

3 January 2022

Mr Chaucer Leung, JP
Director-General of Communications
Office of the Communications Authority
29/F, Wu Chung House
213 Queen's Road East
Wan Chai, Hong Kong

Dear Mr Leung,

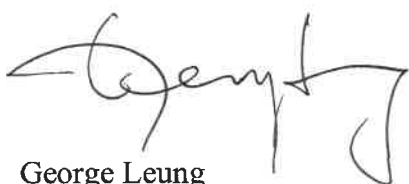
Re: Communications Authority's Consultation on the Draft Guidelines on Work near Underground Telecommunications Lines (the Guidelines)

The Hong Kong General Chamber of Commerce welcomes the opportunity to express our views on the subject consultation.

Whilst we agree with the need for a set of guidelines to help businesses in the relevant sectors comply with their legal obligations as set out under the Telecommunications Ordinance (Cap.106) (the Ordinance), the objectives of such guidelines should not be overly prescriptive or difficult to implement. At the same time, the responsibility should be distributed proportionately and equitably among the relevant parties. Given the Guidelines' significance in determining culpability where there is a suspected breach of the Ordinance, consideration should also be given to extending the current consultation period to allow for sufficient time for feedback to be made.

We hope you find our comments useful to your deliberations.

Yours sincerely,



George Leung
CEO

Encl.

**Communications Authority’s Consultation on Draft *Guidelines on Work
Near Underground Telecommunications Lines* (“the Draft”)**

**Submission by The Hong Kong General Chamber of Commerce
 (“HKGCC”)**

HKGCC welcomes the opportunity to respond to this consultation. As the introduction to the Draft notes, damage to underground telephone lines can have a major disruptive effect on both individuals and businesses, as with damage to electricity cables and other essential services. Any useful guidance that can be given to assist businesses in the relevant sectors to avoid such damage is therefore to be welcomed (subject to our comments below).

We set out below first our general comments, then our more specific comments, on the Draft.

General Comments

1. It is critical to get these guidelines right, because they may be influential in determining whether a person is guilty of committing a criminal offence. Under the new section 22A(4) of the Telecommunications Ordinance, compliance with the guidelines will be a defence to what would otherwise be a criminal offence. Conversely, under the new section 22B(3), failure to comply with them may be relied on by the prosecutor in seeking to establish that an offence be committed. Given the importance of these guidelines and getting them right, we believe that a consultation period of one month is far too short, and that a period of at least three months would be more appropriate.
2. In our view, getting the guidelines right requires at least the following:
 - They must not suggest any step which is impracticable to implement or unnecessary.
 - They must not be too prescriptive, and leave the relevant parties with sufficient flexibility to adopt alternative steps which are reasonable.
 - They must strike a fair balance between the interests of, and distribute the burden (financial and otherwise) fairly between, telecommunication operators, and parties which have to carry out underground works, often at the public’s expense and for the public’s benefit.
3. In our view, the Draft in its current form falls short of meeting these requirements:
 - As we explain in our specific comments below, there are a number of steps which we are informed by the relevant sectors are impracticable or unnecessary.
 - The language of the guidelines is mandatory: the word “shall” is used throughout, as if the guidelines were legislation, which they are not. The language used should be suggestive rather than mandatory- for example “we suggest that...”, “reasonable steps might include...”, working parties may wish to consider...” etc.

Moreover, the guidelines in many areas are overly detailed and give the operators concerned insufficient flexibility. For example, “The working party shall also provide a method statement detailing the working method, plants employed and any measures that the relevant fixed network operators (FNOs) shall take before the work begins”.¹ With respect, this is overly detailed, intrusive and unnecessary. The danger is that the more detailed the guidelines are, the greater the risk is that working parties (and indeed FNOs) will commit a criminal offence, if they omit to take any particular step.

- It must not be overlooked (as noted above) that working parties are often doing work at the public’s expense and for the public benefit. Often the work they do is of an emergency or urgent nature. Arguably, allocating most of the burden of investigating and locating underground telecommunications lines (UTLs) to working parties in these circumstances is inappropriate, and the balance may need to be redressed. We suggest in our specific comments below a number of areas where this could be achieved.

In short, we believe that the Draft needs a great deal of further consideration and work to get right, and we would urge the Authority to extend the consultation period by at least a further two months for this purpose.

Specific Comments

(Numbers in the left column refer to paragraph numbers in the Draft).

6	FNOs should be added to the list of relevant entities in the first sentence, in the interests of balance. They may also inadvertently cause damage to their own or another FNO’s line in carrying out work, not just working parties. In the same sentence we suggest that the opening words should be “The Guidelines are designed to assist” instead of “The Guidelines are applicable to”.
7	The word “suspected” should be inserted before “offence” where it appears near the end of the sentence.
8	Table 1 appears to replicate the equivalent table in the Electrical and Mechanical Services Department’s “Code of Practice on Working near Electricity Supply Lines” (2018). However (a) damage to electricity poses a higher risk to public safety (for example through an explosion) than damage to telephone lines; and (b) we have received membership feedback that maintaining these distances is not practicable, given the current congestion in many locations where lines are located. We suggest that shorter distances should therefore apply in the case of UTLs.
11(b), 12	We suggest that a number of days be specified as a guide, and would suggest “14 days unless otherwise agreed”, as in EMSD’s guidelines referred to above.
11(d)	The function of the tracer wire is to facilitate the detection of UTLs. If UTLs are made with a metallic conductor or wire to propagate the signal for detection, the installation of the tracer wire should not be required. This is

¹ Para 46.

	indeed recognised in Appendix 3 paragraph 3.2. Paragraph 11(d) should be amended accordingly.
19, 20	It would be helpful if a sample of a written notice of the proposed work for submission to FNOs could be provided by way of illustration. We also suggest that it be clarified that notices can be submitted electronically. These timelines may need to be accelerated in emergency situations, and this should be made clear.
23	This paragraph states (in bold) that “the working party shall not solely rely on the information given in the telecommunications lines layout plans provided by the relevant FNO”. But it does not indicate what else the working party is expected to rely upon. This is an example of the point made in our general comments above that there should be more of an onus on FNOs in the guidelines to locate their own lines. On a more technical point, we understand from the industry that optical fibre cables (OFCs) without tracer wire cannot be located with the devices currently available. We suggest therefore that the guidelines provide that FNOs should keep records of OFCs with and without tracer wire.
24-39	It needs to be made clear that if a UTL is undetectable due to the fact that the FNO has neither ensured that it contains a suitable metallic conductor to propagate a signal, nor installed a tracer wire (as specified in Appendix 3 para 3.2), neither the relevant working party nor the competent person appointed by it should be held responsible for any damage caused to the UTL in question.
27	We suggest it be provided that FNOs should assist and advise the competent person if he/she cannot reasonably locate the lines.
48	We have received industry feedback that the distances of 0.5 and 1 metre respectively are impracticable to implement in many locations due to congestion of cables and restricted pavement widths. Shorter distances should be specified, or left to what is reasonable in the circumstances.
60	Due the same congestion problem referred to above, we are informed that the 10-metre distance is impracticable to implement at many locations. Shorter distances should be specified, or left to what is reasonable in the circumstances.
62	The word “immediately” is too strict and should be replaced by “as soon as is reasonably practicable”.
App.2, 2.5 (b)	We suggest that in the interests of efficiency, there should be coordination between EMSD and OFCA in recognition of appropriate training courses.

We hope you find the above comments helpful.

HKGCC Secretariat
January 2022