

C014-E

A BILL To Amend the Land (Miscellaneous Provisions) Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Land (Miscellaneous Provisions) (Amendment) Ordinance 2002.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Works by notice published in the Gazette.

2. Interpretation

Section 2 of the Land (Miscellaneous Provisions) Ordinance (Cap. 28) is amended---

(a) by repealing the definition of "excavation permit" and substituting---
"excavation permit" (挖掘准許證) means a principal excavation permit or a secondary excavation permit;"

(b) by adding---

"contractor" (承判商), for an excavation or emergency excavation to which a principal excavation permit or principal emergency excavation permit relates, means---

(a) any person who enters into a contract, express or implied, with the permittee of the permit to make or maintain all or any part of the excavation for such permittee; or

(b) any person who enters into a contract, express or implied, to make or maintain all or any part of an excavation which the person referred to in paragraph (a) has to make or maintain under the contract referred to in paragraph (a);

"emergency excavation" (緊急挖掘) means an excavation that is made or maintained consequential upon the occurrence of an emergency incident;

"emergency excavation permit" (緊急挖掘准許證) means a principal emergency excavation permit or a secondary emergency excavation permit;

"emergency incident" (緊急事故) means an incident the occurrence of which reasonably requires an immediate excavation for the purpose of---

(a) the prevention of injury to any person;

(b) the saving of life of any person;

(c) the prevention of damage to any property; or

(d) the prevention of serious interruption or disruption to any public transport system or utility services;

"excavation" (挖掘、挖掘工作) means an excavation of land;

"nominated permittee" (指定持准許證人) means a person regarded as a nominated

permittee under section 10F;

"permittee" (持准許證人) means the holder of a principal excavation permit or principal emergency excavation permit;

"principal emergency excavation permit" (主體緊急挖掘准許證) means a principal emergency excavation permit issued under section 10B;

"principal excavation permit" (主體挖掘准許證) means a principal excavation permit issued under section 10A;

"Review Board" (覆核委員會) means the Review Board established under section 10M;

"secondary emergency excavation permit" (附屬緊急挖掘准許證) means a secondary emergency excavation permit deemed to be issued under section 10E;

"secondary excavation permit" (附屬挖掘准許證) means a secondary excavation permit deemed to be issued under section 10E;"

3. Section added

The following is added---

"2A. Application to Government

(1) Subject to this section, Part III binds the Government so far as it relates to an excavation in unleased land which is a street maintained by the Highways Department.

(2) Part III does not have effect to permit proceedings to be taken against, or to impose any criminal liability on, the Government or a person doing anything in the course of carrying out his duties as a public officer in the service of the Government.

(3) If the Authority considers that a public officer, in carrying out his duties in the service of the Government, has done an act or made an omission in contravention of Part III, the Authority shall, if the act or omission is not immediately terminated to his satisfaction, report the matter to the Secretary for Works.

(4) On receiving a report under subsection (3), the Secretary for Works shall inquire into the matter and, if his inquiry shows that a public officer is continuing to contravene Part III or is likely to contravene that Part again, the Secretary for Works shall ensure that the best practicable steps are taken to stop the contravention or avoid the recurrence (as the case may be)."

4. Part substituted

Part III is repealed and the following substituted---

"PART III

Excavation in Unleased Land

8. Interpretation

(1) For the purpose of this Part and the Schedule---

"carriageway" (車路) means a street or part of a street over which the public has

a right of way for the passage of motor vehicles;

"initial period" (首段期間) means the initial period mentioned in section 10B(3);

"street" (街道) includes any slope not used or frequented by the public or to which the public do not have access or are not permitted to have access;

"street maintained by the Highways Department" (由路政署維修的街道) includes any road defined under section 2 of the Tramway Ordinance (Cap. 107) which is not reserved exclusively for use by trams.

(2) Any reference in this Part or the Schedule to a street shall be construed as a street in unleased land and maintained by the Highways Department.

9. Application of certain provisions

Sections 10B, 10C, 10K, 10L, 10M, 10N, 10R and 18B only apply in the case of an excavation in a street.

10. Control of excavations in unleased land

(1) Except under and in accordance with a prospecting licence, mining licence or sand removal permit, a person shall not make or maintain any excavation in unleased land unless---

(a) he is the holder of an excavation permit or emergency excavation permit; and
(b) he so makes or maintains the excavation under and in accordance with the permit.

(2) Subject to subsection (6), a person who contravenes subsection (1) by making or maintaining an excavation in unleased land without being the holder of an excavation permit or emergency excavation permit shall be guilty of an offence and shall be liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(3) Subject to subsection (6), a person who contravenes subsection (1) by making or maintaining an excavation in unleased land in contravention of any condition of an excavation permit or emergency excavation permit issued to him shall be guilty of an offence and shall be liable on conviction to a fine at level 5.

(4) Subject to subsection (7), where---

(a) any person, other than a permittee of a principal excavation permit or principal emergency excavation permit, makes or maintains an excavation or emergency excavation to which the permit relates;

(b) there is a breach of any condition of the permit as a result of any conduct of the person; and

(c) there is no nominated permittee in relation to the permit at the time of the breach of the condition,

the permittee shall be guilty of an offence and shall be liable on conviction to a fine at level 5.

