

**BILLS COMMITTEE ON
LAND (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2002
MEETING ON 13 FEBRUARY 2003**

Follow-up to meeting on 20 January 2003

In the Bills Committee on Land (Miscellaneous Provisions) (Amendment) Bill 2002 on 20 January 2003, the Administration was requested to follow up on certain issues. The following are the information provided on these issues.

Question (a) To improve the drafting of the relevant provision on service of notice under the new section 10L so as to avoid possible disputes in future.

Answer (a) The Bill will be modified to require the serving of a notice under new section 10L in substitution of just the mentioning of some notification action in the previous version. A draft of the proposed amendment is attached at Annex 1 for the Bills Committee's consideration.

Annex 1

Question (b) To consider revising the new section 2A to the effect that an act or an omission by a public officer in contravention of Part III of the Bill could be stopped immediately through the proposed reporting mechanism.

Answer (b) We consider it necessary and logical to state in the legislation Secretary for the Environment, Transport and Works (SETW) should ascertain if there is really a contravention continuing by the public officer as alleged under subsection 2A(3), before he takes any steps to stop the contravention. Such ascertainment of the fact may be a simple investigation. We therefore propose to replace the word 'inquiry' in section 2A by 'investigation', as 'inquiry' may involve a hearing process, which is unnecessary just for stopping the continuation of the contravention.

All actions required in new Section 2A from SETW should be done without unreasonable delay. According to section 70 of Interpretation and General Clauses Ordinance, Cap 1, “where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises”.

We therefore consider it impractical and unnecessary to prescribe any time limit here as the nature of the cases may vary.

Question (c) To elaborate on the detailed procedures involved in an inquiry conducted by the Secretary for the Environment, Transport and Works and follow-up actions to be taken by the Secretary under the new sections 2A(4) and (5), including possible disciplinary actions against the concerned public officers.

Answer (c) We are preparing a framework of the procedures SETW will follow on receiving a report from the Authority about a contravention by a public officer or government department under new section 2A of the Bill. The draft of the proposed framework will be provided to the Bills Committee in the next meeting.

Question (d) To consider specifying a time limit in respect of the inquiry under the new section 2A(4).

Answer (d) See our answer to (b) above.

Question (e) To consider whether “查訊” was an appropriate Chinese rendition for the term “inquire” .

Answer (e) See our answer to (b) above.

Question (f) To consider improving the drafting of the Chinese rendition of the proposed Committee Stage amendment to the new section 10L(13) [根據第(12A)款作出或根據第(12A)款被視為路政署署長的決定的決定是最終的決定...].

Answer (f) The Chinese rendition of the proposed Committee Stage Amendment to the new section 10L(13) has been revised. A draft of the proposed revised amendment is attached at Annex 1 for the Bills Committee's consideration.

Question (g) To report on the deliberations and outcome of the latest round of consultation with utility undertakers on the Bill.

Answer (g) We consulted the utility undertakers, The Hong Kong Construction Association and Hong Kong General Building Contractors Association on 24 January 2003 about the Committee Stage Amendments (CSA) so far proposed up to 20 January 2003, and other future operational matters of the scheme such as payment arrangement and method of dealing with minor works. Essentially, they have no objection on the principles of CSA and they are satisfied with the administrative arrangements proposed on those operational matters. We discussed about some improvements to the Bill as summarized below:

- (i) In the proposed Committee Stage Amendments on new section 10Q(4)(b), the utility undertakers pointed out that it was not the normal practice for the 'competent person' to personally conduct daily inspections. An inspection system controlled by such competent person would be more realistic. That view is not unreasonable. A draft of the proposed revised amendment is attached at Annex 1 for the Bills Committee's consideration.

- (ii) Following from (i) above, the utility undertakers pointed out that not all excavations warrant the use of architects, surveyors and engineers, and in some smaller excavations a registered safety officer should suffice. We agreed with that view. A draft of the proposed revised amendment is attached at Annex 1 for the Bills Committee's consideration.

