



Telecommunications (Jersey) Law 2002

Cases T-015 & T-055 : Guidance Notes on:

- Applying for a Telecoms Licence
- Applying for approval of a Change of Control of a Licensee
- Surrendering a Telecoms Licence

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Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street,
St Helier,
Jersey, JE2 3RF
Tel 01534 514990
Web: www.jcra.je

1. Introduction

1.1 Under Article 2(1) of the Telecommunications (Jersey) Law 2002 (**Telecoms Law**) a licence from the Authority is required by any person who runs part or all of a telecommunications system in the Bailiwick of Jersey. It is a criminal offence to run a telecommunications system without a licence and can also lead to civil liability to affected parties.

1.2 There are four classes of telecommunications licence:

- (a) **Class I Licence:** for telecoms operators whose activities have no discernible impact on the competitive market;
- (b) **Class II Licence:** for telecom operators operating a public telecommunications system but which do not possess Significant Market Power (SMP);
- (c) **Class III Licence:** for telecom operators operating a public telecommunications system and possessing SMP; and
- (d) **General Class Licence:** for those running a service or apparatus set out in Appendix A to the class licence, where in the opinion of the Authority making a formal application for an individual licence would be too onerous. Although there is no need for any application or notification to the Authority, the licensee is required to comply with the limitations and responsibilities set out in the General Class Licence.

1.3 These guidance notes set out:

- (a) the information the Authority requires and the process it will follow in order to assess an application for a Class I or Class II licence;
- (b) the information the Authority requires and the process it will follow in order to assess a request for it to approve a Change of Control of a Class I or Class II licensee;
- (c) the process to be followed by a Class I or Class II licensee if it determines that the provisions of Article 2(1) no longer apply and it therefore wishes to surrender its licence.

1.4 This document is structured as follows:

Part 1	Applying for a Class I or Class II Licence
Part 2	Applying for approval of a Change of Control of a Class I or Class II licensee
Part 3	Surrendering a Class I or Class II licence

Part 1: Applying for a Class I or Class II Licence under Article 2(1) of the Telecoms Law

2. General and Corporate Information

2.1 All applications should be sent in pdf form, together with relevant supporting documentation in pdf, Word, PowerPoint or Excel format, to:

info@jcra.je

and must be accompanied by the appropriate licence application fee – see paragraph 8 below.

2.2 Please supply full corporate details of the proposed licensee:

- Full legal name plus trading name if different
- Registered office

- Company number, if available
- Legal form (e.g. company limited by shares, limited liability partnership)
- Date and place of incorporation
- List of directors or equivalent (giving full names and country of residence)
- Identities of senior management team (whether or not directors)

2.3 Please identify the person or group of persons who control the proposed licensee. For these purposes 'control' means any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the proposed licensee by any means and in any event. A person or group of persons shall be deemed to control the proposed licensee if:

- (a) he or they exercise or control the exercise of fifty per cent or more of the votes able to be cast at general meetings of the proposed licensee on all, or substantially all, matters; or
- (b) he is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all matters or is able to appoint or remove a majority of the governing body of the proposed licensee; or
- (c) he or they exercise or control the exercise of fifty per cent or more of the partnership or other ownership interests of the proposed licensee,

and, in each case, reference to the proposed licensee shall include any person or group of persons who controls the proposed licensee in any of such ways.

2.4 Where any such person or persons is not a natural person, please set out:

- (a) a structure chart showing all persons with control (as defined above) of such person, with sufficient detail to enable the Authority to establish the legal identity, place of incorporation or residence of each such person and the ultimate beneficial ownership of the proposed licensee; and
- (b) the identities of its officers, directors, partners or equivalent.

3. Financial information

3.1 In relation to the proposed licensee and each such person as referred to in paragraph 2.4, please provide:

- (a) its most recent published accounts; and
- (b) its most recent monthly management accounts.