(5) Subject to subsection (7), where---

(a) any person, other than a permittee of a principal excavation permit or principal emergency excavation permit, makes or maintains an excavation or emergency excavation to which the permit relates;

(b) there is a breach of any condition of the permit as a result of any conduct of the person; and

(c) there is a nominated permittee in relation to the permit at the time of the breach of the condition,

then---

(d) where the condition is under the permit to be complied with by the permittee, the permittee shall be guilty of an offence and shall be liable on conviction to a fine at level 5;

(e) where the condition is under the permit to be complied with by the nominated permittee, the nominated permittee shall, unless he is already guilty of an offence under subsection (3), be guilty of an offence and shall be liable on conviction to a fine at level 5; or

(f) where the condition is under the permit to be complied with by both the permittee and the nominated permittee, then---

(i) the permittee, unless he is already guilty of an offence under subsection (3); and

(ii) the nominated permittee, unless he is already guilty of an offence under subsection (3),

shall each be guilty of an offence and shall each be liable on conviction to a fine at level 5.

(6) It shall be a defence for a person, other than a nominated permittee, charged with an offence under subsection (2) or (3) to show that---

(a) he was making or maintaining the excavation in question under the direction of another person; and

(b) he believed on reasonable grounds that---

(i) that other person was authorized under an excavation permit or emergency excavation permit to make and maintain the excavation; and

(ii) he was authorized by virtue of the permit to make and maintain the excavation.

(7) It shall be a defence for a permittee or nominated permittee of a principal excavation permit or principal emergency excavation permit charged with an offence under subsection (4) or (5) to show that the person referred to in subsection (4)(a) or (5)(a)(as the case may be) was not authorized by him to make or maintain the excavation or emergency excavation to which the permit relates.

(8) If any person makes or maintains an excavation in unleased land, without an

excavation permit or emergency excavation permit, the Authority may---

(a) carry out such works as he considers necessary to reinstate and make good---

(i) the unleased land; and

(ii) any other land the reinstatement and making good of which is in his opinion necessary in consequence of the excavation; and

(b) recover the cost of any work carried out by him under this subsection from the person.

10A. Issue of principal excavation permit

(1) The Authority may, on payment of the appropriate prescribed fee and subject to such conditions as he thinks fit, issue a permit, to be known as the principal excavation permit, authorizing the making and maintaining of excavations in unleased land.

(2) A principal excavation permit shall be valid for the period specified therein as that for which it is valid unless it is terminated under section 10J.

(3) The Authority may, on payment of the appropriate prescribed fee, extend the period for which a principal excavation permit is valid.

(4) Where---

(a) the Authority issued a principal excavation permit for an excavation; and

(b) the permittee of the permit is unable to have access to the land concerned for the purpose of making or maintaining the excavation after the commencement of the excavation for reason other than the fault of the permittee, the contractor for the excavation or their employees,

the Authority may, without payment of any prescribed fee or any part thereof (other than that paid under subsections (1) and (3)), extend that period by the number of days for which the permittee is so unable to have access to the land.

(5) Any prescribed fee paid under subsection (1) is not refundable.

10B. Issue of principal emergency

excavation permit

(1) The Authority may, subject to such conditions as he thinks fit, issue a permit, to be known as the principal emergency excavation permit, authorizing the making and maintaining of emergency excavations.

(2) A principal emergency excavation permit shall be valid for 6 months unless it is terminated under section 10J.

(3) During the period for which a principal emergency excavation permit is valid, the permittee of the permit may, subject to the conditions specified in the permit, make and maintain an emergency excavation for each emergency incident during a period ("initial period") of 7 days from the date of the report of the incident to the Authority.

(4) The Authority may require a permittee to pay the appropriate prescribed fee for an emergency excavation made or maintained during the initial period either before or after the expiration of the initial period.

(5) For the purpose of calculation of the appropriate prescribed fee, the duration of an emergency excavation which can be completed within the initial period shall be---

(a) the number of days commencing from the date of the report of the emergency incident to the Authority and expiring on the date of the report of the completion of the excavation to the Authority; or

(b) 7 days if there is no report of the completion of the excavation to the Authority.

(6) Any prescribed fee paid under subsection (4) is not refundable.

(7) Where---

(a) the Authority issued a principal emergency excavation permit for an excavation; and

(b) the permittee of the permit is unable to have access to the land concerned for the purpose of making or maintaining the excavation after the commencement of the excavation for reason other than the fault of the permittee, the contractor for the excavation or their employees,

the Authority may, without payment of any prescribed fee or any part thereof (other than that required to be paid under subsection (4)), extend the initial period by the number of days for which the permittee is so unable to have access to the land.

10C. Emergency excavation which lasts for more than 7 days

(1) If the permittee of a principal emergency excavation permit anticipates that he has to make or maintain an emergency excavation for more than 7 days, the permittee shall apply to the Authority for the issue of a principal excavation permit before the expiry of the initial period of the excavation.

