

GUIDE TO THE CMO CLASS LICENSING SCHEME

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Published on 31 October 2023.

About CMOs and the Class Licensing Scheme

Collective management organisations, or **CMOs**, are private entities appointed by rights owners (their members) to manage the rights in their members' copyright works and protected performances (or **content** for short). This includes granting permission to use the content, collecting royalties (known as **tariffs** in the legislation), and enforcing rights on behalf of their members. In this way, CMOs perform a vital role in the copyright ecosystem by connecting rights owners with users; bringing about efficient transactions by reducing transaction costs and providing simple, cost-effective access to content.

As CMOs handle voluminous transactions involving a multitude of members and users, it is crucial that they operate with high standards of transparency, accountability, efficiency, and good governance. To ensure this, all CMOs operating in Singapore are regulated under a class licensing scheme administered by IPOS. It is an offence to operate as a CMO without a class licence. All CMOs are automatically licensed under this scheme and must comply with the class licence conditions in the Copyright (Collective Management Organisations) Regulations 2023 (the **Regulations**).¹ The class licensing scheme takes effect from 1 May 2024.

This guide summarises the key aspects of the scheme, including its scope, the licence conditions, and the process involved when IPOS takes regulatory action against a CMO. This guide is not intended to be a substitute for the legislative text; please refer to Part 9 of the Copyright Act 2021 and the Regulations for the full details on the relevant legislative provisions.

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A

Introduction to the Class Licensing Scheme for CMOs

Under the CMO regulatory regime, a dual set of levers ensures compliance and shapes good behaviour by CMOs. There are the class licence conditions, which are legally-binding; CMOs must comply with them or they may be subject to regulatory action by IPOS. Then there are good practice guidelines, which complement the licence conditions. Good practice guidelines are non-binding resources that are intended to encourage and help CMOs to meet industry and international standards, which include recommendations, illustrations, and templates. These will be progressively developed in close collaboration with the industry after the class licensing scheme comes into force.

Key Aspects of the Class Licensing Scheme

Light-Touch Regulation.

- The scheme regulates only 5 critical areas:
 - members' rights;
 - distribution of tariffs;
 - dispute resolution;
 - governance, records and reports; and
 - information provided to the public.

As long as CMOs can meet the minimum standards of transparency, accountability, efficiency, and good governance in these areas, they have freedom to operate and choose how they can best comply with the licence conditions. These are explained in detail in Part C.

- CMOs also remain free to set their fees and other terms of their tariff schemes. Where a dispute on such fees arises, the Copyright Tribunals remain the appropriate forum for resolution.
- CMOs do not need to register with IPOS or pay to be licensed; licensing is automatic as the class licence is extended to any entity that is a CMO.

Ground-Up Policing by Members and Users. CMOs do not need to periodically report to IPOS and are not subject to periodic audits by IPOS. Instead, members and users are empowered to hold CMOs to account by requesting that IPOS investigate a potential breach of a class licence condition. IPOS will step in after the affected member or user has attempted to resolve the matter with the CMO through the CMO's dispute resolution process.

Fair Processes, Proportionate Outcomes. CMOs and their officers have a right to be heard at every stage of the regulatory action process, and tiered avenues for appeal that ultimately lead to an appeal determined by the Minister for Law. Depending on the nature of the non-compliance and the circumstances in issue, IPOS may issue a regulatory direction, impose a financial penalty or order a CMO to cease business as a CMO.

B

Who is Regulated? (Definition of a CMO)

The mandatory class licence applies to all entities that fall within the legal definition of a "CMO".²



Individuals are not licensed to carry on CMO business.

It is an offence for any person to carry on business as a CMO without a class licence.³ While the Copyright Act 2021 allows for multiple class licences to be established, there is currently only a single class licence for entities carrying on business as CMOs.⁴ It is hence illegal for persons who are not entities (i.e., individuals) to carry on business as a CMO as they would be doing so without a licence.

In summary, a "CMO" is any entity that is...

- in the business of **collectively managing** the use of content (i.e. copyright works or protected performances)...
Managing the use of content includes negotiating the terms of use, granting permission for the use, administering the terms of use, and collecting and distributing payment for the use of the content.
- ...made or given by **different creators** (i.e. authors, makers, publishers or performers) who are **unrelated** to the entity...
Creators who are related to the entity include the entity's employees and creators commissioned by the entity to create the content. Hence, if an entity manages only content that is created by its employees or commissioned by it, the entity is not a CMO.
- ...as the rights owner or with the rights owners' authority, for the **collective benefit** of those creators or rights owners...
Some CMOs manage the use of content as rights owners because the creators assign the rights to the CMOs to administer. Even though the CMOs are legally the rights owners and can take action to enforce the rights, ultimately, they are still managing the content for the benefit of those creators (and not themselves).
- ...and which offers one or more **tariff schemes to the public in Singapore**.
A tariff scheme is a scheme formulated or operated by an entity to grant permission to use the content managed by it, and which is made available to the public (or a segment of the public) in Singapore. A scheme can take any name – often in Singapore, it is simply called a "licence" or "permit".

and which is not an "**Excluded Person**".

An entity that meets **all** of the above criteria is a CMO, regardless of:

- its corporate structure (e.g., whether it is a corporate or incorporate entity);
- whether its collective management business is for profit or its sole or main business; and
- whether it is constituted in Singapore or overseas.

B Who is Regulated? (Definition of a CMO)



ILLUSTRATION

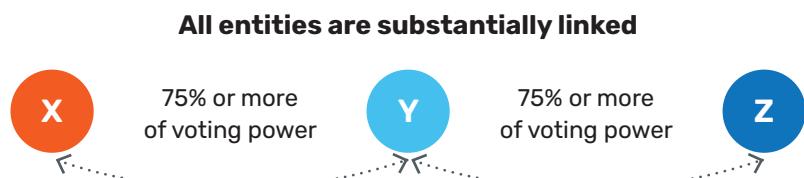
X is in the music publishing business and only licenses its content through individual arrangements negotiated in private with its users. As X does not offer any tariff schemes to the public in Singapore, X is not a CMO. However, should X also offer one or more tariff schemes to the public in Singapore, it will be considered a CMO and subject to regulation (provided all the other criteria are satisfied).

Excluded Persons are not CMOs for the purpose of the scheme (even if they meet all the other criteria in the CMO definition). There are presently 2 classes of excluded persons:⁵

- **Subscription-based services:** Entities that provide subscription-based services that primarily provide access to digital content on demand (and that, but for providing that service, would not be CMOs).
- **Corporate groups etc.:** Entities that manage content exclusively for one or more entities within a group (and that, but for managing that content, would not be CMOs).

