

THIRD-PARTY INVOLVEMENT IN CLASS LICENSES

Category: Infrastructure and Telecommunications
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The South African telecommunications industry is a highly regulated industry. The *Electronic Communications Act 36 of 2005* (“**ECA**”) is the primary piece of legislation for the telecommunications sector. The ECA establishes licensing requirements for electronic communications services. The ECA sets out two types of class licences that persons may apply for:

- Class Electronic Communications Network Service (“**CECNS**”) Licenses empower holders to deploy and operate physical telecommunications networks. These networks can encompass a diverse array of technologies, including radio equipment for wireless networks, copper cabling, fibre optic cabling and more. CECNS license holders may enter into commercial arrangements with other licensees, enabling them to utilise their networks for the provision of electronic communication services; and
- Class Electronic Communications Service (“**CECS**”) Licenses grant holders the ability to offer services to customers over their own network or through third-party networks. This category of license is typically pursued by Internet Service Providers (ISPs) that do not own or operate their own network infrastructure but instead rely on existing network facilities to deliver services to end-users.

There are a host of duties that class licensees must comply with and the involvement of third parties

adds another layer of complexity to regulatory compliance and therefore require careful consideration to ensure adherence to regulatory requirements and contractual obligations.

Third-Party Rights and Responsibilities

Typically, class licences allow its holders and its subsidiaries to provide all or any of the electronic communications services together with all or any other rights granted to it under the licence.

This means that if a parent company in a group of companies obtains a class licence, its subsidiaries may use the licence without obtaining its own license to provide electronic communication services.

Additionally, third parties including agents and contractors are allowed to exercise rights and obligations under a class licence by way of entering in an agreement with the holder. It is important to note that the licence holder remains responsible for the third-party to ensure that they do not contravene the conditions of the license.

Despite the latitude afforded to licensees in engaging third parties, regulatory constraints must be carefully navigated to avoid contravening the ECA. Section 16(6) of the ECA explicitly prohibits the cession, letting, subletting, or transfer of a class license without prior written approval from the Independent Communications Authority of South Africa. This provision aims to safeguard against unauthorised transfers of licensing rights and maintain regulatory oversight over telecommunications services.

Licensees must exercise caution when delegating tasks to third parties to ensure compliance with regulatory provisions. While third-party involvement can enhance operational efficiency and service delivery, licensees must refrain from delegating all tasks associated with the class license, as this could be construed as a prohibited transfer of the license itself.

Ultimately, the involvement of third parties presents both opportunities and challenges for licensees. By carefully setting out rights and responsibilities through contractual agreements, licensees can leverage third party expertise while maintaining compliance with regulatory requirements.

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