PUBLIC CONSULTATION ON DRAFT REGULATIONS FOR COLLECTIVE MANAGEMENT ORGANISATIONS

Prepared by Ministry of Law ("**MinLaw**") and Intellectual Property Office of Singapore ("**IPOS**")
7 November 2022

PART 1: INTRODUCTION

1. MinLaw and IPOS are seeking views on draft subsidiary legislation on the regulation of collective management organisations ("**CMOs**").

2. The Copyright (Collective Management Organisations) Regulations ("**Regulations**") set out the licence conditions which CMOs must comply with under a mandatory class licensing scheme administered by IPOS, as well as procedural matters relating to the regulation of CMOs. A draft of the Regulations is annexed as **ANNEX A**.

3. The public consultation period is from **7 November 2022 to 4 December 2022**.

A. Background

4. This consultation is part of an ongoing review of Singapore's copyright regime, specifically on the introduction of a class licensing scheme for CMOs. This consultation follows from earlier consultations on proposed amendments to our copyright regime, including a consultation conducted in 2020 on the collective rights management ecosystem ("**2020 Consultation**").

5. For reference, the consultation paper for the 2020 Consultation is at **ANNEX B**. The 2020 consultation paper sets out the context for and background to the preparation of the draft Regulations, including the relevant legislative history, policy objectives, and needs that the draft Regulations seek to meet.

6. The Copyright Act 2021 ("**Act**") was passed in Parliament on 13 September 2021 and has mostly taken effect on 21 November 2021. The regulatory framework for CMOs is established under Part 9 of the Act, which has not been brought into force. Under this framework, every CMO will be automatically subject to a mandatory class licence and must therefore comply with all licence conditions applicable to it. IPOS will be the regulator of the licensing scheme and will be empowered to take regulatory actions against CMOs and their officers as sanctions for any breach of licence conditions or for the purpose of regulating CMOs generally. There are 3 types of regulatory actions that IPOS can take: giving regulatory directions, imposing financial penalties, and making cessation orders.[1]

7. The draft Regulations will be made pursuant to Part 9 of the Act and will set out the detailed provisions on the operation of the scheme, specifically:

(a) the licence conditions with which CMOs must comply; and

[1] Sections 463 to 465 of the Act.

(b) the procedures relating to regulatory action taken by IPOS, including procedures for making representations, applying for reconsiderations, and appealing against such regulatory action.

B. Public Consultation Process

8. Purpose of consultation. The draft Regulations implement the proposals made at the 2020 Consultation and take in the feedback received on those proposals at that consultation. In contrast to the 2020 Consultation, the current consultation is a *technical* consultation directed at the draft Regulations. We invite interested persons to provide their views on the language of the specific provisions of the draft Regulations as well as the specific additional issues raised in this paper. In particular, we invite views on the following:

(a) Is there any ambiguity or lack of clarity as to the scope of any provision or how it should operate, including any aspect in which a particular provision may be more prescriptive?

(b) Is there any practical or operational difficulty (other than what was previously raised at the 2020 Consultation) which has not already been addressed in the draft Regulations or explained in this paper? If so, how may it be addressed, taking into account the framework of the licensing scheme as described in Part 2 of this paper?

9. Method of feedback. Please submit your feedback via email or hard copy to:

Ministry of Law
Intellectual Property Policy Division, Ministry of Law
100 High Street, #08-02, The Treasury
Singapore 179434

Email:
MLAW_Consultation@mlaw.gov.sg

Please include your name, contact number, and, if you are representing an organisation, the name of that organisation. Please also identify the provision and/or issue to which your feedback relates.

10. Format of consultation. We ask that you provide your submissions in a clear and concise manner, with a reasoned explanation for any proposal or response on any issue.

11. Deadline. Please submit your feedback by **4 December 2022.** Thank you.

12. We reserve the right to make public all or parts of any submission and disclose the identity of its source. Commenting parties may request for confidentiality for any part of the submission that is believed to be proprietary, confidential, or commercially sensitive. Any such information should be clearly marked and placed in a separate annex. If we grant confidential

treatment, we will consider, but will not publicly disclose, the information. If we reject the request for confidential treatment, the information will be returned to the party that submitted it and will not be considered as part of this review. As far as possible, parties should limit any request for confidential treatment of information submitted. We will not accept any submission that requests confidential treatment of all, or a substantial part, of the submission.

C. Summary of this Paper

13. In the rest of this paper, we set out the following:

(a) **Part 2** – key features of the framework of the class licensing scheme.

(b) **Part 3** – class licence conditions.

(c) **Part 4** – prescribed procedures for representations, reconsiderations, and appeals in respect of IPOS's regulatory action.

PART 2: FRAMEWORK OF LICENSING SCHEME

A. A Light-touch Model of Regulation

14. The mandatory class licensing scheme will introduce a light-touch model of regulation over the collective rights management ecosystem in Singapore. The intended approach is to focus on key areas that will promote greater market efficiency and uphold the principles of transparency, accountability, and good governance without unnecessarily increasing compliance efforts and costs.

15. No fee-setting or fee approval. The scheme does not intervene in the fees that CMOs charge for permission to use the works and performances that they manage. The industry remains free to determine its fees. Where a dispute on such fees arises, the Copyright Tribunal remains the appropriate forum for resolution.

16. Low set-up cost. CMOs will not need to register or pay any fee to be licensed. This reduces the administrative burden on CMOs and lowers the barrier to entry for new CMOs. Since licensing is automatic, CMOs need only to comply with applicable licence conditions.

17. Regulations only in critical areas. The licence conditions target only critical areas where transparency, accountability, efficiency, and good governance can be improved, based on feedback from the previous public consultations. This ensures that CMOs will meet the minimum standards set in these critical areas without incurring the high costs of compliance that are associated with a heavily regulated regime.

18. CMOs retain flexibility. Wherever possible, CMOs are given flexibility in compliance. For example, certain licence conditions allow CMOs to deviate from prescribed standards so long as they obtain approval from their members to do so. Other licence conditions impose only minimum and maximum limits, within which CMOs remain free to operate. Yet other licence conditions require CMOs to introduce a policy to address certain matters, but do not prescribe the specific details of what that policy should set out.

19. Policing by members and users. The scheme will not require CMOs to report to IPOS periodically, or IPOS to conduct periodic audits of CMOs' operations. It will empower members and users to hold CMOs to account for compliance with the licence conditions at first instance; IPOS will step in only if the parties are unable to resolve the issue through the CMO's internal dispute resolution process.

B. Licence Conditions and Best Practices

20. Under the new regulatory framework, a dual set of levers will be established to ensure compliance and shape good behaviour:

(a) Mandatory licence conditions: These are legally-binding requirements that will be set out in the Regulations. CMOs must comply with these requirements. Failure to do so constitutes a regulatory breach that may warrant regulatory action by IPOS.

(b) Non-mandatory notes on best practices ("**Best Practices**"): These non-binding resources are intended to encourage and assist CMOs to meet industry and international standards. Examples of matters that may be set out in Best Practices include recommendations, illustrations, and templates. Best Practices will also take in feedback from the 2020 Consultation on matters concerning standards and practices that CMOs will do well to meet or perform as a matter of good industry practice, but which are not, or may not be, suitable to be prescribed as licence conditions at this juncture. We have highlighted in this paper the matters at the 2020 Consultation that are more suitably addressed in Best Practices based on the feedback received.

21. Elements of the originally-envisaged "Code of Conduct" [2] will hence be included in either the licence conditions or Best Practices, depending on their intended legal nature. This binary binding and non-binding distinction minimises any potential uncertainty over the implications of non-compliance and problems relating to enforcing subjective industry standards that may need more time to mature and crystalise into objective legal requirements. If and when necessary and appropriate, certain Best Practices may be elevated to licence conditions at a later time. In this regard, introducing them first as Best Practices will both allow for an assessment of their suitability as licence conditions as well as give the industry an opportunity to familiarise itself with such standards and practices in advance.

22. We will work with the stakeholders of the collective rights management ecosystem to develop the Best Practices at a later stage.