Entities are part of a group if all of them are substantially linked to one another. A substantial link is established when one entity has control of 75% or more of the voting power in another, and the same concept applies where there are 3 or more entities in the same group: If X is substantially linked to Y and Y is substantially linked to Z, then X is also substantially linked to Z. This excluded class caters to those who manage the use of what is effectively their own works (in a group setting), for example, a wholly-owned subsidiary incorporated by a publisher to manage solely the publisher's repertoire.

FIGURE 1:
Establishment of a substantial link among entities in a group comprising 3 or more entities.



CMOs must provide IPOS with an email address.



It is a licence condition for CMOs to provide IPOS with an email address at which IPOS may serve documents on the CMO for the purposes of the Copyright Act 2021.⁶ All CMOs should do so via email to **Copyright@ipos.gov.sg**.

C

Class Licence Conditions

The class licensing scheme requires all CMOs to comply with a set of licence conditions that regulates 5 critical areas:⁷



This Part explains what these licence conditions are. These licence conditions are also summarised into a Compliance Checklist for CMOs in the Annex.

Establishing and complying with CMO policies. As part of the licence conditions, each CMO must establish, maintain, and comply with a membership policy,⁸ a distribution policy,⁹ and a dispute resolution policy¹⁰ (or in short, the **CMO policies**). The conditions require CMOs to incorporate the CMO policies in the membership agreements with their members.¹¹ Accordingly, where a CMO fails to comply with any term of a CMO policy, the CMO may be in:

- **breach of the class licence condition**, insofar as the term in issue gives effect to a class licence condition;¹² and
- **breach of contract**, given the incorporation of the CMO policies in the membership agreement. A member may sue the CMO to enforce the term in issue as a legally-binding contractual obligation.¹³

The CMO policies can only be amended by a general meeting of members. Therefore, CMOs must ensure that members are kept well-informed about their rights, as set out in the CMO policies, in order to make such decisions.

The CMO policies may provide for additional matters beyond those that are specifically required by the licence conditions, so long as such matters are not inconsistent with the licence conditions.

Must the CMO policies apply equally to all members?



Not always. Since the CMO policies can provide for additional matters beyond those required by the licence conditions, the CMO policies may provide that, in respect of such additional matters only, an individual member's membership agreement can have terms that differ from (and prevail over) the default arrangement in the CMO policies.

This gives CMOs and members the freedom to negotiate the terms of membership, tailored to each member, in matters beyond the baseline minimum set out in the licence conditions. In the interests of transparency and fairness to all other matters, the CMO policies must identify all such matters where deviation may be permitted.

C Class Licence Conditions

1

Members' Rights

Members form the basis for the existence of CMOs, granting CMOs the mandate authorising them to act on their behalf in administering their rights. By entrusting their rights to a CMO, members often become wholly dependent on it for the efficient administration of these rights. Therefore, a CMO owes its primary responsibility towards the members it represents, and it is imperative that CMOs treat all members fairly, transparently, and without discrimination.

The licence conditions establish a minimum standard for CMOs in their dealings with their members in their **membership agreements** and **membership policy**.

CMOs are free to manage their internal dealings with their members so long as they meet this minimum standard. For example, CMOs are free to offer different types of memberships with different rights as long as they grant the minimum level of essential rights required by the licence conditions to all members regardless of membership type.



Who is a member of a CMO?

Members of a CMO are the authors, makers, publishers, performers, and rights owners for whose benefit a CMO collectively manages the use of content. This excludes the CMO's partner collecting societies, as well as the authors, makers, publishers, performers, and rights owners whose content is managed by the CMO only by virtue of a representation agreement.

Any person who meets the above definition is a member, even if the CMO does not call the person a "member".

C Class Licence Conditions

1 Members' Rights

a. Membership Agreement Requirements

Option for Non-Exclusive Membership

CMOs must offer non-exclusive memberships and explain the consequences of exclusive membership arrangements.

REGULATION 6

Members have the right to an informed choice of whether to join a CMO on an exclusive or non-exclusive basis.¹⁴ Before any potential member enters into an exclusive membership agreement, the CMO must:

- explain in writing the consequences of entering into an exclusive membership (e.g., the CMO's inability to sue on behalf of a non-exclusive member for copyright infringement); and
- offer the person an opportunity to enter into a membership agreement that is non-exclusive but otherwise on the same terms.

Written Membership Agreement

CMOs must enter into written agreements with their members and must give members a copy of the agreement.

REGULATION 7

To ensure that every member is kept informed of their rights in relation to their CMO, CMOs must record every member's arrangement with it in a written agreement (known as a **membership agreement**).

A CMO must give a copy of the membership agreement to its member when the member joins the CMO and upon the member's request.

This licence condition also requires any changes to a membership agreement to be in writing. In such cases, a copy of the amended agreement or the amended part of the agreement must be given to the member.

How should a membership agreement look like?



The licence conditions do not stipulate the specific form that the membership agreement must take or what else it can contain. This means that, as long as every member is given a written agreement which sets out all the matters required under the licence conditions, that document can be the membership agreement.

C Class Licence Conditions

1 Members' Rights

a. Membership Agreement Requirements

Matters to be Specified in Membership Agreements

CMOs' membership agreements must specify at least certain matters.

REGULATION 8

The membership agreement must provide for at least the following matters:

- Clarity on the content managed by the CMO on behalf of the member (e.g., by specifying the title or a description of each work or performance).



What are the ways to provide certainty regarding the member's portfolio?

Specifying the title or a description of each work and performance is just one way of providing certainty as to what the CMO manages under the membership agreement.

This requirement for clarity is satisfied so long as it is clear whether any specific work or performance falls under the membership agreement. For example, stating that the CMO manages all the content of a member is sufficiently clear because it is clear that every work and performance of that member falls under the membership agreement.

- The nature of rights exercised by the CMO over the member's content, including:
 - whether the CMO becomes the rights owner or is only acting with the member's authority;
 - the duration for which the member grants the rights; and
 - (if the CMO is only acting with the member's authority) the scope of that authority.
- The conditions under which the membership agreement may be terminated and the process for doing so.

C Class Licence Conditions

1 Members' Rights

b. Membership Policy Requirements

The membership policy sets a minimum standard for how the CMO should manage its relationship with its members and must be complied with. For transparency, the membership policy must contain key information that members would need to know and key rights in relation to their portfolios and participating in the CMO. The minimum matters that CMOs must provide for in their membership policies are explained below.

Membership Criteria

CMOs must specify the criteria to be a member in their membership policies and must accept members based only on that criteria.

REGULATION 12

CMOs are free to set their own membership criteria, as long as they abide by it. This promotes fairer treatment of all potential members as all members will be accepted on the same basis.

Members' Right to Retain Control Over Use of their Own Portfolios

CMOs must specify in their membership policies when members may continue to use their own portfolios or authorise the CMO to waive tariff collection.

REGULATION 13

A CMO's mandate may sometimes prevent a member from using the member's own content or restrict the member's ability to decide how his or her content is to be used. For example, this could happen when the member has assigned the rights in the content to the CMO.

