

Chapter 4

Section 10 - Refund of Daily Fee and Economic Costs Procedure

1.0 Introduction

1.1 Under section 10L of the Land (Miscellaneous Provisions) Ordinance (LMPO), the Director of Highways (DHY) as the Authority or his delegated officers may refund—

- (i) the whole or any part of the economic costs paid for extension of an excavation permit (XP) caused by reasons stipulated in section 10L(1)(b) of the LMPO; and
- (ii) 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.

1.2 This procedure is for permittees whether they are Excavation Permit Management System (XPMS) users or not, except that, for non-XPMS users, the mode of correspondence with HyD will be through letters or facsimile instead of XPMS.

2.0 Refund for Economic Costs

2.1 The permittee shall make an application, through XPMS for a refund of the whole or any part of the economic costs within 1 month from the date of the notification of the result of the application for an extension of the XP.

2.2 The permittee shall state the reasons and setting out the evidence in support of the application.

2.3 Upon receipt of the application for a refund from the permittee, the E/CTO of the respective HyD Regional Office shall assess whether he is satisfied that the extension is caused by reasons other than the fault of the permittee, its contractors and employees, including but not limited to the following—

- (i) inclement weather which includes the hoisting at the Hong Kong Observatory of the No.3 visual storm warning or above or rainstorm warning (i.e. Amber, Red or Black rainstorm warning

- issued by the Director of the Hong Kong Observatory); or
- (ii) suspension of excavation on order of the Government which is not due to the fault of the permittee, its contractors or employees; or
- (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 the above reasons hindered the progress of an excavation to which the permit relates.

2.4 If the E/CTO of the respective HyD Regional Office is satisfied that the extension is caused by reasons other than the fault of the permittee, its contractors, or employees and progress of the excavation is hindered, he shall assess how many days of extension which the permittee is entitled. Also, the E/CTO shall record the assessment result including the number of days of extension granted, the date which the permittee is entitled to an extension and the reasons for the extensions in XPMS and check whether the data for calculating the amount of refund of economic cost by XPMS are correct. If the data are correct, the E/CTO should print the refund instruction from XPMS. The E/CTO should then sign and forward the refund instruction to his Account Section for arranging the refund, without interest, to the permittee. After receipt of the refund instruction, the Account Section will request Treasury to refund a fixed amount to the permittee. Normally, Treasury will either credit the designated account of the permittee or send a bank cheque to the permittee. This refund process is applicable to the permittee whether he has a deposit account with HyD or not.

2.5 The E/CTO of the respective HyD Regional Office should inform the permittee of the result of his assessment through XPMS within 28 days from the date of receipt of the application whether he agrees wholly or partially, or disagrees with the amount claimed by the permittee. However, if the E/CTO considers that more time or additional information is required for the assessment of an individual complicated case, an interim reply would be provided to the permittee within 28 days from the date of receipt of the application and the result of his assessment will be provided before a date specified in the interim reply. If the permittee appeals in accordance with section 10(M)(3) and (7) of the LMPO, the amount of refund may be revised subject to the result of the review. The

E/CTO should update the extension period in XPMS based on the result of the review. If further refund is required, the E/CTO should arrange the refund following the procedure as stated in para. 2.4 above. If the amount of refund calculated based on the result of the review is less than the amount already refunded, the E/CTO should request, not through XPMS, his Account Section to issue a demand note to the permittee for the payment difference. After the permittee has settled the demand note, the E/CTO should record date of payment in XPMS.

3.0 Refund for Early Completion of Works

- 3.1 Under section 10L(2) and (3) of the LMPO, the E/CTO of the respective HyD Regional Office as the delegated officer may refund a sum, without interest, 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.
- 3.2 The permittee is not required to make an application for the refund for early completion of excavation works. The permittee shall notify the E/CTO of the respective HyD Regional Office upon the completion of excavation works. The E/CTO should initiate the refund process as stated below when he confirms that the excavation works have been satisfactorily completed before the expiry date of the permit or the extended period of the permit.
- 3.3 Upon receipt of such notification from the permittee through XPMS, the E/CTO of the respective HyD Regional Office shall check the following conditions to see whether the permittee is entitled to any refund-
 - (i) the permittee of an XP has completed an excavation to which the permit relates before the expiry date of the permit or the extended period of the permit; and
 - (ii) he is satisfied that the permittee has reinstated the land to which the permit relates as required by the permit conditions.
- 3.4 If the conditions in item 3.3 above are all complied with, the E/CTO shall confirm in XPMS whether the date of completion of the works inputted is correct. The refund arrangement is detailed below:

- (i) if the permittee has a deposit account with HyD and economic cost is not involved, XPMS will automatically refund the amount, without interest, to the permittee's deposit account;
- (ii) if the permittee has a deposit account and economic cost is involved, the E/CTO is required to print the refund instruction from XPMS. Then, the E/CTO should sign and forward the refund instruction to his Account Section for arranging the refund, without interest, to the permittee. After receipt of the refund instruction, the Account Section will request Treasury to refund a fixed amount to the permittee. Normally, Treasury will either credit the designated account of the permittee or send a bank cheque to the permittee; or
- (iii) if the permittee does not have a deposit account with HyD, the E/CTO is required to print the refund instruction from XPMS. Then, the E/CTO should sign and forward the refund instruction to his Account Section for arranging the refund, without interest, to the permittee. After receipt of the refund instruction, the Account Section will request Treasury to refund a fixed amount to the permittee. Normally, Treasury will send a bank cheque to the permittee.

3.5 The E/CTO of the respective HyD Regional Office shall inform the permittee of the result of his assessment on whether the permittee has satisfied the matters in section 10L(2)(a), (b) and (c) of the LMPO through XPMS within 28 days from the date of the completion of excavation works. If the permittee appeals in accordance with section 10(M)(3) and (7) of the LMPO, the amount of refund may be revised subject to the result of the review. The E/CTO should update the extension period in XPMS based on the result of the review. If further refund is required, the E/CTO should arrange the refund following the procedure as stated in para. 3.4 above. If the amount of refund calculated based on the result of the review is less than the amount already refunded, the E/CTO should request, not through XPMS, his Account Section to issue a demand note to the permittee for the payment difference. After the permittee has settled the demand note, the Account Section should record date of payment in XPMS.

4.0 Extension of Permit Period without Payment

- 4.1 Under section 10A(4) of the LMPO, where-
- (i) the permittee is unable to have access to-
 - (a) 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 XP 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
 - (b) 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 XP is valid, for reason other than the fault of the permittee, the contractor for the excavation or their employees,

the E/CTO of the respective HyD Regional Office may, without payment of any prescribed fee or any part thereof (other than that paid under sections 10A(1) and (3) of the LMPO), issue an extension of the XP to extend that period by the number of days for which the permittee is so unable to have access to the land. Subject to section 10L of the LMPO, any prescribed fee paid for issue of an XP is not refundable.