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**Legislative Council**

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**Paper for the House Committee meeting on 14 December 2018**

**Report of the Subcommittee on  
Land (Miscellaneous Provisions) (Amendment) Regulation 2018**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Land (Miscellaneous Provisions) (Amendment) Regulation 2018 ("the Subcommittee").

**Background**

2. According to the Administration, to improve the regulation of excavation works in unleased government land including streets maintained by the Highways Department ("HyD") and those other than streets maintained by HyD, the Administration introduced the Land (Miscellaneous Provisions) (Amendment) Bill 2002 ("the Amendment Bill")<sup>1</sup> to amend the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("the Ordinance") to introduce an excavation permit ("XP") system, which has been in operation since 1 April 2004. Under the XP system, different fees are payable for the issue of various types of XPs. Also, the XP system provides for the economic costs to be charged for extensions of the validity period of such XPs.<sup>2</sup> The relevant

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<sup>1</sup> The Amendment Bill was introduced into the Legislative Council on 24 April 2002 and passed on 14 May 2003.

<sup>2</sup> The economic costs for excavations on streets maintained by HyD prescribed in item 2(b) in Part I of Schedule 3 to the Land (Miscellaneous Provisions) Regulations (Cap. 28A) are based on assessment of the economic loss due to traffic delay in a carriageway caused by an excavation on a street.

fees and economic costs are specified in Schedule 3 to the Land (Miscellaneous Provisions) Regulations (Cap. 28A) ("the Regulations").

3. According to the Legislative Council ("LegCo") Brief (without file reference) issued by the Development Bureau ("DEVB") in October 2018 on the Land (Miscellaneous Provisions) (Amendment) Regulation 2018 ("the Amendment Regulation"), a review of the relevant fees and economic costs shows that the existing fees payable for the issue of various types of XPs are unable to recover the operating cost of the XP system at the 2018-2019 price level, and the existing economic costs are below the 2018-2019 price level. As such, the Administration has proposed that:

- (a) to achieve full-cost recovery gradually in accordance with the "user-pays" principle<sup>3</sup> and avoid steep fee increase, the fees payable for the issue of XPs be increased by 10% to 15%; and
- (b) to reflect the updated economic loss due to traffic delay caused by the excavations and to maintain sufficient incentive to the excavation permittees to complete their works as soon as possible, the economic costs payable for extension of the validity period of XPs be increased by 7% to 8%.

### **Land (Miscellaneous Provisions) (Amendment) Regulation 2018**

4. In the above connection, the Secretary for Financial Services and the Treasury has made the Amendment Regulation to revise eight fee items and three economic costs payable in respect of XPs relating to excavations in unleased government land under section 29A(1) of the Interpretation and General Clauses Ordinance (Cap. 1) by virtue of section 19 of the Ordinance.<sup>4</sup>

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<sup>3</sup> It is the Government's policy that fees charged by the Government should in general be set at levels sufficient to recover the full cost of providing the services.

<sup>4</sup> Under section 19 of the Ordinance, the Chief Executive in Council may make regulations to prescribe the fees and economic costs in relation to excavations under the Ordinance. Pursuant to section 29A(1) of Cap. 1, the Financial Secretary (which means also the Secretary for Financial Services and the Treasury by virtue of section 3 of Cap. 1) may by similar subsidiary legislation increase or decrease, or otherwise vary, the amount of the fees or charges as prescribed in such regulations.

The existing and revised fees and economic costs are listed in **Appendix I**. The relevant fees and economic costs were last revised in 2015.<sup>5</sup>

5. The Amendment Regulation was gazetted on 26 October 2018 (L.N. 205 of 2018) and tabled before LegCo at its meeting of 31 October 2018 for negative vetting. It will come into operation on 28 December 2018.

### **The Subcommittee**

6. At the House Committee meeting on 2 November 2018, Members agreed to form a subcommittee to study the Amendment Regulation. The membership list of the Subcommittee is in **Appendix II**. Under the chairmanship of Hon Abraham SHEK, the Subcommittee has held two meetings with the Administration to examine the Amendment Regulation.

7. To allow sufficient time for the Subcommittee to complete the scrutiny of the Amendment Regulation and compile a report to the House Committee, the Chairman moved a motion at the Council meeting of 21 November 2018 to extend the scrutiny period of the Amendment Regulation to the Council meeting of 9 January 2019. The motion was passed at the Council meeting of 21 November 2018.