The licence conditions thus require the membership policy to specify whether, and if so, when a member may continue to use the member's portfolio. The membership policy must also specify whether, and if so, when the CMO may waive the collection of tariffs for the use of the member's portfolio – this is helpful for members who may wish to authorise their CMO to waive the collection of tariffs for use of their content in specific situations, such as in an event organised for charity.

C Class Licence Conditions

1 Members' Rights

b. Membership Policy Requirements

Members' Right to Vary or Terminate CMO's Mandate

CMOs must set out in their membership policies how their members can vary or terminate the rights granted to them and the effect of such variation or termination.

REGULATION 14

Members must be allowed to vary or terminate the rights they grant to the CMO. CMOs cannot restrict this right in any way, such as by imposing conditions or charging a fee for variation or termination. One type of variation is switching between an exclusive and non-exclusive grant of rights.

Members must be allowed to vary or terminate at any time. However, members must give notice to the CMO, which the CMO can set at between 3 and 9 months. This range gives CMOs flexibility to determine the appropriate notice period, taking into account potential disruptions to users and ongoing negotiations between CMOs and potential users. To ensure that users are kept apprised of changes that affect them, CMOs must also notify their users within 14 days of receiving a member's notice of variation or termination.

Permissions to use granted by the CMO in respect of the varied or terminated right continue to be valid until:

- 18 months after the variation/termination takes effect;
- the permission expires; or
- the permission is superseded by a new permission granted by the member to the user.

This ensures that users have the necessary certainty to plan activities premised on the permissions to use granted and minimises potential disruptions.

Members' Right to Information

CMOs must give members the right to key information about the CMO, including the right to request information, in their membership policies.

REGULATION 15

CMOs must inform their members of at least the following key changes or whenever regulatory action is taken by IPOS against a CMO or its officers:

- change to the CMO policies;
- change to key officers;
- change to constitutional documents;
- any regulatory direction, financial penalty, or cessation order imposed on the CMO or its officers, and the outcome of any reconsideration application or appeal by the CMO in respect of any such regulatory action.

Members can also request information from their CMO. The membership policy must also provide for how the CMO deals with such requests.

C Class Licence Conditions

1 Members' Rights

b. Membership Policy Requirements

Members' Right to Participation

CMOs must provide in their membership policies, the procedure for holding general meetings of members, which must specify certain matters and give members participation rights in the CMO.

REGULATION 16

Given that the purpose of a CMO is to manage their members' content for their collective benefit, members should be able to play an active role in the running of the CMO. A significant way that members may play this role is through general meetings, where key decisions about the CMO are made.

Members have the right to:

- call for a general meeting, but CMOs may subject this right to certain conditions (e.g., by requiring the support of members who collectively have a certain proportion of the total voting rights, or imposing a minimum notice period); and
- attend and vote at general meetings (including by remote means or by proxies), but CMOs have the flexibility to provide for different voting rights for different classes of members.

CMOs must hold general meetings at least once every financial year.¹⁵ At a minimum, a CMO must hold general meetings to:

- present its annual transparency report;¹⁶
- approve any amendments to its CMO policies; and
- appoint directors to its board.

C Class Licence Conditions

2

Distribution of Tariffs

One of the core functions of a CMO is to collect tariffs on behalf of its members. It is therefore important that CMOs distribute the tariffs to their members in a manner that is accurate, fair and efficient, and that CMOs are accountable to their members in relation to the methodology and processes used for tariff distribution. To ensure this, the class licensing scheme requires CMOs to establish and comply with a distribution policy that governs the critical aspects mentioned below.



Users should also cooperate with CMOs to facilitate distributions.

While the scheme does not regulate users, a CMO's ability to comply with certain licence conditions in this area will depend on the conduct of users. Users are encouraged to cooperate with CMOs in providing CMOs with accurate information on their usage of a CMO's portfolio. This will help CMOs to give members insights on how their content has been used and ensure that members whose content is actually used will get a more accurate share of the distributions.

Calculation of Tariffs

CMOs' distribution policies must provide for how they calculate tariffs, which should be based on actual use of a member's portfolio to the extent practicable.

REGULATIONS 20 – 21

The Distribution Policy must (a) state the method that the CMO will use to calculate tariffs to be distributed and (b) describe any deductions that the CMO makes before distribution.

The method of distribution should reflect actual use of the member's portfolio. However, if this is not practicable, the method of distribution may be based on estimated use instead – in such situations, the Distribution Policy must be transparent about how the use will be estimated.

In assessing whether it is practicable to calculate distributions based on actual use, CMOs may consider matters such as:

- whether finding out the actual use would impose a heavy administrative burden on a user;
- whether a user is unable to or refuses to cooperate with the CMO in providing information on how the CMO's portfolio has been used; and
- whether a member's portfolio has been used for private or domestic purposes, or in private or domestic settings.

C Class Licence Conditions

2

Distribution of Tariffs

Regular Distributions to Members

CMOs must provide for the frequency and manner of distributions in their distribution policies.

REGULATION 22

CMOs must distribute collected tariffs to their members in a timely manner.

They must do their best to distribute tariffs to their members within 6 months after the end of the financial year in which the tariff is collected. This is the default timeframe within which all distributions must be made.

However, 2 exceptions apply. First, if a CMO is unable to distribute within 6 months despite its best efforts, it may do so within any longer period set out in the distribution policy. Second, if the CMO is unable to make a distribution as a result of a user's conduct, the timeframe does not apply in respect of that distribution.

Dealing with Undistributed Tariffs

CMOs must set out in their distribution policies how they deal with tariffs that they are unable to distribute despite their best efforts.

REGULATION 23

The distribution policy must require the CMO to, at a minimum:

- keep a record of those undistributed tariffs, including the reasons for being unable to distribute;
- take specified steps towards distributing those tariffs (e.g., by identifying members entitled to a distribution);
- safeguard those tariffs until they are distributed or otherwise used or dealt with according to the distribution policy; and
- inform members of the steps taken towards distributing the tariffs and the amounts being safeguarded for each financial year.

CMOs may use undistributed tariffs for any purpose specified in the distribution policy. However, it may only do so if it remains unable to distribute those tariffs despite taking the specified steps towards distribution.

C Class Licence Conditions

2

Distribution of Tariffs

Collection and Provision of Information on Use of Portfolios

CMOs must collect certain key information about the use of their portfolios and give the information to members when making a distribution or upon request.

REGULATIONS 24 - 25

CMOs must collect accurate and timely information about the use of their portfolios, and provide this information to members. This is to ensure members have sufficient information to understand the distributions they receive.

