(4).

(2) The Secretary shall not appoint any public officer to the Review Panel.

(3) A person appointed under subsection (1) shall hold office for not more than 3 years and may -

- (a) be reappointed;
- (b) resign by notice in writing served on the Secretary.

10N. Review Board

(1) Upon receipt of a notification under section 10L(6), the Secretary shall-

- (a) compile a list of the names of members whom he intends to appoint to constitute the Review Board to review the Chief Engineer's decision under section 10L(4);
- (b) serve a notice on the members mentioned in paragraph (a) requiring them to make a declaration as to whether they have or do not have any direct or indirect interest in the review concerned within 7 days from the date of service of the notice; and
- (c) serve a notice on the permittee concerned informing him the names of the members mentioned in paragraph (a) and require the permittee to raise any objection on the appointment of any member on the ground that the member has direct or indirect interest in the review within 7 days from the date

of service of the notice.

(2) The objection in subsection (1)(c) shall be in writing and shall be accompanied by all written statements and other documentary evidence relied upon by the permittee concerned in support of the objection.

(3) After the expiry of the period allowed for the declaration of interest and the raising of objection under subsection (1)(b) and (c), the Secretary shall, subject to subsections (5) and (6), finalize the composition of the Review Board by appointing 3 or 5 persons (excluding the Chairman) from the list compiled under subsection (1) to constitute the Review Board after taking into consideration the declaration of interest of the members and the objection raised by the permittee concerned.

(4) The Director of Highways shall be the Chairman of the Review Board.

(5) The Secretary shall nominate -

(a) at least one public officer of the rank of Government Engineer or above from the Highways Department;

(b) at least one member from the Review

Panel; and

(c) 1 or 3 other persons as he thinks fit.

(6) The majority of the persons constituting a Review Board, excluding the Chairman, shall be persons other than public officers.

(7) If at any time during the review proceedings, it is discovered that any member of the Review Board has a direct or indirect interest in the review concerned, the Chairman may adjourn the proceedings and inform the Secretary.

(8) The Secretary shall terminate the appointment of the member and appoint another member by applying the procedures in subsections (1), (2) and (3) with necessary modification as he thinks fit.

(9) After the appointment of a new member under subsection (8), the Review Board may rehear the application wholly or in part if it is satisfied that it is just to do so.

10NA. Proceeding of the Review Board

(1) The Review Board shall not proceed to hear an application for a review of the Chief

Engineer's decision under section 10L(4) at a hearing other than to adjourn unless all the members appointed under section 10N(3) are present.

(2) All the matters for determination at a hearing of the Review Board shall be decided by a majority of vote of the members present.

(3) The Chairman shall not vote at the hearing of the Review Board.

(4) In case there is an equality of votes, the Chairman shall discharge the Review Board and notify the Secretary.

(5) Upon the receipt of the notification under subsection (4), the Secretary shall apply the procedures in section 10N(1), (2) and (3) with necessary modification to appoint another Review Board to hear the review concerned.

(6) In case there is an equality of votes at a hearing of the Review Board appointed under subsection (5), then -

(a) where section 10L(5A)(b) is applicable, the result of the permittee's assessment shall be taken to be the decision of the Review Board; or

(b) in any other case, the decision

made by the Chief Engineer under section 10L(4) on the subject matter of the application shall be taken to be the decision of the Review Board,

and the Review Board may, in accordance with the decision, exercise any of the powers conferred on it under section 10L(12)."

- (r) In the proposed section 100(1) -
 - (i) in the heading by adding "made under an excavation permit" after "excavation";
 - (ii) by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".
- (s) In the proposed section 10P, by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".
- (t) In the proposed section 10Q -
 - (i) in subsection (1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";
 - (ii) by deleting subsection (2) and

substituting -

"(2) Where there is a permittee and no nominated permittee and subsection (1) is contravened, the permittee shall be guilty of an offence and shall be liable on conviction to a fine of \$200,000.

(2A) Where there is a permittee and a nominated permittee and subsection (1) is contravened, both the permittee and the nominated permittee shall each be guilty of an offence and shall each be liable on conviction to a fine of \$200,000.";

(iii) in subsection (3), by adding "or (2A)" after "(2)";

(iv) by adding -

"(4) A court, in making a decision on the defence provided under subsection (3), may take into consideration that a person charged with an offence under subsection (2) or (2A) has -

(a) hired a competent person to supervise the excavation concerned;

(b) a documented system for supervising the excavation concerned, including but not limited to a system which -

(i) is managed by a competent person; and

(ii) requires inspection of the excavation to ensure compliance with duties imposed

under
subsection
(1) and
record of
such
inspection;

(c) a documented system
to ensure his
contractor
complies with the
duties imposed under
subsection (1).

