

# 《2021 年電訊 ( 修訂 ) 條例草案》

**Telecommunications (Amendment) Bill 2021**

# Telecommunications (Amendment) Bill 2021

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# A BILL

## To

Amend the Telecommunications Ordinance to provide for non-carrier licences, requirements relating to work near underground telecommunications lines and related offences; to confine certain objectives of technical regulation to telecommunications matters; to cover new appeal subject matters; to make minor textual amendments; and to provide for related matters.

Enacted by the Legislative Council.

### **Part 1**

#### **Preliminary**

##### **1. Short title and commencement**

- (1) This Ordinance may be cited as the Telecommunications (Amendment) Ordinance 2021.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

**2. Enactments amended**

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

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## Part 2

### Amendments to Telecommunications Ordinance (Cap. 106)

#### 3. Section 2 amended (interpretation)

Section 2(1)—

##### Add in alphabetical order

“*operative guideline* (有效指引), in relation to an act or omission, means a guideline issued by the Authority under section 6D that is in force at the time of the act or omission;

*underground telecommunications line* (地下電訊線路) means a telecommunications line located below ground level in any land that is not seabed;”.

#### 4. Section 7AB added

After section 7A—

##### Add

##### “7AB. Non-carrier licences

- (1) The Secretary may by notice published in the Gazette specify a licence as a non-carrier licence.
- (2) A notice published under subsection (1) is not subsidiary legislation.
- (3) In this section—

*non-carrier licence* (非傳送者牌照) means a licence issued for the establishment or maintenance of a telecommunications network, or telecommunications system, for carrying communications between locations within Hong Kong to provide a restrictive telecommunications service;

*restrictive telecommunications service* (受局限電訊服務) means a telecommunications service that is more restrictive, in terms of the geographical coverage, scope, scale or customer base of the service, than one authorized to be provided under a carrier licence.”.

## 5. Section 18A added

After section 18—

### Add

#### “18A. Requirements relating to work near underground telecommunications lines

- (1) A person must not carry out, or cause or permit another to carry out, any work below ground level near an underground telecommunications line, unless the person takes, before the work begins, all reasonable steps to ascertain—
  - (a) whether any underground telecommunications line exists within or near the proposed work site; and
  - (b) if so—the alignment and depth of the line.

- (2) If a person carries out, or causes or permits another to carry out, any work below ground level at a work site within which, or near which, an underground telecommunications line exists, the person must ensure that all reasonable measures are taken to prevent—
- (a) any damage to the line; or
  - (b) any interruption to a telecommunications service,  
arising from the work.”.

**6. Sections 22A and 22B added**

After section 22—

**Add**

**“22A. Contravention of section 18A an offence**

- (1) A person who contravenes section 18A(1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.
- (2) A person who contravenes section 18A(2) commits an offence and is liable on conviction—
  - (a) if the contravention results in an interruption to a telecommunications service—to a fine of \$200,000 and to imprisonment for 12 months; or
  - (b) in any other case—to a fine at level 4 and to imprisonment for 6 months,and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.



- (3) In proceedings against a person for an offence under subsection (1), it is for the person to show that the person took, before the work began, all reasonable steps to ascertain—
  - (a) whether any underground telecommunications line existed at the time within or near the proposed work site; and
  - (b) if so—the alignment and depth of the line.
- (4) For the purposes of subsection (3), if the person shows that the person complied with an operative guideline relating to taking reasonable steps as referred to in section 18A(1), the person is taken to have shown that the person took all reasonable steps.
- (5) In proceedings against a person for an offence under subsection (2), it is a defence for the person to show that the person complied with an operative guideline relating to taking reasonable measures as referred to in section 18A(2).
- (6) Also, it is a defence for the person charged with an offence under subsection (2) to show that—
  - (a) the person took, before the work began, all reasonable steps for the purposes of section 18A(1); and
  - (b) any failure to take all reasonable measures for the purposes of section 18A(2) was due to reliance on information provided by the licensee authorized to place and maintain the underground telecommunications line concerned.