(2) Upon receipt of an application mentioned in subsection (1)---

(a) a principal excavation permit is deemed to be issued to the permittee of the principal emergency excavation permit---

(i) on the same terms and conditions as the principal emergency excavation permit; and

(ii) commencing from the date of the commencement of the emergency incident to which the principal emergency excavation permit relates and expiring on the date of the notification of the result of the application; and

(b) the initial period under the principal emergency excavation permit is deemed to be extinguished.

(3) The Authority shall determine the period for which a principal excavation

permit deemed to be issued under subsection (2)(a) shall be valid and may revise the expiry date of the permit to a date which is later than the original expiry date.

(4) If the period determined by the Authority under subsection (3) is shorter than the period applied for by the permittee under subsection (1), the Authority may, in respect of a principal excavation permit deemed to be issued under subsection (2)(a), grant an extension for a period commencing from a date next following the expiry of the permit and expiring on the last day of the period applied for by the permittee.

(5) The Authority may require a permittee to pay the appropriate prescribed fee for a principal excavation permit deemed to be issued and an extension granted under this section.

10D. Refusal of issue of excavation permit

(1) The Authority may refuse to issue a principal excavation permit or principal emergency excavation permit if he reasonably believes that the person making the application for the issue of the permit---

(a) is not a fit and proper person to make or maintain any excavation in unleased land;

(b) cannot comply with the conditions imposed under the permit; or

(c) does not have sufficient financial resources to make or maintain an excavation to which the permit relates.

(2) Where the Authority refuses to issue a permit, he shall notify the person who made the application in writing of the grounds for such refusal.

10E. Deemed issue or extension of

secondary excavation permit

or secondary emergency

excavation permit

(1) Where a principal excavation permit is issued or deemed to be issued for an excavation, a permit on the same terms and conditions as the principal excavation permit, which is to be known as the secondary excavation permit, is deemed to be issued to any contractor who makes or maintains all or any part of the excavation.

(2) Where a principal emergency excavation permit is issued for an excavation, a permit on the same terms and conditions as the principal emergency excavation permit, which is to be known as the secondary emergency excavation permit, is deemed to be issued to any contractor who makes or maintains all or any part of the excavation.

(3) Where an extension in respect of a principal excavation permit is granted under section 10A(3) or (4) or 10C(4), the extension is deemed to be granted to the secondary excavation permit concerned.

(4) For the avoidance of doubt, it is hereby declared that the Authority is not

required to issue or grant to any person a written or electronic copy of the secondary excavation permit, secondary emergency excavation permit or extension mentioned in this section.

10F. Nominated permittee

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.

10G. Nomination by permittee

(1) A contractor shall not be regarded as being nominated as a nominated permittee in relation to a principal excavation permit or principal emergency excavation permit unless the permittee of the permit has sent to the Authority a notice in writing nominating that contractor as the nominated permittee of the permit.

(2) A permittee of a principal excavation permit or principal emergency excavation permit may withdraw the nomination of a contractor under subsection (1) by sending a notice of withdrawal to the Authority and the contractor.

(3) A notice of withdrawal referred to in subsection (2) takes effect on the date of the receipt of the notice by the Authority or such later date as is specified in the notice.

10H. Consent and agreement by nominated permittee

(1) A contractor shall not be regarded as giving the consent and agreement referred to in section 10F(b) as a nominated permittee in relation to a principal excavation permit or principal emergency excavation permit unless that contractor has sent to the Authority a notice in writing to that effect.

(2) A nominated permittee in relation to a principal excavation permit or principal emergency excavation permit may withdraw his consent and agreement referred to in subsection (1) by sending a notice of withdrawal to the Authority and the permittee of the permit.

(3) A notice of withdrawal referred to in subsection (2) takes effect on the date of the receipt of the notice by the Authority or such later date as is specified in the notice.

10I. Approval by Authority of nomination

- (1) The Authority may approve the nomination of a contractor as a nominated

permittee.

(2) The Authority may 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---

(a) 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; and

(b) by sending a notice of withdrawal to the permittee of the permit and the nominated permittee.

(3) A notice of withdrawal referred to in subsection (2) takes effect on the date specified in the notice.

10J. Termination of excavation permit
or emergency excavation permit

(1) If there is a breach of any condition of a principal excavation permit or principal emergency excavation permit, the Authority may terminate the permit by---

(a) serving a notice of the termination to the permittee of the permit and the nominated permittee (if any) in relation to the permit; and

(b) posting a notice of the termination at a conspicuous place on the unleased land to which the permit relates.

(2) A principal excavation permit or principal emergency excavation permit is regarded as terminated from the date of the posting of the notice of the termination relating to it under subsection (1)(b).

(3) Where a principal excavation permit or principal emergency excavation permit is terminated, the secondary excavation permit or secondary emergency excavation permit (as the case may be) concerned is deemed to be terminated on the same date as the first-mentioned permit.

(4) For the avoidance of doubt, it is declared that there shall be no refund of any prescribed fee paid under section 10A(1) or (3), or 10B(4) or 10C(5) in respect of or in connection with a principal excavation permit or principal emergency excavation permit which is terminated under this section.