(5) For the purpose of
subsection (4), "competent person"
(合資格人士) means a person who is
registered as -

(a) a registered
architect under the
Architects
Registration
Ordinance (Cap.
408);

(b) a registered
professional
engineer under the

Engineers

Registration

Ordinance (Cap. 409)

and is within a

discipline which is

relevant to the

excavation

concerned;

(c) a registered

professional

surveyor under the

Surveyors

Registration

Ordinance (Cap. 417)

and is within a

discipline which is

relevant to the

excavation

concerned; or

(d) a safety officer

under the Factories

and Industrial

Undertakings

(Safety Officers and

Safety Supervisors)

Regulation (Cap. 59
sub. leg.) and -

- (i) where
subsection
(4)(a) is
applicable,
has at least 3
years
experience in
supervising
excavation
which is
similar to
the
excavation
concerned; or
- (ii) where
subsection
(4)(b)(i) is
applicable,
has at least 3
years
experience in
managing
documented

system which
is similar to
the system
described in
that
subsection."

(u) By adding -

**"100A. Reinstatement of unleased land
after excavation made under
a lease, licence etc.**

(1) Any person who makes or maintains an excavation under and in accordance with a lease, licence, deed, memorandum of appropriation or an engineering conditions for land allocation issued by the Director of Lands or an exemption granted under section 10AA shall reinstate and make good the land as required by any condition of the lease, licence, deed, memorandum of appropriation, engineering conditions for land allocation or exemption, as the case may be.

(2) If any unleased land is not reinstated and made good in accordance with subsection (1), the Director of Lands may carry out such work as he considers necessary to reinstate and make good the land, and any other land the reinstatement and making good of which is, in his opinion, necessary in

consequence of the excavation, notwithstanding that the works for the carrying out of which the excavation was made have not been completed.

(3) The Director of Lands may recover from the person mentioned in subsection (1) the cost of any work carried out by the Director of Lands under subsection (2).

(4) For the avoidance of doubt, it is declared that any work carried out under subsection (2) shall not be regarded as excavation for the purpose of this Ordinance."

- 6 (a) By deleting paragraph (a) and substituting -
- "(a) in subsection (1), by deleting "8 or 12" and substituting "10, 10A, 10AA, 10B, 10C, 10D, 10E, 10I, 10J, 10K, 10L, 10N, 10NA, 10O, 10OA, 10P, 10R, 12 or 18C";
- (b) In the proposed section 18(1A) -
- (i) by adding "the Environment, Transport and" before "Works";
- (ii) by deleting "or 10N" and substituting ", 10N or 10NA".
- 7 (a) In the proposed section 18B -
- (i) in subsection (1) -
- (A) by deleting "Director of Highways" and substituting "Review Board";

- (B) by deleting "the refund of economic costs" and substituting "an assessment made under section 10L(1)(d), (g), (h) or (i)";
- (ii) in subsection (2), by deleting everything after "days" and substituting "from the date of service of a notice of the decision on the aggrieved person";
- (iii) in subsection (3), by deleting "economic costs" and substituting "prescribed fee".

(b) By adding -

"18C. Authority's power to specify time limit and newly constructed street

(1) The Authority may, by notice in the Gazette, specify -

- (a) the time limit for the submission of an application for -
 - (i) the issue of an excavation permit or emergency excavation permit in relation to an excavation or any class of excavation;
 - or

(ii) the extension of the period for which an excavation permit is valid in relation to an excavation or any class of excavation;

(b) a street or any class of streets as a newly constructed street or a class of newly constructed streets and the duration for which and the extent to which such street or such class of streets, as the case may be, shall not be used for any excavation.

(2) For the avoidance of doubt, it is declared that a notice published under subsection (1) is not subsidiary legislation."

9(b) In the first column -

- (a) by adding "10AA(1), 10AA(2)" after "10A(4)";
- (b) by deleting "10D(2)" and substituting "10D(1A), 10D(2), 10E(1), 10E(2) and 10E(3)";
- (c) by adding "18C(1)" after "16C(2)".

11 In the proposed section 3A -

- (a) in the heading, by deleting "principal" where it twice appears;
- (b) in subsection (1), by deleting "a principal" and substituting "an".

