

## 10 Appendix B: Draft Facilitating Telecommunications Rights of Way Regulations

### Facilitating Telecommunications Rights of Way Regulations [Country]

#### CHAPTER I PRELIMINARY

##### 1. Citation

These Regulations may be cited as the *“Facilitating Telecommunications Rights of Way Regulations of [Country]”*.

##### 2. Authorising Provisions

These Regulations were enacted in accordance with [insert relevant provisions].

##### 3. Definitions

(1) In these Regulations, the following expressions contained shall have the meanings given below:

- (a) “Law” means the means the relevant National Telecommunications Law which includes provisions for Telecommunications Services.
- (b) “Authority” means the body, company or institution that has control or management of Telecommunications Services.
- (c) “Days” means calendar days.
- (d) “Director General” means Director General of the Authority.
- (e) “Facility” means any part of the infrastructure of a Telecommunications Network; or any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a Telecommunications Network.
- (f) “License” means an authorisation to provide Telecommunications Services granted under the Law.
- (g) “Licensee” means a holder of a License.
- (h) “Overground Facility” means a facility or a facility line established over the ground and includes posts or other above ground contrivances, appliances and apparatus for the purpose of establishment or maintenance of the facility.
- (i) “Regulations” mean the *Facilitating Telecommunications Rights of Way Regulations of [Country]*.
- (j) “Telecommunications Network” means a network of telecommunications facilities, telecommunications equipment, computers, devices similar to computer, peripherals used in conjunction with them by means of wire or wireless communication technology

- (k) "Underground Facility" means a facility or facility line laid under the ground and includes manholes, marker stones, appliances and apparatus for the purposes of establishment or maintenance of the facility.

(2) Words and expressions used and not defined herein shall have the meaning assigned to them in the Law.

#### 4. Application

The Authority shall exercise the powers under these Regulations on an application for establishment and maintenance of an Underground or Overground Facility by Licensees holding a License entitling them to provide Telecommunications Services in [Country].

## CHAPTER II

### ESTABLISHMENT OF LOW-IMPACT FACILITIES

#### 5. Low-Impact Facilities

(1) Subject to the additional requirements in Ch IV, a Licensee may establish an Underground or Overground Facility if the facility is a Low-Impact Facility without seeking permission from the Authority.

#### 6. Defining Low-Impact Facilities

- (2) Low-Impact Facilities include, but are not limited to:
- (a) radiocommunications dishes not more than 1.2 metres in diameter;
    - i. if attached to a supporting structure, the total protrusion from the structure is not more than 2 metres
  - (b) antenna poles that are not more than 2.8 metres long;
    - ii. if the antenna is attached to a structure, the total protrusion from the structure is not more than 3 metres
  - (c) underground cabling and cable pits;
  - (d) in-building subscriber connection equipment;
  - (e) Facilities that were installed to provide telecommunication services in emergencies
  - (f) public payphones that are:
    - i. used solely for carriage and content services; and
    - ii. not designed for other uses (for example, as a vending machine); and
    - iii. not fitted with devices or facilities for other uses; and
    - iv. not used to display commercial advertising other than advertising related to the supply of standard telephone services
- (3) The following cannot be Low-Impact Facilities:
- (a) designated overhead lines;
  - (b) a tower that is not attached to a building;
  - (c) a tower attached to a building and more than 5 metres high;
  - (d) an extension to a tower that has previously been extended;
  - (e) an extension to a tower, if the extension is more than 5 metres high.
- (4) The Director General may, by written approval, determine that a specified facility is a Low-Impact Facility.

(5) A Facility cannot be a Low-Impact Facility unless it is specified in these Regulations or approved by the Director General in writing.

Chapter II may be included if the Authority wishes to expediate the process for establishing low-impact facilities. This refers to telecommunications infrastructure which, because of their size and location, are considered to have a low visual impact and be less likely to raise significant planning, heritage or environmental concerns.