3.2 In relation to the proposed licensee, where the application is for a Class II licence, please provide a business plan setting out in reasonable detail its costed plans for launching a telecommunications service in Jersey, showing in respect of the current and next two financial years:

- (a) the telecommunications services to be offered in Jersey and the technological means of delivery (e.g. fibre broadband, mobile services etc);
- (b) anticipated number of subscribers in Jersey;
- (c) anticipated data volumes in Jersey;
- (d) proposed capital investment in Jersey;
- (e) anticipated turnover and profit in Jersey; and

- (f) how the proposed capital spend and any revenue spend prior to profitability will be funded.
- 3.3 Please give details of how the proposed licensee will comply with the following obligations (which will form part of its licence conditions):
- (a) the administration and management of the business associated with the running (including establishment, maintenance and operation) of the telecommunications system shall be conducted from the Bailiwick of Jersey; and
 - (b) its business is conducted in a manner which the Authority is satisfied is on a normal commercial basis and at arm's length from the business of any of the persons referred to in paragraph 2.4.

4. Other information – Class II licence applications only

- 4.1 In respect of the senior management team of the proposed licensee, please set out brief details of their experience of providing telecommunications services and operating a telecommunications service provider.
- 4.2 Please give details of how the proposed licensee will:
- (a) provide a public emergency call service (in accordance with condition 14.1 of Class II licences); and
 - (b) maintain and provide a directory information service.
- 4.3 Please give details of how the proposed licensee will ensure that the telecommunications system it proposes to operate is secure, reliable and resilient.
- 4.4 Please state how the grant of the licence applied for would benefit Jersey, its consumers and businesses, including as regards the environmental impact of any proposed additional infrastructure.

5. Information relating to spectrum allocation and numbering

- 5.1 Please advise if the proposed licensee will seek an allocation of numbers from OFCOM's National Numbering Plan. If so, please set out the expected allocations of fixed and mobile numbers.¹
- 5.2 Please advise if the proposed licensee will seek the allocation of spectrum in Jersey from OFCOM?² If so, please provide details of:
- (a) the preferred spectrum allocation; and
 - (b) what technology the proposed licensee intends to deploy and in what timescale (to the extent this is not evident from the business plan).

¹ Please note that the granting of a licence by the Authority is a pre-condition for, but does not guarantee, the awarding of numbers by OFCOM

² Please note that the granting of a licence by the Authority is a pre-condition for, but does not guarantee, the awarding of spectrum by OFCOM. Further information is available on our website.

6. Requirements for the application

- 6.1 The application must be made in the name of the proposed licensee and be signed by two directors or equivalent. Accompanying material can be submitted from the proposed licensee's legal or accounting advisors where appropriate.
- 6.2 Each application must include a declaration from the proposed licensee that:
- (a) all the information provided by or on behalf of the proposed licensee is true, accurate and complete and may be relied on by the Authority in considering whether to grant the licence applied for;
 - (b) it will comply at all times in every respect with the conditions attached to any licence (or modification thereof) issued to it by the Authority from time to time; and
 - (c) it will comply at all times in every respect with the laws of Jersey and the lawful directions of the Authority.

7. Process for considering an application

- 7.1 The Authority may require further information during its consideration of the application. All information which the proposed licensee marks as being not for publication will be treated as being confidential, but see below in relation to the Initial Notice and the Authority's statutory duties. All personal data provided to the Authority shall be held and processed in accordance with the Data Protection (Jersey) Law 2018.
- 7.2 When making its decision in relation to granting a licence, the JCRA is exercising a 'specified regulatory function' under the Telecoms Law. Please see Article 11 of that Law for the details but in outline:
- the officers of the Authority will review the application, and liaise with the proposed licensee, and formulate their advice to the Authority;
 - following this, the board of the Authority will consider the application at its next meeting (it has approximately 10 scheduled meetings each year and can hold interim meetings in exceptional circumstances). If it accepts the licence application it will authorise the officers to publish an Initial Notice setting out the provisions of the proposed licence and its reasons for accepting the application;
 - there will be a period of at least 28 days in which any person can make representations to the JCRA in relation to its proposed decision to issue the licence;
 - if:
 - no representations are received, the Authority will issue a Final Notice and the licence will come into effect; or
 - representations are received, the board of the Authority will consider them and, at its next meeting, decide whether to proceed to the Final Notice or to take some other action.