At a minimum, CMOs must collect the following information and give the information to a member when making a distribution to the member:

- general information about the users and usage of the member's portfolio;
- information about the period of use for each work or performance in the member's portfolio;
- how the distributed amount was calculated for each work or performance in the member's portfolio;
- for each tariff scheme (operated by the CMO) that applies to the work or performance in the member's portfolio:
 - how often permission is granted under each class of case to which the scheme applies;
 - the categories of rights for which permission is granted under the scheme;
 - how often permission is granted for each category of rights; and
- any other information that is specified in the distribution policy.

A CMO must also collect information on the use of each tariff scheme it operates. However, this information need not be given to a member when making a distribution; a CMO only needs to give a member this information if the member asks for it.¹⁸

A CMO may provide in its distribution policy that it is not required to give any information to a member if it does not have the information due to the conduct of a user, such as when the user fails to provide information about its use of the CMO's portfolio despite the CMO's best efforts to collect the information. However, in such cases, the CMO must nevertheless inform the member of the efforts it has taken to collect the information.

Member's Right to Query and Dispute Distributions

The distribution policy must set out how members can query and dispute their distributions.

REGULATION 26

Members must be allowed to query and dispute the distributions they receive.

CMOs must give members the opportunity to (a) request information about how a distribution was calculated and (b) dispute the distributed amount. In their distribution policies, CMOs can set how long to keep this opportunity open for their members, so long as the period is between 60 – 90 days from the date on which a member is given the initial information on the distribution.

The CMO must provide the information requested and deal with such disputes in accordance with its dispute resolution policy.

C Class Licence Conditions

3

Dispute Resolution

As CMOs regularly engage with various stakeholders, including their members and users, there will inevitably be disagreements and differences of opinions. These could relate to a wide variety of issues, such as a CMO's failure to comply with a class licence condition, the distributions made to members, or how a CMO has treated a user during negotiations. It is in the best interests of all parties for such disagreements to be resolved in an expedient and low-cost manner, and as amicably as possible.

The class licensing scheme ensures that CMOs deal with disputes with their members and users in good faith, through a transparent, fair, and efficient process by requiring CMOs to establish and comply with a dispute resolution policy that contains at least the matters set out below.

Dispute Resolution Procedure

CMOs must set out a dispute resolution procedure for members and users (including intending users) in their dispute resolution policies.

REGULATION 30(2)

The procedure must set out how a member or user may raise a complaint (known in the regulations as a notice of dispute) to the CMO. CMOs are free to provide for different provisions to deal more effectively with different classes of disputes, such as establishing one process and set of timelines for dealing with disputes with members, and another for dealing with disputes with users.

This procedure is meant to facilitate the resolution of disputes that members or users have with their CMO. It is not meant to deal with other types of disputes where a CMO is not a party, such as a dispute between two members over which member owns the copyright to a work.

Obligation to Address Complaints in Good Faith and Reasonably

CMOs must provide in their dispute resolution policies that they will act in good faith and reasonably when dealing with disputes.

REGULATION 30(3)

This includes acting in good faith and reasonably in investigating the matters raised in a complaint, deciding on the complaint or otherwise dealing with the complaint.

C Class Licence Conditions

3

Dispute Resolution

Manner and Timeframe for Addressing Complaints

CMOs must give their decisions in writing, with reasons, and within 60 days inclusive of any internal recourse.

REGULATION 30(4) – (7)

To ensure prompt resolution of a dispute, the licence conditions set an overall timeframe for a CMO to conclusively exhaust its dispute resolution process. A CMO must give its final decision on a complaint (after any internal recourse such as an appeal) within 60 days after a notice of dispute is given, or any shorter period specified in the dispute resolution policy. Within this period, a CMO is free to manage its own timelines, such as when it will give its initial decision on a complaint.

The dispute resolution policy must also provide that the decisions made by the CMO (including any internal recourse) must be given to the complainant in writing. If the decision is an adverse one (i.e., the CMO does not agree with the complainant), the CMO must provide reasons in its written decision.

Other Rights Not Affected

CMOs must state in their dispute resolution policies that any rights of a CMO or a person who raises a complaint are not affected.

REGULATION 30(9)

A CMO's dispute resolution process is independent of any recourse that may be pursued by a CMO, member or user in other forums. A CMO's dispute resolution policy must make this clear by providing that it does not affect any other rights that the CMO and complainant may have, for example:

- the right to sue for a breach of contract (i.e., where a complaint involves a breach of the CMO's contractual obligations, the complainant remains entitled to take action in court at any time); and
- the right to refer the dispute to a Copyright Tribunal (i.e., where a complaint involves a matter that may be decided by the Copyright Tribunals, the complainant remains entitled to refer the dispute to a Copyright Tribunal at any time).

IPOS may direct a CMO to mediate a dispute.



If the dispute remains unresolved, IPOS may require the CMO to attend mediation with the complainant. However, IPOS will do so only after the process in the dispute resolution policy (including any internal recourse) has been exhausted.

If IPOS directs a CMO to mediate, the CMO must do so unless the other party does not take part in the mediation.

C Class Licence Conditions

4

Governance, Records and Reports

a. Governance Requirements

The good governance of CMOs is critical for inspiring confidence in the collective rights management ecosystem. Qualities such as transparency and accountability engender trust in the administration of CMOs. In this regard, the licence conditions enable members to hold their CMOs accountable by participating in the composition of the CMO's board of directors, and set a minimum standard of transparency by requiring CMOs to keep proper records and present reports to members.

Governance Requirements in Constitutional Documents

CMOs' constitutional documents must provide for the appointment and removal of directors, and disqualification conditions for key officers.

REGULATION 33

Appointment and removal of directors in companies. The board of directors is the executive committee that supervises the activities of a company. To ensure greater accountability, members are empowered to play a crucial role in determining the composition of the board in 2 ways. First, all appointments of directors must be approved by members at a general meeting. Second, members can also remove directors at a general meeting.

Disqualification from being key officer. To ensure that CMOs are run by individuals with a good track record, CMOs must not appoint as a key officer any person who:

- is disqualified from being a director of a company under any written law;
- was a key officer of another CMO that was given a cessation order up to 3 years ago; or
- was removed as a key officer of another CMO under a regulatory direction up to 3 years ago.

Who are the key officers of a CMO?



The key officers are those who are (or purport to be) involved in managing the CMO's business, or who sit (or purport to sit) on its board of directors, executive committee or any other management committee.

Examples of key officers include Chief Executive Officers, Chief Financial Officers, Chief Operating Officers, and partners in limited liability partnerships.

C Class Licence Conditions

4

Governance, Records and Reports

b. Record-Keeping Requirements

Record-Keeping Requirements

CMOs must maintain proper financial records for at least 6 years.

REGULATION 34

A CMO must be able to account for all monies they collect and distribute in administering their members' rights.

This is through the keeping of proper financial records, which must include at a minimum:

- all tariffs received by the CMO;
- the deductions made by the CMO from those tariffs; and
- distributions from those tariffs, including the members who received distributions, and the information to be given to members when making a distribution.

