

# 立法會 *Legislative Council*

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## **Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2002**

### **Background Brief**

#### **Purpose**

This paper sets out the background of the Land (Miscellaneous Provisions) (Amendment) Bill 2002 (the Bill), and summarizes the views of Members and deputations when the proposal to introduce a charging and penalty system for street excavation works was discussed at the meetings of the Panel on Planning, Lands and Works on 12 December 2001, 15 January, 20 February and 8 March 2002.

#### **Background**

##### Existing system

2. Street excavation works normally involve two (often independent) parties, namely the promoter (e.g. a utility undertaker) for whom the work is carried out, as well as the contractor who actually carries out the work. At present, the promoter obtains an excavation permit (EP) under the Land (Miscellaneous Provisions) Ordinance for making the excavation, whilst in practice, the contractor carries out the works on site. Up to now, no fees have been charged to recover Government's costs incurred for processing these EPs and for carrying out the related audit inspections and monitoring actions.

##### Proposal to improve the regulation of excavations in unleased land

3. The Administration considers the present regulatory control unsatisfactory as it is not in line with the user-pays principle and the permittees have no incentive to complete their work as soon as possible. To improve the regulation of excavations in unleased land, the Administration introduces the Bill, which includes the following major proposals:

- (a) Where a person employs a contractor to carry out excavation works, he would himself need a principal excavation permit and his contractor as well as any other subcontractors would each be deemed to have been issued with a secondary permit on similar terms and conditions so that enforcement against any breaches can be made against any of them;

- (b) A permittee may also nominate his contractor as a nominated permittee, thereby making him liable also for any breaches of permit conditions;
- (c) Administrative costs for the permits will be charged on a full cost recovery basis; and
- (d) For excavation on streets, the Highways Department (HyD) will be empowered to charge an additional economic cost depending on whether the street concerned is a "strategic street", "sensitive street" or "remaining street" based on the likely traffic impact an excavation can cause. The economic cost will only be charged on an extension of the permit and may be refunded if the extension is not the fault of the permittee or his contractors or the excavation is completed before the extended expiry date.

4. Under the existing provision, the penalty for making or maintaining an excavation without a permit or in breach of a permit condition is a fine of \$5,000 and to imprisonment for 6 months. The Bill proposes to increase the fine to \$50,000 to reflect the inflation over the past 30 years.

5. The Bill also proposes that the control regime be extended so as to bind the Government in so far as it relates to excavations in unleased land which is a street maintained by the HyD. Government departments which carry out such excavations will therefore have to apply for a permit, pay the prescribed fees and bound by its conditions. However, any non-compliant department will, instead of being made liable to criminal proceedings, be made subject to a reporting mechanism to the Secretary for Works.

### **Audit reviews**

6. The problems caused by street excavation works have long been a subject of public concern. As early as in 1991, the Director of Audit, in his report issued in October 1991, had already called for the Administration to introduce measures to reduce the incidence of delays in the completion of utility works on Hong Kong roads. The Public Accounts Committee (PAC) has since then been monitoring the subject. In the PAC Report No. 24 issued in July 1995, PAC recommended that additional measures should be taken to improve the control of utility openings and that the EP fee should be implemented as soon as possible. In view of PAC's recommendations, the Director of Audit conducted a follow-up review on the Government's efforts in enhancing the control of utility openings in 2001. The audit focused on the following areas:

- (a) implementation of the Utility Management System and other measures to enhance the coordination and control of utility openings;

- (b) reporting of site inspection results;
- (c) frequency of site inspections;
- (d) damage to underground utilities; and
- (e) implementation of the EP fee and the new penalty system.

7. In the PAC Report No. 37 issued in February 2002, the PAC expressed grave dismay that after three examinations on the control of utility openings in 1991, 1995 and 2001, there was still a lack of real progress on the issue. The PAC urged the Administration to introduce measures to monitor the performance of utility operators in street excavation works. On the proposed implementation of the EP fee and new penalty system, PAC recommended that the Secretary for Works should, in considering the matter, ensure that the penalty system would apply fairly to government departments, the officials involved and government contractors, as well as their private-sector counterparts.

### **Consultation with the Panel on Planning, Lands and Works**

8. The Administration introduced its first proposal for a two-tier charging and penalty system for street excavation works to the Panel on Planning, Lands and Works (PLW Panel) on 19 March 1996. Under the two-tier system, the promoter was required to obtain a licence for occupation of the excavation site and the contractor to separately obtain the relevant EP. Having taken into account Panel members' comments and upon consultation with utility undertakers, the proposal was revised and was put to the PLW Panel for consideration on 19 November 1996. The major revision was to dispense with the proposed two-tier permit system. An EP issued to the promotor would be deemed to be issued also to any independent contractor instructed by the promotor for carrying out the excavation.

