

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 19th day of December, 1962, and is found by me to be a true and correctly printed copy of the said Bill.

A. T. CLARK,
Clerk of Councils.

(Secretariat CR1/67/3231/47)

TELECOMMUNICATION ORDINANCE, 1962.

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HONG KONG

No. 46 OF 1962.



I assent.

R. B. BLACK,
Governor.

20th December, 1962.

An Ordinance to repeal and replace the Telecommunication Ordinance, Chapter 106 and to make better provision for the licensing and control of telecommunications, telecommunication services and telecommunication apparatus and equipment.

[1st January, 1963.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

PART I.**PRELIMINARY.**

Short title
and com-
mencement.

1. This Ordinance may be cited as the Telecommunication Ordinance, 1962, and shall come into operation on the 1st day of January, 1963.

Interpre-
tation.

2. In this Ordinance, unless the context otherwise requires—
- “Authority” means the Telecommunications Authority appointed under section 5;
- “licensee” means the holder of a licence for the time being in force under this Ordinance;
- “message” means any communication sent or received or made by telecommunication or given to a telecommunications officer to be sent by telecommunication or to be delivered;
- “radiocommunication” means communication by radio waves;
- “telecommunication” means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by visual means or by wire or radio waves or any other electromagnetic system;
- “telecommunication installation” means any apparatus or equipment maintained for or in connexion with a telecommunication service;
- “telecommunication officer” means any person employed in connexion with a telecommunication service;
- “telecommunication service” means the provision of facilities for use by members of the public or by any person for the transmission or reception of messages or the provision on loan, lease or hire to

*Ordinance not
deallowed, see
G.N. 1185/63.*

members of the public or to any person of apparatus for telecommunication either within the Colony or with any place outside the Colony.

3. Save as otherwise expressly provided, this Ordinance does not bind the Crown or apply to any means of telecommunication established or maintained by the Crown or to any apparatus for telecommunication possessed or used by the Crown for the purpose of or in connexion with any such means of telecommunication.

Application to Crown.

4. Nothing in this Ordinance shall prevent the Crown from establishing and maintaining any means of telecommunication to the exclusion of all other persons.

Saving of Crown rights.

PART II.

APPOINTMENT OF TELECOMMUNICATIONS AUTHORITY.

5. The Governor may appoint such public officer as he thinks fit to be the Telecommunications Authority for the purposes of this Ordinance.

Appointment of Telecommunications Authority.

6. The Authority may, in writing, delegate to any public officer, either generally or for any particular occasion and either by name or by reference to a public office, such of his powers and functions under this Ordinance as he considers necessary:

Delegation of powers.

Provided that no delegation made hereunder shall preclude the Authority from exercising or performing at any time any of the powers or functions so delegated.

PART III.

CONTROL OF TELECOMMUNICATIONS.

7. The Governor in Council and, subject to regulations made under section 37, the Authority may, in accordance with this Ordinance, grant to such persons as they think fit licences to establish and maintain any means of telecommunication and to possess and use apparatus for radiocommunication or any apparatus of any kind that generates and emits radio waves.

Power of Governor in Council to grant licences.

8. (1) Save under and in accordance with a licence granted by the Governor in Council or with the appropriate licence granted by the Authority, no person shall in the Colony or on board any British ship or aircraft that is registered in the Colony—

Prohibition of establishment and maintenance of means of telecommunication, etc., except under licence.

- (a) establish or maintain any means of telecommunication; or
- (b) possess or use any apparatus for radiocommunication or any apparatus of any kind that generates and emits radio waves notwithstanding that the apparatus is not intended for radiocommunication;

- (c) deal in the course of trade or business in apparatus or material for radiocommunication or in any component part of any such apparatus or in apparatus of any kind that generates and emits radio waves whether or not the apparatus is intended, or capable of being used, for radiocommunication; or
- (d) demonstrate, with a view to sale in the course of trade or business, any apparatus or material for radiocommunication.

