

7 June 2021

Circular letter to:

- **Unified Carrier Licensees**
- **Localised Wireless Broadband Service Licensees**
- **Wireless Internet of Things Licensees**
- **Services-Based Operator Licensees**
- **Class Licensees for Offer of Telecommunications Services**

Dear Sir/Madam,

**Updated Guidelines for Administration of the Class Licence for
Offer of Telecommunications Services**

The Class Licence for Offer of Telecommunications Services (“CLOTS”)¹ pursuant to section 8(1)(aa) of the Telecommunications Ordinance (Cap. 106) (“TO”) regulates any person who offers telecommunications services to the general public without establishment, operation or maintenance of any means of telecommunications. Under condition 4 of the CLOTS, a licensee shall comply with the TO, regulations made under the TO, licence conditions or any other applicable instruments (e.g. the subject guidelines) which may be issued by the Communications Authority (“CA”).

In accordance with the Telecommunications (Registration of SIM Cards) Regulation gazetted on 4 June 2021 (“SIM Regulation”)² for implementation of the real-name registration requirement for SIM cards, CLOTS licensees which offer in the course of business SIM services will be subject to the same set of SIM registration requirements and obligations as those applicable to mobile network operators and mobile virtual network operators. For effective enforcement of the SIM registration requirement, the CA has updated the Guidelines for Administration of the CLOTS (see **Annex**).

¹ Available at:
[https://www.coms-auth.hk/filemanager/common/licensing/Offer_of_Tele_Services_\(Eng\).pdf](https://www.coms-auth.hk/filemanager/common/licensing/Offer_of_Tele_Services_(Eng).pdf).

² Available at: <https://www.gld.gov.hk/egazette/pdf/20212522/es22021252275.pdf>.

Under the updated guidelines, all CLOTS licensees offering SIM services during the course of business, irrespective of the size of their customer base, are required to register their information with the CA. To avoid possible breach of the relevant licence condition(s), CLOTS licensees which offer SIM services but have not yet registered with the CA should do so as soon as possible and in any case no later than 31 August 2021, before the SIM Regulation coming into effect on 1 September 2021.

Should you have any enquiry on the above, please contact Ms Karen Kwan at 2961 6598 or Ms Lucy Lau at 2961 6653.

Yours faithfully,

(Linda Yu)
for Director-General of Communications

Encl.

Guidelines for Administration of the Class Licence for Offer of Telecommunications Services

7 June 2021 (Issue 2)

General

The Class Licence for Offer of Telecommunications Services (“CLOTS”) pursuant to section 8(1)(aa) of the Telecommunications Ordinance (Cap. 106) (“TO”) was introduced in 2007 to regulate any person who offers telecommunications services to the general public without establishment, operation or maintenance of any means of telecommunications. In line with the emergence of new technologies and the adoption of new business models and commercial practices by market players, the CLOTS was revised by the Communications Authority (“CA”) on 26 April 2019¹ following a public consultation. The revised CLOTS took effect on 26 October 2019². These Guidelines are issued under section 6D(2)(a) of the TO to provide information on the administration of the CLOTS licensing regime for compliance by any party offering telecommunications services under the CLOTS. They supersede any previous version of the Guidelines and the information note on the same subject issued in January 2007.

Nature of CLOTS

2. The CLOTS is a light-handed licensing vehicle to authorise offer in the course of business a telecommunications service under the set of licence conditions therein. Unlike individual licences which call for active application from applicants for approval by the CA, the CLOTS does not require any application to be made. Any party which meets the criteria and conditions set out in the CLOTS would automatically be deemed as being granted the CLOTS and is hence subject to the conditions as a CLOTS licensee. At the moment, no licence fee payment is required for the CLOTS.

¹ The Statement of the Communications Authority on review of the CLOTS is available at: https://www.coms-auth.hk/filemanager/statement/en/upload/502/ca_statement_20190426.pdf.

² The revised CLOTS is available at: [https://www.coms-auth.hk/filemanager/common/licensing/Offer_of_Tele_Services_\(Eng\).pdf](https://www.coms-auth.hk/filemanager/common/licensing/Offer_of_Tele_Services_(Eng).pdf).

Who falls under the CLOTS?

3. Any persons (including incorporated entities as well as unincorporated persons, such as sole proprietors or partnerships) who offer telecommunications services without operating any telecommunications means in Hong Kong fall within the scope of the CLOTS. These persons are generally resellers of the telecommunications services operated by licensed operators. They usually purchase wholesale services from licensed operators and resell the services in the retail market under their own brand names.

