
Technology, Media and Telecommunications

Updates to the Regulatory Framework for Social Media and Internet Messaging Services in Malaysia - New Licensing Requirements

Introduction

On 27 July 2024, the Malaysian Communications and Multimedia Commission ("**MCMC**") announced that a new licensing requirement will be imposed on the providers of "social media services" and "internet messaging services" in Malaysia.

As clarified by MCMC, this new licensing requirement is in line with the efforts of the Malaysian Government to: (i) curb various cybercrimes, such as online gambling, online scams, cyberbullying, piracy, harmful artificial intelligence, race, religion and royalty (3R) issues, and child pornography; as well as (ii) ensure that providers of social media services and internet messaging services comply with Malaysian laws, including the Communications and Multimedia Act 1998 ("**CMA**"), Personal Data Protection Act 2010, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Sexual Offences Against Children Act 2017, and Penal Code (collectively, "**Related Laws**").

In order to give legal effect and provide further clarity on this new licensing requirement, amendments to the Communications and Multimedia (Licensing) Regulations 2000 ("**Licensing Regulations**") and/or the Communications and Multimedia (Licensing) (Exemption) Order 2000 ("**Exemption Order**") (as the case may be) are required and these will likely be gazetted on or about 1 August 2024.

Pending the gazettment as well as availability of further details about the amendments, we set out below a brief overview and our insights as to steps that businesses may have to take in order to comply with this new licensing requirement.

1. Who needs to be licensed?

Only providers of "social media services" and "internet messaging services" with at least 8 million registered users in Malaysia ("**Licensable Persons**") will be required to obtain a licence from MCMC.

Technology, Media and Telecommunications

Providers of "social media services" and "internet messaging services" that do not meet the 8 million registered user threshold, as well as users of "social media services" or "internet messaging services", are not subject to this new licensing requirement.

While it was reported that the intention of the Malaysian Government is to impose this licensing requirement on major "social media services" and "internet messaging services", by citing specific platforms such as Facebook, WhatsApp, TikTok, and YouTube, the exact scope of the Licensable Persons may only be ascertained upon the gazettment of the amendments to the Licensing Regulations and/or the Exemption Order (as the case may be).

2. What is the type of licence to be obtained?

The type of licence to be obtained from MCMC is an applications service provider class licence ("**ASP(C) Licence**").

It is pertinent to note that the ASP(C) Licence is an existing type of licence under the current CMA licensing regime, which is imposed on licensable categories of applications services as specified under the Licensing Regulations and Exemption Order. Examples of applications services which are currently licensable under an ASP(C) Licence include internet access services and public cellular services.

In other words, this new licensing requirement expands the scope of licensable categories of applications services under the existing ASP(C) Licence to providers of "social media services" and "internet messaging services" as well.

It also follows that the existing eligibility requirements and licensing obligations typically imposed on an ASP(C) licence holder will be extended to the Licensable Persons for their ASP(C) Licence.

3. When will the licensing requirement come into force?

This new licensing requirement will come into force from 1 August 2024 onwards.

A grace period of five months is provided for the Licensable Persons to obtain an ASP(C) Licence and MCMC intends to enforce this new licensing requirement from 1 January 2025 onwards.

4. What are the implications of not obtaining a licence?

MCMC is empowered to exercise its power under the CMA against Licensable Persons who do not comply with the new licensing requirement and continue to operate after 1 January 2025 without a valid ASP(C) Licence. Under Section 126 of the CMA, upon conviction, a Licensable Person who fails to

Technology, Media and Telecommunications

obtain an ASP(C) Licence shall be liable to a fine not exceeding RM500,000 or a jail term not exceeding five years or both.

Further, it was also reported that the Malaysian Government intends to shut down the operations of such Licensable Persons who do not have a valid ASP(C) Licence and continue to operate after 1 January 2025.

5. What is the process of obtaining a licence?

Given that the ASP(C) Licence is an existing type of licence under the current CMA licensing regime, the current process to obtain an ASP(C) Licence will similarly apply to the Licensable Persons in applying for their ASP(C) Licence.

In general, a foreign company is ineligible to apply for an ASP(C) Licence. As such, Licensable Persons without a local presence will be required to incorporate a local company or designate an existing local subsidiary as an applicant for the ASP(C) Licence.

Notwithstanding this general eligibility requirement, given that the Licensing Regulations empower the Minister (as defined under the CMA) to permit a foreign company to be registered as an ASP(C) Licence holder for a good cause or as the public interest may require, there remains a possibility that the Minister may permit a foreign company to be an applicant instead.