(5) Where a principal excavation permit or principal emergency excavation permit is terminated, the termination does not affect---

(a) the power of the Authority to require a permittee of the permit to pay the appropriate prescribed fee under section 10B(4) or 10C(5); and

(b) the obligation of the permittee to pay the appropriate prescribed fee as required by the Authority under that section.

10K. Refund of daily fee and economic costs
paid for extension of principal

excavation permit

(1) The Authority may refund the whole or any part of the economic costs paid for an extension of a principal excavation permit if---

(a) the permittee of the permit makes an application---

(i) for a refund of the economic costs within one month from the date of the notification of the result of the application for an extension of the principal excavation permit; and

(ii) stating the reasons and setting out the evidence in support of the application; and

(b) the Authority is satisfied that the extension is caused by reasons other than the fault of a permittee of the permit, its contractors and employees, including but not limited to the following---

(i) inclement weather which includes the hoisting at the Hong Kong Observatory of---

(A) the No. 3 visual storm warning or above;

(B) rainstorm warning;

(ii) suspension of excavation on order of the Government which is not due to the fault of the permittee, its contractors or employees;

(iii) physical condition of the unleased land to which the permit relates and which is not in existence at the time of the application of the permit; and

(c) the Authority is satisfied that the reasons mentioned in paragraph (b) hindered the progress of an excavation to which the permit relates.

(2) Where---

(a) the permittee of a principal excavation permit completes an excavation to which the permit relates before the expiry of an extended period of the permit;

(b) the permittee notifies the Authority of the completion of the excavation; and

(c) the Authority is satisfied that the permittee has reinstated the land to which the permit relates as required by the conditions of the permit,

the Authority may refund a sum which is equivalent to the daily fee and economic costs paid in respect of the period commencing from the date next following the date of notification of the completion of the excavation and expiring on the expiry date of the extended period.

(3) Any refund of daily fee or economic costs under this section shall be paid by the Authority without interest.

(4) In this section, "rainstorm warning" (暴雨警告) means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Amber, Red or Black.

10L. Review of assessment

(1) A public officer of the rank of Chief Technical Officer, Engineer or Senior Engineer (collectively referred to as "the Engineer") in the Highways Department acting as the delegate of the Director of Highways shall make an assessment on--

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(a) the duration of a principal excavation permit if he exercises the Director of Highways' power under section 10A(1);

(b) the duration of the initial period of an emergency excavation according to section 10B(5) if he exercises the Director of Highways' power under section 10B(4);

(c) the duration of an extended period of a principal excavation permit extended under section 10A(3) or (4) or 10C(4) if he exercises the Director of Highways' power under that section; and

(d) the amount of economic costs to be refunded under section 10K if he exercises the Director of Highways' power under that section.

(2) A permittee who is aggrieved by an assessment made in respect of him under subsection (1) may, within 28 days from the date of being notified of the result of the assessment, apply in writing to a public officer of the rank of Chief Engineer or Government Engineer (collectively referred to as "the Chief Engineer") in the Highways Department for a review of the Engineer's assessment.

(3) On receipt of an application under subsection (2), the Chief Engineer shall review the assessment of the Engineer and notify the permittee concerned of the result of his review within 28 days from the date of the receipt of the application for review.

(4) On a review under subsection (3), the Chief Engineer may---

(a) vary the assessment complained of;

(b) require a permittee who applied for a review under subsection (2) to pay extra prescribed fee; and

(c) refund the prescribed fee or any part of the prescribed fee paid by the permittee.

(5) A permittee who is aggrieved by a decision made in respect of him under subsection (4) may, within 28 days from the date of being notified of the decision, apply in writing to the Director of Highways for a review of the Chief Engineer's decision.

(6) On receipt of an application under subsection (5), the Director of Highways shall set up a Review Board in accordance with section 10M.

(7) The Review Board may fix a time and place for hearing an application for review under subsection (5) and invite the permittee concerned and the Chief Engineer who made the decision complained of to present their case.

(8) A permittee who is invited to appear before a Review Board under subsection (7) may appear in person or may be represented by his authorized representative.

(9) The Director of Highways shall invite members of the Review Board to give their individual advice.

(10) The Director of Highways shall---

(a) make his decision after taking into consideration of the advice of members of the Review Board; and

(b) notify the applicant of his decision within 14 days from the date of the advice given by members of the Review Board.

(11) The Director of Highways shall appoint a public officer to be the secretary of the Review Board and the officer shall keep a record of every meeting of the Review Board.

(12) The Director of Highways may---

(a) vary the decision complained of;

(b) require a permittee who applied for a review under subsection (5) to pay extra prescribed fee; and

(c) refund any prescribed fee or any part of the prescribed fee paid by the permittee.

(13) Any decision made under subsection (12), other than a decision on the amount of economic costs to be refund under that subsection, shall be final.

(14) An application for a review of an assessment or decision made under this section does not affect the obligation of a permittee to pay the appropriate prescribed fee as required by the Authority under this Part.

(15) Any payment of extra prescribed fees and refund of prescribed fees or any part thereof under this section shall be paid by a permittee or the Authority, as the case may require, without interest.