9. The subject was brought back to the PLW Panel in January 2000. According to the Administration, the revised proposals presented to the Panel on 13 January 2000 and subsequently discussed on 6 November 2000 did not contain major changes to the proposal presented in November 1996 except that the charge rates had been updated based on up-to-date cost information.

10. During the period between December 2001 and March 2002, the PLW Panel held four meetings with the Administration to discuss the present proposal for introducing a charging and penalty system for street excavation works. The Panel also invited public views on the proposal. The list of organizations which have presented views to the PLW Panel is in **Appendix I**.

### Concerns over the proposed charging and penalty system

11. Some District Council members had pointed out that the proposed legislative amendments should bring about improvement to avoid repetitive street excavation works.

12. The utility undertakers and the construction industry had expressed serious concern about the proposed charging and penalty system for street excavation works. They considered that the proposed charging and penalty system could neither achieve the purported objectives nor provide a fair and logical allocation of responsibility for delay in road excavation works. It was considered unfair that government departments breaching EP conditions would not be prosecuted but would only be subject to a reporting mechanism to the Secretary for Works. Implementation of the proposed charging and penalty system under the present economic climate was also contradictory to the undertaking made by the Government to provide a conducive environment for the business sector to develop, not to mention the fact that the proposed fees were on the high side.

13. To address the problem arising from the disruption caused by street excavation works, the deputations suggested that common utility trenches should be built for newly developed areas. An effective co-ordination mechanism should also be in place to improve collaboration among government departments, utility undertakers and contractors. A one-stop-shop mechanism for application and processing of EPs and other necessary consent and approvals should also be introduced. A consolidated responses to comments raised by utility undertakers during the consultation conducted by the Administration in October/November 2001 was in **Appendix II**.

14. Members had divergent views over the proposed charging and penalty system for street excavation works. In view of the disruption to traffic and inconvenience to the public caused by street excavation works, some members pressed for the early implementation of the proposal. Effective measures should also be introduced to address the problems arising from the delays in street excavation works.

15. Some however opined that the proposed system did not address the crux of the problems. They expressed objection to imposing any criminal sanction against promoters and contractors for failure to comply with the EP conditions. The Administration should instead explore other measures to address the problems in collaboration with the industry players and introduce a one-stop-shop mechanism for application and processing of EPs.

16. In the course of deliberation, members have also raised concern on the following specific issues:

- (a) whether the proposed fees and charges are too high, in particular, the proposed additional daily charge of \$18,000 for traffic delay caused to

- strategic streets;
- (b) whether criminal sanction is appropriate for breach of permit conditions and the differential treatment for non-compliant government departments;
  - (c) whether a one-stop-shop mechanism for receiving and processing applications for EPs could be established;
  - (d) whether there is any possible role conflict of the HyD as it would assume the role of the issuing authority, the enforcement authority and a permittee at the same time; and
  - (e) whether an effective and fair appeal mechanism could be put in place to handle appeals from road works promoters. .

### **Other references**

17. Members may refer to **Appendix III** for the following information submitted by the Administration to the PLW Panel :

- (a) Statistics on the operation of the existing EP system for the fiscal years 1999/2000 and 2000/2001;
- (b) Details of the prosecution actions taken in the past for breach of EP conditions;
- (c) The time required for the submission and processing of applications of EPs vis-à-vis the duration of road excavation works concerned;
- (d) Action plan on the implementation of a one-stop-shop mechanism for receiving and processing applications for EPs;
- (e) Provisions in other ordinances under which a breach of licence/permit conditions carries criminal liability and the sanction of imprisonment, where the licences/permits are issued for the purpose of regulating commercial activities to prevent such activities from causing disturbance and/or nuisances to the public; and
- (f) Regulatory framework in overseas jurisdictions in respect of street excavation works.

