Communications: regulation and outsourcing in Hong Kong: overview

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THE TELECOMMUNICATIONS MARKET

1. Give a brief overview of the structure of the telecommunications market in your jurisdiction. Briefly set out any major recent developments, such as mergers and acquisitions, restructurings and insolvencies.

Market structure
The telecommunications sector is fully liberalised. The liberalisation process that started in the 1990s was finally concluded with the removal of limitations on the number of local fixed network telecommunications services licences as well as the removal of restrictions regarding investment or network rollout from these licences in 2003.

Recent developments
The World Economic Forum Global Information Technology Report 2016 ranks Hong Kong fourth in Asia (12th in the world) in the Network Readiness Index, indicating Hong Kong’s advanced position when it comes to telecommunications infrastructure.

Major developments in the telecommunications sector in 2014 and 2015 include:

- The acquisition of New World Telecom by HKBN from New World Development Company Limited in March 2016.
- The acquisition of Wharf T&T Limited by MBK Partners and TPG from The Whaf (Holdings) Limited on 9 November 2016.
- Hutchison Telecommunications announced sale of its fixed-line business to I Squared Capital Advisors for HKD14.5 billion on 21 March 2017.

The Competition Ordinance (Cap. 619), which introduces a cross-sector competition law regime, came into force in December 2015. A lot of preparatory work took place before the commencement of this legislation, including the issuance of six guidelines by the Competition Commission on how it will interpret and apply the Competition Ordinance. The Competition Ordinance repealed the then-current anti-competition provisions in the Telecommunications Ordinance. The Competition Ordinance prohibits:

- Mergers within the telecommunication sector that have the object or effect of preventing, restricting or distorting competition in Hong Kong.

While the rest of the Competition Ordinance applies across all industries, the merger rules remain confined to the telecommunications sector and only apply to entities that hold a carrier licence.

REstrictions on foreign ownership

2. Are there any restrictions on foreign companies entering the telecommunications market in your jurisdiction?

There are no restrictions to market entry for foreign companies. A foreign company can apply for a unified carrier licence or service based operator licence (see Question 4), provided that it has a presence in Hong Kong. At the very least, if it is not a locally incorporated company then it must be registered under the Hong Kong Companies Ordinance as an overseas company with a place of business in Hong Kong. There are currently no restrictions on foreign ownership of telecommunication licensees or operators in Hong Kong.

By contrast, broadcasting licences can only be held by a Hong Kong company, with certain limitations on foreign ownership, depending on the type of licence involved.

REGulatory framework

3. Give a brief overview of the regulatory framework for telecommunications in your jurisdiction. Which authorities regulate telecommunications services in your jurisdiction? Is there a separate regulator for competition law issues in this sector?

Regulatory framework
The main legislation that governs telecommunications services include:

- Telecommunications Ordinance (Cap. 106), which regulates the provision of telecommunications services, apparatus and equipment.
- Communications Authority Ordinance (Cap. 616), under which the Office of the Communications Authority (OFCa) was established.
- Broadcasting Ordinance (Cap. 562).
- Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391).
- Unsolicited Electronic Messages Ordinance (Cap. 593).
- Competition Ordinance (Cap. 619).

**Regulatory authorities**

The Communications Authority (CA) was established on 1 April 2012, as a merged regulator for the telecommunication and broadcasting industries. The Communications Authority operates under its executive arm, namely the Office of the Communications Authority (OFCA).

The Competition Commission was established on 18 January 2013 as an independent statutory body responsible for investigating competition-related complaints and bringing public enforcement action before the Competition Tribunal.

Under the Competition Ordinance (Cap. 619), the CA is given jurisdiction concurrent with the Competition Commission to enforce the Competition Ordinance (Cap. 619) for anti-competitive conduct of telecommunications and broadcasting licensees, including merger and acquisition activities involving carrier licensees that substantially lessen competition.

**Authorisation and licences**

4. **What notification, authorisation and licences are required to provide telecommunications services? What is the licence application procedure and fee?**

It is an offence to provide telecommunication services without a licence. Licences are granted by the Communications Authority (CA). The CA can refuse to grant a licence if it believes that the applicant does not meet the pre-qualification requirements (if it is not sufficiently qualified to provide the relevant services in light of its financial or technical capabilities).

Unified carriers are entities that own telecommunication networks, circuits and equipment that are used to supply fixed, mobile or converged services to the public, for example, the setting up and operation of fibre networks. Before August 2008, there were two separate types of carrier licences available:

- The fixed carrier licence.
- The mobile carrier licence.

Since August 2008, the unified carrier licence (UCL) regime does not distinguish between a fixed or mobile telecommunication infrastructure and a single UCL licensing regime applies to both.