- (iii) There was also a consensus that it was necessary to state the other grounds an excavation permit should not be granted in addition to those already in new section 10D of the Bill, such as in a newly constructed road or where the application was unreasonable. On provision of a minimum processing time by the Authority of applications, the utility undertakers considered it reasonable to have such an arrangement, but were worried about last minute applications for extensions due to some unforeseeable circumstances may be impeded. We agreed that if they paid the fees together with their applications for extension (as against on issue of the extension), then their permit could be deemed to be extended on receipt of the application by the Authority. The applicant will be advised of the final decision on their application and any excess fees will be refunded. The utility undertakers were satisfied with such an arrangement. A draft of the proposed amendment is attached at Annex 1 for the Bills Committee's consideration.

- (iv) The current drafting of new section 10L(13) and new section 18B(1) about decision on refund of economic cost can be replaced by more concrete description of decisions under particular sections in the Bill. Out of the two essential elements of the calculation of economic costs, namely assessment of initial period,

and extension of time, we proposed only assessment of extension of time should be allowed to the Administrative Appeals Board. There was no in-principle objection from the utility undertakers, but they indicated that they would like to see the drafting. A draft of the proposed amendment which was circulated amongst the utility undertakers is attached at Annex 1 for the Bills Committee's consideration.

Question (h) To provide information on the proposed honorarium and guiding principles for the determination of honorarium for members of the Review Board under the new section 10M.

Answer (h) Financial Circular No. 7/2000 on "Remuneration of Non-Official Members of Boards and Committee" provides guidance about the determination of honorarium for members of the Review Board under new section 10M. According to Finance Bureau Circular Memorandum No. 7/2002, the current ceiling is \$715 per member per attendance. A copy of the relevant documents are attached as Annex 2 and Annex 3 for Members' information.

Annex 2

Annex 3

Question (i) To consider replacing the terms "other persons" or "persons" under the new sections 10M and 10N with "non-public officers" so as to reflect clearly the intent of the provisions.

Answer (i) For new section 10M, our original intention is to allow Director of Highways to appoint 3 other persons who may or may not be public officers. We have reviewed Members' suggestion, and propose to retain this discretion, but require Director of Highways to ensure that the majority of the Board should not be public officers so that he can hear more outside views.

Also, we have consolidated new sections 10M and 10N as a single new section 10M, and the relationship between the review board and review panel is stated in new section 10M(1). In new section 10M(2), we have stated it clearly that all panel members should not be public officers. (The Chinese term for “Review Panel” is revised with “覆核小組” replaced by “覆核委員會”).

A draft of the proposed amendment is attached at Annex 1 for the Bills Committee’s consideration.

Question (j) To consider defining the relationship between the Review Board and the Review Panel in the new section 10N, and reviewing the appropriateness of using the heading “Review Panel” in the new section 10N, given that the Review Panel merely served to provide a pool of talent for subsequent appointment to the Review Board.

Answer (j) See our answer to (i) above.

**ETWB
28 January 2003**

NFSIU/LANDCSA/#69291V11.doc
1st draft: 29.11.2002
1st draft (revised): 02.12.2002
2nd draft: 13.01.2003
2nd draft (revised): 14.01.2003
3rd draft : 28.01.2003
3rd draft (revised): 06.02.2003
3rd draft (2nd revised): 08.02.2003
3rd draft (3rd revised): 10.02.2003

LAND (MISCELLANEOUS PROVISIONS)(AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary
for the Environment, Transport and Works

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By adding "the Environment, Transport and" before "Works".
2	(a) In <u>paragraph (a)</u> , by deleting the proposed definition of "excavation permit" and substituting - "excavation permit" (挖掘准許證) means an excavation permit issued under <u>section 10A</u> ;"
	(b) In <u>paragraph (b)</u> - (i) in the proposed definition of "contractor", by deleting " a principal excavation permit or principal" and substituting "an excavation permit or"; (ii) by deleting the proposed definition of "emergency excavation permit" and substituting -

"emergency excavation permit (緊急挖掘
准許證) means an emergency
excavation permit issued under
section 10B";

- (iii) in the proposed definition of
"permittee", by deleting "a principal
excavation permit or principal" and
substituting "an excavation permit or";
- (iv) by deleting the proposed definitions of
"principal emergency excavation
permit", "principal excavation permit",
"secondary emergency excavation
permit" and "secondary excavation
permit".;
- (v) in the proposed definition of "Review
Board", by deleting "established" and
substituting "constituted".