Inspection of Financial Records

CMOs must allow their members to inspect their financial records upon request at least once every financial year.

REGULATION 35

The right to request to inspect a CMO's financial records only relates specifically to the requesting member. Members do not have the right to inspect records relating specifically to other members.

CMOs may also charge an administrative fee for the inspection if provided for in their membership policies.

C Class Licence Conditions

4

Governance, Records and Reports

c. Reporting Requirements

As part of being accountable to their members, CMOs are responsible for keeping their members updated with a full and transparent picture of their financial performance and operations. They must do so through an annual transparency report to be presented at a general meeting of members in respect of each financial year. The transparency report for a particular financial year must be presented within the next financial year. This is separate from any other reports that a CMO must prepare under other written laws, such as legislation pertaining to corporate governance (even though there may be an overlap in the matters that are reported).

Broadly, in the transparency report, CMOs are required to report on financial matters relating to revenue and expenditure, operating costs, funds used for social, cultural, or educational purposes, representation agreements with partner collecting societies, and management fees.

Annual Transparency Report

CMOs must make and present a transparency report, which must contain certain key information in respect of the CMO's financial performance and operations in each financial year.

REGULATION 36

The transparency report must contain certain minimum information in respect of every financial year, as detailed below.

Financial statements

These financial statements must include:

- a balance sheet or statement of assets and liabilities; and
- an income and expenditure account (including breakdown of operating expenditure).

Information on the CMO's activities

CMOs should provide sufficient details about their operations to keep members apprised of the state of affairs in their CMOs.

Tariffs collected by CMO

This includes the:

- total amount of tariffs collected;
- proportion of tariffs corresponding to:
 - each tariff scheme;
 - each class of case to which each tariff scheme applies (e.g. licences for entertainments comprising performances of light or popular music)¹⁹ ; and
 - each category of rights managed by the CMO (e.g. right to perform in public);
- amount and type of deductions made from the tariffs, including information on any social, cultural (e.g. events sponsored by the CMO) or educational services (e.g. training for members) for which the deductions were made;
- total amount attributed and distributed to members; and
- total amount attributed but not distributed to members.

Total remuneration paid to officers and employees

This includes non-monetary benefits (e.g. gifts) paid to the officers of the CMO.

Information on partner collecting societies and representation agreements

This includes the:

- names of all partner collecting societies;
- dates of the representation agreements between the CMO and its respective partner collecting societies;
- total amount paid to the partner collecting societies;
- total amount received from the partner collecting societies; and
- total deductions (if any) made by the partner collecting societies under the representation agreements, such as deductions for management fees.

C Class Licence Conditions

5

Information Provided to the Public

To ensure that CMOs remain transparent and accountable to their stakeholders, they are required to grant the public access to accurate information about their operations, including the rights they manage, the way they are organised, as well as their policies and processes. This fosters a relationship of trust between a CMO and its stakeholders by enabling members and users to make informed decisions in their dealings with the CMO.

To achieve this, CMOs must maintain a public website and publish key documents and information on it. The CMO's website must contain at least the information and documents set out below.

Portfolio Information

CMOs must publish information on their portfolios on their website.

REGULATIONS 38 – 39

For users, it is crucial to know whether the content they are seeking permission to use is indeed part of a CMO's portfolio. Users also need assurance that once they have permission from a CMO to use the content, they can do so without infringing copyright.

CMOs are required to provide their users with this certainty through implementing one of two options.

Option 1 – Publish List of Works and Performances in Portfolio

Under this option, the CMO must publish a list of each work and performance in its portfolio*, including at least the following information:

- its title or a description of it;
- its author or performer;
- its rights owner;
- the categories of rights managed by the CMO in relation to it;
- whether the CMO manages those rights on an exclusive basis; and
- any restrictions in the CMO's scope of rights in relation to it.

Option 2 – Publish List of Members and Partner Collecting Societies, and Indemnify Users

Under this option, the CMO need only publish a list of its members and partner collecting societies. However, the CMO must indemnify its users against any liability for use of a work or performance that is apparently within its portfolio. This indemnity operates as a contractual promise by the CMO to cover the user's losses and expenses if the work or performance is, in fact, not part of its portfolio.

Key aspects of how this indemnity works are as follows:

- A CMO must publish a list of its members and partner collecting societies (list of members).*
- The CMO may also publish a list of works and performances that are not part of its portfolio.*
- A CMO must provide, as a standard term in its licensing agreements, an undertaking to indemnify its user for any use of a work or performance that is apparently within the CMO's portfolio. A work or performance is apparently within a CMO's portfolio when it is made or owned by a member, or represented by a partner collecting society, in the list of members. This excludes any work or performance that the CMO identifies on its website as not being part of its portfolio, or that is expressly excluded in the licensing agreement.
- The indemnity extends to any costs that a user incurs or must pay in connection with actual or contemplated infringement proceedings.
- A CMO may set reasonable conditions on the indemnity, such as when and how to make a claim under the indemnity, and a cap on the indemnity amount.

C Class Licence Conditions

5

Information Provided to the Public

*The information in these lists must be kept up-to-date, which means that:

- it must be updated at least within the last 3 months;
- it was accurate when last updated; and
- the CMO's website must state the date on which the information was last updated and give users an email address for sending any queries on its portfolio (elaborated in the next licence condition below). This gives users an avenue for getting up-to-date information on a CMO's portfolio since its last update on its website.



Why should CMOs provide certainty as to what content it grants permission for?

If a CMO does not publish a list of works and performances in its portfolio, it is impossible for its users to know with certainty whether the content that it grants permission for are, in fact, managed by the CMO. There is greater uncertainty when the CMO grants blanket permissions that do not specify the content that the permission is granted for.

CMOs should strive to be as specific as possible when granting permission for their portfolios. Otherwise, when a CMO provides an indemnity, this may be construed widely to correspond with the apparently broad scope of the permission granted.

C Class Licence Conditions

5

Information Provided to the Public

Responding to Queries on Works and Performances in Portfolio CMOs must specify an email address for receiving public queries about their portfolios and respond to such requests within 14 days.

REGULATION 40

This licence condition requires CMOs to set up a process for responding to requests from the public for confirmation or proof about whether a particular copyright work or performance is or is not part of the CMO's portfolio.

CMOs must specify on their website, an email address to which the public may send such requests and the time within which the CMO will ordinarily respond to the request. This specified time must not exceed 14 days.²⁰

Other Key Information and Documents

CMOs must publish other key information and documents on their website.