10M. Review Board

(1) There shall be established a Review Board for advising the Director of Highways on an application for review of a decision made by the Chief Engineer under section 10L(4).

(2) The Director of Highways shall be the Chairman of the Review Board and the Secretary for Works shall appoint not less than 3 but not more than 5 other persons to constitute the Review Board.

(3) Subject to subsection (2), the Secretary for Works shall appoint---

(a) at least one public officer of the rank of Government Engineer or above from the Highways Department;

(b) at least one member from the Review Panel appointed under section 10N; and

(c) not more than 3 other persons as he thinks fit.

(4) The Secretary for Works shall not appoint a person to act as a member of the Review Board if that person has a direct or indirect interest in the review concerned.

(5) The members of the Review Board, other than public officers, shall be

remunerated for their services out of money appropriated for the purpose by the Legislative Council at such rate as the Financial Secretary may determine.

10N. Review Panel

(1) The Secretary for Works may appoint a panel of not more than 20 persons whom he considers to be suitable to act as members of a Review Panel to advise the Director of Highways on an application for review of a decision made by the Chief Engineer under section 10L(4).

(2) A person appointed under subsection (1) shall hold office for not more than 3 years and may---

(a) be reappointed;

(b) resign by notice in writing served on the Secretary for Works.

10O. Reinstatement of unleased

land after excavation

(1) A permittee of a principal excavation permit or principal emergency excavation permit shall, before the expiry or termination of the permit, reinstate and make good the land as required by any condition of the permit.

(2) If any unleased land is not reinstated and made good in accordance with subsection (1)---

(a) before the expiry or termination of the permit; or

(b) as required by any condition of the permit,

the Authority may carry out such work as he considers necessary to reinstate and make good the land, and any other land the reinstatement and making good of which is, in his opinion, necessary in consequence of the excavation, notwithstanding that the work for the carrying out of which the excavation was made have not been completed.

(3) The Authority may recover from the permittee---

(a) the cost of any work carried out by the Authority under subsection (2); and

(b) the cost of any work carried out by the Authority to reinstate and make good any unleased land if the necessity for such work---

(i) arises within 12 months after the completion of work for the reinstatement and making good of the land under this section; and

(ii) is attributable to any fault on the part of such permittee or his servants or agents.

(4) For the avoidance of doubt, it is declared that any work carried out under subsection (2) shall not be regarded as an excavation for the purpose of this Ordinance.

10P. Provision of safety facilities

in connection with excavation

If any condition of a principal excavation permit or principal emergency

excavation permit requiring the provision of facilities for the safety or convenience of the public is contravened, the Authority may provide such facilities and recover the cost thereof from the permittee of the permit.

10Q. Provision of safety precautions and support

(1) The permittee and nominated permittee of a principal excavation permit or principal emergency excavation permit shall---

(a) adopt all necessary safety precautions to protect the public or any person making or maintaining an excavation to which the permit relates from any danger or injury;

(b) provide adequate support for the structural stability of buildings, roads, slopes, structures, pipes, lighting posts, utility services or similar installations adjacent to the excavation so as to prevent the public or any person from being endangered by a fall or displacement of earth, rock or other material.

(2) A permittee and nominated permittee who contravenes subsection (1) shall each be guilty of an offence and shall each be liable on conviction to a fine at level 5 and to imprisonment for 6 months.

(3) It is a defence in a proceeding against a person for an offence under subsection (2) if the person charged shows that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

10R. Designation of strategic street, sensitive street and remaining street

(1) The Director of Highways may, by notice published in the Gazette---

(a) designate any street or part of a street as a strategic street, a sensitive street or a remaining street after taking into consideration the economic costs of traffic delay in a carriageway caused or likely to be caused by an excavation carried out on the street; and

(b) amend or revoke any such designation.

(2) For the avoidance of doubt, it is declared that a notice published under subsection (1) is not subsidiary legislation.

10S. Service of notice

A notice (howsoever described) which under this Part is required to be, or may be, sent or served to or on a person (howsoever described) other than the Authority shall, in the absence of evidence to the contrary, be deemed to be so sent or served if---

(a) in the case of an individual, it is---

(i) delivered to him;

(ii) left at his last known address for service, or at his last known place

of residence or business, in Hong Kong;

(iii) sent by post to him at his last known address for service, or at his last known postal address, in Hong Kong; or

(iv) sent by telex, facsimile transmission or other similar method to him at his last known address for service, or at his last known postal address, or at his last known place of residence or business, in Hong Kong;

(b) in the case of a company, it is---

(i) given to or served on a director or manager of the company;

(ii) left at the company's last known address for service, or at its last known place of business, in Hong Kong;

(iii) sent by post to the company at its last known address for service, or at its last known postal address, in Hong Kong; or

(iv) sent by telex, facsimile transmission or other similar method to the company at its last known address for service, or at its last known postal address, or at its last known place of business, in Hong Kong;

(c) in the case of a partnership, it is---

(i) delivered, left or sent in accordance with paragraph (a) in respect of any partner who is an individual; or

(ii) given, left or sent in accordance with paragraph (b) in respect of any partner which is a company;

(d) in the case of a person ("attorney") holding a power of attorney under which the attorney is authorized to accept service in respect of another person on whom it is required to be so sent or served, it is---

(i) where the attorney is an individual, delivered, left or sent in accordance with paragraph (a);

(ii) where the attorney is a company, given, left or sent in accordance with paragraph (b);

(iii) where the attorney is a partnership, delivered, left or sent in accordance with paragraph (a) in respect of any partner who is an individual; or

(iv) where the attorney is a partnership, given, left or sent in accordance with paragraph (b) in respect of any partner which is a company."