3 By deleting the proposed section 2A(3) and (4) and
substituting -

"(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 -

- (a) report the matter to the Secretary for
the Environment, Transport and Works;

and

(b) in the report, advise him, that the act or omission has, as the case may be -

(i) been terminated to the Authority's satisfaction;
or

(ii) not been terminated to the Authority's satisfaction.

(4) On receiving a report under subsection (3) where paragraph (b)(ii) of that subsection is applicable, the Secretary for the Environment, Transport and Works shall investigate the matter to which the report relates and ascertain if the public officer concerned is continuing to contravene Part III or has stopped the contravention.

(5) If an investigation under subsection (4) shows that the public officer concerned is continuing to contravene Part III, the Secretary for the Environment, Transport and Works shall ensure that the best practicable steps are taken to -

(a) stop the contravention; and

(b) avoid the recurrence of any like contravention if he considers that the public officer concerned or any other public officer, is likely to commit the

like contravention.

(6) If -

(a) either -

(i) a report under subsection (3) is received where paragraph (b)(i) of that subsection is applicable; or

(ii) an investigation under subsection (4) shows that the public officer concerned has stopped the contravention; but

(b) the Secretary for the Environment, Transport and Works considers that the public officer concerned or any other public officer, is likely to commit a like contravention,

then the Secretary for the Environment, Transport and Works shall ensure that the best practicable steps are taken to avoid the recurrence of the like contravention."

4

(a) By deleting the proposed section 9 and substituting -

"9. Application of certain provisions

"(1) Section 10B, 10C, 10D(1A), 10E,

10K(1), (3) and (4), 10L, 10M, 10R, 18B and 18C only apply in the case of an excavation in a street.

(2) Section 10K(2) only applies in the case of an excavation which caused traffic delay in a carriageway."

(b) In the proposed section 10 -

(i) by deleting subsections (1) and (2) and substituting -

"(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) either -

(i) he is the holder of an excavation permit or emergency excavation permit; or

(ii) he is the contractor

of 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 -

(a) the holder of an
excavation permit
or emergency
excavation permit;
or

(b) the contractor of
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." ;

(ii) in subsection (3), by deleting

"issued to him";

(iii) in subsection (4)(a), by deleting

"a principal excavation permit or

principal" and substituting "an

excavation permit or";

(iv) in subsection (5)(a), by deleting

"a principal excavation permit or

principal" and substituting "an

excavation permit or";

(v) in subsection (7), by deleting "a

principal excavation permit or

principal" and substituting "an

excavation permit or".

(c) In the proposed section 10A -

(i) in the heading, by deleting

"principal";

(ii) in subsection (1), by deleting "a

- permit, to be known as the
principal" and substituting "an";
- (iii) in subsection (2), by deleting "A
principal" and substituting "An";
 - (iv) in subsection (3), by deleting "a
principal" and substituting "an";
 - (v) in subsection (4) -
 - (A) in paragraph (a), by deleting
"a principal" and
substituting "an";
 - (B) by deleting paragraph (b) and
substituting -
 - "(b) the permittee
of the permit
is unable to
have access
to a
reasonably
substantial
portion of
the land
concerned for
the purpose
of making or
maintaining

the
excavation,
after the
commencement
of the period
for which the
permit is
valid but
before the
commencement
of the
excavation,
for reason
other than
the fault of
the permittee,
the
contractor
for the
excavation or
their
employees, ".

- (d) In the proposed section 10B -
- (i) in the heading by deleting "principal";
 - (ii) in subsection (1), by deleting "a permit,

to be known as the principal" and substituting "an";

(iii) in subsection (2), by deleting "A principal" and substituting "An";

(iv) in subsection (3), by deleting "a principal" and substituting "an";

(v) in subsection (7) -

(A) in paragraph (a), by deleting "a principal" and substituting "an";

(B) by deleting paragraph (b) and substituting -

"(b) the permittee of the permit is unable to have access to a reasonably substantial portion of the land concerned for the purpose of making or maintaining the excavation, after the date of the report of the emergency incident concerned to the

Authority under
subsection (3) but
before the
commencement of the
excavation, for
reason other than
the fault of the
permittee, the
contractor for the
excavation or their
employees,".