**22B. Use of guidelines in criminal proceedings under section 22A**

- (1) This section applies in relation to criminal proceedings before a magistrate or a court in which a person is alleged to have committed an offence under section 22A(1) or (2).
- (2) A provision of an operative guideline that appears to the magistrate or the court to be relevant to the alleged offence is admissible in evidence in the proceedings.
- (3) Also, if—
  - (a) a provision of the operative guideline appears to the magistrate or the court to be relevant to a matter that the prosecution must prove in order to establish the offence; and
  - (b) the prosecution has proved that the person failed to comply with the provision at the relevant time,  
the prosecution may rely on the failure as tending to prove the matter.
- (4) However, subsection (3) does not apply if the person shows that, for the matter referred to in subsection (3)(a), a requirement alleged to have been contravened was complied with other than by complying with the provision of the operative guideline.”.

**7. Section 32CA added**

Part 5, after section 32C—

**Add**

**“32CA. Burden of proof**

A person is taken to have shown a matter that needs to be shown under section 22A(3), (4), (5) or (6) or 22B(4) if—

- (a) there is sufficient evidence to raise an issue with respect to the matter; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

**8. Section 32D amended (standards)**

- (1) Section 32D(1)—

**Repeal paragraph (iii)****Substitute**

“(iii) to control the level of non-ionizing electromagnetic radiation that is allowed to be emitted by telecommunications apparatus;”.

- (2) Section 32D(1)(iv), after “standards”—

**Add**

“in respect of telecommunications functions”.

**9. Part 5C heading amended (appeals relating to section 7Q)**

Part 5C, heading—

**Repeal**

“Relating to Section 7Q”.

**10. Section 32L amended (interpretation)**

- (1) Section 32L, definition of *appeal*, after “32N(1)”—

**Add**

“or (1D)”.

- (2) Section 32L, definition of *Appeal Board*—

**Repeal**

“(Competition Provisions)”.

- (3) Section 32L—

**Repeal the definition of *appeal subject matter***

**Substitute**

“*appeal subject matter* (標的事項) means the subject of an appeal;”.

**11. Section 32M amended (establishment and membership of Appeal Board)**

- (1) Section 32M, Chinese text, heading—

**Repeal**

“成立”

**Substitute**

“設立”.

- (2) Section 32M—

**Repeal subsection (1)**

**Substitute**

“(1) An appeal board is established with the name “Telecommunications Appeal Board” in English and “電訊上訴委員會” in Chinese.”.

**12. Section 32N amended (appeals to Appeal Board)**

Before section 32N(2)—

**Add**

- “(1D) Also, a person aggrieved by—
- (a) a decision of the Authority to refuse to issue under section 7(5) a licence other than an exclusive licence;
  - (b) a decision of the Authority to refuse to consent under section 7F(3) to the combining of telecommunications services;
  - (c) a decision of the Authority to revoke under section 32K(2) a certificate of competency;
  - (d) a decision of the Authority to suspend or revoke under section 32K(5) an authority to operate;
  - (e) a decision of the authority concerned to cancel, withdraw or suspend under section 34(4) a licence, permit, permission or consent;
  - (f) a determination of the Authority under section 36A(1) on the terms and conditions of interconnection;
  - (g) a direction by the Authority under section 36AA(1) to coordinate and cooperate;
  - (h) a direction by the Authority under section 36B(1);
  - (i) a requirement by the Authority under section 36C(1) or (2) to pay a financial penalty; or
  - (j) a requirement by the Authority under section 36C(3A) to disclose information or publish corrective advertisements,
- may appeal to the Appeal Board against the decision, determination, direction or requirement.”.

**13. Section 32O amended (procedure and powers of Appeal Board, etc.)**

Section 32O(2)—

**Repeal**

“at any time before the opinion, determination, direction, decision, sanction or remedy referred to in section 32N(1)”

**Substitute**

“or the authority concerned at any time before the opinion, determination, direction, decision, sanction, remedy or requirement referred to in section 32N(1) or (1D)”.

**14. Section 32P amended (privilege against disclosure)**

Section 32P, after “Authority”—

**Add**

“(or the authority concerned)”.

**15. Section 36C amended (Authority or court may impose financial penalties)**

Section 36C(3A)(b), Chinese text—

**Repeal**

“啓示” (wherever appearing)

**Substitute**

“啟事”.