14 In the proposed Schedule 3 -

(a) in Part I -

(i) in the heading, by deleting "PRINCIPAL";

(ii) in item 1 -

(A) by deleting "a principal" and
substituting "an";

(B) by deleting "the principal" and
substituting "the";

(iii) in item 2, by deleting "a principal" and
substituting "an";

(b) in Part II -

(i) in the heading, by deleting "PRINCIPAL";

(ii) in item 1, by deleting "a principal" and
substituting "an";

(iii) in item 2, by deleting "a principal" and
substituting "an".

15 By deleting "the refund of economic costs" and
substituting "an assessment made under section 10L(1)(d),
(g), (h) or (i)".

16 By deleting "a principal" where it twice appears and
substituting "an".

Annex

NFSIU/LANDCSA/#69291v12.doc
1st draft: 29.11.2002
1st draft (revised): 02.12.2002
2nd draft: 13.01.2003
2nd draft (revised): 14.01.2003
3rd draft : 28.01.2003
3rd draft (revised): 06.02.2003
3rd draft (2nd revised): 08.02.2003
3rd draft (3rd revised): 10.02.2003
4th draft: 21.03.2003
4th draft (revised): 27.03.2003
4th draft (2nd revised): 27.3.2003

LAND (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary
for the Environment, Transport and Works

Clause

Amendment Proposed

1(2)

By adding "the Environment, Transport and" before
"Works".

2

(a) In paragraph (a), by deleting the proposed
definition of "excavation permit" and
substituting -

"excavation permit" (挖掘准許證) means an

excavation permit issued under section

10A;"

(b) In paragraph (b) -

(i) in the proposed definition of

"contractor", by deleting " a principal
excavation permit or principal" and
substituting "an excavation permit or";

(ii) by deleting the proposed definition of

"emergency excavation permit" and
substituting -

"emergency excavation permit (緊急挖掘
准許證) means an emergency
excavation permit issued under
section 10B";

- (iii) in the proposed definition of
"permittee", by deleting "a principal
excavation permit or principal" and
substituting "an excavation permit or";
- (iv) by deleting the proposed definitions of
"principal emergency excavation
permit", "principal excavation permit",
"secondary emergency excavation
permit" and "secondary excavation
permit".;
- (v) in the proposed definition of "Review
Board", by deleting "established under
section 10M" and substituting
"constituted under section 10N".

3 By deleting the proposed section 2A(3) and (4) and
substituting -

"(3) If the Authority considers that a public
officer, in carrying out his duties in the service
of the Government, has done an act or made an

omission in contravention of Part III, the Authority shall -

(a) report the matter to the Secretary for the Environment, Transport and Works; and

(b) in the report, advise him, that the act or omission has, as the case may be -

(i) been terminated to the Authority's

satisfaction; or

(ii) not been terminated to the Authority's satisfaction.

(4) On receiving a report under subsection (3) where paragraph (b)(ii) of that subsection is applicable, the Secretary for the Environment, Transport and Works shall investigate the matter to which the report relates and ascertain if the public officer concerned is continuing to contravene Part III or has stopped the contravention.

(5) If an investigation under subsection (4) shows that the public officer concerned is continuing to contravene Part III, the Secretary

for the Environment, Transport and Works shall ensure that the best practicable steps are taken to -

- (a) stop the contravention; and
- (b) avoid the recurrence of any like contravention if he considers that the public officer concerned or any other public officer, is likely to commit the like contravention.

(6) If -

(a) either -

- (i) a report under subsection (3) is received where paragraph (b)(i) of that subsection is applicable; or

- (ii) an investigation under subsection (4) shows that the public officer concerned has stopped the contravention; but

(b) the Secretary for the Environment, Transport and Works considers that the public officer concerned or any

other public officer, is likely to commit a like contravention, then the Secretary for the Environment, Transport and Works shall ensure that the best practicable steps are taken to avoid the recurrence of the like contravention."

- 4 (a) In the proposed section 8(1), by adding -
- "Secretary (局長) means the Secretary for the Environment, Transport and Works;"
- (b) By deleting the proposed section 9 and substituting -

"9. Application of certain provisions

"(1) Section 10B, 10C, 10D(1A), 10E, 10K, 10L, 10M, 10N, 10NA, 10R, 18B and 18C only apply in the case of an excavation in a street.

(2) Sections 10AA and 10OA only apply in the case of an excavation in unleased land, other than streets."

- (c) In the proposed section 10 -
- (i) by deleting subsections (1) and (2) and substituting -

"(1) Except under and in accordance with a prospecting licence, mining licence or sand

removal permit, or a lease, licence, deed, memorandum of appropriation or engineering conditions for land allocation issued by the Director of Lands, a person shall not make or maintain any excavation in unleased land unless -

(a) either -

(i) he is the holder of an excavation permit or emergency excavation permit; or

(ii) he is the contractor of the holder of an excavation permit or emergency excavation permit; and

(b) he so makes or maintains the excavation under and in accordance with the permit.

