

**BILLS COMMITTEE ON
LAND (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2002
MEETING ON 18 NOVEMBER 2002**

Follow-up to meeting on 11 November 2002

In the Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2002 on 11 November 2002, the Administration was requested to follow up on certain issues. The following are the information provided on these issues.

Question (a) To make clear the meaning of “adopt all necessary safety precautions” in the new section 10Q(1)(a) and to consider issuing codes of practice and guidelines or introducing new administrative measures to facilitate the trade to comply with the safety precaution and support requirements set out in the proposed new section 10Q(1).

Answer (a) We encourage and expect those involved in street excavations to seek professional advice as regard what are ‘necessary safety precautions’. What constitutes ‘necessary safety precautions’ should be well known amongst engineers, architects and related professionals, and may vary according to the situation, scale and complexity of the work. These are embodied in the knowledge acquired by these professionals through long time education, training and, practical experience and there is already consensus within the trade and profession about what should be safe after so many years. Street excavation promoters are expected to, if they themselves are not professionals in this field, to hire such professionals from the market as either in house staff or consultants. This service is widely available in Hong Kong.

It is unnecessary to issue guidelines to handle such matters as they are already widely known and in existence. But for information to Members, A non-exhaustive list of standards and guidelines indicates the range of references normally

referred to by professionals on this matter is attached as Annex A.

Annex A

Question (b) To consider pitching the level of fines involving breaches of the new section 10Q(1) with reference to the tender prices of projects.

Answer (b) Fines should not be considered as part of the cost of a business, and we should not encourage such to happen. Fine should only be used to reflect the seriousness and consequence of an offence and the deterrence effect required. We do not want business to count fines as part of the cost, and be able to include that in their price, by which they can indirectly acquire the right to commit an offence and neutralize the effect of penalty.

As we do not want promoters and contractors of street excavations to commit the offences under 10Q(1), and we do not expect them to commit such offence so frequently that they can consider the fine as part of their cost, we do not consider it necessary to pitch the fine in relation to tender prices of projects.

Question (c) To provide information on the level of penalties imposed by the court for past convictions involving breaches of section 8(1) of the Land (Miscellaneous) Provisions Ordinance (Cap. 28) and the tender prices of the related projects;

Answer (c) Statistics between 1998 and 2001 indicated that there were only 30 cases of prosecutions in relation to the Land (Miscellaneous Provisions) Ordinance (Cap. 28). There is no information about the circumstances of the convictions and whether it is related to 'project'. Even if it is related to a project, we do not have information about the tender price of such project, whether it is a public or a private one. We are

unable to obtain the fines imposed by courts on those convictions in relation to section 8(1) of the existing Land (Miscellaneous Provisions) Ordinance (Cap. 28).

Question (d) To provide information on the offences with fines ranging up to \$200,000 under the Factories and Industrial Undertakings Ordinance (Cap. 59) and its subsidiary legislation, and the level of fines imposed by the court for past convictions.

Answer (d) There are more than 80 offences attracting fines of \$200,000 (whether prison terms are provided in addition or not) under the Factories and Industrial Undertakings Ordinance (Cap. 59) and its sub-legislations.

We have listed out *some* examples of the offences in Cap. 59 in Annex B, with \$200,000 maximum fine, separated into Table 1 - which may attract no additional prison term; Table 2 - which may attract an additional prison term of 6 months and Table 3 - which may attract an additional prison term of 12 months. This demonstrates that penalty of \$200,000 is widely adopted in Cap. 59 where safety is paramount. **The original text of the legislations should be referred to for a fuller understanding of what they are about.**

Also, it should be noted that in the Electricity Supplies Lines (Protection) Regulations (sub-legislation H to Cap. 406), Section 10(2)(a) states that "A person who carries out or causes or permits another to carry out in the vicinity of an underground electricity cable any works which are below ground level shall ensure that all reasonable measures are taken to prevent the occurrence of an electrical accident or an interruption to the supply of electricity arising from those works". The penalty for contravening this is, as stated in section 17(4) is:

Annex B

- “(a) if the contravention results in an electrical accident or an interruption to the supply of electricity, to a fine of \$200,000 and to imprisonment for 12 months; or
- (b) in any other case, to a fine at level 4 and to imprisonment for 6 months”.