C. 6-month Notice Period

23. There will be a 6-month notice period before the class licensing scheme takes effect. This will give CMOs the opportunity and preparatory time to develop and implement all necessary policies and procedures and make all necessary changes to their organisational structures and operations, to be fully compliant with all applicable licence conditions by the commencement of the scheme. In our estimation, a 6-month notice period strikes an appropriate balance between granting CMOs preparatory time and commencing the scheme to improve the ecosystem.

[2] We previously proposed a "Code of Conduct" for setting out standards of transparency, governance, accountability, and efficiency for CMOs. See 2020 Consultation paper, para 1.2.

24. The 6-month period will begin upon the gazetting of the Regulations. Once this period expires, Part 9 of the Act and the Regulations will come into effect.

Table 1

Summary of proposal	Questions (In addition to the general questions at paragraph 8)
To bring into force Part 9 of the Act and the Regulations 6 months after gazetting the Regulations. This provides for a 6-month transitional period during which CMOs will have the opportunity to take all necessary steps to ensure compliance by the time the class licensing scheme takes effect.	Is there anything else that should be provided for to enable CMOs to achieve compliance while ensuring a timely commencement of the licensing scheme?

PART 3: CLASS LICENCE CONDITIONS

25. The class licensing scheme requires CMOs to comply with all licence conditions of the class licence that applies to them. While the Act allows the Regulations to establish "one or more class licences (whether for all CMOs or for different classes of CMOs)",[3] at this juncture we intend to establish only one general class licence that will apply to all entities carrying on business as CMOs. We will continue to monitor the collective rights management landscape to determine if more specific class licences are required in the future.

26. Under the single general class licence to be introduced under the draft Regulations, every CMO must comply with all the conditions set out in the draft Regulations. In this Part 3 of the paper, we set out a summary of the key conditions.

i. Application, Scope, and Definitions

27. As the scheme regulates "CMOs", it is crucial for this term to be precisely and appropriately defined. At the 2020 Consultation, various stakeholders gave feedback that the definition of a CMO should be carefully calibrated to ensure that it neither allows persons that effectively carry out collective rights management to evade regulation nor captures persons that are not intended to be regulated. To this end, the Act's definition was refined to be more precise and granular than that proposed at the 2020 Consultation. Section 459 of the Act now defines a CMO as follows:

[3] Section 462(1)(a) of the Act.

Interpretation: what is a collective management organisation (CMO) and who are its members; what is a tariff scheme

459.—(1) In this Part, a person (*X*) is a "collective management organisation" or "CMO" if —

(*a*) *X* is in the business of collectively managing the use of copyright works or protected performances (or both), including —

(i) negotiating the terms of use;

(ii) granting permission for the use;

(iii) administering any terms of use; and

(iv) collecting and distributing royalties or any other payment for the use;

(*b*) those works or performances —

(i) are made or given by different authors, makers, publishers or performers; and

(ii) are not made or given by those authors, makers, publishers or performers —

(A) as employees of *X* or a prescribed related person; or

(B) under a commission from *X* or a prescribed related person;

(*c*) *X* manages those works or performances —

(i) as the rights owner or with the authority of the rights owners; and

(ii) for the collective benefit of —

(A) those authors, makers, publishers or performers; or

(B) the rights owners of those works or performances (but not including *X*);

(*d*) *X* formulates or operates one or more schemes (however named) setting out —

(i) the classes of cases in which *X* is willing to grant, or procure the grant of, permission to use the works or performances that *X* manages; and

(ii) the terms (whether relating to the payment of a fee or charge or otherwise) on which *X* is willing to grant, or procure the grant of, that permission;

(*e*) one or more of the schemes mentioned in paragraph (*d*) are available to the public (or a segment of the public) in Singapore; and

(*f*) *X* does not fall under any prescribed class of excluded persons.

(2) For the purposes of subsection (1) —

(*a*) to avoid doubt, *X* and the related person mentioned in subsection (1)(*b*)(ii) may be —

(i) an individual;

(ii) an organisation, an association or a body;

(iii) a corporate or an unincorporate entity; or

(iv) constituted under the law of a country other than Singapore;

(*b*) it does not matter whether the business mentioned in subsection (1)(*a*) —

(i) is carried on for profit or otherwise; or

(ii) is the sole or main business of *X*; and

(*c*) it does not matter whether the schemes mentioned in subsection (1)(*d*) are formulated or brought into operation before, on or after 21 November 2021.

(3) In this Part —

"members", in relation to a CMO, means the authors, makers, publishers, performers and rights owners mentioned in subsection (1)(*c*)(ii), but not the CMO itself;

"tariff scheme" means a scheme described in subsection (1)(*d*) that is available to the public (or a segment of the public) in Singapore.

28. A person does not need to register with or notify IPOS in order to constitute a "CMO" or carry on business as a CMO. As explained at paragraph 16, the scheme applies automatically, so any person falling within the above definition of a CMO will be subject to all applicable licence conditions. While there was feedback from various groups of users at the 2020 Consultation that CMOs should be required to submit some form of registration with IPOS, we think that a registration (and approval) process will go beyond the intended light-

touch nature of the scheme. Nevertheless, to ensure accountability and effective regulation, the Regulations will require every CMO to provide IPOS with an email address at which IPOS may serve documents for the purposes of the Act.

29. Determining whether a person is CMO. Some respondents at the 2020 Consultation also expressed concerns about potential ambiguities as to whether a particular person would constitute a CMO and suggested that IPOS should issue determinations in this regard. These concerns were considered when refining the Act's CMO definition to provide greater clarity and certainty. In addition, we will issue information resources on the definition of a CMO, which will take into account any frequently asked questions on this matter. However, IPOS will not issue any free-standing determinations on whether a person is (or is not) a CMO. This determination should be made in an actual case where IPOS may need to exercise its regulatory functions against such person. In doing so, IPOS will apply the statutory criteria. Any disagreement with IPOS's decision, including its determination that the person in question constitutes a CMO, can be resolved through the procedures under the Act and ultimately by the courts.

30. Exclusion through prescribed classes. As seen above, Section 459(1)(f) allows for prescribed classes of excluded persons to be exempted from the scheme. These classes will be prescribed under the Regulations and may be further refined or updated from time to time to allow the scheme to adapt to changes in the collective rights management ecosystem. Such exclusions ensure that persons whose activities technically fall within the letter of the definition of a CMO but who are not the intended object of the scheme will not inadvertently be subject to regulation under the scheme.

31. In this regard, the draft Regulations prescribes one class of excluded persons: subscription service providers, such as persons in the business of providing over-the-top video-on-demand or music-on-demand streaming services for personal and non-commercial use. Generally, such persons are regarded as intermediaries who are set up and operate differently from persons that are conventionally regarded as CMOs. To the extent that such persons would have fallen within the definition in section 459, the Regulations make clear that they are excluded.

32. Scope of class licence. The Act provides that it is an offence for any person (whether a corporate person or a natural person) to carry on business as a CMO without a class licence.[4] Under the draft Regulations, a class licence is established only for all *entities* (i.e., corporate persons) carrying on business as CMOs. Any person who is not an entity but carries on business as a CMO would commit an offence under the Act as the class licence under the Regulations does not extend to such persons. This means that individuals, which are not entities, would not be permitted to carry on business as a CMO. At this juncture, we are establishing a class licence only for entities because collective rights management businesses are currently being operated by entities in Singapore. Furthermore, there are licence conditions relating to corporate governance which would be inappropriate to impose on individuals. Should it become appropriate to do so in the future, we may expand the scope of this class licence or introduce new specific class licences that apply to individuals.

[4] Section 461(1) of the Act.

