

Telecommunications Regulatory Affairs Advisory Committee

Strengthening the Fifth Generation Mobile (“5G”) Infrastructure by Ensuring Availability of Space in and Access to New Buildings for Installation of Mobile Communications Facilities

PURPOSE

This paper updates Members on the implementation progress of the Government’s proposal to strengthen 5G infrastructure by ensuring availability of space in and access to new buildings for installation of mobile communications facilities (“MCFs”) by mobile network operators (“MNOs”).

BACKGROUND

2. As mobile communications network has become a basic necessity fundamental to further innovation and technological development, the Chief Executive announced in the 2022 Policy Address the Government’s plan to amend the Telecommunications Ordinance (Cap. 106) (“TO”) and relevant guidelines to ensure that appropriate space is made available in new buildings for the installation of MCFs by relevant MNOs.

3. To take forward the policy initiative, the Commerce and Economic Development Bureau, with the support of the Office of the Communications Authority (“OFCA”) and inputs from the Development Bureau, the Buildings Department (“BD”), the Lands Department (“LandsD”) and the Planning Department, conducted a consultation¹ from February to April 2023 with major stakeholders, including the MNOs, building developers and relevant professional bodies, on the salient details of the proposal (“Proposal”) as summarised below –

¹ The consultation note is available at :
[https://www.cedb.gov.hk/assets/resources/cedb/consultations-and-publications/Consultation_Document_\(Eng\)_new.pdf](https://www.cedb.gov.hk/assets/resources/cedb/consultations-and-publications/Consultation_Document_(Eng)_new.pdf).

- (a) to amend section 14 of the TO so that the MNOs may more readily be granted access right to new buildings;
- (b) to have a Code of Practice issued by the Communications Authority (“CA”) setting out the minimum standards / requirements of the infrastructure for the installation of MCFs in new buildings (“Mobile CoP”); and
- (c) to impose spatial requirements for reserving designated space in new buildings through revising relevant administrative guidelines / Codes of Practice / Practice Notes under the respective purviews of relevant Government departments, where such designated space in new buildings will be exempted from the calculation of gross floor area² (“GFA”).

A total of 13 submissions were received and all were supportive of the Proposal.

IMPLEMENTATION OF THE PROPOSAL

Telecommunications (Amendment) Bill 2023 (“Bill”)

4. The Bill³ was gazetted on 1 December 2023 and introduced to the Legislative Council (“LegCo”) on 6 December 2023. A Bills Committee has been set up by LegCo to scrutinise the Bill. The Bill aims to provide legal backing for the CA’s authorisation for the MNOs to enter the reserved space in Specified Buildings⁴ for installing and maintaining MCFs, without being

² Pursuant to regulation 23(3)(b) of the Building (Planning) Regulation (Cap. 123F) (“B(P)R”), in determining the GFA for the purposes of regulations 20, 21 and 22 of the B(P)R, the Building Authority (“BA”) may disregard any floor space that he is satisfied is constructed or intended to be used solely for any of the purposes specified in that regulation 23(3)(b), including access facilities for telecommunications and broadcasting services.

³ The Bill is available at:
<https://www.gld.gov.hk/egazette/pdf/20232748/es32023274836.pdf>.

⁴ The term “Specified Building” is defined in the Bill. In essence, it refers to a new building that is required to be provided with access facilities for telecommunications and broadcasting services under the B(P)R, that is to say, a building that -

- (a) is a **commercial building, industrial building, residential building** (other than a building for residence of a single family) or a **hotel building**; and
- (b) is erected or results from major rebuilding or alteration where the relevant building plans for the

subject to the existing stringent criteria under section 14(1A) and (1B) of the TO as well as payment of a fee under section 14(1D) and (2)(ii) of the TO to the persons having a lawful interest in the land. In other words, access right to Specified Buildings may be granted to MNOs by the CA in respect of the installation of MCFs as readily as access right that may be granted to fixed network operators.

Mobile CoP by the CA

5. To supplement the proposed legislative amendments, the CA will issue a Mobile CoP under relevant special conditions (“SCs”) of the Unified Carrier Licence (“UCL”) to provide practical guidance to MNOs for installation, operation and maintenance of MCFs inside Specified Buildings for the provision of mobile services, as well as guidance to developers and construction professionals on the minimum space and associated access facilities that should be made available in Specified Buildings for MNOs to install, maintain and operate mobile communications and other related facilities. The MNOs are required under the relevant SCs in their UCLs to comply with the Mobile CoP.

6. OFCA is finalising the Mobile CoP taking into account views and comments from the relevant stakeholders including the MNOs, building developers and professional bodies, and relevant Government departments to ensure the practicality of the Mobile CoP. Some key features of the draft Mobile CoP are highlighted below:

- (a) *Scope:* Specified Buildings as defined in the Bill⁵ are required to reserve designated floor space and mobile access facilities (“MAFs”) for the installation of MCFs by MNOs. Small Specified Buildings (“SSBs”) which meet the exemption criteria are in

erection or major rebuilding or alteration are approved by the BA on or after six months from the commencement date of the amendments to section 14 of the TO. Major rebuilding or alteration means one half of the building by volume is rebuilt or one half of the superficial area of the main walls is reconstructed.

