

IMPORTANCE OF PERMIT ACQUISITION FOR BUILDING SUBMARINE CABLES

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Abstract: Over the next few years, the capacity for data consumption is expected to increase by multiple folds through-out South East Asia. This demand in capacity consumption is driven not only by the increase of data usage by existing mobile and data users and is also driven by the emergence of new developing nations across the ocean. For any Submarine Cable build in any region in the world, the success of such builds are dependent on the ability for Owners and contractors alike to obtain Permit in Principles and Operational Permits to enable a trouble free implementation and installation schedule. Time and time again, most delays in Submarine Cable builds revolve around the red tapes involved during the permitting process in the region. Coupled with lack of clear regulations, specific mandates in certain territories and the recent territorial claims from multiple countries have made permit acquisition a very difficult task.

1. General Regulatory Framework

International legal conventions that grant Coastal states the power to regulate cable laying in its Territorial Sea and Exclusive Economic Zone (EEZ), and to some extent the continental shelf, but not regulate over the high seas. Hence, the core focus on permitting is in the territorial sea and EEZ. [1]

Traditionally, both system owners and contractors alike, have relied on United Nations Convention on the Law of the Sea (UNCLOS) to identify the requirements for permitting in principle for systems that transit through disputed maritime boundaries.

Time and time again the demarcation of what constitutes high seas, continental shelf and/or (EEZ) has been blurred through unclear local regulations from the disputing countries and the increasing assertion of claimed territorial waters by these parties. This, coupled with multiple claimants, has created an ambiguous permit application process.

As a typical example, in recent years, since the inception of the major submarine networks in Asia, this area has become one of the most difficult regions in the world for permit acquisition, because of complex terrestrial waters and environmental issues. It is general knowledge that every cable system built in Asia from Singapore or Malaysia to Hong Kong or Japan will transgress such difficult zones.

In general terms, to construct a simple end-to-end cable system linking Singapore, Hong Kong and Japan will require Permit in Principles from seven countries: Singapore, Malaysia, Indonesia, Philippines, Hong Kong, China PRC, and Japan. The simple question remains, how do we demark the requirements of Permit in Principle application in these areas claimed by multiple countries when the cable does not land in these countries?

2. Permit In Principle – What is it all about?

The acquisition for Permit in Principle is not a simple matter, but a multi-faceted task that can take substantial amounts of time, and therefore will require close

monitoring when building any cable system.

a. Generic Definition of Permit in Principle

Permit in Principle is the permit that enables the installation of a cable system for a particular jurisdiction.

This permit usually also covers Right of way, way leave, easement rights, Environmental Impact Assessment, fisherman compensations, military compensations and 3rd party non-governmental approvals such as pipeline owners no objections and oil concession block owner approvals.

Timeframe – Generally, in the Asian region, it can take anywhere from 4 months to 18 months.

b. Scope of a full Permit In Principle (PIP)

- i. PIP application, depending on jurisdiction, may include but is not limited to:
 - a. Ministry of Telecommunications
 - b. Ministry of Defence
 - c. Department of Lands
- ii. *Environmental Impact Assessment (EIA)*

In jurisdictions where environment concerns are heavily regulated, this can take up to 18 months or more and can be a very tedious and costly process. Caution has to be taken in countries where seasonal EIA is required. These items have to be factored into the plan of work.

iii. Agreement with Fishery Unions

In jurisdictions where there is a large fishing industry, this can be a long-drawn process, taking up to 6 months or more in some cases. In recent years, Fishery Union agreements have taken an important role in the PiP process. This has increased both cost and duration required to finalize Fishery Union agreements. When planning the cable laying route, it is important to avoid fishing areas as it can lead to high compensation pay-outs. Depending on the cable route location, certain Fishery Unions have also stipulated schedules for marine survey and marine installation. These matters have to be taken into account during planning to avoid unnecessary standby and delay and reduce compensation amounts.

iv. Cable / pipeline / oil concession crossing agreement

There are international guidelines and recommendations issued by International Cable Protection Committee specifying how cables and pipelines are to be crossed. [2]

It should also be noted that there may be sensitivities regarding crossing oil concessions whereby disclosure of oil deposits may be confidential information and not easily disclosed especially at disputed maritime boundaries.

vi. *Military compensation*

Military Compensations has become a very critical issue for PiP acquisition in the recent years.

Over the last 5 years, most projects that have been built through the South China Sea have been subjected to some form of Military Compensation.

These compensations in recent years have been imposed not only for PiP approvals but also to enable the planned cable route to be approved. Coupled with lack of regulation this item has both increased the cost and duration required to finalize a planned cable route for survey and installation. It should also be noted that Military Compensation does not guarantee an installable route.

3. From Singapore to Japan

During planning stages, cable owners and contractors alike will study the requirements for permit acquisition. In cases where a cable is being planned from Singapore to Japan with branches to Malaysia, Indonesia, Vietnam, Philippines, Hong Kong and China PRC, the question remains on what permits are required to enable construction of these systems.



Figure 1- South China Sea Claimed Waters & Disputed Islands[3]

Does UNCLOS apply in the South China Sea?

In many cases, the answer is YES, since most of the coastal states have ratified the convention.

Who regulates such requirements?

At this moment, it is very much self-regulated by each individual state. Individual states have over the years interpreted the convention as they see fit, even more so since the increase in assertion over territorial claims on certain island and/or outcrop within the South China Sea. This has complicated the permitting process as certain routes will require multiple permit-in-principle applications to different country states. Issues then arise when there are conflicting requests for a particular cable route request from two (2) separate country states and authorities.

To whom, shall we apply for these permits?