### **Deliberations of the Subcommittee**

8. The Subcommittee in general supports the increases in the relevant fees and economic costs under the Amendment Regulation. In the course of deliberations, the Subcommittee has examined the assessment criteria for determining the validity period of an XP ("permit period"), the charging of economic costs for extension of the permit period, and measures to enhance management and monitoring of road excavation works.

#### Assessment criteria for determining the validity period of an excavation permit

9. The Subcommittee notes that an excavation promoter shall apply for an XP from HyD before making and maintaining excavations in unleased land which is a street maintained by HyD, and pursuant to section 10A(2) of the Ordinance, an XP shall be valid for the period specified therein. Given that

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<sup>5</sup> For details, please refer to the [LegCo Brief](#) on Land (Miscellaneous Provisions) (Amendment) Regulation 2015.

there are complaints from members of the public from time to time about frequent and prolonged road excavation works that cause disturbances, including inconvenience to the public and loss of business to roadside shops in the vicinity, the Subcommittee has examined the criteria adopted by HyD in determining the permit period, and whether such criteria are too relaxed. Members considered that allotting a reasonable permit period for completing the works can facilitate control of the duration of excavation and minimize disturbances to traffic network and road users.

10. The Administration has advised that HyD conducts permit period assessment ("PPA") in a fair and open manner to balance the interests of the industry and society. An XP applicant is required to submit a construction programme detailing the works activities for the proposed excavation works for HyD's approval. Generally, there are two types of construction programmes: (a) standard works programmes (i.e. common and less complex works such as laying utility pipes/ducts); and (b) non-standard works programmes (i.e. more complicated works such as the construction of footbridge foundations). For standard works programmes, the applicants should use the standard PPA templates provided in the XP Management System ("XPMS"), which is implemented by HyD for the management of XP applications, to generate their construction programmes for submission to HyD. In the case of non-standard works programmes, applicants must provide details of all construction works sequences/activities for HyD's approval.

11. The Subcommittee notes that the time required for each works activity for standard works programmes is pre-set in the standard PPA template for the specific type of excavation works concerned, whilst XPMS also allows the applicants to apply for a longer permit period based on certain engineering constraints, such as heavy traffic, rainy seasons and existing congested underground utilities. Also, the applicants should liaise with the Transport Department ("TD") and Hong Kong Police Force to seek traffic advice before carrying out road excavation works with a view to minimizing traffic disruption.

12. The Subcommittee also notes from the Administration that enhancements to the PPA process have been made over the years. HyD commissioned the Hong Kong University of Science and Technology and the Hong Kong Polytechnic University to review the PPA process and the two reviews were completed in 2012 and 2013 respectively. Following the reviews, the standard PPA templates for utility trench works were updated and additional standard PPA templates were adopted to cater for some common types of standard excavation works, such as geotechnical investigation works,

slope improvement works, and road resurfacing works. Other enhancements include shortening of the duration of works activities in the templates, elimination of unnecessary works activities, and introduction of concurrent programming of works activities in order to reduce the overall permit period. According to the Administration, as a result of these enhancements, the average permit period has shortened over the years. The average permit period in 2012, 2014, 2016 and 2017 were 88, 78, 67 and 65 days respectively.

#### Charging of economic costs for extension of permit period

13. The Subcommittee notes that under section 10A(3) of the Ordinance, HyD may extend the permit period on payment of the appropriate prescribed fee by the permittee, including a daily fee and economic costs for the whole duration of the extended period as set out in Part I of Schedule 3 to the Regulations. According to the Administration, in 2017, HyD issued around 20 000 XPs, and among which around 1 300 XPs were granted extension of the initial permit period. Members have asked about the current basis for the calculation of the economic costs and examined whether the charging of the economic costs at the increased rates under the Amendment Regulation can adequately serve to encourage excavation permittees to complete their excavation works as soon as possible and minimize the extension of XPs.