4. It should be noted that agents or contractors of licensed operators who sell or promote telecommunications services for or on behalf of the operators within the scope of the respective agency agreements will not fall under the CLOTS regime. For example, retail outlets, convenience stores and street stalls that sell telephone cards which are issued by licensed operators, or promote the service plans of licensed operators, are generally regarded as agents or contractors of licensed operators and not treated as CLOTS licensees. Under the principle of agency law, the licensed operators will remain fully responsible for the offer and provision of services under their own licences.

5. Whether a person who offers telecommunications services is to be considered as a reseller (who will fall within the regulation of the CLOTS) or as an agent (who will NOT on his/her own fall within the regulation of the CLOTS) is a question of law to be considered based on the facts and circumstances of each case. In particular, the CA will look into the various aspects of the actual business arrangement between a particular sales agent / representative and the licensed operator to decide whether the person who offers telecommunications services is a reseller (i.e. a CLOTS licensee) or an agent (who will not be a CLOTS licensee and the licensed operator will be liable as the principal).

6. For the avoidance of doubt, the offer of any telecommunications services which involves the establishment, operation or maintenance of any means of telecommunications is not authorised under the CLOTS and should be subject to an appropriate licence granted by the CA under the TO. For details on the different types of licences granted by the CA under the TO and their application procedures, please refer to website of the CA³.

³ Details about the different types of licences granted by the CA are available at: <https://www.coms-auth.hk/en/licensing/telecommunications/index.html>.

What kind of telecommunications services fall under the CLOTS?

7. There is no restriction on the nature of services that may be offered under the CLOTS. All kinds of telecommunications services (such as voice or data services, local or external services, fixed or mobile services, whether for person-to-person communications or machine type connections) that can be offered, on prepaid or post-paid basis, would be subject to the same regulation.

8. In actual operation, the CLOTS regime is generally applicable to resellers who acquire wholesale services from other telecommunications licensees (i.e. wholesale service providers) and resell the services in the retail market under their own brand names. Typical examples of public telecommunications services which may be offered by resellers under CLOTS using their own brand names include –

- (a) local mobile voice and/or data services and/or short message services operated by local mobile network operators (“MNOs”) or mobile virtual network operators (“MVNOs”);
- (b) local fixed voice and/or broadband services operated by local fixed network operators or services-based operators;
- (c) prepaid International Direct Dial (“IDD”) services operated by external telecommunications services operators;
- (d) “Wi-Fi Eggs” services offered to Hong Kong consumers for use during overseas visits⁴;
- (e) prepaid international voice/data services offered to Hong Kong consumers for use during overseas visits; and
- (f) wireless services for machine type connections operated by local MNOs, MVNOs, or providers of localised wireless broadband services or wireless internet of things services.

9. In circumstances where the telecommunications services concerned are to be consumed outside Hong Kong, the CLOTS regime will continue to be applicable provided that the act of offering the services is conducted in Hong Kong.

⁴ For the avoidance of doubt, “Wi-Fi Eggs” services offered as a bundle of a local mobile service and a Wi-Fi router offered by service providers in Hong Kong to foreign visitors for use in Hong Kong would generally fall outside the scope of the CLOTS. This is because the Wi-Fi router would be deemed as a telecommunications equipment established and/or maintained for the provision of a public telecommunications service. Therefore, providers of such services should be subject to other licences under the TO.

What are the major requirements under the CLOTS?

Compliance with all applicable legal and regulatory instruments

10. All CLOTS licensees are required to comply with the TO, regulations made under the TO, licence conditions, and other applicable instruments such as guidelines or codes of practices⁵ issued by the CA for the purpose of providing practical guidance on any particular aspect of any conditions of the CLOTS (such as reporting arrangement for service outage, or cessation arrangement for telecommunications services, etc). In addition, CLOTS licensees should also observe documents applicable to them published on the CA's website⁶.

Registration Requirement

11. From the date of these Guidelines, CLOTS licensees falling into either or both of the following two categories are required to register their information (see paragraph 16 below) with the CA before the commencement of offering in the course of business a telecommunications service in Hong Kong –

- (a) CLOTS licensees offering a subscriber identification module (“SIM”) card as part of the telecommunications service(s) they offer during the course of business, irrespective of the size of their customer base (see also paragraph 12), with examples of such telecommunications services given in items (a), (d), (e) and (f) under paragraph 15; and/or
- (b) CLOTS licensees offering any telecommunications services other than those involving a SIM card and with a customer base of 10 000 subscriptions or more in any month over the past three months.