However, note that this Chapter is subject to the additional requirements set out in Chapter V. This means that although the Licensee no longer needs to obtain permission from the Authority prior to establishing the Low-Impact Facility, the Licensee may still need to obtain permission from the local government, for instance.

### CHAPTER III ESTABLISHMENT AND MAINTENANCE OF UNDERGROUND FACILITIES

#### 7. Application by a Licensee

(1) A Licensee shall, for the purposes of establishment of a Facility under any immovable property vested in or under the control or management of the Authority, make an application to the Authority, supported by such documents in such form and manner as may be specified by Authority.

(2) The information along with supporting documents to be provided by the Licensee in the application made under sub-rule (1) shall include-

- i. a copy of the License granted by the Authority;
- ii. the details of the Underground Facility proposed to be laid;
- iii. the mode of and the time duration for, execution of the work;
- iv. the time of the day when the work is expected to be done in case the Licensee expects the work to be done during specific time of the day;
- v. the details of expenses that the Authority will necessarily be put in consequence of the work proposed to be undertaken by the Licensee;
- vi. the inconvenience that is likely to be caused to the public and the specific measures proposed to be taken to mitigate such inconvenience;
- vii. the specific measures proposed to be taken to ensure public safety during the execution of the work;
- viii. any other matter relevant, in the opinion of the Licensee, connected with or relative to the work proposed to be undertaken; and
- ix. any other matter connected with or related to the work as may be specified, through the Law or any other applicable law.



Provided that the Licensee shall, while making the application, give a specific commitment on whether he undertakes to discharge the responsibility for restoration, to the extent reasonable and prudent, of the damage that the Authority shall necessarily be put in consequence of the

The list of supporting documentation that a Licensee must submit to the Authority when making an application is broad. As per sub-rule (2) of Rule 7, in addition to the enumerated documents, the Licensee must also include 'any other matter connected with or related to the work as may be specified, through the Law or any other applicable law'. This is to ensure that the Authority has all the relevant information it needs to make an appropriate determination under Rule 8.

The broad requirements regarding supporting documentation are mirrored in Rule 11 for applications for establishing Overground Facilities.

work proposed to be undertaken.

(3) Every application under sub-rule (1) shall be accompanied with such fee to meet administrative expenses for examination of the application and the proposed work as the Authority may deem fit. Such a fee to meet administrative expenses shall not exceed [amount to be determined] per kilometre.

The capped administrative fee in sub-rule (3) ensures that administrative costs associated with the installation of telecom infrastructure are kept at a reasonable amount. This helps to facilitate the non-discriminatory basis on which Licensees are to be granted permission by the Authority.

Sub-rule (3) of rule 11 also requires a capped administrative fee for making an application to the Authority to establish Overground Facilities.

## 8. Grant of Permission by the Authority

(1) The Authority shall examine the application with respect to the following parameters, namely:

- (a) the route planned for the proposed Underground Facility and the possible interference, either in the establishment or maintenance of such Facility, with any other public infrastructure that may have been laid along the proposed route;
- (b) the mode of execution;
- (c) the time duration for execution of the work and the time of the day that the work is proposed to be executed;
- (d) the estimation of expenses that the Authority shall necessarily be put in consequence of the work proposed to be undertaken;
- (e) the responsibility for restoration of any damage that the Authority may necessarily be put in consequence of the work proposed to be undertaken;
- (f) assessment of measures to ensure public safety and inconvenience that the public is likely to be put to in consequence of the work proposed and the measures to mitigate such inconvenience indicated by the Licensee;
- (g) any other matter, consistent with the provisions of the Law, these Regulations, or any other applicable law, connected with or relative to the establishment or maintenance of an Underground Facility.

