

Cloud Services to be Licensable from 2022

Licensing of Cloud Services

The increased reliance on cloud computing has recently seen regulatory responses from the authorities. The Malaysian Communications and Multimedia Commission (“MCMC”) on 15 October 2021 released an Advisory Notice on the upcoming licensing of cloud service providers from 1 January 2022, to address the regulatory loopholes brought about by the rise of cloud services and particularly the integrity of data stored on cloud.

Applications Service Provider Class Licence

Cloud services have been defined by MCMC as

“any service made available to end users on demand via the Internet from a cloud computing provider’s server.”

Cloud service providers are therefore required to obtain an applications service provider class licence (“ASP Class Licence”) under the **Communications and Multimedia Act 1998** (“CMA”) if they have local presence in Malaysia or if they provide cloud services via local data centres in Malaysia. For international cloud service providers that do not have a local presence but provide cloud services to end-users in Malaysia via a local data centre, the data centre will be the entity that has to apply for the ASP Class Licence.

Regulating the provision of cloud services through the ASP Class Licence comes with the benefit of maintaining easy market access to industry players and promoting industry growth, while simultaneously providing MCMC with the flexibility to determine the standards expected of the services and service providers to ensure that the best industry practices are adopted. This is because unlike individual licences under the CMA, the ASP Class Licence allows for easier application procedure and comes with fewer restrictions. For instance, there is no restriction on foreign shareholding of a licensee.

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No Change to Existing Exempted Services

Given MCMC's light touch approach to regulating cloud services, activities that are currently exempted from licensing requirements including those under the Communications and Multimedia (Licensing) (Exemption) Order 2000 ("Order") will remain exempted. This means, for example, that the provision of web hosting or client server services will remain exempted from the licensing requirements pursuant to the Order.

Providers to Review Their Services

In anticipation of the new licensing requirements coming into force from 1 January 2022, MCMC is in the process of engaging with the relevant stakeholders.

As it is an offence under the CMA to provide licensable services (now including cloud services) without a licence, cloud service providers should review their services to determine if an ASP Class Licence is necessary.

MCMC is expected to publish further guidance on the subject later this year. The information contained in this Update is subject to change in light of such further guidance.

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