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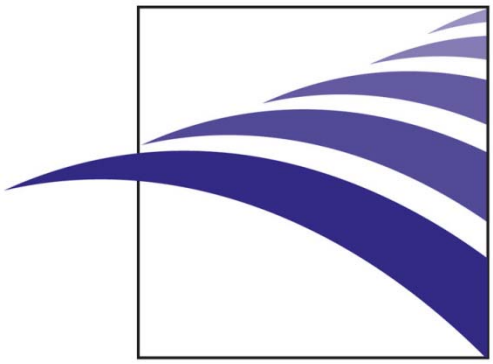

Republic of Lebanon
Telecommunications
Regulatory Authority

STUDY ON USE OF PUBLIC PROPERTIES

____ 2009

This document is issued by the Telecommunications Regulatory Authority of the Republic of Lebanon (the "TRA"). It is not a final, officially adopted document and will only become so upon completion of the consultation process and publication of the final draft.

This consultation draft is made publicly available via the TRA's web site to allow interested parties to submit comments and other relevant information. Interested persons may respond in writing to the TRA during the public consultation period. To be considered, responses must be received no later than 5.00 p.m. Beirut time on ___ _____ 2009.

The address for responses sent by post or hand delivery is:

Telecommunications Regulatory Authority
Marfaa 200, Building
Beirut, Lebanon
Attention: The Chairman

Responses may also be sent to the TRA by email to_____ @tra.gov.lb or by fax to +961 1 964 341.

As part of its process to develop a complete record and allow open public access to the information that forms a basis for its decisions, the TRA will generally publish all comments as received, unless respondents expressly ask that their responses be treated as confidential, in whole or in part. If any respondent wants the whole or any part of its submission kept confidential, then it should state its request, set out clearly the basis for its request, and enclose the information that it wants to be treated confidentially in a separate sealed envelope. If the TRA agrees that the circumstances warrant confidential treatment, then it will notify the respondent of the same and will open and consider the submission confidentially in this consultation process. If the Authority disagrees, then it will destroy the sealed materials without opening or reviewing them, not consider them in this consultation process, and notify the respondent of the same.

Responses for which confidentiality is requested must be submitted by post or hand delivery and not by email or fax. Failure to comply with this requirement may result in loss of confidentiality.

Capitalized terms not defined herein have the meaning provided in Law No. 431 of 2002 (the "Telecommunications Law").

The TRA is still considering certain matters in relation to this draft Study, and would welcome comments on any issues included within the text of the consultation draft.

Study on Use of Public Properties
Telecommunications Regulatory Authority of Lebanon

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1. PURPOSE AND LEGAL BASIS OF THIS STUDY

1.1 Accelerating deployment of high speed networks and services

Law No. 431 of 2002 (the "Telecommunications Law") has set in motion a process for the liberalization of the telecommunications sector in Lebanon and the related privatization of the State-owned undertakings that currently operate the primary fixed and mobile networks in Lebanon. Liberalization, privatization and fair competition in the telecommunications sector are expected to bring substantial benefits for the Lebanese economy and will pave the way for the development of state-of-the-art networks and services. For the economy, benefits include increased investments in the sector and the creation of high value-added jobs both within the sector and in all businesses that require modern telecommunications facilities. Consumers will also reap the rewards of increased choice, improved quality of service and lower prices.

Lebanon already has one of the highest GDPs per capita (5,900 USD) in the Levant area. Although its population is approximately four million, more than 10 million Lebanese live abroad. This Diaspora creates high visitor numbers, in addition to the one million tourists that visit Lebanon every year. Modernizing the telecommunications sector and fostering vigorous competition can help Lebanon improve its per capita GDP and realize its goal to improve the quality of life for all citizens. Although investments and development in this sector have been limited to date, the Telecommunications Regulatory Authority of the Republic of Lebanon (the "TRA") is committed to exploring all possibilities for expansion.

To achieve these goals, the Telecommunications Law provides for the opening of the market to new entrants, the expansion of the services authorized to be provided by incumbents, and the establishment of competition among all incumbents and new entrants alike. In carrying out its duties, the TRA is charged with committing to "the principle of promoting the modernization of telecommunications Equipment and networks in line with state-of-the-art technologies and regulatory principles."[1] Toward these ends, the TRA is preparing to issue broadband licenses to attract new investment and enable the build-out of new infrastructure that will provide next generation services.

A recent OECD Study concluded that 68% of the costs in the first year of rolling out a fiber network to the premises are comprised by civil works, and so, "Clearly any policy which can reduce the costs of civil works would provide an important impetus to stimulating the roll-out of fiber."[2]

[1] Article 5(3) of the Telecommunications Law.

[2] Public Rights of Way for Fibre Deployment to the Home, 04-Apr-2008, OECD, Committee for Information, Computer and Communications Policy, DSTI/ICCP/CISP(2007)5/FINAL (the "OECD Study").

Enabling service providers to build and operate networks that rely on existing public properties can greatly reduce the need for civil works and their associated costs. Use of public properties would also shorten the time to introduce services. For these reasons, most, if not all, countries seeking to achieve genuine advances in network investment and high speed services typically make public properties available in this way. For example, France allows service providers to benefit from rights of way on public highways.[3] Germany entitles service providers to use public roads, paths, squares, bridges and waterways to deploy telecommunications lines free of charge.[4] Canada allows service providers to enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines.[5] In the United States, the National Telecommunications and Information Administration facilitates access of service providers to a wide range of public properties.

Particularly significant cost savings may be realized if service providers can use existing telecommunications duct systems. For this reason, numerous countries in the world require that their telecommunications duct systems be made available to telecommunications service providers, including for example Australia, Austria, France, Korea, Portugal, Switzerland and the United States. In the Arab region, the Saudi Communications and Information Technology Commission (CITC) recently carried out a public consultation indicating it plans to require sharing of telecommunications ducts. In Bahrain, the regulator can require provision of access to ducts,[6] as in Jordan[7] and Oman.[8] While much duct regulation is aimed at ducts that are already held by private telecommunications service providers rather than the State, the underlying aim in all cases is to ensure that assets which cannot be duplicated on economically feasible terms by service providers should be made available to them, particularly where important efficiency gains can be achieved.

In this context, Article 35 of the Lebanese Telecommunications Law contemplates that all licensed service providers will enjoy non-discriminatory access to public properties for use in connection with telecommunications infrastructure. For the reasons set out above, the TRA expects a fundamental component of new telecommunications networks in Lebanon to be reliance on Lebanon's public properties for fixed and wireless infrastructure under Article 35.

Lebanon boasts an extensive public property portfolio that when made available in accordance with Article 35 will greatly reduce the costs to telecommunications service providers of building and operating modern telecommunications networks. This includes in particular an extensive telecommunications duct system built by the Republic of Lebanon. It also includes an extensive inventory of additional ducts, poles and towers mainly owned or operated by the State or public bodies. Other important public properties include a matrix of public rights of way running along highways, streets, roads, pipelines and power lines, rooftops and other related assets and facilities

[3] Article L. 45-1 of the Post and Electronic Communications Code (Code des Postes et des Communications Electroniques, CPCE).
[4] See OECD Study, p13.
[5] Section 43, Telecommunications Act 1993.
[6] See definition of "Access" and "Telecommunications Facility" in section 1 of the Bahrain Telecommunications Act.
[7] See section 4.4 of the Jordanian Interconnection Instructions.
[8] See definition of "co-location (site sharing)" in section 1(12) of Oman's Telecommunications Regulatory Act.

currently owned and administered by the public sector. The TRA expects access to these public properties to be a central driver of the success of broadband licensing and increased access across Lebanon to high speed telecommunications services.

1.2 Legal basis of this Study

This Study has been prepared by the TRA pursuant to Article 35(3) of the Telecommunications Law. Article 35 of the Telecommunications Law provides as follows:

> 1) Licensed telecommunications service providers may, for the purpose of providing telecommunications services to the public in compliance with the conditions set hereunder, enter any public properties including streets, pavements, drainage systems, and railway tracks, for the construction and maintenance of telecommunications services infrastructure in, along, above or under such public properties. Whenever necessary, the licensed service providers may, with the approval of the relevant government department, alter the appearance and specifications of such public property in order to be able to provide their telecommunications services, provided that such alteration does not obstruct the use of the property for its intended purpose.
>
> 2) Licensed service providers must obtain the approval of the relevant government department before entering any public property, carrying out certain works, or erecting any installations.
>
> In the event it is not possible to obtain such approval on acceptable terms and conditions for any reasons whatsoever within one month of the filing of the request for approval, the service provider shall submit a written request to the TRA, within another period of one month, to intervene with the government department concerned. In the event of any disagreement between the TRA and the government department concerned, the matter shall be raised before the Council of Ministers for making an adequate final decision.
>
> 3) Conditions for the use of public properties, procedures for requests for such use, and the basis for the allocation of charges, compensations and fees shall be established by a decree issued by the Council of Ministers, upon the proposal of the Minister, based on a study prepared by the TRA and on the opinion of the relevant government authority.

This Study is therefore required by law as the basis for the decree to be prepared for the Minister to propose to the Council of Ministers in accordance with Article 35(3) and Article 3(A)(1) of the Telecommunications Law. On the basis of this Study and consultations with relevant government authorities, and pursuant to the TRA's duties under Article 5(1)(a) of the Telecommunications Law, the TRA has drafted the proposed Article 35(3) decree for submission to the Minister.

1.3 Outline of the Study

Section 2 of this Study begins by examining the anticipated needs for access to public properties faced by service providers. These may be incumbents who want to expand or modernize their existing networks or new entrants who plan to build new networks, in each case to participate in the upcoming broadband licensing process. These scenarios help identify the various relevant public entities that are relevant to access to public property, which are surveyed in section 3.

Section 4 deals with various legal matters relating to State and municipal authorizations generally. Section 5 of this Study examines specific uses of public property that will be required by service providers. Together, these sections address the legal issues that must be covered in the Article 35(3) decree to ensure that telecommunications service providers will have necessary and sufficient rights of access to and use of key public properties to make meaningful use of them.

Given the impossibility of service providers requesting use of public properties without having information about them, section 6 addresses the lack of existing practices and procedures for obtaining such information and indeed the development of reliable information about public properties which are likely to be a priority for service providers.

The Telecommunications Law provided a sort of mediation and appeals process for failures to obtain authorizations to use public property. The role of the Article 35(3) decree in this regard is discussed in section 7 of this Study. Charging for use of public property is discussed in section 8.

Since this Study is the basis of the decree under Article 35(3), it sets out various conclusions and recommendations as to what that decree should cover and includes (in boxed text) provisions for inclusion in the decree.

2. NETWORK BUILD-OUT NEEDS FOR PUBLIC PROPERTIES

2.1 Expanding incumbents and new entrants

Based on currently available technologies and the topology of Lebanon, the TRA anticipates that telecommunications service providers will build core national networks, both intercity and intra-city, using fiber optics. They will have to install a backbone fiber optic network with arteries that reach points of presence in the main commercial and population centers. Service providers can be expected to provide access to customers using a combination of fixed and wireless technologies and network architectures, depending on the type of customer, the density of likely customers in the relevant location, the existence of available infrastructure that can facilitate network deployment, and other considerations.

2.2 Intercity backbone network

The TRA expects service providers to prefer, and the TRA will encourage them, to locate their fiber optic backbone cables in the existing publicly owned intercity duct system to the greatest extent technically feasible. The TRA understands that these ducts primarily lie under or along State roads but some may also lie under or along municipal roads and other public rights of way. In some cases, new duct access points may need to be added and, in other cases, existing duct access points may need to be modified. These works may involve digging and other street works. In all cases, some temporary street blockage and traffic disruption may be required for installation of cables, electronics and any addition or modification of duct access points.

2.3 Intra-city metropolitan networks

The TRA also expects service providers to prefer, and the TRA will also encourage them, to locate the arteries of their intra-city metropolitan fiber optic networks in existing publicly owned intra-city duct systems to the greatest extent technically feasible. These ducts primarily lie under or along municipal roads but some may lie under or along State roads and other public rights of way. As with intercity ducts above, new duct access points may need to be added and existing duct access points may need to be modified, requiring digging, other street works, street blockage and traffic disruption.

2.4 Access networks

The TRA understands that the existing public telecommunications duct system terminates at local central offices, street cabinets or other points that fall short of those endpoints where each service provider would need to reach its customers. The Ministry of Telecommunications currently uses copper local loop to achieve customer access in many instances. Absent access to and use of copper local loop and other active network elements, other incumbents and new entrants will therefore need to devise and implement alternative arrangements to transport telecommunications traffic between customer premises and their fiber optic networks. The TRA anticipates that most such service providers would plan to accomplish their “last kilometer” or “last 100 meters” transport by one or more of the following three methods:

2.4.1 Trenching and new ducts for fiber to the premises

A service provider using the public duct system to house its fiber optic network may in some cases extend its fiber optic network closer to or directly into the customer premises, particularly where the premises offers a critical mass of demand for telecommunications services, such as an office building or high-rise apartment building. This is most likely for major anchor customers such as large businesses, large residential buildings and Government departments, whose custom is expected to contribute to the revenues which will be critical to the success of the service provider’s business plan. In some cases, these proposed extensions may involve trenching and/or the installation of new ducts under or along both State roads and municipal roads and related sidewalks and pavements. These works may involve digging, other street works, street blockage and traffic disruption.

2.4.2 Buried or above ground co-axial or copper cable

A service provider using the public duct system to house its fiber optic network may in other cases install coaxial or copper cables from the termination points of its fiber network to the customer premises. These cables can be buried or placed above ground. If buried, installation will involve similar works to those where new trenching for fiber is required. If above ground, the service provider will need access to electric power distribution poles, telephone poles and/or other utility poles, or will need to install its own poles, for attaching coaxial and copper cables.

2.4.3 Wireless radio transmission

In still other cases, a service provider using the public duct system to house its fiber optic network may use wireless transceivers to communicate between its fiber optic network and customer premises. In these circumstances, the service provider will need to identify antenna sites and arrange a physical connection using fiber optic cable or coaxial cable between the fiber optic network and the antenna site. In some cases, the most desirable antenna site may be located in a public right of way, on a pole, mast or tower that is itself public property (e.g., if it is currently used by the Ministry of Telecommunications or Electricité du Liban) or on the rooftop of a building that is public property. Where the fiber network point of presence and antenna site are not physically co-located, the physical connection may involve some of the same construction and use issues identified for fixed links to the fiber network.

2.5 Defining covered public properties

Under the planned broadband licensing process in particular, licensees will be required to construct a national broadband backbone network as well as local broadband distribution networks. Given Lebanon's urgent need for new telecommunications infrastructure, the TRA considers it important that the proprietors of such networks develop their own active network elements, including fiber, local loops and wireless links, rather than relying only on the existing publicly owned fiber, local loops and wireless links. This will result in greater network redundancy, create more robust end-to-end competition, avoid the regulatory complexities of forced sharing of active network elements, and provide greater network security. In addition, the TRA's investigations have established that the greatest cost and time-to-market barriers for new entrants are the civil works required to install the passive network elements rather than the cost of the fiber or other active network infrastructure.

The TRA understands that there is significant capacity remaining in the ducts which are being used for telecommunications. Use of EDL's network infrastructure, particularly its fiber-optic network, is also likely to offer considerable efficiencies for Lebanese service providers. Similarly, use of poles and masts of the State's existing mobile operations may also offer valuable cost saving opportunities for service providers. In other cases, joint infrastructure construction projects involving telecommunications service providers, such as roads or water, may involve sharing of costs and therefore reduction to the demands on the public purse.

The TRA has concluded, therefore, and recommends that the process of adopting the Article 35(3) decrees can and should be approached in stages rather than attempted in a single decree. Accordingly, the initial Article 35(3) decree should focus on enabling shared use of public properties used or useful as passive network elements, including

the existing public ducts, poles, towers, antenna sites, rights of way and related public properties. The TRA recommends that at this time the Article 35(3) decree should exclude, at least initially, public properties in the nature of active network elements. Additional Article 35(3) decrees can be proposed and issued as and when additional service provider needs identify other public properties to which access should be granted, whether these properties are in the nature of active or passive network elements.

The TRA recommends that the Article 35(3) adopt a clear definition of the public properties it covers.

Recommended Provision

"Covered Public Property" means the following public properties:

(a) ducts, conduits, pipes and similar fixtures to real property in which communications cables and equipment can be installed, including, without limitation, all such items now or hereafter managed, used or occupied by the Republic of Lebanon acting through the Ministry of Telecommunications, OGERO, Electricité du Liban or any water public body;

(b) poles, masts, towers, rooftops, racks and similar installations on which communications cables, antennae and equipment can be installed, including, without limitation, all such items now or hereafter managed, used or occupied by the Republic of Lebanon acting through the Ministry of Telecommunications, OGERO, MIC1, MIC2, Electricité du Liban, or the Ministry of Information;

(c) public facilities for housing, servicing, accessing or using the foregoing items, including, without limitation, manholes, hand-holes, outbuildings, sheds, cabinets, equipment rooms, stairways, ladders, doors and hallways;

(d) rights of way in, under or above which the foregoing items are or can be installed, including, without limitation, highways, streets, roads and parallel easements running alongside highways, streets and roads; and

(e) rights of ingress and egress to the foregoing public properties.

The TRA also recommends that the Article 35(3) decree define what permitted uses service providers may make of the public properties, and that such uses be squarely within the parameters of the Telecommunications Law.

Recommended Provision

"Permitted Uses" means to construct, install, operate, maintain and/or remove Telecommunications infrastructure, which may include the construction and installation of additional fixtures and properties of the types described above, in order to provide Telecommunications Services using such infrastructure.

3. SURVEY OF RELEVANT PUBLIC AUTHORITIES

In preparing this Study, representatives of the TRA researched, met and/or consulted with numerous government departments and other public sector entities over the past year to gather and share information relating to the implementation of the public property

access mandate under Article 35 of the Telecommunications Law. Among those were the Ministry of Telecommunications, the Ministry of Public Works and Transportation, the Ministry of Interior and Municipalities, the Ministry of Energy and Water, Electricité du Liban, two of the four water public bodies, and the Council for Development and Reconstruction. The following subsections of this Study summarize key information gleaned from or about such public sector entities.

3.1 Ministry of Telecommunications

After full implementation of the Telecommunications Law, the State will no longer compete with the private sector in the ownership and operation of telecommunications networks or the provision of telecommunications services.[9] At present, however, the State currently owns the primary fixed and mobile networks, and the Ministry of Telecommunications (the "MOT") is currently responsible for administering these public undertakings.[10]

Currently, the MOT has administrative authority over ducts being used by the State-owned fixed telecommunications network, most or all of the State-owned telephone poles, and many of the State-owned antenna sites. These public properties, which are mostly in the nature of improvements or fixtures on real property, currently constitute by far the most extensive passive network elements used or useful in telecommunications infrastructure in the Republic of Lebanon. In particular, the TRA understands that there is substantial excess capacity in the existing public ducts used for telecommunications that can be used by service providers at very little or no cost or risk to the State.

When Liban Telecom is incorporated, the Telecommunications Law provides that the Council of Ministers will have discretion over which, if any, of the public properties used for telecommunications (such as ducts) will be transferred to Liban Telecom and which will be retained by the State.[11] Article 35 of the Telecommunications Law applies to them while they are public property. If they become private property of privatized Liban Telecom, Article 36(2) of the Telecommunications Law will apply to require them to be made available to other service providers. Thus regardless of whether the ducts ultimately remain in public hands or are transferred as part of the assets of Liban Telecom, they will require to be shared with other service providers. The TRA understands that any access granted to service providers while the ducts are public property would be binding on the successor after privatization.[12] The TRA considers that there is no reason to wait for the Council of Minister's decision on their treatment in the privatization and indeed that development of the telecommunications sector in Lebanon makes it urgent that service provider access to them be initiated now.

The MOT has delegated the management of the towers and certain other public properties used for the mobile networks to two private sector contractors, but the ultimate authority over such public properties currently remains with the MOT. Which of

[9] See Telecommunications Law, Articles 1 and 3.
[10] See Legislative Decree No. 126/1959 and Legislative Decree No. 127/1959.
[11] Telecommunications Law, Article 50.
[12] Article 12 of Privatization Law No. 228/2000 provides: "Contrary to any other text, when the privatized project is transferred to the natural or moral person, this person takes immediately and forcefully the place of the public project, with all the entailed rights and obligations towards others."

such assets will be privatized and which will be retained by the State will, the TRA expects, be determined in the process for privatization of the two mobile operations when that process is resumed. As with the ducts, these will either be made available to other service providers under Article 35 as public properties or Article 36 if they are privatized, and there is no reason to wait before allowing such access.

3.2 Ministry of Public Works and Transport

The Ministry of Public Works and Transport ("MPWT") is responsible for all State-controlled public roads. All other public roads are managed by municipalities. The public roads administered by MPWT are principally the international and national highways and certain other primary streets and roads. All civil works must be approved prior to construction and, if obstruction to traffic will occur, coordinated with the Ministry of the Interior and Municipalities, which is responsible for traffic flows (as discussed in section 3.4 of this Study).