**List of organizations which had submitted views to the  
Panel on Planning, Lands and Works on the  
proposed charging and penalty system for street excavation works**

The following organizations had appeared before the Panel to give oral views:

1. Hutchison Global Crossing Limited
2. CLP Power Hong Kong Limited
3. Hong Kong Cable Television Limited
4. Hong Kong General Building Contractors Association
5. Hong Kong Tramways Limited
6. New World Telephone Limited
7. Pacific Century CyberWorks Limited
8. The Hong Kong and China Gas Co Limited
9. The Hong Kong Construction Association
10. The Hong Kong Institute of Architects
11. Central and Western District Council
12. Islands District Council
13. Sha Tin District Council
14. Yuen Long District Council

The following organization had provided written submission to the Panel

1. Wharf New T&T Limited

## **Appendix II**

### **Consolidated Response to Comments Raised by Utility Undertakers during the Consultation in October/November 2001**

#### *Abbreviated Organisation Name*

CTV	Cable TV	CLP	CLP Power Hong Kong Ltd.
NTT	Wharf New T&T Limited	NWT	New World Telephone
PCCW	Pacific Century Cyber Networks	HGG	Hutchison Global Crossing
HKCG	Hong Kong and China Gas Company Limited	HEC	Hong Kong Electric Company

<b>Item No.</b>	<b>Comment</b>	<b>Utility Undertakers raising the comment</b>	<b>Administration's Response</b>
1.	'User pays' – principle is not efficient. Heavy burden on UU's. Although the user of EP system are utilities, the public at large as consumers or users of utility services will ultimately foot the bill. Administrative cost should be recovered through tax.	NTT, PCCW, HKCG, CTV, CLP, NWT, HGC	Not all members of the public have the same pattern of consumption of utility services, and in some cases, they may have a choice. As the use of utility service is a consumption process, we believe it is incorrect to subsidise this process with tax. The user pays principle is more appropriate. It seems that the user pays principle in this case has the support of the Director of Audit and the Public Accounts Committee. Where there is a choice for the consumer, and if this is reflected in the service charge of utility services, it can give the utility undertakers greater incentive to manage their excavation works.
2.	The scheme does not have effect of speeding up work, as promoters and contractors are already keen to complete them early in their own interest.	NTT, PCCW, NWT	We believe promoters and contractors are keen to complete on time. But the administrative charge part is just for cost recovery, and the economic charge part is the incentive to complete <u>on time</u> . We do not want UU's to get into situation of having to pay economic charge, but we must have the disincentive instrument to meet any eventuality.

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
3.	If there is a disincentive for delay, there should be a bonus for early completion.	HKCG	If there is room for early completion, that means the UU's are not submitting an optimum programme. In the interest of the public, a shortest time program is expected. What we want here is that the program submitted is the physically possible shortest program and we want it to be adhered to. We do not expect early completion.
4.	The proposal is cost oriented rather than process improvement	CTV	The scheme is basically process improvement. It just uses monetary incentive as a tool.
5.	The proposal is not cost effective to the UU's or the consumers. The scheme is just creating administrative cost.	CTV, HGC	According to the RIA study, the saving of traffic impact time by shortening excavations is very significant.
6.	UU's are already paying various licence fees annually, as such, they should be given EPs free.	CTV	All licence fees are basically for recovering cost of administering a particular licence based on the user-pays principle. It does not cover the cost of the EP system.
7.	Different administrative charge should be levied for carriageways and pavements to encourage use of footpath for service.	NTT	The costing of administrative expense is generally the same, irrespective of on carriageway or pavement. The economic charge should be a disincentive for making openings in carriageways, but will not be applied to pavements.
8.	The permittee may not be able to use the whole EP period due to delay in giving consent by EPD, Police, etc. One stop shop is required. What is the likely processing time.	NTT, PCCW, CTV, CLP, NWT, HGC, HKE	We are working out the necessary administrative framework to realize the one stop shop. The likely processing time will also be worked out.
9.	All EP fees should be waived for diversion required by Government (or 'semi government entities').	NTT, HKCG, CLP	There is a statutory requirement on UU's to meet cost of diversions. Where the diversion arises not due to statutory requirement, the UU's can recover the cost from the relevant parties.

