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28 October 2002

The Honourable Mr. Lau Ping-cheung
Chairman, 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) and mail

Dear Mr. Lau,

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

We refer to the three briefing sessions held by the Government on 27 September, 18 and 22 October 2002 in relation to the legal aspects of the above Bill. Despite extensive discussions over its implications, all of the utility undertakers (UUs) including Wharf New T&T are still unsettled about some of the provisions as we all believe that there are indescribable dangers lying in wait under the Bill.

In particular, we would like to draw the Committee’s attention over the proposed Section 10F(c), Section 10I, Section 10Q(2) and the proposed charging of audit fees by the Government.

Section 10F(c)

Section 10F(c) clearly states that “*for the purposes of this Ordinance, a contractor is regarded as a nominated permittee in relation to a principal excavation permit or principal emergency excavation permit if –*

- (a) he is nominated by a permittee of the permit as a nominated permittee under section 10G;*
- (b) he consents to the nomination and agrees to comply with the conditions in the permit under section 10H; and*
- (c) the Authority **approves** the nomination under section 10I”*

In other words, the proposed amendment requires the approval from the Authority before the nomination can be achieved. Wharf New T&T believes that such approval is unnecessary. The UUs in general should have the full discretion to appoint its own contractor for its own subject works and in the absence of a proper timeframe and transparent criteria from the Government,

the approval requirement would promise nothing but more administrative delay for the subject excavation works.

Besides, when a particular contractor is called upon and appointed nominated permittee by a particular principal excavation permittee, the progress of the subject works would be seriously disrupted if the Authority decides to withdraw its nomination or approval during the process due to some reasons of its own.

Section 10I

Again, Section 10I corresponds with Section 10F(c) and clearly states that the Authority “*may approve the nomination of a contractor as a nominated permittee*” and “*withdraw his approval under [subsection (1)] to the nomination of a contractor as a nominated permittee in relation to a principal excavation permit or principal emergency excavation permit if the Authority is satisfied that the nominated permittee is incapable of complying with any of the conditions which under the permit are to be complied with by the nominated permittee...*”.

As mentioned earlier on, if the nomination of a contractor is made subject to the approval or withdrawal of the Government, such requirement would certainly disrupt the progress and commercial operation of the projects undertaken by the UUs. This could hardly be beneficial to the UUs concerned and hence the public. The uncertainty and risk of project delay would certainly increase as a result.

Section 10Q(2)

This section is most controversial and we believe it deserves full Government’s attention for review of its impact.

Section 10Q is a provision in relation to the safety precautions and support undertaken by the permittee or nominated permittee which we believe is important in itself. Yet, under the proposed Section 10Q(2), if a permittee or a nominated permittee who contravenes Section 10Q(1) shall be liable to a fine at level 5 (currently at HK\$50,000) and to imprisonment for 6 months.

Just as it is wrong for failure to adopt all necessary safety precautions or provide adequate support for structural stability, so it is wrong to impose such a harsh penalty on the UUs and the directors of the utility companies concerned if there were to be subject to criminal prosecution and incur personal liability. Penalties of this nature can give rise to considerable difficulties and unfair if directors of the utility companies will be held liable for something out of their own control on a personal level. We submit that the penalty should be confined to a fine at level 5 if the permittee and nominated permittee contravene Section 10Q(1) as it is sufficient penalty for the nature of its criminal conviction.

Audit Fees

The current charging system is basically two-fold: administrative fees and audit fees. Wharf New T&T believes that the audit fees should not be applied in this case, as the auditing works should be part and parcel of the normal administrative process of the Government. Moreover, such first-time charging should not be encouraged as the other Government departments, i.e. Housing,

Engineering and Labour) have not levied such charges at all. There is a perfect reason why such levy is a concern. If the Highways Department were allowed to be an exception, it would just encourage the other Government departments to do the same.

I trust I have covered all of the points that most of the utility companies have concerns. If you have any queries, please do not hesitate to contact me.

Thank you for your kind attention.

Yours sincerely,

Bill Yeung
General Manager
Engineering

cc All members of the Bills Committee on the Land (Miscellaneous Provisions) (Amendment) Bill 2002 via Legislative Council Secretariat

Clerk to the Bills Committee on the Land (Miscellaneous Provisions) (Amendment) Bill 2002 (Attn: Ms. Alice Au)

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