(2) Subject to subsection (6), a person who contravenes subsection (1) by making or maintaining an excavation in unleased land without being -

(a) the holder of an excavation permit or emergency excavation permit;
or

(b) the contractor of the holder of an excavation permit or emergency excavation permit,

shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 6 months." ;

- (ii) in subsection (3), by deleting "issued to him";
 - (iii) in subsection (4)(a), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";
 - (iv) in subsection (5)(a), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";
 - (v) in subsection (7), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".
- (d) In the proposed section 10A -
- (i) in the heading, by deleting "principal";
 - (ii) in subsection (1), by deleting "a permit, to be known as the principal" and substituting "an";
 - (iii) in subsection (2), by deleting "A principal" and substituting "An";
 - (iv) in subsection (3), by deleting "a principal" and substituting "an";
 - (v) in subsection (4) -

(A) in paragraph (a), by deleting
"a principal" and
substituting "an";

(B) by deleting paragraph (b) and
substituting -

"(b) the permittee of
the permit is
unable to have
access to -

(i) a reasonably
substantial
portion of the
street
concerned for
the purpose of
making or
maintaining
the
excavation,
after the
commencement
of the period
for which the
permit is
valid but

before the commencement of the excavation, for reason other than the fault of the permittee, the contractor for the excavation or their employees; or

- (ii) a reasonably substantial portion of the land concerned, other than a street, for the purpose of making or maintaining the

excavation,
after the
commencement
of the period
for which the
permit is
valid, for
reason other
than the fault
of the
(Revised) permittee,
the
contractor
for the
excavation or
their
employees." ;

(vi) in subsection (5), by deleting "any" and
substituting "Subject to section 10K,
any".

(e) By adding -

"10AA. Exemption

(1) Any person who intends to make and
maintain an excavation in unleased land may apply
to the Authority in writing to exempt the

excavation from complying with all or any provision of this Part and shall set out the reasons for the application.

(2) Upon receipt of an application made under subsection (1), the Authority may by notice in writing exempt the excavation referred to in the application from all or any provision of this Part if the Authority is of the opinion that the excavation -

- (a) is minor;
- (b) will not involve or is unlikely to involve lateral support or substantial work in terms of the extent, duration and size of the excavation and the area that will be or is likely to be affected by the excavation;
- (c) will not cause or is unlikely that the excavation concerned will cause any inconvenience or danger to the public;
- (d) will not cause or is

unlikely that the excavation concerned will cause any delay to traffic; and

- (e) will not pose or is unlikely that the excavation concerned will pose a danger to any underground apparatus or properties."

(f) In the proposed section 10B -

- (i) in the heading by deleting "principal";
- (ii) in subsection (1), by deleting "a permit, to be known as the principal" and substituting "an";
- (iii) in subsection (2), by deleting "A principal" and substituting "An";
- (iv) in subsection (3), by deleting "a principal" and substituting "an";
- (v) in subsection (6), by deleting "any" and substituting "Subject to section 10K, any";
- (vi) in subsection (7) -
 - (A) in paragraph (a), by deleting "a principal" and substituting "an";

(B) by deleting paragraph (b) and substituting -

"(b) the permittee of the permit is unable to have access to a reasonably substantial portion of the land concerned for the purpose of making or maintaining the excavation, after the date of the report of the emergency incident concerned to the Authority under subsection (3) but before the commencement of the excavation, for reason other than the fault of the permittee, the contractor for the excavation or their employees,".

(g) In the proposed section 10C -

(i) in subsection (1), by deleting "a principal" where it twice appears and

substituting "an";

(ii) in subsection (2) -

(A) by deleting "a principal" and substituting "an";

(B) by deleting "the principal" wherever it appears and substituting "an";

(iii) in subsection (3), by deleting "a principal" and substituting "an";

(iv) in subsection (4), by deleting "a principal" and substituting "an";

(v) in subsection (5), by deleting "a principal" and substituting "an".