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
10.	Criteria for judgment of initial permit period is required. Need to be fair. Code of practice forum should be set up.	HKCG, CLP, NWT, HEC	HyD staff will be able to judge according to their experience based on the information submitted by the applicants. Rest assured that the assessment will be fair. HyD will periodically invite UU's to discuss the issue to improve assessment.
11.	Economic charge should be waived for not due to fault of the permittee, agreed set of reasonable delays is required, and UU's should be consulted: <ul style="list-style-type: none"><li>- suspension order issued not due to the permittee's fault;</li><li>- objection from local people or business;</li><li>- site not handed over by the Authority, including due to consent not granted by police, EPD etc.</li><li>- restricted working hours;</li><li>- adverse weather;</li><li>- unforeseeable underground conditions.</li></ul>	NTT, PCCW, HKCG, CTV, HGC	We have included such consideration in our proposal. The situations that are technically definable will be written into the law. As regards restriction on working hours, the assessment of reasonable duration will take this into account. Details will be worked out.
12.	No matter how the judgment system is worked out, there are always argument and increase in administrative work.	HKCG	We recognize that it may take some effort in arriving at a agreed working period. The set of administrative procedures and criteria will be made transparent and arguments can be minimized.
13.	Enforcement agency should be independent from HyD, WSD, DSD to be fair.	NTT, PCCW, CTV, NWT	The enforcement arm although operated under the DHy, is related to other divisions of the HyD just as the ICAC operates under the CE, is not related to any other government department. Hence there is no reason to believe HyD is biased.
14.	Transparent set of criteria for prosecuting breaking EP condition is required rather than subjective judgment	NTT, HKCG	The prosecution criteria of HyD are no less transparent than any other law enforcement agencies.

Item No.	Comment	Utility Undertakers raising the comment	Administration's Response
15.	Unequal as government departments are immune from prosecution. Should make departments prosecutable as in EIAO. Or why cannot the reporting mechanism be applicable to non-complying UU's. Doubtful if the incentive for expediting excavation work is applicable to government departments.	NTT, PCCW, CTV, CLP, NWT, HGC	That departments are prosecutable under the EIAO is a misnomer. A similar reporting mechanism in the EIAO will be used in the LMPO.  Government departments are subject to economic charge.
16.	Not the right economic climate to introduce such to increase the burden of the public. It damages Hong Kong's business environment. The scheme should be stopped	NTT, PCCW, HKGC, CTV, HGC	The incentive for prompt completion of street excavations can reduce traffic congestion/ pollution can help improve business environment at large.
17.	Need to see cost breakdown to determine if the system is fair. Period review of charges is necessary	PCCW, HKCG, CTV, CLP, NWT, HGC	Already provided. All charges will be reviewed periodically.
18.	Why is the administrative charge this time higher than that recommended last year?	HGC	The apparent increase in the initial processing fee is to take into account of police and transport department's input. Previously, we took into account of HyD's input only.
19.	'Loophole' for bribery notwithstanding criteria are set for EP duration and economic charge exemption	PCCW, CTV, HEC	In any system, there is always a need to have some officials, or persons to make some judgment, or exercise some discretion. We should not assume that these always give rise to corruption. If there is evidence of corruption, those people involved will be liable to sanction by the law.
20.	Appeal (to the Administrative Appeal Board) is time consuming and delay provision of utility to Hong Kong	PCCW	The speed of settlement by the Administrative Appeal Board depends on workload and may not necessarily be time consuming. We do not envisage a lot of cases going to the AAB, nor do we want them to be so. It is unlikely that an appeal can hold up the provision of service, as the whole appeal is basically a paper exercise, and any economic charge determined to be overpaid can be refunded.

<b>Item No.</b>	<b>Comment</b>	<b>Utility Undertakers raising the comment</b>	<b>Administration's Response</b>
21.	More effort should be spent on road infrastructure, utility troughs etc. rather than the unfair scheme.	HKCG, CTV, NWT	Government has been studying the use of utility troughs in new development areas, but that idea also requires the support of utilities, including their willingness to participate in their investment.
22.	It is necessary to differentiate the liability between the permittee and the nominated permittee. Permittee should not be held liable for nominated permittee's act.	HKCG, NWT, HGC	The nominated permittee's and permittee's liability will be clearly differentiated in the permit itself. The Permittee will not be liable for those EP conditions which are to be complied by the Nominated Permittee.
23.	The nominated permittee system increases complexity. But it should not increase the processing time for EP	NWT	The system is necessary to catch contractors. The EP processing time should not be affected by the system.
24.	The scheme runs against the spirit of asking UU's to invest more in Hong Kong to enhance Hong Kong's environment	CTV	We believe that whether UU's decide to invest in Hong Kong depends on whether there is a strong demand for their product or service, and therefore if it is profitable. The extra bit of EP fees is minimal to UU's cost, and if they are passed on, should not stifle demand if the quality of service offered is good. We do not expect UU's to pay a lot of economic charge.
25.	The scheme should provide for multiple utility working in one excavation. The permittee may not have control over other UU's working in the same trench	CLP	HyD will work out a fair allocation of time in case of 'common trench' and each UU working in that trench will be liable only for their own delay.
26.	Will other government departments impose charges similar to road opening?	HGC	We cannot foretell what charge will be proposed in future. We can only say that charges are proposed as the need arises, or is recognized. Any charge has to be agreed by LegCo.

