

Intellectual Property

Balancing Rights within the Collective Management Ecosystem - Class Licensing Scheme for Collective Management Organisations

Introduction

Collective Management Organisations ("**CMOs**") perform a vital role in Singapore's creative sector by acting as a conduit between content rights owners and content users. CMOs represent thousands of content rights owners in Singapore and provide content users with efficient and cost-effective access to protected content.

Seeking to enhance Singapore's collective management ecosystem, the [Copyright \(Collective Management Organisations\) Regulations 2023](#) ("**Regulations**"), which are made pursuant to Part 9 of the Copyright Act 2021, were gazetted on 31 October 2023. The Regulations set out a new CMO class licensing scheme ("**Licensing Scheme**"), which will come into operation on 1 May 2024.

The Licensing Scheme seeks to achieve a well-functioning collective management ecosystem by raising standards of transparency, accountability, efficiency and good governance amongst CMOs. It applies a light-touch model of regulation targeted at five critical areas, while leaving CMOs with the flexibility to choose how to best comply with the licence conditions.

In this Update, we consider the key aspects of the forthcoming Licensing Scheme.

Licensing Scheme

The Regulations: (i) establish a single class licence scheme for all entities carrying on business as CMOs; (ii) set out the licence conditions that CMOs must comply with; and (iii) set out procedural matters relating to the regulation of CMOs. The Regulations incorporate feedback received¹ during the public consultation exercise conducted by the Ministry of Law and the Intellectual Property Office of Singapore ("**IPOS**") from 7 November 2022 to 4 January 2023 on the draft Copyright (Collective Management Organisations) Regulations 2023. You may read our Legal Update regarding the public consultation [here](#).

Once the Regulations are in force, all CMOs will be automatically subject to the mandatory Licensing Scheme and must comply with all applicable licence conditions. Failure to do so may result in regulatory

¹ The summary of key changes to the draft Copyright (Collective Management Organisations) Regulations issued for public consultation in November 2022 can be accessed [here](#).

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enforcement action. The Licensing Scheme operates automatically, hence CMOs do not need to register with IPOS or pay to be licensed.

Key stakeholders

The key stakeholders affected by the Licensing Scheme are:

1. **CMOs** – The mandatory class licence applies to all entities that fall within the legal definition of a CMO, broadly an entity in the business of collectively managing the use of its members' content, for the collective benefit of those members and which offers one or more tariff schemes to the public in Singapore. Subscription-based services and corporate groups are exempt from the Licensing Scheme.
2. **CMO members** – Members are the authors, makers, publishers, performers, and rights owners for whose benefit a CMO collectively manages the use of content. This excludes the CMO's partner collecting societies, as well as content creators and rights owners whose content is managed by the CMO only by virtue of a representation agreement.
3. **CMO users** – These are individual consumers, businesses and institutions who obtain permission from CMOs to use their members' content.

Key licence conditions

The Licensing Scheme will require all CMOs to comply with a set of licence conditions that regulates the five key areas of members' rights, the distribution of tariffs, dispute resolution, ensuring good governance and the information to provide to the public. Provided CMOs can meet the minimum standards of transparency, accountability, efficiency and good governance in these areas, they will have the freedom to operate and choose how they can best comply with the licence conditions.

A summary of the salient licence conditions under each key area is provided below.

1. **Members' Rights** – A CMO owes its primary responsibility towards the members it represents, and it is imperative that CMOs treat all members fairly and transparently. The licence conditions establish a minimum standard for CMOs in their dealings with members in their membership agreements and membership policy. CMOs are free to manage their internal dealings with their members provided they meet this minimum standard:
 - (a) Provide all members with a copy of their membership agreement. Any change to the membership agreement must be made in writing.
 - (b) Offer potential members the option of entering into non-exclusive membership agreements. For existing members, CMOs must offer an unconditional right to vary or terminate the rights

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granted to the CMO, including varying the grant of rights from an exclusive to a non-exclusive basis or vice versa, subject only to a notice requirement.

- (c) Give their members the right to participate in the operation of the CMO, including a say in the appointment and removal of directors.
 - (d) Establish, maintain and comply with the following policies, which can only be amended with members' approval:
 - (i) A membership policy that sets out how a CMO manages its relationship with its members;
 - (ii) A distribution policy that governs critical aspects of the distribution of tariffs; and
 - (iii) A dispute resolution policy that deals with the handling of disputes with their members or users.
2. **Distribution of Tariffs** – The distribution policy must set out the method used to calculate tariffs, the frequency of tariff distributions, and how a CMO deals with collected tariffs that it is unable to distribute. A CMO must distribute a tariff within six months after the financial year in which it collected that tariff, unless the distribution policy provides for a longer period. When distributing tariffs, the CMO must also provide members with usage information so members can understand the distributions they receive. Members must also be given the opportunity to dispute and/or query distributions.
3. **Dispute Resolution** – The dispute resolution policy must provide a dispute resolution process by which members and users, including intending users, can raise disputes to the CMO. A CMO must give its final decision on a complaint within 60 days of receiving a notice of dispute, or any shorter period specified in the dispute resolution policy. A CMO is free to manage its own timelines within this period, such as when it will give its initial decision on a complaint. The dispute resolution policy does not preclude any party from referring their dispute to the Copyright Tribunal.
4. **Ensuring Good Governance** – Several licence conditions act as safeguards to ensure that CMOs operate in a transparent and accountable manner:
- (a) A CMO's constitutional documents must provide for the appointment and removal of directors, and disqualification conditions for key officers.
 - (b) CMOs must keep their members updated with a full and transparent picture of their financial performance and operation. CMOs must account for all monies they collect and distribute in administering their members' rights; keep and maintain proper financial records; allow members to inspect financial records; and, for each financial year, produce an annual transparency report that is presented at a general meeting of members.
5. **Information to Provide to Members of the Public** – CMOs must set up and maintain a website with key information and up-to-date documents to enable the public to make informed decisions

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before transacting with the CMO. For users, this includes obtaining confirmation and proof on whether the content that they wish to licence are within a CMO's portfolio.