The State also owns the railway tracks and other relevant railway assets.[13] MPWT is also responsible for railways: it has "tutelage" ("*tutelle*") over the public body entrusted with management and exploitation of the railway[14] although none are currently operational.

As such, the MPWT controls a significant portion of the public rights of way used or useful for telecommunications infrastructure.

Telecommunications infrastructure works may be facilitated if coordinated with the MPWT's maintenance works which usually take place between June and October.

In addition to coverage in the Article 35(3) decree, the TRA recommends that the Minister of Telecommunications seek the cooperation of the Minister of Public Works and Transport (for State roads) and the Minister of Interior and Municipalities (for municipal roads), and requests that they make their work plans available to service providers and issue circulars to help State and municipal employees and other public agents better understand the Telecommunications Law and its implementing decrees, as well as the implications of the privatization of the telecommunications sector.

3.3 Municipalities and Municipality Unions

Everything in a municipality (within administrative municipal borders) is the responsibility of the municipality government, including municipal roads, civil works and trenches. The TRA understands that even international roads and roads between governorates (محافظات), which are formally under MPWT's administration, are in practice often maintained and operated by the municipalities.

The TRA understands that out of the 940 municipalities in Lebanon, 540 are currently organized into 40 unions of municipalities (which coordinate projects between member municipalities. The TRA understands that there are plans to increase the number of unions to 60, which will then encompass many other municipalities in Lebanon.

[13] See Article 2 and 4 of decision No. 144/1925.
[14] See Article 2 of decree No.6479/1961.

Details of legal requirements for authorizations for use of municipal property such as roads are set out in section 4.1 of this Study. Most municipalities only have experience with public entities (and not private entities) digging and/or accessing rights of way. Accordingly, municipalities currently do not have developed procedures for dealing with requests from private entities, such as service providers.

3.4 Ministry of the Interior and Municipalities

The Ministry of Interior and Municipalities ("MIM") has two roles relevant to the use of public properties by licensed telecommunications service providers.

First, MIM is the interface between the national government and municipal governments. Although MIM does not have authority to authorize works on municipal roads, MIM could facilitate the implementation of Article 35 by informing individual municipalities and their unions about their rights and obligations under the Article 35(3) decree. The TRA recommends that in addition to proposing the Article 35(3) to the Council of Ministers, the Minister of Telecommunications request practical assistance from MIM in dealing with the municipalities. For example, MIM could issue one or more information circulars (تعميم) to all municipalities and unions of municipalities after the decree has been issued.

Second, the Internal Security Forces operated by MIM have primary responsibility for traffic control on all highways and roads, including those administered by MPWT and those administered by municipalities not having a police force.[15] Telecommunications service providers needing to block or disrupt traffic will have to coordinate such closures with the Internal Securities Forces.

3.5 Ministry of Energy and Water

The Ministry of Energy and Water ("MEW") has authority over the electricity and water sectors (including natural waterways such as rivers). It has "*tutelle"* authority over the public bodies involved in these sectors including EDL and the four water public bodies. In addition, it has the power to monitor water and electricity concessions.[16] The MEW has also assumed responsibility for matters related to oil that were previously in the Ministry of Industry and Oil.[17] Under Article 34 of Law No. 431, the Ministry of Environment would also be involved in many cases affecting the environment (see Article 2 of Law No. 667/1997 and Article 6 of Law No. 690/2005).[18]

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[15] See Article 1(5) of Decree No. 953/1991.
[16] See Decree No. 5469/1966 and Decision No. 104/2005.
[17] See Article 7 of Law No. 247/2000.
[18]

المادة 2 الجديدة- تتولى وزارة البيئة، بالتنسيق مع الادارات المعنية:
(..)5- تحديد شروط استعمال الشواطئ البحرية والنهرية بما يضمن حماية البيئة.

-6-4- مصلحة الموارد الطبيعية:
الاشراف على تطبيق الشروط البيئية للنشاطات والمشاريع المتعلقة باستخراج واستعمال الموارد الطبيعية وتنظيم كيفية استعمال الاراضي بما فيها الاراضي المشاعية وحماية الشواطىء البحرية ومجاري الانهر والينابيع والبحيرات والمستنقعات والاودية وحماية الانظمة الايكولوجية بما فيها التنوع البيولوجي وتحديد انواع الحيوانات والنباتات المهددة بالانقراض وكيفية حمايتها وانشاء وحماية وإدارة المحميات الطبيعية.

The TRA understands that two laws currently govern the Energy and Water sectors:

- Law 462/2002 concerning the energy sector; and
- Law 221/2000 concerning water authorities.

Law 462/2002 contemplates the privatization and liberalization of the electricity sector coupled with the establishment of an independent sector regulatory authority. However, at present, the privatization process has not begun and the electricity sector remains publicly owned. The independent regulatory authority's board has not yet been appointed and installed. EDL owns and operates the major part of the electricity networks and assets, as described in section 3.6 of this Study.

Property and control over water and sewage networks is more complex to describe. Multiple stakeholders have over time built and/or operated water and sewage networks. These include the recently established public water bodies, the State, municipalities and even Unions of municipalities. Practice has not always been consistent with the law, however. For example, Article 4 of Law No. 221/2000 clearly stipulates that sewers are under the control of the public water bodies. Yet TRA understands that they are in practice mostly still under the control of the municipalities.

The TRA understands that, allowing service providers to use public property owned by Electricité du Liban or the water public bodies in exchange for a fee would require authorization of these public bodies. Article 10 of Decree No. 4517/1972 provides that the board of any public body is responsible for taking all decisions required in order to achieve the mission of a public body.[19] Article 35(1) of the Telecommunications Law clearly requires public bodies to allow service providers to use their public properties and expects them to be compensated for this. The TRA is advised therefore that such activities would be viewed as within their missions.[20]

Having said that, Articles 21 and 22 of Decree No. 4517/1972 provide a list of board decisions which the Minister having *tutelle* over the public body must approve. The list includes decisions relevant to provisional budget as well as grants. To the extent that occupancy of EDL's or the public water bodies' assets will have budgetary implications, the Minister's approval would likely be required. The TRA has not examined whether, if such indirect ministerial approval is required, it could be granted in connection with the overall budget while specific decisions to grant use of the public bodies' properties be taken by the boards of the relevant public bodies.

Fees and other conditions would be subject to agreement between the parties involved and, the TRA understands, are currently not subject to any regulatory parameters.

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[19] In Lebanon as in France, public bodies (Etablissements publics) are governed by the principle of specialization (Principe de spécialité): They can only take action for the purpose and within the scope of the mission assigned to them (Youssef Saad el Khoury مجموعة قانون الأداري, الجزء الثاني، p. 9; Y Gaudemet, Traité de droit administrative, TI, LGDJ, 16 ed., p. 298).

[20] Under the French model, likely to be followed in Lebanon, courts have developed broad understanding of public bodies' mission and have allowed them to undertake activities that have some connection with their mission and that have financial justification. For an overall assessment, see Chevallier: La place de l'établissement public en droit administratif, p. 43 and seq, *www.u-picardie.fr/labo/curapp/revues/root/2/chevallier.pdf*.

3.6 Electricité du Liban

Electricité du Liban ("EDL") is a public body that operates Lebanon's electric power generation, transmission and distribution assets, which currently comprise virtually the entire Lebanese electricity sector. EDL owns most of Lebanon's electricity assets.[21] The electric grid comprises:

- power generation assets, which are expected to be fully privatized under Law 462/2002;
- high voltage (above 24 kv) transmission assets, which are expected to remain in the public domain, but can be managed under contract by a private company; and
- power distribution (below 24 kv) assets, which are expected to be fully privatized.

In addition to its electric transmission and distribution networks, EDL has a nationwide, 220 kilometer long fiber-optic network which has excess capacity. The network consists of 12 fiber pairs which are used as part of a national control center for the electrical network. EDLs fiber-optic network is deployed in the grounding electrical cables. These are located underground in Beirut and Tripoli and above ground everywhere else. In addition, EDL has deployed a dark fiber cable between its station at Ksara (Bekaa) and the Syrian border, which connects with Turkey, Iraq, Jordan, Egypt, Libya, Tunisia, Algeria, and Morocco.

Other assets under EDL's administration of relevance to telecommunications service providers are transmission towers and rights of way, distribution poles and other related assets.

As noted in the discussion of MEW in section 3.5 of this Study, EDL is eventually expected to be privatized in a transaction that will declassify the generation and distribution assets and transfer them to the private sector, while the transmission assets will remain in public sector ownership and control. However, at present, all EDL assets fall within the domain of public property and are subject to Article 35 of the Telecommunications Law. As with the public telecommunications assets, any access granted while EDL is still a public sector entity will be binding on its successor after privatization.

The power of the EDL board to grant permission to use its properties is discussed in section 3.5 of this Study. Other than possible indirect approval from the Minister of Energy and Water in connection with budgetary matters, EDL would not need to seek approval from other public entities such as municipalities.

The TRA understands that EDL has not previously granted rights to use its electrical or fiber-optic network assets. Nor (until Article 35(3) was introduced) has EDL yet had reason to develop procedures for handling private sector requests for information about or access to and use of its electric and telecommunications facilities.

[21] *See* Articles 2, 3 and 26 of Decree No. 16878/1964.

Studies may be required regarding the weight-hold impact of additional telecommunications cabling installed on electricity poles and towers, presumably from the perspective of the reliability and safety of the electric grid.

3.7 Water public bodies

Law No. 221/2000 (as amended by law No. 241/2000) merged the old water departments into four independent public entities covering four separate regions (Beirut and Mount Lebanon, North, South and Bekaa) and included water and drainage of dirty waters in their scope of work. The TRA understands that there is no formal coordination between the different water entities, but that the MEW director generals meet regularly to discuss common matters and projects. The TRA also understands that in most of the water public bodies, their information about existing infrastructure is not current (with the exception of Beirut and Mount Lebanon, and Tripoli as described below).

The power of the boards of the water public bodies to grant permission to use their water-related assets is discussed in section 3.5 of this Study. Other than possible indirect approval from the Minister of Energy and Water in connection with budgetary matters, they would not need to seek approval from other public entities such as municipalities. The water public bodies have no experience in allowing private sector use of its water infrastructure, nor do they currently have procedures for handling requests or setting usage fees.

Other permissions may be required under the circumstances enumerated elsewhere in this Study. For example, if digging is necessary for the installation of telecommunications infrastructure, approval of the municipality or the MPWT will be required (see sections 5.2 and 5.3 of this Study).

The remainder of this section describes the example of the Water Authority of Beirut and Mount Lebanon ("WABML"). The WABML administers the water and sewer infrastructure in a region that includes Beirut and Mount Lebanon. The TRA understands that WABML is not yet administering the sewers, and is only handling the drinking water infrastructure. Sewers are still being administered by the municipalities.[22]

The TRA understands that WABML has developed a GIS mapping system that includes all fresh water infrastructure in its region. WABML's GIS system does not yet include information regarding sewers and drainage. (In the rest of Lebanon, the TRA understands that only Tripoli also has a GIS system.) Regarding the actual physical plant, the TRA understands that the majority of the water infrastructure in Beirut and Mount Lebanon is more than 50 years old, but that WABML has a 25-year plan to upgrade and replace its aging infrastructure. For example, WABML built a new 800 mm water line from Dbayeh toward Metn coast. It may be possible to coordinate joint construction activities with telecommunications service providers in the course of such upgrades.

[22] *See* articles 49 and 136 of legislative decree No. 118/1977.

3.8 Council for Development and Reconstruction

The Council for Development and Reconstruction ("CDR") is a public body established in 1977 to be responsible for reconstruction and development in Lebanon. CDR was granted important powers to avoid any administrative routine that could slow down the reconstruction process, especially in the financial field.

Over the years, CDR has been very active, overseeing billions of dollars in public investment in coordination with all other ministries, and is involved in monitoring, tendering and implementing priority reconstruction and development projects in basic infrastructure, social and productive sectors, including power, health, education, water and waste water, telecommunications, transportation, roads and highways.

CDR does not administer any particular class of public properties of likely interest to telecommunications service providers. Nor is infrastructure built by CDR (e.g., water, electricity and sewage infrastructure) its own property.[23] However, its active role in planning, financing and contracting a variety of relevant infrastructure projects makes it a natural source of information for telecommunications service providers. In particular, the CDR is the leading source of knowledge about existing and planned infrastructure projects, and has a database of existing fixed telecommunications network infrastructure deployed after 1997, as well as other projects since 1990. CDR could also conceivably be a potential partner with telecommunications service providers in public-private partnerships for the joint construction of infrastructure projects that include a telecommunications infrastructure component.

The TRA recommends that the Minister of Telecommunications seek the assistance of the CDR in this regard. For example, service providers and public projects may benefit mutually if service providers could obtain information from CDR about planned works in which such service providers could participate for the installation of telecommunications facilities. CDR's expertise may be a useful resource in the planning and implementation process for service provider requests to install ducts and other telecommunications infrastructure in conjunction with other planned public infrastructure projects.

3.9 Identifying relevant government departments in the Article 35(3) decree

As described in the previous sections, various public authorities administer key public properties that are or may be used for telecommunications. Annex A to this Study summarizes these and the key legal provisions. The TRA believes it is important to make it clear in the Article 35(3) decree which public bodies have responsibilities under it and so to define such public bodies specifically.

Recommended Provision

"Government Department" means any

(a) ministry, authority or other government department of the Republic of Lebanon that administers or controls Covered Public Property, including, without limitation, the Ministry of Telecommunications (Directorate of Equipment and Construction or Directorate of Operation and Maintenance), the Ministry of Public Works and Transportation

[23] See Article 5-7-i Legislative Decree No. 5/1977.

(Directorate of Roads), the Ministry of Interior and Municipalities (General Directorate of the Internal Security Forces), the Ministry of Information, the Ministry of Water and Energy and each mouhafez and kaimakam; or

(b) municipality in the Republic of Lebanon, or any union of such municipalities, that administers or controls Covered Public Property, including, without limitation, the president of each municipality; or

(c) other public body or government or public entity in the Republic of Lebanon that administers or controls Covered Public Property, including, without limitation, Electricité du Liban and any water public body; or

(d) any successor public authority or public entity of the foregoing, or any private sector representative or contractor of or for the foregoing, that may assume administration or control of any Covered Public Property from time to time, whether through a change of roles or functions, a reorganization of Government Departments, the transfer of administration or control of any Covered Public Property from one Government Department to another, the issuance of a concession or making of a contract with a private sector concessionaire, or otherwise.

4. PROCEDURES AND APPROVALS GENERALLY

4.1 Public property under Lebanese administrative law

4.1.1 Types of public property

Before analyzing existing law relating to use of specific public properties, it is helpful to summarize some key points of Lebanese administrative law relating to public property generally.

There are two types of public property (i.e., property of public entities) under Lebanese administrative law, and these affect their legal treatment:

- public domain, and
- private domain.

Both of these are subject to Article 35 of the Telecommunications Law requirement to allow service providers to use them. Within the category of public domain property there are two classifications:

- natural public domain property such as territorial waters, rivers, coastal lines, etc. and
- artificial public domain property.

The artificial public domain encompasses public properties transformed to be allocated to the provision of a public service or to the use of the general public. This includes roads, railway tracks as well as telecommunications, electricity and water or sewers networks.

The main public properties the TRA expects telecommunications service providers to need are currently in the public domain. Furthermore, the most immediately important are likely to be artificial public domain property. Artificial public domain property typically already comprises some infrastructure on established public rights of way. This is likely to offer service providers the greatest opportunity for major savings in their costs of installing telecommunications infrastructure.

4.1.2 Authorizations to use and occupy the State public domain

Only the head of State (i.e., the Council of Ministers) can grant rights of way on the public domain of the State (Article 16 of Decision No.144/1925).[24] In a relevant precedent, the Authority for Legislation and Consultancies declared illegal a right of way granted by the railway public body to the municipality of Tripoli for the purpose of laying sewer pipes under railway tracks running across the municipality. The Authority held that only the head of the State could grant rights of way on its public domain (in this case, railway tracks).[25] Read together with Article 65 of the Lebanese Constitution, reference to the "head of the State" today means the Council of Ministers.

Relevant precedent in Decision No. 144/1925[26] relating to private occupancy of the State's public property has established the following:

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[24] *Decision No. 144/1925.*

المادة 16- تعطى اجازات الاشغال الموقت على الاملاك العمومية خاصة الدولة بموجب قرار من رئيس الدولة وفقا لاحكام هذا الفصل.
تعطى اجازات الاشغال الموقت على الاملاك العمومية خاصة البلديات وفقا للقوانين والشرائع المتعلقة بالبلديات.

[25] Opinion No. 314/1964, Authority for Legislation and Consultancies, Sader, Vol 4, p. 4345.

[26] Decision No. 144/1925:

الفصل الثالث - اشغال الاملاك العمومية

المادة 14- يمكن للدولة او البلديات ان ترخص على املاكها العمومية بصفة مؤقته قابلة الالغاء ومقابل رسم ما باشغال قطعة من الاملاك العمومية اشغالا شخصيا مانعا لا سيما اذا كانت المسألة تتعلق بمشروع ما.
يعتبر المشروع امتيازا اذا كان منشأ كمصلحة عمومية واما الاجازة بالاشغال الموقت فلا تكون لمصلحة عمومية.
يعطي الامتياز او الاجازة بالاشغال الموقت على الاملاك العمومية بشرط المحافظة على حقوق الاخرين.
المادة 15- تعطى الامتيازات وفقا لاحكام القرار رقم 2511 الصادر في 20 آذار سنة 1924
المادة 16- تعطى اجازات الاشغال الموقت على الاملاك العمومية خاصة الدولة بموجب قرار من رئيس الدولة وفقا لاحكام هذا الفصل.
تعطى اجازات الاشغال الموقت على الاملاك العمومية خاصة البلديات وفقا للقوانين والشرائع المتعلقة بالبلديات.
المادة 17- تمنح اجازات الاشغال الموقت لسنة واحدة ويمكن تجديدها بالرضى الضمني.
يعين في القرارت التي تمنح بموجبها الاجازات الرسوم الواجب اداؤها بسبب الاشغال الموقت ويعتبر في هذه الرسوم المساحة والمحل ويمكن بصورة استثنائية تخفيضها تخفيضا كثيرا وحتى جعلها رسما مبدئيا من خمسة غروش سورية اذا امكن اعتبار الغرض من الاشغال الموقت للمنفعة العمومية. تدفع الرسوم مسبقا.
لا يحق لصاحب الاجازة ان يتنازل عنها قبل انتهاء السنة المبتدأة.
المادة 18 - يمكن الغاء اجازات الاشغال الموقت بدون تعويض عند اول طلب من الادارة على انه يحق لصاحب الاجازة ان يداعي بقسم او بجملة الرسوم التي دفعها.
يجري سحب الاجازة بقرار من رئيس الدولة.
المادة 19- تحدد عند اللزوم بقرارات من رئيس الدولة فيما يختص باجازات الاشغال على الاملاك العمومية البرية او النهرية او البحرية التي هي من نوع واحد الشروط الخصوصية التي يمكن بواسطتها منح هذه الاجازات سواء اكان ذلك على املاك الدولة او على بعض مناطق او محلات معينة.
المادة 20- يمكن مراجعة النظر في القرارات العمومية المتعلقة باجازات الاشغال على الاراضي العمومية كل خمس سنوات في جملتها او في قسم منها بناء على اقتراح احدى الدوائر ذات الشأن. لا يحتج بمراجعة النظر هذه على اصحاب الاجازات ما لم تبلغ لهم قبل ثلاثة اشهر على الاقل من انتهاء مدة الخمس سنوات الجارية.
المادة 21- ما خلا الاحوال المذكورة في المادة الثالثة ينظم قبل اول ك2 سنة 1927 باهتمام دائرة النافعة جدول بجميع الاجازات الممنوحة على الاملاك العمومية الارضية او النهرية باجرة او بغير اجرة وبجميع الاملاك المشغولة التي لم يصدر ترخيصا بها والتي يمكن استرجاعها ويجري العمل نفسه باهتمام مفتش البحرية التجارية في الاملاك العمومية البحرية.

- authorizations are always temporary (Articles 14, 16 and 17);

- the head of state (i.e., the Council of Ministers) may establish general regulations for use of public property (e.g., Decree No. 4810/1966 (conditions of use of maritime public domain) and Decree No. 12841/1963 (fees for use of maritime public domain) (Article 19); and

- fees for use should take into account the location and size of the property and should be paid in advance (Article 17), and may be symbolic when the occupancy aims at achieving public interest.[27]

The TRA understands that a decree of the Council of Ministers can confer the benefit of such rights of use and occupancy of the public domain of the State generally on a class of persons. Such class of persons may include service providers whose licenses issued by the TRA authorize them to access and use the relevant public properties. The decree itself is not required to name in advance the actual persons on whom those rights are bestowed. However, such a decree would not itself be sufficient to authorize a specific service provider to use a specific public property. Each such requested use of public property by a service provider would have to be granted on a personal basis to such service provider by the public authority that administers the relevant public properties. This will allow a single Council of Ministers decree to provide for present and future use of the public domain of the State by all relevant telecommunications service providers from time to time, subject to prior approval of each such request by the relevant public authority. This will avoid the need for a new decree for each additional service provider requiring access.