14. The Administration has advised that there are three levels of the charge of the economic costs based on the likely traffic impact caused by an excavation carried out on the respective category of streets maintained by HyD, namely, Category 1 – strategic streets, Category 2 – sensitive streets, and Category 3 – remaining streets.<sup>6</sup> For each category of streets, TD will conduct computer simulation on representative road sections and intersections to assess the delays caused by the excavation works to motorists. The delay is converted to an economic loss in dollars per day by application of the "value of time" factor used in the Comprehensive Transport Study of TD. The increases in the economic costs under the Amendment Regulation (i.e. \$23,600, \$9,120 and \$1,850 respectively for the three categories of streets) seek to reflect the updated economic loss to traffic delay caused by excavations and to maintain sufficient incentive to the excavation permittees to complete their works as soon as possible.

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<sup>6</sup> Under section 10U of the Ordinance, the Director of Highways may, by notice published in the Gazette, 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.

15. Members have suggested factoring in the inconvenience caused to the public and loss of business of the affected roadside shops in the vicinity in the calculation of the economic costs. The Administration has advised that the issue had been discussed by the Bills Committee then formed to scrutinize the Amendment Bill, but the current calculation criteria were instead adopted after in-depth discussion. The Administration has explained that excavation works on footpath would only affect relatively smaller parts of the street concerned, and their impact on roadside shops and pedestrians generally cannot be accurately or scientifically assessed. Further, the industry and their contractors would usually suitably schedule their works and take measures to avoid causing inconvenience to shop owners and pedestrians as far as possible, such as covering the excavation openings by temporary covers to maintain pedestrian flow.

16. The Subcommittee also notes that under section 10L of the Ordinance, the permittee may apply to HyD for a refund of the whole or any part of the economic costs paid for an extension of an excavation permit, if the extension is caused by reasons other than the fault of the permittee, its contractors and employees as specified under 10L(1)(b). Such reasons include, inter alia, inclement weather, suspension of excavation on order of the Government, and physical condition of the unleased land concerned which is not in existence at the time of the permit application. Before granting the refund, HyD must be satisfied that the reasons mentioned in the relevant refund applications have actually hindered the progress of the excavation to which the permit relates.

#### Measures to enhance management and monitoring of road excavation works

17. The Subcommittee is concerned that the extremely high density of underground utilities in Hong Kong has given rise to the high frequency of road excavation works. With a view to minimizing the impact of excavation works on the safety of pedestrians and motorists, as well as the business of the shop operators in the vicinity, members have asked about measures undertaken by HyD in addition to the XP system to enhance management and monitoring of such works. They have asked about the progress of HyD's follow-up actions in response to the recommendations made in Chapter 4 (Government's efforts in management excavation works on public roads) in Report No. 70 of the Director of Audit released in April 2018. In particular, members are keen to know whether the Administration would actively explore the use of common utility tunnels ("CUT") especially in new development areas.

18. The Subcommittee notes from the Administration that DEVB has issued a memo to remind government works departments to enhance site investigation to ascertain the underground conditions in particular at locations

of potential conflicts between utilities and the proposed excavation works; and HyD is exploring with the Lands Department to make use of the Geospatial Information Hub and GeoInfo Map for developing an effective management and monitoring system on underground space occupation. Also, HyD has enhanced the Audit Inspection Management System in July 2018 to improve the overall inspection coverage of XP sites, and has regularly compiled statistical data to closely monitor the submission of site photographs and test reports by utility undertakings for more efficient processing of Completion Notices. The Audit Inspection Team of HyD has stepped up inspection at permit sites and streamlined the referral procedures to promptly refer suspected cases of breaches of the provisions under the Ordinance to the Enforcement Team for immediate follow-up actions. Since 2012, a Demerit Point System ("DPS") with sanctioning measures for non-compliances of XP conditions has been in place, and new demerit point categories have been added to DPS in 2017.

19. As regards the implementation of CUT, HyD has advised that a feasibility study commenced in mid-2018. The main objectives of the study are to review the applicability of CUT in new development areas with respect to construction cost estimate, social and economic benefits, management, maintenance, operation, security, safety and legal liability issues for recommending a practical implementation framework of CUT in new development areas in Hong Kong. After the completion of the study, HyD will assist DEVB in establishing procedures for identifying suitable locations to construct CUT. For example, the Administration has initially identified the Lok Ma Chau Loop development area as a suitable location for trial implementation of CUT.

