

Information Note
for Incorporated Owners and
Building Management Office of Building
Regarding Access to Buildings by Network Operators
with Section 14 Authorization
Granted by the Communications Authority
under the Telecommunications Ordinance

Purpose

This note provides information to Building Management Offices, Incorporated Owners (or owners' corporations), Owners' Committees and owners of buildings, as the case may be, which act as the persons having lawful interest in land (collectively referred to as "IO/BMO") on matters relating to access to buildings by Unified Carrier Licensees authorized to provide fixed internal services (hereinafter referred to as the "Operators") under section 14(1) of the Telecommunications Ordinance (Chapter 106) ("TO").

Right of Access for Operators

2. Under section 14(1) of the TO, the Operators, who have been granted authorization by the Communications Authority (the "CA authorization"), are entitled to gain access to the common parts of buildings to install and maintain in-building telecommunications systems, which include cables and equipment, as necessary for provision of their licensed services to the residents or occupiers of the buildings. For information on the names and contacts of the Operators, please call the In-building System Enquiry Hotline of the Office of the Communications Authority ("OFCA") at 8102 4100 or visit OFCA's web site <http://www.ofca.gov.hk>.

3. To give effect to the legislative purpose of unimpeded access of all consumers to the full range of public telecommunications services of their choice, land designated as the common parts or otherwise for tenants use in common with others under the tenancy agreements, should be construed as subject to the right of access in section 14(1) of the TO¹. It should be emphasized that the CA authorization does not give the Operators any right to enter upon the buildings for the purpose of marketing and promotional activities. The Operators wishing to conduct any such activities should obtain prior permission from the IO/BMO concerned, failing which, the IO/BMO may consider taking appropriate action against the Operators concerned for unauthorized entry and/or nuisance caused.

Obligations of Operators

4. Under section 14(2)(b) of the TO, the Operators shall do as little damage as possible to the building in the course of installing cables and equipment in the building. Under section 14(2)(b)(i) of the TO, if any person having a lawful interest in the building or land concerned suffers physical damage to any fixtures or chattels found in the building or land as a result of such installation, the Operators shall make full compensation to such person.

5. The Operators are required to bear the full costs for the installation of their equipment and cabling facilities and, where applicable, the costs of interconnection with the in-building telecommunications system of the building. The Operators are also required to pay for the electricity bill for the power supply feeding to their own equipment installed in the building unless the IO/BMO agrees to bear such cost of electricity.

Co-ordinator for Operators

¹ Further details can be found in the judgement of the Court of Appeal in the CACV 275/2017 case.

6. A few Operators have been granted the CA authorization and they may deploy different access technologies, including wireless technology, for their access networks in buildings. In practice, there may be more than one Operator wishing to access a building to install in-building telecommunications systems there for provision of services. In order to minimize workload of the IO/BMO and to ensure that the Operators will install their equipment in an effective manner, the IO/BMO may appoint one Operator as a co-ordinator to liaise with all other interested Operators. The main roles of the co-ordinator are:

- (a) to collect requirements of the other Operators who wish to access the building;
- (b) to liaise with the IO/BMO to arrange joint site visit and meetings;
- (c) to work out a consolidated proposal (“the Proposal”);
- (d) to co-ordinate installation work as to minimise disruption to residents or occupiers; and
- (e) to act as a single contact point among OFCA, IO/BMO and the Operators concerned.

Points to Note by IO/BMO

7. Although the IO/BMO should allow the Operators to access the common parts of the building, those common parts remain the property of and, as the case may be, continue to be managed by the IO/BMO. The IO/BMO should note the following points, which are not meant to be exhaustive, in dealing with the Operators for the access to the common parts of the buildings for installing in-building telecommunications systems. Notwithstanding that individual IO/BMO may have its own concern, as long as the Operators’ statutory right to access the common parts of the building is not curtailed or inhibited, the IO/BMO may in good faith negotiate with the Operators on the technical and operational details of the access.

