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Intellectual Property

# Regulation and Licensing of Collective Management Organisations

## - Public Consultation on Proposed Draft Regulations

### Introduction

The Ministry of Law ("**MinLaw**") and the Intellectual Property Office of Singapore ("**IPOS**") are conducting a Public Consultation on the proposed draft Copyright (Collective Management Organisations) Regulations 2023 ("**Regulations**"). The Public Consultation will be held from 7 November 2022 to 4 December 2022.

The Public Consultation is part of an ongoing review of Singapore's copyright regime, and seeks to introduce a class licensing scheme for collective management organisations ("**CMOs**"). MinLaw and IPOS had earlier conducted a consultation in 2020 ("**2020 Consultation**") on the collective rights management ecosystem. For more information on the 2020 Consultation, please see our earlier Legal Update [here](#).

The draft Regulations implement the proposals made at the 2020 Consultation and take in the feedback received on those proposals. While CMOs have thus far not been subject to substantive regulation, the draft Regulations set out a series of licence conditions which CMOs must comply with, which address issues relating to members' rights and dispute resolution between the CMO and its members and users. The Public Consultation thus involves the rights and interests of members and users, as well as the obligations of CMOs.

This Update highlights the key elements of the draft Regulations in this Public Consultation.

### CMO Licensing Regime

As part of the reform of Singapore's copyright regime, MinLaw and IPOS seek to address the lack of regulation and independent oversight over the governance and management of CMOs. This is to be achieved through the introduction of a licensing scheme that sets out certain key standards for CMOs.

The legislation establishing the statutory framework for the regulation of CMOs is contained in Part 9 of the Copyright Act 2021 (which is not yet in force). Under this mandatory class licensing scheme, all CMOs will be automatically licensed and must comply with all applicable licence conditions. CMOs and

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their officers who breach the licence conditions may be subject to regulatory action by IPOS. Part 9 and the Regulations will come into force at the same time.

In this latest Public Consultation, MinLaw and IPOS have provided further details on the proposed CMO licensing framework through the draft Regulations. The Public Consultation seeks views on the language of the draft Regulations, in particular feedback on whether there is any:

- ambiguity or lack of clarity as to the scope of any provision or how it should operate, including any aspect in which a particular provision may be more prescriptive; and
- practical or operational difficulty which has not already been addressed in the draft Regulations or explained in this paper, and if so, how it may be addressed, taking into account the framework of the licensing scheme.

## Key Features of Draft Regulations

### Overall framework

The proposed class licensing scheme in the draft Regulations will introduce a light-touch model of regulation.

The framework includes the following key features:

- **No fee-setting** – The scheme does not intervene in the fees that CMOs charge for permission to use the works and performances that they manage, although it does provide that CMOs must have a dispute resolution policy and a query response process that users can utilise.
- **Automatic licensing** – Licensing of CMOs is automatic, i.e. CMOs will not need to apply for a licence or pay any fees in order to operate in Singapore.
- **Regulations only in critical areas** – The licence conditions target only critical areas where transparency, accountability, efficiency, and good governance can be improved.
- **No legal obligations on users** – IPOS has indicated that it does not intend to impose legal obligations on users through the licensing scheme at this stage as the objective of the scheme is to regulate CMOs.
- **Policing by members and users** – CMOs will not be required to report to IPOS periodically, or to be subject to periodic IPOS audits. However, members and users will be empowered to

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hold CMOs to account for compliance with the licence conditions at first instance, with IPOS stepping in if parties are unable to resolve the issue internally.

- **CMOs retain flexibility** – Wherever possible, CMOs are given flexibility in compliance. For example, certain licence conditions allow CMOs to deviate from prescribed standards so long as they obtain approval from their members to do so. Other licence conditions impose only minimum and maximum limits, within which CMOs remain free to operate. Yet other licence conditions require CMOs to introduce a policy to address certain matters, but do not prescribe the specific details of what that policy should set out.

There will be a six-month notice period before the proposed class licensing scheme takes effect. This is to give CMOs the opportunity and preparatory time to develop and implement all necessary policies and procedures and make all necessary changes to their organisational structures and operations.

