

# TELECOMMUNICATIONS LAWS OF THE WORLD

Hong Kong, SAR



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## OVERVIEW OF LEGAL LANDSCAPE

The telecommunications industry in Hong Kong is regulated by the Communications Authority (CA). The CA was established in 2012 as the unified regulator of the telecommunications and broadcasting sectors. The Office of the Communications Authority (OFCA) is the executive arm and secretariat of the CA and it supports the CA in administering and enforcing the relevant laws in relation to the provision of telecommunications services.

In general, there are no foreign ownership restrictions or limits on the number of operators, but telecommunications operators should be aware of the different licensing requirements for the provision of services in Hong Kong.

## KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The duties and powers of the CA and the OFCA are stated in the [Communications Authority Ordinance \(Cap. 616\)](#) and the [Telecommunications Ordinance \(Cap. 106\)](#) respectively.

The primary legislation governing telecommunications in Hong Kong is the Telecommunications Ordinance (Cap. 106) (and its subordinate regulations and orders).

In addition to the Telecommunications Ordinance, the following legislation may also impact the provision of communication services and the operation of communication networks:

- The [Broadcasting Ordinance \(Cap. 562\)](#)
- The [Personal Data \(Privacy\) Ordinance \(Cap. 486\)](#)
- The [Broadcasting \(Miscellaneous Provisions\) Ordinance \(Cap. 391\)](#)
- The [Unsolicited Electronic Messages Ordinance \(Cap. 593\)](#)

The key features of the Telecommunications Ordinance are:

- Licensing requirements for telecommunications services providers
- Competition provisions that aim to prevent anti-competitive conduct
- Regulation of mergers and acquisitions that may restrict competition in the telecommunications market

## REGULATORY BODIES OR AUTHORITIES

### Communications Authority (CA)

Address: 29/F, Wu Chung House, 213 Queen's Road East, Wan Chai, Hong Kong

Website: <http://www.coms-auth.hk/en/home/index.html>

## Office of the Communications Authority (OFCA)

Address: 29/F, Wu Chung House, 213 Queen's Road East, Wan Chai, Hong Kong

Website: <http://www.ofca.gov.hk/>

## TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The CA regulates the provision of various telecommunications services, including but not limited to local fixed carrier services, fixed broadband services, IP telephony services, external telecommunications services, various international value-added network services, external telecommunications facilities and mobile network services. All related operators and service operators are subject to the relevant legal and regulatory requirements.

## OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Depending on the scope of services, telecommunications operators may require the following licence(s) from the CA:

- Carrier Licences (CL) for the provision and maintenance of facility-based public telecommunications services or infrastructure, including establishing telecommunications networks, circuits, and equipment, fixed external services, fixed internal services, and/or mobile services
- Service-based Operator (SBO) Licences for the provision of ancillary services related to telecoms services over networks owned by CL holders. These are divided into 4 main categories depending on the types of services delivered, and the terms and obligations which apply vary per category:
  - Class 1 services – local voice telephony services (that have all the attributes of the conventional telephone services and are subject to the similar licence obligations applicable to carrier licence holders)
  - Class 2 services – local voice telephony services (that do not have all the attributes of the conventional telephone services and are subject to minimal licensing conditions)
  - Class 3 services – including but not limited to external telecommunications services, international value-added network services (including internet access services), mobile virtual network operator services, public radio communications relay services, teleconferencing services and private payphone services
  - Services other than Class 1, Class 2 or Class 3 Services
- Class Licences (CLOTS) are generally applicable to services provided by resellers of telecoms services operated by CL, SBO Licences or other CLOTS holders. Typically, these resellers purchase wholesale services then rebrand and/or repackage such services for resale under the resellers' own brands
  - Resellers (with a customer base of 10,000 subscriptions or more) must register with the CA regardless of the types of services offered. As part of the registration requirement, organizations need to provide details to the CA including, but not limited to, contact details, description of the services being offered, as well as provide the names of all licensed telecoms operator(s) with whom such organization has entered into an agreement for the provision of telecoms services under the CLOTS. Resellers with a customer base of fewer than 10,000 subscriptions may register with the CA on a voluntary basis.
- Public Radiocommunications Service Licences
- Localised Wireless Broadband Service Licences
- Wireless Internet of Things Licences

## **DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES**

A licence may be granted to or held only by a company formed and registered in Hong Kong. For companies incorporated outside of Hong Kong, the CA may consider their applications, provided that they have registered under the Companies Ordinance (Cap. 622) as a non-Hong Kong company.

## **EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

The CA may make a determination on the request of a party to the terms and conditions of interconnection or, in the absence of a request, if it considers it is in the interest of the public to do so.

CL and SBO licence holders that provide local voice telephony services are required to provide any customer in any one network access to any other customer in any interconnecting network.

## **TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

Telecommunication laws and regulations generally do not distinguish between the provision of services to businesses and to consumers. However, general consumer law also applies, including the Trade Descriptions Ordinance concerning unfair trade practices. Telecommunications service providers regulated as licensees under the Telecommunications Ordinance may be subject to the enforcement of the fair trading sections by the CA.

CLOTS licensing conditions and the registration regime have been specifically implemented for the protection of consumer interests, in particular resellers are required to provide the following specific information to facilitate consumers to make an informed purchasing decision:

- name of the CLOTS licensee;
- customer service hotline number(s);
- access code(s) or number(s) (including any access password) used for obtaining the services, where applicable;
- instructions on how to access the services;
- price(s) of the services; and
- duration(s) and/or validity period(s) of the services.

## **REGULATORY TAXES AND FEES**

Different licence fees are payable on the issue and on renewal of licences. Occasionally, the CA will determine and publish the licence fee for a particular licence.

## **KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS**

There are a number of sanctions and penalties stipulated under the Telecommunications Ordinance. Some of the key offences are listed as follows:

A person who, without the appropriate licence, is found to have committed any of the following, will be liable to fines of up to HKD 100,000 and imprisonment for up to 5 years:

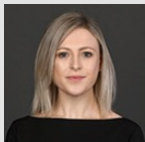
- Establishes or maintains any means of telecommunications

- Offers in the course of business a telecommunications service
- Possesses or uses any apparatus for radiocommunications or any apparatus of any kind that generates and emits radio waves notwithstanding that the apparatus is not intended for radiocommunications
- Deals in the course of trade or business in apparatus or material for radiocommunications or in any component part of any such apparatus or in apparatus of any kind that generates and emits radio waves whether or not the apparatus is intended, or capable of being used, for radiocommunications
- Demonstrates, with a view to sell in the course of trade or business, any apparatus or material for radiocommunications

It is an offence punishable by a fine of HKD 25,000 and imprisonment for 12 months if a person, without the appropriate permit granted by the CA, imports into or exports from Hong Kong any radiocommunications transmitting apparatus, unless he is the holder of a licence authorising him to deal in the course of trade or business in such apparatus.

If a licence holder breaches any licence condition issued by the CA or the Telecommunications Ordinance, they can be subject to a fine of up to HKD 200,000 upon first breach, HKD 500,000 upon second breach and HKD 1,000,000 upon any subsequent breach.

## KEY CONTACTS



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