Service-based operators are entities that supply telecommunication services over the fixed or mobile networks owned and operated by unified carrier licensees. There are four different types of service-based operator licences (SBOLs) available, which are divided as follows according to the type of services that can be provided:

- Class 1: local voice telephony services provided to fixed or mobile customers, which have all the attributes of conventional telephone services and are subject to the same or similar licensing conditions that apply to UCLs for the provision of conventional telephone services.
- Class 2: local voice telephony services provided to fixed or mobile customers, which do not have all the attributes of conventional telephone services and are subject to minimal licensing conditions that are mainly aimed at protecting consumers.
- Class 3: these include external telecommunications services; international value-added network services (including internet access); mobile virtual network operator services; public radio communications relay services; teleconferencing services; private payphone services; security and fire alarm signal transmission services; mobile communications services on board an aircraft and any other services designated by the CA as Class 3 services.
- Others: all other services not covered by Classes 1, 2 or 3, for example, local voice telephone services that do not require the use of numbers from the Numbering Plan for Telecommunications Services.

An SBOL licensee can only provide the services that fall within the scope of services specified in their licence, and not all of the services described above.

The requirements for a UCL or SBOL are as follows:

- The applicant must be a company incorporated in Hong Kong, or a foreign company that has an established place of business in Hong Kong registered under the Companies Ordinance (Cap. 622).
- The applicant must provide the required information and documents depending on the type of licence being applied for. These documents include:
  - copies of the business registration certificate and certificate of incorporation;
  - information on the corporate and shareholding structure;
  - certified copies of the articles of association;
  - details on the composition of the board of directors and key officers;
  - copies of the audited financial statements of the company;
  - auditor reports for the last three years and the most recent interim results;
  - a budgeted profit and loss statement for the proposed services for the first three years of operation and sufficient evidence to prove that the applicant has the financial capability to meet the capital investment required in the financial plan;
  - a detailed financial plan for the proposed network and services;
  - a detailed description of the system or facilities to be installed;
  - a detailed description of all services to be provided, including the expected service launch date and implementation schedule;
  - details of the technical support facilities in Hong Kong, including a description of the technical personnel;
  - details on any previous relevant experience of the applicant, its shareholders and key personnel in establishing and operating the proposed telecommunication services, and any other relevant business in Hong Kong or overseas; and
  - a contingency plan and implementation plan.
- The applicant must pay the relevant application fee and annual licence fee.

The fees for a UCL are:

- An annual fee of HKD1 million;
The fees for SBOls are:
- HKD25,000 for Class 1 or Class 2 services, or any other services other than Class 3 services.
- For Class 3, HKD750 for each type of Class 3 services authorised under the licence.

The fees are payable on the issuance or renewal of the licence. If equipment for radio communications is possessed, used, established or maintained for the purposes of providing services under an SBOl, then an additional annual fee of either:
- HKD750 is payable for each base or fixed station.
- HKD700 for each 100 mobile stations or less used by the customers.

Other fees can also apply to UCLs and SBOls, for example, additional fees are payable for base stations and for each subscriber number allocated to the licensee.

A licence granted by the CA cannot be assigned or transferred to another person, unless there is an express condition in the licence that allows for such transfer (section 8(1), Telecommunications Regulations (Cap. 106A)). If this condition exists, then the licence can only be transferred subject to the conditions specified in the licence.

Other telecommunication services may also be subject to a class licence. For example, there are class licences for:
- Offering telecommunications services.
- In-building telecommunication systems.
- Providing public wireless local area network services.

Unlike a UCL or SBOl, no registration or application for a licence is required for providing the services under a class licence. Instead, providers of the services that fall within the scope of a class licence must merely comply with the licensing conditions of the class licence. For a copy of the class licence conditions, see.

5. **How long does a telecommunications licence typically last and what are the usual conditions attached to it? Can conditions be varied? Are licences available for public inspection?**

The term of a unified carrier licence (UCL) is 15 years. A service-based operator licences’ (SBOls) term is one year, but can be renewed on an annual basis, subject to the Communications Authority’s (CA) discretion.

There are general and special licence conditions for both UCLs and SBOls. These can be found on the CA’s official website (). The UCL standard general licence conditions reflect those prescribed under Schedule 1 of the Telecommunications (Carrier Licences) Regulation.

The general conditions vary with each category of licence. Some of these general conditions include:
- An obligation on the licensee to comply with the Constitution and Convention of the International Telecommunication Union.
- An obligation to operate, maintain and provide a good, efficient and continuous services during the licence period, in a manner satisfactory to the CA.
- An obligation not to disclose any customer information, unless authorised by law or the consent of the customer has been provided, and the form of consent has been approved by the CA.
- A prohibition on the licensee using any customer information other than for the provision of the services, and so on.

The conditions imposed under an SBOl can be varied by the CA by notice in the Gazette (section 7C, Telecommunications Ordinance). Before varying the conditions, the CA must issue a notice in the Gazette that:
- States that it proposes to vary the SBOl specified in the notice.
- States the subject matter of the variations to the SBOl.
- Sets out where a member of the public can purchase a copy of the SBOl and the proposed variations.
- Invites members of the public to provide their comments by a date and to an address set out in the notice.