Everyone or in this case, every country that is practical and reasonable. The key point here is that, one must consider the potential impact of cable

route selection at the beginning to avoid large variations from original planned cable routes. In making such decisions, consideration should also be given regarding where the landing countries are located. In a case of Hong Kong for example, any cable landed in Hong Kong SAR is subject to China PRC permitting requirements since the waters around Hong Kong SAR are part of undisputed China PRC boundaries all regulations apply.

These changes in routes can come along due to many unforeseen reasons, and sometimes even after marine survey has been completed. Therefore, the ability to identify the correct authorities in each state to mitigate this issue is highly important. It is also prudent to consider future branches that might be laid into specific countries. This provides a general idea whether to apply to these countries at the start of the project or wait until these branches are ready to be built.

How do we select cable routes?

In many cases, prior consultation with the each individual authority, fishery unions, pipeline & oil concession block owners are the key to successful permit-in-principle acquisition. This saves both cost and implementation time. In most cases with these consultation and exchange of information, owners can expect 3 to 6 months reduction in implementation schedules and a speedy Ready-For-Provisional-Acceptance (RFPA) date. During the planning stage, considerations such as EIA requirements, landing site selection and installation timing should be considered together with prior consultation with the relevant stakeholders.

Fishery Unions, EIA's, Crossing Agreements and Compensations. What do we do?

Prior consultations with fishery unions and Environmental Departments are vital. This will determine the cable route and cost involved in managing these items. In some countries, the timing of installation is critical in order to complete and Environmental Impact Assessment (EIA), as such, these items should be taken into account in developing plan of works for new builds. Constant communication with Fishery Unions provide such information and these are the type of information that will assist in managing cost for the project itself. This is especially true when it comes to compensation amounts which could run into the millions if these comments are not taken into account. As for pipeline crossing consultations, these should be initiated at a very early stage of any project. Pipeline and oil concession block owners are constantly planning new exploration or pipeline installation works within their concession blocks. Consultation with these owners reduces the risk of further route changes, managing the cost for pipeline crossing methods and implementation schedules changes to avoid any clash in installation timing between all stakeholders involved.

Future Repair & Maintenance

One of the most important issues to consider during design stage of a system is the requirements for future maintenance and repair permits. It is crucial to consider if multiple permits are required for a single repair. These items not only increase cost but

duration to acquire these permits from multiple countries.

Is there a lack of International awareness and co-ordination in this matter?

Certainly, it would be highly effective if all states co-ordinated in managing these matters. Unfortunately, that is not the case, since these states are actively asserting their rights on claimed territory in the South China Sea. It is yet to be seen that these competing states are considering a co-ordinated agency as an effort to enable for speedy submarine cables system construction. The highly resource rich seabed under the South China Sea could be one of the main drivers for this as competing states vie for these scarce resources for economic benefits.

4. Key drivers of successful permit acquisition

Some key areas that can help ensure the PIP is acquired successfully and in a timely manner.

a. Effective project management

Regular reporting and updating to ensure any potential issues are flagged early. Uniformity amongst cable system owners to ensure provision of correct and consistent information. The awareness of the cable owners in each step of the permitting process plays an important role in managing the issues associated with these permit acquisition.

c. Experienced content

In-depth local knowledge helps bridge the cultural and language gap when dealing with government authorities. It

is important to note that in-depth local knowledge provides the ability to avoid new and unreasonable requirements which are usually more costly for owners. However, it should also be noted that certain regulations are now designed specifically to cover submarine cables and these regulation stipulates exact requirements for submarine cable builds and such items are unavoidable.

d. Awareness of holiday periods / embargo periods

Apart from public holidays, due to cultural traditions, there are certain periods in each jurisdiction where officials from governmental departments take their holidays. Insufficient planning for this may result in delays. Certain large scale events in past years have caused delay in implementation due to embargo for work during period of these large scale events. Most of the time, it is unavoidable but planning around such events are critical in managing installation schedules.

e. Political awareness

When dealing with maritime boundaries, political issues will ultimately be present and when applying for such permits, these sensitivities need to be kept in mind. It is also prudent to manage these political issues with great care.

f. Leverage on established relationships

This enables fast tracking as well as positive outcomes when dealing with situations where it is subject to interpretation. Long working relationships together with these

authorities and the understanding of bureaucracy within these different authorities assist in providing positive outcome.

g. Constant & Prior Consultation

Before the start of any cable builds, consultation with local authorities is essential. This also applies to fishery unions, pipeline & oil concession owners. Since the comments from these stakeholders shall determine the cable route, these parties should be part of the initial consultation during planning stages.

h. Crossing Agreements

Cable crossing agreements have evolved in recent years to encompass agreements via email exchanges between owners and this is in-line with International Cable Protection Committee (ICPC) recommendations. However, in consortium-based cable builds, where pipeline agreements are in play, confusion on accountability of these agreements then arises, since, these pipeline crossing agreements have critical liability clauses that are attached to it. Technical discussions with pipeline owners are also important points to note, as certain pipeline owners request specific cable and pipeline crossing protection methods which can increase or decrease implementation cost.

5. Conclusion

This paper has sought to identify the red tape and processes encountered during the Permitting process for the countries mentioned above.

In the most recently completed cable systems in this region, system owners and

consortium members have been actively exploring and pursuing the concept for the contractors to apply for and acquire Permit In Principle for the countries where cable system lands and for the territories where the cable transit. This paper also seeks to identify the most appropriate scenarios and way to ensure a speedy RFPA date for newly constructed systems. This shall include dialog with other users of the ocean such as oil concession and pipeline owners and fisherman. In this paper we shared our experience in designing cable routes and considerations that needs to be taken during planning stages.

It must also be said that the Permit-In-Principle acquisition process is often a multi-faceted task with many hidden obstacles. By focusing on the key drivers for permit acquisition, it can help to ensure a successful and timely acquisition of these permits.

6. REFERENCES

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