(h) In the proposed section 10D -

(i) by deleting subsection (1) and substituting -

"(1) The Authority may refuse to issue an excavation permit or emergency excavation permit if -

(a) he reasonably believes that the person making the application for the issue of the

permit -

- (i) is not a
fit and
proper
person to
make or
maintain
any
excavation
in
unleased
land;
- (ii) cannot
comply
with the
conditions
imposed
under the
permit;
- (iii) does not
have
sufficient
financial
resources
to make or

maintain
an
excavation
to which
the permit
relates;

(b) in the opinion of
the Authority,
the application
to which the
permit relates is
unreasonable;

(c) having regard to
the circumstances
of the case, the
issue of the
permit is, in the
opinion of the
Authority,
inappropriate in
such
circumstances.

(1A) In addition to the
grounds specified in subsection
(1), the Authority may -

(a) refuse to issue an excavation permit or emergency excavation permit if -

(i) the person who makes the application for the issue of the permit fails to submit the application within the time limit specified by the Authority under section 18C; or

(ii) the street to which the

permit
relates is a
newly
constructed
street
specified by
the Authority
under section
18C;

(b) refuse to extend
the period for
which an
excavation permit
is valid if the
person who makes
the application
for the extension
fails to submit
the application
within the time
limit specified
by the Authority
under section
18C." ;

(ii) in subsection (2), by adding "or extend

the period for which a permit is valid"
after "permit".

- (i) By deleting the proposed section 10E and
substituting -

**"10E. Late application for extension
of excavation permit**

(1) Without prejudice to section 10D(1A),
where -

- (a) a permittee applies for an
extension of the validity period
of an excavation permit beyond
the time limit specified for such
excavation under section 18C but
before the expiry date of the
permit;
- (b) the application is accompanied by
the appropriate prescribed fee
based on the duration of the
period applied for by the
permittee; and
- (c) the Authority has not made his
decision on or before the expiry
date of the permit,

the permit shall, unless sooner terminated under
this Ordinance and subject to subsection (2), be

deemed to be extended up to the expiry of the period applied for by the permittee.

(2) The Authority shall determine the period for which an excavation permit deemed to be extended under subsection (1) shall be valid and may revise the expiry date of the permit to a date which is earlier than the expiry date in subsection (1).

(3) The Authority shall serve a notice of his determination under subsection (2) on the permittee concerned.

(4) If the period determined by the Authority under subsection (2) is shorter than the period applied for by the permittee concerned, he shall refund any extra prescribed fee to the permittee without interest."

(j) In the proposed section 10F, by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".

(k) In the proposed section 10G -

(i) in subsection (1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";

(ii) in subsection (2), by deleting "a

principal excavation permit or
principal" and substituting "an
excavation permit or".

(l) In the proposed section 10H -

(i) in subsection (1), by deleting "a
principal excavation permit or
principal" and substituting "an
excavation permit or";

(ii) in subsection (2), by deleting "a
principal excavation permit or
principal" and substituting "an
excavation permit or".

(m) In the proposed section 10I(2), by deleting "a
principal excavation permit or principal" and
substituting "an excavation permit or".

(n) In the proposed section 10J -

(i) in subsection (1), by deleting "a
principal excavation permit or
principal" and substituting "an
excavation permit or";

(ii) in subsection (2), by deleting "A
principal excavation permit or
principal" and substituting "An
excavation permit or";

(iii) by deleting subsection (3);

- (iv) in subsection (4), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";
- (v) in subsection (5), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".
- (o) In the proposed section 10K -
 - (i) in the heading, by deleting "principal";
 - (ii) in subsection (1) -
 - (A) by deleting "a principal" and substituting "an";
 - (B) in paragraph (a)(i), by deleting "principal";
 - (iii) in subsection (2) -
 - (A) by deleting paragraph (a) and substituting -
 - "(a) the permittee of an excavation permit completes an excavation to which the permit relates before the expiry date of the permit or the extended period of the permit;"

- (B) by adding "(if any)" after
"economic costs";
- (C) by deleting "extended period" and
substituting "permit or the
extended period of the permit, as
the case may be".

(p) In the proposed section 10L -

(i) in subsection (1) -

- (A) by adding "or a public officer of
equivalent rank with engineering
qualifications relevant to the
excavation concerned" after
"Senior Engineer";
- (B) in paragraph (a), by deleting "a
principal" and substituting "an";
- (C) by deleting paragraphs (c) and (d)
and substituting -

"(c) the duration of an extended
period of an excavation
permit extended under section
10A(3) if he exercises the
Director of Highways' power
under that section;

(d) the duration of an extended
period of an excavation

permit extended under section 10A(4) if he exercises the Director of Highways' power under that section;

(e) the duration of an extended period of an excavation permit extended under section 10C(4) if he exercises the Director of Highways' power under that section;

(f) the duration of an extended period of an excavation permit extended under section 10E(2) if he exercises the Director of Highways' power under that section;

(g) whether an extension is caused by reasons mentioned in section 10K(1)(b) if he exercises the Director of Highways's power under that section 10K(1);

(h) whether the reasons mentioned in section 10K(1)(b) hindered the progress of an excavation

to which the excavation permit relates if he exercises the Director of Highway's power under section 10K(1);

(i) whether a permittee has satisfied the matters in section 10K(2)(a), (b) and (c) if he exercises the Director of Highways' power under section 10K(2)."