(2) For the avoidance of doubt, it is hereby declared that the fact that the person from whom any apparatus for telecommunication is loaned, leased or hired, or the person maintaining a means of telecommunication of which other apparatus forms part or with which other apparatus is connected, is the holder of a licence granted under this Ordinance, does not exempt the person to whom the apparatus is loaned, leased or hired, or the person maintaining, possessing or using the apparatus forming part of, or connected with, such means of telecommunication, as the case may be, from the necessity to obtain such licence or licences as may be required under this Ordinance.

(18 of 1951). (3) Nothing in this section shall affect any public telephonic communication by wire supplied and operated under the Telephone Ordinance, 1951.

Control of import and export of radiocommunication transmitting apparatus.

9. Save under and in accordance with a permit granted by the Authority, no person shall import into the Colony or export therefrom any apparatus or any component part of any apparatus for transmission by radio waves unless he is the holder of a licence authorizing him to deal in the course of trade or business in such apparatus.

Control of use of radiocommunication apparatus on vessel in Colony waters.

10. (1) Save as otherwise provided in this section, no radiocommunication apparatus on board a vessel (other than a ship of war) shall be used while the vessel is in the waters of the Colony notwithstanding that a licence, whether granted under this Ordinance or under the law of any other territory, is in force in respect of such apparatus.

(2) When a vessel is proceeding through the waters of the Colony, radiocommunication apparatus on board the vessel may be used to communicate on minimum power with the nearest coast station, or, if communication with the nearest coast station is impracticable and the safe navigation of the vessel so requires, with a more distant coast station or another vessel.

(3) Radiocommunication apparatus on board a vessel that is in the waters of the Colony may be used, for the purpose of summoning assistance on an occasion of danger to the life of any person or to the vessel, to communicate with the nearest coast station or, if communication with the nearest coast station is impracticable, with a more distant coast station or another vessel.

(4) Subject to the conditions of the licence issued in respect of the radiocommunication apparatus on board the vessel, communication may be made from a vessel in the waters of the Colony in the Very High Frequency Mobile Service.

(5) With the permission in writing of the Authority, radiocommunication apparatus on board a vessel that is in the waters of the Colony may be used in the carrying out of experimental tests.

(6) The Authority may permit the use, on such occasions or for such a period as he specifies, of radiocommunication apparatus on board a vessel that is in the waters of the Colony.

11. (1) Save as otherwise provided in this section, no radiocommunication apparatus on board an aircraft shall be used while the aircraft is at any aerodrome in the Colony, except for the purposes of air traffic control and air navigation or for testing prior to flight of the apparatus used for air traffic control and air navigation purposes, notwithstanding that a licence, whether granted under this Ordinance or the law of any other territory, is in force in respect of such apparatus.

Control of use of radiocommunication apparatus on aircraft in Colony.

(2) With the permission in writing of the Authority, radiocommunication apparatus on board an aircraft that is at an aerodrome in the Colony may be used in the carrying out of experimental tests.

(3) The Authority may permit the use, on such occasions or for such period as he specifies, of radiocommunication apparatus on board an aircraft that is at an aerodrome in the Colony.

12. Where radiocommunication apparatus on board a vessel is used pursuant to subsection (4) of section 10 or with the permission of the Authority under subsection (5) or (6) of section 10 or radiocommunication apparatus on board an aircraft is used with the permission of the Authority under subsection (2) or (3) of section 11, no interference shall be caused to any other means of telecommunication within the Colony.

No interference to telecommunication when apparatus on board vessel or aircraft is used.

13. (1) Where, in the opinion of the Governor, an emergency has arisen in which it is expedient for the public service that the Government should have control over telecommunication stations, the Governor, by warrant under his hand, may direct or cause such telecommunication stations as are specified in the warrant to be taken possession of and to be used for the service of the Government, and, subject thereto, for such ordinary service as may seem fit; or may direct and authorize such persons as he thinks fit to assume control of such telecommunication stations as he may specify and in such manner as he may direct.

Possession of telecommunication stations taken by Government in emergencies.

(2) Any such warrant shall not have effect for a longer time than one week from the issuing thereof, but the Governor may issue successive warrants from week to week as long as, in his opinion, such emergency continues.

