

Cloud Service Regulation to Come into Effect January 2022

On 16 October 2021, the Malaysian Communications and Multimedia Commission (**MCMC**) announced that it will implement light touch regulations on cloud services with effect from 1 January 2022 (**Cloud Service Regulation**). To date, the draft Cloud Service Regulation has not been published.

According to the MCMC's [Advisory Notice \(FAQs\) on the Cloud Service Regulation](#), the basis of the new regulation is to address data integrity and security concerns following increased usage of cloud services, and to provide sufficient legal protection to users and the relevant public agencies. The MCMC also takes the view that by licensing cloud service providers, it has the flexibility to issue industry technical standards which may only be enforced through a licensing regime. Such standards are intended to ensure best practices are adopted by the cloud service providers.¹

Going forward, certain cloud service providers will need to be licensed under the Applications Service Provider Class (**ASP (C)**) licence, which typically regulates end-consumer activities such as voice services, data services, Internet access and electronic commerce.

Unlike individual licences which require a high degree of regulatory control for specified persons carrying out a specified activity, a class licence is a "light-handed" form of regulation which merely requires registration as part of an administrative process.² Examples of licensable activities that require an ASP (C) licence include public cellular services and public payphone services, while electronic transaction services or web hosting or client server activities (among others) remain exempted from requiring an ASP (C) licence, pursuant to the Communications and Multimedia (Licensing) (Exemption) Order 2000.³

Under the proposed Cloud Service Regulation, the licensing requirement under the ASP (C) licence only applies to the cloud service activity.

For regulatory purposes, the MCMC has defined cloud services as "*any service made available to end users on demand via the Internet from a cloud computing provider's server*" and has stated that all persons providing cloud services with a local presence or through local data centres in Malaysia are required to be registered under the ASP (C) licence. As an illustration, the Advisory Notice (FAQs) outlines the following scenarios where a service provider may require a licence:⁴



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¹ MCMC Advisory Notice (FAQs), para 2

² MCMC Licensing Guidebook, para 1.5

³ MCMC Licensing Guidebook, para 1.6 and MCMC Advisory Notice (FAQs), para 6

⁴ MCMC Advisory Notice (FAQs), para 8

- **Scenario 1:** Company A is a locally incorporated company providing cloud service applications to end users. Company A would be required to be registered under the ASP (C) licence.
- **Scenario 2:** Company B does not have any local presence but is providing cloud service applications through a local data centre, Company C, to end users. Company C would be required to be registered under the ASP (C) licence.
- **Scenario 3:** Company D does not have local presence and does not provide any cloud service applications through a local data centre to end users. Company D may be required to be registered under the ASP (C) licence and therefore will not be given any regulatory protection to both the user and provider of the service.

The Advisory Notice (FAQs) states that the ASP (C) licence for cloud services will not impose any foreign shareholding restriction, and that a waiver on the Universal Service Provision (USP) fund contribution will be applicable.⁵

The validity period for the ASP (C) licence is one year and is renewable annually for a fee. It is an offence under the Communications and Multimedia Act 1998 (**CMA**) to carry out licensable activities without a licence. As such, cloud service providers are advised to obtain the relevant licence(s) prior to commencing operations, or to determine at the earliest opportunity whether their activities fall within the definition of “cloud services” as prescribed above.

The introduction of the Cloud Service Regulation will be of concern for many players in this space as the scope of the new standards that will be introduced by the MCMC to specifically regulate the activities/conduct of cloud service providers has yet to be published. Pending explicit guidance on this, providers must be prepared to adopt industry best practices to avoid penalties pursuant to the CMA.⁶

The press release on the Cloud Service Regulation can be viewed [here](#).

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⁵ MCMC Advisory Notice (FAQs), para. 5

⁶ The MCMC has issued [a Technical Code on Information and Network Security — Cloud Service Providers Selection \(First Revision\)](#), which specifies the relevant security requirements that should be taken into account by organisations when selecting a cloud service provider.