

**HKCA Submission to Bills Committee
on Land (Miscellaneous Provisions) (Amendment) Bill 2002**

Preamble

1. The Hong Kong Construction Association (HKCA) submitted a paper to LegCo Lands and Works Panel Special Meeting held on 15/01/02. HKCA's views have not changed.
2. HKCA is grateful for and welcomes the opportunity to contribute towards improving this long-standing difficult and highly contentious matter.
3. HKCA is fully aware of the disruption to transport, and the consequential economic loss and feelings of helpless frustration felt by the public that is brought by road openings. It is a matter of great concern for our members involved in such work, as it brings criticism on them when road opening work inevitably overruns the original announced completion date.
4. Our members will support all practical measures that will improve the situation, but until the difficulties described below are resolved or at least recognized and accommodated, we believe that some of the proposed amendments will result in further penalties placed on contractors alone, regardless of who or what may be causing the time overruns. We hope that Hon. Members will find our comments helpful to their understanding of this matter and persuasive.

Background

5. Contractors who carry out road opening work have to deal with a largely uncharted range of services provided by a wide range of services providers. Record drawings of these services are notoriously unreliable, therefore the exact line, depth and nature of any service pipe or cable cannot be known for certain until the road/footpath has been opened and the ground excavated.
6. Having exposed an existing service, the contractor cannot touch it. For each and every occasion, the contractor must, for both legal and safety reasons, contact the service provider to establish whether or not the service is still "alive", or if it has been abandoned. If "alive", agreement must be reached as to how to avoid causing damage to the service when the new work is carried out.
7. In many cases this means devising and constructing temporary supports and protection. In others it means that service provider will need to arrange for the existing service to be diverted. In others, the Engineer will need to re-design the new work in order to overcome the problem. Under Hong Kong Government contract conditions, these delays are added to the original time for completion. It is no secret and should be of no surprise, that the additional time needed to safely sort out these problems can result in the time for completion being more than doubled. This is one reason why road opening sites sometimes appear to be abandoned by

the Contractor. No work can safely proceed until others have devised the solution to the problem.

8. These practical problems impact upon excavation permits (EP). EP's effectively sub-divide the construction contract into several discrete sections, each with its own separate start and completion dates. The construction contract has a procedure for extending the time for completion, as do EP's but the two are not directly connected and therefore are not compatible. The lack of compatibility brings the potential for conflict i.e, the extra time awarded under the construction contract being different to the extension(s) granted to the EP's, with the possibility of different assessment criteria being used.
9. Further, the restrictions imposed by the EP can be different to those imposed by the construction contract, and are therefore not included in the contract price.
10. In developing the rules for EP's, it is essential that the above described complexities are not ignored.

The Land (Miscellaneous Provisions) (Amendment) Ordinance 2002.

HKCA's major concerns are:-

1. That contractual arrangements between the permit holders/employers and the contractor will off-load all the risk onto the contractors.
2. If the Authority underestimates the extent of the sub-surface difficulties, the contractor will have to pay the additional daily fee and the penalty regardless of their being no fault, then have to go through the procedures for getting back the money, at the contractor's own expense whilst providing an interest free loan to Government.
3. To avoid the effects of item 2, the contractor will have to make an early application for an extension to the EP, as the Authority cannot "waive" the daily fee and the penalty. The information needed to justify the extension may not be available, as the problems may only surface close to the expiry date of the EP.
4. Tenderers will have no idea how many EP's will be granted, so cannot assess the financial risk with which they are faced. Any pre-tender assessment of the project can be distorted beyond recognition once the work has started. This is an unpriceable risk placed on contractors and conflicts with the recommendations of the Tang Report.
5. Whilst it is possible for Government to arrange for the Authority to be a member of the construction management team, so as to be fully informed of the day-to-day matters affecting progress and the need for an extension to the EP, this is not possible for the private utility services.
6. The parallel but separate imperatives of legislation and contractual obligations is a recipe for disputes. Those responsible under the contract for awarding extensions of time, the proof needed to avoid penalties, have no record of early decision making in such matters.

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