

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

TELECOMMUNICATIONS (CARRIER LICENCES) (AMENDMENT) REGULATION 2016

INTRODUCTION

A On 29 April 2016, the Secretary for Commerce and Economic Development (“SCED”), in exercise of the powers conferred by section 7(2)(a) of the Telecommunications Ordinance (Cap.106) (“Ordinance”) and section 3(1) of the Telecommunications (Carrier Licences) Regulation (Cap.106V) (“Regulation”), made the Telecommunications (Carrier Licences) (Amendment) Regulation 2016 (“the Amendment Regulation”), at **Annex A**, to remove General Condition 10 (“GC 10”) from the general conditions (“GCs”) for carrier licences specified in Schedule 1 to the Regulation.

JUSTIFICATIONS

2. Pursuant to section 7(2)(a) of the Ordinance and section 3(1) of the Regulation, the SCED has prescribed the GCs for carrier licences in Schedule 1 to the Regulation. In accordance with section 7A of the Ordinance, the Communications Authority (“CA”) has attached special conditions (“SCs”), consistent with the Ordinance and not inconsistent with the prescribed GCs, to carrier licences.

3. While the GCs and SCs in carrier licences are sector-specific provisions for the regulation of the telecommunications licensees, there are also cross-sectoral legislation or regulation on specific matters which apply across the board to all sectors including the telecommunications sector. The introduction of and further enhancements to these cross-sectoral regulatory regimes over time have served to supersede some of the sector-specific controls imposed under the telecommunications licensing regime and rendered the latter

inappropriate and unnecessary.

4. Following a review of the relevant licence conditions in carrier licences, GC 10 concerning restrictions on attachment to public buildings and trees, and five SCs concerning road opening works in public streets and unleased Government land have been identified as duplicating with or being superseded by the cross-sectoral legislation or regulation.

5. At present, GC 10 of carrier licences requires a licensee to seek the prior written consent of the Government Property Administrator for the attachment of any part of the network to any Government building, and the prior written consent of the Director of Agriculture, Fisheries and Conservation or the Director of Leisure and Cultural Services for the attachment of any part of the network to any tree on any Government land.

B The full text of GC 10 is at **Annex B**.

6. In fact, restrictions on attachment to Government buildings are governed by property and tort laws. In general, if any person intends to place an attachment to a property or building, including a Government building, he/she needs to negotiate with the property owner, who may grant permission for the attachment in various forms, such as lease, contract, or letter of consent. Such restrictions apply not only to the attachment by telecommunications licensees but also to the attachment by other entities. Separately, restrictions on attachment to any tree on any Government land are covered by section 21 of the Forests and Countryside Ordinance (Cap. 96) (“FCO”), a breach of which may constitute an offence. The Director of Agriculture, Fisheries and Conservation may under section 23 of the FCO issue special permit to any person for the act prohibited under section 21.

7. As a matter of fact, protection of forests, trees and plants, as well as government buildings from possible damage falls outside, and indeed extends beyond the telecommunications perspectives. The reason for introducing the above restriction in the telecommunications regulatory regime when the Telephone Ordinance was enacted in 1925 was that there was no cross-sectoral restriction back then: it should be noted that the Forestry Ordinance which preceded the FCO was only enacted in 1937. It is not the intention of the telecommunications policy to subject telecommunications licensees to both the sectoral and cross-sectoral regulatory regimes in relation to attachment to public buildings and trees. In reviewing the GCs, the SCED did not see any justification relating to the telecommunications policy or operational consideration for the co-existence of GC 10 in the carrier licences and the restrictions under the

cross-sectoral regime.

THE AMENDMENT REGULATION

8. To implement the proposal to remove GC 10 of carrier licences, we propose to repeal GC 10 of Schedule 1 to the Telecommunications (Carrier Licences) Regulation (Cap. 106V) (“the Regulation”) by the Amendment Regulation.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be –

Publication in the Gazette	6 May 2016
Tabling at the Legislative Council	11 May 2016
Commencement of the Amendment Regulation	1 July 2016

IMPLICATIONS OF THE AMENDMENT REGULATION

10. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the Telecommunications Ordinance (Cap. 106). It has no financial, civil service, economic, competition, productivity, environmental, sustainability, family or gender implications.

PUBLIC CONSULTATION

11. Before amending the Regulation, the SCED is required by the Telecommunications Ordinance (Cap. 106) to invite, by notice in the Gazette, members of the public who are interested in the matter to make representations. A public consultation exercise was launched jointly with the CA on 5 September 2014 and a total of 11 submissions were received by the close of the public consultation on 20 October 2014.

12. In the 11 submissions to the public consultation, all responding

operators supported removing GC 10 from carrier licences, save for one which expressed that the removal of GC 10 may lead to the lack of guidance to operators on the relevant consent to be obtained when attachment has to be made to Government buildings and trees. However, the SCED considered that a licence condition is not and should not be kept for the sole purpose of reminding licensees of certain administrative procedures. In any event, the Office of the Communications Authority (“OFCA”) is, as it has always been, prepared to provide assistance to licensees in this matter.

13. Having considered the views and comments received from the public consultation, the SCED and the CA remained of the view that GC 10 relating to restrictions on attachment to public buildings and trees and five SCs relating to road opening works should be removed from carrier licences respectively (“the Decision”). In this connection, the SCED and the CA issued a joint statement setting out their responses to the submissions and the Decision on 10 March 2015.

14. We briefed the Information Technology and Broadcasting Panel of the Legislative Council on 9 November 2015 on the proposal to repeal GC10. The Panel is supportive of this proposal.

PUBLICITY

15. A spokesman will be available for answering media enquiries.

ENQUIRY

16. For enquiries, please contact Mr Ivanhoe Chang, Principal Assistant Secretary for Commerce and Economic Development (Communications and Creative Industries) at 2810 2713.

**Communications and Creative Industries Branch
Commerce and Economic Development Bureau
May 2016**

Telecommunications (Carrier Licences) (Amendment) Regulation 2016

(Made by the Secretary for Commerce and Economic Development under section 7(2) of the Telecommunications Ordinance (Cap. 106))

1. Commencement

This Regulation comes into operation on 1 July 2016.

2. Telecommunications (Carrier Licences) Regulation amended

The Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V) is amended as set out in section 3.

3. Schedule 1 amended (general conditions for carrier licences)

Schedule 1—

Repeal General Condition 10.



Secretary for Commerce and
Economic Development

29 April 2016

Explanatory Note

Schedule 1 to the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V) contains the general conditions for carrier licences. The purpose of this Regulation is to repeal General Condition 10 in the Schedule. That condition relates to restrictions on attaching any part of a telecommunications network to a Government building or a tree on any Government land.

Full Text of the General Condition 10 for Carrier Licences

10 RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

- 10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.