4.1.3 Authorizations to use and occupy the municipal public domain

As noted in section 3.3 of this Study, municipal public domain property is under the control of municipal governments, including municipal roads, civil works and trenching.

Law No. 60/1988, as amended by Law No. 14/1990, addresses municipal authorizations and fees for private use or occupancy of the municipal public domain (mainly Articles 42 to 49 and 100). The right to occupy the municipal public domain is governed by Article 75 of Legislative Decree No. 118/1977[28] and Article 44 of Law No. 60/1988.[29]

ترسل هذه الجداول الى دائرة المالية التي تقوم باعادة النظر في الاجازات او بتعيين الرسوم ثم يعطى علم لاصحاب الاجازات بوجوب التوقيع على تعهد بدفع الرسوم الجديدة التي تبتدئ من اول اذار سنة 1927 واذا لم يوقع على التعهد المذكور تسحب اجازة الاشغال.
يجب ان تصبح اشغالات الاملاك العمومية الغير مرخص بها قانونية على الصورة المذكورة في هذا القرار واذا رفض الشخص الذي يشغل المحل ان يخضع للشروط التي تعينها الدوائر صاحبة الصلاحية فينذر باخلاء القسم من الاملاك العمومية المشغول بغير حق وان يعيده الى حالته السابقة في مدة يعينها رئيس الدولة.
واذا لم ينفذ شاغل الملك الشروط المطلوبة منه فرئيس الدولة يأمر بتنفيذ هذه الشروط رأسا وحالا بالطريقة الادارية.

[27] The basis for charges for use of public property, including the RoL ducts, is discussed separately in section 3.7.

[28] Legislative Decree No. 118/1977

المادة 49- يتولى المجلس البلدي دون ان يكون ذلك على سبيل الحصر الأمور التالية:
(..)- تحديد معدلات الرسوم البلدية في الحدود المعنية في القانون.
المادة 60- معدلة وفقا للقانون الصادر في 1999/4/25
تخضع لتصديق القائمقام القرارات الآتية:
(…)- تحديد معدلات الرسوم البلدية ضمن الحدود المنصوص عنها بقانون الرسوم البلدية.

Authorization to occupy and use the public domain of a municipality is granted by the head of the executive of the municipality for public property located within the boundaries and public domain of the municipality (which would exclude, for example, State roads located inside the municipality, which as noted in section 3.3 of this Study are under the administration of the State). See Article 16 of Decision No. 144/1925,

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[29] Law No. 60/1988

المادة 42- الرسم على أشغال الأملاك العمومية البلدية نوعان: رسم ترخيص ورسم استثمار.
المادة 43- يخضع للرسم أشغال الأملاك العمومية البلدية بأنواعه الثلاثة الآتية:
1 - الأشغال المرتبط بمركز ثابت بهدف توسيع مدى استعمال هذا المركز (مقهى، مطعم...).
2 - الأشغال غير المرتبط بمركز ثابت وذلك باستعمال الأرض المشغولة لغايات استثمارية (أكشاك، وسائل دعائية...).
3 - أشغال المدى الهوائي بمظلات أو ستائر أو أية وسائل أخرى واقية من الشمس أو المطر مرتبطة بمركز ثابت.
المادة 44- يعطي الترخيص بالأشغال رئيس السلطة التنفيذية في البلدية في النطاق البلدي والقائمقام أو المحافظ خارج النطاق البلدي.
المادة 45- معدلة وفقا للقانون 14 تاريخ 1990/8/20
يحدد رسم الترخيص ضمن الحدين الأقصى والأدنى الآتيين ويستوفى لمرة واحدة عند إعطاء الرخصة:

الحد الأقصى ل.ل.	الحد الأدنى ل.ل.
20000	10000

المادة 46- معدلة وفقا للقانون 14 تاريخ 1990/8/20
يحدد الرسم السنوي لأشغال الأملاك العمومية البلدية وفقا لما يلي:
1 - الأشغال المتبط بمركز ثابت بنسبة لا تقل عن (2%) اثنان بالماية من القيمة البيعية للمساحة المرخص بأشغالها.
2 - الأشغال غير المرتبط بمركز ثابت بنسبة لا تقل عن (1%) واحد بالمئة من القيمة البيعية للمساحة المرخص بأشغالها.
3 - أشغال المدى الهوائي بمظلات أو ستائر رسم مقطوع.

الحد الأقصى ل.ل.	الحد الأدنى ل.ل.
20000	2000

يستوفى الرسم سنويا إلا إذا كانت مدة الأشغال تقل عن السنة فيستوفى عندئذ نسبيا وعلى أساس شهري، مع احتساب كسر الشهر شهرا كاملا.
المادة 47- يجري تقدير القيمة البيعية للمساحة المرخص بأشغالها بتاريخ الترخيص من قبل اللجنة المنصوص عنها في المادة 77 من هذا القانون.
المادة 48- يعين المجلس البلدي أماكن وقوف السيارات والآليات على اختلاف فئاتها وأنواعها في الأملاك العمومية البلدية ويضع نظاما خاصا لهذه الغاية يحدد فيه معدلات الرسم تبعا لمدة الوقوف مؤقتا كان أو عابرا كما يعين طرق ووسائل تحصيله.
يخضع النظام لمصادقة وزير الداخلية.
المادة 49- يتعرض كل من يشغل ملكا عموميا بلديا دون ترخيص مسبق لغرامة تعادل مجموع قيمة رسمي الترخيص والأشغال علاوة على الرسوم الأساسية المتوجبة بالإضافة إلى نزع ما هو مخالف.
المادة 100- يحدد المجلس البلدي الرسوم التي لم تحدد مقاديرها والتي عين لها هذا القانون حدودا قصوى ودنيا على أن يضع المجلس مسبقا نظاما يتضمن القواعد والمعايير المقتضاة لذلك التحديد.
ولأجل تحديد مقادير الرسوم على المؤسسات السياحية، يأخذ المجلس البلدي بالأسس التي تعتمدها وزارة السياحة.

المادة 77- لأجل فرض رسم الترخيص بالبناء، تتولى تخمين الثمن البيعي للمتر المربع من أرض العقار المنوي إقامة أو إضافة بناء عليه لجنة خاصة تؤلف بقرار من رئيس السلطة التنفيذية في البلدية قوامها:
- أحد أعضاء المجلس البلدي رئيسا
- مهندس من البلدية أو مهندس من التنظيم المدني ينتدبه القائمقام أو للمحافظ عضوا
- موظف من وزارة الداخلية ينتدبه وزير الداخلية بناء على اقتراح المحافظ بعد استطلاع رأي رئيس مصلحة الشؤون البلدية والقروية عضوا
أما في المناطق الواقعة خارج النطاق البلدي فتؤلف اللجنة بقرار من المحافظ على النحو التالي:
- القائمقام أو أحد موظفي الفئة الثالثة في القائمقامية أو المحافظة رئيسا
- مهندس من التنظيم المدني عضوا
- خبير في الشؤون العقارية عضوا
تتولى هذه اللجان كل فيما خصها وخلافا لأحكام المادة 13 من المرسوم الإشتراعي رقم 83/13 تاريخ 1983/2/25 وتعديلاته، مهمة التخمين عند تطبيق قوانين تسوية مخالفات البناء، بما في ذلك تخمين قيمة الأرض الوهمية.

Thus, licenses to dig up municipal roads are granted by the head of the relevant municipality. [32] The head of the executive is typically the president of the municipality, except in Beirut, where the head of the executive is the Mouhafez (Article 67 of Legislative Decree No. 118/1977).[33]

Decisions made by the Council of the Union of Municipalities are binding on all member municipalities.[34] Approvals of works (e.g., authorizations to dig up roads and disrupt traffic) involving multiple municipalities will likely be more quickly and consistently secured if the project is initially approved or adopted by the union. According to Article 135 of Legislative Decree No. 118/1977, if the Municipal Council or its President do not undertake an action or work[35] which they are required by law or regulations to undertake, the Kaimakam may address a written injunction to them requesting that they proceed to implementation within a given time limit. If they do not comply, the Kaimakam, has the power to issue the decision on their behalf provided that he obtains prior approval of the Mouhafez and that he sets out the reasons for proceeding in his decision.[36]

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[30] Legislative Decree No. 118/1977;
المادة 75- يجوز لرئيس السلطة التنفيذية ان يرخص بالأشغال المؤقت أو بوضع البضائع مؤقتا في الطرق والأماكن العامة أو يعرضها على جوانب الأرصفة والساحات العامة، وله ان يرخص أيضا لأصحاب المطاعم والمقاهي بأن يضعوا طاولات ومقاعد وكراسي على أرصفة الطرق والساحات المذكورة.

[31] Law No. 60/1988:
المادة 44- يعطي الترخيص بالأشغال رئيس السلطة التنفيذية في البلدية في النطاق البلدي والقائمقام أو المحافظ خارج النطاق البلدي.

[32] Article 74 of Legislative Decree No. 118/1977

المادة 74- يتولى رئيس السلطة التنفيذية على سبيل التعداد لا الحصر، الأعمال التالية:
(...)- الترخيص بحفر الطرقات العامة لمد قساطل المياه والكهرباء والهاتف والمجارير وغيرها لقاء كفالة تضمن إعادة الحال إلى ما كانت عليه على نفقة طالب الترخيص ولا تستثنى المؤسسات العامة والمصالح المستقلة وإدارات الدولة من هذا الترخيص.
المادة 67- يتولى السلطة التنفيذية في البلدية رئيس المجلس البلدي، وفي بلدية بيروت يتولاها المحافظ لا تطبق على من يتولى السلطة التنفيذية أحكام الفقرة (2) من المادة 14 من المرسوم الإشتراعي رقم 112 تاريخ 12 حزيران 1959.

[33] Legislative Decree No. 118/1977
المادة 74- يتولى رئيس السلطة التنفيذية على سبيل التعداد لا الحصر، الأعمال التالية:
(...)كل ما يتعلق بتأمين السير وتسهيل التجول في الشوارع والساحات والطرق العمومية وكل ما يتعلق بالتنظيف والإنارة ورفع الأنقاض والأقذار.

[34] Article 128 of Legislative Decree No. 118/1977:
المادة 128- ان جميع القرارات التي يتخذها مجلس الاتحاد ضمن نطاق صلاحياته لها صفة الإلزام القانوني للبلديات الأعضاء.
إذا تمنعت إحدى البلديات الأعضاء عن تنفيذ قرارات مجلس الاتحاد القائمقام أو المحافظ أما عفوا أو بناء لطلب رئيس مجلس الاتحاد ان يوجه الى البلدية المختصة أمراً خطياً بوجوب التنفيذ خلال مهلة عشرة أيام وإلا حل محل المجلس البلدي أو رئيس البلدية في القرار الذي يضمن حسن تنفيذ قرار مجلس الاتحاد.
يسجل قرار القائمقام أو المحافظ في سجل القرارات الخاص في البلدية المعنية.

[35] The term "عمل" can be understood as action or work.
[36] المادة 135- إذا تمنع المجلس البلدي أو رئيسه القيام بعمل من الأعمال التي توجبها القوانين والأنظمة، للقائقام أن يوجه الى المجلس البلدي أو الى رئيسه أمراً خطياً بوجوب التنفيذ خلال مهلة تعين في هذا الأمر الخطي فإذا انقضت المهلة دون التنفيذ حق للقائمقام بعد

4.1.4 Authorization framework for the Article 35(3) decree

In this context, the TRA recommends that the Article 35(3) decree set out the basic framework for obtaining approvals and ownership status of State and municipal public properties. For example, public authorities may not discriminate among service providers. Further, the State both is currently a provider of telecommunications services and will be the provider of ducts to alternative providers of telecommunications services. Given these continuing roles of the State in the telecommunications sector at this time, the TRA recommends that the decree seek to assure non-discriminatory treatment of service providers and generally prevent problems arising from conflicts of interest.

Recommended Provision

Government Departments must on a non-discriminatory, first-come, first-served basis, make available to requesting licensed Service Providers all Covered Public Property under their administration or control for Permitted Uses, and such Service Providers will have the right to enter, use, occupy and, when necessary, disturb and restore or permanently alter the appearance and specifications of such property. Any permanent alteration must not obstruct the use of the Covered Public Property for its intended purpose. The rights granted only extend to Service Providers who have been duly licensed by the TRA to provide Telecommunications Services and to install and operate the relevant equipment and other Telecommunications infrastructure.

A Service Provider must obtain the approval of the relevant Government Department with respect to any particular Permitted Uses of any particular Covered Public Property in accordance with this Decree before engaging in such Permitted Uses of such Covered Public Property.

A licensed Service Provider's right to engage in Permitted Uses of Covered Public Property will continue from the date the relevant Government Department's approval is effective for so long as such Service Provider holds a license under the Telecommunications Law that permits it to install and operate the Telecommunications infrastructure located on the Covered Public Property, unless the Service Provider completes or abandons the Permitted Use earlier or the relevant Government Department has a good reason for setting a shorter term for the Permitted Use.

All rights in Covered Public Property and other public property entered, used, occupied, disturbed, restored or altered by any Service Provider will remain at all times public property and no Service Provider will acquire any right, title or interest in any Covered Public Property or other public property, except the right to engage in Permitted Uses upon and subject to the terms and conditions set forth in this Decree and the approval of the relevant Government Department.

4.2 Request procedures

As observed several times in section 3, public authorities have not for the most part previously authorized private companies, including telecommunications service providers, to use the public property under their administration. They do not have

existing procedures or requirements relating to such use, nor experience in evaluating such requests.

Different government departments are likely to have different requirements. Where the property is being used for particular purposes which could be affected by allowing service providers access to it (e.g., electricity or water), procedures will likely need to be tailored to the relevant property. Health and safety issues will naturally be paramount considerations for approvals of use of water and electricity network assets, for example. It will likely be necessary for the relevant public authorities to be satisfied that the installation and operation of telecommunications facilities will not adversely affect the existing and planned uses. Service providers will have to coordinate directly with relevant public authority to avoid causing damage or service disruption during works for the installation of telecommunications infrastructure.

The TRA recommends that the Article 35(3) decree should ensure that procedures for approvals are developed to ensure that public entities fulfill their duties under Article 35 of the Telecommunications Law to permit use of their public properties. An appropriate balance must be struck between ensuring some standard procedures and allowing different government departments to tailor procedures to specific requirements or situations relevant to the public property they administer.

Recommended Provision

A relevant Government Department that receives a formal request from a licensed Service Provider for a Permitted Use or for information about Covered Public Property must provide a written response to the requesting Service Provider within one month after receipt of the formal request. Where a Service Provider is planning extensive works on Covered Public Property, the Service Provider and the relevant Government Departments will cooperate prior to and after the formal submission by the Service Provider of its request(s) for Permitted Uses with the objective of defining a mutually acceptable and feasible project implementation plan and timetable. This planning process will take account of all relevant factors, including, without limitation, coordinating the Service Provider's requested works with those planned by the Government Department and others, avoiding disruptions to existing uses of the Covered Public Property, minimizing costs of repetitive works and duplicative infrastructure, expediting the processing and approval of the Service Provider request(s), and otherwise preserving public order and minimizing the adverse impact of Permitted Uses.

The TRA and all relevant Government Departments must confer regularly regarding the implementation and enforcement of this Decree, and in particular must consider and implement ways to coordinate the processing and implementation of requests by more than one Service Provider for similar or related Permitted Uses of the same Covered Public Property, or related requests from a Service Provider made to more than one Governmental Department, with a view to:

(a) minimizing disputes;

(b) avoiding disruptions to existing uses of the Covered Public Property;

(c) minimizing costs of repetitive works and duplicative infrastructure, including the imposition of conditions that facilitate joint use of fixtures and permanent improvements by multiple Service Providers;

(d) expediting the processing and approval of Service Provider requests to ensure efficient and rapid deployment of alternative Telecommunications infrastructure and Networks in the Republic of Lebanon; and

(e) otherwise preserving public order, achieving the objectives of the TRA and the other Government Departments, and minimizing the adverse impact of Permitted Uses on the environment, quality of life and the operation of government and business.

The Telecommunications Law clearly establishes a presumption that public properties are to be made available to service providers. Particularly since government departments are not accustomed to receiving and dealing with requests to use public properties under this administration, the TRA believes it is important that the Article 35(3) decree set parameters for the refusal to allow such use.

Recommended Provision

A Government Department may only deny a licensed Service Provider's request for a Permitted Use of Covered Public Property that otherwise complies with the terms, conditions and requirements of this Decree for (a) insufficient capacity, (b) national security reasons, (c) safety reasons, (d) environmental reasons, (e) demonstrably adverse impact on Covered Public Property of historical or religious significance, or (f) demonstrably adverse impact on the existing uses. Where the Government Department believes a request should be denied as submitted but that alterations to the request might address its objections, it must promptly so inform the Service Provider in writing and work with the Service Provider to reach a mutually acceptable alternative. Whenever a Government Department formally denies a request, it must set out the complete rationale in a writing delivered to the TRA and requesting Service Provider.

It will be important to enable public authorities to ensure that service providers comply with the requirements for authorizations and payment of fees.

To some extent existing law does refer to penalties for violations relating to use of the public domain. Legislative Decree No. 15403/1964 (amended Article 23 of Decision No. 144/1925) applies to the public domain of the State (الاملاك العامة خاصة الدولة). It provides that, for each category of properties, decrees shall determine penalties due in the event of a violation of regulations applicable to the public domain. It also provides that the State is entitled to compensation in addition to destruction of works undertaken illegally.[37] In addition, Article 49 of Law No. 60/1988 (الرسوم والعلاوات البلدية) provides that

[37] Legislative Decree No. 15403/1964 (amended Article 23 of Decision No. 144/1925):

"المادة 1- تعدل احكام المادة 23 من القرا رقم S/144 تاريخ 1925/6/10 كما يلي:
أ - عند عدم وجود مراسيم تحدد، عند الاقتضاء، وفقا لطبيعة المخالفات المختلفة المامورين المخولين اختصاص تنظيم محاضر الضبط تضبط المخالفات للانظمة المتعلقة بنظام ملك الدولة العام وبالمحافظة عليه وباستعماله، بموجب محاضر يضعها فضلا عن افراد قوى الامن الداخلي الموظفون المعينون من اجل ذلك في كل من وزارات الاشغال العامة والنقل والداخلية والزراعة والمالية.
ب - يعاقب على هذه المخالفات بغرامة ادارية تحدد قيمتها بمرسوم بالنسبة لكل نوع من انواع الاملاك العامة. وتعين في المرسوم نفسه السلطة الادارية المكلفة بفرض الغرامة.
وفي حال التكرار، يتعرض المخالفون بالاضافة الى الغرامة الادارية، لعقوبة السجن لمدة 10 ايام على الاقل وثلاثة اشهر على الاكثر. يحكم بعقوبة السجن هذه من جانب المحاكم الجزائية.
ويمكن، بمراسيم لاحقه، وفقا لطبيعة المخالفات، زيادة الحد الادنى وانقاص الحد الاعلى لعقوبة السجن المنصوص عنها في الفقرة السابقة تقرر العقوبات الادارية والقضائية مع حفظ حق الادارة بالمطالبة بالتعويض عن الضرر وبهدم الاشغال المقامة بصورة غير مشروعة على الاملاك العامة او مناطق الارتفاقات، عفوا ودون حاجة لاي معاملة(...).

The TRA recommends that the Article 35(3) decree provide for inspections by government departments. The Article 35(3) appears to contemplate that the decree issued under it will comprehensively deal with authorizations and payments. In light of this and the existing legal provisions mentioned above, the TRA considers it appropriate that the Article 35(3) decree sets out penalties to apply in the event that service providers do not pay the required fees, charges and compensations. (See also section 8 of this Study.)

Recommended Provision

Each Government Department may conduct periodic inspections of Covered Public Property for purposes of ensuring compliance by all Service Providers using or occupying such Covered Public Property with the Telecommunications Law, this Decree and any other terms and conditions lawfully imposed by the Government Department or otherwise. In addition to being entitled to require the relevant Service Provider to remove any unauthorized facilities and/or to bring the same into compliance, the Government Department may assess any unpaid fees, charges and compensation, plus a penalty on such unpaid amounts up to 50% of the unpaid amounts, and a penalty for each other violation not to exceed [*a value to be specified based on consultation with the relevant Government Departments* ___] per violation.

Pursuant to its authority under the Telecommunications Law or other applicable laws and decrees, the TRA may exercise such powers of control, inspection and enforcement as it deems reasonably necessary or appropriate to ensure compliance with this Decree and the regulations, procedures and decisions promulgated or made hereunder.

