



FREQUENTLY ASKED QUESTIONS (FAQ) ON LICENSING CLOUD SERVICE PROVIDERS

1. Why MCMC imposed the regulation on cloud services?

In line with MyDIGITAL initiatives, Government of Malaysia is moving towards “Cloud First Policy” whereby the reliance on cloud services will increase exponentially. There is a concern on data safety and trust considering high adoption by consumers on cloud services in their daily activities more so with public data in the cloud. This regulatory approach will ensure cloud service providers maintain a high level of data security, data privacy, data protection and data flows whilst being able to provide a legal protection for consumers and public agencies.

2. What is the regulatory approach for cloud service providers?

In view of the potential regulatory loopholes regarding the unregulated data stored in cloud, the cloud services would need to be regulated to provide a safe and trusted environment for the said service to continue to flourish, as uncertainty in terms of the applicable laws or regulations may hinder the public and investors from using/investing in the services offered.

In this respect, MCMC would be licensing the cloud services under a class licence, specifically under the Applications Service Providers Class [“ASP(C)”] licence and would be adopting a light touch approach, both of which are intended to provide easy market access and promote industry growth.

3. Why is MCMC undertaking regulation of cloud services through licensing?

Licensing is one of the available regulatory tools under the Communications and Multimedia Act 1998 (“CMA98”). The regulation of cloud services by way of licensing would be able to standardize, stabilize and regulate the activities related to cloud services efficiently.

In line with the regulatory regime propagated under the CMA98, licensees are also accorded some form of self-regulation through the availability of forums and voluntary industry codes which the licensees themselves can develop and be duly registered with MCMC.

This is seen as a very convenient environment for emerging services like cloud services, where the said service would still have the flexibility to grow but within a regulated atmosphere.

4. What is the salient feature of the light touch approach by MCMC?

As highlighted above, MCMC is adopting a light touch approach whereby MCMC will be implementing a no worse off policy in the licensing of the cloud service providers.

In this respect, related activities that are currently exempted under the current licensing framework such as 'web hosting and client server' will remain exempted, and only persons undertaking the cloud service activities would be required to be licensed under the ASP(C) licence.

5. What does Applications Service Providers Class licence mean for a cloud service provider?

As highlighted above, this type of licence is intended to provide easy market access and promote industry growth.

In this respect, as an ASP (C) licence holder, cloud service providers can be registered easily (on an annual basis) with no restriction of foreign shareholding.

In addition, there would also be an imposition of zero weightage factor on the revenue received from the cloud service activities

6. Will the "web hosting and client server" activities remain exempted?

Yes. As highlighted above, under the proposed light touch approach, the licensing requirement under the ASP(C) licence will be imposed on the cloud service activities only.

Web hosting and client server activity will remain as exempted applications services under the Communications and Multimedia (Licensing) (Exemption) Order 2000.

7. What is the definition of cloud services?

For the purpose of regulation, MCMC has defined cloud services as follows:

Cloud Services means any service made available to end users on demand via the Internet from a cloud computing provider's server.

8. Who is the end user under the definition?

End user can be a natural or artificial person who the cloud services is being provided to.

Illustrations:

- *Cloud services is being provide to **Bank G**. Bank G is an end user.*
- *Cloud services is being provided to **Mr. H**. Mr. H is an end user.*

9. Who is required to apply for the ASP (C) licence?

A person with local presence would be required to be registered as an ASP(C) licensee. In this respect, local presence would be determined based on the followings:

- (i) a person that is locally incorporated/established in accordance with the relevant laws. However, a local branch of a foreign person would not fall within this category as branches of a foreign person is still regarded as part of the said foreign person and would be inconsistent with regulation 23 of the Communications and Multimedia (Licensing) Regulations 2000 on; or
- (ii) a person that is locally incorporated/established in accordance with the relevant laws and provides cloud services that originates from a foreign cloud service provider, through its local data centre. In this respect, the provisioning of the foreign cloud services would be undertaken by the local data centre which would have control over the cloud services that are being made available to the end users

Illustrations:

- **Company A** is a locally incorporated company providing cloud services to end users. Company A is required to be registered under the ASP (C) licence for providing the said services.
- **Company B** is not a locally incorporated company but provides cloud services through a local data centre, **Company C**, to end users. Company C is required to be registered under the ASP (C) licence for providing the foreign cloud service provider's services through its local data centre.
- **Company D** is not a locally incorporated company and does not provide cloud services through any local data centres to end users. Company D is not required to be registered under the ASP (C) licence.
- **Company E** is not a locally incorporated company, but has a local branch. As the branch is not considered as local presence, the said branch need not be registered under the ASP (C) licence.

10. When will the regulation of cloud services be implemented/ take effect?

The regulation will take effect beginning 1 January 2022. There will be a grace period provided for companies to manage its affairs from 1 January 2022 until 31 March 2022 which MCMC accept voluntary registration submission under this period. The regulation will be in force beginning 1 April 2022.

11. How to apply for the ASP (C) licence?

ASP (C) Licence Application

Application for ASP (C) licence can be made by submitting the following document to the Licensing Department, MCMC:

- i. Two (2) copies of FORM D of the Third Schedule of the Communications and Multimedia Act 1998 (CMA98);
- ii. Registration fee of RM2,500.00 yearly;
- iii. Checklist on Registration Notice;
- iv. Statutory forms under the Companies Act 2016;
- v. Company Profile and Organisation Chart;
- vi. Brief Description of type of services being provided (in this case, cloud services).

The registration process will take 14 days for new registration and 7 days for annual re-registration application. Application information, documents and checklist can be downloaded from the MCMC website.

12. What is the tenure or validity period of the licences?

Validity period for ASP (C) licence is one (1) year. Licensee is required to submit the registration application yearly.

13. Will there be any foreign restriction in shareholding in the licence?

There will be no restriction in shareholding under the ASP (C) licence.

14. What if the person is currently registered under the ASP (C) licence?

For existing ASP (C) licence holders that are providing cloud services, the said licence holders may continue providing cloud services under the current ASP (C) license, but would be required to include cloud service activities as one of the activities undertaken, during the re-registration of the said licence for the following year.

15. What if the services are being provided without the necessary licence?

Provisioning of licensable activities without licence is an offence under the CMA98. Service providers are advised to get the necessary licence(s) before commencing their operation.

16. How will this assist Cloud Service Providers manage information requests from Law Enforcement Agencies' (LEAs) requests for information for investigation purposes?

The licensing of cloud service providers under the CMA98 will provide certainty to the procedures for the request for information by LEAs and avoid any disruptions to the operations of the cloud services through the implementation of the relevant/applicable standard operating procedures for data request and disclosure in respect of cloud services.