

Telecommunications Regulatory Affairs Advisory Committee

**Proposed Incorporation of New Standard Special Conditions
into Unified Carrier Licence in relation to
Fit and Proper Person Requirements, Testing and Monitoring of
Telecommunications Services and
Emergency Alert System**

PURPOSE

This paper seeks Members' views on the proposed incorporation of three new standard special conditions ("SCs")¹ into the sample Unified Carrier Licence ("UCL") for issue for the provision of the public telecommunications services in general.

BACKGROUND

2. Nowadays, a robust and secure telecommunications infrastructure is essential for delivering round-the-clock connectivity of individuals and businesses for access to information and news, social networking, support of various commercial transactions and use of various smart city applications. Telecommunications services have now become a basic utility that is expected to be functioning well at all times. Further, as telecommunications networks and platforms generate and store a lot of customer information and data, they are expected to be operated by entities that are competent and trustworthy. These considerations have become even more important as a new and more powerful generation of telecommunications networks and services such as those enabled by the fifth generation mobile ("5G") technology are being implemented to achieve massive connectivity under an Internet-of-things ("IoT") environment and support more sophisticated

¹ Under section 7A of the Telecommunications Ordinance (Cap. 106), the CA may attach SCs, consistent with the TO and not inconsistent with the prescribed general conditions, to a licence that it is empowered to issue, including Unified Carrier Licence.

services and applications.

3. In the light of the above, in the auction recently conducted in October 2021 for the assignment / re-assignment of spectrum in the 600 MHz, 700 MHz, 850 MHz, 2.5/2.6 GHz, and 4.9 GHz bands (“2021 Auction”) for the provision of public mobile services including 5G services, additional requirements to ensure secure and reliable operation of public mobile services are imposed on each of the successful bidders which will be granted a UCL to effect the assignment of the spectrum acquired by them from auction.

4. As specified in the sample UCL attached to the information memorandum for the 2021 Auction (“IM”)² and the related notice of the terms and conditions of auction (“Notice”)³ gazetted pursuant to section 32I of the Telecommunications Ordinance (“TO”), the new UCLs to be granted to the successful bidders will contain three new special conditions, namely Fit and Proper Person (“FAPP”, at **Annex A**), Testing and Monitoring of Telecommunications Services (at **Annex B**), and Emergency Alert System (“EAS”, at **Annex C**) (collectively “New SCs” or individually “New SC”).

5. Given that the considerations for introduction of the above new licence conditions also apply for other facilities-based telecommunications operators, there is a need to consider if similar licence obligations should be imposed on these other licensees to ensure consistency of regulation.

THE PROPOSAL

6. It is proposed that the New SCs, which are applicable to the UCLs to be issued to the successful bidders in the 2021 Auction, be extended to the sample UCL as standard SCs for the provision of

² The IM is available at:
https://www.ofca.gov.hk/filemanager/ofca/en/content_1517/Auction_IM_20210730.pdf

³ The Notice is available at:
https://www.ofca.gov.hk/filemanager/ofca/en/content_1517/Gazette_20210730_2.pdf

telecommunications services in general, such that the new SCs will be applicable to all new UCLs to be granted. As to the existing unified carrier licensees, the new SCs will be imposed on them upon renewal of their licences or, subject to their consent, upon licence amendments before renewal. The obligations under the New SCs and the reasons for imposing them are discussed in the following paragraphs.

New SC on Fit and Proper Person Requirements

7. As mentioned in paragraph 2 above, the integrity of telecommunications network (whether for provision of mobile or fixed, local or external services) has become more important than ever. Any network failure or security breach may result not only in suspension or malfunctioning of telecommunications services but also interruption to operation, services and applications of various entities in other sectors that rely on the proper functioning of telecommunications networks. It is hence of paramount importance that the telecommunications networks should be managed by reliable and trustworthy persons⁴.

8. We consider that it would be in the public interest to enhance the integrity of all public telecommunications networks in Hong Kong, whether for the provision of fixed or mobile, or local or external services, by imposing an on-going FAPP licence obligation on all unified carrier licensees. Therefore, it is proposed to incorporate the New SC on FAPP (see **Annex A**) into the sample UCL as a standard SC to require the licensee and any person exercising control over it to be and remain an FAPP throughout the validity period of the UCL.