- (e) In the proposed section 10C -
- (i) in subsection (1), by deleting "a principal" where it twice appears and substituting "an";
 - (ii) in subsection (2) -
 - (A) by deleting "a principal" and substituting "an";
 - (B) by deleting "the principal" wherever it appears and substituting "an";
 - (iii) in subsection (3), by deleting "a principal" and substituting "an";
 - (iv) in subsection (4), by deleting "a principal" and substituting "an";

(v) in subsection (5), by deleting "a principal" and substituting "an".

(f) In the proposed section 10D -

(i) by deleting subsection (1) and substituting -

"(1) The Authority may refuse to issue an excavation permit or emergency excavation permit if -

(a) he reasonably believes that the person making the application for the issue of the permit -

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

land;

(ii) cannot
comply
with the
conditions
imposed
under the
permit;

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

(b) in the opinion of
the Authority,
the application
to which the
permit relates is

unreasonable;

- (c) having regard to the circumstances of the case, the issue of the permit is, in the opinion of the Authority, inappropriate in such circumstances.

(1A) In addition to the grounds specified in subsection (1), the Authority may -

- (a) refuse to issue an excavation permit or emergency excavation permit if -

- (i) the person who makes the application for the issue of the

permit fails
to submit
the
application
within the
time limit
specified by
the
Authority
under
section 18C;
or

(ii) the street to
which the
permit
relates is a
newly
constructed
street
specified by
the Authority
under section
18C;

(b) refuse to extend
the period for

which an excavation permit is valid if the person who makes the application for the extension fails to submit the application within the time limit specified by the Authority under section 18C.";

(ii) in subsection (2), by adding "or extend the period for which a permit is valid" after "permit".

(g) By deleting the proposed section 10E and substituting -

"10E. Late application for extension of excavation permit

(1) Without prejudice to section 10D(1A), where -

(a) a permittee applies for an extension of the validity period of an excavation permit beyond

the time limit specified for such excavation under section 18C but before the expiry date of the permit;

(b) the application is accompanied by the appropriate prescribed fee based on the duration of the period applied for by the permittee; and

(c) the Authority has not made his decision on or before the expiry date of the permit,

the permit shall, unless sooner terminated under this Ordinance and subject to subsection (2), be deemed to be extended up to the expiry of the period applied for by the permittee.

(2) The Authority shall determine the period for which an excavation permit deemed to be extended under subsection (1) shall be valid and may revise the expiry date of the permit to a date which is earlier than the expiry date in subsection (1).

(3) The Authority shall serve a notice of his determination under subsection (2) on the permittee concerned.

(4) If the period determined by the Authority under subsection (2) is shorter than the period applied for by the permittee concerned, he shall refund any extra prescribed fee to the permittee without interest."

(h) In the proposed section 10F, by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".

(i) In the proposed section 10G -

(i) in subsection (1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";

(ii) in subsection (2), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".

(j) In the proposed section 10H -

(i) in subsection (1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";

(ii) in subsection (2), by deleting "a principal excavation permit or principal" and substituting "an

excavation permit or".

(k) In the proposed section 10I(2), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".

(l) In the proposed section 10J -

(i) in subsection (1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";

(ii) in subsection (2), by deleting "A principal excavation permit or principal" and substituting "An excavation permit or";

(iii) by deleting subsection (3);

(iv) in subsection (4), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";

(v) in subsection (5), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".

(m) In the proposed section 10K -

(i) in the heading, by deleting "principal";

(ii) in subsection (1) -

- (A) by deleting "a principal" and substituting "an";
 - (B) in paragraph (a)(i), by deleting "principal";
 - (iii) in subsection (2)(a), by deleting "a principal" and substituting "an".
- (n) In the proposed section 10L -
- (i) in subsection (1) -
 - (A) in paragraph (a), by deleting "a principal" and substituting "an";
 - (B) by deleting paragraphs (c) and (d) and substituting -
 - "(c) the duration of an extended period of an excavation permit extended under section 10A(3) if he exercises the Director of Highways' power under that section;
 - (d) the duration of an extended period of an excavation permit extended under section 10A(4) if he exercises the Director of Highways' power under that section;
 - (e) the duration of an extended

period of an excavation permit extended under section 10C(4) if he exercises the Director of Highways' power under that section;

