

**LAND (MISCELLANEOUS PROVISIONS)  
(AMENDMENT) ORDINANCE 2003**

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

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ORDINANCE NO. 17 OF 2003

L.S.

TUNG Chee-hwa  
Chief Executive  
22 May 2003

An Ordinance 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 2003.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and 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 an excavation permit issued under section 10A;”;

(b) by adding—

““contractor” (承判商), for an excavation or emergency excavation to which an excavation permit or 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 an emergency excavation permit issued under section 10C;
- “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 10G;
- “permittee” (持准許證人) means the holder of an excavation permit or emergency excavation permit;
- “Review Board” (覆核委員會) means the Review Board constituted under section 10O;”.

### 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—

- (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. 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 10C(3);
- “Secretary” (局長) means the Secretary for the Environment, Transport and Works;
- “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**

- (1) Sections 10C, 10D, 10E(2), 10F, 10L, 10M, 10N, 10O, 10P, 10U, 18B and 18C only apply in the case of an excavation in a street.
- (2) Sections 10B and 10R only apply in the case of an excavation in unleased land, other than streets.

**10. Control of excavations in unleased land**

- (1) Except under and in accordance with a prospecting licence, mining licence or sand removal permit, or a lease, licence, deed of appropriation, memorandum of appropriation or engineering conditions for land allocation, issued by the Director of Lands, 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 or 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 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 an excavation permit or 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 an excavation permit or 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 an excavation permit or 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 excavation permit**

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

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

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

(4) Where—

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

(b) the permittee of the permit is unable to have access to—

(i) a reasonably substantial portion of the street 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; or

(ii) a reasonably substantial portion of the land concerned, other than a street, for the purpose of making or maintaining the excavation, after the commencement of the period for which the permit is valid, 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) Subject to section 10L, any prescribed fee paid under subsection (1) is not refundable.

### **10B. Exemption**

(1) Any person who intends to make and maintain an excavation in unleased land may apply to the Authority in writing to exempt the excavation from complying with all or any provision of this Part and shall set out the reasons for the application.

(2) On receipt of an application made under subsection (1), the Authority may by notice in writing exempt the excavation referred to in the application from all or any provision of this Part if the Authority is of the opinion that the excavation—

- (a) is minor;
- (b) will not involve or is unlikely to involve lateral support or substantial work in terms of the extent, duration and size of the excavation and the area that will be or is likely to be affected by the excavation;
- (c) will not cause or is unlikely to cause any inconvenience or danger to the public;
- (d) will not cause or is unlikely to cause any delay to traffic; and
- (e) will not pose or is unlikely to pose a danger to any underground apparatus or properties.

#### **10C. Issue of emergency excavation permit**

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

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

(3) During the period for which an 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) Subject to section 10L, any prescribed fee paid under subsection (4) is not refundable.

(7) Where—

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

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.

**10D. Emergency excavation which lasts for more than 7 days**

(1) If the permittee of an 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 an excavation permit before the expiry of the initial period of the excavation.

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

- (a) an excavation permit is deemed to be issued to the permittee of an emergency excavation permit—
  - (i) on the same terms and conditions as an emergency excavation permit; and
  - (ii) commencing from the date of the commencement of the emergency incident to which an emergency excavation permit relates and expiring on the date of the notification of the result of the application; and
- (b) the initial period under an emergency excavation permit is deemed to be extinguished.

(3) The Authority shall determine the period for which an 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 an 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 an excavation permit deemed to be issued and an extension granted under this section.

#### **10E. Refusal of issue of excavation permit**

(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; or
  - (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; or
- (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.

(2) In addition to the grounds specified in subsection (1), the Authority may, on reasonable grounds—

- (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.

(3) Where the Authority refuses to issue a permit or extend the period for which a permit is valid, he shall notify the person who made the application in writing of the grounds for such refusal.

**10F. Late application for extension of excavation permit**

(1) Without prejudice to section 10E(2), 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 the application 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.

**10G. Nominated permittee**

For the purposes of this Ordinance, a contractor is regarded as a nominated permittee in relation to an excavation permit or emergency excavation permit if—

- (a) he is nominated by a permittee of the permit as a nominated permittee under section 10H;
- (b) he consents to the nomination and agrees to comply with the conditions in the permit under section 10I; and
- (c) the Authority approves the nomination under section 10J.