9. For the purpose of determining whether a licensee or any person exercising control over the licensee satisfies the FAPP requirement, account shall be given to the following matters⁵ –

⁴ In 2012, a public consultation was conducted by the former Telecommunications Authority on the proposed inclusion of the FAPP requirement as one of the licensing criterion for UCL, but no decision was made at the time.

⁵ Reference has been made to section 21 of the Broadcasting Ordinance (Cap. 562) (“BO”).

- (a) the business record of the licensee or person;
- (b) the record of the licensee or person in situations requiring trust and candour;
- (c) the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in (c) above.

10. Under the New SC on FAPP, an applicant of UCL will be required to submit a statutory declaration (see a sample declaration form at **Annex D**⁶) to the CA confirming that it and the persons exercising control of it are FAPP before a UCL is granted to the applicant. After the grant of a UCL to a licensee, further statutory declarations will only need to be submitted by the licensee upon request by the CA. This is in line with the light-handed approach of the CA in the regulation of the telecommunications sector⁷.

New SC on Testing and Monitoring of Telecommunications Services

11. Unified carrier licensees are required under General Condition 5 of the UCL at all times to provide a good, efficient and continuous telecommunications services in a manner satisfactory to the CA. In view of the potential significant impact on the society due to disruption or unsatisfactory provision of telecommunications services today, there is an increasing need to enhance regulatory oversight through monitoring and conducting tests of those telecommunications networks, systems and services operated by network operators and service providers.

⁶ Based on adaptation of the one attached to the IM and Notice of the 2021 Auction.

⁷ In the case of broadcasting licensees, they are required under section 21(2) of the BO to provide statutory declarations on or before 1 April of each year. In actual practice, they are also required to provide statutory declarations upon licence application and upon each change of directors or principal officers.

In this regard, it is considered appropriate to require them to provide a customer connection to the CA to enable it to test and monitor the services provided under the licence. This will enable the CA to check efficiently if unified carrier licensees provide telecommunications services in a satisfactory manner and in compliance with the TO and the relevant licence conditions as needed.

12. It is therefore proposed to incorporate the New SC on testing and monitoring of telecommunications services (see **Annex B**) into the sample UCL as a standard SC. Under this New SC, the CA may require a unified carrier licensee to demonstrate to it that in establishing, maintaining, or operating any means of telecommunications, the licensee is in compliance with the TO, licence conditions, and any directions and instruments that may be imposed or issued by the CA. Specifically, the licensee may be required to provide at its own expense customer connections to the CA for performing testing and monitoring, including the provision of a mobile connection (such as SIM card) in the case of mobile services and the installation of a fixed line connection to the Office of the Communications Authority (“OFCA”)’s office in the case of fixed services⁸. The CA may also require licensees providing wholesale telecommunications services to provide relevant means for testing and monitoring of services, as appropriate in the circumstances.

New SC on Emergency Alert System

13. As an initiative under the first round of the Anti-epidemic Fund, the Government has engaged the four local mobile network operators⁹ (“MNOs”) to set up an EAS, through which the Government may disseminate time critical public announcements through the MNOs’ radio networks to remind members of the public to take contingency measures immediately during emergency situations such as extreme weather and large-scale public health issues. The EAS employs cell

⁸ This is in line with the licence condition on the provision of testing facilities and services for regulatory purposes in the domestic television programme service licences.

⁹ Namely China Mobile Hong Kong Company Limited, Hong Kong Telecommunications (HKT) Limited, Hutchison Telephone Company Limited and SmarTone Mobile Communications Limited.

broadcast service technology, enabling dissemination of messages to mobile service users in a few seconds. Local mobile service users¹⁰ and overseas visitors roaming to local mobile networks, who use compatible mobile devices connected to the MNOs' third generation, fourth generation or fifth generation networks, are able to receive the EAS messages.

14. The Government launched the EAS in November 2020. According to the commercial agreements entered into between the Government and the four MNOs, they are required to provide the services, including initial set up of the relevant EAS platforms and on-going maintenance and operation of the EAS for a specified period. Taking into account the on-going need of the EAS for emergency communications with members of the public, the New SC on EAS is added to the UCL to be issued to successful bidders in the 2021 Auction so that it becomes an on-going obligation of the MNOs to ensure the continued availability of the EAS for use by the Government for dissemination of time critical public announcements after expiry of the specified period set out in the commercial agreements.