(f) the duration of an extended period of an excavation permit extended under section 10E(2) if he exercises the Director of Highways' power under that section;

(g) whether an extension is caused by reasons mentioned in section 10K(1)(b) if he exercises the Director of Highways's power under that section 10K(1);

(h) whether the reasons mentioned in section 10K(1)(b) hindered the progress of an excavation to which the excavation permit relates if he exercises the Director of Highway's power under section 10K(1);

- (i) whether a permittee has satisfied the matters in section 10K(2)(a), (b) and (c) if he exercises the Director of Highways' power under section 10K(2).";
- (ii) by deleting subsection (2) and substituting -
 - "(1A) The Engineer who made an assessment under subsection (1) shall serve a notice of the result of his assessment on the permittee concerned.
 - (2) A permittee who is aggrieved by an assessment made in respect of him under subsection (1) may -
 - (a) within 28 days from the date of service of the notice under subsection (1A), 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;

(b) set out the result of his own assessment in an application made under paragraph (a)."

(iii) in subsection (3), by deleting "notify the permittee concerned of the result of his review" and substituting "serve a notice of the result of his review on the permittee concerned";

(iv) by deleting subsection (5) and substituting -

"(5) After receipt of an application under subsection (2), if the Chief Engineer fails to serve a notice of the result of his review on the permittee concerned within the time specified in subsection(3), then -

(a) where subsection (2)(b) is applicable, the

result of the
permittee's assessment
shall be taken to be the
result of the Chief
Engineer's review; or

- (b) in any other case, the
assessment made by the
Engineer under
subsection (1) on the
subject matter of the
application shall be
taken to be the result of
the Chief Engineer's
review,

and the Chief Engineer may, in
accordance with the result of the
review, exercise any of the powers
conferred on him under subsection
(4).

(5A) A permittee who is
aggrieved by a decision made in
respect of him under subsection (4)
may -

- (a) within 28 days from the
date of service of the

notice under subsection (3), apply in writing to the Director of Highways for a review of the Chief Engineer's decision;

(b) set out the result of his own assessment in an application made under paragraph (a)."

- (v) in subsection (6), by deleting "(5)" and substituting "(5A)";
- (vi) in subsection 7, by deleting "(5)" and substituting "(5A)";
- (vii) in subsection (10)(b), by deleting "notify the applicant of his decision" and substituting "serve a notice of his decision on the applicant";
- (viii) in subsection (12)(b), by deleting "(5)" and substituting "(5A)";
- (ix) by adding -
 - "(12A) After receipt of an application under subsection (5A), if the Director of Highways fails to serve a notice of his decision on the applicant within the time

specified in subsection (10)(b),

then -

(a) where subsection (5A)(b)

is applicable, the

result of the

permittee's assessment

shall be taken to be the

decision of the Director

of Highways; or

(b) in any other case, the

decision made by the

Chief Engineer under

subsection (4) on the

subject matter of the

application shall be

taken to be the decision

of the Director of

Highways,

and the Director of Highways may,

in accordance with the decision,

exercise any of the powers

conferred on him under subsection

(12).";

(x) by deleting subsection (13) and

substituting -

"(13) Except a decision relating to an assessment made under subsection (1)(d), (g), (h) or (i), the following decision shall be final -

(a) any decision made under subsection (12), or

(b) any decision taken to be the decision of the Director of Highways under subsection (12A)."

(o) By deleting the proposed section 10M(1), (2), (3) and (4) and substituting -

"(1) The Secretary for the Environment, Transport and Works may appoint a panel of not more than 20 persons ("the Review Panel") whom he considers suitable to sit as members of a Review Board to advise the Director of Highways on an application for a review of the Chief Engineer's decision under section 10L(5).

(2) The Secretary for the Environment,

Transport and Works shall not appoint any public officer to the Review Panel.

(3) 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 the Environment, Transport and Works.