4.3 Conditions of use

There are no detailed provisions of Lebanese law setting out systematically the conditions on which private parties may use public property. As the licensing of service providers is expected to result in a significant amount of such use, the TRA recommends establishing such conditions, as contemplated in Article 35(3) of the Telecommunications Law.

Various issues require to be clarified in order to minimize disputes between service providers and government departments, and to recognize the matrix of obligations that service providers owe to other service providers regarding use of property. For example, while a service provider is using the ducts or other fixtures and permanent improvements, it will be subject to obligations to make its telecommunications infrastructure available to other service providers under Article 36 of the Telecommunications Law. (Whether the second service provider needs additional authority from any public administrators of roadways under or along which the ducts run can be analyzed as discussed in the rest of this section. The TRA does not believe that this needs to be specifically addressed in the Article 35(3) decree.)

38

Recommended Provision

A licensed Service Provider who lawfully installs any fixtures or permanent improvements to Covered Public Property will enjoy the right to use such fixtures or improvements, and to receive all rents and charges from other Service Providers for the use thereof, during the term of its Permitted Use only but not thereafter. Such Service Provider's right to use such fixtures and improvements, and the Covered Public Property to which they are affixed, is also subject to:

(a) any rights or obligations of the Government Department administering the relevant Covered Public Property to permit other Service Providers to enter, use, occupy, disturb and restore or alter such public property, and

(b) any obligations of the Service Provider under Article 36(2) of the Telecommunications Law or otherwise to allow other Service Providers shared use of such fixtures and permanent improvements.

The relevant Government Department's approval of fixtures and permanent improvements must be subject to the condition that the Service Provider will affix such fixtures and make such improvements in a manner that does not unnecessarily or maliciously prevent or impair the sharing of the Covered Public Property with other Service Providers except where the necessary additional cost of doing so would be unreasonably disproportionate to the likely shared use. For the avoidance of doubt, this does not require any Service Provider to install or reserve any excess capacity for use by another Service Provider.

To cover all risks and damages that telecommunications service providers might cause when undertaking the works, the TRA recommends that government departments should be authorized to require service providers to provide insurance coverage and indemnification for damage and harm that may occur.

Recommended Provision

A Service Provider entering, using or occupying Covered Public Property must:

(a) as required by the relevant Government Department, provide insurance coverage and indemnification against all perils including injury or death of natural persons and damage to the Covered Public Property and any other relevant property arising from the actions, including, without limitation, negligence or fault, of the Service Provider; and

(b) comply with all necessary terms and conditions established or enforced by the relevant Government Department, including, without limitation, requirements for certificates of insurance, performance bonds, security deposits, letters of credit and/or other financial instruments or undertakings to support or ensure performance by the Service Provider.

4.4 Ownership of fixed installations and moveable property

The TRA understands that in principle under Lebanese property law, ducts and other fixtures and permanent improvements installed by a service provider and fixed into the ground will be incorporated into the property in which they are fixed. Such property may be:

- the public domain of the State if in State property, e.g., State roads;
- the public domain of the relevant municipality if in municipal property, e.g., municipal roads;
- the private domain of the State or municipality, i.e., which is owned by them but not in the "public domain"; or
- the private property of private persons.

The TRA believes it is important that the Article 35(3) decree clarify what happens to such fixtures and permanent improvements at the end of the period during which the service provider is authorized to use the public property. This would include reflecting in the Article 35(3) decree the existing law that fixtures and permanent improvements that are not removed will be classified as public property.

An appropriate balance needs to be struck between permitting government departments to require removal of installed fixtures and permanent improvements and avoiding unnecessary cost to service providers for doing so. In this context, it is also prudent to ensure that service provider's rights and responsibilities regarding its moveable property located on public properties during and after the period of permitted use are clear.

Recommended Provision

If the relevant Government Department so requires, the Service Provider will at the end of the term of the Permitted Use promptly remove all fixtures and other permanent improvements installed by it on, in or under Covered Public Property at its own cost and restore the Covered Public Property to its original condition. A Government Department may only require removal of fixtures and permanent improvements installed below ground or below grade level, such as ducts, manholes and hand-holes, upon a finding that such removal is required for the planned future use of the relevant public property. Any fixtures and other permanent improvements not removed at the end of the term of the Permitted Use will be classified as public property subject to the authority and control of the relevant Government Department and without any compensation being due or payable to the Service Provider that installed such fixtures or improvements.

All moveable property or tangible personal property owned by a Service Provider and located on Covered Public Property for a valid Permitted Use will at all times remain private property of the Service Provider, and, upon cessation of its Permitted Use of Covered Public Property or at such earlier time as it chooses or is otherwise lawfully required to do so, the Service Provider will at its own cost remove all such items and restore the Covered Public Property to its original condition.

5. SPECIFIC USES OF PUBLIC PROPERTY

Having discussed the framework for and made recommendations applicable generally to State and municipal public domain property, this section examines the legal position of specific uses of public property which the TRA anticipates will be of the greatest importance to service providers, and identifies further necessary interventions that should be provided for in the Article 35(3) decree.

5.1 Use of public ducts

The Ministry of Telecommunications currently has administrative authority over all ducts used in the operation of the fixed telecommunications network. Although ducts themselves are not inherently telecommunications infrastructure (they are essentially a conduit system for cables), Article 212 of Legislative Decree No. 126/1959 defines the wireline telecommunications network as comprising all installations, material or equipment constructed above or under the ground for the provision of wireline telecommunications,[39] and Article 5 of Legislative Decree No. 127/1959 includes the same items in the definition of telegraph telecommunications networks.[40]

The existing public ducts are classified as telecommunications-related and under control of the Ministry of Telecommunications. Because they are the public domain of the State, authorization to occupy them must be granted by the head of the State. (See Article 16 of Decision No. 144/1925.[41]) Thus, as explained in section 4.1.2 of this Study, a decree of the Council of Ministers is required to allow use or occupancy of the telecommunications ducts.[42] Such a decree can provide a general authorization which is then administered by a relevant administering authority, which would in this case be the MOT.

The TRA recommends that the Ministry of Telecommunications (or its successor as administrator of the public ducts) should be designated to administer and police access to and use of the ducts by service providers as specified in the Article 35(3) decree.

Due to the prior history of State-owned telecommunications service providers, no specific procedures or charges have yet been established for private telecommunications service provider access to and use of the public ducts. See Article 1 of Legislative Decree No. 126/1959[43] and Article 1 of Legislative Decree No. 127/1959.[44] Furthermore, occupancy of infrastructure networks on the scale envisaged by the

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[39] *Legislative decree No. 126/1959*

المادة 212- تشتمل شبكة المواصلات السلكية على جميع التمديدات والأدوات والأجهزة المقامة فوق الأرض أو تحتها لتأمين المواصلات البرقية .

- [40] *Legislative decree No. 127/1959:*

المادة 5- تشتمل شبكة المواصلات الهاتفية على جميع التمديدات والادوات والاجهزة المقامة فوق الارض او تحتها لتامين المواصلات الهاتفية .

[41] *Decision No. 144/1925*

المادة 16- تعطى اجازات الاشغال الموقت على الاملاك العمومية خاصة الدولة بموجب قرار من رئيس الدولة وفقا لاحكام هذا الفصل.
تعطى اجازات الاشغال الموقت على الاملاك العمومية خاصة البلديات وفقا للقوانين والشرائع المتعلقة بالبلديات.

[42] Youssef Saad el Khoury, The public and private domain, Sader, 1999, p. 284-285.

[43] Legislative decree No. 126/1959:

المادة 1- يحصر في المديرية العامة للبريد والبرق حق نقل مواد المراسلات ضمن أراضي الجمهورية اللبنانية، ولها أن تلزم النقل أو أن تتولاه بنفسها.
ويقصد بكلمة (إدارة) الواردة في هذا المرسوم الاشتراعي - المديرية العامة للبريد والبرق.

[44] Legislative decree No. 127/1959

المادة 1- تتولى المديرية العامة للهاتف انشاء التجهيزات والشبكات الهاتفية واستثمارها وادارتها، والقيام بكل الاعمال التي يتطلبها الحصر الهاتفي.

Telecommunications Law and the Article 35(3) decree is also new to Lebanese authorities.

The TRA recommends that the Article 35(3) decree establish authorization procedures and terms and conditions of access that will apply for telecommunications service providers sufficient to secure the permission of the Ministry of Telecommunications for the access to, or use or alteration of, the telecommunications ducts.

The exclusive control of the existing public ducts is vested in the State even when they run under or along municipal public property (as opposed to State public property) or private property. As a result, the right to access, use and alter ducts does not require separate authorization from any municipality in whose rights of way those public ducts may be located. Instead, these matters are under the exclusive control of the State. However, as discussed in sections 4.1.3, 5.2 and 5.3 of this Study, a service provider will need authorization from the relevant municipality to the extent the activities of accessing, using and altering the ducts requires the digging up of roads or blockage or disruption of traffic or occupancy of municipal public domain.

Even where the public ducts run under State-controlled roads, the result is similar in that the authority to access, use or alter the ducts granted under the Article 35(3) decree and administered by the Ministry of Telecommunications (or its successor) is sufficient to allow the use of the related State-owned rights of way. Again, however, a service provider will also need authorization from the relevant administrators of the State roads to the extent digging or traffic blockage and disruption are involved.

5.2 Digging up public roads

5.2.1 State and municipal authorities

To undertake works that require digging or disturbance of the roads and/or the easements running along the roadside, a telecommunications service provider must obtain authorization from the relevant administrator of the roads.[45] Regarding preservation of municipal and State roads, Article 6 of Legislative Decree No. 68/1983 determines which authorities are responsible for monitoring works carried out to lay telecommunications, water, electricity or other public service infrastructure.[46] The abovementioned authorities however only monitor and inspect the roads themselves and not what is above or under the roads.

A threshold determination for a service provider seeking permission to dig or disturb the roads is whether a particular road on its route is a State road or a municipal road. The main criterion applied by law[47] as well as identified in judicial decisions is whether the

[45] This analysis does not address the procedure for obtaining the right to use private rights of way in which RoL ducts may be located.

[46]

المادة 6- يجري الاشراف على التنفيذ بواسطة فرع الصيانة في المديرية الاقليمية المختصة او بواسطة الوحدة التي يكلف بهذه المهمة المدير العام للطرق والمباني فيما يتعلق بالطرق التي ترعى شؤونها وزارة الاشغال العامة والنقل وبواسطة الجهاز الفني البلدي بالنسبة لبلديتي بيروت وطرابلس والجهاز الفني في اتحاد البلديات بالنسبة للبلديات التابعة للاتحادات او احدى الوحدات التابعة للمديرية العامة للتنظيم المدني بالنسبة لباقي البلديات .

[47] See Article 4 of Decision No. 144/1925.

road primarily serves the national or municipal interest. State roads (international, main, secondary and local) are defined under Decree No. 1315/1965. State roads that run through a municipality remain within the State's public domain. Lebanese State Council, Decision No. 90, May 9, 1969/ Court of Cassation, Decision No. 2, May 9, 1952. Article 62 of Legislative Decree No. 118/1977 specifies that public roads that run within the municipality (with the exception of State roads) fall within the public domain of the municipality.

As noted in section 4.1.3 of this Study, in the case of digging in municipal roads, a telecommunications service provider must obtain authorization from the head of the executive of the municipality. In the case of State roads, a telecommunications service provider must obtain authorization from the Director of Roads of the Ministry of Public Works and Transportation. See Article 5 of Legislative Decree No. 68/1983.[48]

5.2.2 Existing authorization charges and procedures for digging roads

To ascertain any additional matters that the Article 35(3) decree should address regarding digging in State and municipal roads, this analysis next reviews the existing authorization procedures and charges for private persons to obtain permission of the relevant administrator for digging in and along roadways.

When digging is undertaken on public roads, no fees are currently required. The persons who undertake such works are required, at their own expense, to restore roads to their original condition. See Article 5 of Legislative Decree No. 68/1983)[49] and Article

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المادة 4- تعتبر الاملاك المذكورة في المادة الاولى والمادة الثانية تابعة للاملاك العمومية الوطنية او للاملاك العمومية البلدية حسب تخصيصها للمنفعة الوطنية او للمنفعة البلدية.
يعين الفرق بين الاملاك العمومية الوطنية والاملاك العمومية البلدية في قرار من رئيس الدولة يتخذه في مجلس النظار.

[48] Legislative Decree No. 68/1983
المادة 5- يصدر الترخيص بالحفر عن مدير الطرق فيما يتعلق بالطرق المصنفة التي ترعى شؤونها وزارة الاشغال العامة والنقل وعن رئيس السلطة التنفيذية في البلدية المختصة فيما يتعلق بالطرق الداخلية الواقعة في نطاقها لمصلحة الجهة طالبة الترخيص مع مراعاة الشروط التالية : (..)

[49] Decree No. 68/1983
المادة 5- يصدر الترخيص بالحفر عن مدير الطرق فيما يتعلق بالطرق المصنفة التي ترعى شؤونها وزارة الاشغال العامة والنقل وعن رئيس السلطة التنفيذية في البلدية المختصة فيما يتعلق بالطرق الداخلية الواقعة في نطاقها لمصلحة الجهة طالبة الترخيص مع مراعاة الشروط التالية :
(…)
3- مع مراعاة احكام المادة 74 من المرسوم الاشتراعي رقم 118 تاريخ 1977/6/30 (قانون البلديات) تتحمل الجهة طالبة الترخيص تكاليف اعادة الطريق الى حالتها الاصلية وفقا لشروط فنية تضعها الادارة المرخصة.
(..)
5- لا يصرف اي مبلغ للمتعهد عن الاشغال موضوع الترخيص المتعلقة باعادة الطريق الى حالتها الاصلية ما لم يقترن بموافقة الادارة المرخصة .
المادة 4- لا يرخص باشغال حفر الطرق المنفذة الا في حال وضع برنامج عمل للمشروع يلحظ تفاصيل اشغال الحفر كتحديد اقسام الطرق المنوي حفرها والعمق الملحوظ وحجم التمديدات وتبليغه الى مديرية الطرق او البلدية المختصة قبل المباشرة بالاشغال بسنة واحدة في المرحلة الانتقالية التي تستغرق ثلاث سنوات اعتبارا من تاريخ نفاذ هذا المرسوم الاشتراعي وبثلاث سنوات على الاقل بعد المرحلة المذكورة ، الا انه يمكن الترخيص باشغال الحفر هذه في اي وقت كان دون برنامج عمل على ان يتم اعلام مديرية الطرق او البلدية المختصة عن العمل المراد القيام به وموقعه ومدة تنفيذه وذلك في الحالات الاستثنائية التالية :
1- اذا تعذر استعمال حق الارتفاق المنصوص عنه في المادة السابقة في مواقع الابنية الملاصق للطريق على ان لا يتعدى الترخيص بالحفر المواقع المجاور للابنية المذكورة .
2- اذا اضطرت الادارة او المؤسسة العامة او البلدية المختصة الى اصلاح او صيامة الخطوط التابعة لها والمارة تحت الطريق.
3- في حال الاضطرار الى حفر الطريق عرضيا ، او بسبب وجود اعطال طارئة تستلزم اصلاحات فورية تبادر الدائرة المختصة لدى الادارة او المؤسسة طالبة الترخيص الى القيام بها بالتعاون مع الادارة المرخصة .

74 of Legislative Decree No. 118/1977.[50] Municipal law requires a security deposit by any person undertaking works to ensure such person will bear all costs of restoring municipal roads. Article 74 of Legislative Decree No. 118/1977. Existing technical specifications as to public roads are detailed under Decree No. 13495/1998 and Decree No. 1623/1978 and must be followed when restoring roads to their original condition.

Detailed procedures for work requests, time limits and evaluation procedures are set out in Articles 4 and 5 of Legislative Decree No. 68/1983. Article 5 sets out the following procedures for obtaining authorization to dig in both municipal and State roads:

(a) The service provider must submit to the responsible public administrator an application that details the proposed works by providing maps, drawings and technical plans, and includes a commitment to abide by conditions to safeguard motorists and the general public.

(b) Upon receiving an application, the public administrator must undertake a study of the technical conditions the applicant must meet. The administrator must provide the applicant with the study results, grant or deny the requested authorization and set out authorized dates for performing the works.

المادة 5- يصدر الترخيص بالحفر عن مدير الطرق فيما يتعلق بالطرق المصنفة التي ترعى شؤونها وزارة الاشغال العامة والنقل وعن رئيس السلطة التنفيذية في البلدية المختصة فيما يتعلق بالطرق الداخلية الواقعة في نطاقها لمصلحة الجهة طالبة الترخيص مع مراعاة الشروط التالية :

1- ان يقدم طلب الترخيص الى مديرية الطرق او البلدية المختصة يبين فيه الاشغال المطلوبة مع الخرائط والمصورات من مسطحات ومقاطع طولية وعرضية وتصاميم تفصيلية عائدة للتمديدات والاشغال ويتضمن تعهدا بالتقيد بالشروط اللازمة للمحافظة على سلامة السير والسلامة العامة اثناء التنفيذ.

2- فور تسلمها الطلب تقوم الادارة الصالحة للترخيص بوضع دراسة تتضمن الشروط الفنية اللازمة وتعيده الى الجهة طالبة تنفيذ الاشغال مع قرار الترخيص والمدة التي يستلزمها التنفيذ وتاريخ العمل به.

3- مع مراعاة احكام المادة 74 من المرسوم الاشتراعي رقم 118 تاريخ 1977/6/30 (قانون البلديات) تتحمل الجهة طالبة الترخيص تكاليف اعادة الطريق الى حالتها الاصلية وفقا لشروط فنية تضعها الادارة المرخصة.

4- يجب ان يكون المتعهدون المكلفون باعادة الطرق الى حالتها الاصلية مؤهلين لهذه الاشغال وفقا لنظام التصنيف المعمول به في الادارات العامة .

5- لا يصرف اي مبلغ للمتعهد عن الاشغال موضوع الترخيص المتعلقة باعادة الطريق الى حالتها الاصلية ما لم يقترن بموافقة الادارة المرخصة

المادة 3-

1- ينشأ على الاملاك الخصوصية الواقعة بجانب الطرق المخصصة لاستعمال العموم المنفذة او المصدق تخطيطها بتاريخ نفاذ هذا المرسوم الاشتراعي ، حق ارتفاق مد وتقوية وصيانة خطوط الخدمات العامة .

2- يطبق حق الارتفاق المنصوص عنه في الفقرة السابقة من هذه المادة في موقع التراجع والبراح والمفروض عن حدود الاستملاك ولا يستعمل الا تحت الارض او بمستوى سطحها ولقاء تعويض عادل عن الضرر اللاحق العقار من جراء تنفيذ الاشغال .

3- يحدد التعويض بقرار يصدر عن لجنة الاستملاك ويخضع للاصول المنصوص عنها في قانون الاستملاك.

يتخذ اساس لتحديد التعويض قيمة الاشجار والمزروعات التي يستدعى تنفيذ الاشغال ازالتها وتكاليف اعادة الانشاءات والتجهيزات الى ما كانت عليه .

4- لا يستعمل حق الارتفاق المنصوص عنه في الفقرة (1) اعلاه ولايسجل على الصحائف العينية للعقارات المشمولة به ما لم ينظم محضر كشف ويصدر قرار من لجنة الاستملاك ولو في حال عدم وجود اضرار او تعويض .

[50] Decree No. 118/1977

المادة 74- يتولى رئيس السلطة التنفيذية على سبيل التعداد لا الحصر، الأعمال التالية:

- الترخيص بحفر الطرقات العامة لمد قساطل المياه والكهرباء والهاتف والمجارير وغيرها لقاء كفالة تضمن إعادة الحال إلى ما كانت عليه على نفقة طالب الترخيص ولا تستثنى المؤسسات العامة والمصالح المستقلة وإدارات الدولة من هذا الترخيص.

(c) The administrator must set out the technical specifications the applicant must follow when restoring roads to their original state. The applicant must bear all costs of such restoration.

(d) The contractor engaged to restore the roads to their original state must have the expertise to undertake such works following the classifications and regulations applied by the administrator.

(e) The contractor engaged to restore the roads may not be paid before its work is completed and the public administrator has approved the works.

In view of the lack of precedent for large-scale private works in the roadways, the TRA recommends that the Article 35(3) decree should be directed to (a) the Ministry of Public Works and Transportation and (b) the municipalities to ensure that each is officially instructed to cooperate in requests for works by private telecommunications service providers that involve digging in or along the roads under its authority. (See section 3.9 of this Study.)

According to Legislative Decree No. 68/1983, the applicant's detailed work program must be submitted to the public administrator at least three years prior to commencing work except in the following three circumstances set out in Article 4 of that decree:

- to the extent it is impossible to obtain or use existing easements to run the improvements along the roads rather than under them;
- if a public authority has to repair or maintain its infrastructure under the road; or
- if digging is carried out across a road (horizontally) or in cases of emergency.