33. No legal obligations on users. We received feedback from some CMOs that the scheme should impose legal obligations on users too. However, given that the objective of the scheme is to regulate CMOs, we will not do so at this stage. Nevertheless, we have reshaped certain licence conditions so that they will be contingent on the conduct of users.[5]

Table 2

Draft Regulations	Summary of key provisions	Questions (In addition to the general questions at paragraph 8)
Reg 3	**"Excluded persons" in the section 459 definition of a CMO**: The definition of a CMO in section 459 of the Act includes a carve-out for "excluded persons", which are to be prescribed in the Regulations. The draft Regulations introduces one class of "excluded persons": any person who provides a subscription service (commonly known as streaming services) where a subscriber may access digital content on demand for the subscriber's personal and non-commercial use. This is provided that, but for providing that service, that person would not be a CMO.	Is there any other class of persons which should be classified as "excluded persons"? If so, why?
Reg 2(1)	**Definition of "portfolio"**: A CMO manages the works and performances of its members and operates tariff schemes offering the use of these works and performances. To reflect this, the draft Regulations define "portfolio" as: (a) in relation to a CMO – the works and performances collectively managed by the CMO (whether as the rights owner or with the authority of the rights owners) for the collective benefit of its members and falling within one or more tariff schemes formulated or operated by the CMO; and (b) in relation to a member of a CMO - the works and performances managed by the CMO under the membership agreement between the CMO and the member. The definition of portfolio is used in various regulations including: • Regulation 2, which defines a "user" as a person who has been granted permission to	Is the definition sufficiently precise and is its scope appropriate in relation to the provisions to which it is applied? If not, how should the definition be amended?

[5] See for example, Table 4 (Reg 21).

	use the whole or any part of a CMO's portfolio under a tariff scheme operated by the CMO. • Regulation 2, which defines "tariff" as payment for permission to use the whole or part of a CMO's portfolio. • Regulations 12 and 13, which grant members various rights to control the use and management of their portfolios (including varying or terminating their grant of rights over their portfolios to their CMOs). • Regulation 20, which requires CMOs to make distributions according to a method that is based on the use of a member's portfolio. • Regulations 23 and 24, which require CMOs to collect and give usage information on the use of its portfolio. • Regulation 37, which requires CMOs to provide the public with information about its portfolio.	
Reg 2(1)	**Definition of "key officers"**: The draft Regulations define the term "key officers" as: (a) in relation to a body corporate – a director or the chief executive officer or a similar officer of the body corporate; and (b) in relation to a partnership – a partner. This definition applies to the following provisions: • Regulation 14(2)(d) – CMOs must inform members of changes to its key officers.[6] • Regulation 32(2) – circumstances in which an individual will be disqualified from being a key officer of a CMO.[7] • Regulation 35 – CMOs must publish an annual report which includes information on the remuneration paid to key officers.[8] • Regulation 38(1)(f) – CMOs must publish on its website the names of its key officers.[9]	Is the definition sufficiently precise and is its scope appropriate in relation to the provisions to which it is applied? If not, how should the definition be amended?

[6] See Table 3 (Reg 14) for more details.
[7] See Table 6 (Reg 32(2)-(3)) for more details.
[8] See Table 6 (Reg 35) for more details.
[9] See Table 7 (Reg 38(1)) for more details.

ii. Members' rights

34. A CMO's raison d'etre is to represent its members, who grant it their mandate authorising it to act on their behalf in administering their rights. It is therefore imperative that CMOs treat all their members fairly, transparently, and without discrimination. The draft Regulations establish a minimum standard for CMOs in their dealings with their members; CMOs are free to manage their internal affairs 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 a mandatory set of essential rights to all members regardless of membership type and as long as they ensure that their members know of these rights.

35. The draft Regulations require a CMO to provide for each member's rights in a written membership agreement between the CMO and the member (a copy of which must be given to the member). Under the Regulations, CMOs must establish, maintain and comply with the following policies (collectively, "**CMO Policies**"):

(a) membership policy (see Table 3 (Regs 9 to 16) below);

(b) distribution policy (see paragraph 42); and

(c) dispute resolution policy (see paragraph 44).

36. The membership agreement must incorporate the CMO Policies by express reference and cannot be inconsistent with the CMO Policies.

37. The membership agreement and the CMO Policies may provide for additional matters that are not required by the class licence conditions, so long as such matters are not inconsistent with the class licence conditions. On such matters, CMOs and members will be free to negotiate terms in the membership agreement that are tailored to a particular member and depart from a general position which may be embodied in the CMO Policies. However, in the interest of transparency and fairness to all members, the CMO Policies must expressly identify the matters in respect of which such deviations may be permitted.

38. The membership agreement and the CMO Policies incorporated thereunder must comply with the draft Regulations; failure to comply will constitute a breach of the licence conditions. Given the contractual nature of the membership agreement, members may also enforce its terms (and those of the CMO Policies incorporated in it) as contractual obligations binding on the CMO.

39. At the 2020 Consultation, some CMOs raised queries on whether existing contracts can constitute this membership agreement. The draft Regulations do not stipulate the specific form that the membership agreement must take. As long as the member is given a written document which sets out all the matters required by the draft Regulations to be contained in the membership agreement, that document can be the membership agreement.

40. A few CMOs also suggested requiring CMOs to publish template membership agreements. However, given that CMOs will be free to enter into different agreements with different members, and that CMOs will be required to give members a copy of their own membership agreement, there is no need to require CMOs to publish a generic agreement (even though they can do so if they wish). Instead, the draft Regulations require that CMOs publish their CMO Policies, which set out the key matters relating to a CMO's relationship with its members. This will allow potential members to understand how each CMO conducts its affairs and, in the case of the dispute resolution policy, will provide both members and users with information on how the CMO handles disputes.

Table 3

Draft Regulations	**Summary of key proposals**	**Questions** (In addition to the general questions at paragraph 8)
Regs 6 to 8	**Membership agreement**: The CMO must give each member a copy of their membership agreement. Any change to the membership agreement must be made in writing. Matters to be set out in membership agreement: The draft Regulations set out the minimum matters that must be provided for in the membership agreement, which correspond to those proposed at the 2020 Consultation.[10] Some matters that were originally proposed are now instead set out in the CMO Policies, which the membership agreement must expressly incorporate. For example, the frequency of distribution of tariffs is now set out in the distribution policy instead. Interaction between CMO Policies and membership agreement: The CMO Policies prevail over any inconsistent term of the membership agreement. However, both the CMO Policies and the membership agreement can provide for extraneous matters (i.e., matters for which provision is not required by the Regulations) – in respect of any such extraneous matter, the CMO Policies can provide that its application to a member is subject to the membership agreement instead. Non-exclusive membership: CMOs must explain to potential members what it means to enter into an exclusive membership	-

[10] See 2020 Consultation paper, para 3.17.1.

	agreement and offer them the option of entering into non-exclusive membership agreements.	
Regs 9 to 16	**Membership policy**: CMOs must establish and comply with a membership policy. This policy must set out how a CMO manages its relationship with its members, including, at a minimum: (a) the criteria to be a member of the CMO; (b) whether (and, if so, the circumstances under which) a member may continue to use, or waive tariff collection for, their own portfolio; (c) the process when a member varies or terminates their grant of rights to the CMO;[11] (d) the effect of such variation or termination on existing licences; (e) the process for a member to request information from the CMO; (f) a requirement for the CMO to inform members of key changes to it; and (g) the procedure for general meetings of members.	Is there any other information which CMOs should be required to provide in the membership policy?
Reg 10	**Amendment of membership policy:** The membership policy may only be amended by a general meeting of members and any amendment that is inconsistent with the Regulations is void.	-
Reg 13	**Right to control granted rights**: Where a member grants rights to a CMO to manage their works or performances but retains ownership over such content, the CMO must give the member an unconditional right to vary or terminate the rights granted to the CMO, subject only to a notice requirement. One way that members can vary their grant of rights to CMOs is by switching between exclusive and non-exclusive grants of rights. <u>Duration of notice period</u>. At the 2020 Consultation, we received mixed feedback on the appropriate duration for this notice period (which we originally proposed to be set at no more than 6 months). While many respondents agreed that 6 months was a reasonable period,	-

[11] See Table 3 (Reg 13) for more details.

	several rightsholders proposed different periods between 3 to 9 months. On the balance, the draft Regulations fix this notice period at 3 to 9 months. This grants CMOs flexibility to determine the appropriate notice period, while ensuring that this period is kept at a length which is reasonable for CMOs, members and users. A minimum period is necessary to minimise disruptions to licensing plans and negotiations between CMOs and potential users, as it allows CMOs to continue to grant new permission to use the work or performance in question prior to the expiry of the period (which is when the variation or termination would take effect). The 3-month minimum period is aligned with the timeframe within which CMOs must maintain the accuracy of their portfolios on their websites.[12] <u>No restrictions on variation or termination</u>. Some respondents also raised practical concerns about the proposal to grant members the freedom to control the rights granted to CMOs, since certain CMOs restrict variations and terminations of such rights (e.g., limiting the frequency of variations). Such restrictions effectively hamper a member's freedom to control their rights since they may often be forced to wait for long periods of time before being able to vary or terminate. To ensure that members will not be bound by unreasonable restrictions, the draft Regulations clarify that variations and terminations must be allowed at any time, subject only to the notice period requirement.	
Reg 13	**Continued administration of existing licences after variation or termination**: At the 2020 Consultation, CMOs and users raised concerns about the continued applicability of licences granted before a member's variation or termination of rights. The feedback was that such existing licences should be allowed to run their course or until a fixed period following the variation or termination. We agree that this is reasonable not only for the CMOs administering	Is the 3-year period reasonable? If not, what would be a reasonable period, and why?