REGULATION 41

Key information includes at a minimum:

- the CMO policies (i.e. the membership, distribution and dispute resolution policies);
- information on how to apply to be a member (including any relevant forms, membership fees, and application timelines);
- information on each tariff scheme formulated or operated, including:
 - the classes of cases in which the CMO is willing to grant permission to use works or performances managed by the CMO; and
 - the standard terms on which such permission can be granted (including fees and discounts);
- every transparency report for the past 6 financial years;
- constitutional documents of the CMO; and
- all representation agreements the CMO has entered into, which must be kept updated within the last 3 months (and state the date on which the list was last updated).

D

Regulatory Action

To ensure effectiveness of the CMO regulatory regime, IPOS is empowered to investigate and take regulatory actions against CMOs and their officers. IPOS can investigate and take action on its own motion or pursuant to a request for investigation into an alleged breach of a class licence condition (**request for investigation**). There are offences for operating without a class licence or failing to comply with any regulatory action taken by IPOS.

The scheme empowers members and users to hold CMOs accountable for compliance with the licence conditions at first instance. Accordingly, where a request for investigation is submitted in relation to an alleged breach concerning a user or member, IPOS will only proceed with investigations if the CMO has not addressed the breach after the user or member has exhausted the dispute resolution process under the CMO's dispute resolution policy.

IPOS will take regulatory action after investigating and determining that there is a breach of a licence condition. An affected person may apply for a further review of IPOS's decision before finally appealing to the Minister for Law. CMOs and their officers have a right to be heard at every stage of the process and may apply to suspend the regulatory action pending a final decision.



D Regulatory Action

1

Regulatory Actions and Offences

What Regulatory Actions can be Taken?

IPOS can take 3 types of regulation actions against CMOs and their officers.

a. Regulatory directions

IPOS may issue regulatory directions to a CMO or any of its officers to secure compliance with the class licence conditions, or to investigate or remedy any breach of the licence conditions. Regulatory directions may also be issued without reference to specific licence conditions, such as for the purpose of regulating CMOs in general or to ensure the good governance of a CMO.²¹

Regulatory directions are issued based on the specific circumstances of a case, and may include directing a CMO or any officer to:

- provide security for the CMO's compliance with the licence conditions;
- conduct an audit of the CMO's business at the expense of the CMO or officer;
- submit to an audit of the CMO's business conducted by or at the direction of IPOS and bear the costs associated with the audit;
- secure the removal or appointment of a person as an officer of the CMO;
- (in the case of an officer) cease acting in a particular capacity in the CMO; and
- turn over the conduct of the CMO's business to a person appointed by IPOS.

Non-compliance with a regulatory direction is an offence punishable with a fine not exceeding **\$10,000** or imprisonment for a term not exceeding **6 months**, or both.

b. Financial penalties

For every breach of a class licence condition, IPOS may impose a financial penalty of up to **\$20,000** on the CMO or each officer responsible for the CMO's breach.

c. Cessation order

IPOS may make a cessation order on a CMO – this order requires the CMO to cease its CMO business either indefinitely or for a specified period. Such orders are typically reserved for the most serious breaches of the class licence conditions or failures to comply with regulatory directions.²²

Carrying on a business as a CMO without a class licence or while under a cessation order is an offence that is punishable with a fine not exceeding **\$50,000** or imprisonment for a term not exceeding **3 years** or to **both**.

D Regulatory Action

2

Regulatory Action Procedure

The regulatory action procedure involves the following key stages, each with its own procedural requirements as set out in the Regulations.

- submitting a request for investigation (for investigations that are not initiated by IPOS on its own accord);²³
- making representations to IPOS before IPOS takes regulatory action;
- applying to IPOS for reconsideration of its regulatory action; and
- appealing to the Minister against IPOS's reconsidered decision.²⁴ The Minister's decision is final.

A decision against a CMO or its officer may be made summarily if the CMO or officer fails to comply with the procedural requirements under the Regulations or any fact-finding directions, or if the conduct of the CMO or officer is frivolous or vexatious.²⁵

Who can Submit a Request for Investigation?

The following persons may submit a request for investigation to IPOS after attempting to resolve the matter with the CMO through the process in its dispute resolution policy (including any recourse mechanisms such as appeals):

- an existing member of a CMO;
- an existing user of a CMO's portfolio; or
- an intending user of a CMO's portfolio.