Thus under existing legislation, there is a presumption that a three year notice period applies unless one of the exceptions in Article 4 listed above is verified. In contrast, Article 35(2) of the Telecommunications Law refers to a much shorter waiting period – only one month – for approvals of use of public properties by service providers before the service provider may request the intervention of the TRA. Because the existing provisions governing the digging of roads, including the three year period, are included in a legislative decree, a law is required to modify these provisions. The Telecommunications Law provides for such amendments in Article 35(2), which not only deals with occupancy of the public domain by telecommunications infrastructure but also with the right to enter the domain and to undertake works in, on or under this domain. Given the nature of telecommunications infrastructure, and that Article 35(1) of the Telecommunications Law specifically addresses use of streets and pavements, the TRA believes that the Telecommunications Law was intended to shorten the waiting period for road works from three years to one month.

However, the TRA recognizes that the one month period established by the Telecommunications Law may not always be realistic given the complicated and iterative nature of submitting and approving plans that involve installation of telecommunications infrastructure and related road works as well as the current practice that allows three years to consider a request and ensure a framework for proper implementation of the works.

The TRA recommends that the Article 35(3) decree should address the steps and procedures required before the one month period commences, including the notice,

Recommended Provision

If the relevant Government Department is unable to provide approval on acceptable terms and conditions within one month after the formal submission of a request for a Permitted Use due to the size, scale and nature of the construction project, the period of time proposed by the Service Provider to complete the project, coordination with other requests for similar projects from other Service Providers, other works already planned or ongoing on the relevant Covered Public Property, or other considerations such as environmental issues or historical or architectural considerations, then the TRA's interventions will take these factors into account.

5.2.3 Minimizing inefficient repetitive works and public nuisance

Article 35(3) of the Telecommunications Law implies a presumption that telecommunications-related works should be allowed absent an overriding public policy reason to disallow them. The term "use" (استخدام), as used therein, includes not only occupancy (اشغال), but also entry and temporary utilization for the purpose of undertaking works.

The TRA recognizes the importance of ensuring that road works are managed in an orderly fashion. For example, it may not be appropriate, to allow service providers to dig up roads that have very recently been built or restored. Restrictions on digging up such roads are not unusual, and serve to preserve public property and resources and to avoid the extensive nuisance that works and digging entail for the general public. Such objectives are common in other countries. For example, in France, legal and regulatory provisions forbid digging projects when the coat of the road is less than 3 years old.[51] The TRA believes most potential impediments that these restrictions may cause can be addressed through coordination among relevant public authorities and private telecommunications service providers. They could further be addressed by establishing clear guidelines, to be transparently administered, for acceptance or rejection of applications for works.

The TRA recommends that the Article 35(3) decree provide objective criteria to help administrators of the roads and the TRA appropriately balance the objective of preserving public property and minimizing public nuisance (by avoiding repeated or unnecessary digging and damage to roads) with the objective of facilitating the build-out of a modern telecommunications infrastructure (by allowing necessary digging in or along the roadways). The Article 35(3) decree should specify the conditions under which a request to dig may be rejected and require the relevant administrator to spell out the reasons for rejection.

[51] Code de la Voirie routière L115-1; Règlement de Voirie de la Ville de Calais, Article 3.

Recommended Provision

Any Government Department that administers highways, streets or roads in or under which ducts or other Covered Public Property fixtures or permanent improvements are, or are proposed to be, located may not deny a request to dig or perform other works for the sole reason that such digging or works will disturb the surface of the highway, street or road, but may apply conditions to an approval of such a request in order to minimize the level of disturbance. Without limiting the foregoing, the conditions on road works imposed by a relevant Government Department may include delaying commencement of the works, to the extent they involve disturbance of recently resurfaced roads, plazas, walks or other landscaping, for a period up to but not later than *[time period to be specified based on consultation with the relevant Government Departments]* after such resurfacing was completed, and requiring that such works be scheduled in accordance with the Government Department's work plan adopted following the rules and procedures set by law and regulations in force.

A relevant Government Department that receives a request from a licensed Service Provider for temporary closure of lanes or passage on a highway, street or road under, over or along which works are to be undertaken for a Permitted Use will reasonably cooperate with such request on a non-discriminatory basis, affording the same prioritization for such activity as such Government Department affords similar public works undertaken by the public sector.

After completing the consultation process with the relevant road administrator, the TRA expects to add to the Article 35 decree a period for which digging would be forbidden after road works.

5.3 Blocking or disrupting traffic

Legislative Decree No. 4082/2000 establishes a public body, the Traffic Management Office, to deal with traffic issues, such as management of signals or temporary closure of roads.[52] This body is under the "*tutelle*" of the Ministry of Interior and Municipalities.

[52] 4- Decree No. 4082/2000

الفصل السادس - هيئة ادارة السير والآليات والمركبات

المادة 53- تنشأ مؤسسة عامة مركزها بيروت تدعى «هيئة ادارة السير والآليات والمركبات» تتمتع بالشخصية المعنوية والاستقلال الاداري والمالي، وتعرف فيما يلي بـ«المؤسسة» وتخضع لاحكام النظام العام للمؤسسات العامة.

المادة 54- ترتبط المؤسسة بوزير الداخلية والبلديات الذي يمارس عليها الوصاية الادارية.

المادة 55- تتولى المؤسسة المهام التالية:

- السهر على تطبيق القوانين والانظمة المتعلقة بالسير وتسجيل الآليات والسيارات والمركبات على اختلافها.

- ادارة اشارات السير ومراقبتها: ادارة نظام الاشارات الضوئية وتشغيلها وصيانتها، ووضع خطط لتشغيل الاشارات بالتوقيت الافضل، ومعايرة معلومات المجسات واعداد قاعدة المعلومات عن الاشارات الضوئية ومراقبة عمل مقاولي الصيانة للتأكد من قيامهم بالصيانة الدورية والطارئة على احسن وجه. واستخدام نظام المراقبة بواسطة الفيديو لمتابعة حركة السير للكشف والتحقق من الحوادث والاحداث، وتقييم اثر خطط المعالجة والتأكد من عودة الاحوال الى طبيعتها بعد زوال مسببات العرقلة.

- دراسة هندسة السير: دراسة وتقييم لوحات وعلامات سطح الطريق وجميع وسائل ضبط وارشاد السير من اشارات ضوئية وغيرها وكيفية تشغيلها، واقتراح التعديلات عليها. وبالتالي جمع المعلومات عن حركة السير بواسطة المجسات للاستفادة منها في دراسات السير والتخطيط لنظم النقل التي تقوم بها سائر الجهات المختصة.

- تخطيط السير التشغيلي: تطوير استراتيجيات ادارة السير وخطط تدفقاته وتحليل المتطلبات

Among other duties, it has authority to manage traffic when works or other circumstances require closure or significant disruption of traffic flows on roads. This public body does not however have agents of its own that will regulate the traffic. Furthermore, it usually only intervenes when major works or works requiring traffic disruption for a long period of time are to be undertaken. Not all works carried out by telecommunications service providers will require such intervention.

The Interior Security Forces, Unit for Circulation ("مفرزة سير"), manages traffic in the County towns of the Mouhafazats and in big cities (Article 232 of Law No. 17/1990).[53] Decree No. 953/1991 provides a list of those cities and towns.[54]

In municipalities, traffic management is the prerogative of the head of the executive (Article 74 of Legislative Decree No. 118/1977).

The TRA recommends that the Article 35(3) decree be directed to (a) the Traffic Management Office and (b) the General Directorate of the Internal Security Forces and

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الخاصة الناشئة عن مناسبات خاصة وكذلك اغلاق بعض المسارب التي تتطلبها الاشغال، وتحضير خطط معالجة الاختناقات التي تنشأ عن الحوادث والاحداث.

- الوقوف على جوانب الطرق: العمل بالتنسيق مع البلديات وسائر الاجهزة المختصة (قوى الامن، الشرطة البلدية، وسواها...) على وضع سياسة لتنظيم الوقوف على جوانب الطرقات وتحديد الاماكن المخصصة للوقوف المسموح او الممنوع، ووضع نظام خاص لادارة برامج الوقوف على جوانب الطرق باستخدام العدادات الخاصة بما في ذلك تركيبها وصيانتها، وازالة المخالفات، كما يمكن للمؤسسة ان تتعاقد مع البلديات المعنية لاستثمار هذه العدادات مع توزيع الحصص العائدة للمؤسسة ولكل بلدية من الرسوم المحصلة.

- الاعلام والتوجيه: تتولى «المؤسسة» تزويد الجمهور ووسائل الاعلام والمسؤولين بالمعلومات عن احوال السير والطرق. كما سيتم لاحقا استخدام وسائل متطورة لانشاء نظام لارشاد مستعملي الطرق. وتتولى هذه «المؤسسة» اجراء الحملات الاعلامية الارشادية للسائقين والمنتفعين حول نظم ادارة السير الحديثة.

المادة 56- تتكون موارد المؤسسة من:
- الاعتمادات الملحوظة لها في الموازنة العامة.
- وارادتها الذاتية.
- سلفات الخزينة المقررة لها وفقا للقوانين والانظمة المرعية الاجراء.
- الهبات والتبرعات والوصايا.
- اية موارد اخرى تلحظها نصوص خاصة.

[53] Law No. 17/1990:
المادة 232- بالإضافة إلى مهام قوى الأمن الداخلي المحددة في المادة الأولى من هذا القانون، يناط بقوى الأمن الداخلي ما يأتي:
1- تأمين ضابطة السير في مراكز المحافظات وفي المدن الكبرى التي تحدد بمرسوم بناء على اقتراح وزير الداخلية المبني على اقتراح المدير العام. ولقوى الأمن الداخلي أن تستعين لهذه الغاية بالشرطة البلدية المعنية في حالة وجودها.

[54] Decree No. 953/1991:
المادة 1- تناط بقوى الأمن الداخلي مهمة تأمين ضابطة السير في الأماكن التالية:
-في بيروت وضواحيها.
-في سائر مراكز المحافظات.
-في مراكز الاصطياف والإشتاء والتي تحدد، عند الاقتضاء، بقرار من المدير العام لقوى الأمن الداخلي.
-في المدن التالية:
حلبا-المنية-زغرتا-أميون-بترون-جبيل-جونيه-بيت الدين-جزين-صور-بنت جبيل-مرجعيون-حاصبيا-راشيا-جب جنين-شمسطار-بعلبك-الهرمل.
-في كل من المدن غير المشار إليها في الفقرة السابقة إذا كانت ليس لديها شرطة بلدية.
-على كامل شبكة الطرقات الكائنة خارج المدن والقرى اللبنانية بما فيها تلك المؤدية إلى المناطق الحدودية.

(c) the head of every municipality to ensure that each such administrator is officially instructed to cooperate in requests for works involving disruption of traffic on the roads and streets under its authority.

5.4 Use of public rights of way

Authorization to use the public ducts includes authorization to occupy the public rights of way in which those ducts are located. In all other cases in which a telecommunications service provider plans to install telecommunications infrastructure that will occupy public rights of way other than on a transient basis (such as the temporary occupancy of roadways during construction), it must obtain authorization from the relevant public administrator for use and occupancy of the public domain. These circumstances would include, for example, when the service provider installs in the public rights of way any new ducts, buried or above-ground cables (other than inside the public ducts), street cabinets or like facilities, and/or aerials and related equipment on public domain.

As explained in section 4.1 of this Study, authorization to occupy and use the State's public domain (e.g., State roads) must be granted by way of a decree of the Council of Ministers, and authorization to occupy and use the municipal public domain must be granted by the head of the municipality or the other procedures described in that section.

The TRA recommends that the Article 35(3) decree both (a) authorize service provider access to and use of rights of way in the public domain of the State and (b) be directed to municipal administrations. For the avoidance of doubt, the Article 35(3) decree should expressly authorize the installation of new ducts as well as the use of the existing public ducts and set out any conditions precedent for such works, such as lack of sufficient capacity in the public ducts or the need to reach a location not served by the public ducts.

In the case of roads, the public rights of way typically include not only the roads themselves but a strip of land along either side of the roads. Public easements running along virtually every street and road in Lebanon have been granted under Article 3 of Decree No. 68/1983. Vis-à-vis any private landowners over whose land the public easements traverse, these easements are generally broad enough in scope to permit occupancy and use involving telecommunications infrastructure and have been used for laying such infrastructure by public entities. Use and occupancy by a private telecommunications service provider of the public infrastructure is of course subject to obtaining authorization from the relevant public entity.

Legislative Decrees No. 127/1959 and 126/1959 allow for easements/occupancy of many areas for the laying of telecommunications infrastructure.[55] Article 2 of Legislative

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المادة 6- يحق للادارة :
1- ان تجري على سطح الارض او تحتها وفي الطرقات العامة ومتفرعاتها جميع الاشغال اللازمة لانشاء الخطوط الهاتفية وصيانتها.
2- ان تركز اسنادا على جدران الابنية او واجهاتها المطلة على الطرقات العامة وعلى سطوحها وسقوفها، بشرط امكان الوصول اليها من الخارج، وان لا تهدد هذه الانشاءات سلامة الابنية او تشوه منظرها ولا يخضع ذلك لأجر ما.
3- ان تمد المجاري او تقيم الاعمدة فوق الارض او تحتها في الاراضي غير المسورة.
4-ان تركز الاسناد وان تمد المجاري والخطوط وان تضع اجهزة القطع و الوصل في الاقسام الشائعة من الاملاك المبنية المشتركة الاستعمال وعلى جدرانها وواجهاتها غير المطلة على الطرقات العامة بشرط امكان الوصول اليها من الخارج او بواسطة الاقسام الشائعة، وذلك من اجل ربط شاغلي البناء نفسه او الابنية المجاورة بصورة افرادية او جماعية بشبكة التوزيع.

Decree No. 68/1983 specifically focuses on roads and surrounding areas. It provides that room must be allocated alongside public roadways for public service infrastructures (Article 2 of Legislative Decree No. 68/1983).[56] Such areas have been expropriated and are now public domain. Legislative Decree No. 68/1983 has been employed to permit the occupancy and use of roadways and the parallel easements for telecommunications infrastructure. Article 2 of Decree No. 68/1983 provides that:

- When roads are to be built or broadened, room is reserved for public service infrastructure on the side of these road and sidewalks.
- Room is allocated to public service infrastructure in the surrounding areas along the road which correspond to areas expropriated for the purpose of building the road.

The benefit of reserved public properties along the roadways is defined under Legislative Decree No. 68/1983 according to the type of infrastructure to be installed, rather than being limited to named persons. Any person who installs facilities allocated for the provision of public services would have the benefit of such easements. The Legislative Decree mentions telephone, electricity, water and sewers as examples, but the list of services provided is not exhaustive.[57] The telecommunications infrastructure laid on the basis of Article 2 of the abovementioned legislative decree is currently public property (e.g., the public ducts), but the TRA understands that the public administrators of the rights of way would have authority to grant a private telecommunications service

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المادة 213 - يحق للمديرية العامة للبريد والبرق القيام بجميع الأشغال اللازمة لإنشاء أسلاكها البرقية وتمديدها وصيانتها على سطح الأرض أو تحتها ، مصورة كانت هذه الأرض أو غير مصورة ، مزروعة كانت أو غير مزروعة ، أو كانت ملكا للدولة أو للأفراد.

[56]المادة 2- تؤمن مواقع تمديدات خطوط الخدمات العامة كالمياه والكهرباء والهاتف والمجارير وغيرها ضمن سطح الطرق وبراحاتها على الوجه التالي :
1- ضمن جوانب وارصفة الطرق المنوي تخطيطها او توسيعها ويمكن المباشرة باشغال التمديدات فور الانتهاء من معاملات الاستملاك .
2- ضمن حدود الاملاك العمومية التابعة للطرق المنفذة خارج القسم المزفت .
3- اذا تعذر تطبيق الفقرة (2) السابقة لاسيما في حال عدم توفر المساحة اللازمة لتأمين التمديدات المذكورة يلجأ الى استعمال حق الارتفاق المنصوص عنه في المادة التالية .
المادة 3-
1- ينشأ على الاملاك الخصوصية الواقعة بجانب الطرق المخصصة لاستعمال العموم المنفذة او المصدق تخطيطها بتاريخ نفاذ هذا المرسوم الاشتراعي ، حق ارتفاق مد وتقوية وصيانة خطوط الخدمات العامة .
2- يطبق حق الارتفاق المنصوص عنه في الفقرة السابقة من هذه المادة في موقع التراجع والبراح والمفروض عن حدود الاستملاك ولا يستعمل الا تحت الارض او بمستوى سطحها ولقاء تعويض عادل عن الضرر اللاحق العقار من جراء تنفيذ الاشغال .
3- يحدد التعويض بقرار يصدر عن لجنة الاستملاك ويخضع للاصول المنصوص عنها في قانون الاستملاك.
يتخذ اساس لتحديد التعويض قيمة الاشجار والمزروعات التي يستدعى تنفيذ الاشغال ازالتها وتكاليف اعادة الانشاءات والتجهيزات الى ما كانت عليه .
4- لا يستعمل حق الارتفاق المنصوص عنه في الفقرة (1) اعلاه ولايسجل على الصحائف العينية للعقارات المشمولة به ما لم ينظم محضر كشف ويصدر قرار من لجنة الاستملاك ولو في حال عدم وجود اضرار او تعويض .

[57]
المادة 1- يحظر القيام باشغال الحفر ضمن حدود الاستملاك للطرق لمد خطوط الخدمات العامة على اختلاف انواعها او تقويتها او صيانتها ما لم تراع الاحكام المنصوص عنها في هذا المرسوم الاشتراعي.

المادة 2- تؤمن مواقع تمديدات خطوط الخدمات العامة كالمياه والكهرباء والهاتف والمجارير وغيرها ضمن سطح الطرق وبراحاتها على الوجه التالي (..)

provider the rights of use and occupancy in such reserved areas of the public domain for the purpose of installing telecommunications infrastructure inside this infrastructure.

As a general matter, the TRA recommends that the Article 35(3) decree provide service providers with the benefit of the fullest extent of public rights to use private land where public infrastructure is constructed on or installed under it.

Recommended Provision

To the extent Covered Public Property of this Decree runs, lies or is situated in, under or above any private property, the Permitted Uses granted to a licensed Service Provider by the relevant Government Department will include the right for such Service Provider to use and occupy such Covered Public Property to the fullest extent permitted by the easement or other rights granted by the owner of such private property to the Republic of Lebanon, the relevant municipality or the relevant public entity or body, but the Service Provider engaging or proposing to engage in a Permitted Use of such Covered Public Property is responsible for obtaining, and paying any additional compensation due to the owner for, any additional easements or other rights that may be required as between the Service Provider and the owner of such private property.

To the extent the existing public domain roadway corridors do not provide telecommunications service providers with adequate space or legal rights to install necessary telecommunications infrastructure, they would need to seek permission directly from the abutting private landowners. Their ability to require private landowners to grant the necessary easements would be governed by Article 36 of the Telecommunications Law which applies to "common areas". Service providers may also freely negotiate terms of lease or other use of private property where the law does not provide for right to an easement.

5.5 Use of public utility poles and antenna sites

Laying underground cables involves considerable cost and potentially long lead times. Access to utility poles and antenna sites may therefore have considerable value to telecommunications service providers as an alternative means of last 100 meters / last kilometer access from the public ducts to customer premises.

Many existing utility poles are State-owned and used by MoT, EDL or both. Many existing antenna facilities are State-owned and used by one or more of the two mobile network operators or the Ministry of Information. Unless and until such time as these facilities are privatized, they are considered public properties and are subject to access and use by telecommunications service providers under Article 35 of the Telecommunications Law.

The TRA recommends that to the greatest extent possible, the Article 35(3) decree should establish the ability of telecommunications service providers to attach cables and other facilities to electric and other utility poles and to co-locate on and use existing antenna towers.

6. ACCESS TO INFORMATION ABOUT PUBLIC PROPERTIES

6.1 Information requests

Lebanon does not yet have a freedom of information law and public entities are not accustomed to handling requests for information. The TRA then recommends, that the Article 35(3) decree should provide a process for requests for information about public properties, and establish a duty on public authorities to respond to such requests. This should ensure that requests relate to genuine telecommunications network planning. The TRA recommends also that public authorities develop forms for service providers to use for information requests, and can facilitate this where useful by preparing a standard form that public authorities may adopt.

Recommended Provision

A licensed Service Provider may at any time request from a Government Department information about Covered Public Properties for a potential Permitted Use of Covered Public Properties if it provides proof that it is licensed to provide telecommunications services and a letter stating the purpose of the request. A licensed Service Provider may also at any time request approval of a Permitted Use from the relevant Government Department.

To facilitate requests for information and Permitted Uses, the TRA will, in consultation with the relevant Government Departments, compile, publish, update and maintain for public inspection a list of Government Departments administering Covered Public Property, the types of Covered Public Property they generally administer, which such Covered Public Property the TRA has designated as priority for Permitted Uses, and such other information as the TRA deems necessary or useful. The TRA will notify the relevant Government Departments of their inclusion on such list from time to time.