15. Under this New SC, any MNO will be required at its own expense to establish, maintain and operate the EAS, unless otherwise directed by the CA¹¹. The New SC requires that the EAS shall be in compliance with relevant standards or requirements that may be specified by the CA, and the licensee shall comply with guidelines that may be issued by the CA in relation to the establishment, maintenance, operation and testing of the EAS as well as other related tasks.

16. In order to ensure that the EAS could effectively support dissemination of time-critical messages to all mobile customers by the Government in future, it is proposed that the New SC on EAS be incorporated into the sample UCL for issue to all unified carrier licensees

¹⁰ Including all customers of the MNOs as well as mobile virtual network operators ("MVNOs") to whom the MNOs provide wholesale or MVNO hosting services.

¹¹ Licensees which only provide wholesale mobile network services to other licensees without provision of any retail mobile services to the general public will not be required to establish, maintain and operate the EAS.

as a standard SC. With new spectrum in different frequency bands expected to be available for assignment by way of auction or administrative method in the coming years, the New SC on EAS will oblige licensees newly assigned with spectrum for the provision of mobile telecommunications services to the general public to establish, maintain and operate the EAS. It will also be applicable to the existing unified carrier licensees providing fixed telecommunications services if they apply to the CA to expand the service scope of their UCLs to provide also public mobile telecommunications services to the public.

WAY FORWARD

17. OFCA will take into consideration all the views and comments received from Members on the proposal to extend the New SCs to the sample UCL as standard SCs applicable to the provision of public telecommunications services before seeking approval by the CA.

18. Subject to the approval of the CA, the New SCs will be incorporated into the sample UCL for publication on the CA's website. The New SCs will be incorporated into all new UCLs granted thereafter. As for the existing holders of UCL, corresponding licence amendments will be made upon renewal of their licences or if they give consent to the amendments before expiry of their existing licences.

VIEWS SOUGHT

19. Members are invited to give their views and comments on the proposal given in this paper.

**Office of the Communications Authority
November 2021**

50¹. FIT AND PROPER PERSON

- 50.1 The licensee shall be and remain, and shall procure that any person exercising control over the licensee shall be and remain, a fit and proper person during the validity period of this licence.
- 50.2 In determining whether the licensee or any person exercising control over the licensee is a fit and proper person, account shall be taken of –
- (a) the business record of the licensee or person;
 - (b) the record of the licensee or person in situations requiring trust and candour;
 - (c) the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
 - (d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in Special Condition 50.2(c).
- 50.3 Upon the date of issue of this licence, the licensee shall have provided to the Authority a statutory declaration duly made by an authorized director, a secretary or a principal officer of the licensee confirming that the licensee and the persons exercising control over the licensee are fit and proper persons having regard to the matters mentioned in Special Condition 50.2(a) to (d) in a form specified by the Authority.
- 50.4 Upon request by the Authority, the licensee shall provide to the Authority within reasonable time a statutory declaration duly made by an authorized director, a secretary or a principal officer of the licensee confirming that the licensee and all persons exercising control over the licensee are and remain fit and proper persons having regard to the matters mentioned in Special Condition 50.2(a) to (d) in a form specified by the Authority.
- 50.5 Upon request by the Authority, the licensee shall provide to the Authority written authorizations from persons exercising control over the licensee authorizing relevant authorities to release criminal records and other relevant information of those persons to the Authority, to enable the Authority to establish and verify whether the licensee or the

¹ Subject to CA's approval, the SC no. may be amended as appropriate for incorporation into the sample UCL or the UCL to be issued.

persons exercising control over the licensee are and remain fit and proper persons.

50.6 For the purpose of this Special Condition 50, a person exercises control over the licensee if he or she is –

- (a) a director or principal officer of the licensee;
- (b) the beneficial owner of more than 15% of the voting shares in the licensee;
- (c) a voting controller of more than 15% of the voting shares in the licensee; or
- (d) otherwise has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that licensee or any other corporation, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person.

51¹. TESTING AND MONITORING

51.1 Without prejudice to section 7J of the Ordinance, the Authority may require the licensee to demonstrate to it that in establishing, maintaining, or operating any means of telecommunications, including any telecommunications network, system or installation in the provision of telecommunications services, the licensee is in compliance with the Ordinance, conditions of this licence, and any directions and instruments that may be imposed or issued by the Authority.

51.2 For the purpose of Special Condition 51.1, and as may be required by the Authority, the licensee shall at its own expense provide a customer connection to any place specified by and/or for use with any appropriate apparatus used by the Authority, so as to enable the Authority to perform testing and monitoring of the services provided by the licensee under this licence (“the relevant services”).