[12] See Table 7 (Regs 37(8) to (9) and 38(2) for more details.

	the licences but also for the licensees. It reduces interruption and ensures continuity for licensees who have a reasonable expectation to be able to use the content for which they obtained a licence, giving them the necessary certainty to plan their activities that are premised on those licences. To this end, the draft Regulations provide that any permission granted in respect of varied or terminated rights remain valid and binding (i) for 3 years, (ii) until it expires, or (iii) until it is superseded by fresh permission given by the member to the user, whichever is earliest. This 3-year timeframe is meant to ensure that licensees have sufficient time to obtain an alternative licence. It was derived from feedback from a CMO which explained that many typical licences are granted for 3 years or longer. A minimum 3-year post-variation/termination applicability period will provide licensees with a reasonable degree of certainty and reduce their administrative burden. Members continue to be entitled to tariffs collected in respect of licences administered by their CMOs after variation or termination.[13]	
Reg 14	**Right to be informed**: For transparency and accountability, each CMO must inform its members of key changes to it and sanctions imposed on it, including, at the minimum: (a) changes to the CMO Policies; (b) changes to key officers; (c) changes to constitutional documents; (d) any regulatory direction, financial penalty, or cessation order imposed on the CMO or its officers; and (e) outcome of any reconsideration application or appeal relating to a regulatory direction, financial penalty, or cessation order.	Is there anything else which a CMO should be required to inform its members about?

[13] See, for example, Regulation 20(4), where the method used by a CMO in calculating a member's distribution must take into account any post-variation/termination use of a member's portfolio.

Reg 15	**General meetings of members**: Separate from meetings convened as part of a CMO's corporate structure, CMOs must hold general meetings of the CMO's members at least once every financial year. Right to call for general meeting. Members have the right to call for a general meeting. This right can be unconditional or subject to conditions imposed by the CMO, e.g., by requiring the support of a minimum percentage of members or a minimum notice period. Right to attend and vote. Members have the right to attend and vote at general meetings, including by remote means or by proxies. Taking in feedback that CMOs may offer different types of memberships that grant different voting rights, the draft Regulations retain this flexibility by allowing CMOs to provide for different voting rights for different classes of members. This strikes a necessary balance between allowing the members to play a part in the running of the CMO while also recognising that different classes of members represent different types and degrees of interests. Approvals, resolutions, and presentations at general meetings. At a minimum, each CMO must: (a) put to approval or resolution by a general meeting of members: (i) the CMO Policies,[14] and any amendments thereto; (ii) the appointment of directors;[15] and (b) present its annual report to a general meeting of members every year. [16] Additional matters. The CMO's procedure may provide for any other matter that is necessary or expedient for the holding of general meetings.	Is there any other matter which should be approved, resolved or presented at a general meeting?

[14] Except for the membership policy, which must first be created by the CMO before it can even accept members. However, once admitted, the members may amend the membership policy by a general meeting (as with the other CMO Policies).
[15] See Table 6 (Reg 32(1)) for more details.
[16] See Table 6 (Reg 35) for more details.

iii. Collection and distribution of tariffs

41. Members authorise CMOs to administer their rights on their behalf in order to collect royalties (defined as "**tariffs**" in the Act) more efficiently. It is important therefore that CMOs not only collect tariffs accurately but also distribute them to their members in a fair, timely, and transparent manner.

42. To this end, the draft Regulations require CMOs to establish and comply with a distribution policy, which must govern at least the following critical aspects relating to collection and distribution of tariffs:

(a) calculation of distributions, including where CMOs must account for their methodology and deductions;
(b) frequency and manner of distributions;
(c) obligations concerning tariffs that CMOs are unable to distribute despite their best efforts;
(d) collection of information on use of CMOs' portfolios, whether from users or otherwise;
(e) sufficiency of information given to members on usage of CMOs' portfolios and distributions; and
(f) members' rights to query and dispute their distributions.

43. At the 2020 Consultation, several users suggested that CMOs should be required to employ (at a CMO's costs) technological solutions in collecting information on use of their portfolios. However, we do not consider it appropriate to mandate this as a licence condition at this juncture. CMOs are in the best position to determine the type of tools they require for collecting usage information. Mandating the use of technological tools may also lead to an unnecessary increase in costs, which will likely be passed on to members or users. Instead, we will recommend this use of technological solutions as a Best Practice. This accords with the light-touch model of regulation while supporting the licence condition that requires CMOs to collect accurate and timely usage information.

Table 4

Draft Regulations	Summary of key provisions	Questions (In addition to the general questions at paragraph 8)
Reg 17	**Distribution policy**: The draft Regulations require CMOs to establish and comply with a distribution policy relating to how the CMO will deal with monies collected as tariffs.	-
Reg 18	**Amendment of distribution policy**: The distribution policy may only be amended by a general meeting of members and any amendment that is inconsistent with the Regulations is void.	-

Regs 19 to 20	**Calculation of tariffs**: The distribution policy must set out: (a) the method to calculate how much of its tariffs will be distributed among its members, and how much will be distributed to each member; and (b) any deductions that the CMO will make from its tariffs before distributions.	-
Reg 20	**Method of calculating distribution**: CMOs must base their distributions of tariffs to members on either (i) actual use of a member's portfolio or, to the extent that this is not practicable, (ii) estimated use of the member's portfolio. In the latter case, the distribution policy must specify how the use is estimated. This requirement takes into account feedback at the 2020 Consultation from various respondents that sampling methods, while suitable as a basis of distribution when actual usage cannot practically be determined, should be approved by members since the tariffs that they will ultimately receive will depend directly on the selected method.	(a) Are there specific circumstances where it would be impractical to calculate distributions based on actual use of a member's portfolio? (b) If so, what are these circumstances and how can the drafting be improved to provide for greater clarity (e.g. illustrations in respect of specific circumstances)?
Reg 21	**Regular distributions to members**: CMOs should distribute tariffs to their members as soon as practicable. They must do their best to do so within 6 months after the financial year in which the tariff is collected. If a CMO is unable to do so despite its best efforts, it must in any event distribute that tariff within 12 months (or any other period specified in the distribution policy). The draft Regulations grant CMOs a degree of flexibility by imposing the 6-month deadline as a rule, with an exceptional 12-month deadline for situations where CMOs may, on occasion, be unable to distribute within 6 months as a result of one-off difficulties. The 6-month deadline was first proposed at the 2020 Consultation and was generally supported by respondents, even though members tended to favour a shorter period while CMOs generally wanted longer. The	-

	default hard stop deadline of 12 months takes into account feedback that CMOs may, from time to time, face practical logistical difficulties in distributing tariffs within 6 months. This is balanced against members' legitimate expectation to be paid without undue delay. Where a longer hard stop deadline may be necessary, members may approve this through the distribution policy. At the 2020 Consultation, one of the main concerns of CMOs about these deadlines is that their ability to distribute tariffs in a timely fashion sometimes depends on the conduct of users. If users fail to cooperate by providing critical usage information, the CMO may not be able to determine the quantum of tariffs to be distributed to its members. Accounting for this concern, the draft Regulations provide that a CMO's obligations to distribute tariffs within these deadlines do not apply to the extent that the CMO is unable to distribute as a result of a user's conduct (e.g., where a user fails to provide usage information despite the CMO's best efforts to collect that information).	
Reg 22	**Undistributed monies**: CMOs may, despite their best efforts, be unable to distribute certain tariffs they have collected. These monies belong to their members, who should have a say (through the distribution policy) in how they should be applied. The distribution policy sets out how the CMO must deal with collected tariffs that it is unable to distribute, including, at a minimum, how it will: (a) keep a record of those undistributed tariffs (including the reasons for being unable to distribute); (b) take specified steps towards distributing those tariffs (e.g., by identifying the members entitled to a distribution); (c) safeguard those tariffs until they are distributed or otherwise used or dealt with; (d) inform members of the steps taken under (b) and the amounts being safeguarded under (c) for each financial year.	-