⁵ Codes of practice / guidelines on telecommunications services issued by the CA are available at: https://www.coms-auth.hk/en/policies_regulations/cop_guidelines/telecomm/index.html.

⁶ Documents to be observed by CLOTS licensees are available at: https://www.coms-auth.hk/en/licensing/telecommunications/class/docs_to_be_observed_by_class_licensees_for_offer/index.html.

12. In accordance with the Telecommunications (Registration of SIM Cards) Regulation gazetted on 4 June 2021⁷ (“SIM Regulation”) for implementation of the real-name registration requirement for SIM cards⁸, CLOTS licensees which offer in the course of business SIM services will be subject to the same set of SIM registration requirements and obligations as those applicable to MNOs and MVNOs. For effective enforcement of the SIM registration requirement, all CLOTS licensees offering SIM services should have registered with the CA by the time the SIM Regulation comes into effect. Hence, CLOTS licensees under category (a) in paragraph 11 above which have not yet registered with the CA⁹ are required to do so before 1 September 2021.

13. For CLOTS licensees which do not offer in the course of business any telecommunications services involving a SIM card and with a customer base of less than 10 000 subscriptions in each month over the past three months, the CA has decided to waive them from the registration requirement for the time being but they are welcome to register on a voluntary basis.

14. Any party (an individual or an entity) who has accepted the offer of telecommunications service(s) by a CLOTS licensee, irrespective of whether such service(s) is/are for the party’s own use or for provision of a lawful telecommunications service to third parties, will be regarded as a “customer” of the CLOTS licensee concerned. A single customer may have multiple subscriptions with a CLOTS licensee.

15. A “subscription” shall mean an arrangement for a customer to access or use a telecommunications service offered by a CLOTS licensee and may be characterised by the supply of a SIM card, a fixed line, any other form of customer connection, or a subscriber account by the CLOTS licensee to the customer. Below are some examples for illustrating what may constitute a

⁷ The Gazette Notice is available at:
<https://www.gld.gov.hk/egazette/pdf/20212522/es22021252275.pdf>.

⁸ A SIM card means a subscriber identification module provided by a specified licensee that –

- (a) forms part of a mobile device, or is a hardware or software component for insertion into or integration with a mobile device;
- (b) is represented or held out by the licensee to be used primarily for communications between persons and persons; and
- (c) identifies and authenticates a subscriber for the subscriber’s access to a telecommunications service provided in Hong Kong by any specified licensee.

⁹ Existing CLOTS licensees offering SIM services and with a customer base of 10 000 subscriptions or more in any month over the past three months should already have registered with the CA in accordance with the previous version of the Guidelines.

“subscription” for the services mentioned under paragraphs 8(a)-(f) above –

	Telecommunications Services Offered	Examples of a “Subscription”
(a)	Local mobile voice and/or data services and/or short message services	<ul style="list-style-type: none"> • a SIM card (including an e-SIM)
(b)	Local fixed voice and/or broadband services	<ul style="list-style-type: none"> • a fixed line¹⁰ • a virtual customer connection¹¹
(c)	Prepaid IDD services	<ul style="list-style-type: none"> • a subscriber account
(d)	“Wi-Fi Eggs” services	<ul style="list-style-type: none"> • a Wi-Fi router embedding a SIM
(e)	Prepaid international voice/data services	<ul style="list-style-type: none"> • a SIM card (including an e-SIM)
(f)	Wireless services for machine type connections	<ul style="list-style-type: none"> • a SIM card (including an e-SIM)

The above illustrations are not meant to be exhaustive. CLOTS licensees should contact the Office of the Communications Authority (“OFCA”) if they have any question on the counting of customer base and subscriptions.

16. Any CLOTS licensee which is required to register with the CA shall register the following information through the links below –

https://app2.coms-auth.hk/clots_ext/licenceRegistration?lang=en

in English; or

[https://app2.coms-](https://app2.coms-auth.hk/clots_ext/licenceRegistration?lang=zh_HK)

[auth.hk/clots_ext/licenceRegistration?lang=zh_HK](https://app2.coms-auth.hk/clots_ext/licenceRegistration?lang=zh_HK) in Chinese.