(3) The Government shall pay to the owner of any telecommunication station taken possession of under this section, as compensation for any loss of profit sustained by the company by reason of the exercise of the powers conferred by this section such sum as may be agreed between the Government and the owner by agreement or in case of difference, by arbitration.

PART IV.

USE OF LAND FOR TELECOMMUNICATION LINES, ETC.

Power to place and maintain telecommunication lines, etc., on land.

14. (1) The Authority, and any licensee authorized by the Authority either generally or for any particular occasion, may place and maintain a telecommunication line, and such posts as may be necessary, in, over or upon any land, subject—

- (a) in the case of unleased Crown land, to the consent in writing of the Director of Public Works or an officer of the Public Works Department appointed by him for the purposes of this section; and
- (b) in the case of land vested in or occupied by Her Majesty's naval, military or airforce services, to the consent in writing of the Commander, British Forces, or such officer as he appoints to be his representative for the purposes of this section.

(2) In exercising the powers conferred by subsection (1), the Authority or the licensee, as the case may be, shall do as little damage as possible and full compensation shall be paid by the Authority, or the licensee, as the case may be, to any person having a lawful interest in the land, or being lawfully thereon, who suffers damage as a result of the exercise of those powers.

(3) So far as may be necessary for the due exercise of the powers conferred by subsection (1), the Authority or the licensee, as the case may be, may alter the position of any pipe or wire, other than a water, gas or electric main, if—

- (a) reasonable notice has been given to the owner of the pipe or wire or the person in control thereof; and
- (b) in the case of a pipe or wire in or over or upon unleased Crown land, the consent in writing of the Director of Public Works or an officer of the Public Works Department appointed by him for the purposes of this section has been obtained; and
- (c) in the case of a pipe or wire in, over or upon land vested in or occupied by Her Majesty's naval, military or airforce services, the consent in writing of the Commander, British Forces, or such officer as he appoints to be his representative for the purposes of this section has been obtained.

15. (1) Where any dispute arises as to—

- (a) whether compensation is payable under subsection (2) of section 14;
- (b) the amount of any such compensation; or
- (c) the person to whom it is payable,

Disputes as to compensation.

the dispute shall be referred to and determined by the District Court.

(2) For the purposes of this section, a dispute shall be deemed to have arisen where a claimant or the Authority or the licensee, as the case may be, has served notice of intention to refer the dispute to the District Court upon all other parties to the dispute, and the party who has served notice as aforesaid shall, within two months thereafter, refer the dispute to the District Court by notice served upon a deputy registrar of the Court giving particulars of the matter in dispute between the parties, and a copy of the last-mentioned notice shall, within the said period, be served upon all other parties.

(3) The District Court may order that the costs incurred by any party in proceedings before it under this section shall be paid by any other party, and may tax or settle the amount of any costs to be paid under any such order, or may direct the manner in which they are to be taxed.

(4) The Chief Justice may, subject to this Ordinance, make rules for regulating proceedings before the District Court under this section.

16. (1) Where any person desires to use land in a way that makes it necessary to remove to another part of the land a telecommunication line or a post maintained by the Authority or a licensee in, over or upon the land under section 14 or to alter such telecommunication line or post in any way, he may by notice in writing served upon the Authority or the licensee, as the case may be, require the removal or alteration of the line or post.

Removal, etc., of line or post where necessary by reason of use of land.

(2) Any expenses incurred by the Authority or the licensee in complying with a requirement under subsection (1) may be recovered from the person who made the requirement.

17. (1) If a tree standing or lying near a telecommunication line interrupts, or is likely to interrupt telecommunication, a magistrate may, upon application by the Authority or the licensee concerned, as the case may be, order the tree to be removed or otherwise dealt with in such a way as to prevent the interruption, or the likelihood of the interruption, of telecommunication and, if the tree was in existence at the time the telecommunication line was placed in, over or upon the land, may order the Authority or the licensee, as the case may be, to pay to the owner of the tree such sum by way of compensation as he thinks reasonable.

Trees interrupting telecommunication.