(2) The Authority shall within a period not exceeding 60 days from the date of application made under rule 7-

- (a) grant permission on such conditions including, but not limited to, the time, mode of execution, measures to mitigate public inconvenience or enhance public safety and payment of restoration charge, as may be specified, subject to the provisions of the Law, these Regulations, or any other applicable law; or
  - (b) reject the application for reasons to be recorded in writing.
- (3) No application shall be rejected unless the applicant has been given an opportunity of being heard on the reasons for such rejection.
- (4) The permission shall be deemed to have been granted if the Authority fails to either grant permission under clause (a) of sub-rule (2) or reject the application under clause (b) of sub-rule (2); and the same shall be communicated in writing to the applicant not later than 5 working days after permission is deemed to have been granted.

Rule 8 makes clear that strict timelines must be observed by the Authority in granting permission or rejecting an application. As per sub-rule (4), a Licensee's application will be deemed to have been granted if the Authority fails to issue a permission or rejection within the specified timeframe. This is to provide a framework for a speedy infrastructure approval process and improve ease of business overall.

The timelines requirements in granting permission are mirrored for Overground Facilities in Rule 12.

#### 9. Obligations of Licensee in Undertaking Work

- (1) The Licensee shall make the payment of expenses or submit the bank guarantee as determined by the Authority within a period of 30 days from the date of grant of permission and prior to the commencement of work of laying the Underground Facility.
- (2) The Authority may, at its discretion, extend the said period for payment of expenses or submission of bank guarantee on an application made by the Licensee seeking such extension.
- (2) The Licensee shall ensure that –
  - (a) prior to the commencement of work of laying the Underground Facility and at all times during the execution of work, the measures to mitigate public inconvenience and provide for public safety are implemented; and
  - (b) the work of laying the Underground Facility is carried out in accordance with the conditions specified in the grant of permission by the Authority
- (3) The Licensee shall ensure provision of positional intelligence, through appropriate technology, of all Underground Facilities to enable the Authority to obtain real time information on its location.

Rule 11 creates obligations on Licensees for the benefit of the general community. In addition to obligations such as complying with conditions set by the Authority and making payment of expenses, Licensees are required to have regard to public inconvenience and public safety in undertaking work.

Some of these obligations on Licensees are mirrored in Rule 13 for Licensees who are establishing an Overground Facility.

#### 10. Powers of the Authority to Supervise the Work

- (1) The Authority may supervise the execution of work to ascertain if the conditions imposed in the grant of permission under clause (a) of sub-rule (2) of rule 8 are observed by the Licensee.
- (2) The Authority may, on the basis of such supervision, impose such other reasonable conditions as it may think fit.
- (3) If the Authority comes to the conclusion that the Licensee has wilfully violated any of the conditions for grant of permission under clause (a) of sub-rule (2) of rule 8, it may forfeit, in full or in part, the bank guarantee submitted by the Licensee and withdraw the permission granted to the Licensee, for reasons to be recorded in writing
- (4) No action shall be taken under sub-rule (3) unless the Licensee has been given an opportunity of being heard.

Rule 10 empowers the Authority to supervise the work of Licensees in establishing and maintaining Underground Facilities. This power functions to help the Authority confirm that conditions on the grant of permission are met. It also empowers the Authority to take action if the Licensee has been found to wilfully violate any of these conditions. This power is important in ensuring that the Authority retains some control over the maintenance of Facilities even after permission has been granted to a Licensee.

Under Rule 14, the Authority also has power to supervise work in relation to Overground Facilities.

### CHAPTER IV ESTABLISHMENT OF OVERGROUND FACILITY

#### 11. Application by a Licensee

- (1) A Licensee shall, for the purposes of establishing an Overground Facility, upon any immoveable property vested in or under the control or management of the Authority, make an application, supported by such documents, to the Authority in such form and manner as may be specified by the Authority
- (2) The information along with supporting documents to be provided by the Licensee in the application made under sub-rule (1) shall include-
  - i. a copy of the Licence granted by the Authority;
  - ii. the nature and location, including exact latitude and longitude, of post or other above ground contrivances proposed to be established;
  - iii. the extent of land required for establishment of the Overground Facility;
  - iv. the details of the building or structure, where the establishment of the Overground Facility, is proposed;
  - v. the mode of and the time duration for, execution of the work;
  - vi. the inconvenience that is likely to be caused to the public and the specific measures proposed to be taken to mitigate such inconvenience;