**Penalties for non-compliance**

6. **What are the consequences of non-compliance with the telecommunications regulations?**

Establishing or maintaining any means of telecommunications, or offering a telecommunication service without the appropriate licence, is an offence. The offender can face:
- A fine of up to HKD50,000 and two years imprisonment on summary conviction.
- A fine of up to HKD100,000 and five years imprisonment on conviction on indictment.

If a licensee breaches any licence condition, requirement or direction issued by the Communications Authority (CA), or any provision of the Telecommunications Ordinance or underlying regulations, then the CA can (section 36C(1) to (3) and 36C(3B), Telecommunications Ordinance):
- Impose a fine of up to HKD200,000 for a first time breach.
- Impose a fine of HKD500,000 for a second time breach.
- Impose a fine of HKD1 million for any subsequent breach.

If the CA believes that the above fines are insufficient in light of the breach that has occurred, refer the matter to the Court of First Instance that can also impose a fine up to a maximum of 10% of the licensee’s turnover during the period of the breach or HKD10 million, whichever is higher.

The CA also can require the licensee to disclose to the public or any particular classes of persons, information relating to the breach, and to publish a corrective advertisement in any newspaper (section 36C(3A), Telecommunications Ordinance).
The decisions of the Communications Authority (CA) are generally subject to judicial review under common law. The CA’s decisions on anti-competition restrictions under the Telecommunications Ordinance (Cap. 106) can be appealed to the Telecommunications (Competition Provisions) Appeal Board that can in turn refer questions of law to the Court of Appeal. Under the Competition Ordinance (Cap. 619), decisions can be appealed to the Competition Tribunal. The Competition Tribunal can also refer any question of law to the Court of Appeal.

### Universal service obligations

8. Is the incumbent provider or other large providers with significant market power subject to specific regulations? Do universal service obligations apply? Are there provisions for the structural separation of a network?

The Communications Authority (CA) can require any fixed carrier licensee to be subject to a universal service obligation (section 35B, Telecommunications Ordinance (Cap. 106)). A universal service obligation requires the licensee to ensure that a good, efficient and continuous basic service is reasonably available to all persons.

According to Office of the Communications Authority’s (OFCA) official website, PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited are currently the only entities subject to a universal service obligation under the licence conditions of their unified carrier licence (UCL). Therefore, they are required to make basic services reasonably available to all persons, in return for service charges that are capped by the published tariffs. The scope of the universal service obligation mainly applies to basic fixed voice telephony services and public payphones. Broadband and mobile services are not included (see Question 20).

In relation to all other fixed network operators, their service coverage is generally a commercial decision. However, they are still required under their licence to provide services when requested by the CA, if their networks have been rolled out to the relevant location. All holders of UCLs must also contribute a sum (calculated in accordance with the formula adopted by the CA from time to time) to the universal service provider to assist them in meeting their universal service obligation (Special Condition 22, standard UCL; section 35B(3), Telecommunications Ordinance).

### General conditions

9. What general conditions apply to telecommunications services? Which other regulations must be complied with?

Licensees must comply with the general and special conditions specified in their relevant licence (see Question 5).

Licensees of unified carrier licence (UCL) and service-based operator licences (SBOLs) licensees must also comply with the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it. These regulations include the International Telecommunication Regulations, the revised version of which was approved by the World Conference on International Telecommunications in 2012.

### Spectrum use

10. Which authorities allocate spectrum use and how is it managed?

The Communications Authority (CA) can allocate and assign spectrum (section 32H, Telecommunications Ordinance (Cap. 106)).

In April 2007, the government announced a Radio Spectrum Policy Framework (Framework) for the management of spectrum after completing a three month public consultation. The Framework stipulates that a market-based approach must be used in spectrum management whenever the CA considers that there are likely to be competing demands from providers of non-government services.

As part of the implementation of the Framework, the CA annually publishes a spectrum release plan showing the potential supply of radio spectrum through an open bidding or tendering process for the following three years. The spectrum release plan is updated every year on a rolling basis, or as required, and takes into account the latest developments. In December 2014, SmarTone, China Mobile and Hutchison Telecom won the bid for spectrum allocation, and as a result are paying a combined price of HKD2.42 billion in spectrum utilisation fees starting from 2016. According to the spectrum release plan for 2017 to 2019 (issued by OFCA on 21 February 2017), no spectrum will be available for release.

Users of spectrum must pay spectrum utilisation fees for all non-government use of spectrum. The Secretary for Commerce and Economic Development can prescribe the level of spectrum utilisation fees and method of calculating such fees by regulation (section 32I, Telecommunications Ordinance).

11. Can spectrum use be traded or sublicensed?

While the Radio Spectrum Policy Framework (Framework) makes it clear that the policy is for spectrum trading to be introduced in the long-term, spectrum liberalisation has not yet occurred and there is currently no established platform for spectrum trading.