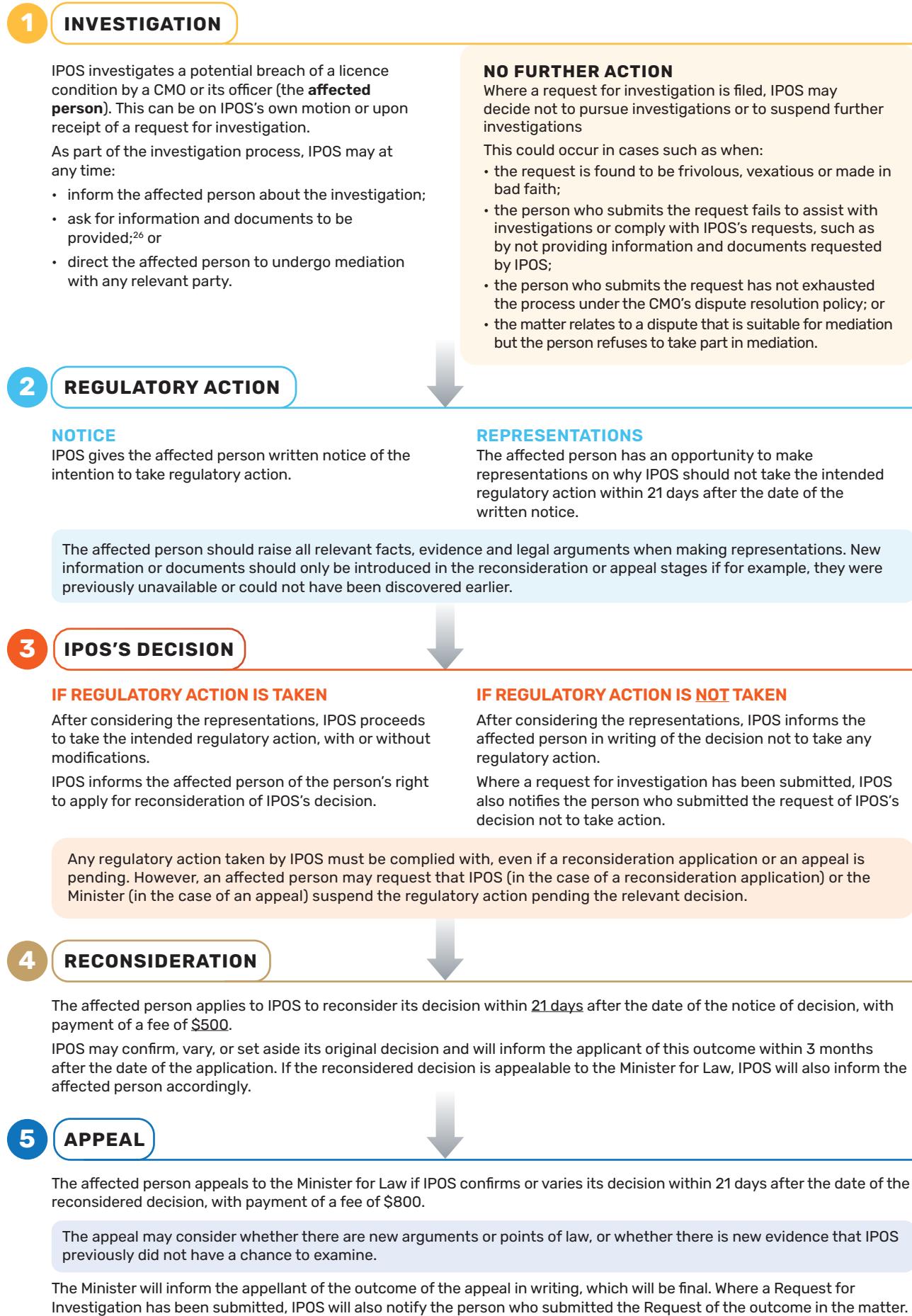


IPOS does not regulate the fees CMOs charge for permission to use the content it manages.

The class licensing scheme does not intervene in the fees that CMOs charge. These fees are to be determined by the market and in the usual course of commercial negotiations. If a user thinks that the fees or other terms of a CMO's tariff scheme are unreasonable, they may apply for a Copyright Tribunal to determine the appropriate terms on which the content should be licensed.

However, the scheme *does* regulate how CMOs should *conduct* themselves in negotiations regarding these fees, such as publishing standard terms of the tariff scheme, answering queries on a CMO's portfolio, and dealing with any user complaints according to the CMO's dispute resolution policy (as explained above). If a request for investigation is submitted in relation to such issues, it would be subject to the regulatory action procedure detailed below.

The regulatory action procedure and timeline is elaborated on in the flowchart below.



E

Annex: Compliance Checklist for CMOs

<input type="checkbox"/> Provide IPOS an email address at which IPOS may serve documents for the purpose of regulation.	Reg 42
1. MEMBERS' RIGHTS	
Membership Agreement	
<input type="checkbox"/> Before entering into an exclusive membership agreement, give a member:	Reg 6
<input type="checkbox"/> the option to enter into a non-exclusive membership agreement instead; and	Reg 6(b)
<input type="checkbox"/> a written explanation of the consequences of entering into an exclusive membership agreement.	Reg 6(a)
<input type="checkbox"/> Give each member a copy of their membership agreement upon joining the CMO, upon the member's request (within 7 days), and whenever the membership agreement is amended.	Reg 7
<input type="checkbox"/> Ensure that each membership agreement is in writing and at least:	Regs 8 and 9
<input type="checkbox"/> expressly incorporates the CMO policies (i.e., the membership policy, distribution policy, and dispute resolution policy);	Reg 9(1)
<input type="checkbox"/> provides that the CMO policies prevail over any inconsistent term in the membership agreement;	Reg 9(2)
<input type="checkbox"/> provides clarity on the works and performances that the CMO manages on behalf of the member;	Reg 8(1)
<input type="checkbox"/> specifies the nature of the rights that the CMO exercises over those works and performances; and	Reg 8(2)
<input type="checkbox"/> provides the conditions and process for terminating membership.	Reg 8(3)
Membership Policy	
<input type="checkbox"/> Establish a membership policy which provides at least:	Part 3, Div 3
<input type="checkbox"/> that it may be amended only by members and not inconsistently with the Regulations;	Reg 11
<input type="checkbox"/> the membership criteria (and that the CMO must not accept members in any other way);	Reg 12
<input type="checkbox"/> when members may continue to use their portfolios or authorise the CMO to waive tariff collection;	Reg 13
<input type="checkbox"/> a right of members to vary or terminate rights granted to the CMO;	Reg 14
<input type="checkbox"/> a right of members to be informed and request information; and	Reg 15
<input type="checkbox"/> a procedure for general meetings of members and a right of members to participate in them.	Reg 16
2. DISTRIBUTION OF TARIFFS	
Distribution Policy	
<input type="checkbox"/> Establish a distribution policy which provides at least:	Part 3, Div 4
<input type="checkbox"/> that it may be amended only by members and not inconsistently with the Regulations;	Reg 19
<input type="checkbox"/> the method for calculating tariff distributions;	Regs 20(1) and 21
<input type="checkbox"/> the deductions to be made before distributions;	Reg 20(2)
<input type="checkbox"/> the frequency and mode of making distributions;	Reg 22
<input type="checkbox"/> for safeguarding and dealing with tariffs that cannot be distributed;	Reg 23
<input type="checkbox"/> a requirement for the CMO to do its best to collect and provide each member with accurate and timely information about the use of their portfolios; and	Regs 24 and 25
<input type="checkbox"/> a right of members to ask for information about, and dispute, the distributions they receive.	Reg 26
3. DISPUTE RESOLUTION	
Dispute Resolution Policy	
<input type="checkbox"/> Establish a dispute resolution policy which provides at least:	Part 3, Div 5, Reg 30
<input type="checkbox"/> that it may be amended only by members and not inconsistently with the Regulations;	Reg 29
<input type="checkbox"/> the procedure for a member or user to raise a notice of dispute to the CMO;	Reg 30(2)
<input type="checkbox"/> a requirement for the CMO to investigate, decide on, and otherwise deal with the dispute in good faith and reasonably;	Reg 30(3)
<input type="checkbox"/> a requirement for the CMO to give its decision on a dispute in writing and, in the case of an adverse decision, with reasons;	Reg 30(4)
<input type="checkbox"/> the time period for the CMO to give its final decision on the dispute (this period must not be longer than 60 days, including any internal recourse); and	Reg 30(5)-(7)
<input type="checkbox"/> that the Dispute Resolution Policy does not affect any right of the parties, including the right to refer the dispute to a Copyright Tribunal.	Reg 30(9)