**16. Section 45 added**

After section 44—

**Add****“45. Transitional and savings provisions—Telecommunications (Amendment) Ordinance 2021**

- (1) An act or thing that—
  - (a) has been done before the commencement date in the exercise of a power, or performance of a function or duty, by the former Appeal Board under the pre-amended Ordinance; and
  - (b) is in force immediately before the commencement date,  
continues to be in force on or after the commencement date as if the 2021 Amending Ordinance had not been enacted.
- (2) An appeal that is pending immediately before the commencement date is to be dealt with by the new Appeal Board under this Ordinance as amended by the 2021 Amending Ordinance on or after the commencement date.
- (3) Section 32N(1D) applies only in relation to a decision, determination or requirement made, or a direction issued, on or after the commencement date.
- (4) In this section—

**2021 Amending Ordinance** (《2021年修訂條例》) means the Telecommunications (Amendment) Ordinance 2021 ( of 2021);

**commencement date** (生效日期) means the date on which the 2021 Amending Ordinance comes into operation;

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*former Appeal Board* (前上訴委員會) means the Appeal Board as defined by section 32L of the pre-amended Ordinance;

*new Appeal Board* (新上訴委員會) means the Appeal Board as defined by section 32L as amended by the 2021 Amending Ordinance;

*pre-amended Ordinance* (《原有條例》) means this Ordinance as in force immediately before the commencement date.”.

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## Part 3

### Consequential Amendment to Communications Authority Ordinance (Cap. 616)

17. **Section 23 amended (offence to give or disclose information obtained or received officially)**

Section 23(5), definition of *court*—

**Repeal**

“(Competition Provisions)”.

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## Explanatory Memorandum

The objects of this Bill are to amend the Telecommunications Ordinance (Cap. 106) (*Ordinance*) to provide for non-carrier licences, requirements relating to work near underground telecommunications lines and related offences, to confine certain objectives of technical regulation to telecommunications matters, to cover new appeal subject matters, to make minor textual amendments, and to provide for related matters.

2. The Bill is divided into 3 Parts.

### Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

### Part 2—Amendments to the Ordinance

4. Clause 3 adds the definitions of *operative guideline* and *underground telecommunications line* to section 2(1) of the Ordinance, which are necessary for the interpretation of the amendments to the Ordinance.
5. Clause 4 adds a new section 7AB to the Ordinance to empower the Secretary who is appointed by the Chief Executive for administering the Ordinance to specify a licence as a non-carrier licence.
6. Clause 5 adds a new section 18A to the Ordinance to provide for the requirements relating to work near underground telecommunications lines.

7. Clause 6 adds a new section 22A to the Ordinance to make it an offence for contravening the new section 18A of the Ordinance and to provide for the defences for the contravention. It also adds a new section 22B to the Ordinance to provide for the use of guidelines in criminal proceedings under the new section 22A of the Ordinance.
8. Clause 7 adds a new section 32CA to the Ordinance to make it clear that the evidential burden applies to the showing of a matter by a person under certain provisions in the new sections 22A and 22B of the Ordinance.
9. Clause 8 amends section 32D of the Ordinance to confine certain objectives of technical regulation to telecommunications matters.
10. Clause 11 amends section 32M of the Ordinance to change the name of the appeal board established under that section (*Appeal Board*).
11. Clause 12 amends section 32N of the Ordinance to cover new subject matters against which a person may appeal to the Appeal Board.
12. Clauses 13 and 14 amend sections 32O and 32P of the Ordinance respectively consequential to the amendment made by clause 12.
13. Clause 15 contains minor textual amendments to the Chinese text of section 36C of the Ordinance.

14. Clause 16 adds a new section 45 to the Ordinance to provide for the transitional and savings arrangements regarding the Appeal Board following the change in its name under clause 11, and to provide that the new subject matters under the amended section 32N of the Ordinance may be appealed against only if they arise on or after a certain date.

**Part 3—Consequential Amendment to Communications Authority Ordinance (Cap. 616)**

15. Clause 17 amends section 23 of the Communications Authority Ordinance (Cap. 616) consequential to the change in the name of the Appeal Board under clause 11.