8. IO/BMO should –

- (a) respond promptly to Operators' request for site visit within 14 days upon receipt of written request of the Operators. It is suggested that the IO/BMO should give at least 5 working days advanced notice to the Operators for site visit;
- (b) provide the relevant building drawings and layout plans of the common parts of the building, if available, to the Operators;
- (c) permit and assist the Operators to access the common parts of the building and the in-building telecommunications system, if applicable, to install equipment and cables necessary for provision of services to the residents or occupiers in the building;
- (d) make available space in the common parts of the building and the in-building telecommunications system to the Operators on a non-discriminatory basis;
- (e) obtain the Proposal which contains all the requirements of the Operators who are interested to access the building in the existing co-ordination cycle;
- (f) acknowledge receipt of the Proposal and keep the co-ordinator and the Operators informed of its work progress from time to time;
- (g) confirm acceptance to the Proposal promptly. The normal timing for confirming acceptance of the Proposal by the IO/BMO, including seeking clarification with the Operators, should not be more than 4 weeks upon receipt of the Proposal for a development with 5 or less buildings; 5 weeks for a development with 6 to 15 buildings and 7 weeks for a development with 16 or more buildings;
- (h) give a date to the Operators for commencement of installation work when confirmation of acceptance to the Proposal is given; and
- (i) permit the relevant Operator to commence its installation

work even though only part of the Proposal is accepted. Reasons for not accepting the remaining parts of the Proposal should be given in writing.

9. In reviewing the Proposal submitted by the Operators, the IO/BMO may consider the following:

- (a) detailed arrangement including date and time for the Operators to carry out the installation work, and the arrangement for their workmen to access the building;
- (b) the installation method and location of equipment including the antenna at rooftop (if any), transmission equipment, cable, routing, etc.;
- (c) detailed arrangement for operation and maintenance of equipment in future, e.g. settlement of bills charged on electricity consumed by the Operators;
- (d) arrangement for remedial building work to be carried out in future on the space to be occupied by the Operators;
- (e) whether the Operators can use the existing in-building telecommunications systems or lay their own cables. If the Operators wish to lay their own cables, the IO/BMO may negotiate with the Operators with a view to keeping the aesthetic of the building intact as much as possible; and
- (f) whether the installation will comply with all relevant Ordinances, Regulations, guidelines and codes of practice in Hong Kong.

10. IO/BMO should not –

- (a) impose any fees, deposit, access charge, administrative charge, escort charge or rental charge on the Operators for the access of the building, the use of the common parts of the building or the use of the in-building telecommunications system of the building for the provision

- of services to residents or occupiers of the building;
- (b) enter into any commercial contract which will unreasonably restrict the right of a resident or an occupier or deprives a resident or an occupier of the right, to have access to the public telecommunications services of his/her choice. Any such agreement is void to the extent that it imposes such restriction;
 - (c) appoint any person not being an Operator who is also interested in accessing the building to act as the co-ordinator
 - (d) delay to process the access request submitted by the Operators;
 - (e) limit the choice of technology to be used or predetermine the access method of the Operators (e.g. to share use of cable, trunk and facilities, or to install separate set of cable, trunk and facilities);
 - (f) instruct or cause the Operators to employ an Authorized Person (with the same meaning as defined in the Buildings Ordinance (Chapter 123)) to endorse the Proposal which is indeed unnecessary;
 - (g) demand the Operators to share costs for maintenance of the building;
 - (h) demand the Operators to employ a particular contractor or company nominated by the IO/BMO to install the Operators' antenna, cable and/or equipment; and
 - (i) restrict the Operators to install antenna, cable and equipment at locations where practically feasible.

Assistance to be Provided by OFCA

11. IO/BMO should respond to the request of the co-ordinator and/or the Operators within reasonable time. If the IO/BMO and the co-ordinator (or the Operators) cannot satisfactorily agree to the Proposal, they may approach OFCA for assistance.

12. For any enquiry about this note, please call OFCA's In-building System Enquiry Hotline at 8102 4100, or contact OFCA by fax to 2116 0136, or by email to in-bldg@ofca.gov.hk.

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Note: In the event of any inconsistency or conflict between this Information Note and the provisions of the TO, the provisions in the TO shall prevail. Operators, IO/BMO and readers of this Information Note are advised to consult their own legal advisers on any matters to which information provided herein may be relevant.