

**Consultation Paper
on the Creation of
Class Licence for Terminal Equipment
under Section 7B(2) of the Telecommunications Ordinance**

Issued by the Telecommunications Authority, Hong Kong

16 March 2001

Introduction – the Class Licence Regime

Class licensing is a new type of licensing provided under the streamlined licensing system introduced by the Telecommunication (Amendment) Ordinance 2000 (Amendment Ordinance). It is an administratively simple approach, whereby a class of people is authorised to provide specified telecommunications or radiocommunications services or to operate telecommunications or radiocommunications installations without the need to undergo an application and processing procedure before obtaining the necessary licence. A class licence will be universally applicable to a ‘class’ of persons intended to be regulated, so that as soon as the licence is created, it can be immediately applied to and enforceable against the targeted telecommunications systems or services. Class licensing is seen as an effective and efficient means to regulate the operation of the less extensive, less complicated or less essential telecommunications or radiocommunications networks, systems or installations, or the provision of the less extensive, complicated or essential telecommunications or radiocommunications services.

2. Annex 1 gives an introduction of the new licensing regime under the Amendment Ordinance (including class licence).

Class Licence for Terminal Equipment

3. Terminal equipment in this context refers to the equipment which is used or is intended for use by a customer of the holder of a fixed carrier licence¹, a mobile carrier licence, a fixed telecommunications network services

¹ See Annex 1 for an introduction of carrier licence regime and the fixed carrier and mobile carrier licences.

(FTNS) licence, a public radiocommunications service (PRS) licence or a public non-exclusive telecommunications service (PNETS) licence (collectively referred to as “public telecommunications network or service licences”). It covers radiocommunications apparatus such as mobile telephones and apparatus for non-radiocommunications such as telephones, fax terminals, private automatic branch exchanges (PABX) and modems. Radiocommunications apparatus not for direct radiocommunications with the radio stations licensed under public telecommunications network or service licences, such as cordless telephones or wireless local area networks, are not covered in this class licence. The Telecommunications Authority (TA) will create another class licence to cover the use and possession of cordless telephones and other low power devices. A separate consultation will be conducted to seek views from interested parties.

4. Where terminal equipment (other than apparatus for radiocommunications) is connected to the network or equipment of a fixed carrier, an FTNS or a PNETS licensee and is in use, the user is regarded as establishing or maintaining a means of telecommunications within the meaning of section 8(1)(a) of the Telecommunications Ordinance. According to section 8(1)(a), any person who establishes or maintains a means of telecommunications is required to obtain a licence. As for radiocommunications apparatus for direct radiocommunications with the radio stations licensed under a public telecommunications network or service licence, a licence is required as soon as a person possesses or uses such apparatus (section 8(1)(b)).

5. However, despite section 8, at present no licence is actually granted to cover the use and possession of terminal equipment. Given that the number of users of terminal equipment is enormous, and the obligations to which the users are subject are much less onerous than the telecommunications operators, it is impractical to undergo the usual application and processing procedure for issuing individual licences to each and every user. For these reasons, the following three exemption orders were issued on the respective dates by the then Governor-in-Council to expressly exempt the terminal equipment from licensing:

- ◆ the Telecommunications (Public Non-Exclusive Telecommunications Service Customers) (Exemption from Licensing) Order (6 January 1984);

- ◆ the Telecommunications (Public Radiocommunications Service Customers) (Exemption from Licensing) Order (21 December 1990); and
- ◆ the Telecommunications (Fixed Telecommunications Network Services) (Exemption from Licensing) Order (1 July 1995).

6. In this consultation paper, the TA proposes to create a class licence for terminal equipment in replacement of the three exemption orders and explains in detail the reasons for such change and the regulatory framework. The TA invites comments from all interested parties on his proposal.

Replacement of Exemption Orders by Class Licence

7. Class licensing is similar to the arrangement under the current licensing regime granting exemption to a class of persons in that no individual licences are granted to the parties concerned. An exemption order can only be granted by the Chief Executive-in-Council whereas a class licence is created by the TA. As the telecommunications industry is evolving at a fast pace with technological advancement, the class licence regime is considered to be the more appropriate alternative to class exemption in that the TA can be more flexible and efficient in responding to the changing needs of the telecommunications market by creating or amending a class licence in a shorter timeframe. It is not only administratively simple, but also places the operation of the installations and services concerned within the regulatory framework under the Telecommunications Ordinance rather than outside of it.

8. To tie in with the implementation of the carrier licence regime on 1 April 2001, the TA proposes to create a class licence not only to cover the use of the terminal equipment by the customers of FTNS, PRS and PNETS licensees, but also of the fixed carrier and mobile carrier licensees, who operate essentially the same kinds of networks as the FTNS licensees and PRS licensees for personal communications service (PCS), public mobile radiotelephone services (PMRS) and services other than land mobile services. All three exemption orders will be replaced and repealed on the same date the class licence is created.

The Class Licence

9. A draft class licence for terminal equipment is attached in Annex 2. The intention of the class licence is to license those persons who use the terminal equipment as end-users. Therefore, it does not cover anyone making use of the terminal equipment to operate a public telecommunications service, or sell or lease the terminal equipment in the course of trade or business.

10. Different from the Telecommunications (Public Radiocommunications Service Customers) (Exemption from Licensing) Order, in which a person is exempted from licensing only when he *uses* a mobile telephones (which is an apparatus for radiocommunications) as a customer of a licensed mobile network, the class licence also allows a person to *possess* a mobile telephone which is not in use. This is in recognition of the market reality that a mobile telephone can be freely purchased from a dealer without the need of the purchaser being a customer of a licensed mobile operator beforehand.

11. The TA welcomes views on the proposal outlined in paragraphs 7-10 above, in particular the qualifications of the persons eligible to be licensees, and the scope and conditions of the licence.