5. Section added

The following is added---

"16C. Certificate of record of information
produced from Authority's
computer systems

(1) In any proceedings under this Ordinance before a court or magistrate, a document purporting---

(a) to be a copy of a record of any information produced from any of the computer systems of the Authority; and

(b) to be certified by the Authority as being such a copy,

shall be admitted in evidence on its production without further proof.

(2) Where a document is admitted in evidence under subsection (1)---

(a) the court or magistrate before which it is produced shall, until the contrary is proved, presume that---

(i) the document is a true copy of the record of information referred to in subsection (1)(a);

(ii) it was properly certified by the Authority for the purposes of subsection (1)(b); and

(iii) the record was duly made at the time (if any) referred to in the document as that at which it was made; and

(b) the document is prima facie evidence of the contents of the information referred to in subsection (1)(a).

(3) Where a document is admitted in evidence under subsection (1), the court or magistrate before which or whom it is produced may, if it or he thinks fit, on its or his own motion or on the application of any party to the proceedings in question, summon the person who purports to have certified the document for the purpose of subsection (1)(b) and examine him as to its subject matter."

6. No claim to lie against Government,

Authority or Secretary for Works

Section 18 is amended---

(a) in subsection (1), by repealing "8" and substituting "10, 10A, 10B, 10C, 10D, 10I, 10J, 10K, 10L, 10O, 10P, 10R";

(b) by adding---

"(1A) Neither the Government nor the Secretary for Works shall be liable for any loss or damage suffered by any person in consequence of anything done under section 10M or 10N."

7. Section added

The following is added---

"18B. Appeals against decision

(1) A person who is aggrieved by a decision of the Director of Highways made in respect of him under section 10L(12) relating to the refund of economic costs may appeal to the Administrative Appeals Board.

(2) An appeal made under subsection (1) shall be made within 28 days after the aggrieved person has received a notice of the decision.

(3) Any economic costs determined to be refunded to an aggrieved person pursuant

to a decision of the Administrative Appeals Board shall be paid by the Director of Highways and without interest."

8. Regulations

Section 19 is amended---

(a) by renumbering it as section 19(1);

(b) by adding---

"(2) Any fees prescribed by regulations made under this section may---

(a) be fixed at a level which provides for the recovery of---

(i) expenditure incurred or likely to be incurred by the Government in relation generally to the administration, regulation and control of matters to which this Ordinance relates; and

(ii) economic costs of traffic delay in a carriageway caused or likely to be caused by excavations on streets;

(b) provide for the payment of different fees in respect of matters or cases or streets of different classes or descriptions; and

(c) provide for the payment of fees to be calculated in any manner specified in the regulations."

9. Designated Authorities

The Schedule is amended---

(a) within the square brackets, by repealing "s. 3" and substituting "ss. 3 & 8";

(b) by repealing the entries in relation to sections 7(2) and (3), 8(2), (3) and (5), 9(2) and (3) and 10 and substituting---

"7(2) and Urban area. Director of Lands.

7(3) New Territories, Director of Highways

except New in the case of

Kowloon. unleased land which

is a street; or the

Director of Lands in

the case of unleased

land, other than

streets.

2A(3) Urban area Director of Highways

10(8) and New in the case of

10A(1) Territories. unleased land which

10A(3) is a street; or the

10A(4) Director of Lands in

10B(1) the case of unleased

10B(3) land, other than

10B(4) streets."

10B(5)

10B(7)

10C(1)

10C(3)

10C(4)

10C(5)

10D(1)

10D(2)

10E(4)

10F(c)

10G(1)

10G(2)

10G(3)

10H(1)

10H(2)

10H(3)

10I(1)

10I(2)

10J(1)

10J(5)

10K(1)

10K(2)

10K(3)

10O(2)

10O(3)

10P

10S

16C(1) and

16C(2)

10. Transitional provisions

(1) Notwithstanding anything contained in this Ordinance, the pre-amended Ordinance shall continue to apply to an excavation in unleased land which is being made or maintained or is to be made or maintained pursuant to---

(a) an excavation permit or an extension in respect of an excavation permit which is in force immediately before or on the commencement date and continues in force after the commencement date; or

(b) an excavation permit or an extension in respect of an excavation permit the

application for the issue or the grant of which is made before the commencement date and which is issued or granted on or after the commencement date.

(2) Where immediately before the commencement date, an application has been made under the pre-amended Ordinance for the issue of or the grant of an extension in respect of an excavation permit, the application is to continue to have effect and is to be dealt with in all respects as if this Ordinance had never been enacted.