Similar penalties are also provided for under the Gas Safety (Gas Supply) Regulations (sub-legislation B to Cap. 51). Regulation 23A(2) states that:

“A person who carries out, or permits to be carried out, any works in the vicinity of a gas pipe shall ensure that all reasonable measures are taken to protect the gas pipe from damage arising out of the works that would be likely to prejudice safety”. Contravening this regulation can result in penalty, as stated in regulation 49, of:

“in the case of a contravention of regulation 23A(2), to a fine of \$200,000 and to imprisonment for 12 months and, in the case of a continuing offence, to a daily penalty of \$10,000”.

According to information available to us, a very commonly contravened regulation in the Construction Site (Safety) Regulation (sub-legislation I of Cap. 59) is regulation 38A(2) - failing to provide safe access and egress, and, 38B(1) - failing to prevent a person from falling over 2 m. These offences carry a fine of \$200,000 plus 12 months imprisonment. But the most common fine imposed by the court is around \$20,000 to \$40,000, and in very rare circumstances, the fine can be as low as about \$2,000 and as high as about \$90,000.

Question (e) To provide information on the respective numbers and percentages of excavation permits issued to utility undertakers and to works of Government utility undertakings.

Answer (e) The number of excavation permits issued to Highways Department, public utility undertakings, private utility undertakes for 2001 – 2002 are as follows:

	Non-carriageway		Carriageway		Total	
Private Utility Undertakers	14,609	41%	4,087	27%	18,696	37%
Government Utility Undertakers	2,141	6%	2,917	19%	5,058	10%
Highways Department	18,819	53%	8,395	55%	27,214	53%
Total	35,569	70%	15,399	30%	50,968	100%

The corresponding number of ‘excavation permit – days’ (EP-days) of excavation permits issued in 2001 to 2002 are as follows:

	Non-carriageway		Carriageway		Total	
Private Utility Undertakers	701,455	65%	343,041	49%	1,044,496	59%
Government Utility Undertakers	85,135	8%	228,221	32%	313,356	18%
Highways Department	295,169	27%	131,673	19%	426,842	24%
Total	1,081,759	61%	702,935	39%	1,784,694	100%

We would attach more significance to EP-days figures than the number of excavation permits, as the EP-days figures can

truly reflect that the excavation exists and causes impact on pedestrians and traffic.

List of standards, codes of practice, guidance notes and manuals relevant to safety at work for excavation works

GROUP	ISSUE AUTHORITY	TITLE
Standards	British Standard Institution UK	BS 8110 Structural Use of Concrete
Code of Practice	British Standard Institution UK	BS5975 Code of Practice for Falsework
Code of Practice	Labour Department	CoP for Metal Scaffolding Safety
Code of Practice	Labour Department	CoP for Safety Management
Code of Practice	Labour Department	CoP for Safe Safety and Health at Work in Confined Spaces
Code of Practice	Labour Department	CoP for Safety and Health at Work for Manual Electric Arc Welding
Code of Practice	Labour Department	CoP for Safety and Health at Work for Gas Welding and Flame Cutting
Code of Practice	Highways Department	CoP for the lighting, signing and guarding of road works
Code of Practice	EMSD	CoP on working near electricity supply lines
Code of Practice	EMSD	CoP - Avoiding danger from gas pipes
Code of Practice	Building Authority HK	CoP for the Structural Use of Steel 1987
Code of Practice	Building Authority HK	Cof Practice for the Structural Use of Concrete 1987
Guidelines	Highways Dept & Civil Eng Dept	Guide to Trench Excavations
Guidelines	Labour Department	A guide to the construction sites (safety) regulations
Guidelines	Labour Department	A guide to the factories and industrial undertakings (confined spaces) regulations
Guidelines	Labour Department	Safety for working in confined spaces
Guidelines	Labour Department	A guide to the factories and industrial undertakings (lifting appliances and lifting gear) Regulations