Timing

12. The consultation process will complete on 6 April 2001. After consideration of the comments received, the TA will finalise the class licence. The class licence will commence operation on the same date the three exemption orders are repealed to ensure that there is no vacuum period between the transition to the new regime. It is intended that, subject to the outcome of consultation on this proposal, the class licence shall come into operation in mid-2001 so as to tie in with the implementation of the carrier licence regime.

Invitation of Comments

13. Views and comments on this consultation paper should reach the Office of the Telecommunications Authority on or before 6 April 2001. The TA reserves the right to publish all views and comments and to disclose the identity of the source. Any part of the submission, which is considered commercially confidential, should be marked. The TA would take such markings into account in making his decision as to whether to disclose such information or not. Submissions should be addressed to:

Office of the Telecommunications Authority
29/F Wu Chung House
213 Queen's Road Central
Wanchai
Hong Kong
[Attention: Regulatory Affairs Manager (Facilities Licensing)]
Fax: 2803 5110
E-mail: ecchui@ofta.gov.hk

An electronic copy of the submission in Word 7.0 format should be provided by e-mail to the address indicated above.

Office of the Telecommunications Authority
16 March 2001

**New Licensing Regime introduced by
the Telecommunication (Amendment) Ordinance 2000**

The Telecommunication (Amendment) Ordinance 2000 (Amendment Ordinance) was passed by the Legislative Council on 7 June 2000. It provides for a new licensing regime categorised broadly into four types of licences, namely exclusive licence, carrier licence, class licence and licences that fall outside the former three categories. The intention is to streamline the licensing procedures to cope with the rapid development of the telecommunications industry. Both carrier licence and class licence are new form of licences introduced to the Hong Kong telecommunications regulatory regime. The Government has gazetted on 12 January 2001 that the new licensing regime under section 7 of the Telecommunications Ordinance shall become effective and replace the existing licensing regime on 1 April 2001.

2. Section 7B(1) of the Telecommunications Ordinance (as amended by the Amendment Ordinance) provides that ‘a class licence gives a person the right to carry on the activities specified in the class licence that are prohibited under section 8(1) except under a licence subject to the conditions of the class licence’. Under section 7B(2), the TA may create a class licence for telecommunications (including radiocommunications) networks, systems, installations or services. The TA may also impose conditions for a class licence, as well as specify the qualifications that a person is required to possess before he is eligible to be a class licensee (section 7B(6)). Once a person meets the qualifications, he will become a licensee under the class licence and be subject to the licence conditions and provisions of the Telecommunications Ordinance that applies to the class licence. Before creating a class licence, the TA is required by section 7B(3) to, by notice in the Gazette, invite members of the public to make representations.

3. The carrier licence is intended to regulate facilities which involve substantial investment and provide, or have the potential to provide, services to a wide sector of the public. Its scope is wide enough to encompass a number of telecommunications licences currently in existence, including FTNS licences and PRS licences for PCS, PMRS and services other than land mobile services.

The Secretary for Information Technology and Broadcasting (Secretary) has gazetted on 12 January 2001 the carrier licence regulation, which will commence on 1 April 2001. The new class licence for terminal equipment proposed by the TA in this consultation paper include equipment which is used or is intended for use by a customer of holder of the new fixed or mobile carrier licence, holder of the FTNS or PRS licence under the existing licensing regime as well as holder of the PNETS licence.

**TELECOMMUNICATIONS ORDINANCE
(Chapter 106)**

CLASS LICENCE

TERMINAL EQUIPMENT

The Telecommunications Authority, in exercise of the powers conferred on him by sections 7(5) and 7B(2) of the Telecommunications Ordinance (Cap 106), issues this licence (“Licence”) on this [] day of [], 2001.

1. Interpretation

1.1 In this Licence –

“Authority” means the Telecommunications Authority appointed under section 5 of the Ordinance;

“Licensee” means a person licensed under clause 2 of this Licence;

“Ordinance” means the Telecommunications Ordinance (Cap 106);

“terminal equipment” means telecommunications equipment that is

(i) connected, or for connection, to the network or equipment of the holder of a fixed carrier licence, a mobile carrier licence, a fixed telecommunications network services licence, a public radiocommunications service licence or a public non-exclusive telecommunications service licence; and

(ii) intended for use by a customer of the holder of such licence,

provided that where the telecommunications equipment is a radiocommunications apparatus, the apparatus shall

- (a) conform to the standards and specifications (including performance specifications) prescribed from time to time by the Authority under the Ordinance; and
- (b) be for direct transmission and reception of communications to and from radio stations licensed under a fixed carrier licence, a mobile carrier licence, a fixed telecommunications network services licence, a public radiocommunications service licence or a public non-exclusive telecommunications service licence.

1.2 Any word or expression used in this Licence shall, unless otherwise provided, have the same meaning as it has in the Ordinance or regulations made under the Ordinance.

1.3 For the purposes of interpreting this Licence, headings and titles shall be disregarded.

2. Grant of Licence

2.1 A person is licensed to establish, maintain, possess or use the terminal equipment provided that he does not

- (a) use the terminal equipment to provide a public telecommunications service; and
- (b) sell or lease the terminal equipment in the course of trade or business.

3. General

3.1 This Licence shall not be construed as granting an exclusive right to the Licensee.

3.2 This Licence replaces any licence or any exemption from licensing, however described, which may have been granted to the Licensee.

3.3 This Licence shall remain in full force unless expressly revoked by the Authority.

4. Compliance Generally

- 4.1 The Licensee shall comply with the Ordinance, regulations made under the Ordinance, licence conditions, guidelines, codes of practice, and any other instruments which may from time to time be issued by the Authority under the Ordinance.