

National Information and Communications Technology Authority

Guide to class licensing

DRAFT ONLY

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Guide to class licensing

This guide has been prepared to assist potential class licence registrants determine their eligibility for a class licence, understand their responsibilities and obligations under a class licence, and prepare an application for a class licence. It also provides guidance on the meaning of 'closed user group' for the purposes of subsection 2(2) of the *National Information and Communications Technology (Operator Licensing) Regulation, 2010* (the Licensing Regulation).

This guide should be read in conjunction with both the *National Information and Communications Technology Act 2010* (the NICT Act) and the Licensing Regulation. Many of the terms used in this guide are defined in either the NICT Act or the Licensing Regulation, and have the same meaning in this Guide.

Eligibility for class licences is summarised in the table below. Any person intending to undertake activities authorised by a class licence must, prior to undertaking those activities, complete and submit to NICTA a class licence registration form and pay an application fee. The activities will not be authorised by a class licence until NICTA has endorsed the registration request and returned an endorsed copy of the registration form to the applicant.

	Facilities Rights	Network services	Application Services	Content Services
If you want to	Construct, maintain, own or operate: -earth stations -VSATs -line links -radiocoms links -switching centres -exchange nodes -towers -masts -antennas -tunnels -ducts -pits -poles -other facilities	Supply: -bandwidth services -public cellular mobiles services Switching services -international gateways services -facilities access services -broadcasting distribution services -space services -other network services	Supply: -PSTN telephony -public switched data -public cellular -internet access -IP telephony -directory services -messaging -audiotext hosting -public payphone -other application services	Supply television or radio broadcast content services
And it will be	For your own private use		A community service	Either a narrowcasting service or a community service
And you are	Either a citizen of PNG or a company incorporated in PNG (with appropriate foreign investment authorisations under the <i>Investment Promotion Act, 1992</i> if the company is a foreign enterprise.)			
Then	You are eligible for a class licence			

New licensing framework

In 2010, the NICT Act created a new licensing regime for operators in the Papua New Guinean ICT sector. Under this regime there are three types of operator licences:

- network licences;
- applications licences; and
- content licences.

A network licence entitles the licence holder to construct, maintain, own and operate the facilities that constitute a communications network, such as VSATs, towers, lines, antenna, and earth stations. These entitlements are called facilities rights. A network licence also authorises the licence holder to supply to the public certain network services, which are services for carrying electronic communications. Examples include public cellular mobile services and broadcasting distribution services. A network licence also authorises the supply of facilities access services, which are services through which the licence holder's facilities can be accessed and used to supply a network services.

An applications licence authorises the licence holder to supply to the public certain applications services, which are communications services supplied using a network service. Examples of applications services include PSTN telephony services, IP telephony services, internet access services, messaging services and audiotext services.

A content licence authorises the licence holder to supply television or radio broadcast services. Content licences also authorises the supply of narrowcast services, which are applications services that involve the supply of content that is intended for a restricted number of viewers or listeners.

Each of these three licence types is available in two forms:

- as an individual licence, which is granted to a specific named individual person or company; or
- as a class licence.

Class licence eligibility

To be eligible to hold any type of operator licence you must be either:

- (i) a natural person who is citizen of Papua New Guinea; or
- (ii) a body corporate that is incorporated in Papua New Guinea. If the company is a foreign enterprise it must also have the certificates necessary under the *Investment Promotion Act, 1992*.

Eligibility for a class licence is largely dependent on how broadly the service is made available. To this end, the Licensing Regulation define three important concepts: private use, community service, and narrowcasting services.

Type of ICT licence	Form of licence	Eligibility dependent on
Network	Individual	Private use
	Class	
Applications	Individual	Community service
	Class	
Content	Individual	Narrowcasting service Community service
	Class	

To be eligible for a network class licence, the intended network services must be for private use only. That is, the network services must only be supplied to a closed user group. In the case of facilities rights, the relevant facilities must be for use in connection with the supply of network services to a closed user group.

