

7 November 2002

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Your Ref.: CB1/BC/10/01

Clerk to the Bills Committee on the
Land (Miscellaneous Provisions) (Amendment) Bill 2002
Legislative Council Secretariat
3/F, Citibank Tower,
3 Garden Road,
Central,
Hong Kong

By Fax (2121 0420) & By Post
Total Pages: 3 Pages

Attn.: Mrs. Queenie Yu

Dear Mrs. Yu,

Re: Land (Miscellaneous Provisions) (Amendment) Bill 2002 (the “Bill”)

We refer to your letter dated 25 October 2002. Hong Kong Cable Television Limited (“HKCTV”) welcomes the opportunity to make another submission to the Bills Committee. We are pleased that the Government has finally agreed and confirmed to the Bills Committee in its last meeting on 24 October 2002 that it would remove the penalty of imprisonment in section 10Q(2). The purpose of this written submission is to set out a number of outstanding issues in the Bill including our concern on the proposed increase of fine in section 10Q(2) from \$50,000 to \$200,000 and the conflicting role of the Highways Department in enforcing, for example, section 10Q and excavation permit conditions. HKCTV would be interested to make an oral presentation of our views to the Bills Committee.

HKCTV has prepared a submission on the Bill per attached. Should you require additional information, please do not hesitate to contact our Mr. William Chow at 2112 6221.

Yours sincerely,
Hong Kong Cable Television Limited

Allen Law
General Manager
OSP Engineering & Construction

AL/WC/jc
Encl.

Submission by Hong Kong Cable Television Limited (“HKCTV”) on the Land (Miscellaneous Provisions) (Amendment) Bill 2002 (the “Bill”)

I. Introduction

- 1.1 We refer to our earlier submission dated 23 October 2002 on the Bill. The purpose of this submission is to draw the attention of the Bills Committee to the views of HKCTV on the outstanding issues on the Bill. HKCTV welcomes that the Government finally takes heed of concern of the utility companies over section 10Q by confirming in the Bills Committee meeting on 24 October 2002 the removal of the penalty of imprisonment for 6 months in that section. However, HKCTV has concern over the drastic increase in the fine in section 10Q(2) and we suggest that the fine at that section should be maintained at \$50,000 instead of \$200,000 as proposed by the Government in the last Bills Committee meeting. HKCTV also supports the proposal of a Bills Committee member in the last meeting that the Bill should ensure record of conviction under the amendment ordinance will not be passed to the police.

II. Proposed increase of fine in section 10Q(2) from \$50,000 to \$200,000

- 2.1 HKCTV notes that the Government proposed to increase the fine in section 10Q(2) from \$50,000 to \$200,000 in the last meeting of the Bills Committee on 24 October 2002. Unless the Government can produce concrete evidence of the deterioration in the safety standard at excavation sites, we submit that this fourfold increase in the fine cannot be justified. It is HKCTV’s view that a fine of \$50,000, under the current difficult economic environment, is already a sufficient penalty to ensure compliance with section 10Q(1) and to prevent inadvertent violation of the Ordinance. In other words, bearing in mind that the directors and persons concerned in the management of an utility company may be personally liable to the fine by virtue of section section 101E of the Criminal Procedure Ordinance (Chapter 221 of the Laws of Hong Kong), the existing level of penalty in section 10Q(2) without any drastic increase in fine will have sufficient deterrent effect.

III. Criminal record for conviction of offences under the amendment ordinance

- 3.1 During the meeting of the Bills Committee on 24 October 2002, a Bills Committee member suggested that the record of conviction of any offence under the amendment ordinance should not be passed to the police. We share such views and support the addition of a clause in the Bill to reflect this proposal having regard that a conviction under, for example, section 10Q would not be a matter of interest to the police in the issue of certificate of no criminal conviction.

IV. Conflicting role of the Highways Department

- 4.1 As some utility companies have pointed out earlier, there is inherent conflict in the dual capacity of the Highways Department which is both a player and the referee. On one hand, the Highways Department, like other utility companies, engages contractors to carry out excavation work. On the other hand, the Highways Department is the watchdog which enforces the Land (Miscellaneous Provisions) Ordinance (the "Ordinance") regarding excavation and prosecutes those who infringe the excavation permit conditions. Hence, the Bills Committee may like to give more careful consideration to this point in view of such conflicting role of the Highways Department. This issue also underlines the need, as the Highways Department has tried to assure the industry, to have an independent team within the Highways Department for the enforcement of section 10Q and excavation permit conditions. According to the Highways Department, after the independent team has gathered the evidence for breach of, for example, section 10Q by a person, the work and the decision on prosecution will be undertaken by the Department of Justice.

V. Conclusion

- 5.1 In short, instead of \$200,000 as proposed by the Government in the last Bills Committee meeting, HKCTV submits that the fine at section 10Q(2) should be maintained at \$50,000. We also support the proposal of a Bills Committee member that the record of conviction of any offence under the amendment ordinance should not be passed to the police and a provision to that effect should be incorporated in the Bill. HKCTV is of the view that there is inherent conflict in the dual capacity of the Highways Department as being the department responsible for carrying out excavation and enforcing the Ordinance. The Bills Committee may like to consider this issue more carefully in order to ensure that the Ordinance will be enforced in an impartial manner.