Communications Authority’s (CA) approval must be obtained for any transfer of spectrum amongst licensees. Trade of radio spectrum can indirectly occur through a merger and acquisition of licensees. However, such a merger and acquisition is prohibited (section 7P, Telecommunications Ordinance (Cap. 106)) if it will prevent, restrict or distort competition (this provision will soon be repealed and replaced by the Competition Ordinance (Cap. 619)). For example, in May 2014, the CA found that Hong Kong Telecommunications (HKT) Limited’s acquisition of CSL New World Mobility (CSL) would affect competition. Therefore, the CA approved the merger subject to HKT and CSL complying with certain conditions, including divesting 29.6MHz of 2100MHz 3G (UMTS) spectrum, and HKT and CSL not being allowed to participate in any 3G spectrum auction in for five years.
INFRASTRUCTURE AND NETWORK MANAGEMENT

12. Do communications providers have any powers to place their equipment on third party sites?

Under the Telecommunications Ordinance (Cap. 106), communications providers authorised by the Communications Authority (CA) can place and maintain telecommunication lines and radio-communications installation on third party sites provided that the statutory procedures are followed (section 14(1) and (1A), Telecommunications Ordinance (Cap. 106)).

In exercising their powers, the communications providers can be required to give reasonable notice to the owner of the third party site and pay compensation to any person having a lawful interest in the site (section 14(2), Telecommunications Ordinance (Cap. 106)).

Access and interconnection

13. Does access to infrastructure and a network have to be given to other providers?

Access to infrastructure

Access to infrastructure must be given where the Communications Authority (CA) directs a provider to co-ordinate and co-operate with another provider in the public interest to share the use of any facility owned or used by it (section 36A(1), Telecommunications Ordinance (Cap. 106)).

If a provider reasonably requests to share a facility with another provider, the other provider must endeavour to come to an agreement with the requesting party for the provision, use or sharing of the facility (section 36A(4), Telecommunications Ordinance (Cap. 106)).

Access to network

The mandatory type II interconnection policy was withdrawn in late June 2008. Type II interconnection is a regulatory tool widely deployed in the world, requiring the incumbent fixed network operator (FNO) to open up its copper-based customer access network (CAN) to new entrants so that the latter can provide competing service to customers in the start-up phase when their own self-built CANs are not as extensive as the incumbent's. Currently, over 86% of local households have the choice of more than one FNO.

14. Is the interconnection of networks required? Are interconnection prices regulated and how are interconnection disputes resolved?

A holder of a unified carrier licence (UCL) must ensure any-to-any (A2A) connectivity for its voice services, meaning any customer in any one network can have access to any other customer in any interconnecting network and, where directed by the Communications Authority (CA), to any service offered in any interconnecting network. The A2A connectivity requirement also applies to holders of a service-based operator licences (SBOLs) for Class 1 or Class 2 services.

Interconnection prices between providers are not subject to any regulation and are determined through commercial negotiations between the interconnecting providers.

The CA has the power to determine the terms and conditions of interconnection under the Telecommunications Ordinance (Cap. 106). If the parties dispute the terms of interconnection, the CA can make a determination on the request of a provider (sections 36A(1), (2) and (3), Telecommunications Ordinance (Cap. 106)).

Data protection and security

15. What data protection or consumer privacy regulations apply to the telecommunications sector, including both generally applicable and sector-specific laws? Are communications providers required to retain communications data? If yes, which data and for how long? What are the penalties for breach of these regulations?

The Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) regulates the collection, retention, processing and use of personal data that is controlled by a person or organisation located in Hong Kong. Therefore, the PDPO applies to any service provider in the telecommunications sector that controls the handling of personal data. In particular, the Office of the Privacy Commissioner for Personal Data published a guidance note in 2000 in relation to practices of mobile service operators that involve the processing and use of personal data of mobile customer accounts.

In brief, under the PDPO, telecommunication service providers must:

- Provide individuals (for example, customers or employees) on or before the collection of their personal data with certain prescribed information, for example:
  - the purpose of collection of their personal data;
  - the classes of persons to whom their personal data can be transferred; and
  - their right to request access to and correction of their personal data.

- Unless the consent of the individual is obtained, only use the personal data for the original purpose for which it was collected, as notified to the individual under the above (or a directly related purpose).

- Not use personal data for direct marketing purposes unless the express prior consent of the relevant individual has been obtained and the prescribed information has been provided to them.

- Not transfer personal data to a third party for them to use in direct marketing purposes (whether or not in return for gain), without the express prior written consent of the relevant individual and the prescribed information has been provided to them.

- Immediately stop issuing direct marketing materials to an individual once that individual has withdrawn his consent.

Telecommunication providers must pay particular attention to the strict direct marketing provisions under the PDPO. Breach of the direct marketing requirements constitutes an offence, and incurs:

- A maximum fine of HKD500,000 and three years imprisonment.

