

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

(Issued on 30 August 2019; to be effective on 26 October 2019)

### **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 equipment. 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 on 26 April 2019<sup>1</sup> following a public consultation by the Communications Authority (“CA”). The revised CLOTS takes effect on 26 October 2019<sup>2</sup>. 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 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.

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<sup>1</sup> 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](https://www.coms-auth.hk/filemanager/statement/en/upload/502/ca_statement_20190426.pdf).

<sup>2</sup> The revised CLOTS is available at: [https://www.coms-auth.hk/filemanager/common/licensing/Offer\\_of\\_Tele\\_Services\\_effect\\_from\\_20191026\\_en.pdf](https://www.coms-auth.hk/filemanager/common/licensing/Offer_of_Tele_Services_effect_from_20191026_en.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 CA<sup>3</sup>.

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

- (a) local mobile voice and/or data services operated by local mobile network operators;
- (b) local fixed voice and/or broadband services operated by local fixed network operators;
- (c) prepaid International Direct Dial (“IDD”) services operated by external telecommunications services operators;
- (d) “Wi-Fi Eggs” services offered under the resellers’ own brand names to Hong Kong consumers for use during overseas visits<sup>4</sup>; and
- (e) prepaid international voice/data roaming services offered under the resellers’ own brand names to Hong Kong consumers for use during overseas visits.

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.

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<sup>4</sup> 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 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 practices<sup>5</sup> 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 website<sup>6</sup>.

### Registration Requirement

11. CLOTS licensees 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. To enable a smooth transition to the revised CLOTS regime taking effect from 26 October 2019, existing CLOTS licensees are allowed three months' time after the effective date of the revised CLOTS (i.e. **no later than 26 January 2020**) to complete the registration requirement.

12. With a view to reducing the administrative burden of CLOTS licensees with smaller scale of operation, currently only those with **a customer base of 10 000 subscriptions or more** in any month over the past three months are required to fulfill the above registration requirement. For CLOTS licensees with a customer base of less than 10 000 subscriptions, the CA has decided to waive them from the registration requirement but they are welcome to register on a voluntary basis.

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<sup>5</sup> 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](https://www.coms-auth.hk/en/policies_regulations/cop_guidelines/telecomm/index.html).

<sup>6</sup> 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](https://www.coms-auth.hk/en/licensing/telecommunications/class/docs_to_be_observed_by_class_licensees_for_offer/index.html).

13. All CLOTS licensees with a customer base of 10 000 subscriptions or more (see paragraphs 14 and 15 below on the definition of “customer” and “subscription”) are required to register, regardless of the types of services offered, or whether they are reselling services to customers outside Hong Kong so long as the offer of telecommunications services is conducted in Hong Kong. A single customer may have multiple subscriptions with a CLOTS licensee.

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.

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 subscriber identification module (“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 “subscription” for the services mentioned under paragraphs 8(a)-(e) above -

	<b>Telecommunications Services Offered</b>	<b>Examples of a “Subscription”</b>
(a)	Local mobile voice and/or data services	<ul style="list-style-type: none"> <li>• a SIM card</li> <li>• an e-SIM</li> </ul>
(b)	Local fixed voice and/or broadband services	<ul style="list-style-type: none"> <li>• a fixed line<sup>7</sup></li> <li>• a virtual customer connection<sup>8</sup></li> </ul>
(c)	Prepaid IDD services	<ul style="list-style-type: none"> <li>• a subscriber account</li> </ul>
(d)	“Wi-Fi Eggs” services	<ul style="list-style-type: none"> <li>• a Wi-Fi router embedding a SIM</li> </ul>
(e)	Prepaid international voice/data roaming services	<ul style="list-style-type: none"> <li>• a SIM card</li> <li>• an e-SIM</li> </ul>

<sup>7</sup> 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.

<sup>8</sup> 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.

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 with a customer base of 10 000 subscriptions or more is required to register the following information with the CA through the links below –

[https://app2.coms-auth.hk/clots\\_ext/licenceRegistration?lang=en](https://app2.coms-auth.hk/clots_ext/licenceRegistration?lang=en)

in English; or

<https://app2.coms->

[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 (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)<sup>9</sup> 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](mailto: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.

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<sup>9</sup> Information on licensed operators is available at: <https://www.coms-auth.hk/en/licensing/telecommunications/index.html>.

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](https://app2.coms-auth.hk/clots_ext/login?lang=en) in English; or  
[https://app2.coms-auth.hk/clots\\_ext/login?lang=zh\\_HK](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 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 tariffs<sup>10</sup> of the services; and
- (g) the duration or validity period of the services.

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<sup>10</sup> 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.

## 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 -

- (i) 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
- (ii) 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 (ii) 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.

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 guideline<sup>11</sup> issued and amended by the CA from time to time in respect of procedures for handling number portability.

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<sup>11</sup> For details, please see:  
<https://www.coms-auth.hk/filemanager/statement/en/upload/241/cop20131206e.pdf>.

## **Further Information**

24. For further information of the revised CLOTS, interested parties may make reference to the statement of the CA on the subject published on 26 April 2019<sup>12</sup> and the revised CLOTS to be effective on 26 October 2019<sup>13</sup>.

**Office of the Communications Authority**

30 August 2019

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<sup>12</sup> See Footnote 1.

<sup>13</sup> See Footnote 2.