### **Class licence conditions**

The class licensing scheme requires all persons falling within the prescribed definition of a CMO (essentially an entity that is in the business of collectively managing the use of copyright works or protected performances) to comply with all licence conditions of the class licence that applies to them. The Public Consultation provides that MinLaw and IPOS currently intend to establish only one general class licence that will apply to all entities carrying on business as CMOs. CMOs are required to comply with the legally-binding requirements set out in the Regulations, or face regulatory action by IPOS upon failure to do so.

The key licence conditions in the draft Regulations include the following:

- **Members' rights** – The draft Regulations establish a minimum standard for CMOs in their dealings with their members, such as:
  - o CMOs must give each member a copy of their membership agreement, which must include certain prescribed matters, such as the nature and type of rights that are granted by members to the CMO and the scope of the rights of administration granted by members to the CMO;
  - o CMOs are required to establish, maintain and comply with the following sets of policies: (i) a membership policy setting out how a CMO manages its relationship with its members; (ii) a distribution policy governing various aspects of the collection and distribution of tariffs for licensing of copyright works; and (iii) a dispute resolution policy stipulating how disputes between members and the CMO are to be resolved;
  - o Members must have an unconditional right to vary or terminate the rights granted to the CMO, subject only to a notice requirement;

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- o CMOs must inform its members of key changes to the CMO and regulatory sanctions imposed on it or its officers; and
  - o CMOs must hold general meetings of its members at least once every financial year.
- **Collection and distribution of royalties** – The draft Regulations require CMOs to establish and comply with a distribution policy, which must govern at least the prescribed critical aspects relating to collection and distribution of tariffs:
  - o Calculation of distributions, which should be based on either (i) actual use of a member's portfolio or, to the extent that this is not practicable, (ii) estimated use of the member's portfolio;
  - o Frequency and manner of distributions, which should be within six months of the financial year for which the tariffs were collected;
  - o Obligations concerning tariffs that CMOs are unable to distribute despite their best efforts;
  - o Collection of information on use of CMOs' portfolios;
  - o Sufficiency of information given to members on usage of CMOs' portfolios and distributions to enable the members to understand the distributions that they receive; and
  - o Members' rights to query and dispute their distributions.
- **Dispute resolution** – The draft Regulations require CMOs to establish and comply with a dispute resolution policy to deal with complaints by members and users (including intending users). The policy must provide a dispute resolution process for members and users to file a complaint to a CMO, which must then respond within a specified period.

This policy must set out, at a minimum:

- o The procedure for giving a notice of dispute to the CMO;
  - o A requirement for the CMO to act in good faith and reasonably in investigating, deciding on, and dealing with the dispute;
  - o The period (which must not exceed 30 days) within which the CMO must give its written decision and its reasons for the decision;
  - o Any internal recourse against the CMO's decision; and
  - o That the policy does not affect any right of the CMO or the counterparty (including the right to refer the dispute to a copyright tribunal).
- **Good governance** – The draft Regulations introduce several safeguards to ensure that CMOs operate with good governance, including in the following areas:

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- o Appointment and removal of the board of directors;
  - o Disqualification of key officers;
  - o Keeping of proper financial records for at least six years;
  - o Allowing its members to inspect its financial records; and
  - o Making and presenting an annual report to a general meeting of its members.
- **Provision of information to the public** – The draft Regulations require each CMO to maintain an Internet website on which it must publish key documents and information, which will enable users and potential members to make informed decisions in their dealings with the CMO. This includes the following:
    - o A list of every work and performance in its portfolio;
    - o A list of all the reciprocal agreements with partner CMOs; and
    - o A process for responding to queries from users and the public about whether the CMO manages any particular work or performance (with a 14-day deadline).

## Regulatory Actions

IPOS will be empowered to take regulatory actions against CMOs and their officers for breaches of licence conditions or to investigate or otherwise regulate CMOs. In particular, IPOS may give regulatory directions to, impose financial penalties on, or make cessation orders to CMOs.