(3) For the purpose of this section---

"commencement date" (生效日期) means the day appointed under section 1(2) as the day on which this Ordinance comes into operation;

"excavation permit" (挖掘准許證) has the same meaning as in section 2 of the pre-amended Ordinance;

"pre-amended Ordinance" (未經修訂的條例) means the Land (Miscellaneous Provisions) Ordinance (Cap. 28) which is in force immediately before the commencement date.".

Consequential Amendments

Land (Miscellaneous Provisions) Regulations

11. Regulation added

The Land (Miscellaneous Provisions) Regulations (Cap. 28 sub. leg.) is amended by adding---

"3A. Fees relating to principal excavation permits or principal emergency excavation permits

(1) The fee payable for the issue under section 10A(1) of the Ordinance of, or extension under section 10A(3) or 10C(4) of the Ordinance in respect of, a principal excavation permit shall be---

(a) where the permit relates to an excavation in unleased land which is a street maintained by the Highways Department, that specified in column 3 of Part I of Schedule 3 against the applicable description in column 2 of that Part;

(b) where the permit relates to an excavation in unleased land, other than any street maintained by the Highways Department, that specified in column 3 of Part II of Schedule 3 against the applicable description in column 2 of that Part.

(2) The fee payable for an emergency excavation made or maintained during the initial period referred to in section 10B(4) of the Ordinance shall be that specified in column 3 of Part III of Schedule 3 against the applicable description in column 2 of that Part."

12. Schedule 1 amended

Schedule 1 is amended, in Part II, by repealing item 3.

13. Schedule 2 amended

Schedule 2 is amended, in Part II, by repealing item 3.

14. Schedule 3 added

The following is added---

"SCHEDULE 3 [reg. 3A]

Fees

PART I

Fees Payable in Respect of Principal Excavation Permits
Relating to Excavations in Unleased Land Which is a
Street Maintained by the Highways Department

Item Description Fee

1. Issue or deemed issue of a principal
excavation permit referred to in
sections 10A(1) and 10C(2) of
the Ordinance \$1,860 plus a daily fee of \$32 per day
for the whole duration of the principal excavation permit

2. Extension in respect of a principal
excavation permit referred to in
sections 10A(3) and 10C(4) of
the Ordinance (a) \$590 plus a daily fee of \$32 per day
for the whole duration of the
extended period; and

(b) economic costs in the following
scale for the whole duration of
the extended period---

(i) \$18,000 per day for a strategic
street;

(ii) \$7,000 per day for a sensitive
street;

(iii) \$1,500 per day for a remaining
street.

PART II

Fees Payable in Respect of Principal Excavation Permits
Relating to Excavations in Unleased Land,
other than Streets Maintained by the
Highways Department

Item Description Fee

1. Issue of a principal excavation permit
referred to in section 10A(1) of the
Ordinance \$3,060

2. Extension in respect of a principal excavation permit referred to in section 10A(3) of the Ordinance \$400

PART III

Fees Payable in Respect of Emergency Excavations in Unleased Land Which is a Street Maintained by the Highways Department

Item	Description	Fee
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1.	Emergency excavation made or maintained during the initial period referred to in section 10B(4) of the Ordinance	\$1,860 plus a daily fee of \$32 per day for
----	--	--

the whole duration of the emergency excavation determined in accordance with section 10B(5)".

Administrative Appeals Board Ordinance

15. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding---

"60. Land (Miscellaneous Provisions) Ordinance (Cap. 28) A decision of the Director of Highways under section 10L(12) relating to the refund of economic costs.".

Tsing Ma Control Area (General) Regulation

16. Road works within the Area

Section 16(5) of the Tsing Ma Control Area (General) Regulation (Cap. 498 sub. leg.) is amended by repealing "an excavation permit under section 8" and substituting "a principal excavation permit under section 10A or 10C, or a principal emergency excavation permit under section 10B".

Explanatory Memorandum

This Bill amends the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("the principal Ordinance").

2. Clause 1 sets out the short title and the commencement of the Bill.

3. Clause 2 defines the terms used in the Bill.

4. Clause 3 defines the scope of the application of the principal Ordinance to the Government.

5. Clause 4 repeals Part III of the principal Ordinance and substitutes a new Part III consisting of 22 new sections (sections 8 to 10S)---

(a) the new section 8 defines certain terms used in Part III and the Schedule of the principal Ordinance;

(b) the new section 9 restricts the scope of application of certain provisions to an excavation in a street maintained by the Highways Department;

(c) the new section 10 consolidates the existing regime on the control of excavations in unleased land. It revises the penalty for making or maintaining an excavation in unleased land in contravention of the conditions of an excavation permit and emergency excavation permit. It also defines the liability of a permittee and a nominated permittee for the breach of conditions of the permit concerned;

(d) the new section 10A consolidates the existing regime to provide for the issue of principal excavation permits. Apart from the powers under the existing provisions, the Authority is empowered to charge a prescribed fee for the issue of or the extension of the validity period of a principal excavation permit;

(e) the new section 10B provides a new regime to control emergency excavations in streets maintained by the Highways Department. The Authority is empowered to issue a principal emergency excavation permit which will be valid for 6 months and during that period, the permittee may make and maintain an emergency excavation during a period ("initial period") of 7 days from the date of the report of the emergency incident to the Authority. The Authority is also empowered to charge a prescribed fee for an emergency excavation made or maintained during the initial period;