#### **10H. Nomination by permittee**

(1) A contractor shall not be regarded as being nominated as a nominated permittee in relation to an excavation permit or 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 an excavation permit or 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.

#### **10I. Consent and agreement by nominated permittee**

(1) A contractor shall not be regarded as giving the consent and agreement referred to in section 10G(b) as a nominated permittee in relation to an excavation permit or 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 an excavation permit or 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.

#### **10J. 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 an excavation permit or 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.

**10K. Termination of excavation permit  
or emergency excavation permit**

(1) If there is a breach of any condition of an excavation permit or 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) An excavation permit or 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) 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 10C(4) or 10D(5) in respect of or in connection with an excavation permit or emergency excavation permit which is terminated under this section.

(4) Where an excavation permit or 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 10C(4) or 10D(5); and
- (b) the obligation of the permittee to pay the appropriate prescribed fee as required by the Authority under that section.

**10L. Refund of daily fee and economic costs  
paid for extension of excavation permit**

(1) The Authority may refund the whole or any part of the economic costs paid for an extension of an 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 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 an excavation permit completes an excavation to which the permit relates before the expiry date of the permit or the 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 (if any) 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 permit or the extended period of the permit, as the case may be.

(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.

## 10M. Review of assessment

(1) A public officer of the rank of Chief Technical Officer, Engineer or Senior Engineer or a public officer of equivalent rank with engineering qualifications relevant to the excavation concerned (collectively referred to as “the Engineer”) in the Highways Department acting as the delegate of the Director of Highways shall make an assessment on—

- (a) the duration of an 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 10C(5) if he exercises the Director of Highways’ power under section 10C(4);
- (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 10D(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 10F(2) if he exercises the Director of Highways’ power under that section;
- (g) whether an extension is caused by reasons mentioned in section 10L(1)(b) if he exercises the Director of Highways’ power under section 10L(1);
- (h) whether the reasons mentioned in section 10L(1)(b) hindered the progress of an excavation to which the excavation permit relates if he exercises the Director of Highways’ power under section 10L(1);
- (i) whether a permittee has satisfied the matters in section 10L(2)(a), (b) and (c) if he exercises the Director of Highways’ power under section 10L(2).

(2) The Engineer who made an assessment under subsection (1) shall serve a notice of the result of his assessment on the permittee concerned.

(3) 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 (2), apply in writing to a public officer of the rank of Chief Engineer or Government Engineer or a public officer of equivalent rank with engineering qualifications

relevant to the excavation concerned (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).

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

(5) On a review under subsection (4), the Chief Engineer may—

(a) vary the assessment complained of;

(b) require a permittee who applied for a review under subsection (3) to pay extra prescribed fee; and

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

(6) After receipt of an application under subsection (3), 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 (4), then—

(a) where subsection (3)(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 (5).

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

(a) within 28 days from the date of service of the notice under subsection (4), 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).

(8) On receipt of an application under subsection (7), the Director of Highways shall notify the Secretary who will set up a Review Board in accordance with section 100.

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

(10) A permittee who is invited to appear before a Review Board under subsection (9) may appear in person or may be represented by his authorized representative.

(11) The Director of Highways shall serve a notice of the Review Board's decision on the permittee concerned within 14 days from the date of the decision of the Review Board.

(12) 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.

(13) The Review Board may—

- (a) vary the decision complained of;
- (b) require a permittee who applied for a review under subsection (7) to pay extra prescribed fee; and
- (c) refund any prescribed fee or any part of the prescribed fee paid by the permittee.

(14) After receipt of an application under subsection (7), if the Director of Highways fails to serve a notice of the Review Board's decision on the applicant within the time specified in subsection (11), then—

- (a) where subsection (7)(b) is applicable, the result of the permittee's assessment shall be taken to be the decision of the Review Board; or
- (b) in any other case, the decision made by the Chief Engineer under subsection (5) on the subject matter of the application shall be taken to be the decision of the Review Board,

and the Review Board may, in accordance with the decision, exercise any of the powers conferred on it under subsection (13).

(15) 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 (13); or
- (b) any decision taken to be the decision of the Review Board under subsection (14).

(16) 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.

(17) 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.

### **10N. Review Panel**

(1) The Secretary 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 review the Chief Engineer’s decision under section 10M(5).

(2) The Secretary shall not appoint any public officer to the Review Panel.

(3) A person appointed under subsection (1) shall hold office for a period of 3 years and may—

(a) be reappointed;

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

(4) A person appointed under subsection (1) shall not hold office for more than 6 consecutive years.