- vii. the measures proposed to be taken to ensure public safety during the execution of the work;
- viii. the detailed technical design and drawings of the post or other above ground contrivances;
- ix. certification of the technical design by a structural engineer attesting to the structural safety, of the Overground Facility;
- x. certification, by a structural engineer, attesting to the structural safety of the building, where the post or other above ground contrivances is proposed to be established on a building;
- xi. the names and contact details of the employees of the Licensee for the purposes of communication in regard to the application made;
- xii. any other matter relevant, in the opinion of the Licensee, connected with or relative to the work proposed to be undertaken; and
- xiii. any other matter connected with or related to the work as may be specified, through the Law or any other applicable law.

(3) Every application under sub-rule (1) shall be accompanied with such fee to meet administrative expenses for examination of the application and the proposed work as the Authority may, by general order, deem fit. The one-time fee, to meet administrative expenses, accompanying every application shall not exceed [amount to be determined].

## 12. Grant of Permission by the Authority

(1) The Authority shall examine the application with respect to the following parameters, namely:

- (a) the extent of land required for the Overground Facility;
- (b) the location proposed;
- (c) the mode of and time duration for execution of the work;
- (d) the estimation of expenses that the Authority shall necessarily be put in consequence of the work proposed to be undertaken;
- (e) assessment of the inconvenience that the public is likely to be put to in consequence of the establishment or maintenance of the Overground Facility, and the measures to mitigate such inconvenience indicated by the Licensee;
- (f) certification of the technical design by a structural engineer attesting to the structural safety of the Overground Facility;
- (g) certification, by a structural engineer, of the structural safety of the building on which the post or other above ground contrivances is proposed to be established;
- (h) any other matter, consistent with the provisions of the Law, these Regulations, or any other applicable law, connected with or related to the laying of Overground Facilities.

(2) Where the establishment of the Overground Facility renders the immoveable property, vested in the control or management of the Authority over which such Overground Facility is established, unlikely to be used for any other purpose, the Authority shall be entitled to compensation for the value of the immoveable property, either once or annually, assessed on such rates as that Authority may, by general order, specify.

(3) The Authority shall, within a period not exceeding 60 days from the date of application made under rule 11 –

- (a) grant permission on such conditions including, but not limited to, the time, mode of execution, measures to mitigate public inconvenience or enhance public safety or

- structural safety and payment of restoration charge or compensation, subject to the provisions of the Law, these Regulations, or any other applicable law; or
- (b) reject the application for reasons to be recorded in writing.

(4) No application shall be rejected unless the applicant Licensee has been given an opportunity of being heard on the reasons for such rejection.

(5) Permission shall be deemed to have been granted if the Authority fails to either grant permission under clause (a) of sub-rule (3) or reject the application under clause (b) of sub-rule (3) and the same shall be communicated in writing to the applicant not later than 5 working days after permission is deemed to have been granted.

(6) The Authority shall not charge any fee other than those mentioned under sub-rule (3) of rule 11 and clause (a) of sub-rule (3) from the Licensee for establishing an Overground Facility.

### 13. Obligations of Licensee in Undertaking Work

- (1) The Licensee shall ensure that –
  - (a) prior to the commencement of establishment and maintenance of the Overground Facility and at all times, the measures to mitigate public inconvenience and ensure public safety, including structural safety of such Overground Facility are implemented; and
  - (b) the work of establishment and maintenance of the Overground Facility is carried out in accordance with the conditions specified in the grant of permission by the Authority.