The higher fine of HKD1 million and five years imprisonment where the breach involves the transfer of any personal data to a third party for direct marketing purposes in return for a gain.

The Hong Kong Privacy Commissioner and the courts have been taking a hard line approach on infringement of the direct
marketing provisions. In a recent decision issued by the Hong Kong Magistrates’ Court, Hong Kong Broadband Network was convicted for failing to cease using an individual’s personal data in direct marketing despite the individual’s request to do so.

Hong Kong currently does not have any specific laws or regulations for the retention of communications data in general. However, the PDPO requires companies to not retain any personal data for longer than is necessary in order to fulfill the purpose for which it was collected. The Chief Executive in Council is also empowered by the Telecommunications Ordinance (Cap. 106) to issue regulations to provide for the period for which, and the conditions subject to which, messages and other documents connected with a telecommunications service should be preserved (section 13N, Telecommunications Ordinance (Cap. 106)), but service providers must still take all reasonable steps to delete any personal data as soon as the original purpose of collection of the data has been exhausted.

16. What are the rules relating to the interception of calls? How and on what grounds can government authorities require disclosure of communications data? What are the penalties for breach of these rules?

Rules on interception of calls
The Interception of Communications and Surveillance Ordinance (Cap. 589) (ICSO) sets out a statutory regime for the authorisation and regulation of interception of communications by officers of law enforcement agencies (LEAs). Any interception activity can only be lawfully conducted by an officer of LEAs under a prescribed authorisation granted by the relevant authority in accordance with the ICSO.

A prescribed authorisation under the ICSO is only issued if (section 3(1), ICSO):
- The purpose is that of preventing or detecting a serious crime or protecting public security.
- There is reasonable suspicion that any person has been, is or likely to be involved in a serious crime or activity that would constitute a threat to public security.
- The interception is necessary for, and proportionate to, the purpose sought to be furthered.

Where an officer fails to comply with the ICSO, then he can be subject to disciplinary proceedings or even the common law offence of misconduct while in public office. If the head of an LEA believes that there has been a breach of the ICSO, it must report the breach to the Commissioner of Interception of Communications and Surveillance (CICS) (section 54, ICSO). The ICSO Code of Practice (issued under Section 63 of the ICSO), also requires all officers to report any breach of the ICSO to the CICS, and for the LEAs to take into any account any views that the CICS can have on the appropriate disciplinary action that should be taken against the offending officer.

Rules on disclosure of communications data
The Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) can also apply where the communications data involves personal data (see Question 15). In particular, under the PDPO, an individual’s personal data can only be collected by means that are fair and lawful. The interception of calls by, for example, telecommunication providers are generally unlikely to be fair or lawful. Breach of the data protection principles under the PDPO can result in the Hong Kong Privacy Commissioner issuing an enforcement notice, which can specify remedial steps that need to be taken. An enforcement notice can still be issued even if the company has rectified the breach. Failure to comply with an enforcement notice is an offence, and can result in a fine of HKD50,000 and two years imprisonment, and a daily penalty of HKD1,000 for any continuing offence. Further penalties also apply for any subsequent repeat contraventions on the same facts or for multiple breaches of enforcement notices.

A user’s right to privacy of communication is also protected by the Basic Law. Article 30 of the Basic Law stipulates that the freedom and privacy of communication of Hong Kong residents are protected by law. No department or individual can, on any grounds, infringe on the freedom and privacy of communication of residents except that the relevant authorities can inspect communications in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.

17. Are there any network or data security obligations imposed on communications providers?
There are no specific network security obligations imposed by the Telecommunications Ordinance (Cap. 106). However, under the Telecommunications Ordinance (Cap. 106) it is an offence for:
- A telecommunications officer to:
  - willfully destroy, secrete or alter any message that they receive for transmission or delivery;
  - forge any message;
  - utter any message that they know to be false;
  - willfully refrain from transmitting any message, or intercept, detain or delay any message; or
  - copy any message or disclose it to anyone other than the person to whom it was addressed.
- Any person (that is not a telecommunications officer) to willfully destroy, detain or delay any message that is intended for delivery to another person.
- A person knowingly causing a computer to perform any function to obtain unauthorised access to any program or data held in a computer (section 27A, Telecommunications Ordinance (Cap. 106)).

With personal data, the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) requires telecommunication service providers to take all practicable steps to prevent unauthorised or accidental loss, access, processing, erasure, loss or use of any personal data held by them from.

PRICE REGULATION

18. How are prices and charges regulated?
The telecommunications market is one of the most competitive in the world, and there are no price control mechanisms.

Service providers can generally fix their own prices and charges. However, the Communications Authority (CA) can impose price control measures for carrier licensees in a dominant market position to prevent anti-competitive behaviour (section 7G, Telecommunications Ordinance (Cap. 106)). The Competition Ordinance (Cap. 619) also prevents any agreement or practices (including price fixing) that have the object or effect of preventing, restricting or distorting competition in Hong Kong.
A licensee must publish its tariffs in accordance with its licence conditions or any directions issued by the CA (section 7F, Telecommunications Ordinance).