E Annex: Compliance Checklist for CMOs

4. GOVERNANCE	
Constitutional Documents	
<input type="checkbox"/> Provide in the CMO's constitution for the members' right to approve appointment of directors and to remove directors. (applicable to companies only)	Reg 33(1)
<input type="checkbox"/> Provide in the CMO's constitutional documents the disqualification criteria for key officers.	Reg 33(2)-(3)
Records and Reports	
<input type="checkbox"/> Keep proper financial records that include:	Reg 34(1)
<input type="checkbox"/> the tariffs received;	Reg 34(1)(a)
<input type="checkbox"/> the deductions made from those tariffs; ³ and	Reg 34(1)(b)
<input type="checkbox"/> the distributions made from those tariffs.	Reg 34(1)(c)
<input type="checkbox"/> Keep the financial records for 6 financial years.	Reg 34(2)
<input type="checkbox"/> Allow members to inspect, upon request, the CMO's financial records at least once every financial year.	Reg 35
<input type="checkbox"/> Make a transparency report for each financial year which provides at least:	Reg 36
<input type="checkbox"/> the CMO's financial statements;	Reg 36(2)(a)
<input type="checkbox"/> information on the CMO's activities;	Reg 36(2)(b)
<input type="checkbox"/> information on the tariffs collected;	Reg 36(2)(c)
<input type="checkbox"/> information on the total remuneration paid to the CMO's officers and employees; and	Reg 36(2)(d)
<input type="checkbox"/> information on the CMO's partner collecting societies.	Reg 36(2)(e)
<input type="checkbox"/> Present the transparency report to a general meeting of members within the next financial year.	Reg 36(1)

5. INFORMATION TO THE PUBLIC	
Public Information	
<input type="checkbox"/> Set up and maintain a public website.	Reg 37
<input type="checkbox"/> Create a mechanism for providing confirmation and proof about the CMO's portfolio, including:	Reg 40
<input type="checkbox"/> specifying on the CMO's website the email address to which people can send requests for confirmation or proof that a particular work or performance is part of a CMO's portfolio; and	Reg 40(2) and (5)
<input type="checkbox"/> stating on the CMO's website the time within which the CMO will ordinarily respond to such requests (which must not exceed 14 days).	Reg 40(5)

<input type="checkbox"/> Publish the following key information and documents on the CMO's website:	Reg 41
<input type="checkbox"/> the CMO policies;	Reg 41(1)(a), (i)-(j)
<input type="checkbox"/> information on the membership application process;	Reg 41(1)(b)
<input type="checkbox"/> all the CMO's tariff schemes, including details on the classes of cases and the standard terms of each scheme;	Reg 41(1)(c)-(d)
<input type="checkbox"/> every transparency report for the last 6 financial years;	Reg 41(1)(e)
<input type="checkbox"/> the names of the key officers;	Reg 41(1)(f)
<input type="checkbox"/> the constitutional documents; and	Reg 41(1)(g)
<input type="checkbox"/> an up-to-date list of all representation agreements.	Reg 41(1)(h)
Portfolio Information Option (1): Publish Works-Based Portfolio Information	
* CMOs must comply with either this option or Option 2.	
<input type="checkbox"/> Publish on the CMO's website the following up-to-date information about each work and performance in the CMO's portfolio:	Reg 38
<input type="checkbox"/> its title or a description;	Reg 38(3)(a)
<input type="checkbox"/> its author or performer;	Reg 38(3)(b)
<input type="checkbox"/> its rights owner;	Reg 38(3)(c)
<input type="checkbox"/> the categories of rights managed by the CMO (including any restriction on those rights); and	Reg 38(3)(d)-(e)
<input type="checkbox"/> whether the CMO is managing it on an exclusive basis.	Reg 38(3)(f)
Portfolio Information Option (2): Publish Members-Based Portfolio Information and Indemnify Users	
* CMOs must comply with either this option or Option 1.	
<input type="checkbox"/> Publish on the CMO's website, up-to-date information on:	Reg 39(2)-(5)
<input type="checkbox"/> every member of the CMO;	Reg 39(2)(a)
<input type="checkbox"/> every partner collecting society for whom the CMO manages works or performances; and	Reg 39(2)(b)
<input type="checkbox"/> any works or performances that are not part of the CMO's portfolio.	Reg 39(3)
<input type="checkbox"/> Provide, in licence agreements with users, an indemnity against liability for infringement arising from use of a work or performance that is apparently within the CMO's portfolio based on the information published on its website.	Reg 39(6)-(12)

NOTES:

¹ The detailed provisions relating to this scheme are set out Regulations.

² See Section 459 of the Copyright Act 2021 for the statutory definition of a CMO.

³ See Section 461 of the Copyright Act 2021.

⁴ See Regulation 5. While the Copyright Act 2021's definition of a CMO is wide enough to cover both entities and individuals, the Regulations presently do not establish any class licence for individuals.

⁵ See Regulation 4.

⁶ See Regulation 42.

⁷ See Part 3 of the Regulations for the exact licence conditions.

⁸ See Part C1(b) for more details.

⁹ See Part C2 for more details.

¹⁰ See Part C3 for more details.

¹¹ See Regulation 9.

¹² See Regulations 10(2), 18(2) and 28(2).

¹³ See Regulations 10(3), 18(3) and 28(3). These provisions make clear that the CMO policies do not affect any other remedies (such as in contract) that a person may have against the CMO.

¹⁴ See the definition of "exclusive" in relation to a membership agreement between a CMO and a member in Regulation 2(1). It means that a membership agreement under which –

- (a) the CMO becomes the rights owner of the member's portfolio;
- (b) the CMO is granted an exclusive licence or authority to give permission to use the member's portfolio;
- (c) the CMO becomes the exclusive agent of the member in managing the member's portfolio; or
- (d) the CMO is granted other exclusive rights in relation to the management of the member's portfolio.

¹⁵ These are separate from meetings convened as part of a CMO's corporate structure.

¹⁶ See Part C4(c) for more details.

¹⁷ For example, if the user fails to provide usage information despite the CMO's best efforts to collect that information.

¹⁸ See Regulation 25(2).

¹⁹ This example is based on the class of case that was the subject of the Copyright Tribunal's decision in Sunvic Production Pte Ltd v Composers and Authors Society of Singapore Ltd [1993] SGCRT 1.

²⁰ The CMO must comply with this time requirement unless there are exceptional circumstances beyond the CMO's control and despite its best efforts. In such situations, the CMO must inform the enquirer of the delay in responding as soon as reasonably practicable.

²¹ Section 464(1) of the Copyright Act 2021.

²² Section 465(1) of the Copyright Act 2021.

²³ See Part 4 of the Regulations. The forms relevant to the regulatory action procedure will be made available on IPOS's website before the regime takes effect on 1 May 2024.

²⁴ Appealing to the Minister is only allowed if IPOS, after reconsideration, confirms or varies a financial penalty, cessation order, or a regulatory direction given to a person to turn over the conduct of the CMO's business to a person appointed by IPOS (see Section 467(1) of the Copyright Act 2021).

²⁵ In particular, (i) at the representations stage, IPOS may summarily reject the CMO or officer's representations without considering its merits (see Regulation 49), (ii) at the reconsideration stage, IPOS may summarily confirm its original decision without considering the merits of the CMO or officer's reconsideration application (see Regulation 58), and (iii) at the appeal stage, the Minister may summarily confirm the decision appealed against without considering the merits of the appeal (see Regulation 65).

²⁶ IPOS may direct any person providing information or documents to make a statutory declaration to attest to the veracity of the information or documents.



Published 31 October 2023

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