51.3 For the purpose of Special Condition 51.2, the Authority may give notice to the licensee requesting the licensee to provide, within 21 days thereof or as soon as the customer connection mentioned in Special Condition 51.2 is in place, the relevant services to the Authority in order that the Authority may test and monitor the performance of such services, and the licensee shall comply with the request. Where the relevant services are provided to the Authority under this Condition 51.3,

- (a) no charge or subscription shall be raised or levied;
- (b) no restriction on the lawful use or application in relation to the services shall be imposed by the licensee; and
- (c) the services thereby provided shall be continuous and of the same types and levels as offered by the licensee to its customers.

¹ Subject to CA’s approval, the SC no. may be amended as appropriate for incorporation into the sample UCL or the UCL to be issued.

52¹. EMERGENCY ALERT SYSTEM

- 52.1 Without prejudice to any agreement (if any) between the licensee and the Government, the licensee shall at its own expense establish, maintain and operate an emergency alert system so as to enable the Government to disseminate time-critical public announcements and messages through the licensee's radio network to alert all of its connected customers using apparatus that support reception of such public announcements and messages during emergency situations.
- 52.2 The system set up by the licensee under Special Condition 52.1 shall be based on cell broadcast service technology and in compliance with any relevant standards or requirements that may be specified by the Authority.
- 52.3 Without prejudice to Special Conditions 52.1 and 52.2, the licensee shall comply with any guidelines that may be issued by the Authority in relation to the establishment, maintenance, operation and testing of the emergency alert system as well as other related tasks.
- 52.4 The Authority may direct in writing, for such period and on such conditions as the Authority may determine, that this Special Condition 52 shall not apply to the licensee.
- 52.5 For the purpose of this Special Condition 52,

“connected customers” means users in Hong Kong whose apparatuses are connected to the licensee's radio network, including (a) subscribers of the licensee's mobile service provided via its own radio network; (b) subscribers of a licensed service provider which provides or offers mobile service making use of the licensee's radio network for service provision; and (c) visitors to Hong Kong roaming to the licensee's radio network.

“radio network” means the radio network operated under this licence at the relevant frequencies specified in Schedule 3 for provision of mobile services of third generation (3G) or above.

¹ Subject to CA's approval, the SC no. may be amended as appropriate for incorporation into the sample UCL or the UCL to be issued.

**Statutory Declaration Form on Persons regarded as Fit and Proper
for a Unified Carrier Licensee**

Notes :

- A. Please read carefully the fit and proper person (“FAPP”) requirement under the relevant licence condition, which is set out in Annex 1 for reference (“FAPP licence condition”) and the content of this form including the Schedule and the Annexes hereto before completing this form.
- B. The terms used herein, where applicable, have the same meanings as in the Telecommunications Ordinance (Cap. 106).
- C. Please include Chinese names where applicable.
- D. Please attach additional sheets if required.

IN THE MATTER of the Unified Carrier
Licence

and

IN THE MATTER of the Oaths and
Declarations Ordinance (Cap. 11)

STATUTORY DECLARATION

I, _____ (Name) [HKID No.: XXXXXX] _____ of
(Address) _____, being _____ (Company Secretary/Director/Principal Officer) of
(Licensee) [Company No.: XXXX] _____ (“the Licensee”), do solemnly and sincerely
declare that –

The Licensee and all persons exercising control of the Licensee, whose names
are listed in the Schedule attached hereto (each a “relevant person”), are fit and proper
persons after careful inquiry and having regard to –

- (1) the business record of the Licensee and each relevant person;
- (2) the record of the Licensee and each relevant person in situations
requiring trust and candour;
- (3) the criminal record in Hong Kong of the Licensee and each relevant
person in respect of offences under the laws of Hong Kong involving
bribery, false accounting, corruption or dishonesty; and
- (4) the criminal record in places outside Hong Kong of the Licensee and
each relevant person in respect of conduct which, if done in Hong
Kong, would constitute or form part of the criminal record in Hong
Kong of the Licensee and each relevant person as mentioned in (3).

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Ordinance (Cap. 11).

(Signed)

DECLARED at [please insert address] in Hong Kong this _____ day of _____.