**LEGCO PANEL ON PLANNING, LANDS AND WORKS  
SPECIAL MEETING ON 15 JANUARY 2002**

**Follow-up to meeting on 12 December 2001**

**Proposed charging and penalty system for street excavation works**

In the LegCo Panel on Planning, Lands and Works special meeting on 12 December 2001, the Administration was requested to follow up on certain issues on the captioned subject. The following are the information provided on these issues.

**Question (a) Please provide statistics on the operation of the existing permit system to facilitate Members' consideration of whether the proposed system would be effective in preventing unnecessary delays in road excavation works; such statistics should include but not limited to the following –**

- (i) **the respective number and percentage of Excavation Permits (EPs) issued for excavations affecting carriageways and for excavations not affecting carriageways;**
- (ii) **the respective number and percentage of EPs issued to utility undertakers and to government departments;**
- (iii) **analyses of the situation of permit extensions based on the classifications of EPs in (i) and (ii) above; such analyses should include the reasons for the extensions.**

**Answer (a)** The statistics on the operation of the existing excavation permit (EP) system for the fiscal years 1999/2000 and 2000/01 are attached at Appendices 1 and 2.

Appendix 1 shows -

- (i) the respective numbers and percentages of EPs issued for excavation affecting carriageways and non-carriageways;
- (ii) the respective numbers and percentages of EPs issued to utility undertakers and to works of Government utility undertakings<sup>1</sup>;

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<sup>1</sup> Government utility undertakings herein refer to Drainage Services Department and Water Supplies Department.

and,

(iii)the distribution of extensions of EP's based on (i) and (ii) above.

The reasons for EP extensions are broadly classified into 6 categories and the respective percentages of extensions for each reason is at Appendix 2.

The statistics indicates the following:

1. The percentages of EPs and extensions issued for excavation affecting carriageways and non-carriageways remain almost the same in 1999/2000 and 2000/01. The percentages of EPs granted to private utility undertakings (UUs) and works of Government UUs for works on carriageways and non-carriageways respectively only vary slightly in 1999/2000 and 2000/01.
2. The number of extensions granted in 2000/01 decreased by about 3% compared with that of 1999/2000. This decrease is mostly due to the significant decrease (13%) in the number of extensions for Government UUs' excavation works (private UUs show about 2% increase). This indicates that more works of the Government UUs, were able to complete on time by the initial completion dates in 2000/01 than in 1999/2000.
3. The number of extension days granted in 2000/01 decreased by 24% as compared with 1999/2000. The percentage decrease in number of extension days granted to works of Government UUs is 54% while that of private UUs is 15%.
4. As indicated in (2) and (3) above, there is much room for improvement. With the implementation of the charging scheme, it is believed that there is more incentive for UUs to improve their planning and programming of their works so as to reduce the number of extensions and extension days.
5. Looking at the reasons for extensions, the reasons "Obstruction by underground utilities and difficult ground conditions",

“Interference by other parties” and “Traffic arrangement and co-ordination” have accounted for about 60% of all the extensions. Most of the extensions due to “Obstruction by underground utilities and difficult ground conditions” and “Traffic arrangement and co-ordination” can be avoided if more effort is put into site investigation works and preparation of the temporary traffic management schemes at the planning stage and it is believed that these areas can be most effectively improved by the implementation of the charging scheme. With more works progressing as programmed, the extensions due to “Interference by other parties” can be reduced accordingly.

**Question (b) Please provide details of the prosecution actions taken in the past for breach of EP conditions.**

Answer (b) In accordance with the records provided by the Judiciary Administrator, there were 30 cases of departmental summons under section 8 of Land (Miscellaneous Provisions) Ordinance between 1998 and 2001.

Police under the Road Traffic (Traffic Control) Regulations can also issue summons in respect of failure to comply with the lighting, signing and guarding requirements specified in the excavation permit. The number of summons issued in 1999/2000 was about 500 and in 2000/01 was about 400.

**Question (c) Please provide an analysis of the time required for the submission and processing of applications or EPs vis-a-vis the duration of road excavation works concerned.**

Answer (c) Generally, the location and the anticipated duration of road excavation works can affect the lead time for the works to be registered in the Utility Management System (UMS).