(4) On receipt of an application for a review of the Chief Engineer's decision under section 10L(5), the Director of Highways shall notify the Secretary for the Environment, Transport and Works and -

- (a) subject to subsections (4A) and (4B), the Secretary shall after such notification nominate not less than 3 but not more than 5 persons to constitute a Review Board to advise the Director of Highways on the application; and
- (b) the Director of Highways shall

be the Chairman of the Review Board.

(4A) The Secretary for the Environment, Transport and Works shall nominate -

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

(4B) The majority of the persons constituting a Review Board, excluding the Chairman, shall be persons other than public officers.

(4C) The Secretary for the Environment, Transport and Works shall not nominate a person to sit as a member of the Review Board if that person has a direct or indirect interest in the review concerned."

- (p) By deleting the proposed section 10N.
- (q) In the proposed section 100(1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".

(r) In the proposed section 10P, by deleting "a principal excavation permit or principal" and substituting "an excavation permit or".

(s) In the proposed section 10Q -

(i) in subsection (1), by deleting "a principal excavation permit or principal" and substituting "an excavation permit or";

(ii) by deleting subsection (2) and substituting -

"(2) Where there is a permittee and no nominated permittee and subsection (1) is contravened, the permittee shall be guilty of an offence and shall be liable on conviction to a fine of \$200,000.

(2A) Where there is a permittee and a nominated permittee and subsection (1) is contravened, both the permittee and the nominated permittee shall each be guilty of an offence and shall each be liable on conviction to a fine of \$200,000.";

(iii) in subsection (3), by adding "or (2A)"
after "(2)";

(iv) by adding -

"(4) A court, in making a
decision on the defence provided
under subsection (3), may take into
consideration that a person
charged with an offence under
subsection (2) or (2A) has -

(a) hired a competent
person to supervise
the excavation
concerned;

(b) a documented system
for supervising the
excavation
concerned,
including but not
limited to a system
which -

(i) is
managed
by a
competent
person;

and

(ii) requires inspection of the excavation to ensure compliance with duties imposed under subsection (1) and record of such inspection;

(c) a documented system to ensure his contractor complies with the duties imposed under subsection (1).

(5) For the purpose of subsection (4), "competent person" (合資格人士) means a person who is registered as -

- (a) a registered architect under the Architects Registration Ordinance (Cap. 408);
- (b) a registered professional engineer under the Engineers Registration Ordinance (Cap. 409) and is within a discipline which is relevant to the excavation concerned;
- (c) a registered professional surveyor under the Surveyors Registration Ordinance (Cap. 417) and is within a discipline which is

relevant to the
excavation

concerned; or

- (d) a safety officer
under the Factories
and Industrial
Undertakings
(Safety Officers and
Safety Supervisors)
Regulation (Cap. 59
sub. leg.) and -

- (i) where
subsection
(4)(a) is
applicable,
has at least 3
years
experience in
supervising
excavation
which is
similar to
the
excavation
concerned; or

(ii) where
subsection
(4)(b)(i) is
applicable,
has at least 3
years
experience in
managing
documented
system which
is similar to
the system
described in
that
subsection."

- 6 (a) By deleting paragraph (a) and substituting -
 "(a) in subsection (1), by deleting "8 or 12"
 and substituting "10, 10A, 10B, 10C, 10D,
 10E, 10I, 10J, 10K, 10L, 10O, 10P, 10R, 12
 or 18C";
- (b) In the proposed section 18(1A) -
 (i) by adding "the Environment, Transport
 and" before "Works";
 (ii) by deleting "or 10N".
- 7 (a) In the proposed section 18B -

- (i) in subsection (1), by deleting "the refund of economic costs" and substituting "an assessment made under section 10L(1)(d), (g), (h) or (i)";
- (ii) in subsection (2), by deleting everything after "days" and substituting "from the date of service of a notice of the decision on the aggrieved person";
- (iii) in subsection (3), by deleting "economic costs" and substituting "prescribed fee".

(b) By adding -

"18C. Authority's power to specify time limit and newly constructed street

(1) The Authority may, by notice in the Gazette, specify -

- (a) the time limit for the submission of an application for -
 - (i) the issue of an excavation permit or emergency excavation permit in relation to an excavation or any class of excavation;
 - or

(ii) the extension of the period for which an excavation permit is valid in relation to an excavation or any class of excavation;

(b) a street or any class of streets as a newly constructed street or a class of newly constructed streets and the duration for which and the extent to which such street or such class of streets, as the case may be, shall not be used for any excavation.