To initiate a request for any Permitted Use of any Covered Public Property, a licensed Service Provider must first submit all relevant information using the request form supplied by the relevant Government Department. The TRA will prepare and make publicly available a standard request form which Government Departments may elect to use as their form and which Service Providers may use if a relevant Government Department has not supplied a request form.

Given that public authorities are not accustomed to this and lack existing procedures for providing information, the TRA recommends that the Article 35(3) decree make it clear that government departments must respond to such requests.

Each Government Department must use reasonable efforts to provide all information reasonably and duly requested by any licensed Service Provider regarding the availability of any Covered Public Property for Permitted Uses and to identify alternatives under its control if any requested Covered Public Property is not available.

The fact that

(a) the TRA has not listed a particular Government Department as administering Covered Public Property under this Decree,

(b) the TRA has not designated any Covered Public Property as priority for Permitted Uses, and/or

(c) a Government Department has not taken the steps set forth in this Decree

will not be a valid reason for any Government Department to refuse or ignore, or delay the approval of, a request from a licensed Service Provider for information.

6.1.1 Prioritizing among public properties

Apart from the maps of ducts currently used for telecommunications, the TRA is not aware of reliable maps of underground infrastructure in Lebanon currently existing. Service providers will have to conduct their own surveys of underground infrastructure on public properties before digging. Service providers will have to take the initiative in identifying the existence and ownership of underground infrastructure. However, they will be greatly dependent upon public authorities making such information available, and it will be necessary at least for some public authorities to take initial steps to identify relevant public properties, their routes and locations. The TRA believes it would be overly burdensome for all public authorities to have to do so since many may never receive requests to use their public properties. Thus it is appropriate to prioritize those public properties which are likely to be of most importance to service providers. The TRA can be of assistance in identifying such priority public property.

Recommended Provision

Within 90 days after the TRA has notified a Government Department that it has been listed as administering any Covered Public Property designated by the TRA as priority for Permitted Uses, such Government Department must, in consultation with the TRA, prepare, keep up-to-date (with reviews undertaken no less frequently than on an annual basis) and make available for use by licensed Service Providers:

(a) route and location maps and related records for all Covered Public Property administered by such Government Department, which maps and records must show, to the extent such information is available or readily ascertainable, the routes or locations, access points and size of all ducts, poles and towers, the identity of all existing users and the nature of existing uses, the capacity used and remaining, and any other pertinent information;

(b) procedures and fee schedules for obtaining copies of or access to maps and records;

(c) procedures, instructions and fee schedules for requesting Permitted Uses of Covered Public Property and a request form which may require the applying Service Provider to provide all necessary information for the relevant Government Department to evaluate the request, including, without limitation:

(i) the proposed Permitted Use;
(ii) detailed technical information and project plans regarding the proposed construction, installation and operation of any fixtures, improvements or equipment;
(iii) information regarding the feasibility of sharing Permitted Use of the Covered Public Property with other Service Providers;
(iv) the organization of and schedule for any works to be carried out and their expected duration;
(v) the name, contact information and qualifications of the individuals responsible for managing the construction project; and

(vi) the name, contact information and qualifications of the individuals responsible for managing safety both during construction and afterwards; and

(d) technical and legal terms and conditions applicable to the Permitted Uses of Covered Public Property administered by it, including, without limitation, those applicable to designs and specifications, installation, repair, operations and maintenance, disconnection, security and safety, interconnection points, reservation of capacity for future use, insurance, bonds, deposits, inspections, and indemnities.

6.1.2 National security

The TRA is sensitive to concerns that confidentiality of information about some public properties may raise issues related to national security. Obvious examples include location of properties of the security forces. National security is appropriately the domain of the Council of Ministers and the TRA recommends that the Article 35(3) decree refer government departments to the Council of Ministers on such matters.

Recommended Provision

Where a Government Department believes the disclosure to a Service Provider of information is likely to result in a threat to national security, such Government Department should refer to the Council of Ministers for guidance as to any procedures that may be necessary to mitigate the threat, such as limiting disclosure of sensitive information.

7. MEDIATION AND APPEALS PROCEDURES

Article 35(3) of the Telecommunications Law sets out a sort of appeals procedure for applicants who believe they have been unlawfully denied permission to use public property or had unacceptable conditions imposed on their authorization. It provides for TRA mediation and, if that fails, Council of Ministers intervention.

The TRA recommends that the Article 35(3) decree provide procedures for and guidance on the role of the TRA and the Council of Ministers in resolving such disputes. The Council of Ministers, by its nature should only have to deal with matters of particular importance that cannot otherwise be satisfactorily resolved.

Recommended Provision

If a relevant Government Department (i) denies a request for information or for approval of a Permitted Use duly made by a Service Provider, (ii) does not respond to such a request within one month, or (iii) approves such a request on terms and conditions that are not acceptable to the requesting Service Provider, then:

(a) within one month after the date of the denial, date of expiry of the initial month allowed for approval or denial or date of the unacceptable approval, as the case may be, the requesting Service Provider must submit to the TRA a copy of the request submitted to the relevant Government Department, any response received and any other correspondence exchanged;

(b) the TRA may in such manner as it considers necessary or useful convene meetings with and request further information from the Service Provider, the relevant Government Department or both in order to:

(i) understand the reasons of the Service Provider for the request and of the Government Department for its response or non-response;
(ii) assist the relevant Government Department and the Service Provider in determining a mutually acceptable solution; and
(iii) if necessary or useful, recommend a solution;

(c) if no mutually acceptable solution is agreed, the TRA will submit to the Council of Ministers a report setting out its account of the dispute and its opinion regarding the appropriate resolution of the matter; and

(d) the Council of Ministers will consider the opinion of the TRA and any submission of the relevant Government Department and make a final decision under Article 35(2) of the Telecommunications Law.

8. CHARGES FOR USE OF PUBLIC PROPERTY

This section discusses charges that may be applied to service providers for use of public properties. In some countries such as Germany, certain uses are provided free of charge, but in most countries service providers are required to reimburse certain costs and public authorities may charge for rights of way. Annex C lists findings summarized by the OECD Study.

8.1 Reasonable charges

Article 35(3) of the Telecommunications Law requires the decree issued by the Council of Ministers to establish "the basis for the allocation of charges, compensations and fees" for the use of public properties. The Telecommunications Law clearly reflects the view that modernizing the telecommunications infrastructure in Lebanon serves an important public purpose. Use of public property by service providers is clearly recognized in the Telecommunications Law as an essential element in facilitating investment in new telecommunications infrastructure. As noted above in this Study, this is because of the considerable cost reductions made possible by such use of public property.

The TRA recommends that charges for use of the public ducts, poles, towers, antenna sites, rights of way and related public properties should be reasonable and not inconsistent with the objective in the law of attracting increased investment in new telecommunications infrastructure. Charges should not be set so high that they would undermine these objectives.

Recommended Provision

All charges, compensations and fees assessed, levied or charged by Government Departments to Service Providers for matters covered by this Decree must be reasonable and non-discriminatory among all Service Providers, and in particular no Service Provider, whether owned entirely, in part or not at all by the Republic of Lebanon, should

be required to pay any charge, compensation or fee for any service or for any Permitted Use of covered Public Property unless all Service Providers are required to pay similarly for such service or Permitted Use.

The TRA supports some standardization of pricing to improve administrative efficiency and creates greater predictability and fairness for all parties. For example, a fixed price application fee for requests for public property access might be set at an amount that reflects the average cost per applicant of processing such applications, even though the actual cost for each applicant may differ. Similarly, the prices for use of rights of way might be standardized into price bands for different types of use in different geographic areas, with perhaps a higher charge in densely populated and built-up areas and a lower charge in rural areas in order to encourage deployment in areas presumably less attractive to service providers, and similarly perhaps a higher charge for certain types of uses (above ground) and a lower charge for others (underground). Precedents from other countries suggest a reasonable basis for charging would be per linear increment (e.g., per meter or per kilometer) per year by category of use. Annex B sets out the charges for use of public rights of way in France as an example.

8.2 Recovery of costs

While charges should not be set unduly high, public entities may incur various costs which they should be able to recover. The TRA recommends that the purpose of charges to recover costs be made clear.

Proposed provision:

The goal of the charges is to permit each relevant Government Department to recover from each relevant Service Provider:

(a) a portion of the carrying costs of any shared infrastructure (including both an amortization of capital costs and a pass through of operating expenses) equal to the portion of such infrastructure used by the such Service Provider; plus

(b) a reasonable apportionment of such Government Department's incremental costs of complying with this Decree.

Government Departments can exercise reasonable discretion as to how they allocate such charges to those who must bear them, consistent with the parameters established.

8.2.1 Costs of processing information requests and applications

Government departments may incur costs from creating and maintaining databases, processing applications from service providers for use of public properties and responding to requests from service providers for information about available public properties.

Recommended Provision

Government Departments may charge Service Providers, as a service fee, for the actual or average administrative costs resulting from maintaining information databases (such as maps) to facilitate Permitted Uses of Covered Public Property, processing requests for

information on available Covered Public Property, processing applications for Permitted Uses of Covered Public Property, and overseeing and administering the public interest in cases where a Service Provider has been granted permission to engage in Permitted Uses of Covered Public Property.

Government Departments must establish separate categories of service fees for each of the following requests consistent with the following criteria:

(1) Requests for information – must be at a fixed amount per request, which amount can be calculated by reference to a table based on the amount and type of information requested.

(2) Applications for Permitted Use – must be at a fixed amount per request, which amount can be calculated by reference to a table based on the application processing (exclusive of other fees set in this decree and payable to Government Departments), the types of activities involved in the works, and/or other relevant criteria for estimating the relative burden of the request on the Government Department.

(3) Other charges must be fixed on a fair and reasonable basis.

8.2.2 Incremental costs of making properties available

Public authorities may also incur "make ready" costs and costs of periodic inspections and maintenance which are necessary only in order to enable the service provider to use the property, which they should also be able to recover.

Recommended Provision

Government Departments may charge Service Providers for their actual or average incremental costs of maintaining Covered Public Property to the extent such costs result from Permitted Uses.

Government Departments must establish tables of one-time or annual fees for the incremental costs of activities incurred by them as a result of Permitted Uses of Covered Public Property. These costs do not include an allocation of costs the Government Department would otherwise incur notwithstanding the Permitted Use, but are limited to the additional costs caused by the Permitted Use. These costs may include such items as "make ready" costs, periodic inspection fees and increased operating expenses incurred by the Government Departments as a result of Permitted Uses.

8.2.3 Charges for capital improvements

Where the public property involved is not merely a right of way but infrastructure installations, it will be appropriate to ensure that service providers using such infrastructure bear their fair share of its costs. The TRA recommends that service providers bear these costs on an amortized basis. Such costs comprise not only the costs of the capital improvements but a fair share of annual operating expenses.

Recommended Provision

Government Departments may charge Service Providers for Permitted Uses of Covered Public Property a pro rata share (based on the percentage of total capacity used or occupied) of capital improvements (such as ducts, fixtures and other permanent improvements) to such Covered Public Property on the basis of the cost of the improvements. The annual recoverable costs are equal to all annual carrying costs for the capital improvements, including an allocation of the annual amortization of the capital costs plus annual operating expenses. Cost allocations should amortize or depreciate the capital improvements over their useful life up to a maximum of 20 years (which is the longest permitted term, prior to renewal, for a Service Provider License under the Telecommunications Law).

Government Departments must use generally accepted cost-based accounting principles, consistently applied, to calculate the annual amortization of capital costs and annual operating expenses for Covered Public Property. The allocation of such amounts to Permitted Uses must be based on the percentage of total usable space within the relevant Covered Public Property actually used by the relevant Service Provider. In lieu of actual calculations for each specific item of Covered Public Property, Government Departments may develop average costs for classes of Covered Public Property and presumptions of the average percentage of usable space occupied by type of Permitted Use. Without limiting the foregoing, Government Departments may calculate costs related to capital improvements as follows:

(1) Ducts

In the case of installations of cable in ducts, Government Departments must develop annual carrying cost information per linear unit of duct for each size of duct and allocate a portion of such costs to Service Providers based on (i) the total volume of cable that may be installed in a particular size of duct and (ii) the portion of such volume occupied by a Service Provider, which may include an allocation of the carrying costs of non-usable space among all users and reflect a reasonable return on investment. The following formula shall be used:

Annual rate for duct occupancy (per m) = Duct space factor x (per unit cost/20 + operating expenses) x (1+ ROI)

The terms used in the formula above have the following meanings:

Duct space factor = the percentage of the total duct capacity occupied by the service provider
Per unit cost = actual or current replacement cost of the duct system per linear meter of duct (amortized over a period of 20 years)
Operating expenses = costs of operating and maintaining the duct not attributable to the Permitted Use
ROI = Return on Investment initially set at 10%

(2) Poles and towers

In the case of attachments of cables, equipment aerials to poles and towers, the Government Departments must develop annual carrying cost information on a per pole basis for each standard size of pole and allocate a portion of such costs to Service Providers based on the total usable space for attachments to each pole and the percentage of such space occupied by a Service Provider (including the amount of space above and below such attachment required by applicable electrical and other safety codes and generally accepted practices for use of utility poles), and which may include an allocation of the carrying costs of non-usable space among all users and reflect a reasonable return on investment. The following formula shall be used:

Annual rate for pole attachments = Pole space factor x (pole cost/20 + operating expenses) x (1+ ROI)

The terms used in the formula above have the following meanings:

Pole space factor = the percentage of the total usable space (i.e., available for attachments) occupied by the service provider
Pole cost = actual or current replacement cost of the pole (amortized over a period of 20 years)
Operating expenses = costs of operating and maintaining the pole not attributable to the Permitted Use
ROI = Return on Investment initially set at 10%

A similar formula shall apply to occupancy of towers.

8.3 Rights of way fees

The long established rule since Decision No. 144/1925 is that occupancy of the public domain is allowed in exchange of a fee, i.e., not merely recovery of costs.[58] Consistent with this, Article 35(3) of the Telecommunications Law anticipates and expressly provides that the decree will set the basis for allocation of "fees." The TRA therefore believes it is appropriate for public entities not only to recover costs but to charge fees for the use of the public rights of way. This is also consistent with practice in many countries which apply rights of way fees separately for charges relating to costs of information requests, processing applications, maintenance and capital improvements. The TRA therefore supports the imposition of such fees provided the Article 35(3) decree puts reasonable limits on such charges and keeps them internationally competitive.

Recommended Provision

The relevant Government Department may charge for Permitted Uses of public rights of way included in Covered Public Property. Such Government Department must ensure that such charges do not exceed an amount that is consistent with the value and location of the land and consistent with the benefits and advantages of the Service Provider's use of such land, and, in particular, that such charges are consistent with the parameters established from time to time pursuant other parts of the decree.

A threshold question concerning charges for use of public property is the degree to which rights of way fees can be applied on the basis of existing laws and decrees relating to charges for use of public property. This section describes such existing laws and decrees and concludes that the Article 35(3) decree can lawfully establish reasonable right-of-way fees, consistent with the existing legal framework, and cost-based charging principles for all fixtures and improvements used and all services provided, for the use of public properties in Lebanon.

8.3.1 Charges for use of municipal public domain property

[58] Articles 14 and 17.

Under existing law, municipal authorities are required to set charges for use of municipal public domain property within the framework set by law. Restrictions on such fees apply to:

- one-off fees for granting the authorization to occupancy of the property; and
- annual fees for the ongoing exploitation of the property.[59]

Regarding the former of these, Article 45 of Law No. 60/1988 sets both minimum and maximum one-off fees for authorization of occupancy (between LL 10,000 and LL 20,000).

Regarding annual exploitation fees, the TRA is advised that Article 46 of the same law would apply, requiring such fees to be set at a minimum of 2% of the value of the land occupied by telecommunications infrastructure.[60] Under existing law, this minimum fee would apply, for example, to occupation by telecommunications towers, poles and ducts (although until now it has mainly been applied for above ground use).[61] For the purpose of calculating the exploitation fee, the "value of the land" is its market sale price as assessed by a municipal committee[62] on the date the authorization is granted (Articles 46 and 77 of Law No. 60).[63] The committee has discretion to consider various factors in

[59] Administrative practice, judicial decisions, the French model and juridical commentators indicate that fees for authorizations and exploitation comprise two components: (i) a fixed component that corresponds to use of the public domain; and (ii) a variable component that corresponds to the benefits and advantages for the occupant. (See, e.g., French State Council, December 1923, Peysson, « Qu'il appartenait audit conseil municipal, sous l'autorité du préfet, de fixer le tarif de ces redevances, ainsi qu'il l'a fait en tenant compte, par des dispositions ayant un caractère général, du mode d'usage et de la situation des emplacements occupés, ainsi que de la nature des commerces exercés ") ; February 10, 1978 (Ministre de l'économie et des finances c/ Scudier, p. 66 " La redevance imposée à un occupant du domaine public doit être calculée non seulement en fonction de la valeur locative d'une propriété privée comparable à la dépendance du domaine public pour laquelle la permission est délivrée, mais aussi de l'avantage spécifique que constitue le fait d'être autorisé à jouir d'une façon privative d'une partie du domaine public ") and See also R. Chapus: Droit administratif, T II, Montchrestien, 14ième ed., p. 496-497/ Youssef Saad Allah al Khoury: Public domain and private domain, Sader, 1999, p.307. The latter considers that such criteria have been adopted by Lebanese judicial decisions)

[60] This 2% minimum fee applies to the mode of occupancy and/or use of the public domain grounded into a fixed piece of land for the purpose of broadening the exploitation of such a land, which would be the case with telecommunications infrastructure. Other caps apply to other modes of use that are not relevant to telecommunications infrastructure. For occupancy and/or use of public domain that does not entail grounding into a defined piece of land (e.g., strolling street merchants), fees must be at least equal to 1% of the value of the piece of land occupied. For occupancy of the air by parasols and curtains fixed into the ground, the fees must be included within a maximum (LL 20,000) and a minimum (LL 2,000) fee.

[61] Articles 45 and 46 of Law No. 60/1980 have until now mainly been applied to occupancy above ground. However, they would also apply to the installation and use of ducts. Ducts would be regarded as occupancy and use of the public domain grounded into a fixed piece of land for the purpose of broadening the exploitation of such land.

[62] This committee includes a member of the Municipal Council, an engineer from the municipality or from the town planning, an employee from the Ministry of Interior and Municipalities, an expert in land or real estate, the Kaimakam or a representative belonging the third category of employees of the Muhafaza of Kaimakam and an engineer from Town planning.

[63]

المادة 77- لأجل فرض رسم الترخيص بالبناء، تتولى تخمين الثمن البيعي للمتر المربع من أرض العقار المنوي إقامة أو إضافة بناء عليه لجنة خاصة تؤلف بقرار من رئيس السلطة التنفيذية في البلدية قوامها:

the valuation. The Municipal Council is supposed to set rules and criteria for fees to be applied (within the restrictions defined by the law), and its decision must be approved by the relevant Kaimakam.[64] The TRA understands, however, that in practice most municipalities have not predefined objective criteria.

The TRA considers that the framework described above for municipal property does not as a general matter need to be overhauled and replaced by another framework in the Article 35(3) decree. The TRA believes that there are strong advantages to working with the procedures and restrictions that already apply. In particular, these include the reduced implementation burden that would be faced by the municipalities. The TRA therefore recommends that the Article 35(3) decree clarify and confirm the application of the fees described above to municipal public domain property.

The TRA considers, however, that it is appropriate to distinguish between use of property above ground and underground. As noted above, the minimum exploitation fee of 2% of the value of the land would apply to the use of ducts under the existing framework. However, the TRA understands that this was introduced primarily with above ground use in mind, and without considering use underground. The TRA considers that, after installation, underground usage such as ducts does not disturb or interfere with above ground value or usage in a way that affects the public or other exploitation of the property. A variety of ways to reflect this difference might be employed, and in this case the TRA favors the same sort of simplicity that gave rise to the 2% minimum in the first place. The TRA considers that a utilization factor should be applied to discount the fees applicable to rights of way in the case of underground facilities. The TRA recommends that fees for use of rights of way for underground facilities, mainly duct systems, should be set at 10% of the level of fees for use of property above ground.

8.3.2 Charges for use of State public domain property

Article 16 of Decision No. 144/1925 (when read together with Article 65 of the Constitution) provides that charges for occupancy of the public domain of the State should be fixed by decree. However, Article 35(3) of the Telecommunications Law provides that the decree shall set the “basis” for the allocation of charges, compensations and fees, which does not mean the charges, compensations and fees themselves.