8. Payment of application fee

- 8.1 The following application fees are payable prior to the Authority considering an application and are not refundable in any circumstances:

Class of Licence	Application Fee
Class I	£5,000

Class of Licence	Application Fee
Class II	£7,500

- 8.2 Please note that an annual licence fee is also payable to the Authority and that there are obligations to provide the information required to enable the Authority to calculate the applicable licence fee. For further information, please contact:

JCRAFinance@jcra.ie

Part 2: Applying for approval of a Change of Control of a Class I or Class Licensee under Condition 2 of the Licence

9. Change of Control

- 9.1 Condition 2 of each Class I and Class II contains the following prohibitions (the numbering varies between licences):

The Licence is personal to the Licensee and the Licensee shall not:

- (a) *sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person;*³

- 9.2 However, condition 2 does contemplate a 'Change of Control' of the licensee, where 'Control' means:

...any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event. A person or group of persons shall be deemed to Control the Licensee if:

- (a) *he or they exercises or controls the exercise of fifty per cent or more of the votes able to be cast at general meetings of the Licensee on all, or substantially all, matters; or*
- (b) *he is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all matters or is able to appoint or remove a majority of the governing body of the Licensee; or*
- (c) *he or they exercises or controls the exercise of fifty per cent or more of the partnership or other ownership interests of the Licensee,*

*and, in each case, reference to the Licensee shall include any person or group of persons who Controls the Licensee in any of such ways, and **Change of Control** shall mean any change as a result of which any other person or group of persons acquires Control.*

- 9.3 To be clear, in a Change of Control, the legal entity which holds the licence does not change, but its ownership/control does. **A transfer or assignment of the licence itself is prohibited and would require a separate application to the Authority, which would consider any such application on its merits.**

- 9.4 Please note that each licence also contains the following conditions:

The Licensee shall ensure that:

- (a) *the administration and management of the business associated with the*

³ There are limited exceptions relating to various financing or sale and lease-back structures

running [including establishment, maintenance and operation] of the Licensed Telecommunications System shall be conducted from the Bailiwick of Jersey; and

- (b) *its business is conducted in a manner which the JCRA is satisfied is on a normal commercial basis and at arm's length from the business of any of its shareholders or Subsidiaries or Joint Ventures.*

10. Process to be followed in relation to a Change of Control

10.1 In the case of a Change of Control, the licensee must notify the Authority in writing:

- (a) as soon as it or any of its officers or directors become aware of a proposed Change of Control; or
- (b) if it has already occurred, within 30 days of the Change of Control.

10.2 On receipt and consideration of the application, the Authority will write to the licensee:

- (a) approving the Change of Control;
- (b) disapproving the Change of Control, in which case we will give our reasons; or
- (c) approving the Change of Control, but on condition that the licensee accepts modifications to the terms of the licence (see also below at paragraph 11.2).

10.3 The application for approval should be made by letter on the licensee's headed paper and signed by an authorised signatory. All applications should be sent in pdf form, together with relevant supporting documentation in pdf, Word, PowerPoint or Excel format, to:

info@jcra.je

and must be accompanied by the appropriate application fee – see paragraph 12 below.

10.4 The application must:

- (a) identify the licensee (giving its full legal name, registered office and registration number, if applicable);
- (b) identify the person or group of persons who currently Control the licensee;
- (c) identify the proposed person or group of persons who will assume Control of the licensee (**New Owners**), including in each case:
 - (i) the full name of the entity or natural person; and
 - (ii) the registered office or correspondence address (as appropriate) of the entity or natural person and the nationality of each natural person;
- (d) in respect of New Owners which are not natural persons, set out a structure chart showing all persons with Control of the New Owners, with sufficient detail to enable the JCRA to establish the legal identity, place of incorporation or residence of each such person and the ultimate beneficial ownership of the Licensee if the Change of Control is approved;
- (e) in respect of New Owners which are not natural persons, set out the identities of their officers, directors, partners or equivalent;
- (f) set out any changes to the board of directors of the licensee resulting from the Change of Control; and

- (g) set out any changes in the current senior management team, whether immediately or anticipated within the first 12 months after the Change of Control.