(ii) by deleting subsection (2) and substituting -

"(1A) The Engineer who made an assessment under subsection (1) shall serve a notice of the result of his assessment on the permittee concerned.

(2) A permittee who is aggrieved by an assessment made in respect of him under subsection (1) may -

(a) within 28 days from the date of service of the notice under subsection

(1A), apply in writing to a public officer of the rank of Chief Engineer or Government Engineer or a public officer of equivalent rank with engineering qualifications relevant to the excavation concerned (collectively referred to as "the Chief Engineer") in the Highways Department for a review of the Engineer's assessment;

(b) set out the result of his own assessment in an application made under paragraph (a)."

(iii) in subsection (3), by deleting "notify the permittee concerned of the result of his review" and substituting "serve a notice of the result of his review on the permittee concerned";

(iv) by deleting subsections (5) and (6) and

substituting -

"(5) After receipt of an application under subsection (2), if the Chief Engineer fails to serve a notice of the result of his review on the permittee concerned within the time specified in subsection(3), then -

- (a) where subsection (2)(b) is applicable, the result of the permittee's assessment shall be taken to be the result of the Chief Engineer's review; or
- (b) in any other case, the assessment made by the Engineer under subsection (1) on the subject matter of the application shall be taken to be the result of the Chief Engineer's review,

and the Chief Engineer may, in

accordance with the result of the review, exercise any of the powers conferred on him under subsection (4).

(5A) A permittee who is aggrieved by a decision made in respect of him under subsection (4) may -

(a) within 28 days from the date of service of the notice under subsection (3), apply in writing to the Director of Highways for a review of the Chief Engineer's decision;

(b) set out the result of his own assessment in an application made under paragraph (a).

(6) On receipt of an application under subsection (5A), the Director of Highways shall notify the Secretary who will set up a Review Board in accordance with section 10N."

- (v) in subsection (7), by deleting "(5)" and substituting "(5A)";
- (vi) by deleting subsection (9);
- (vii) by deleting subsection (10) and substituting -

"(10) The Director of Highways shall serve a notice of the Review Board's decision on the permittee concerned within 14 days from the date of the decision of the Review Board.";

- (viii) in subsection (12) -
 - (A) by deleting "Director of Highways" and substituting "Review Board";
 - (B) in paragraph (b), by deleting "(5)" and substituting "(5A)";
- (ix) by adding - (Revised)

"(12A) After receipt of an application under subsection (5A), if the Director of Highways fails to serve a notice of the Review Board's decision on the applicant within the time specified in subsection (10), then -

- (a) where subsection (5A)(b)

is applicable, the result of the permittee's assessment shall be taken to be the decision of the Review Board; or

(b) in any other case, the decision made by the Chief Engineer under subsection (4) on the subject matter of the application shall be taken to be the decision of the Review Board,

and the Review Board may, in accordance with the decision, exercise any of the powers conferred on it under subsection (12)."

(x) by deleting subsection (13) and substituting -

"(13) Except a decision relating to an assessment made under subsection (1)(d), (g), (h) or (i), the following decision

shall be final -

- (a) any decision made under subsection (12), or
- (b) any decision taken to be the decision of the Review Board under subsection (12A). "

(q) By deleting the proposed sections 10M and 10N and substituting -

"10M. Review Panel

(1) The Secretary may appoint a panel of not more than 20 persons ("the Review Panel") whom he considers suitable to sit as members of a Review Board to review the Chief Engineer's decision under section 10L(4).

(2) The Secretary shall (Revised) int any public officer to the Review Panel.

(3) A person appointed under subsection (1) shall hold office for not more than 3 years and may -

- (a) be reappointed;
- (b) resign by notice in writing served on the Secretary.

10N. Review Board

(1) Upon receipt of a notification under section 10L(6), the Secretary shall-

- (a) compile a list of the names of members whom he intends to appoint to constitute the Review Board to review the Chief Engineer's decision under section 10L(4);
- (b) serve a notice on the members mentioned in paragraph (a) requiring them to make a declaration as to whether they have or do not have any direct or indirect interest in the review concerned within 7 days from the date of service of the notice; and
- (c) serve a notice on the permittee concerned notifying him the names of the members mentioned in paragraph (a) and require the permittee to raise any objection on the appointment of any member on the ground that the member has direct or indirect interest in the review within 7 days from the date

of service of the notice.