	CMOs can use undistributed tariffs for purposes specified in the distribution policy, but only if it remains unable to distribute those tariffs despite taking the steps mentioned in (b) above.	
Reg 23	**Accurate and timely collection of usage information**: CMOs must do their best to collect accurate and timely information about the use of their portfolios, including, at the minimum: (a) general information about users of its tariff schemes; (b) how often permission is granted under each class of case to which the scheme applies; (c) the categories of rights for which permission is granted under the scheme; and (d) how often permission is granted for each category of rights.	-
Reg 24	**Accompanying information**: When distributing tariffs, CMOs should provide sufficient information for members to understand the distributions they receive. This must, at a minimum, include: (a) general information about the users of the member's portfolio; (b) how the distributed amount was calculated for each work or performance in the member's portfolio; and (c) for each tariff scheme (operated by the CMO) that applies to a work or performance in the member's portfolio: (i) how often permission is granted under each class of case to which the scheme applies; (ii) the categories of rights for which permission is granted under the scheme; and (iii) how often permission is granted for each category of rights.	Is there any additional information which should accompany the distribution payment?
Reg 25	**Opportunity to dispute or query distributions**: CMOs must give members an opportunity to (i) request information about how a distribution to a member was calculated and (ii) dispute the	Are the proposed timeframes reasonable? If not, what would reasonable timeframes be, and why?

	amount that should have been distributed to the member. Various respondents called for the Regulations to specify that members may only dispute or query their distributions within a reasonable period, but did not suggest what they might consider to be "reasonable". Given the subjective nature of what different stakeholders might consider to be "reasonable", we have stipulated a specific range within which CMOs can set this period. This period cannot be shorter than 60 days because many members, especially individuals, will need time to review the distribution information and prepare their queries or disputes. At the same time, we have also imposed an upper limit of 3 months – to allow CMOs to organise their affairs without being constantly subject to the possibility of having to address old queries (in addition to any contemporaneous queries).	

iv. Dispute Resolution

44. The draft Regulations require CMOs to establish and comply with a dispute resolution policy to deal with complaints by members and users (including intending users). The dispute resolution policy must provide a dispute resolution process in which members and users can file a complaint to a CMO, which must then respond within a specified period. CMOs are free to provide for different provisions to deal more effectively with different classes of disputes – for example, CMOs could establish one process for dealing with complaints by members and another for dealing with complaints by users.

45. While we originally proposed at the 2020 Consultation to require parties to attempt mediation in good faith as part of this dispute resolution process, we received feedback from various stakeholders including legal practitioners, users, and rightsholders that mandating compulsory mediation in every case may unnecessarily prolong the process. Taking this into account, the draft Regulations do not mandate mediation, but provide instead that CMOs must mediate their disputes if directed to do so by IPOS. It also recognises the reality that mandating mediation will not always be effective in encouraging the resolution of a dispute and that it would be unreasonable to require a CMO to comply with a direction to mediate if the member or user refuses or fails to take part in the mediation.

46. We received feedback from various stakeholders on other aspects relating to the dispute resolution policy. Users recommended that CMOs be required to make clear in their dispute resolution procedures that those procedures do not preclude users from referring their disputes to the copyright tribunals. Rightsholders and users called for a deadline within which

CMOs must respond to complaints. These are all reasonable suggestions which have been taken in in the draft Regulations.

47. In addition, users also gave feedback that CMOs should be required to deal with complaints in a manner that is, among other things, fair, equitable, impartial, honest, and non-discriminatory. Care needs to be taken when introducing these broad standards as CMOs, members and users will often have differing expectations as to what is required, which creates uncertainty as to whether there would be a breach of licence conditions in these respects. At the same time, some broad standard needs to be articulated because the circumstances and ways in which CMOs may deal with disputes are too varied to prescribe with specificity. In our view, the balance between these perspectives is best embodied in the minimum standard set in the draft Regulations, which require CMOs to act "*in good faith*" and "*reasonably*" in investigating, deciding, and otherwise dealing with disputes. Additional standards or principles that CMOs are encouraged to adopt when dealing with complaints may also be set out as Best Practices.

Table 5

Draft Regulations	**Summary of key provisions**	**Questions** (In addition to the general questions at paragraph 8)
Regs 27 to 29	**Dispute resolution policy**: The draft Regulations require CMOs to establish and comply with a dispute resolution policy, which should provide sufficient information about a CMO's dispute resolution mechanism. This policy may make different provisions for different classes of disputes but must set out, at a minimum: (a) the procedure for giving a notice of dispute to the CMO (including providing for a named individual to whom this notice can be given); (b) a requirement for the CMO to act in good faith and reasonably in investigating, deciding on, and dealing with the dispute; (c) the period (which must not exceed 30 days) within which the CMO must give its written decision on the dispute and, in the case of an adverse decision, its reasons for the decision; (d) any internal recourse (e.g., appeals) against the CMO's decision; and (e) that the dispute resolution policy does not affect any right of the CMO or the counterparty (including the right to refer the dispute to a copyright tribunal).	Is the 30-day period for resolving complaints reasonable? If not, what would be a reasonable period, and why? A broad standard of good faith and reasonableness is imposed on account of the wide variety of circumstances in which CMOs deal with disputes. (a) Are there specific circumstances where it would be unclear whether this standard would be satisfied? (b) If so, what are these circumstances and how can the drafting be improved to provide for greater clarity (e.g. illustrations in respect

		of specific circumstances)?
Reg 28	**Amendment of dispute resolution policy:** The dispute resolution policy may only be amended by a general meeting of members and any amendment that is inconsistent with the Regulations is void.	-
Reg 31	**Direction to mediate**: IPOS may direct a CMO to mediate a dispute between the CMO and a member, user, or intending member. IPOS can do so only after the CMO's internal dispute resolution process has been exhausted. CMOs must comply with such directions to mediate, unless the counterparty refuses to or fails to take part in the mediation.	Is there any other specific situation where a CMO should reasonably be excused from complying with a direction to mediate?

v. Ensuring Good Governance

48. The good governance of CMOs is critical for inspiring confidence in the collective rights management ecosystem and encouraging a vibrant collective licensing landscape. In this respect, qualities such as transparency and accountability are essential. The draft Regulations introduce several safeguards to ensure that CMOs operate in such a manner.

49. Governance requirements. At the 2020 Consultation, we proposed for a CMO's management and governing board to be responsible for implementing and adhering to what are now class licence conditions. Under this original proposal, the governing board would be subject to various conditions, such as fair and balanced representation in its composition, reappointment every 3 years and a term limit of 3 consecutive 3-year terms. Where a CMO has a board of directors, this board can act as the governing board.[17] The feedback we received on these proposals was mixed. Many users and rightsholders (as well as some CMOs) agreed with the proposal for fixed tenures, citing the dangers of entrenchment of individuals in CMOs. Some called for even shorter tenures. Conversely, several CMOs cited possible difficulties in recruiting qualified individuals to take up these roles. Other CMOs said that to ensure accountability, it was crucial to enable rightsholders to determine board appointments – after all, members are best placed to determine whether individuals serving on the board are adequately fulfilling their duties.