**TELEPHONE NUMBER AND SUBSCRIBER MANAGEMENT**

19. How are telephone numbers allocated and managed in your jurisdiction?

The Communications Authority (CA) allocates telephone numbers according to the Telecommunications Numbering Plan (Numbering Plan). The Numbering Plan is drawn up and managed by the CA, and sets out the format of telephone numbers and which numbers can be used by particular licensees or for particular services (section 32F, Telecommunications Ordinance (Cap. 106)). The CA delegates to telecommunications network operators and service providers the allocation and assignment of numbers and codes to end customers. The telecommunication network operators and services providers must comply with the Code of Practice Relating to the Use of Numbers and Codes in the Numbering Plan (the latest version of which was revised in December 2016), which sets out the guiding principles governing the administration and management of the Numbering Plan.

20. Does access have to be provided to certain services, such as the emergency services and directory enquiries?

PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited are subject to a universal service obligation, and therefore are required to provide good, efficient and continuous basic services. "Basic service" is defined to include (section 2, Telecommunications Ordinance (Cap. 106)):

- A public switched telephone service including:
  - the service connection;
  - continued provision of connectivity;
  - provision of a dedicated telephone number;
  - an appropriate directory listing (except where the customer otherwise directs);
  - a standard telephone handset without switching capacity (except where the customer elects to provide the handset);
  - standard billing and collection services and relevant ancillary services; and
  - facilities necessarily used by the licensee.
- A reasonable number of public payphones including payphones located within publicly or privately owned facilities to which the public have access (including intermittent access).
- A reasonable number of public payphones, designed for ease of effective use by the hearing impaired.
- A reasonable number of public payphones, designed for access by the physically disabled, including but not limited to those persons using wheelchairs.
- Operator provided directory enquiries, fault reporting, service difficulty and connection services.
- A tropical cyclone warning service.
- A thunderstorm and heavy rain warning service.
- A flood warning service.
- Access to a number or numbers for emergency services.
- Such other services as the Communications Authority (CA) may include.

21. Are there regulations relating to specific consumer services, such as acquiring and transferring subscribers, number portability, complaint handling, and nuisance and silent calls?

There are a number of regulations or codes relating to specific consumer services, including number portability, complaint handling and nuisance and silent calls.

**Number portability**

The Communications Authority (CA) introduced a number of guidelines relating to the mobile number portability enabling a customer to retain his assigned mobile number when changing to another subscriber. These guidelines include the:

- Code of Practice Related to the Implementation of Mobile Number Portability (last updated on 6 December 2013).
- Requirements for Mobile Number Portability by Database Solution.
- Functional Specification of Administration Database for Mobile Number Portability.

Unified carriers and certain classes of service-based operators must facilitate fixed and mobile number portability. Licensees must either set up their own systems or negotiate with other licensees for access to their systems on commercial terms. If licensees choose to set up their own systems, the CA can direct those licensees to provide administration database hosting services to other licensees to facilitate number portability.

**Complaint handling**

There is no regulation for customer complaint handling. However, the CA investigates a consumer complaint against a telecommunications operator if there is sufficient evidence to establish a prima facie case on possible breaches of any provisions under the Telecommunications Ordinance (Cap. 106) or any conditions under the telecommunications licence held by the concerned telecommunications operator. The CA can take regulatory actions against the concerned operator if such breaches are substantiated.

Also, the CA has established the "Customer Complaint Settlement Scheme" (Scheme), which is a mediation scheme set up by the Communications Association to help resolve billing disputes in deadlock between customers and their telecommunications service providers and their customers. Under the Scheme, a mediation service is provided by independent and trained mediators, via meetings or telephone communications, to assist the concerned parties to:

- Identify the issues in dispute, their respective positions and expectations, to facilitate the negotiation.
- To formulate a solution.
- Ultimately to reach a settlement agreement regarding the resolution of the whole, or part, of the dispute.
Nuisance and silent calls

See Question 15. The Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) imposes strict requirements on direct marketing. These restrictions apply to telephone calls made by telecommunication service providers to customers identified by name, in order to market various services and products.

The Unsolicited Electronic Messages Ordinance (Cap. 563) (UEMO) also prohibits any business from sending unsolicited messages to a number that is registered on the do-not-call register. Any individual can register their telephone or fax numbers on the do-not-call register administered by Office of the Communications Authority (OFCA). However, the do-not-call registers do not cover person-to-person calls but they do apply to pre-recorded telephone messages. The OFCA can issue an enforcement notice against any infringer, which requires them to take specific remedial steps. Contravention of an enforcement notice results in the infringer being liable to a fine of HKD100,000 or, on a second or subsequent conviction, to a fine of HKD500,000 (and a further daily fine of HKD1,000 for each day that the offence continues).