- أحد أعضاء المجلس البلدي رئيسا
- مهندس من البلدية أو مهندس من عضوا
التنظيم المدني ينتدبه القائمقام أو للمحافظ
- موظف من وزارة الداخلية ينتدبه
وزير الداخلية بناء على اقتراح المحافظ
بعد استطلاع رأي رئيس مصلحة
الشؤون البلدية والقروية عضوا
أما في المناطق الواقعة خارج النطاق البلدي فتؤلف اللجنة بقرار من المحافظ على النحو التالي:
- القائمقام أو أحد موظفي الفئة
الثالثة في القائمقامية أو المحافظة رئيسا
- مهندس من التنظيم المدني عضوا
- خبير في الشؤون العقارية عضوا
تتولى هذه اللجان كل فيما خصها وخلافا لأحكام المادة 13 من المرسوم الإشتراعي رقم 83/13 تاريخ 1983/2/25 وتعديلاته، مهمة التخمين عند تطبيق قوانين تسوية مخالفات البناء، بما في ذلك تخمين قيمة الأرض الوهمية.

[64] Article 100 of Law No. 60/1988 and Articles 49 and 60 of Law No. 118/1977

The TRA has found no reason to discriminate between the amounts of fees for occupation of the municipal and State public domains. The TRA recommends therefore that the Article 35(3) decree set the clear basis for the charges for use of rights of way that covers the public domain of the State, consistent with fees for the municipal public domain.

8.3.3 Charges for rights of way in the Article 35(3) decree

Charging for recovery of costs and for use of rights of way on the scale clearly envisaged by the Telecommunications Law risks becoming extremely complex, demanding extensive and inefficient use of administrative resources, and lacking transparency and predictability – both for public entities and service providers. It will be important to minimize such risks in a manner that is consistent with the principles in the recommendations above.

Recommended Provision

As compensation for use of rights of way, Government Departments may charge usage fees up to but not exceeding the following amounts:

(1) Above ground

In the case of above ground and aerial facilities (including poles, towers, and above-ground cables and aerials), Government Departments may charge an annual occupancy fee as follows:

ROW fees for installing a new pole or tower = 2% x Land value x (Area needed to install fixture like pole or tower)

The minimum area for a pole or tower is considered to be 1 square meter.

(2) Underground

In the case of underground facilities (mainly duct systems), Government Departments may charge an annual occupancy fee based on the following formula:

ROW fees for installing new duct system = 2% x Land value x (linear length of infrastructure x width) x Utilization factor

The terms used in the formulas above have the following meanings:

Width is assumed to be 1 meter unless it is larger, in which case the actual width is used
Land value is the value per square meter of the land as estimated by the Government Department, subject to the following ceilings:

Beirut :	$ 100 – 200
Center of Muhafazat:	$ 75 – 100
Center of Kazza:	$ 50 – 75
National roads and highways	$ 25 – 50
Other places:	$ 1 – 25

Utilization factor is 10%

Service providers will likely seek assurance that addition of new facilities to the same property will not result in new charges for the right of way it is already using.

Recommended Provision
A Service Provider can add new facilities (e.g., ducts, poles, equipment, aerials) to previously installed facilities without having to pay any ROW fees as long as the new facilities do not result in a material extension of the originally authorized Permitted Use.

8.4 Stamp duties

8.4.1 Power to amend stamp duties

Article 35(3) of the Telecommunications Law empowers the Council of Ministers to establish conditions for the use of public properties, procedures for requests for such use, and the basis for the allocation of charges, compensations and fees. It is to do so by a decree upon the proposal of the Minister, based on a study prepared by the TRA and on the opinion of the relevant government authority.

The TRA believes this provision is intended to introduce a comprehensive framework for terms and conditions applying to authorizations to use public properties, including all charges, compensations and fees that may be levied by the State in connection with such authorizations.

Among the various matters to which stamp duties apply in Lebanon, stamp duties are set in respect of authorizations to occupy the public domain granted by the State and municipalities.[65] Stamp duties are considered to be an indirect tax in Lebanon, and according to Article 82 of the Lebanese Constitution, modification of taxes must be made by a law.[66] Lebanese law emphasizes the importance of respecting the hierarchy of legislative authority and this is clearly relevant to modification of taxes.[67]

It has been shown to be possible nevertheless for a law to authorize the Council of Ministers acting by decree in effect to modify taxes by providing exemptions, and indeed this has been applied to stamp duties.[68] It is not impossible, therefore, for a law to authorize the Council of Ministers to modify stamp duties applicable to authorizations for service providers to occupy the public domain. Furthermore, the term for “stamp duties” is the same as that used for fees in Article 35(3) of the Telecommunications Law (رسوم). And although fees payable in exchange for occupation of the public domain have in the

[65] Annex 1 of Legislative Decree No. 67/1967.
[66] Article 82 provides: “No tax may be modified or abolished except by virtue of law.”
[67] Decision No. 340/2002-2003 dated 10 March 2003 of the State Council reiterates the rule that an authority ranking lower in the hierarchy must comply with rules defines by an authority ranking higher.
[68] Articles 5 and 2(3) of Law No. 114/1991 provide for example that the Council of Ministers may, after consultation of both Minister of Finance and the Minister of Foreign Affairs, by decree grant exemptions, privileges and immunities set out under Articles 2, 3 and 4 of Law No. 114/1991 to non profit international organizations. Such exemptions include stamp duties.

For these reasons, the TRA is advised that it is reasonable to conclude that Article 35(3) is a law sufficient to modify stamp duties in accordance with Article 82 of the Constitution – and to do so by authorizing such modification to be made by decree of the Council of Ministers.

The TRA is also aware, however, that it may alternatively be argued that the term for fees (رسوم) is used for many kinds of indirect taxes and fees and that a restrictive interpretation should apply in light of Article 82 of the Constitution, and that Article 35(3) of the Telecommunications Law therefore should not be interpreted as applying to stamp duties. It may also be argued that the aforementioned precedent by which the Council of Ministers was empowered to provide for exemptions to indirect taxes, including stamp duties, was provided for very specifically in the relevant law, and that by comparison Article 35(3) of the Telecommunications Law is not sufficiently specific in authorizing changes to applicable taxes.

In light of the above, the TRA is seeking clarification of the legal position as to whether or not the Council of Ministers has the power to amend stamp duties under Article 35(3). In case it is concluded whether now or at a later date that Article 35(3) has not provided such power, the TRA also recommends the enactment by law by Parliament of a provision making it clear that the Council of Ministers is explicitly authorized to amend stamp duties applicable to authorizations granted to telecommunications service providers to occupy the public domain under Article 35(3) of the Telecommunications Law.

8.4.2 Desirable changes to stamp duties

The TRA understands that stamp duties would apply only to the granting of an authorization to occupy the public domain and not to charges for information requests, maintenance and related costs and costs of capital improvements. If it is concluded that the Article 35(3) decree may change stamp duties or clarify the application of existing stamp duty provisions, the TRA would recommend certain such specific changes and clarifications.

8.4.2.1 Capital improvements

Existing stamp duties for authorizations for occupation of the public domain were not set taking into account the nature of the various uses that telecommunications service providers will make of the public domain. The stamp duty framework was set before the Telecommunications Law was enacted and in particular without consideration for private telecommunications service provider use of ducts. The stamp duty amounts depend on the area on which occupation is authorized. The stamp duties apply on a per square meter basis and range from LL 10,000 to LL 100,000 (approximately US$6.66 to US$66.66) per square meter, subject to a min stamp duty of LL 500,000 (approximately US$ 333) and a max stamp duty of LL 5,000,000 (approximately US$ 3,333) per authorization.

[69] See Decision No. 180, May 22, 1979, Decisions of administrative judges in Lebanon, Public and private domain, p. 75

The TRA is advised that under current stamp duty legislation, such stamp duties could be considered applicable to authorizations to use the public domain regardless of whether the occupancy is above or below ground since the provisions of annex 1 of the legislative decree are broad in their wording (they refer to authorizations to occupy public domain in general). Yet the TRA believes the stamp duties described above were set more in relation to, and are more suitable for, plots of land than ducts which are narrow, linear, underground, many kilometers long and horizontal. Unlike other occupations of public domain property, the installation of fiber in ducts causes little or no change to the available use of the public domain property. Constructing a building on public domain land prevents that land being used for other purposes, whereas roads above and ground adjacent to the ducts can still be used as before, unaffected by fiber installed in the ducts. Thus the TRA finds the rationale for applying the same level of stamp duty to use of ducts to be weak. (This kind of particularity posed by service provider access to public property is an example of why it is reasonable to conclude that Article 35(3) empowered the Council of Ministers to set the basis for the allocation of charges, compensations and fees, discussed in section 8.4.1 above.)

The TRA expects telecommunications service providers to need to lay many kilometers of fiber under public domain land or in many kilometers of public domain ducts. It is possible that in practice numerous separate authorizations from the State will be required for use of its ducts. It is possible too that many additional municipal authorizations in the 940 municipalities will be required to the extent that service providers need to install adjoining facilities on or under municipal roads or other public domain land.

In particular, given the length of ducts likely to be required, each separate authorization may quickly reach the LL 5,000,000 (approximately US$3,333) cap on stamp duties. The TRA is advised that every single authorization document attracts stamp duty even if it is part of a broader authorization process.

For this reason, it is possible for stamp duties across the country to accumulate to large costs for service providers and act as a serious disincentive to the very investment in telecommunications infrastructure which Article 35(3) was intended to facilitate.

The TRA believes that it is consistent with the Telecommunications Law generally, and in particular Article 35(3), to keep stamp duty costs reasonable. As noted above, there is a strong rationale for stamp duty for use of existing public domain ducts – which does not disturb the use of the land – to be set much lower than for other occupation of the public domain.

The TRA finds that for use of the ducts, a simple step would be to:

- apply the stamp duty rates currently applying on a per square meter basis on the basis of per kilometer length instead; and
- apply a minimum stamp duty per authorization of LL 100,000 (approximately US$66) and maximum per authorization of LL 1,000,000 (approximately US$666).

Depending on the conclusions reached concerning the scope of Article 35(3) described in section 8.4.1 of this Study, the TRA may recommend such provisions for the Article 35(3) decree.

In addition, the TRA would also recommend that service providers seek to minimize the number of applications they make to individual public entities for use of multiple properties. The TRA understands from existing practice that it should be possible for municipalities to authorize use of multiple properties in a single authorization which would therefore attract only a single stamp duty, which would be subject to the cap.

8.4.2.2 Rights of way

The ducts are of course not the only public domain property that service providers may wish to use. Where service providers plan to bury cable underground or even install their own ducts on public domain land, stamp duties will apply to authorizations to do so. Again, the risk is high that multiple authorizations will run up high stamp duty costs for service providers and act as a disincentive for investment. Here, however, the TRA recognizes that occupation of the land does affect its alternative uses, since it may be necessary to prevent digging close to or construction above the new cable or ducts. Thus the rationale for reducing the rates of stamp duties is weaker. However, the TRA does find that the risk is serious that each of the 940 municipalities may in practice grant many authorizations resulting in an unnecessarily large amount of stamp duty. For this reason, again, the TRA recommends that requests for use of multiple properties be collected in a single application which can be approved by a single authorization, subject to a single stamp duty.

8.5 Monitoring and regular review

By and large, service providers are expected to deal directly with public authorities. It would be valuable to monitor charges that are applied in order to assess the ongoing successfulness of the implementation of the Article 35(3) decree and from time to time if necessary advise the Minister of changes that may be needed for him to propose to the Council of Ministers. As author of this Study and regulator of service providers, the TRA is the most likely candidate equipped to carry this out.

The TRA therefore recommends that the Article 35(3) decree provide for periodic review by the TRA and public entities of the charges. Such review would result in the Council of Ministers adopting revisions to the charging provision of the decree, and should ensure that ongoing charges are consistent with the developing experience of large scale use and occupancy of public properties.

Recommended Provision

Government Departments must file with the TRA their standard charges, compensations and fees and the basis of their calculation. The TRA will from time to time, in consultation with the relevant Government Departments and Service Providers, conduct periodic reviews through a public consultation process of techniques and formulas for fair and reasonable allocation of charges, compensations and fees and of the typical and customary, and other relevant factors for setting, fees for use of rights of way by licensed Telecommunications Service Providers. If, based on the results of any such review, the

TRA determines that the parameters at such time should be modified, then the TRA will submit its advice and recommendations of changes to the Minister of Telecommunications, who in turn may propose such changes to the Council of Ministers, and such changes will become effective upon approval by decree of the Council of Ministers. All Government Departments must review and adjust their charges for Permitted Uses of Covered Public Property based on each such decree.

9. CONCLUSION

In preparing this Study, the TRA conducted numerous interviews with representatives of relevant Ministries and other public authorities and has taken extensive advice from its specialist Lebanese legal advisers and international telecommunications legal advisers.

Based on the information so obtained, the TRA has concluded that existing Lebanese law and existing practices and attitudes of Lebanese public authorities and administrators, if supported by one or more appropriately drafted decrees under Article 35(3) of the Telecommunications Law, can provide a framework for use of public properties by telecommunications service providers that is comparable to that found in other countries and that is sufficient to achieve the Law's goal of attracting domestic and international investment in new telecommunications infrastructure in Lebanon. The boxes in this Study contain recommended provisions for inclusion in such a decree.

Beirut, __ _____ 2009

Signed: Kamal S. Shehadi
Chairman and CEO
For and by authority of the Telecommunications Regulatory Authority

Annex A **Summary of relevant authorities**

1- Authorities responsible for authorizing occupancy of the public domain in Lebanon

Category of properties	Relevant authority
State property	Council of ministers * Article 16 of Decision No. 144/1925.
Municipal property	> For property pertaining to the municipality and located within the municipality the relevant authority to authorize occupancy is the President of the municipality except for Beirut where the Mouhafez is the relevant authority. > For property pertaining to the municipality but located outside the municipality, the relevant authority is the Mouhafez or Kaimakam. * Article 16 of decision No. 144/1925 * Article 67 of Legislative decree No. 118/1977 * Article 44 of Law No. 60/1988.

Whether a property falls within the public domain of the State or a municipality not only depends on its location but also on whether it is allocated to the national or municipal interest.
* Article 4 of Decision No. 144/1925

2- Authorities having property over and/or managing infrastructure telecom service providers are likely to use

Category of properties	Relevant authorities
1-Municipal roads * Article 62 of Legislative Decree No. 118/1977 specifies that public roads that run within the municipality (with the exception of State roads) fall within the public domain of the municipality.	The rule: The relevant authority is the President of the municipality (Digging/ Traffic) Exception: Beirut: The Mouhafez. * Articles 74 and 67 of Legislative Decree No. 118/1977. Traffic may be referred to the Internal Security Forces in cities that do not have a municipal police force. * Article 1-5 of Decree No. 953/1991.
2-State roads * State roads (international, main, secondary and local) are defined under Decree No. 1315/1965 /Annex (amended by Decree No. 1742/1979).	General directorate of the Internal Security Forces (Traffic) * Article 232 of Law No. 17/1990; Decree No. 953/1991 provides a list of the cities where the internal security forces are in charge of traffic management. Director of roads, Ministry of public works and transport (Digging) * Article 4 of legislative decree No. 68/1983
3-Telecommunication networks /infrastructure	Telecommunications infrastructure is State property administered by MoT * Article 189 of Legislative decree No. 126/1959 * Article 1 of Legislative Decree No. 127/1959. * Article 1 of Law No. 21/1972. Ogero is a public body endowed with legal personality and under the *tutelle* of the Ministry of telecommunications. It only ensures management /maintenance/operations on some infrastructure * Eg: Article 1 of Legislative Decree No. 127/1959; Article

Category of properties	Relevant authorities
	1 of Decree No. 5613/1994
4-Electricity networks/infrastructure	EDL is a public body endowed with legal personality and is under the "*tutelle*" of the ministry energy and water. The main networks of electricity infrastructure are the property of EDL: - Former public electricity infrastructure was transferred to EDL. - EDL has the right to build electricity infrastructure.. * Articles 2, 3 and 26 of Decree No. 16878/1964 Although other entities (notably public) can own electricity infrastructure, the main core of the infrastructure is controlled and owned by EDL. There are currently concessions for distribution of electricity (Zahlé, Jbeil, Aley and Bhamdoun). EDL now controls that of Khadisha. * EDL website * Articles 26 of Decree No. 16878/1964 The day Law No.462/2002 is applied; the sector will evolve towards privatization and progressively fall out of the scope of article 35 of Law No. 431.
5-Water and sewers networks.	There are currently four water public bodies in Lebanon: Beirut and Mount Lebanon/ North Lebanon / Bekaa / South Lebanon. They are endowed with legal personality and are under the "*tutelle*" of the Ministry of water and energy. * Article 3 of Law 221/2000 as amended by law No. 241/2000 The new legal/regulatory provisions organized merger of former water bodies into the new 4 current water public bodies. Rights, obligations and projects of the former water public bodies are transferred to the 4 new water public bodies * Articles 1 and 6 of decree No. 8122/2002 The water public bodies are in charge of the study, building, maintenance, exploitation and renewal of both water distribution and sewers networks in the scope of their respective geographical areas. * Article 4 of Law 221/2000 Provisions of Decree No. 14597/2005 refer to the constructions and properties of the water public bodies, more specifically to extensions linking the public network and the customer and notably running under public roads. * Articles 11, 12 and 51 of Decree No. 14597/2005.

Category of properties	Relevant authorities
	The State via the ministry has undertaken/ still undertakes construction of water infrastructure, including water networks. * Article 2 of Law No. 221/2000 * Article 25 of Decree No. 5469/1966 * Eg. Article 4 of Decree No. 14872/1957 * Decree No. 1425/1999 Municipalities have also built and ensured maintenance of water projects, notably sewers within their geographical scope of competence. * Eg. Articles 49 and 136 of legislative decree No. 118/1977. Unions of municipalities are also entitled by the law to built sewers networks covering several municipalities that are members of the Union. * Articles 74 and 126 of Legislative decree No. 118/1977 In practice water public bodies still do not have information on/control over sewers networks. * Information provided to the TRA by the Beirut and Mount Lebanon water public body.
6-Railway tracks	Railway tracks are the property of the Lebanese State. * Article 2 and 4 of Decision No. 144/1925 The Railway public body is a public body endowed with legal personality. It only has authority to exploit and manage the railway tracks. * Article 2 of Decree No. 6479/1961.

Other:

1- Water, sewers, electricity and telecommunications networks built by **land companies** (شركة عقارية) are built on behalf and for the State

* Article 3 of Law No.117/1991.
* Eg. Solidere (article 61 of Decree No. 2537/1992)

2- Infrastructure built by Council for development and reconstruction **CDR** is not the property of CDR. Such infrastructure notably includes water, electricity and sewers.

*Article 5-7-I Legislative decree No. 5/1977

Annex B Charges for Use of Public Rights of Way in France

The following is an excerpt from the OECD study "**Public Rights of Way for Fibre Deployment to the Home"[70] and quotes from French legislation,** R. 20-51 and 20-52 of the CPCE:

France: The Total Annual Fees

The total annual fees, determined in each case in accordance with Article R. 20-51, depending on duration of occupation, advantages to the permit-holder and rental value of the location occupied shall not exceed: (Article R. 20-52 of the CPCE).

I. Public property (highways):

1. For use of ground or under ground level, per kilometre, per cable: EUR 300 for motorways; EUR 30 for the rest of the road network.
2. In other cases per kilometre, per cable: 40 EUR.
3. For facilities other than radio stations: EUR 20 per m2 of surface area. No charge applies for land-take for supports for cables mentioned in 1 and 2.

II. Public property other than highways, excluding maritime property:

a) Public property (rivers):

1. For use of ground and underground level, per kilometre and per cable: EUR 1 000.
2. In other cases per kilometre and per cable: EUR 1 000.
3. For facilities other than radio stations: EUR 650 per m2 of surface area. No charge applies for land-take for supports for cables mentioned in 1 and 2.

b) Public property (railways):

1. For use at ground or underground level, per kilometre and per cable: EUR 3 000.
2. For other cases, per kilometre and per cable: EUR 3 000.
3. For facilities other than radio stations: EUR 650 per m² of surface area. However, no fee applies for the land-take for supports for the cables mentioned in 1 and 2.

c) On other annexes of public property other than highways:
1. For use of ground and underground level, per kilometre and per cable: EUR 1 000.
2. In other cases per kilometre and per cable: EUR 1 000.
3. For facilities other than radio stations: EUR 650 per m2 of surface area. No charge applies for land-take for supports for cables mentioned in 1 and 2.

[70] Public Rights of Way for Fibre Deployment to the Home, 04-Apr-2008, OECD, Committee for Information, Computer and Communications Policy, DSTI/ICCP/CISP(2007)5/FINAL

Annex C Charges for Use of Public Rights of Way in Other Countries

The following are excerpted from the OECD Study "Public Rights of Way for Fibre Deployment to the Home":

Australia
There is no legislative requirement for compensation for access to installing new infrastructure with the exception of where a person suffers financial loss or damage because of anything done by the carrier. In such a case compensation is payable as agreed between the parties or as determined by a court of competent jurisdiction. Carrier licence conditions require carriers to provide access to their towers and underground ducts to other carriers on terms agreed between the parties or, failing agreement, determined by an arbitrator appointed by the carriers. If the parties fail to agree on the appointment of an arbitrator, the Australian Competition and Consumer Commission becomes the arbitrator.