(2) The objection in subsection (1)(c) shall be in writing and shall be accompanied by all written statements and other documentary evidence relied upon by the permittee concerned in support of the objection.

(3) After the expiry of the period allowed for the declaration of interest and the raising of objection under subsection (1)(b) and (c), the Secretary shall, subject to subsections (5) and (6), finalize the composition of the Review Board by appointing 3 or 5 persons (excluding the Chairman) from the list compiled under subsection (1) to constitute the Review Board after taking into consideration the declaration of interest of the members and the objection raised by the permittee concerned.

(4) The Director of Highways shall be the Chairman of the Review Board.

(5) The Secretary shall nominate -

(a) at least one public officer of the rank of Government Engineer or above from the Highways Department;

(b) at least one member from the Review

Panel; and

(c) 1 or 3 other persons as he thinks fit.

(6) The majority of the persons constituting a Review Board, excluding the Chairman, shall be persons other than public officers.

(7) If at any time during the review proceedings, it is discovered that any member of the Review Board has a direct or indirect interest in the review concerned, the Chairman may adjourn the proceedings and inform the Secretary.

(8) The Secretary shall terminate the appointment of the member and appoint another member by applying the procedures in subsections (1), (2) and (3) with necessary modification as he thinks fit.

(9) After the appointment of a new member under subsection (8), the Review Board may rehear the application wholly or in part if it is satisfied that it is just to do so.

10NA. Proceeding of the Review Board

(1) The Review Board shall not proceed to hear an application for a review of the Chief

Engineer's decision under section 10L(4) at a hearing other than to adjourn unless all the members appointed under section 10N(3) are present.

(2) All the matters for determination at a hearing of the Review Board shall be decided by a majority of vote of the members present.

(3) The Chairman shall not vote at the hearing of the Review Board.

(4) In case there is an equality of votes, the Chairman shall discharge the Review Board and notify the Secretary.

(5) Upon the receipt of the notification under subsection (4), the Secretary shall apply the procedures in section 10N(1), (2) and (3) with necessary modification to appoint another Review Board to hear the review concerned.

(6) In case there is an equality of votes at a hearing of the Review Board appointed under subsection (5), then -

(a) where section 10L(5A)(b) is applicable, the result of the permittee's assessment shall be taken to be the decision of the Review Board; or

(b) in any other case, the decision

made by the Chief Engineer under section 10L(4) on the subject matter of the application shall be taken to be the decision of the Review Board,

and the Review Board may, in accordance with the decision, exercise any of the powers conferred on it under section 10L(12)."

- (r) In the proposed section 100(1) -
 - (i) in the heading by adding "made under an excavation permit" after "excavation";
 - (ii) by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".
- (s) In the proposed section 10P, by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".
- (t) In the proposed section 10Q -
 - (i) in subsection (1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";
 - (ii) by deleting subsection (2) and

substituting -

"(2) Where there is a permittee and no nominated permittee and subsection (1) is contravened, the permittee shall be guilty of an offence and shall be liable on conviction to a fine of \$200,000.

(2A) Where there is a permittee and a nominated permittee and subsection (1) is contravened, both the permittee and the nominated permittee shall each be guilty of an offence and shall each be liable on conviction to a fine of \$200,000.";

(iii) in subsection (3), by adding "or (2A)" after "(2)";

(iv) by adding -

"(4) A court, in making a decision on the defence provided under subsection (3), may take into consideration that a person charged with an offence under subsection (2) or (2A) has -

(a) hired a competent person to supervise the excavation concerned;

(b) a documented system for supervising the excavation concerned, including but not limited to a system which -

(i) is managed by a competent person;

and

(ii) requires inspection of the excavation to ensure compliance with duties imposed

under
subsection
(1) and
record of
such
inspection;

(c) a documented system
to ensure his
contractor
complies with the
duties imposed under
subsection (1).