(2) Any order of a magistrate in proceedings under subsection (1) shall be final.

Work affect-
ing telecom-
munication
line.

18. (1) Any person who proposes to carry out on any land work that may affect a telecommunication line maintained by the Authority or a licensee in, over, upon or near the land shall give to the Authority or the licensee, as the case may be, notice in writing of his intention to carry out the work.

(2) All reasonable precautions shall be taken in the carrying out of such work to prevent damage to any telecommunication line in, over, upon, or near the land, and the Authority or the licensee, as the case may be, may recover from the person on whose behalf the work is carried out any expenses incurred in making good any damage to a telecommunication line caused by a failure to take such precautions.

(3) In any proceedings under subsection (2) for the recovery of the expenses incurred by the Authority or the licensee, it shall be presumed, until the contrary is proved, that the work was carried out on behalf of the owner of the land.

Power to
enter on land
to inspect,
repair, etc.,
telecom-
munication
lines.

19. The Authority and a licensee may at such times as may be necessary enter upon any land, in, over or upon which he maintains a telecommunication line or a post for the purpose of inspecting, repairing, removing or altering such line or post.

PART V.

OFFENCES AND PENALTIES.

Contraven-
tion of
section 8 an
offence.

20. (1) Save as provided in subsection (2), any person who contravenes subsection (1) of section 8 shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine of five thousand dollars and to imprisonment for two years; and
- (b) on conviction on indictment, to a fine of ten thousand dollars and to imprisonment for five years.

(2) Any person who contravenes subsection (1) of section 8 in respect of a broadcast receiver shall be guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.

Contraven-
tion of
section 9 an
offence.

21. Any person who contravenes section 9 shall be guilty of an offence and shall be liable on summary conviction to a fine of three thousand dollars and to imprisonment for twelve months.

22. In the event of a contravention of subsection (1) of section 10 or subsection (1) of section 11 or section 12, the master of the vessel or the captain of the aircraft, as the case may be, or the person at whose direction the radiocommunication apparatus was used, shall be guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars.

Penalty in event of contravention of section 10, 11 or 12.

23. Any person who, knowing or having reason to believe that a means of telecommunication is being maintained in contravention of this Ordinance, transmits or receives any message by such means of telecommunication or performs any service incidental to the transmission or reception of any such message or delivers any message for transmission by such means of telecommunication or takes delivery of any message sent thereby shall be guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars.

Transmitting or receiving messages, etc. by unlicensed means of telecommunication.

24. A telecommunication officer, or any person who, though not a telecommunication officer, has official duties in connexion with a telecommunication service, who—

Offences by telecommunication officer, etc.

- (a) wilfully destroys, secretes or alters any message that he has received for transmission or delivery;
- (b) forges any message or utters any message that he knows to be forged or altered;
- (c) wilfully abstains from transmitting any message or wilfully intercepts or detains or delays any message;
- (d) otherwise than in pursuance of his duty or as directed by a court, copies any message or discloses any message or the purport of any message to any person other than the person to whom the message is addressed,

shall be guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars and to imprisonment for two years.

25. Any person, not being a telecommunication officer, or a person who, though not a telecommunication officer, has official duties in connexion with a telecommunication service, who—

Destruction, etc. of messages by persons other than telecommunication officers.

- (a) wilfully destroys, secretes, detains or delays a message intended for delivery to some other person; or
- (b) having been required by a telecommunication officer to deliver up to him a message in the possession of that person and intended for delivery to some other person, refuses or neglects to do so,

shall be guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for twelve months.

Transmission by telecommunication officer of message not paid for.

26. A telecommunication officer who, with intent to defraud, transmits by telecommunication a message in respect of which the charge prescribed by or under this Ordinance has not been paid shall be guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars and to imprisonment for two years.

Damaging telecommunication installation with intent.

27. Any person who damages, removes or interferes in any way whatsoever with a telecommunication installation with intent to—

(a) prevent or obstruct the transmission or delivery of a message; or

(b) intercept or discover the contents of a message,

shall be guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars and to imprisonment for two years.