The flow diagram of excavation permit processing which reflects the current normal administrative arrangement followed by the Authority and UU's thereon, in Appendix 3, can well illustrate this point:

### Registration

Depending on the category of road on which the works will be carried out and the duration of the works, utility undertakings (UUs) should register their proposed road excavation works in the UMS at a lead time from not less than 1 month to not less than 6 months from the anticipated commencement date. (The lead times are shown in Appendix 4).

### Case Co-ordination

When the proposed road excavation works is registered, Highways Department (HyD) will check for other road excavation works at the proposed location. If it is found that the proposed works is in conflict with other existing/planned road excavation works, the concerned UU is required to co-ordinate the excavation works among their fellow UUs such that all of their works can be scheduled to minimize the number of road excavation works on the same section of a road. The UUs also have to submit an agreed programme to HyD for consideration. If the co-ordination cannot be completed within a prescribed period, HyD will initiate actions to assist the concerned UUs in completing the co-ordination as soon as possible.

### Seek Traffic Advice (Preliminary Consent)

The plan of the proposed excavation works will be forwarded to the Transport Department (TD) and the Hong Kong Police Force (HKPF) if it is determined that the proposed works will have considerable traffic impact. This stage will normally take place at not less than 2 weeks before the submission of an EP application. The proposed works will be rejected if any one from Highways Department (HyD), TD or HKPF disagrees with the proposal. UUs will be notified and further processing is not allowed.

The normal processing time for preliminary consent by HyD is 3 working days while for TD and HKPF is 10 working days and 5 working days respectively from the date when they receive the plan from HyD.

### EP Application

UU can submit his EP application if he is not required to seek traffic advice from TD and HKPF, or, after the relevant Authorities give

preliminary consents. The maximum advance time for EP applications is 4 months before the anticipated commencement date of the excavation work. The application can normally be processed within 5 working days from the receipt date of the EP application letter.

Therefore, the durations of some stages in the application process are variable according to the nature of the excavation, and some are more or less fixed.

**Question (d) Please provide an action plan on the implementation of a one-stop-shop mechanism for receiving and processing applications for EPs;**

Answer (d) The one-stop-shop arrangement would require Highways Department to be the clearing house of all application information. Due to resource and cost implications, and possibility of double handling of referrals in one-stop-shop service, the Working Group for one-stop-shop Service for Road Excavation Works has concluded that before considering whether it should go into detailed study of this approach, we should streamline the current EP application process such that utility undertakings can obtain all the consents/requirements from the relevant Government departments *before* the issue of an EP. By this arrangement, UUs can immediately commence their road excavation works when they obtain an EP so that no permit period is wasted. Based on this conclusion, the action plan at Appendix 5 is proposed.

**Question (e) What provisions in other ordinances under which a breach of licence/permit conditions carries criminal liability and the sanction of imprisonment, where the licences/permits are issued for the purpose of regulating commercial activities to prevent such activities from causing disturbance and/or nuisances to the public.**

Answer (e) The following provisions generally meet the criteria set out in the above question:

### Imprisonment/fine provisions

- i) Under Regulation 21 of the ROAD TRAFFIC (PUBLIC SERVICE VEHICLES) REGULATIONS (Cap. 374 sub.leg. D), any person who drives or uses any private car in respect of which a hire car permit is issued in contravention of any condition to which the hire car permit is subject under regulation 14(5) commits an offence and is liable to a fine of \$1000 and to imprisonment for 6 months.
- ii) Under section 8(1) of the WATER POLLUTION CONTROL ORDINANCE (Cap. 358), a person commits an offence who discharges any waste or polluting matter into the waters of Hong Kong in a water control zone, unless as provided in section 12(1)(b) he proves that the discharge in question is made under and in accordance with a licence granted under section 20. Under section 20(4), a licence may be granted subject to conditions. Under section 11(1)(a), a person who commits an offence under section 8(1) is liable to imprisonment for 6 months and a fine of \$200000.
- iii) Under section 9 of the ENVIRONMENTAL IMPACT ASSESSMENT ORDINANCE (Cap. 499), a person shall not construct or operate a designated project without an environmental permit or contrary to the conditions thereof, and under section 26 a person who contravenes section 9 commits an offence and is liable on summary conviction to a fine at level 6 and to imprisonment for 6 months.