### 14. Powers of the Authority to Supervise the Work

- (1) The Authority may supervise the establishment and maintenance of the Overground Facility to ascertain if the conditions imposed in the grant of permission under clause (a) of sub-rule (3) of rule 12 are observed by the Licensee.
- (2) The Authority may, on the basis of such supervision, impose such other reasonable conditions, as it may think fit.
- (3) If the Authority comes to the conclusion that the Licensee has wilfully violated any of the conditions for grant of permission under clause (a) of sub-rule (3) of rule 12, it may withdraw, for reasons to be recorded in writing, the permission granted to the Licensee.
- (4) No action shall be taken under this sub-rule unless the Licensee has been given an opportunity of being heard.

## CHAPTER V ADDITIONAL REQUIREMENTS

This Chapter should include any additional requirements related to the establishment of telecommunications infrastructure in the jurisdiction. For example:

- Local government laws may mandate specific requirements for the deployment of infrastructure requirements in their area



- If the country's land law recognises customary law, these local informal Regulations should be taken into consideration and incorporated in this Chapter. Note that customary laws can add uncertainty in the infrastructure approval process since such laws may not be written down or recorded, and ownership disputes may be difficult to resolve.
- The Chapter must detail if individuals and entities are to be granted usufruct land rights for occupation or use of land.

In determining the additional requirements relevant in a jurisdiction, please refer to the table in **Appendix A** which provides an overview of land law systems in the Asia Pacific region.

## CHAPTER VI

### RIGHT OF AUTHORITY TO SEEK REMOVAL OF UNDERGROUND OR OVERGROUND FACILITY

#### 20. Right of the Authority to Seek Removal, etc.

- (1) Where the Authority, having regard to circumstances which have arisen since the establishment of any Underground or Overground Facility vested in or under the control or management of the Authority, considers that it is necessary and expedient to remove or alter such Facility, it shall issue a notice to the Licensee, being the owner of such Facility, to remove or alter its location.
- (2) On receipt of the notice under sub-rule (1), the Licensee shall, forthwith and within a period of 30 days, proceed to submit, to the Authority, a detailed plan for removal or alteration of such Underground or Overground Facility.
- (3) The Authority shall, after examination of the detailed plan submitted by the Licensee under sub-rule (2), pass such orders as it deems fit.
- (4) The Authority shall, having regard to emergent and expedient circumstances requiring the removal or alteration of such Facility, give a reasonable time of not less than 90 days to the Licensee for removal or alteration of such Facility.
- (5) The responsibility and liability, including the cost thereof, for removal or alteration of such Facility shall be borne by the Licensee.

Rule 20 gives the Authority the power to seek removal of an Underground or Overground Facility. This allows the Authority to take into consideration matters that have arisen after permission has been granted and the Facility has been established, that make it so that the Facility needs to be removed or altered.

## CHAPTER VII DISPUTE RESOLUTION AND APPEALS PROCESS

### 21. Disputes between the Licensee and Authority

- (1) Any dispute arising between a Licensee and the Authority in consequence of these Regulations, shall be referred to the Ministry within 30 days from the date on which the decision is made
- (2) In respect of the appeal filed under sub-rule (1), the Ministry:
  - (i) shall make necessary investigations;
  - (ii) may approve, revise or cancel the decision of the Authority

### 22. Appealing to the Appeals Tribunal

- (1) A Licensee who is not satisfied with the decision of the Ministry may appeal to the Appeals Tribunal within 45 days from the date the decision is made in accord with the procedure.
- (2) The procedures associated with hearings, decisions, assigning duty and the formation of the Appeal Tribunal shall be consistent with Chapter XVII of the Law.
- (3) The decision of the Appeals Tribunal shall be final and conclusive.

Chapter VII should be drafted in compliance with the dispute resolution process in the relevant National Telecommunications Law. As such, it should be modified according to the bodies, institutions, procedures and practices in a particular jurisdiction.

Chapter VII in these guidelines has been drafted with the assumption that there is an Appeals Tribunal established by the Law for telecommunications disputes. It also assumes a Ministry exists that manages the Authority with which the Licensee has a dispute.