To ensure the CMO or its officer has the right to be heard before regulatory action is taken against them, the draft Regulations set out the procedures and time for the following processes:

- Making representations before IPOS takes regulatory action;
- Applying for reconsideration of IPOS' regulatory action after such regulatory action is taken; and
- Appealing to the Minister for Law against the reconsidered decision of IPOS.

## Concluding Words

The introduction of the proposed framework in the draft Regulations will affect the rights and obligations of CMOs and their members and users. In particular, the draft Regulations set out a comprehensive series of licence conditions that CMOs must comply with or face regulatory action. Users and members should also be aware of the proposed conditions as they may determine the rights that they hold when dealing with CMOs. Parties involved in this area should assess the draft Regulations to determine if there are any practical issues or uncertainties.

The full consultation paper is available [here](#). Any feedback should be submitted to MinLaw by 4 December 2022.

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Parties considering submitting feedback under the Public Consultation may feel free to reach out to our team below.

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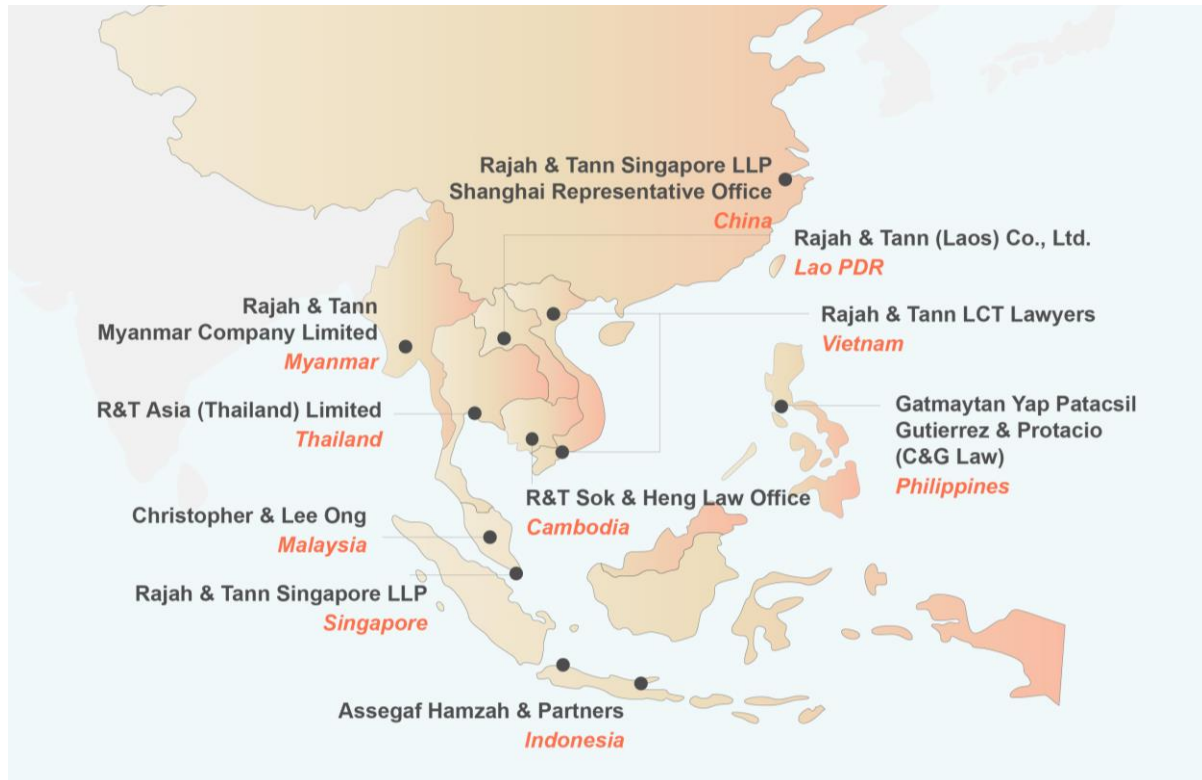
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