Failure to comply with licence conditions

CMOs are not required to periodically report to IPOS, nor will they be subject to periodic audits by IPOS. Instead, the Licensing Scheme first empowers members and users to hold CMOs accountable for compliance with the licence conditions via the CMO's dispute resolution process. Where IPOS receives a request for investigation in relation to an alleged breach concerning a user or member, they will only proceed with investigations if the CMO has not addressed the breach after the user or member has exhausted the dispute resolution process under the CMO's dispute resolution policy. IPOS can also investigate and act on its own accord regarding an alleged breach of a class licence condition.

Depending on the factual circumstances and nature of the non-compliance, IPOS may issue a regulatory direction, impose a financial penalty or order a CMO to cease its CMO business. CMOs and their officers have a right to be heard at every stage of the regulatory action process, including a final appeal to the Minister for Law.

Implementation Timeline

CMOs have a six-month notice period, from 31 October 2023, to adjust their operations so they can comply with the Licensing Scheme when it takes effect on 1 May 2024.

IPOS has published a [Guide to the CMO Class Licensing Scheme](#) which includes a compliance checklist for CMOs. The Licensing Scheme will be complemented by non-binding best practice notes, which are intended to encourage and help CMOs to meet industry and international standards. These will be progressively developed in close collaboration with the industry after the Licensing Scheme comes into force.

Concluding Words

The Licensing Scheme seeks to better meet the needs of content creators and users, whilst not imposing a rigid regulatory regime upon CMOs.

Under the Licensing Scheme, CMOs will have a clear set of licence conditions and the flexibility to make their own policies provided they do not contravene the licence conditions. Members will be protected by a set of key rights and the assurance that CMOs will provide them with regular income distributions that are properly accounted for. Users can make better informed decisions and have greater certainty when seeking licenses from CMOs.

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CMOs must use this period prior to the implementation of the Licensing Scheme to develop and implement the necessary policies, procedures, structural and operational changes required to comply with the licence conditions.

Please feel free to contact our team below if you have any questions regarding this development.

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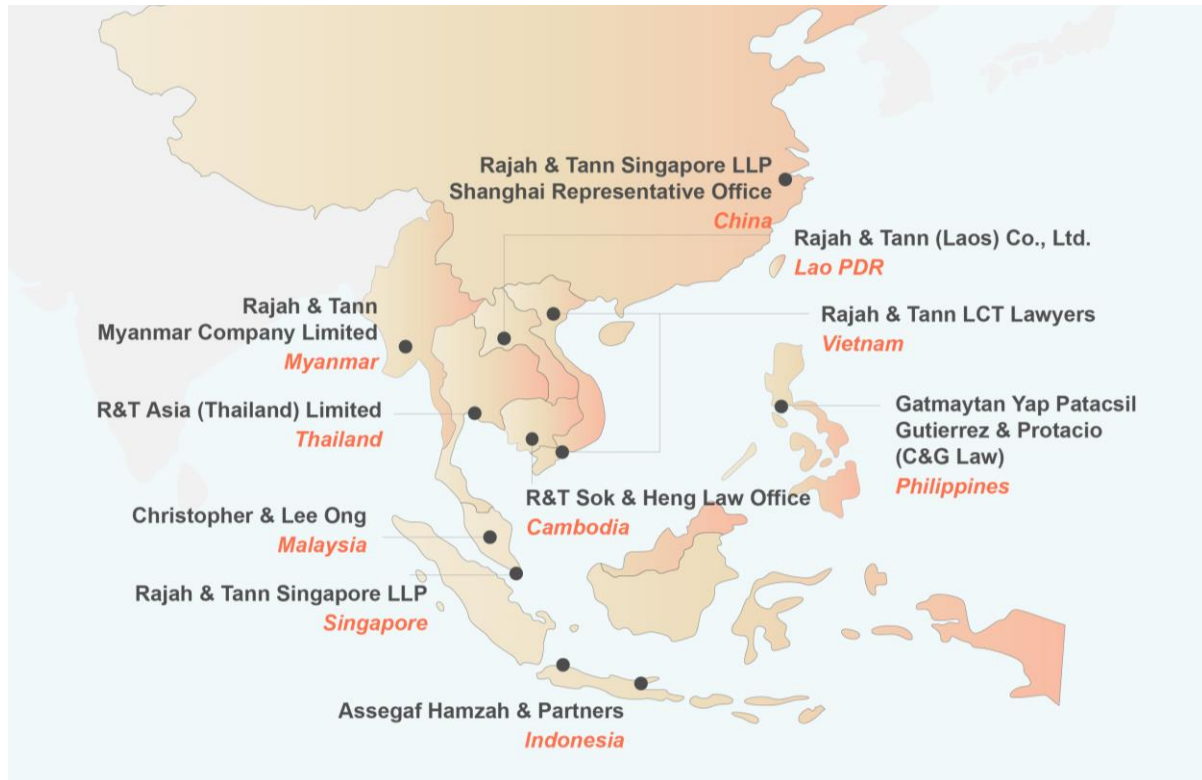
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