The Specified Building definition does not cover buildings for which approval under section 14(1) of the Buildings Ordinance (Cap. 123) is not required. For public housing estates and government buildings, OFCA will follow up with relevant departments to ensure that similar spatial and mobile access facilities requirements will be adopted.

⁵ See footnote 4.

general⁶ not required under the Mobile CoP to provide designated floor space and MAFs. For new developments comprising multiple Specified Buildings, only a portion of the Specified Buildings that are not SSBs⁷ are required to provide designated floor space and MAFs;

- (b) *Minimum requirements on space and MAFs*: the Mobile CoP will designate the minimum requirements for floor space and MAFs reserved at different levels of a Specified Building (i.e. rooftop, the telecommunications and broadcasting equipment room, and/or a lower / intermediate level) depending on the size and type of Specified Buildings;
- (c) *GFA*: the floor space reserved for the installation of MCFs shall be exempted by the Building Authority (“BA”) in determining the GFA;
- (d) *Additional space or facilities*: any request for additional space and facilities beyond the obligatory MAFs provided according to the Mobile CoP and as approved in the relevant building plans by the BA will be subject to commercial agreement between the MNOs and building developers / building owners / Incorporated Owners (“IOs”) / Building Management Offices (“BMOs”) concerned;
- (e) *Holistic design*: MAFs should be integrated in the design of Specified Buildings in a holistic manner to minimise any visual impact and concerns on radiation safety from the occupants of the buildings and the neighbourhood; and
- (f) *Obligations of the parties*: the respective obligations of MNOs, building developers, building owners, IOs / BMOs concerning various aspects of the implementation of the Mobile CoP are clearly defined.

⁶ Except in scenario when all Specified Buildings within a development are SSBs, a certain number of the SSBs will be required to provide space and MAFs to ensure availability of mobile services.

⁷ Each of the Specified Buildings within a development will be assessed individually on whether it meets the SSB exemption criteria.

Practice Note by BD

7. Along with the issue of the Mobile CoP by the CA, BD will update the current Practice Note⁸ issued pursuant to regulation 28A of the Building (Planning) Regulation (Cap. 123F) (“B(P)R”) to specify the design and associated requirements in Specified Buildings to provide suitable floor space and ancillary facilities (e.g. cable ducts) for the installation of MCFs, by adopting those requirements in the Mobile CoP to be promulgated by the CA, for the statutory compliance of relevant building developers and construction professionals.

Land Leases by LandsD

8. To dovetail with the proposed legislative amendments, LandsD will make appropriate provisions in the relevant new land leases⁹ to allow radiocommunications installations in private residential or non-commercial buildings without a need to apply for a waiver¹⁰ from LandsD. To facilitate installation of radiocommunications facilities at Specified Buildings to be redeveloped and rebuilt under existing land leases, LandsD will apply similar treatment via modifying the existing land leases to remove the application for waiver requirement.

WAY FORWARD

9. Subject to LegCo’s scrutiny and passage of the Bill, the CA will approve and issue the finalised Mobile CoP having regard to the comments received during the legislative process. BD will also finalise the draft updated Practice Note with reference to the corresponding provisions in the finalised Mobile CoP and go through the necessary process of approval by the BA (including consulting BD’s committee). The Mobile CoP will be effective

⁸ Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers (PNAP) APP-84 on “Access Facilities for Telecommunications and Broadcasting Services”.

⁹ “New land leases” cover Government Leases or Conditions of Sale / Exchange etc. (as the case may be).

¹⁰ Such waiver will waive the user restriction and other consequential aspects such as GFA, site coverage, building height, etc.

together with the updated Practice Note from the day after the expiry of six months from the commencement date of the amendments to section 14 of the TO¹¹. After passage of the Bill, LandsD will include new conditions in new land leases or modified land leases to remove the requirement to obtain a waiver for private residential and non-commercial buildings as mentioned in paragraph 8 above.

10. Whilst the legislative amendment exercise applies to Specified Buildings, the Housing Department will reserve space and facilities at new public housing developments in accordance with the updated Practice Note to be issued by the BA and formulate administrative arrangements to enable MNOs' access to the reserved space therein for installing and maintaining MCFs. OFCA will also follow up with relevant Government departments for imposing similar spatial requirements in new government buildings where appropriate.

VIEWS SOUGHT

11. Members are invited to take note of the content of this paper. Any views and comments from Members are welcome.

**Office of the Communications Authority
January 2024**

¹¹ It is provided in the Bill that the provisions to amend section 14 of the TO will come into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.