### **10O. Review Board**

(1) On receipt of a notification under section 10M(8), the Secretary shall—

(a) compile a list of the names of members whom he intends to appoint to constitute the Review Board to review the Chief Engineer’s decision under section 10M(5);

(b) serve a notice on the members mentioned in paragraph (a) requiring them to make a declaration as to whether they have or do not have any direct or indirect interest in the review concerned within 7 days from the date of service of the notice; and

(c) serve a notice on the permittee concerned notifying him the names of the members mentioned in paragraph (a) and his right to raise any objection on the appointment of any member on the ground that the member has direct or indirect interest in the review within 7 days from the date of service of the notice.

(2) The objection in subsection (1)(c) shall be in writing and shall be accompanied by all written statements and other documentary evidence relied upon by the permittee concerned in support of the objection.

(3) After the expiry of the period allowed for the declaration of interest and the raising of objection under subsection (1)(b) and (c), the Secretary shall, subject to subsections (5) and (6), finalize the composition of the Review Board by appointing 3 or 5 persons (excluding the Chairman) from the list compiled under subsection (1) to constitute the Review Board after taking into consideration the declaration of interest of the members and the objection raised by the permittee concerned.

- (4) The Director of Highways shall be the Chairman of the Review Board.
- (5) For the purpose of subsection (3), the Secretary shall appoint—
- (a) at least one public officer of the rank of Government Engineer or above or a public officer of equivalent rank with engineering qualifications relevant to the excavation concerned from the Highways Department;
  - (b) at least one member from the Review Panel; and
  - (c) 1 or 3 other persons as he thinks fit.
- (6) The majority of the persons constituting a Review Board, excluding the Chairman, shall be persons other than public officers.
- (7) If at any time during the review proceedings, it is discovered that any member of the Review Board has a direct or indirect interest in the review concerned, the Chairman may adjourn the proceedings and inform the Secretary.
- (8) The Secretary shall terminate the appointment of the member and appoint another member by applying the procedures in subsections (1), (2) and (3) with necessary modification as he thinks fit.
- (9) After the appointment of a new member under subsection (8), the Review Board may rehear the application wholly or in part if it is satisfied that it is just to do so.

#### **10P. Proceedings of Review Board**

- (1) The Review Board shall not proceed to hear an application for a review of the Chief Engineer's decision under section 10M(5) at a hearing other than to adjourn unless all the members appointed under section 10O(3) are present.
- (2) All the matters for determination at a hearing of the Review Board shall be decided by a majority of vote of the members present.
- (3) The Chairman shall not vote at the hearing of the Review Board.
- (4) In case there is an equality of votes, the Chairman shall discharge the Review Board and notify the Secretary.
- (5) On receipt of the notification under subsection (4), the Secretary shall apply the procedures in section 10O(1), (2) and (3) with necessary modification to appoint another Review Board to hear the review concerned.
- (6) In case there is an equality of votes at a hearing of the Review Board appointed under subsection (5), then—
- (a) where section 10M(7)(b) is applicable, the result of the permittee's assessment shall be taken to be the decision of the Review Board; or

- (b) in any other case, the decision made by the Chief Engineer under section 10M(5) on the subject matter of the application shall be taken to be the decision of the Review Board,

and the Review Board may, in accordance with the decision, exercise any of the powers conferred on it under section 10M(13).

**10Q. Reinstatement of unleased land after excavation made under an excavation permit**

(1) A permittee of an excavation permit or 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.

**10R. Reinstatement of unleased land  
after excavation made under  
a lease, licence, etc.**

(1) Any person who makes or maintains an excavation under and in accordance with a lease, licence, deed of appropriation, memorandum of appropriation or an engineering conditions for land allocation issued by the Director of Lands shall reinstate and make good the land as required by any condition of the lease, licence, deed of appropriation, memorandum of appropriation or engineering conditions for land allocation, as the case may be.

(2) If any unleased land is not reinstated and made good in accordance with subsection (1), the Director of Lands 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 works for the carrying out of which the excavation was made have not been completed.

(3) The Director of Lands may recover from the person mentioned in subsection (1) the cost of any work carried out by the Director under subsection (2).

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

**10S. Provision of safety facilities  
in connection with excavation**

If any condition of an excavation permit or 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.