Austria
Providers of a communications network are entitled to demand rights of way on public property, such as streets, footpaths, public places and the airspace above, with the exception of public water facilities, free of charge and without special authorisation. This basically also applies for rights of way concerning the local loop. Private property owners otherwise are entitled to demand compensation corresponding to the loss in value.

Belgium
For the right of use, the authority may not impose any tax, levy, dues or fees of any kind upon the public telecommunications network operator concerned. Moreover, every public telecommunications network operator disposes, free of charge, of a right of way for cables, overhead lines and corresponding equipment on public or private building sites, which are laid on the public domain (article 98 of the Act of 21 march 1991). Nevertheless, the authorities concerned may ask the operators for compensation of the costs incurred.

Canada
In its Telecom Decision CRTC 2001-23, 48 issued on January 2001, granting Ledcor access to municipal rights of way, the CRTC ruled that Vancouver was entitled to recover causal costs only, such as plan review and inspection fees, relocation costs, pavement restoration and lost productivity, but it was not entitled to collect fees for the right to use those rights of way (economic rent). The CRTC stated in its reasons that, while its decision was based on the particular facts of the case, the causal costs principle would assist municipalities and carriers in negotiating the terms on which municipal consent would be given for carriers to construct, maintain and operate transmission lines on municipal property. The decision was appealed to the Federal Court of Appeal which upheld the CRTC ruling and in 2003 the Supreme Court of Canada refused to hear a federation of Canadian Municipalities appeal.

Czech Republic
Under Section 111(1) and (2) of the Building Act, the entity or person whose property has been expropriated is entitled to compensation of an amount corresponding to the usual price of the land or of the building or structure, including all and any appurtenances thereto, if the ownership title has been withdrawn, or of an amount corresponding to the price of the right of way if the ownership title was limited by

establishing the right of way or if a right corresponding to the right of way has been withdrawn or limited. In addition to these compensations, the entity or person is entitled to reimbursement for the costs of moving away, costs of changing the place of business and any other such costs as may be reasonably incurred by the entity or person being expropriated due to and in connection with the expropriation. The method of determination of such compensations, and the amounts thereof, must correspond to the financial damage suffered by the expropriated entity or person as a result of the expropriation. In the event that the usual price is lower than the price determined on the basis of price provisions, the compensation should be in the amount of the price determined on the basis of the price provisions.

Denmark
When applications or notifications of placing cables and siting masts are similar to ordinary planning and building cases, the municipality in question may charge for the review process. These fees must be made public on the municipality.s website. Additionally, the municipalities can ask the companies to contribute with suggestions to the district plan and hereby carry expenses on to the companies.

Finland
Only a fee concerning supervision measures and other official duties must be paid to the local authority**,** in accordance with a tariff approved by that authority.

France
The fees for public highway usage by electronic communications operators are set by the local executive authority within the limits stipulated by Article R.20-52 of the Code and in accordance with the criteria set out in Article R.20-51. The decree allows some leeway at the discretion of the authorities, as follows; first, the authority may set fees at the level it wishes. It must balance revenues against the indirect advantages of promoting the development of electronic communications in its jurisdiction; second, the very principle of a fee for the use of public property enables the local authority to require land use plans, which will facilitate any subsequent infrastructure sharing; third, the Decree opens the door to differential duct fees depending on occupancy, which is an option for identifying reserve capacity and for providing an incentive to operators to manage resources economically. The total fees take into account the duration of occupancy, the rental value of the location occupied and the material, economic, legal and operating advantages to the permit-holder. The manager of public property can set a lower fee for unoccupied than for occupied ducting. The sum of these fees is paid to the property manager or concessionaire in accordance with the conditions set in the right-of-way permit of article R. 20-51 of the CPCE.

Germany
There is no article directly stipulating financial compensation for access to and use of municipal public rights of way. Use is always free of charge. Only a small fee may be charged for granting permission to install cables (technical specifications).

Japan
There is no article directly stipulating financial compensation for access to and use of municipal public
rights of way.

Korea

The fee for an application for occupying a public road is USD 1.00 per case. The restoration of the excavated road is performed by the district office at the cost of the telecom operator to prevent moral hazard of the telecom operator after installing ducts or poles. A telecom operator must pay charges for occupying public roads according to Section 43 of the Law on Public Roads. Section 26-2 of the Presidential Order on the Law on Public Roads describes how to calculate charges for occupying public roads, which varies according to areas (Seoul, other metropolitan areas, and non-metropolitan areas) and facilities (poles, public payphone booth, ducts, and other facilities). Section 44 of the Law on Planning and Use of National Land requires that a telecom operator obtain permission from the head of the District Office to occupy common utility pipe conduit for telecom, gas, electric power, water or sewage, and pay the charges for occupying the conduit determined by the decree of the district office. It is also possible to use the wall space of the subway system after negotiation with Seoul Metro. However, the usage is minimal because the charge is much more expensive than that set by the district office.

Netherlands
If a provider wants to use a third party.s network, this third party has to share its network if it is technically possible. Charging for it may be possible, but there is no compensation system. When applications or notifications of placing cables and sitting masts are similar to ordinary planning and building cases, the municipality in question may charge for the review process. These fees must be made public on the municipality.s website. Additionally, the municipalities can ask the companies to contribute with suggestions to the district plan and hereby carry expenses on to the companies.

New Zealand
There is no legislative requirement for compensation for access to installing new infrastructure.

Norway
The system of taxation and other financial burdens on network owners is different from municipality to municipality. There is no common approach to financial compensation for access to and use of municipal public rights of way which would apply to the local loop. The compensation is based on the value of alternative use of the land or rights.

Portugal
There is no specific rule requiring financial compensation for access and use of municipal rights of way to the local loop. For access and use of municipal public rights of way the law foresees a municipal fee for rights of way . MFRW.50 The rights and charges as regards implanting, crossing or passing over of systems, equipments and further resources of undertakings providing publicly available electronic communications networks and services, at a fixed location, of a public or private municipal domain, may give rise to the establishment of that municipal fee. In municipalities where the MFRW is collected, the undertakings who provide publicly available electronic communications networks and services, at a fixed location, shall explicitly include the amount due in the bills to their end-clients.

Singapore
Access to the incumbent’s rights of way infrastructure/facilities is charged in a cost-based manner.

Rates can be referenced from Schedule 9 (Subsection 5) of the Reference Interconnection Offer which is available at IDA.s website. Access to building owners. facilities as spelt out in the Code of Practice for Info-communications Facilities in Buildings (COPIF) is made available without charge. For road excavations, the Land Transport Authority levies an administrative charge to process applications. Operators are also made responsible for repairing the roads after the works.

Spain
The general tax levying capacity corresponds to local entities, pursuant to the local tax agencies. law, whereas fixing rates per licence corresponds to what the respective tax ordinances of local Entities provide for. The rates fixed in the General Telecommunications Act correspond to the General State Administration and have nothing to do with local taxes. On the other hand, the Local Tax Agencies. Regulating Act (Royal Decree 2/2004, of 5 March, wherein the revised text of the Local Tax Agencies. Regulating Act is approved) provides for the method to calculate the rates foreseen for exclusive use or for exploitation of the local public domain.

Switzerland
Financial compensation may only cover the costs of the municipal public rights of way.

United Kingdom
The telecom-related legislation and regulation does not specify any financial compensation for access to and use of municipal public rights of way which would apply to the local loop. Code operators are, however, required to put in place funds (a bond, insurance policy or other financial instrument) to meet any specified liabilities to protect Highways Authorities against incomplete street works. The specified liabilities would arise should a Code operator cease to trade and leave apparatus on, under or over public highways. The Highway Authority may choose to remove the apparatus or need to reinstate the public highway and would be able to claim against the funds put in place by the Code operator to cover its costs in removing the apparatus or reinstating the public highway. In terms of planning for access to and use of municipal public rights of way, applicants have to pay fees to local planning authorities to consider applications for prior approval and planning permission. However, such fees are to enable the local planning authority to provide a good quality service. They are not intended as compensation for access to a right of way. For street works, under a permit system operators will be charged per permit they apply for. This fee is to cover the costs involved in issuing a permit and co-ordinating the works with others in the locality, which insure that a number of different works, by different utilities, are not taking place at the same time in close vicinity to each other. Permit fees are only intended to cover the cost to the local highway authority of administrating utility led street works. Fees should not be set at a level which generates surplus revenue for the local highway authority; this is regulated by the Department for Transport which sets the maximum fee limits. Therefore, permit fees are not compensation but allow local authorities to mitigate some of the disruption caused by the works.

United States
Section 224 of the Communications Act specifies “just and reasonable” rates for attachments by telecommunications carriers to provide telecommunications service and for attachments by cable television systems used solely to provide cable service. The system of compensation specified by section 224 is based on an allocation to the attacher of a portion of the costs associated with the usable and unusable space on the

pole. The FCC uses these rate formulas when the parties are unable to resolve a dispute regarding the attachment rate themselves.

Annex D FCC Pole Attachment and Duct Formulas

The following is excerpted from the FCC provisions on rates for charges for pole attachments (see http://www.fcc.gov/eb/mdrd/PoleAtt.html):

Pole Attachment Rates. Many pole attachment complaints allege that the annual rates charged for attachments are not just and reasonable. As directed by Congress, the Commission has devised formulas for calculating the maximum lawful rate that can be charged for attachments. Rates for cable television system attachments are governed by a different formula than telecommunications attachments.

The Commission applies the following formula to determine the maximum allowable annual pole attachment rate for cable television systems that do not also provide telecommunications services:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Where Space Factor} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}}$$

where Space Occupied is presumed to be one foot, Usable Space is presumed to be 13.5 feet and Pole Height is presumed to be 37.5 feet

The Commission applies the following formula to determine the maximum allowable rate for pole attachments that provide telecommunications services:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \left[\text{Carrying Charge Rate}\right]$$

$$\text{Where Space Factor} = \left[\frac{\left(\text{Space Occupied}\right) + \left(\frac{2}{3} \times \frac{\text{Unusable Space}}{\text{No. of Attaching Entities}}\right)}{\text{Pole Height}}\right]$$

where Space Occupied is presumed to be one foot, Unusable Space is presumed to be 24 feet and Pole Height is presumed to be 37.5 feet

The FCC applies the following formula to determine the maximum allowable conduit rate for cable television systems and providers of telecommunications:

$$\text{Maximum Rate per Linear ft./m.} = \underbrace{\left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}}\right]}_{\text{(Percentage of Conduit Capacity)}} \times \underbrace{\left[\text{No. of Ducts} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}}\right]}_{\text{(Net Linear Cost of a Conduit)}} \times \text{Carrying Charge Rate}$$

where the number of ducts is presumed to be two. Simplified as:

$$\text{Maximum Rate Per Linear ft./m.} = \frac{\text{1 Duct}}{\text{No. of Inner Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \times \text{Carrying Charge Rate}$$

where the number of ducts is presumed to be two.

Annex E Application for Use of Public Ducts, Poles, Antenna Sites, Rights of Way and Certain Other Public Properties

This form is for licensed telecommunications service providers that want to use public properties pursuant to article 35 of law No. 431/2002 and its implementing decree No.(----)

- **The applicant**

Company's name	
Registration number	
Name of the Company's representative	
Telecom License ID as issued by the TRA of Lebanon	
Address	
Telephone	
Mobile	
Email	
Fax	
Other (specify)	

- **Type of Application**

Grant an authorization	
Renew an authorization	
Amend an authorization	

- **Type of Works**

Install new infrastructure	

Specify the public property (under the control of the Public Authority) object of the request (e.g. Roads, Water pipes, Sewers, Railway tracks, etc.):

And/Or

Use/ utilize existing infrastructure	

Specify the public property (under the control of the Public Authority) object of the request (e.g. Poles, Towers, Existing ducts, etc.):

- **Timeline of intended works:**

  a. Expected Duration:

  b. Dates if available:

- **Description of the works**

    a. Scope of work and detailed specifications relevant to the request (number and type of sites, locations, dimensions, etc.)

    b. The percentage occupied space of the duct system, pole height, or area needed to install fixtures like poles or towers as applicable

    c. Tentative Project implementation plan

    d. Attach a map (with a clear legend and a minimum scale of 1:5,000 for Beirut and 1:20,000 for rest of Lebanon) covering the works area and show locations of proposed sites

    e. Any alterations to the public properties and/or impact on the use of such properties

    f. Measures that will be taken to ensure that the public property will be restored to its original state after the completion of the works

    g. Whether and how the installed infrastructure enables sharing with other Service Providers

- **Provide statement of the technical and financial capability of the entity that will carry out and handover the works for which authorization is being requested**

- **Describe other reasonable alternative routes or ways considered to achieve the purpose of this request including those rejected by other public authorities.**

- **Provide statement of project's objectives including items such as:**

    a. Telecom network build (transmission network, switches, points of presence, etc.)

    b. Telecom network services (residential, business, broadband, Internet, etc.)

    c. Expected public benefits (number of subscribers, population/geographic coverage, etc.)

- **Describe probable, positive and negative effects on the population in the work area including the following items:**

    a. Social and economical aspects

    b. Impact on traffic, pedestrians, etc.

- **Provide the name, contact information and qualifications of the individuals responsible for managing safety both during construction and afterwards**

- **Mention and attach (if available) other authorizations required to implement the project issued or to be issued by public authorities including but not limited to the following:**

  a. Relevant municipality

  b. Relevant Kaimakam or Mouhafez

  c. Ministry of Water and Energy

  d. Water Public Bodies

  e. Electricite du Liban (EDL)

  f. Ministry of Public Works and Transport

  g. Ministry of Telecommunications

  h. Ministry of Information

- **Additional information**

The applicant hereby declares that:

- To the best of its knowledge, all the information provided above as well as enclosed in the application is true, correct and complete.

- To the best of its knowledge, use of public properties as contemplated above will not cause directly or indirectly any adverse impact on the environment, on public properties or on any other public service provided utilizing such properties

- All works will be carried out following state of the art technologies and that hazardous, illegal or unauthorized material/equipment will not be used or stored in, under or above public properties

- It will comply with any terms, conditions and restrictions set out by laws and regulations in force as well as by the public authority including but not limited to fees, compensations and charges, safety standards, insurance coverage and any measure required to minimize the inconvenience works can entail for the general public, and if dissatisfied with the terms of the authorization, it will resort to the TRA for mediation within one month as of the day the public authority delivers its response.

Pursuant to article 35 of law No. 431/2002, the public authority shall deliver a response to the applicant within one month as of the day the application is submitted by way of registered mail with acknowledgement of receipt.
The public authority shall spell out the reason for the dismissal of a request.
All information of a confidential nature provided by the service provider in the application shall not be unduly disclosed by the public authority.
Date

Signature ---- (in his capacity as (----)

طلب لاستخدام المسالك العامة، الأعمدة، مواقع الهوائيات، حقوق المرور وبعض الأملاك العامة الأخرى

هذا النموذج مخصص لمقدمي خدمات الإتصالات المرخص لهم الراغبين باستخدام الأملاك العامة وفقاً للمادة 35 من القانون 2002/431 (قانون الاتصالات) والمرسوم التطبيقي رقم ( ) ذات الصلة

- **مقدم الطلب**

إسم الشركة	
رقم السجل التجاري	
إسم ممثل الشركة	
رمز رخصة الإتصالات الصادر عن الهيئة المنظمة للإتصالات في لبنان	
عنوان	
رقم الهاتف	
رقم الخليوي	
البريد الإلكتروني	
الفاكس	
أي معلومات اضافية	

- **نوع الطلب**

منح ترخيص	
تجديد ترخيص	
تعديل ترخيص	

- **نوع الأشغال**

إنشاء بنية تحتية جديدة	

يجب تحديد الملك العام (ضمن تحكم الإدارة العامة) موضوع الطلب (مثلا الطرقات، أنابيب مياه الشرب، المجاري، خطوط سكة الحديد، الخ.)

و/أو

إستخدام/إشغال بنى تحتية موجودة	

يجب تحديد الملك العام (ضمن تحكم الإدارة العامة) موضوع الطلب (مثلا الأعمدة، الأبراج، المسالك الموجودة الخ.)

- **مواقيت الأشغال المنوي تنفيذها**

c. المدة المتوقعة

d. التواريخ في حال توفرها

- **وصف الأشغال**

h. نطاق العمل والمواصفات المفصلة المتعلقة بالطلب (عدد ونوع المراكز، المواقع، الأحجام او الأبعاد، الخ.)

i. النسبة المئوية المشغولة من سعة نظام المسالك، طول العامود، أو المساحة المطلوبة لإنشاء المثبتات مثل الأعمدة أو الأبراج وفق المطلوب

j. مخطط التنفيذ المبدئي للمشروع

k. إرفاق خارطة (مع تفسيرات واضحة ومقياس رسم لا يقل عن 1:5000 لبيروت و 1:20000 لباقي المناطق) تغطي منطقة الأشغال وتظهر مواقع المراكز المقترحة)

l. أي تعديلات على الأملاك العامة و/أو أثر على استعمال هذا الملك العام

m. التدابير التي ستتخذ لضمان إعادة الملك العام الى حالته الأصلية بعد انتهاء الأشغال

n. إمكانية وكيفية تمكين البنى التحتية المنشأة من المشاركة مع مقدمي خدمات آخرين

- **تقديم بيان عن القدرة التقنية والمالية للمؤسسة التي ستنفذ وتسلم الأعمال موضوع طلب الترخيص**
- **وصف طرق أو مسارات بديلة معقولة أخرى تم أخذها بعين الإعتبار لتحقيق الغرض من الطلب ومن ضمنها تلك التي رُفضت من إدارات عامة اخرى**
- **تقديم بيان بأهداف المشروع بما فيها تلك البنود مثل:**

d. إنشاء شبكة الإتصالات (شبكة النقل، المبدلات، نقاط التواجد، الخ.)

e. خدمات شبكة الإتصالات (السكنية، الاعمال، الحزمة العريضة، انترنت، الخ.)

f. الفوائد العامة المتوقعة (عدد المشتركين، التغطية السكانية/الجغرافية، الخ.)

- **وصف التأثيرات الإيجابية و السلبية المحتملة على السكان ضمن منطقة الأشغال بما في ذلك البنود التالية:**

c. الجوانب الإجتماعية والإقتصادية

d. تأثير على حركة السير والمارة او المشاة، الخ.

- **اسماء، عناوين الإتصال ومؤهلات الأفراد المسؤولين عن إدارة السلامة والحماية سواء اثناء الأشغال الإنشائية أوبعدها**

- **ذكر وربط (في حال توفرها) تراخيص أخرى لازمة لتنفيذ المشروع صادرة او سوف تصدر عن إدارة عامة بما في ذلك على سبيل المثال لا الحصر:**

i. البلدية المختصة

j. القائمقام أو المحافظ المختص

k. وزارة الطاقة والمياه

l. المؤسسات العامة الإستثمارية للمياه والصرف الصحي

m. مؤسسة كهرباء لبنان

n. وزارة الأشغال العامة والنقل

o. وزارة الإتصالات

p. وزارة الإعلام

- **معلومات إضافية**

يصرح مقدم الطلب ها هنا ما يلي:

- ضمن حدود معرفته، جميع المعلومات الواردة أعلاه إضافة إلى تلك المرفقة ضمن هذا الطلب هي معلومات حقيقية، صحيحة وكاملة

- ضمن حدود معرفته، إن استخدام الأملاك العامة وفق ما هو مطلوب أعلاه، لا يسبب أي أثر سلبي مباشر أو غير مباشر على البيئة، الأملاك العامة او أي خدمة عامة أخرى مقدمة من خلال استخدام هذه الأملاك.

- ستتم الأشغال باعتماد احدث التقنيات المستعملة وأنه لن يتم استعمال أو تخزين اي مواد / معدات خطرة، غير شرعية أو غير مرخصة ضمن، تحت أو فوق الأملاك العامة.

- يلتزم بأي أحكام، شروط أو قيود تحددها القوانين والأنظمة والإدارة العامة بما في ذلك الرسوم، التعويضات والأعباء، مقاييس الأمان، تغطية التأمين، وأي إجراء مطلوب لتخفيف المضايقات التي من الممكن أن تسببها الأشغال على الإنتظام العام وفي حال عدم رضاه عن الأحكام الواردة في الترخيص عليه أن يرجع الى الهيئة للتوسط خلال شهر واحد من تسلمه رد الإدارة العامة.

يتوجب على الإدارة العامة، عملاً بالمادة 35 من القانون رقم 2002/431 (قانون الاتصالات) أن تعطي جوابها خلال شهر واحد من تسلمها للطلب من خلال بريد مسجل مع إشعار بالاستلام.

يتوجب على الإدارة العامة أن لا تكشف بلا مبرر أي معلومات ذات طابع سري مسلمة من مقدم خدمة ضمن الطلب.

بيروت في

توقيع (صاحب الصلاحية)