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

9(b) In the first column -

(a) by deleting "10D(2)" and substituting "10D(1A), 10D(2), 10E(1), 10E(2) and 10E(3)";

(b) by adding "18C(1)" after "16C(2)".

11 In the proposed section 3A -

(a) in the heading, by deleting "principal" where it twice appears;

(b) in subsection (1), by deleting "a principal" and substituting "an".

14 In the proposed Schedule 3 -

- (a) in Part I -
 - (i) in the heading, by deleting "PRINCIPAL";
 - (ii) in item 1 -
 - (A) by deleting "a principal" and substituting "an";
 - (B) by deleting "the principal" and substituting "the";
 - (iii) in item 2, by deleting "a principal" and substituting "an";
- (b) in Part II -
 - (i) in the heading, by deleting "PRINCIPAL";
 - (ii) in item 1, by deleting "a principal" and substituting "an";
 - (iii) in item 2, by deleting "a principal" and substituting "an".

15 By deleting "the refund of economic costs" and substituting "an assessment made under section 10L(1)(d), (g), (h) or (i)".

16 By deleting "a principal" where it twice appears and substituting "an".

FIN 96/2/1 II

**FINANCE BUREAU
GOVERNMENT SECRETARIAT
24 July 2000**

FINANCIAL CIRCULAR NO. 7/2000

**Remuneration of Non-official Members of
Boards and Committees**

(Note : Distribution of this Circular is **Scale C**. It should be read by Bureau Secretaries, Controlling Officers, Departmental Secretaries and Accountants, and by all other officers dealing with financial matters.)

This circular reminds bureaux and departments of the principles and guidelines for remunerating non-official members of boards and committees set up by the Government. It replaces Financial Circular No. 7/93.

Principles governing the remuneration of non-official members of Government boards and committees

2. The basic principle is that the service of non-official members is voluntary and, as a general rule, un-remunerated. However, at the same time, no individual should suffer a pecuniary embarrassment through public service nor should the Government be obtaining the services of highly qualified, professional persons "on the cheap". Finance Committee at its meeting on 5 March 1993 reaffirmed these principles.

/Guidelines

To: Policy Secretaries
Controlling Officers

Guidelines for remunerating non-official members of Government boards and committees

3. Given the large number of boards and committees carrying out varied functions and duties and the fact that the workload and demand on non-officials' time also vary considerably, it is not appropriate for us to mandate the payment of honorarium to non-official members of all boards and committees. Instead, Bureau Secretaries and Controlling Officers should observe the following guidelines in considering whether an honorarium should be paid –

- (a) payment of honorarium should be considered to cover travel, out-of-pocket and related expenses incurred by non-official members in connection with their duties. The frequency and location of meetings as well as secretarial support when required should be taken into account;
- (b) remuneration should be considered as compensation for earnings forgone arising from -
 - (i) resignation from substantive employment in order to serve on a Government board or committee; or
 - (ii) membership of a committee which requires substantial and regular work by the member to the extent that it occupies a significant part of the member's working day;
- (c) while advice tendered by non-officials which is of an expert or professional nature per se should not constitute a claim for remuneration, recognition should be given to professional expertise and experience required of the non-officials in performing the function of the board or committee, for example, in chairing appeal boards.

4. In an ad hoc Subcommittee of the Legislative Council set up earlier this year to study the current arrangements for remunerating non-official members serving on Government boards and committees, Members expressed concern over the apparent lack of consistency in the granting of honorarium to non-official members of these boards and committees. To address this concern, Controlling Officers are requested to review from time to time whether non-official members serving on Government boards and committees under their purview should be remunerated and consciously consider the issue of remuneration in the setting up of new boards and committees.

/Procedural

Procedural arrangements and rates of remuneration

5. Bureau Secretaries should consider whether remuneration is necessary and appropriate having regard to the foregoing principles and guidelines. They should consult as necessary the Chairman (where he or she is a non-official) as well as obtain the views of the Head of Department concerned. They should also make reference to existing remuneration arrangements in respect of other boards and committees performing similar functions. Where the Bureau Secretary is satisfied that remuneration is appropriate, he should put a case, with a suggested rate and an indication of availability of funds, to the Secretary for the Treasury for consideration.