The CA has also issued the voluntary Code of Practice on person-to-person marketing Calls (Code of Practice) to provide guidance to its members in making person-to-person telephone calls for marketing activities. All the major telecommunications operators have agreed to comply with the Code of Practice. The key guidance set out in the Code of Practice includes:

- Person-to-person marketing calls can only be made between 9:00am and 10:00pm, Hong Kong time.
- A telecommunications operator that makes person-to-person marketing calls must not conceal or withhold their telephone number from appearing on the receiver's phone. At the beginning of the call, the operator must disclose its identity and purposes of the call, and provide a contact number.
- The telecommunications operator must record and honour any unsubscribe request in a timely manner.
- If the telecommunications operator is aware that the called party is travelling overseas, it must disconnect the call immediately or terminate the conversation as soon as practicable.

The CA can impose sanctions in the form of financial penalties for any breach of the relevant provisions in the above Code of Practice taking into account, among other things, the nature and severity of the breach.

22. Are consumer telecommunications contracts subject to specific regulations?

The Industry Code of Practice for Telecommunications Service Contracts (Industry Code) was originally issued by the Communications Authority (CA) in December 2010. The CA revised the Industry Code in October 2014, which came into effect on 1 May 2015. The Industry Code is a voluntary scheme that provides a set of minimum practices regarding customer service contracts that are intended to ensure greater clarity. For example, the Industry Code specifies requirements concerning:

- Enhanced clarity in the contracts.
- The requirement to provide written confirmation of oral contracts.
- A customer's right to opt-out of free-trial service.
- A cooling-off period during which customers can cancel an unsolicited contract free of charge.
- Further procedures for renewal and termination of the contract.
- Further customer protection in relation to unilateral variation of the terms by the service provider.
- Better arrangements in relation to a customer's service relocation request.

All major fixed and mobile network operators have adopted the Industry Code, including:

- China Mobile.
- CSL.
- Hutchison Telecom.
- Hong Kong Telecommunications Limited.
- SmarTone.
- Hong Kong Broadband Network Limited.

23. Are there restrictions on the use of Voice over IP technology in your jurisdiction?

Voiceover IP (VoIP) services are regulated by the Communications Authority (CA) under the service-based operator licences (SBOLs) framework (see Question 4). Holders of SBOL can provide public internal and external telecommunications services such as:

- Local IP telephony services.
- External telecommunications services.
- International value-added network services.

24. Are there regulations relating to the maintenance of net neutrality in your jurisdiction?

There are no express net neutrality requirements. However, the Competition Ordinance (Cap. 619) provides a framework prohibiting anti-competitive conduct. The Telecommunications Ordinance (Cap. 106) also includes licence conditions relating to interconnection and connectivity access and service obstruction.

OUTSOURCING AND TELECOMMUNICATIONS

25. Are there specific regulations for the outsourcing of telecommunications services or the management of these services?

There are no general laws or regulations that specifically apply to the outsourcing of telecommunications services. However, the providers of the telecommunications services must still be licensed under the Telecommunications Ordinance (Cap. 106) to provide the relevant services, and the licensees are ultimately accountable.

If any personal data will be transferred to the service provider as part of the outsourcing, then the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) must also be complied with (see Question 15). Briefly, to comply with the PDPO, the transfer of any personal data to a third party as part of the outsourced services must either:
• Fall within the scope of the notice provided by the data user to the data subject (for example, the individual customer) on or before the collection of their personal data.

• Be expressly consented to by each data subject, prior to the transfer.

26. Briefly set out the current trends in outsourcing transactions in the telecommunications sector.

The current trend in outsourcing transactions in the telecommunications sector is towards an increasing reliance of multi-sourcing, often in the form of an integrated team or a third party expert company in the relevant field.

27. Who are the key providers of outsourced telecommunications?

The key providers of outsourced telecommunications are normally incumbent operators or IT outsourcing companies.

28. What are the current technologies influencing or affecting outsourcing by telecommunications operators?

The increasing popularity of cloud computing services, voice-over-internet services, and bring-your-own device programmes, are some of the factors influencing outsourcing by telecommunication operators. In particular, there is a growing trend in Asia for the convergence of IT and telecommunication services. Many telecommunication companies are starting to offer IT services to their customers, which are traditionally outsourced to IT companies.

29. From a contractual perspective, what are the key issues in a typical telecommunications outsourcing transaction in your jurisdiction?

Generally, except for the regulated industries (for example, financial institutions), parties can negotiate and enter into outsourcing arrangements suitable for their needs with very little regulatory requirements. A standard outsourcing contract typically includes the features discussed below.

Service scope

The service scope of an outsourcing agreement typically includes the transfer of employees or assets.

Service level and service credits

Service providers are normally required to guarantee certain service levels to ensure continuity and quality of the services. Failure to achieve any of the service levels usually results in service credits.