GROUP	ISSUE AUTHORITY	TITLE
Guidelines	Labour Department	A guide to the factories and industrial undertakings (electricity) Regulations
Guidelines	Labour Department	A guide to the Factories and Industrial Undertakings (Fire Precautions in Notifiable Workplaces) Regulations
Guidelines	Labour Department	A Brief Guide to First Aid in - Notifiable Workplace - Cargo and Container - Handling Undertakings - Construction Sites - Quarries - All Other Workplace
Guidelines	Labour Department	A guide to the factories and industrial undertakings (safety officers and safety supervisors) Regulations
Guidelines	Labour Department	A Guide to Safety Management
Guidelines	Labour Department	A Guide to the Factories and Industrial Undertakings (Protection of Eyes) Regulations
Guidelines	Labour Department	Guidance notes on fire safety at workplaces
Guidelines	Labour Department	Guidance notes on safe use of earth-moving machinery
Guidelines	Labour Department	Guidance notes on classification and use of safety belts and their anchorage systems
Guidelines	Labour Department	Guidance notes - safety at work (falsework - prevention of collapse)
Guidelines	Labour Department	A guide to safety and health at work for gas welding and flame cutting
Guidelines	Labour Department	A Guide to the Factories and Industrial Undertakings (Woodworking Machinery) Regulations
Guidelines	Labour Department	A Guide to the Factories and Industrial Undertakings Ordinance (Sections 6A & 6B)
Guidelines	Labour Department	A Guide to the Factories and Industrial Undertakings (Gas Welding and Flame Cutting) Regulation
Guidelines	Labour Department	A Guide to the Factories and Industrial Undertakings (Loadshifting Machinery) Regulation
Guidelines	Labour Department	Guidance Notes for the Safe Isolation of Electricity Source at Work
Guidelines	Labour Department	Guidance Notes on Inspection, Thorough Examination and Testing of Lifting Appliances and Lifting Gear
Guidelines	Labour Department	Notify Your Workplace and Construction Work
Guidelines	Labour Department	Safe System of Work
Guidelines	Labour Department	Five Steps to risk assessment

GROUP	ISSUE AUTHORITY	TITLE
Guidelines	Water Supplies Department	Guidelines for Excavation near Water Mains
Manual	ETWB	Construction site safety manual
Manual	ETWB	Construction site safety handbook
Manual	Civil Engineering Dept.	Geotechnical Manual for Slopes
Manual	Civil Engineering Dept.	GCO Publication No 1/90 Review of Design Methods for Excavations

Notes: ETWB denotes Environment, Transport and Works Bureau
 EMSD denotes Electrical and Mechanical Services Department
 CoP denotes Code of Practice

Table 1 - Factories and Industrial Undertakings Ordinance (Cap. 59)
Offences carrying a fine of \$200,000 only

Section	Brief description of offence
Construction Sites (Safety) Regulations (Cap. 59; sub-leg. I)	
Regulation 68(2)(a)	<ul style="list-style-type: none"> • Fail to use only a hoist which is in accordance with reg. 5. • Fail to ensure safety of hoistways, platforms and cages contravening reg. 31(1) and (3). • Fail to operate a hoist in prescribed manner contravening reg. 32. • Fail to provide a hoist with safe load marking contravening reg. 34. • Fail to test and examine a hoist contravening reg. 35(1) and (3). • Fail to secure load contravening reg. 38. • Fail to have trained workmen to erect scaffold under supervision contravening reg. 38E. • Fail to inspect a scaffold contravening reg. 38F(1). <p>etc.</p>
Lifting Appliances and Lifting Gear Regulations (Cap. 59; sub-leg. J)	
Regulation 19(a)	<ul style="list-style-type: none"> • Fail to use only a lifting appliance with sound construction contravening reg. 4. • Fail to use only a lifting appliance which is tested and examined contravening reg. 5. • Using a lifting appliance which is known to be defective contravening reg. 6A(2). • Fail to have a lifting appliance periodically inspected by a competent person contravening reg. 7A. • Fail to have an automatic safe load indicator contravening reg. 7B. • Fail to ensure a lifting appliance is stable contravening reg. 7D. • Fail to ensure a lifting appliance is properly anchored and ballasted contravening reg. 7E. <p>etc.</p>

Section	Brief description of offence
Work in Compressed Air Regulations (Cap. 59; sub-leg. M)	
Regulation 38(2)	<ul style="list-style-type: none"> • Fail to have a suitably designed air supply plant contravening reg. 6(1) • Fail to have a conforming air supply comply contravening reg. 7. • Fail to have a conforming man lock contravening reg. 8. • Fail to have arrangement for entrance and exit to working chamber contravening reg. 13 • Fail to have a conforming decant lock contravening reg. 16. • Fail to have a conforming medical lock contravening reg. 21.
Goods Lifts Regulation (Cap. 59; sub-leg. O)	
Regulation 11(1)	<ul style="list-style-type: none"> • Fail to ensure a goods lift in use is well constructed and maintained contravening reg. 4. • Fail to have a goods lift examined annually contravening reg. 5(1).
Carcinogenic Substances Regulations (Cap. 59; sub-leg. AA)	
Regulation 10(1)(a)	<ul style="list-style-type: none"> • Employing people to manufacture a carcinogenic substance or in a process where such substance in generated contravening reg. 3(1). • Bringing into or use in any industrial premises carcinogenic substance contravening reg. 3(2).