(f) the new section 10C requires a permittee to apply for a principal excavation permit if he anticipates that an emergency excavation will last for more than 7 days. It empowers the Authority to revise the expiry date of a principal excavation permit deemed to be granted under this section and to grant an extension in respect of the permit;

(g) the new section 10D empowers the Authority to refuse to issue a principal excavation permit or principal emergency excavation permit;

(h) the new section 10E provides that upon the issuance or granting of the following---

(i) a principal excavation permit;

(ii) a principal emergency excavation permit;

(iii) an extension in respect of a principal excavation permit,

a secondary excavation permit is deemed to be issued or granted to a contractor who makes and maintains an excavation to which the above permit relates and the extension is deemed to be granted to the secondary excavation permit concerned;

(i) the new section 10F defines a nominated permittee by making reference to certain prerequisite acts that have to be performed by a permittee, a contractor who is nominated as a nominated permittee and the Authority before a contractor is regarded as a nominated permittee under the principal Ordinance;

(j) the new section 10G provides for the nomination, as well as the withdrawal of

- the nomination, of a contractor as a nominated permittee;
- (k) the new section 10H provides for the giving of consent by a contractor to be nominated as a nominated permittee and the giving of his agreement to comply with the conditions in a principal excavation permit or principal emergency excavation permit, and for the withdrawal of such consent and agreement;
- (l) the new section 10I empowers the Authority to approve the nomination of a contractor as a nominated permittee and to withdraw his approval if he is satisfied that the nominated permittee is incapable of complying with the conditions under the principal excavation permit or principal emergency excavation permit that are to be complied with by that nominated permittee;
- (m) the new section 10J provides for the mode of termination of a principal excavation permit and principal emergency excavation permit;
- (n) the new section 10K provides for the refund of daily fee and economic costs paid for an extension of a principal excavation permit in certain circumstances;
- (o) the new section 10L establishes a mechanism for the review of assessment on certain decision of the Authority;
- (p) the new section 10M provides for the establishment of a Review Board;
- (q) the new section 10N provides for the appointment of members for a Review Panel;
- (r) the new section 10O preserves the existing provision in section 9 of the principal Ordinance except transferring the duty to reinstate unleased land after excavation to a permittee of a principal excavation permit or principal emergency excavation permit;
- (s) the new section 10P preserves the existing provision in section 10 of the principal Ordinance except transferring the liability to reimburse the Authority for the costs of provision of safety facilities to a permittee of a principal excavation permit or principal emergency excavation permit;
- (t) the new section 10Q imposes a duty on a permittee and nominated permittee of a principal excavation permit or principal emergency excavation permit to provide safety precautions and support to adjacent structures or erections. It also provides a penalty for failure to observe that duty;
- (u) the new section 10R empowers the Director of Highways to designate any street maintained by the Highways Department as a strategic street, a sensitive street or a remaining street;
- (v) the new section 10S provides for the service of notice under new Part III of the principal Ordinance.
6. Clause 5 adds a new section (new section 16C) to provide for the use of computer records as evidence in proceedings.
7. Clause 6 amends section 18 of the principal Ordinance to preserve the existing

protection to the Government and the Authority against any claim for loss or damage. It further extends the protection to the Secretary for Works.

8. Clause 7 adds a new section (new section 18B) to provide for appeals to the Administrative Appeals Board against a decision of the Director of Highways under section 10L(12) of the principal Ordinance.

9. Clause 8 adds a new subsection to section 19 of the principal Ordinance to empower the Chief Executive in Council to fix the prescribed fee at a certain level, to provide for the payment of different fees in respect of matters or cases or streets of different classes or descriptions and for the payment of fees to be calculated in any manner as specified in the regulation.

10. Clause 9 amends the Schedule to the principal Ordinance to redefine the relevant authorities for the purposes of applications for principal excavation permits and principal emergency excavation permits in relation to different areas of unleased land.

11. Clause 10 sets out the transitional arrangements for---

- (a) existing excavations that are made pursuant to an excavation permit or an extension in respect of an excavation permit issued or granted on or before the commencement of this Ordinance;
- (b) excavations that will be made pursuant to an excavation permit or an extension in respect of an excavation permit the application for which is made before the commencement of this Ordinance and which is issued or granted on or after the commencement;
- (c) applications for excavation permits or extensions in respect of excavation permits that are made before the commencement of this Ordinance.

12. Clauses 11 and 14 amend the Land (Miscellaneous Provisions) Regulations (Cap. 28 sub. leg.) to specify the fees payable for---

- (a) the issue of and extension in respect of a principal excavation permit;
- (b) emergency excavation made or maintained during each initial period.

13. Clauses 12 and 13 make consequential amendments to the Land (Miscellaneous Provisions) Regulations.

14. Clauses 15 and 16 make consequential amendments to the Administrative Appeals Board Ordinance (Cap. 442) and the Tsing Ma Control Area (General) Regulation (Cap. 498 sub. leg.) respectively.