50. Taking the feedback into account, the draft Regulations grant members a greater role in determining the board's composition. The appointments of directors must be approved by a general meeting of members, and directors can also be removed by a general meeting. However, because it is the members who are now empowered to affect the composition of the

[17] See 2020 Consultation paper, para 3.40.

board in this manner, CMOs may have difficulty complying with a licence condition that requires them to ensure a fair and balanced representation on the board (and which penalises them for failing to do so). As such, standards relating to fair and balanced representation in board compositions are better introduced as Best Practices. Other matters that can be dealt with as Best Practices include matters relating to the tenure of the board. While it remains important for CMOs to ensure board renewal to maintain board independence, we acknowledge the legitimate concerns raised by CMOs about being over-prescriptive in this area. Crucially, the dangers of entrenched board members will be mitigated by the coming into effect of the licensing scheme as a whole – the class licence conditions work together to ensure that even entrenched individuals are held accountable and must ensure that the CMO meets the requirements for accountability, transparency and good governance as embodied in the licence conditions. In this regard, under section 464 of the Act, IPOS may direct a CMO to secure the removal of any individual as an officer of the CMO or direct an officer of the CMO to resign or otherwise cease to act in that capacity. This power may be exercised to ensure the good governance of a CMO, regardless of whether there is a breach of the class licence conditions.

51. Proper records and reports. We originally proposed empowering members to inspect the CMO's financial records to ensure transparency and accountability by the CMO to its members. Feedback from rightsholders and users on this proposal was generally positive. However, some CMOs said that such a right may be abused by members who might engage in "fishing expeditions". Some CMOs also raised concerns about confidentiality if members were allowed to inspect the CMO's full financial records, which may include information about the individual distributions made to other members. The draft Regulations take in these concerns – the draft Regulations allow CMOs to limit members' right of inspection to no more than once every financial year and exclude records relating specifically to other members' portfolios. The draft Regulations also incorporates feedback that CMOs should be allowed to charge members a reasonable fee for the inspection.

52. In addition, the 2020 Consultation proposed requiring CMOs to present their annual report and financial statements at a general meeting. Various members, CMOs, and users called for CMOs to also present their members with additional information, such as specific financial matters relating to revenue and expenditure, tariff distribution, operating costs, deductions made, funds used for social, cultural, and educational purposes, reciprocal agreements with partner CMOs, and management fees. The draft Regulations take in the feedback by consolidating these categories of information into a single annual report which CMOs must present at a general meeting every financial year. As a check against imposing too onerous reporting requirements on CMOs, the annual report requirements in the draft Regulations derive their baseline from the WIPO Good Practice Toolkit for CMOs ("**WIPO Toolkit**") and the international precedents cited therein.[18]

[18] See WIPO Toolkit, Item 6.2. Among other matters, the WIPO Toolkit recommends that each CMO publish an annual report which presents "a full and transparent picture of its financial performance and operations" in "an easily accessible format".

Table 6

Draft Regulations	Summary of key provisions	Questions (In addition to the general questions at paragraph 8)
Reg 32(1)	**Appointment and removal of board of directors**: Where a CMO is a company, the general meeting of members must approve the appointment of any director. The general meeting of members may also remove a director.	-
Reg 32(2) to (3)	**Disqualification of key officers**: An individual is disqualified from being a key officer of any CMO if the individual: (a) is disqualified under any written law from being a director of a company; (b) was a key officer of another CMO that has been issued with a cessation order (which was not set aside after reconsideration or appeal); or (c) was removed as a key officer of another CMO under a regulatory direction (which was not set aside after reconsideration or appeal). As proposed at the 2020 Consultation, the disqualification under paragraphs (b) and (c) expires 3 years after the cessation order or regulatory direction (as the case may be).	-
Reg 33	**Proper financial records**: CMOs must keep proper financial records for at least 6 years, including, at a minimum, records of: (a) the tariffs received; (b) the deductions made by the CMO from those tariffs; and (c) the distributions from those tariffs, including the members who received distributions and the information that the distribution policy requires the CMO to give a member when making a distribution.	-
Reg 34	**Inspection of financial records**: Each CMO must allow its members to inspect its financial records. This right to inspect excludes	-

	records that relate specifically to the portfolio of other members. CMOs may impose a fee for such inspection and a limit to the frequency of such inspection (which must not be less than once every financial year).	
Reg 35	**Annual report**: Each CMO must, in respect of each financial year, make and present to a general meeting of its members an annual report which must, at a minimum, contain: (a) financial statements, which must include: (i) a balance sheet or statement of assets and liabilities; and (ii) an income and expenditure account (including a breakdown of its operating expenditure); (b) information about the CMO's activities; (c) information on collected tariffs, including (i) the total amount of tariffs; (ii) the proportion of tariffs attributable to each tariff scheme operated by the CMO, each class of case to which each tariff scheme applies, and each category of rights managed by the CMO; (iii) the amount and type of deductions made, (and particulars of any social, cultural, or educational services for which the deductions were made); (iv) the amount attributed and distributed to members; (v) the amount attributed but not distributed to members; (d) information about the total remuneration (including non-monetary benefits) paid to its key officers; (e) information on the reciprocal agreements with partner CMOs, including: (i) the dates of the reciprocal agreements; (ii) the names of the partner CMOs; (iii) the amount paid to partner CMOs; (iv) the amount paid by partner CMOs; and (v) any deductions (e.g., management fees) made by partner CMOs under the agreements.	The minimum annual report requirements are derived from the good practice tools listed in the WIPO Toolkit (6.2.3). Taking into account international and industry norms and nomenclature, is there any requirement that needs further clarification or refinement in order for CMOs to be able to comply (including when instructing their auditors to prepare the annual report)? If so, what amendments can be made to clarify or refine the requirements as described in this provision?

vi. Information to Provide to Members of the Public

53. To promote accountability and transparency, the draft Regulations require each CMO to maintain an Internet website on which it must publish key documents and information such as its CMO Policies and details about its portfolio. Providing these documents and information to the public will also enables users and potential members to make informed decisions in their dealings with the CMO.

Table 7

Draft Regulations	Summary of key provisions	Questions (In addition to the general questions at paragraph 8)
Reg 37(1)-(4)	**Portfolio**: Each CMO must publish on its public website a list of every work and performance in its portfolio. This list must include, at a minimum, the following information: (a) For each work: (i) title or description; (ii) name of author (for authorial works); (iii) name of rights owner; (iv) categories of rights managed by CMO; and (v) whether the CMO manages it on an exclusive basis. (b) For each performance: (i) title or description; (ii) name of performer; (iii) name of rights owner; (iv) categories of rights managed by CMO; and (v) whether the CMO manages it on an exclusive basis.	-
Reg 38(1)(h)	**Lists of reciprocal agreements**: Each CMO must publish on its public website a list of all the reciprocal agreements which it has entered into with partner CMOs. These are agreements which CMOs may enter into with another CMO for its portfolio to be managed by another CMO.	-
Regs 37(8)-(9) and 38(2)	**Accuracy of portfolio and list of reciprocal agreements**:	Is the 3-month period reasonable? If not, what would be a reasonable period, and why?