Customer data and confidentiality

A typical outsourcing arrangement requires the service provider to comply with the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) and to hold all information confidential.

Disaster recovery and business continuity

If the outsourced services concern a critical function of the customer, then they usually require the service provider to have in place a disaster recovery plan and business continuity plan to ensure that data is recoverable and the services can continue to be provided without interruption in the event of any unforeseen circumstances.

Exit plans

Customers typically seek a range of termination rights and typical termination rights sought by customers are:

• Termination for material breach.

• Force majeure.

• Insolvency events.

Termination for the service provider’s change of control is also common. Concerns about changes in regulation also mean that customers often seek a right to terminate where the outsourcing is no longer permitted by applicable law or regulation. Customers also usually require transition services to be provided by the service provider, to ensure that the services are moved from the service provider either back to the customer or a replacement service provider, with as little interruption as possible.

ONLINE RESOURCES

Department of Justice: Bilingual Laws Information System (BLIS)


Description. BLIS is an electronic database of the legislation of Hong Kong and is established and updated by the Department of Justice

Office of the Communications Authority (OFCA)

W www.ofca.gov.hk

Description. The official website of the OFCA that is established and maintained by the OFCA.

Communications Authority (CA)

W www.comms-auth.hk

Description. The official websites of the CA are established and maintained by the CA.
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Areas of practice. Technology, media and telecommunications; intellectual property; copyright litigation; counselling and prosecution; patent litigation; trade secrets; trade mark litigation; transactions; business and technology sourcing; cyber security and data privacy; life sciences; litigation and dispute resolution; electronic discovery and information governance; internal investigations; social media law; sports, entertainment and media.
Non-professional qualifications. LLM, University of Strathclyde; PCLL, the University of Hong Kong; CPE, Manchester Metropolitan University
Recent transactions
- Advised a major US telecoms company on regulatory and competition law issues concerning disposition of data hosting assets.
- Represented a dark fibre provider on dealing with the network operator in the rolling out of a Hong Kong network.
- Advised incumbent operators in Asia on anti-competition and regulatory matters since the mid-1990s and drafted all types of telecoms agreements (for example, interconnect, equipment lease and IRUs).
- Advises financial institutions on regulations and requirements for outsourcing of IT services.
- Advised a leading data analytics company on outsourcing of IT services for end-user and network support throughout Asia and on outsourcing agreement with the telecom service provider for data connection services.

Languages. English, French, Italian, Portuguese, Romanian, Spanish
Professional associations/memberships.
- Board Member, International Institute of Communications (Hong Kong Chapter).
- IP Committee Co- Chair, American Chamber of Commerce.
- Board Member and member of the Executive Committee of ITechlaw.
- Board member of International Women's Forum.
- International Trade Mark Association.
- Hong Kong Institute of Trademark Practitioners.
- Domain name panellist, WIPO (including for Legal Rights Objections and Trade Mark Post-Delegation Dispute Resolution Procedure).

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Professional qualifications. Hong Kong, Solicitor
Areas of practice. Technology, media and telecommunications; intellectual property transactions; business and technology sourcing; cyber security and data privacy; life sciences; sports, entertainment and media.
Non-professional qualifications. PCLL, University of Hong Kong; LPC, College of Law, London; LLB, London School of Economics and Political Science
Recent transactions
- Acted for a leading IT company on all commercial aspects concerning the launch of the first financial industry supported messaging platform of its type, including drafting and negotiation subscription agreements and vendor agreements.
- Acted for a leading airline for the drafting and negotiation of a data centre services agreement.
- Acted for an international bank on the drafting and negotiation of a major outsourcing agreement for a mobile wallet.
- Advised an airport operator on use of e-tendering system, including drafting relevant documents.
- Negotiated an SaaS agreement for a leading property developer regarding a software solution for lease management.
- Advised several international luxury fashion brands on the data privacy laws of various jurisdictions in Asia.
- Advised a leading financial institution on the outsourcing of facilities management services.

Languages. English
Publications.
- Bloomberg BNA World Communications Regulation Report.
- Computer and Telecommunications Law Review.
- China Law and Practice.
- CSJ.
- Computer Law and Security Review.
- E-Finance and Payments Law and Policy.
Domain name panellist, Hong Kong International Arbitration Centre and Asian Domain Name Resolution Centre (including for Uniform Rapid Suspension Procedure).

Publications
- Bloomberg BNA World Communications Regulation Report.
- Computer Law and Security Review.
- China Law and Practice.
- CSJ.
- Getting the Deal Through: Domains and Domain Names.
- Managing IP.
- South China Morning Post.
- World Trademark Review.
- IP Forum.
- Business and Technology Information Quarterly.
- China Business Review.
- Copyright World.
- International Financial Law Review.
- eLaw Asia.
- European Intellectual Property Review.
- IP Asia.
- Computer and Telecommunications Law Review.
- Data Guidance.
- Practical Law.