Table 2 - Factories and Industrial Undertakings Ordinance (Cap. 59)
Offences carrying a fine of \$200,000 plus 6 months imprisonment

Section	Brief description of offence
Main Legislation (Cap. 59)	
Section 10 (1A)	<ul style="list-style-type: none"> • Fail to comply with a 'prohibition notice' in certain manner in relation to a 'notifiable workplace'.
Section 10 (1C)	<ul style="list-style-type: none"> • Fail to comply with a direction in association with the cancellation of a 'prohibition notice'.
Work in Compressed Air Regulations (Cap. 59; sub-leg. M)	
Regulation 38(8E)	<ul style="list-style-type: none"> • Fail to have a suitable person to supervise compressed air operations contravening reg. 5(1).
Regulation 38(8F)	<ul style="list-style-type: none"> • Allowing working in excess of pressure of 50 pound per square inch other than in an emergency contravening reg. 12(4).
Fire Precautions in Notifiable Work Places (Cap. 59; sub-leg. V)	
Regulation 14(4)	<ul style="list-style-type: none"> • Alter a notifiable work place resulting in a fire hazard or blocking a means of escape contravening reg. 8(1).
Regulation 14(5)	<ul style="list-style-type: none"> • Fail to have doors of a notifiable workplace comply with reg. 4. • Fail to maintain fire escapes in good condition contravening reg. 5(1). • Fail to comply with a notice about fire precautions contravening reg. 13(3).

Section	Brief description of offence
Safety Management Regulations (Cap. 59; sub-leg. AF)	
Regulation 34(2)	<ul style="list-style-type: none">• Fail to develop etc. a safety management system contravening reg. 8.• Fail to appoint a safety auditor contravening reg. 13(1).• Fail to conduct a safety audit in a prescribed manner contravening reg. 13(2).• Fail to appoint a safety review officer contravening reg. 19(1a).• Fail to conduct a safety review in a prescribed manner contravening reg. 19(2).

Table 3 - Factories and Industrial Undertakings Ordinance (Cap. 59)
Offences carrying a fine of \$200,000 plus 12 months imprisonment

Section	Brief description of offence
Factory and Industrial Undertaking Regulations (Cap. 59; sub-leg A)	
Regulation 45(2)(a)	<ul style="list-style-type: none"> • Fail to fence off dangerous platforms, liquids etc. contravening reg. 24.
Construction Site (Safety) Regulations (Cap. 59; sub-leg. I)	
Regulation 68(2)(f)	<ul style="list-style-type: none"> • Fail to ensure everywhere in a site is safe etc. contravening reg. 38A(1). • Fail to have an excavation etc. greater than 2m fenced off or covered contravening reg. 40(1).
Regulation 68(2)(g)	<ul style="list-style-type: none"> • Fail to ensure a hoist is not used for carrying persons contravening reg. 36. • Fail to provide and maintain safe egress and access contravening reg. 38A(2). • Fail to prevent persons from getting into an unsafe place contravening reg. 38A(3). • Fail to prevent persons from falling over 2 m contravening reg. 38B(1). • Fail to provide safe means of support contravening reg. 38C. • Fail to provide a properly constructed and maintained scaffold contravening reg. 38D. • Using boatswain chair contravening reg. 38G.
Lifting Appliance And Lifting Gear Regulations (Cap. 59; sub-leg. J)	
Regulation 19(aa)	<ul style="list-style-type: none"> • Using a crane in unsuitable weather condition contravening reg. 7G(1). • Improperly using a crane to carry persons contravening reg. 18B.

Section	Brief description of offence
Suspended Working Platform Regulations (Cap. 59; sub-leg. AC)	
Regulation 29(1)	<ul style="list-style-type: none"> • Failure to provide a suspended working platform with proper -- <ul style="list-style-type: none"> – construction and maintenance contravening reg. 4; – anchorage and support contravening reg. 5; – suspension contravening reg. 6; – counterweights and counterbalance contravening reg. 7; – platforms contravening reg. 8; etc.
Confined Space Regulations (Cap. 59; sub-leg. AE)	
Regulation 14(1)(b)	<ul style="list-style-type: none"> • Fail to have a competent person to assess or reassess the working condition of a confined space contravening reg. 5(1) and 5(5). • Fail to prevent entry to work in a confined space before taking necessary steps contravening reg. 6(1). etc.