Transmission of false messages.

28. Any person who transmits, or causes to be transmitted, by telecommunication a message that he knows to be false shall be guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for two years.

Entry on certain land without permission.

29. Any person who, without lawful authority or excuse, enters or remains on any land in the occupation of a person who provides a telecommunication service shall be guilty of an offence and shall be liable on summary conviction to a fine of two hundred and fifty dollars.

Penalty for contravention of order under section 33.

30. Any person who fails to comply with an order under section 33 shall be guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars and to imprisonment for twelve months.

Obstruction of Authority, etc.

31. Any person who wilfully obstructs the Authority or any public officer in the exercise of any power conferred upon him by this Ordinance shall be guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.

Liability of directors, etc. where offence committed by corporation.

32. Where a person by whom an offence under this Ordinance is committed is a corporation and it is proved that the offence was committed with the consent or connivance of a director or other officer concerned in the management of the corporation, the director or other officer shall be guilty of the like offence.

PART VI.

SUPPLEMENTARY AND MISCELLANEOUS.

Power of Governor to prohibit transmission of messages, etc.

33. Whenever he considers that the public interest so requires, the Governor, or any public officer authorized in that behalf by the Governor either generally or for any particular occasion, may order that any message or any class of messages brought for transmission by telecommunication shall not be transmitted or that any message or any

class of messages brought for transmission, or transmitted or received or being transmitted, by telecommunication shall be intercepted or detained or disclosed to the Government or to the public officer specified in the order.

34. (1) A licence granted under this Ordinance by the Governor in Council shall be valid for such period, and shall be subject to the payment of such fee, royalty or other charge whatsoever, annually or otherwise, as is specified therein, and shall be subject to such conditions as the Governor in Council may, from time to time, specify and, where the Governor in Council considers it desirable in the public interest, may confer on the person to whom it is granted an exclusive right to maintain any service to the public in connexion with which the licence is granted.

General provisions as to licences, etc.

(2) Every licence granted under this Ordinance by the Authority shall be valid for the period or until the day prescribed by the regulations, but, save as otherwise provided by the regulations, may be renewed for a period of one year at a time.

(3) Any licence, permit, permission or consent granted under this Ordinance by the Authority shall be subject to the conditions (if any) prescribed by or under the regulations and to such other conditions as the Authority specifies on the grant or renewal thereof, being conditions that the Authority considers necessary for the purpose of carrying out the objects of this Ordinance.

(4) Any licence, permit, permission or consent granted under this Ordinance may at any time be cancelled or withdrawn by the authority by whom it was granted, or suspended by such authority for such period, not exceeding twelve months, as the authority specifies, in the event of any contravention by the licensee or the person to whom the permit, permission or consent was granted, as the case may be, of this Ordinance or of any condition to which the licence, permit, permission or consent is subject, and any such licence may be cancelled or suspended at any time by the Governor in Council if he considers that the public interest so requires.

(5) Where any licence, permit, permission or consent granted under this Ordinance is cancelled, withdrawn or suspended, no part of any fee or other sum paid in respect thereof or thereunder shall be refunded.

35. (1) The Authority, or any public officer authorized in writing in that behalf by the Authority, may—

Power of Authority.

(a) arrest any person whom he reasonably suspects of being guilty of an offence under this Ordinance;

(b) subject to subsection (2), enter and search any place, or board and search any vessel (other than a ship of war) or any aircraft

(other than a military aircraft) or search any vehicle, in which he reasonably suspects that there is anything liable to seizure under paragraph (c);

(c) seize, remove and detain—

(i) anything in respect of which he reasonably suspects that an offence under this Ordinance has been committed;

(ii) anything that appears to him to be or to be likely to be, or to contain, evidence of an offence under this Ordinance;

(d) enter and inspect the premises at or from which any person manufactures, sells or otherwise deals in apparatus that may be used for telecommunication and require the production to him of any books or documents relating to such apparatus.