### Fine only provisions

- iv) Under section 7 of the AIR POLLUTION CONTROL (OPEN BURNING) Regulations (Cap. 311 sub.leg. O), any person who without a permit, carries out open burning for which a permit may be issued, or being a permit holder contravenes any condition to which the permit is subject, commits an offence, and the liability on conviction is a fine at level 5.
- v) Under section 6(2) of the NOISE CONTROL ORDINANCE (Cap. 400), any person who at any designated place between

hours of 7 p.m. and 7 a.m., or at any time on a general holiday, carries out, or causes or permits to be carried out, any prescribed construction work, in respect of which a construction noise permit is not in force or otherwise than in accordance with the conditions of a construction noise permit in force in respect thereof, commits an offence. Under section 6(5), any person who commits an offence under this section shall be liable on conviction to a fine of \$100000.

It is to be noted that under the Section 8 of the existing Land (Miscellaneous Provisions) Ordinance, there is already a provision for fine and imprisonment for any person who makes or maintains a street excavation without or not in accordance with an excavation permit.

**Question (f)** **Please provide an analysis of the regulatory framework in overseas jurisdictions in respect of road excavation works, and to address in particular the concern of whether it is common in overseas jurisdictions that a breach of licence/permit conditions governing the conduct of road excavation works would carry criminal liability and the sanction of imprisonment.**

Answer (f) It is common in other jurisdictions that to open up a road requires some permit or licence. But as conditions differ according to jurisdictions or countries, the objective or emphasis of the permits and hence their conditions, which are to cater for local concerns, and the penalties, if any, for contravening such conditions may vary according to the local customs or sentiments to such matters. What is done elsewhere may only serve for reference purpose here.

The follow description is based on the regulatory frameworks for street excavation works in Singapore and the United Kingdom (UK) which are selected as the situation in those countries are close to that of Hong Kong. Both countries require a person carrying out street excavation works to obtain a licence issued by the Authority.

In the Singapore system, there are provisions for fine and imprisonment. The Authority has published two Codes of Practice for street excavation contractors to follow to ensure they carry out their works properly and safely according to the Authority's

requirements and conditions. Under Regulation 32 of the Streets Works (Works on Public Streets) Regulations 1995 (made under the Street Works Act 1995), any person who contravenes Regulation 4 or fails to comply with any condition imposed by the Authority shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$2,000 or to imprisonment for a term not exceeding 6 months or to both. Apart from this, there is also a Demerit Point System to control the contractors so that unfit contractors will not be allowed to carry out street excavation works. In brief, the Demerit Point System operates as follows:

- (i) an applicant obtains approval for street excavation works for the purposes of utility works;
- (ii) the Authority carries out regular inspections of the utility works carried out by the contractors;
- (iii) if any default is discovered the contractor concerned will be assigned demerit points according to a pre-defined schedule; and
- (iv) if a contractor is assigned more than 200 points within a month, he will be considered “not a fit and proper person” for street opening works.

In the UK system, the New Roads and Street Works Act 1991 governs street excavation works. The requirements such as safety measures, avoidance of unnecessary delay, reinstatement, etc. that an utility undertaking has to comply with during the execution of the street excavation works are included in the Act. Under section 50 of the Act, the breaking up or opening of street requires a street works licence, and under section 51(1), it is an offence for a person to break up or open a street to place or maintain or alter apparatus in the street otherwise than in pursuance of a street works licence, and under section 51(2), a person committing such an offence is liable on summary conviction to a fine not exceeding level 3.

## Appendix 1

			1999/2000					2000/2001				
			Government Utility Undertakings*	Private Utility Undertakings	Others#	Total		Government Utility Undertakings	Private Utility Undertakings	Others#	Total	
						No.	%				No.	%
No. of EPs	Carriageway	No.	2637	3528	860	7025	31%	2710	3955	952	7617	30%
		%	38%	50%	12%			36%	52%	12%		
	Non-carriageway	No.	1739	12346	1801	15886	69%	1967	13121	2553	17641	70%
		%	11%	78%	11%			11%	75%	14%		
	Total : carriageway + Non-carriageway	No.	4376	15874	2661	22911		4677	17076	3505	25258	
		%	19%	69%	12%		100%	18%	68%	14%		100%
No. of extensions	Carriageway	No.	3519	3093	500	7112	48%	3000	3422	335	6757	47%
		%	49%	44%	7%			44%	51%	5%		
	Non-carriageway	No.	1315	5560	698	7573	52%	1209	5429	947	7585	53%
		%	17%	74%	9%			16%	72%	12%		
	Total : carriageway + Non-carriageway	No.	4834	8653	1198	14685		4209	8851	1282	14342	
		%	33%	59%	8%		100%	29%	62%	9%		100%
No. of extension days	Carriageway	No.	217239	142049	33715	393003	52%	94964	123992	34600	253556	44%
		%	55%	36%	9%			37%	49%	14%		
	Non-carriageway	No.	70537	244357	48732	363626	48%	38414	204180	78556	321150	56%
		%	19%	67%	14%			12%	64%	24%		
	Total : carriageway + Non-carriageway	No.	287776	386406	82447	756629		133378	328172	113156	574706	
		%	38%	51%	11%		100%	23%	57%	20%		100%