Closed user group means that all parties to the communications carried by the network service are within the immediate circle of the registrant. The immediate circle of a registrant consists of the registrant and certain other end-users that have a particular relationship to the registrant. If the registrant is a natural person, then all of that person's employees constitutes his or her immediate circle. If the registrant is a body corporate, then all the employees and officers of that body corporate, together with any related body corporate and the employees and officers of that body corporate, constitute its immediate circle. The employees of the registrant are only considered to be in the closed user group of the registrant in their capacity as employees of the registrant, and not in any other capacity that they might have or hold (e.g. as private citizens). If the registrant is an education institution, then all the students and teachers of that institution constitute its immediate circle. If the registrant is a government department or agency, then all of the officers and staff of that department or agency constitute its immediate circle for the purpose of the application of the term *closed user group*.

To be eligible for an applications class licence, the intended applications services must be supplied as a community service. A community service is a service that is provided for community purposes and is not operated for profit.

To be eligible for a content class licence, the intended content services must be supplied as either a community service or as a narrowcasting service. A narrowcasting service is an applications service that involves the supply of content is intended for a restricted number of viewers of listeners and not to public generally in the area in which the service operates.

Registration form and process

To obtain a class licence, you must complete a registration form and submit it, in duplicate, to NICTA with an application fee of K500. Pls note that apparatus fees may apply where appropriate.

A copy of the registration form is provided at Attachment A. Certain additional documentation may also need to be submitted with the completed registration form, such as evidence of Papua New Guinean citizenship if the applicant is a natural person, or a certificate from the Investment Promotion Authority certifying that an applicant company is authorised to conduct business in Papua

New Guinea. Such additional information or documentation as may be requested and or required by NICTA should also be provided by you.

NICTA will make a decision to accept or reject the registration notice within 30 days of receipt of a completed registration form, including such additional evidence or documentation as may be required. If NICTA accepts the registration notice, NICTA will endorse the duplicate registration form and return it to the applicant.

Grounds for refusal of a registration notice

NICTA may refuse to accept a registration for a class licence if the applicant:

- (i) is not eligible to be an ICT licensee;
- (ii) does not propose to provide the type of ICT services, or exercise the facilities rights, that are the subject of a class licence;
- (iii) does not submit a registration form containing all the information required;
- (iv) is in contravention of the NICT Act or any mandatory instrument in relation to any other ICT licences or existing licences that the registrant may hold; or
- (v) submits a registration form that contains false or misleading information or misrepresentation of fact.

If NICTA refuses a registration notice, it will inform the applicant within 30 days of receipt of the registration notice (including such additional evidence or documentation as may be required). NICTA will also provide the registrant with a written notice stating the reasons for the refusal. A decision to refuse a registration notice may be appealed to the ICT Appeals Panel.

Duration, renewal and cancellation

Class licences are valid and shall continue in force subject to changes in the law, regulations or orders made by NICTA pursuant to the powers given it under the Act.

Registrations under a class licence shall continue in force as long as:

- (i) the registrant continues to comply with the conditions of the licence, as varied by legislation, regulation or order of NICTA from time to time;
- (ii) the registrant continues to maintain eligibility to be registered under the relevant class licence; and
- (iii) the registrant continues to provide services of a kind that are the subject of the class licence.

NICTA may deregister a class licensee if the registrant:

- (i) requests NICTA, in writing, to deregister it;
- (ii) has ceased to fulfil the eligibility requirements;
- (iii) enters into receivership or liquidation;
- (iv) takes any action for its voluntary winding-up or dissolution;
- (v) enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation upon terms and conditions and within such period as may previously have been approved in writing by NICTA);

- (vi) is the subject of any order that is made by a competent court or tribunal for its compulsory winding up or dissolution; or
- (vii) failed to comply with any provision of the NICT Act of a mandatory instrument.

If a registrant is deregistered, the authorisations and entitlements provided to it by the class licence are immediately revoked. The deregistered registrant must then cease to provide any ICT service or exercise any facilities rights or undertake any act in respect of which the class licence was granted.