	Each CMO must maintain its published portfolio and list of reciprocal agreements to ensure they are kept accurate and up to date. One of the main difficulties raised by CMOs at the 2020 Consultation was that CMOs with larger repertoires might find it challenging to maintain their portfolios and lists of reciprocal agreements in real-time. Some CMOs recommended that they should be required to maintain accuracy only within a reasonable period. Some users also suggested that the portfolio and list of reciprocal agreements should state the date on which they were last updated. The draft Regulations take in the feedback by allowing the portfolios and lists of reciprocal arrangements to be deemed up-to-date so long as (i) they were last updated within a stipulated timeframe and (ii) the CMO's website states the date on which the information was last updated. The timeframe proposed in the draft Regulations is 3 months.	
Reg 37(5)-(7)	**Queries on portfolio**: To balance against the fact that their portfolios do not need to be maintained in real-time, CMOs must create and maintain a process for responding to queries from the public about whether they manage any particular work or performance. This process also addresses a concern raised by some CMOs that users may abuse the publication of their portfolios by relying on the absence of a particular work or performance as a defence to an infringement claim. This process must, at a minimum, include: (a) providing an email address to which the following can be sent: (i) questions about whether a particular work or performance is part of the CMO's portfolio; and (ii) requests for proof that a work or performance is part of the CMO's portfolio; and	-

	(b) responding to the above questions or requests within a stipulated time (which must not exceed 14 days). While we had proposed at the 2020 Consultation a 3-week deadline to respond, most of the respondents (save for CMOs, which generally wanted a longer deadline) raised concerns that 3 weeks was unnecessarily lengthy and would pose challenges to users' activities, which are often time-sensitive, especially in industries such as broadcasting and media production. These respondents called for shorter timeframes of as short as 3 working days. On the balance, the draft Regulations set this deadline at no more than 14 days.	
Reg 38(1)	**Other information and documents**: Feedback from the 2020 Consultation largely supported the proposed scope of information and documents that CMOs must make available to the public. The draft Regulations implement that proposal, with the addition of annual reports.[19] We had received feedback from several users proposing requiring CMOs to provide to the public documents such as their audited annual reports, annual transparency statements, and other similar documents. We have consolidated these into a single annual report. Under the draft Regulations, each CMO must publish on its website relevant information and documents, including, at a minimum: (a) information on the process for applying to be a member (e.g., forms and timelines); (b) a list of all the CMO's tariff schemes and, for each scheme, the classes of cases in which the CMO offers permission and the relevant terms on which such permission can be granted; (c) every annual report for the last 6 financial years. This is aligned with the requirement for CMOs to keep proper financial records for 6 years,[20] as well as other corporate record-	-

[19] See Table 6 (Reg 35) for more information on what will be included in the annual report.
[20] See Table 6 (Reg 33) for more details.

	keeping requirements, which typically range between 5 to 7 years; (d) the names of its key officers; (e) its constitutional documents; (f) an up-to-date list of reciprocal agreements entered into with partner CMOs (see above); (g) its membership policy;[21] (h) its distribution policy;[22] and (i) its dispute resolution policy.[23]	

PART 4: PROCEDURES RELATING TO REGULATORY ACTION

54. To support the new regulatory regime and secure compliance with the licence conditions, the Act empowers IPOS as regulator of the class licensing scheme to take regulatory actions against CMOs and their officers. In particular, IPOS may give regulatory directions, impose financial penalties, or make cessation orders.[24] These regulatory actions may be imposed as sanctions for breaches of licence conditions or taken to enable IPOS to investigate or otherwise regulate CMOs.

55. While we originally envisaged at the 2020 Consultation taking these regulatory actions sequentially (first regulatory directions, then financial penalties, and finally cessation orders), we have since refined the manner in which these actions will be taken (particularly the scope of regulatory directions that may be given), as set out in the following paragraphs. While we still envisage taking these actions in that sequence in the general case, the draft Regulations do not mandate this so as to give IPOS the flexibility to take the appropriate regulatory action depending on the circumstances.

56. The regulatory actions are a refinement and consolidation of the various general powers originally proposed at the 2020 Consultation, such as general powers to request information and documents, to investigate into CMO operations, and to audit CMOs for compliance with licence conditions. These are now largely subsumed under the regulatory action of making regulatory directions, with certain modifications. For example, rather than having specific powers to establish an investigative panel to conduct investigations and to appoint code reviewers,[25] IPOS now has a streamlined general power to give regulatory directions, which covers the purposes of obtaining information about a CMO's business, of securing a CMO's compliance with licence conditions, and of investigating or remedying any contravention of licence conditions. Similarly, instead of a power to require a performance bond to secure compliance with licence conditions,[26] the general power to give regulatory directions covers the purpose of requiring CMOs to provide security for compliance. This flexibility in terms of the mode of security takes in feedback from some rightsholders that other

[21] See Table 3 (Regs 9 to 16) for more details.
[22] See Paragraph 42 for more details.
[23] See Table 5 (Regs 27 to 29) for more details.
[24] Sections 463 to 465 of the Act, and definition of "regulatory action" in Regulation 2(1) of the Draft Regulations.
[25] See 2020 Consultation paper, para 3.55.4.
[26] See 2020 Consultation paper, para 3.56.1.

forms of security, such as insurance bonds, should be considered instead of performance bonds specifically.

57. Some CMOs raised concerns about our original proposal to empower IPOS to sit in on CMO meetings that involve members, such as general meetings. We appreciate the concerns raised and consider that the Act's suite of powers, as well as the opportunity for members to raise complaints to IPOS, would suffice in meeting the objective of this originally proposed power, namely, to enable IPOS to obtain an understanding of the issues and concerns of members.

58. To accord with principles of natural justice, the Act grants any CMO or officer of a CMO against whom IPOS intends to take a regulatory action the right to be heard before that action is taken against them. The Act also grants the CMO or officer the right to apply for reconsideration after regulatory action is taken against them. These rights to make representations and to apply for reconsideration are in addition to the right to appeal to the Minister, which we had proposed at the 2020 Consultation, and which the Act also provides.

59. The draft Regulations set out the procedures and time for the following processes:

(a) making representations before IPOS takes regulatory action;

(b) applying for reconsideration of IPOS's regulatory action; and

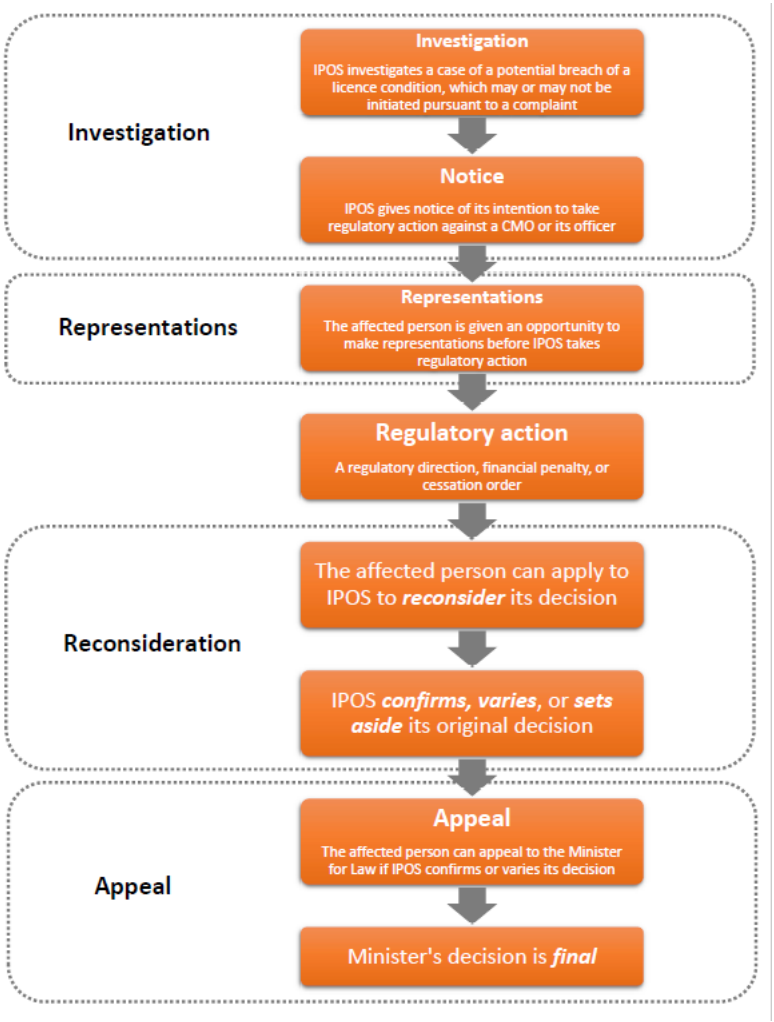
(c) appealing against the reconsidered decision of IPOS.

