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

Background brief

Purpose

This paper provides background information on the Land (Miscellaneous Provisions) (Amendment) Regulation 2018 ("the Amendment Regulation") which is proposed to be made for the revision of the excavation permit ("XP") fees and economic costs specified in Schedule 3 of the Land (Miscellaneous Provisions) Regulations (Cap. 28A) ("the Regulations"). The paper also summarizes the views expressed by Legislative Council ("LegCo") Members on the charging levels of XP fees and economic costs during past relevant discussions.

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, it introduced the Land (Miscellaneous Provisions) (Amendment) Bill 2002¹ to amend the Land (Miscellaneous Provisions) Ordinance (Cap. 28) ("the Ordinance") to introduce an XP system, which has come into operation since 1 April 2004. Under the XP system, a fee is payable for the issue of various types of XPs. Also, it provides for the economic costs to be charged

¹ The Land (Miscellaneous Provisions) (Amendment) Bill 2002 was introduced into LegCo on 24 April 2002 and passed on 14 May 2003.

for extensions of the validity period of such XPs.² The relevant fees and economic costs are specified in Schedule 3 of the Regulations.

3. As advised by the Administration in April 2018,³ a review of the relevant fees and economic costs payable has been carried out recently. The result 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 2018-2019 price level, and the existing economic costs are below the 2018-2019 price level. As such, the Administration has proposed that, (a) in order to achieve full-cost recovery gradually in accordance with the "user-pays" principle⁴ and to avoid steep fee increase, the fees payable for the issue of various types 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%.

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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.⁵

² The economic costs for excavations on streets maintained by HyD prescribed in item 2(b) in Part I of Schedule 3 to the Regulations are based on assessment of the economic loss due to traffic delay in a carriageway caused by an excavation on a street. According to the Administration, the charging of the economic costs aims to ensure the excavation permittees to complete their works as soon as possible.

³ Source: The Administration's information paper submitted to the Panel on Development on "Revision of Fees and Economic Costs for Excavations in Unleased Land under Land (Miscellaneous Provisions) Regulations (Cap. 28A)" ([LC Paper No. CB\(1\)829/17-18\(02\)](#))

⁴ 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.

⁵ 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 fee or charge as prescribed in such regulations.

Details of the proposed revisions are listed in Annex 1 to the [Legislative Council Brief](#) on the Amendment Regulation. The relevant fees and economic costs were last revised in 2015.⁶

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

Concerns and views expressed by Members

6. When the Bills Committee formed to scrutinize the Land (Miscellaneous Provisions) (Amendment) Bill 2002 considered the proposed charging system for street excavation works and received views from deputations on the legislative proposal, Members noted that utility undertakers and the construction industry were of the view that the proposed fees and the economic costs were too high.

7. The Administration advised that it was a long-established government policy of adopting the "user-pays" principle for setting government fees and charges to recover the full cost of the services provided. Further, all government fees and charges were subject to regular reviews to maintain the fees and charges at a full cost recovery level. If the performance of street excavation was improved in future, resulting in decrease in demand for monitoring and advisory service, the savings would be reflected in the fee review. As for the economic costs, the Administration considered that the proposed charge of economic costs affordable to those who were required to pay whilst maintaining the necessary deterrent effect.

8. At the Council meeting on 6 February 2013, a Council question was raised on the coordination of road excavation works.⁷ On the concern raised by some members of the public that various government departments and utility undertakings were often found to be carrying out road excavation works repeatedly on the same road sections, hence posing hazards to the safety of pedestrians and motorists as well as affecting the business of shop operators nearby, the Administration was asked whether it would consider introducing new measures (e.g. charging a fee for carrying out road excavation works) to

⁶ For details, please refer to the [Legislative Council Brief](#) on Land (Miscellaneous Provisions) (Amendment) Regulation 2015.

⁷ Please refer to the following hyperlink for the Council question raised by Dr Hon CHIANG Lai-wan on "Co-ordination of road excavation works" at the Council meeting on 6 February 2013 and the Administration's reply to the question:
<http://www.info.gov.hk/gia/general/201302/06/P201302060309.htm>

encourage government departments and utility undertakings to cooperate in coordinating the arrangements for carrying out excavation works. The Administration responded that it had introduced the charging system that charged more for longer works duration and sought recovery of economic costs from those permittees who had delayed their excavation works without justifiable reasons when the Ordinance was amended in 2004. Also, to reduce the chances of repeated opening on the same road section within a short period of time, HyD would check whether the same road section had undergone excavation works within the last three to six months through its computerized management system. In case repeated openings were spotted, HyD would request the applicant to change the proposed works commencement date. Moreover, HyD encouraged the trade to adopt trenchless excavation methods in their works to further reduce the impact on the surrounding environment and traffic.

9. When the Panel on Development ("the Panel") was consulted on the last proposed revisions in November 2014, members raised no questions about and did not object to the proposal. As regards the currently proposed revisions, an information paper ([LC Paper No. CB\(1\)829/17-18\(02\)](#)) was circulated to members of the Panel on 18 April 2018 and no requests had been received from members to discuss the matter at a Panel meeting.

Latest development

10. At the House Committee meeting held on 2 November 2018, Members agreed that a subcommittee should be formed to study the Amendment Regulation.

Relevant papers

11. A list of relevant papers with their hyperlinks is in the **Appendix**.

Appendix

Land (Miscellaneous Provisions) (Amendment) Regulation 2018

List of relevant papers

Council/Committee	Date of meeting	Paper
Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2002	--	Report of the Bills Committee [LC Paper No. CB(1)1547/02-03]
Panel on Development	24 April 2018	Administration's information paper on "Revision of Fees and Economic Costs for Excavations in Unleased Land under Land (Miscellaneous Provisions) Regulations (Cap. 28A)" [LC Paper No. CB(1)829/17-18(02)]
Council meeting	31 October 2018	Legislative Council Brief on Land (Miscellaneous Provisions) (Amendment) Regulation 2018
House Committee	2 November 2018	Legal Service Division Report on Subsidiary Legislation Gazetted on 26 October 2018 [LC Paper No. LS9/18-19]