A decision to deregister a class licensee may be appealed to the ICT Appeals Panel.

Obligations on registrants

There are a number of standard term and conditions attached to a class licence. All registrants must:

- (i) pay all applicable fees and levies;
- (ii) comply with the NICT Act and all applicable mandatory instruments and laws, rules, guidelines, codes including any radiocommunications licences and relevant international conventions;
- (iii) take all proper and adequate safety measures to safeguard life or property in respect of all apparatus, equipment and installations possessed, operated, maintained or used under the licence, including exposure to any electrical emission or radiation emanating from the apparatus, equipment or installations;
- (iv) take all reasonable steps to ensure that the charging mechanism used in connection with any of its facilities or services are accurate and reliable;
- (v) [not in any way whatsoever have access to an international communications network except by way of entering into an arrangement with an International Gateway Network Service Provider]; and
- (vi) indemnify NICTA against any claims or proceedings from any breaches or failings on the part of the licensee

A registrant must also notify NICTA in writing of any change to the particulars contained in its registration form.

Attachment A: Class licence registration form[FORM CLASS 100]

Registration under a Class Licence pursuant to the National ICT Act

1. Full name of registrant:
2. Physical address of registrant:
3. Postal address of registrant:
4. Phone number(s) of registrant:
5. Fax number of registrant:
6. Email address of registrant:
7. Is the registrant a company or an individual? 1. Company 2. Individual
8. If the registrant is a company provide company registration number in Papua New Guinea
9. If the registrant is a company and a foreign enterprise, provide copies of the relevant certificates under the *Investment Promotion Act, 1992*, authorising foreign investment in PNG
10. If the applicant is an individual, attach a copy of a certificate of birth and/or other evidence showing PNG citizenship. (Evidence may include a copy of registration certificate on voting rolls for PNG, a certificate of citizenship if applicable, or a certificate of birth showing birthplace as a place in PNG.)
11. Type of Class Licence and sub-category of Class Licence under which registration is sought: **Mark one only.**

	Type	Sub-category
1.	Network Licence	Facility rights: in relation to the private use of all facilities Network services: in relation to the supply for private use of all network services
3.	Applications Licences	Applications service: In relation to the supply of one or more of PSTN telephony, public switched data and public cellular services as a community service within a closed user group
4.	Applications Licences	Applications service: In relation to the supply of one or more of internet access, IP telephony, directory, messaging, audiotext hosting, public payphone or other non-exempt applications services
5.	Content Licences	Content service: in relation to TV or radio broadcast services as a narrowcasting service
6.	Content Licences	Content service: in relation to TV or radio broadcast services as a community service

		within a closed user group
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12. Provide a description of the facilities, network service, applications service or content service and areas of coverage and types of technology to be used by the applicant pursuant to this licence.
13. Provide operating procedures including a network topology, details of equipment to be used, connectivity to be obtained.
14. Provide a description of the intended use of the facilities or services.
15. Provide details of any ICT individual licence or class licence registration held by the applicant or by any related company at the date of this application
16. Provide any other information that the applicant has any reason to believe would be relevant to NICTA's assessment of this application for registration under a class licence
17. Signature of applicant or on behalf of registrant
18. Date of application:
19. Contact details:
 - a. Full name of contact person:
 - b. Position of contact person if employee:
 - c. Role of contact person if agent:
 - d. If agent please attach authority to act for registrant
 - e. Phone number (if different from registrant)
 - f. Fax number (if different from registrant)
 - g. Email address (if different from registrant)
 - h. Physical address (if different from registrant)
 - i. Postal address (if different from registrant)

This Registration Form must be lodged in duplicate to NICTA at the following address

Manager Licensing and Business Relations

PO Box 8227

BOROKO 111

NCD

Papua New Guinea

Attachment B: Checklist for registration

1. Duly completed Form Class 100
2. A registration Fee of K500.00
3. Such additional information or document as may be requested by NICTA

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