6. How will this licence impact your business?

The existing licensing obligations that are typically applicable to an ASP(C) Licence holder shall be applicable to the Licensable Persons as well.

Over and above the existing licensing obligations, it is also expected that the Malaysian Government will leverage on this new licensing requirement as a means to increase monitoring, control and enforcement on the Licensable Persons, including by way of: (i) exercising its existing powers and issuing new legal instruments under the CMA to possibly implement or increase content moderation systems or processes; (ii) increasing enforcement of and proposing amendments to tighten existing Related Laws, as well as; (iii) introducing new laws relating to the operations of the Licensable Persons, such as the Online Safety Bill, Malaysian Media Council Bill and proposed laws with respect to cyberbullying offences.

Technology, Media and Telecommunications

Moving Forward

Relevant businesses and stakeholders are advised to stay abreast of these developments, assess the applicability of the licence to their business, review existing processes for compliance with the licensing obligations, and consider readiness of the business in addressing the knock-on effect of the new licensing requirement vis-à-vis other related Malaysian laws.

We trust the above provides a useful update relating to the regulatory landscape of online platforms in Malaysia. Should you require any assistance or clarification in relation to the above, or any matter relating to technology, media and telecommunications, please feel free to contact us at your convenience.

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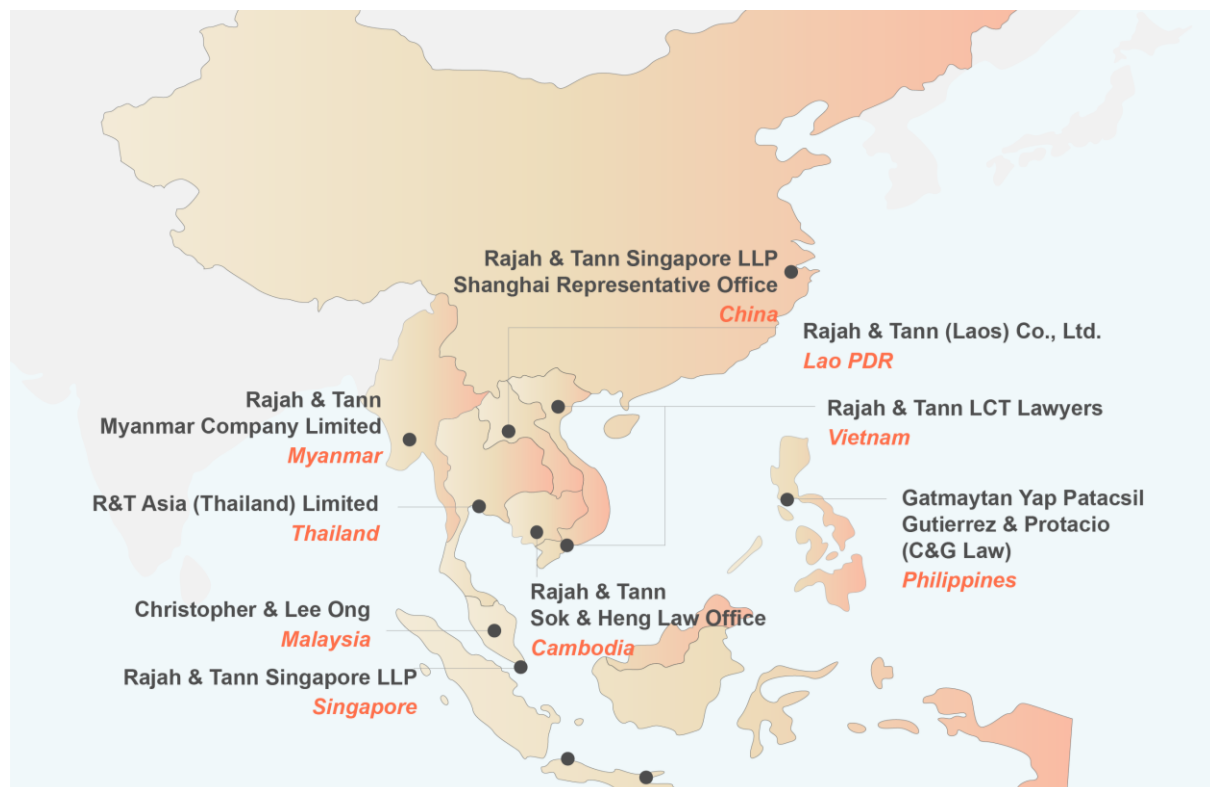
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