- (a) Name of the CLOTS licensee (should be the same as appearing in the Business Registration Certificate (“BRC”));
- (b) Company registration number of the CLOTS licensee under the Companies Ordinance (Cap. 622), or the number of the BRC issued to the CLOTS licensee under the Business Registration Ordinance

¹⁰ A fixed line may include an exchange line (such as Direct Dialing In lines, Facsimile lines and Datel lines), a non-exchange line (such as Internet protocol (“IP”) telephony services and wireless fixed telephony services) or a local leased line.

¹¹ Example of a virtual customer connection is an Internet-based connection provided for access or use of an IP telephony service offered by a CLOTS licensee, and the service is operated in nomadic mode by a licensed operator.

- (Cap. 310);
- (c) Customer service hotline number(s);
 - (d) Contact details;
 - (e) Type(s) of telecommunications services to be offered by the CLOTS licensee; and
 - (f) Name(s) of all licensed telecommunications operator(s)¹² with whom the CLOTS licensee has entered into an agreement, arrangement or understanding for the provision of telecommunications services under the CLOTS.

Enquiries concerning the registration may be sent to the email address: CLOTS@ofca.gov.hk.

17. Failure to provide true, accurate and complete information for the purpose of the registration requirement may lead to rejection or revocation of the registration.

18. Upon successful registration by a CLOTS licensee, OFCA will provide the licensee concerned with a written confirmation through email, including a CLOTS registration number assigned by OFCA. The CA will maintain a register of the registered CLOTS licensees on its website for public information, including the licensees' names, their CLOTS registration numbers and the types of telecommunications services offered. All other information provided to the CA will be kept for regulatory purposes.

19. To enable the CA to have accurate and up-to-date information for contact, the registered CLOTS licensees are required to update the CA of any changes to their registered information through the links below in the first instance –

https://app2.coms-auth.hk/clots_ext/login?lang=en in English; or
https://app2.coms-auth.hk/clots_ext/login?lang=zh_HK in Chinese.

Provision of Information to Customers

20. To enable customers to make informed choices, CLOTS licensees

¹² Information on licensed operators is available at:
<https://www.coms-auth.hk/en/licensing/telecommunications/index.html>.

are required to make available the following information to the customers when the services are offered –

- (a) name of the CLOTS licensee;
- (b) any one of the following numbers:
 - company registration number of the CLOTS licensee under the Companies Ordinance (Cap. 622);
 - the number of the BRC issued to the CLOTS licensee under the Business Registration Ordinance (Cap. 310); or
 - the registration number of the CLOTS licensee issued by the CA;
- (c) customer service hotline number(s);
- (d) the access code(s) or number(s) (including any access password) used for obtaining the services, where applicable;
- (e) instructions on how to access the services;
- (f) the tariffs¹³ of the services; and
- (g) the duration or validity period of the services.

Provision of Information to the CA

21. In order to ensure the information of the CLOTS licensees maintained in the register is up-to-date, all CLOTS licensees which have successfully registered with the CA, irrespective of the type(s) of services offered, will be reminded to provide the following information on an annual basis –

- (a) updates on the size of the licensee's customer base in the form of number of subscriptions as of the anniversary date of the registration; and
- (b) confirmation on whether the licensee's operation and registered information under the CLOTS all remain active and up-to-date.

Failure to provide the confirmation mentioned under (b) above may result in withholding of such licensee's information from the register of registered CLOTS licensees on the CA's website and regulatory action as necessary and appropriate.

¹³ Tariff of a service is a standard offer of the licensee to customers, including the relevant terms and conditions as well as charges of the service. A CLOTS licensee shall not charge more than the published tariffs for a service, and shall offer the service on the published terms and conditions.

22. CLOTS licensees may also be required to provide other operational statistics to the CA as and when necessary.

Number portability

23. For CLOTS licensees offering services provided by the licensed telecommunications operators on which the CA has directed to facilitate the portability of numbers, the CLOTS licensees are required to make arrangements at its own cost to facilitate the fulfilment of the obligations by the operators concerned of porting numbers from the numbering plan of Hong Kong. To this end, the CLOTS licensees concerned shall observe and conform to any applicable code of practice or guideline¹⁴ issued and amended by the CA from time to time in respect of procedures for handling number portability.

Further Information

24. For further information, interested parties may make reference to the statement of the CA on the subject published on 26 April 2019¹⁵ and the revised CLOTS effective from 26 October 2019¹⁶.

Office of the Communications Authority

7 June 2021

¹⁴ For details, please see:
<https://www.coms-auth.hk/filemanager/statement/en/upload/241/cop20131206e.pdf>.

¹⁵ See Footnote 1.

¹⁶ See Footnote 2.