20. The Subcommittee has urged the Administration to keep the Public Accounts Committee ("PAC") informed of the progress made in implementing the recommendations of the said Director of Audit's report for PAC to continue to follow up on the relevant matters.<sup>7</sup>

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<sup>7</sup> PAC has asked for written responses from the Administration regarding the measures to improve the management and monitoring of road excavation works; measures to enhance the control of underground utility installation and space occupation; and the implementation of common utility enclosures. The consolidated replies from the Secretary for Development, Director of Highways, and Director of Lands are in Appendix 10 to [P.A.C. Report No. 70](#) tabled at the Council meeting of 11 July 2018.

### **Recommendation**

21. The Subcommittee has completed scrutiny of the Amendment Regulation. The Subcommittee generally supports the Amendment Regulation and will not propose amendments to the Amendment Regulation. The Subcommittee also notes that the Administration will not propose amendments to the Amendment Regulation.

### **Advice sought**

22. Members of the House Committee are invited to note the deliberations of the Subcommittee.

Council Business Division 1  
Legislative Council Secretariat  
12 December 2018



## Appendix I

### Revision of fees and economic costs for excavations in unleased land under the Land (Miscellaneous Provisions) Regulations (Cap. 28A)

Item	Fee Description	Existing Fee (\$)  (a)	Existing Cost Recovery Rate at 2018-2019 Price Level	New Fee (\$)  (b)	Amount of Increase (\$)  (b)-(a)	Percentage Increase  [(b)-(a)]/(a)	Cost Recovery Rate after Fee Adjustment
<b>A) Fees</b>							
1.	Issue or deemed issue of an excavation permit (per permit) for streets maintained by Highways Department ("HyD")	2,050	55%	2,360	<b>310</b>	15%	64%
2.	Issue or deemed issue of an excavation permit – daily fee for whole duration (per day) for streets maintained by HyD	35	68%	40	<b>5</b>	14%	78%
3.	Extension of an excavation permit (per extension) for streets maintained by HyD	650	56%	750	<b>100</b>	15%	65%
4.	Extension of an excavation permit – daily fee for whole extended period (per day) for streets maintained by HyD	35	68%	40	<b>5</b>	14%	78%
5.	Emergency excavation during the initial period (per emergency excavation) for streets maintained by HyD	2,050	55%	2,360	<b>310</b>	15%	64%
6.	Emergency excavation during the initial period – daily fee for whole duration (per day) for streets maintained by HyD	35	68%	40	<b>5</b>	14%	78%
7.	Issue or deemed issue of an excavation permit (per permit) for other than streets maintained by HyD	3,370	91%	3,700	<b>330</b>	10%	100%
8.	Extension of an excavation permit (per extension) for other than streets maintained by HyD	440	87%	485	<b>45</b>	10%	96%

Item	Fee Description	Existing Fee (\$) (a)	Existing Cost Recovery Rate at 2018-2019 Price Level	New Fee (\$) (b)	Amount of Increase (\$) (b)-(a)	Percentage Increase [(b)-(a)]/(a)	Cost Recovery Rate after Fee Adjustment
<b>B) Economic costs</b>							
9.	Extension of an excavation permit – economic cost for a strategic street – for the whole duration of the extended period (per day) for streets maintained by HyD	21,800	92%	23,600	<b>1,800</b>	8%	100%
10.	Extension of an excavation permit – economic cost for a sensitive street – for the whole duration of the extended period (per day) for streets maintained by HyD	8,540	94%	9,120	<b>580</b>	7%	100%
11.	Extension of an excavation permit – economic cost for a remaining street – for the whole duration of the extended period (per day) for streets maintained by HyD	1,710	92%	1,850	<b>140</b>	8%	100%

(Source: Annex I to the [Legislative Council Brief](#) issued by the Development Bureau in October 2018)

## Appendix II

### Subcommittee on Land (Miscellaneous Provisions) (Amendment) Regulation 2018

#### Membership list

**Chairman** Hon Abraham SHEK Lai-him, GBS, JP

**Members** Dr Hon CHIANG Lai-wan, SBS, JP  
Hon CHU Hoi-dick  
Hon CHEUNG Kwok-kwan, JP

(Total : 4 members)

**Clerk** Ms Doris LO

**Legal Adviser** Ms Clara TAM