60. These are supported by general provisions governing the submission of documents and the waiver, refund or remission of fees associated with these processes.[27]

61. A flowchart illustrating the full process where regulatory action is taken against a CMO or an officer of a CMO (collectively referred to as the "**affected person**") for breach of a class licence condition is set out in Figure 1 below:

[27] See Part 5 of the draft Regulations. The prescribed modes of submission may change in the future to take into account use of IPOS's electronic online system.

Figure 1



62. An application for reconsideration or an appeal against a reconsidered decision does not automatically operate as a suspension of IPOS's regulatory action.[28] In such circumstances, by default, the affected person must still pay the financial penalty or comply with the cessation order or regulatory direction. Should the circumstances be justified, the affected person may request IPOS (in the case of a pending reconsideration application) or the Minister (in the case of a pending appeal) to make an order to suspend the regulatory action pending the relevant decision. The draft Regulations do not limit these circumstances or require specific procedures or timelines to be followed in such circumstances.

A. Representations Procedure

63. If IPOS intends to take regulatory action against a CMO or its officer, IPOS must first give that CMO or officer an opportunity to make representations to IPOS as to why it should not take that intended action. The Act requires IPOS to allow representations in respect of financial penalties and cessation orders,[29] but provides that the Regulations may require IPOS

[28] Sections 466(3)(b) and 467(3)(c) of the Act
[29] Sections 463(2) and 465(2) of the Act.

to allow the same for regulatory directions as well.[30] This distinction accounts for the fact that certain regulatory directions may be in the nature of simple and straightforward investigative processes (e.g., directions to provide information to IPOS for the purpose of investigation) for which the opportunity to make representations may unduly delay matters. For consistency at this point of time, the draft Regulations require IPOS to grant this opportunity to make representations before taking *any* type of regulatory action (including regulatory directions). We may calibrate this approach in future by limiting the opportunity to make representations to only certain types of regulatory directions.

64. The draft Regulations set out the time and procedure for making representations.

Table 8

Draft Regulations	**Summary of key provisions**	**Questions** (In addition to the general questions at paragraph 8)
Regs 42 to 47	**Prescribed procedure**: Notice of intention. IPOS must first give a written notice to a CMO or an officer of the CMO that it intends to take a regulatory action against them. The notice must state: (a) details of IPOS's intended action against the affected person (i.e., amount of a financial penalty, terms of a regulatory direction, or whether a cessation order is indefinite or for a specified period); (b) the grounds for taking the action; (c) a description of the evidence supporting those grounds; and (d) that the affected person may make representations to IPOS within 14 days (or any longer period that IPOS may specify). Time for making representations. The affected person may make representations to IPOS within the specified time. IPOS may extend this time. If the affected person does not make any representations within this time, IPOS may proceed to take the intended action. Method of making representations. The representations must be submitted to IPOS in the form to be prescribed on IPOS's website. Fact finding. To assist IPOS in considering the representations made, IPOS may direct the	(a) Is any other provision required to supplement the procedure for making representations? (b) How else can the procedure be improved so that it will be clear to affected persons and help achieve fair outcomes?

[30] Section 464(3) of the Act.

	representor to make a statutory declaration to support the representations. This is to ensure that the information and supporting documents set out in the representations are factually accurate and authentic. IPOS may also request further information, documents, and clarification. Summary rejection. IPOS may reject the representations if the representor fails to comply with these procedural requirements or IPOS's fact-finding directions, or if IPOS considers the representations to be frivolous or vexatious. Notice of decision. After considering the representations, IPOS may either proceed to take the intended action or give the representor written notice that IPOS has decided not to take any action.	

B. Reconsideration procedure

65. After an affected person has had an opportunity to make representations in accordance with the above representations procedure, IPOS may proceed to take the intended regulatory action against the person. The affected person may then apply to IPOS for it to reconsider the regulatory action.[31]

66. An affected person who is the subject of a regulatory action should generally raise all relevant facts, evidence and legal arguments when first given the opportunity to make representations. The reconsideration application should not be used to rehash submissions made at the representations stage or introduce matters that should have been raised then. New matters could be introduced in a reconsideration application if for example, they were previously unavailable or could not have been discovered earlier.

67. The draft Regulations set out the time and procedure for applying for reconsideration.

Table 9

Draft Regulations	Summary of key provisions	Questions (In addition to the general questions at paragraph 8)
Regs 48 to 56	**Prescribed procedure**: IPOS takes regulatory action: When IPOS takes regulatory action against the affected person, it must give that person written notice of that	(a) Is any other provision required to supplement the procedure for

[31] Section 466 of the Act.

	decision. That notice must state that the affected person may apply to IPOS for reconsideration of that decision within 14 days (or any longer period that IPOS may specify). Time for applying for reconsideration. The affected person may apply for reconsideration within the time specified in the notice. IPOS may extend this time. Method of applying for reconsideration. The application for reconsideration must be submitted to IPOS in the form to be prescribed on IPOS's website. Fee. The applicant must pay a fee for the application. This fee accounts for the fact that the applicant would already have had an opportunity to make representations – for which there is no charge. In most cases, any meritorious case would and should have been made at the representations stage. This fee incentivises persons to ensure that they raise all relevant matters at the representations stage, and in so doing, helps to deter abuses of the reconsideration process. The quantum of this fee will be fixed prior to the introduction of the licensing scheme and may be further adjusted in the future based on the volume and nature of reconsideration applications received by IPOS. Fact finding. To assist IPOS in considering the application, IPOS may direct the applicant to make a statutory declaration to support the application. This is to ensure that the information and supporting documents set out in the application are factually accurate and authentic. IPOS may also request further information, documents, and clarification. Withdrawal. Applicants may withdraw their application before being informed of IPOS's decision on the application. Summary decision. IPOS may summarily confirm its original decision if the applicant fails to comply with these procedural requirements or	applying for reconsideration? (b) How else can the procedure be improved so that it will be clear to affected persons and help achieve fair outcomes?

	IPOS's fact-finding directions, or if IPOS considers the application to be frivolous or vexatious. Reconsidered decision. IPOS must make its decision on the application within 3 months. If IPOS issues fact-finding directions, this 3-month period takes reference from the period for compliance with those directions. IPOS must give the applicant written notice of its reconsidered decision.	

C. Appeal procedure

68. If IPOS's reconsidered decision confirms or varies a regulatory action against the affected person who applied for reconsideration, that person may appeal to the Minister for Law against IPOS's reconsidered decision.

69. The draft Regulations set out the time and procedure for making an appeal.

Table 10

Draft Regulations	Summary of key provisions	Questions (In addition to the general questions at paragraph 8)
Regs 58 to 63	**Prescribed procedure**: IPOS issues reconsidered decision: In IPOS's written notice of its reconsidered decision, it must, if an appeal is available, inform the affected person that the person may appeal to the Minister against that reconsidered decision within the prescribed time for making an appeal. Time for making an appeal. The affected person may appeal within 14 days after the date of IPOS's reconsidered decision. The Minister may extend this time. Method of making an appeal. The appeal must be submitted to the Minister in a form to be prescribed on IPOS's website. Fee. The appellant must pay a fee when making the appeal. Like the fee for the reconsideration application, the appeal fee accounts for the fact	(a) Is any other provision required to supplement the procedure for making an appeal? (b) How else can the procedure be improved so that it will be clear to affected persons and help achieve fair outcomes?

	that the appellant would have had 2 prior opportunities to make its case, one of which (the opportunity to make representations) involved no charge. The quantum of this fee will be fixed prior to the introduction of the licensing scheme and may be further adjusted in the future based on the volume and nature of appeals. Fact finding. To assist the Minister in considering the appeal, the Minister may direct the appellant to make a statutory declaration to support the appeal. This is to ensure that the information and supporting documents set out in the appeal are factually accurate and authentic. The Minister may also request further information, documents, and clarification. Withdrawal. An appellant may withdraw an appeal before being informed of the Minister's decision on the appeal. Summary decision. The Minister may summarily confirm IPOS's reconsidered decision if the appellant fails to comply with these procedural requirements or the Minister's fact-finding directions, or if the Minister considers the appeal to be frivolous or vexatious. Finality of decision. The Minister's decision is final.	

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