\* Government utility undertakings herein refer to Drainage Services Department and Water Supplies Department

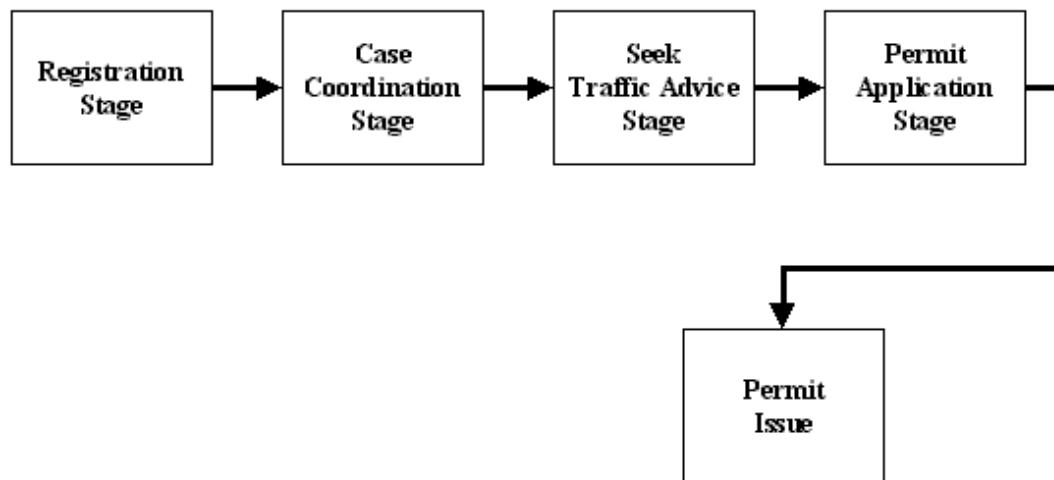
# Others include developers, bus companies, KCRC, MTRC etc.

## **Appendix 2**

Reasons for Extensions	1999/2000		2000/01		Remark
	No. of Extensions	%	No. of Extensions	%	
Obstruction by underground utilities and difficulty grounds	2440	17%	2320	16%	can possibly be improved with more investigations beforehand.
Interferred by other parties	4375	30%	4280	30%	can possibly be improved when the progress of others are more satisfactory and with better co-ordination
Traffic arrangement and co-ordination	2310	16%	2884	20%	Inadequacy in traffic arrangement will possibly be improved if facing with economic charge
Inclement weather	923	6%	1262	9%	
Late commencement or completion of work	1997	14%	1968	14%	Can be improved after streamlining of the EP application process such that works can be commenced when an EP is obtained
Others*	2640	18%	1628	11%	Some of the extensions, e.g. due to late delivery/awaiting delivery of materials, can be eliminated with economic charge
<b>Total</b>	<b>14685</b>	<b>100%</b>	<b>14342</b>	<b>100%</b>	

\* About 1 to 2 percentage points out of the percentage points in others are due to late/awaiting delivery of materials

## Stages of Excavation Permit Processing



## **Appendix 4**

### **Registration Lead Time for Excavation Works**

<b><u>Category of Utility Road Opening Works</u></b>	<b><u>Minimum Registration Lead Time</u></b>
(1) Works on carriageway which will last for more than 3 months, or works on trunk roads or primary distributors.	Not less than 6 months before estimated commencement date.
(2) Carriageway works on district distributors, local distributors or rural roads, which will last for not more than 3 months; or other works which will last for more than 3 months, except those mentioned in (1) above.	Not less than 2 months before estimated commencement date.
(3) All other works.	Not less than 1 month before estimated commencement date.

**Action Plan of a One-stop Shop Mechanism for Receiving and Processing Applications for EPs**

<b><u>Action</u></b>	<b><u>Date</u></b>
Submission of proposal of streamlining the current EP application process to the Working Group for One-stop Shop Service for Road Excavation Works.	1/2002
Consultation with UUs on the proposal.	2/2002
Finalization of the proposal	4/2002
Implementation of the streamlined EP application process	6/2002
Review the result of the streamlined EP application process to investigate whether it is necessary to proceed to the one-stop shop service.	10/2002