Before me,

[Signature and designation, i.e. Justice of the Peace/Notary Public/Commissioner for Oaths]

Schedule

All Persons (including individuals and corporations) exercising control of

_____ (Licensee) _____ as at _____ (Date) _____

(1) All directors or principal officers of the Licensee

Name

Office Held

(2) All beneficial owners of more than 15% of the voting shares in the Licensee

(3) All voting controllers of more than 15% of voting shares in the Licensee

(4) All persons who have the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the Licensee or any other corporation, to ensure that the affairs of the Licensee are conducted in accordance with their wishes

Annex 1 - Fit and Proper Person Licence Condition

50¹. FIT AND PROPER PERSON

- 50.1 The licensee shall be and remain, and shall procure that any person exercising control over the licensee shall be and remain, a fit and proper person during the validity period of this licence.
- 50.2 In determining whether the licensee or any person exercising control over the licensee is a fit and proper person, account shall be taken of –
- (a) the business record of the licensee or person;
 - (b) the record of the licensee or person in situations requiring trust and candour;
 - (c) the criminal record in Hong Kong of the licensee or person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
 - (d) the criminal record in places outside Hong Kong of the licensee or person in respect of conduct which, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the licensee or person as mentioned in Special Condition 50.2(c).
- 50.3 Upon the date of issue of this licence, the licensee shall have provided to the Authority a statutory declaration duly made by an authorized director, a secretary or a principal officer of the licensee confirming that the licensee and the persons exercising control over the licensee are fit and proper persons having regard to the matters mentioned in Special Condition 50.2(a) to (d) in a form specified by the Authority.
- 50.4 Upon request by the Authority, the licensee shall provide to the Authority within reasonable time a statutory declaration duly made by an authorized director, a secretary or a principal officer of the licensee confirming that the licensee and all persons exercising control over the licensee are and remain fit and proper persons having regard to the matters mentioned in Special Condition 50.2(a) to (d) in a form specified by the Authority.
- 50.5 Upon request by the Authority, the licensee shall provide to the Authority written authorizations from persons exercising control over the licensee authorizing relevant authorities to release criminal records and other relevant information of those persons to the Authority, to enable the Authority to establish and verify whether the licensee or the persons exercising control over the licensee are and remain fit and proper persons.
- 50.6 For the purpose of this Special Condition [50], a person exercises control over the licensee if he or she is –

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¹ Subject to CA's approval, the SC no. may be amended as appropriate for incorporation into the sample UCL or the UCL to be issued.

- (a) a director or principal officer of the licensee;
- (b) the beneficial owner of more than 15% of the voting shares in the licensee;
- (c) a voting controller of more than 15% of the voting shares in the licensee; or
- (d) otherwise has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that licensee or any other corporation, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person.

Annex 2 - Notes on Interpretation

- (1) For the purpose of interpretation of this form of statutory declaration and the FAPP licence condition,

“corporation” means a company as defined in section 2(1) of the Companies Ordinance (Cap 622) or other body corporate.

“Licensee” means the entity named in the first page of this form of statutory declaration, being an applicant or holder of a unified carrier licence which is required to complete and submit this form of statutory declaration.

“principal officer” means the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Chief Technical Officer, or equivalent, of the Licensee.

“voting control” means the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to 1 or more voting shares of the Licensee —

- (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
- (b) by an entitlement to exercise such a right to vote;
- (c) under a duty or obligation;
- (d) through a nominee;
- (e) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights; or
- (f) as a chargor of voting shares of the Licensee unless the chargee of the voting shares or the nominee of the chargee has given notice in writing to the chargor under the charge of an intention to exercise the right to vote attaching to such voting shares.

“voting controller” means a person who either alone or with 1 or more other persons holds voting control.

- (2) Any reference to a person—
- (a) holding or being beneficially entitled to shares in the Licensee; or
 - (b) being a voting controller of any voting shares in the Licensee, shall be construed as a reference to his being so entitled, whether by himself or jointly with other persons, and whether directly or through 1 or more nominees.
- (3) Reference to the business record of the Licensee and each relevant person shall include any record of the Licensee and each of the relevant person being or having been subject to liquidation, bankruptcy or other similar proceedings/orders.

- (4) Reference to the record of the Licensee and each relevant person in situations requiring trust and candour shall include any record of Licensee and each relevant person being or having been censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession in Hong Kong or elsewhere, or disqualified by a court of competent jurisdiction from being a director of a business entity, etc. in Hong Kong or elsewhere.