6. The Secretary for the Treasury has been delegated the authority by Finance Committee to approve remuneration subject to a ceiling. This ceiling is regularly revised with reference to the movement of the Consumer Price Index (C) and announced by way of a Finance Bureau Circular Memorandum. The ceiling, with effect from 1 August 2000, will be \$745 per member per attendance. A per-attendance rate is used if the number of attendance is small, e.g. four to five times monthly. If attendance is more frequent, a monthly honorarium based on the per-attendance rate may be more appropriate.

7. There are cases where rates higher than the ceiling are more appropriate. Such higher rates are often justified on grounds that the business of the board or committee is very time-consuming and calls for substantial sacrifice on the part of the chairman or members in terms of earnings forgone. In other cases, professional experience and expertise are required and should be appropriately recognised. Such higher rates of remuneration require the approval of Finance Committee on a case-by-case basis.

8. To facilitate bureaux and departments in considering and proposing an appropriate rate of remuneration for non-officials and to ensure greater consistency throughout the Government in this regard, we have posted on FB's webpages (<http://www.info.gov.hk/fb>) in the Internet all the approved rates for easy reference. Our colleagues in the respective Resource Divisions are also happy to assist. Bureaux and departments are requested to keep FB informed of any changes for updating the webpages.

/Remuneration

Remuneration for members of financially autonomous public bodies and statutory bodies with arrangements for remuneration specified under the relevant legislation

9. Some boards and committees, though appointed by Government, are not subject to the above system of approving remuneration to their Chairman and members. These include

- (a) financially autonomous non-government funded public bodies such as the Airport Authority, Housing Authority, KCRC and Examinations Authority; and
- (b) statutory bodies such as the HKSAR Passports Appeal Board, Electoral Affairs Commission and Copyright Tribunal whose Chairman's and members' remuneration are governed by specific provisions in the respective legislation.

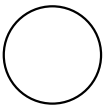
Trading funds

10. This circular also applies to trading funds.

Enquiries

11. For enquiries on this circular, please contact Mr. K K Lam, Principal Executive Officer (G) on 2810 2668 or Miss Pat Chung, Treasury Officer (Bureau Management) on 2810 2567.

MISS DENISE YUE
Secretary for the Treasury



M E M O

Annex 3

附件3

From Secretary for the Treasury

Ref. (49) in FIN CR 24/581/78 Pt. 11

Tel. No. 2810 2540

Fax No. 2596 0729 *Total Pages:* 1

Date 3 June 2002

To Bureau Secretaries & Controlling Officers

(Attn. : _____)

Your Ref. _____ *in* _____

Dated _____ *Fax No.* _____

**Revision of Remuneration of Non-official Members of
Boards and Committees**

Financial Circular No. 7/2000 reminds bureaux and departments of the principles and guidelines for remunerating non-official members of boards and committees set up by the Government. It also sets out the **maximum** rate of remuneration which can be approved administratively. The maximum rate is to be adjusted in accordance with the movement of the Consumer Price Index (C). This rate is at present \$735 per member per attendance.

2. Having regard to the movement of the Consumer Price Index (C) between April 2001 (98.5) and April 2002 (95.7), I have approved the downward adjustment of this **maximum** rate of remuneration by about 2.7% to **\$715** per member per attendance with effect from **1 August 2002**. Accordingly, Controlling Officers should ensure that non-officials receiving the maximum rate of remuneration are paid at \$715 per member per attendance from 1 August 2002 onwards. Controlling Officers should explain the rationale for the adjustment to those affected by this revision.

3. Where the current remuneration rates are below \$715 per member per attendance, Controlling Officers may exercise discretion on whether to make similar adjustments to these rates.

4. The revision in para. 2 above applies only to remuneration approved administratively under FC No. 7/2000 and paid out from the General Revenue Account. It does not apply to remuneration above the ceiling and approved by Finance Committee or by a designated public officer under the respective legislation. Bureaux and departments are, however, requested to consider whether similar adjustments should be made in respect of these cases.

(Miss Denise Yue)
Secretary for the Treasury