10.5 Please also provide:

- (a) the most recent accounts of all New Owners which are not natural persons;
- (b) a letter from the New Owners (or the principal New Owner) or its or their legal or accounting advisors:
 - (i) confirming the accuracy of the information provided by the Licensee relating to the New Owners;
 - (ii) requesting the JCRA to approve the Change of Control; and
 - (iii) confirming that the licence condition set out in paragraph 2.4 above will be complied with on and after the Change of Control.

10.6 The Authority may require further information during its review of the application. The Authority will treat all non-public information provided as part of the application process as being confidential (but see below in relation to the Initial Notice). All personal data provided to the Authority will be held and processed in compliance with the Data Protection (Jersey) Law 2018.

11. Timescale for review and decision

11.1 On receipt of the application for approval of a Change of Control:

- (a) the officers of the Authority will review the application, and liaise with the licensee, and formulate their advice to the Authority;
- (b) following this, the Authority will consider the application at its next meeting (it has approximately 10 scheduled meetings each year and can hold interim meetings **in exceptional circumstances**), and the licensee will be informed of the Authority's decision.

11.2 If the Authority approves the Change of Control on the condition that the licensee accepts certain modifications to the licence, the officers will inform the licensee of the changes required. If the licensee accepts them then:

- (a) at its next scheduled meeting, the Authority will authorise the officers to publish an **Initial Notice** setting out the proposed modifications and its reasoning for those modifications;
- (b) there will be a period of at least 28 days in which any person can make representations to the JCRA in relation to its proposed decision;
- (c) if:
 - (i) no representations are received, the Authority will issue a Final Notice putting the modifications into effect; or
 - (ii) if representations are received, the Authority will consider them and, at its next meeting, decide whether to proceed to the Final Notice or to take some other action.

11.3 Please note that in the Initial Notice, the Authority must set out its reasons for its decision, and, if representations are received, it must set these out and its responses. In each case, the Authority is likely to make public some or all of the information provided to it during the application process. The Authority will generally allow the Licensee to identify commercially sensitive material and to request its redaction.

12. Payment of application fee

12.1 The following application fees are payable prior to the Authority considering an application for approval of a Change of Control and are not refundable in any circumstances:

Class of Licence	Administrative Fee
Class I	£5,000
Class II	£7,500

Part 3: Surrendering a Class I or Class II Licence

13. Surrender of a licence

13.1 It is for each licensee to consider whether it is running part or all of a telecommunications system, for the purposes of Article 2(1) of the Telecoms Law. Should a licensee consider that it does not require its Class I or Class II licence, it may surrender that licence.

13.2 If a licensee wishes to surrender its licence, it should notify the Authority by letter on the licensee's headed paper and signed by an authorised signatory. It should be sent in pdf form, to:

info@jcra.je

13.3 In such letter, the licensee should:

- (a) identify the licensee (giving its full legal name, registered office and registration number, if applicable);
- (b) identify the Class I or Class II licence, by reference to its date of issue;
- (c) state that it wishes to surrender the licence, giving a brief summary of its reasons for doing so; and
- (d) state the date on which it wishes the surrender to take effect.

13.4 At its next scheduled meeting after receipt of the letter referred to in paragraph 13.2, the Authority will note the surrender but will make no enquiry into the reasons given by the licensee. The Authority will authorise the officers to make appropriate entries in its register of licences and licensees, as set out on its website. Please note that in noting the surrender, the Authority is not making any decision or determination or exercising a specified regulatory function.

13.5 No fee is payable in respect of a surrender of a licence.

Status of this note

This note is prepared as guidance only and applicants and licensees **must** comply with the Telecoms Law in relation to an application for a licence or for approval of a Change of Control or on notification of a licence surrender. Nothing in this note constitutes legal advice or fetters the discretion of the Authority in exercising its statutory functions.

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