(2) Where he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises used for dwelling purposes anything that is liable to seizure under paragraph (c) of subsection (1), a magistrate may issue his warrant authorizing such premises to be entered and searched by the Authority or any other public officer, and no premises used for dwelling purposes shall be entered or searched under this Ordinance except pursuant to the warrant of a magistrate issued under this subsection.

(3) The Authority or any public officer may—

(a) break open any outer or inner door of any place that he is empowered or authorized by or under this Ordinance to enter and search;

(b) forcibly board any vessel, aircraft or vehicle that he is empowered by this Ordinance to board and search;

(c) remove by force any person or thing obstructing any arrest, detention, search, inspection, seizure or removal that he is empowered by this Ordinance to make;

(d) detain any person found in any place that he is empowered or authorized by or under this Ordinance to search until such place has been searched;

(e) detain any vessel or aircraft that he is empowered by this Ordinance to board and search, and prevent any person from approaching or boarding such vessel or aircraft, until it has been searched;

(f) detain any vehicle that he is empowered by the Ordinance to search until it has been searched.

Forfeiture.

36. A magistrate or the court may, upon application by or on behalf of the Authority or by any public officer, order that any apparatus in respect of which there has been a contravention or attempted

contravention of this Ordinance shall be forfeited to the Crown, whether or not proceedings have been taken against any person in respect of the contravention or attempted contravention.

37. (1) The Governor in Council may by regulation prescribe or Regulations, provide for—

- (a) the control and conduct of means of telecommunication;
- (b) the operation and use of apparatus for telecommunication or apparatus that generates and emits radio waves;
- (c) the prohibition and control of electrical or radiated interference with the working of apparatus for telecommunication;
- (d) the conditions and restrictions subject to which messages may be transmitted or received;
- (e) the period for which, and the conditions subject to which, messages and other documents connected with a telecommunication service shall be preserved;
- (f) fees for searching for messages or other documents connected with a telecommunication service;
- (g) the licences and permits that may be granted by the Authority and the fees payable on the grant or renewal of any such licences or permits;
- (h) the examination of persons in connexion with the operation of apparatus for radiocommunication and the grant and endorsement of certificates of competency in the operation of such apparatus and the fees payable in respect of any such examination;
- (i) the issue of certificates of competency in radiocommunication and authorities to operate authorizing persons to hold positions in radiocommunication stations and the cancellation or suspension of any such authority.

(2) Regulations made under this section may provide that contravention of specified provisions of such regulations shall be an offence and may provide penalties therefor:

Provided that no penalty so provided shall exceed a fine of two thousand dollars and imprisonment for twelve months.

38. The Governor may by order prescribe the charges that apply in respect of messages exchanged in either direction between the Colony and any ship or aircraft.

Power of Governor to prescribe charges for certain messages.

39. The Governor in Council may by order exempt any person or any class of persons from this Ordinance or from such of the provisions thereof as he thinks fit.

Exemption.

Transitional provisions.
(Cap. 106).

40. (1) Any licence granted under the repealed Telecommunication Ordinance by the Governor in Council that is in force at the commencement of this Ordinance shall be deemed to have been granted by the Governor in Council under and in accordance with this Ordinance.

(2) Any telecommunication line or post lawfully placed and maintained in, over or upon any land under the repealed Telecommunication Ordinance at the commencement of this Ordinance shall be deemed to be placed and maintained in, over or upon the said land under and in accordance with this Ordinance.

Repeal.
(Cap. 106).

41. The Telecommunication Ordinance is repealed.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council on the 19th day of December, 1962, and is found by me to be a true and correctly printed copy of the said Bill.

A. T. CLARK,
Clerk of Councils.

(Secretariat GR32/2961/46)

HONG KONG

No. 47 OF 1962.

L.S.

I assent.

R. B. BLACK,
Governor.

20th December, 1962.

An Ordinance to amend the Estate Duty Ordinance, Chapter 111.

[1st January, 1963.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows—

1. This Ordinance may be cited as the Estate Duty (Amendment) Ordinance, 1962, and shall come into operation on the 1st day of January, 1963.

Short title and commencement.

Ordinance not disallowed - see G.N. 116/67.