**10T. Provision of safety precautions  
and support**

(1) The permittee and nominated permittee of an excavation permit or 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) 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.

(3) 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.

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

(5) A court may, in making a decision on the defence provided under subsection (4), take into consideration that a person charged with an offence under subsection (2) or (3) 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);
- (d) taken other reasonable steps.

(6) For the purpose of subsection (5), “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 or the works within that excavation;
- (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 the works within that excavation; or

- (d) a safety officer under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59 sub. leg. Z) and—
- (i) where subsection (5)(a) is applicable, has at least 3 years experience in supervising excavation which is similar to the excavation concerned; or
  - (ii) where subsection (5)(b)(i) is applicable, has at least 3 years experience in managing documented system which is similar to the system described in that subsection.

**10U. 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.

**10V. 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 the Environment, Transport and Works**

Section 18 is amended—

- (a) in subsection (1), by repealing “8 or 12” and substituting “10, 10A, 10B, 10C, 10D, 10E, 10F, 10J, 10K, 10L, 10M, 10O, 10P, 10Q, 10R, 10S, 10U, 12 or 18C”;
- (b) by adding—

“(1A) Neither the Government nor the Secretary for the Environment, Transport and Works shall be liable for any loss or damage suffered by any person in consequence of anything done under section 10N, 10O or 10P.”.

**7. Section added**

The following is added—

**“18B. Appeals against decision**

(1) A person who is aggrieved by a decision of the Review Board made in respect of him under section 10M(13) relating to an assessment made under section 10M(1)(*d*), (*g*), (*h*) or (*i*) may appeal to the Administrative Appeals Board.

(2) An appeal made under subsection (1) shall be made within 28 days from the date of service of a notice of the decision on the aggrieved person.

(3) Any prescribed fee 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.

**18C. Authority’s power to specify time limit  
and newly constructed street**

(1) The Authority may, by notice published 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.”.

**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, except New Kowloon.	Director of Highways in the case of 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(2)		land, other than
10C(1)		streets.”.
10C(3)		
10C(4)		
10C(5)		
10C(7)		
10D(1)		

10D(3)  
10D(4)  
10D(5)  
10E(1)  
10E(2)  
10E(3)  
10F(1)  
10F(2)  
10F(3)  
10F(4)  
10G(c)  
10H(1)  
10H(2)  
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10I(1)  
10I(2)  
10I(3)  
10J(1)  
10J(2)  
10K(1)  
10K(4)  
10L(1)  
10L(2)  
10L(3)  
10M(16)  
10M(17)  
10Q(2)  
10Q(3)  
10S  
10V  
16C(1)  
16C(2) and  
18C(1)

## 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 excavation permits or 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 10D(4) of the Ordinance in respect of, an 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 10C(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]

FEEES

PART I

FEEES PAYABLE IN RESPECT OF 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 an excavation permit referred to in sections 10A(1) and 10D(2) of the Ordinance.....	\$1,860 plus a daily fee of \$32 per day for the whole duration of the excavation permit
2.	Extension in respect of an excavation permit referred to in sections 10A(3) and 10D(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—

Item	Description	Fee
		(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**

**FEE PAYABLE IN RESPECT OF EXCAVATION PERMITS  
RELATING TO EXCAVATIONS IN UNLEASED LAND,  
OTHER THAN STREETS MAINTAINED BY THE  
HIGHWAYS DEPARTMENT**

Item	Description	Fee
1.	Issue of an excavation permit referred to in section 10A(1) of the Ordinance...	\$3,060
2.	Extension in respect of an excavation permit referred to in section 10A(3) of the Ordinance.....	\$400

**PART III**

**FEE PAYABLE IN RESPECT OF EMERGENCY EXCAVATIONS  
IN UNLEASED LAND WHICH IS A STREET MAINTAINED  
BY THE HIGHWAYS DEPARTMENT**

Item	Description	Fee
1.	Emergency excavation made or maintained during the initial period referred to in section 10C(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 10C(5)".

**Administrative Appeals Board Ordinance**

**15. Schedule amended**

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

- |   |  |
|---|--|
| <p>“60. Land (Miscellaneous Provisions) Ordinance (Cap. 28)</p> | <p>A decision of the Director of Highways under section 10M(13) relating to an assessment made under section 10M(1)(d), (g), (h) or (i).”.</p> |
|---|--|

**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 “an excavation permit under section 10A or 10D, or an emergency excavation permit under section 10C”.