(5) For the purpose of
subsection (4), "competent person"
(合資格人士) means a person who is
registered as -

(a) a registered
architect under the
Architects
Registration
Ordinance (Cap.
408);

(b) a registered
professional
engineer under the

Engineers

Registration

Ordinance (Cap. 409)

and is within a

discipline which is

relevant to the

excavation

concerned;

(c) a registered

professional

surveyor under the

Surveyors

Registration

Ordinance (Cap. 417)

and is within a

discipline which is

relevant to the

excavation

concerned; or

(d) a safety officer

under the Factories

and Industrial

Undertakings

(Safety Officers and

Safety Supervisors)

Regulation (Cap. 59
sub. leg.) and -

- (i) where
subsection
(4)(a) is
applicable,
has at least 3
years
experience in
supervising
excavation
which is
similar to
the
excavation
concerned; or
- (ii) where
subsection
(4)(b)(i) is
applicable,
has at least 3
years
experience in
managing
documented

system which
is similar to
the system
described in
that
subsection."

(u) By adding -

**"100A. Reinstatement of unleased land
after excavation made under
a lease, licence etc.**

(1) Any person who makes or maintains an excavation under and in accordance with a lease, licence, deed, memorandum of appropriation or an engineering conditions for land allocation issued by the Director of Lands shall reinstate and make good the land as required by any condition of the lease, licence, deed, memorandum of appropriation, engineering conditions for land allocation, as the case may be.

(2) If any unleased land is not reinstated and made good in accordance with subsection (1), the Director of Lands may carry out such work as he considers necessary to reinstate and make good the land, and any other land the reinstatement and making good of which is, in his opinion, necessary in consequence of the excavation, notwithstanding that

the works for the carrying out of which the excavation was made have not been completed.

(3) The Director of Lands may recover from the person mentioned in subsection (1) the cost of any work carried out by the Director of Lands under subsection (2).

(4) For the avoidance of doubt, it is declared that any work carried out under subsection (2) shall not be regarded as excavation for the purpose of this Ordinance."

- 6 (a) By deleting paragraph (a) and substituting -
- "(a) in subsection (1), by deleting "8 or 12" and substituting "10, 10A, 10AA, 10B, 10C, 10D, 10E, 10I, 10J, 10K, 10L, 10N, 10NA, 10O, 10OA, 10P, 10R, 12 or 18C";
- (b) In the proposed section 18(1A) -
- (i) by adding "the Environment, Transport and" before "Works";
- (ii) by deleting "or 10N" and substituting ", 10N or 10NA".
- 7 (a) In the proposed section 18B -
- (i) in subsection (1) - (Revised)
- (A) by deleting "Director of Highways" and substituting "Review Board";
- (B) by deleting "the refund of economic

costs" and substituting "an
assessment made under section
10L(1)(d), (g), (h) or (i)";

(ii) in subsection (2), by deleting
everything after "days" and
substituting "from the date of service
of a notice of the decision on the
aggrieved person";

(iii) in subsection (3), by deleting "economic
costs" and substituting "prescribed
fee".

(b) By adding -

**"18C. Authority's power to specify
time limit and newly
constructed street**

(1) The Authority may, by notice in the
Gazette, specify -

(a) the time limit for the submission of
an application for -

(i) the issue of an excavation
permit or emergency
excavation permit in
relation to an excavation
or any class of excavation;
or (Revised)

(ii) the extension of the period

for which an excavation permit is valid in relation to an excavation or any class of excavation;

(b) a street or any class of streets as a newly constructed street or a class of newly constructed streets and the duration for which and the extent to which such street or such class of streets, as the case may be, shall not be used for any excavation.

(2) For the avoidance of doubt, it is declared that a notice published under subsection (1) is not subsidiary legislation."

9(b) In the first column -

- (a) by adding "10AA(1), 10AA(2)" after "10A(4)";
- (b) by deleting "10D(2)" and substituting "10D(1A), 10D(2), 10E(1), 10E(2) and 10E(3)";
- (c) by adding "10L(14), 10L(15)" after "10K(3)";
- (d) by adding "18C(1)" after "16C(2)".

11 In the proposed section 3A -

- (a) in the heading, by deleting "principal" where it twice appears;
- (b) in subsection (1), by deleting "a principal" and substituting "an".

14 In the proposed Schedule 3 -

(a) in Part I -

(i) in the heading, by deleting "PRINCIPAL";

(ii) in item 1 -

(A) by deleting "a principal" and
substituting "an";

(B) by deleting "the principal" and
substituting "the";

(iii) in item 2, by deleting "a principal" and
substituting "an";

(b) in Part II -

(i) in the heading, by deleting "PRINCIPAL";

(ii) in item 1, by deleting "a principal" and
substituting "an";

(iii) in item 2, by deleting "a principal" and
substituting "an".

15 By deleting "the refund of economic costs" and
substituting "an assessment made under section 10L(1)(d),
(g), (h) or (i)".

16 By deleting "a principal" where it twice appears and
substituting "an".