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POSTAL SERVICES ACT (CHAPTER 237A)

POSTAL SERVICES (CONTROL OF DESIGNATED POSTAL LICENSEES) REGULATIONS 2012

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In exercise of the powers conferred by sections 26H and 61 of the Postal Services Act, the Info-communications Development Authority of Singapore, with the approval of the Minister for Information, Communications and the Arts, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Postal Services (Control of Designated Postal Licensees) Regulations 2012 and shall come into operation on 25th May 2012.

Definitions

2.—(1) In these Regulations, unless the context otherwise requires —

“applicant” means the person making an application and includes a designated postal licensee and an acquiring party within the meaning of regulation 7;

“application” means an application for the prior written approval of the Postal Authority under section 26B(2), (3) or (4) or 26F of the Act;

“open market transaction” means a transaction entered into in the ordinary course of business on, or otherwise subject to the business rules of, a securities exchange;

“relative”, in relation to a person, means —

- (a) the person’s spouse;
- (b) a parent or remoter lineal ancestor, or a step-parent, of the person;
- (c) a child or remoter issue, or a step-child, of the person; or
- (d) a sibling or step-sibling of the person;

“working day” means a day other than a Saturday, a Sunday or a public holiday.

(2) For the purposes of these Regulations, a person, *X*, is an affiliate of another person, *Y*, if —

- (a) *X* is an entity which has an attributable interest (direct or indirect) in *Y* of 5% or more (referred to in this paragraph as a parent);
- (b) *Y* is an entity in which *X* has an attributable interest (direct or indirect) of 5% or more (referred to in this paragraph as a subsidiary); or
- (c) *X* is an entity in which *Y*’s parent has an attributable interest (direct or indirect) of 5% or more (referred to in this paragraph as a sibling), but *X* will not be considered an affiliate of *Y* if the common parent of *X* and *Y* has only a

passive ownership interest in the 2 sibling entities, such as where the parent entity does not in practice cause the subsidiary entity to take, or prevent the subsidiary entity from taking, decisions regarding the management and major operating decisions of the entity,

and any party's attributable interest shall be determined using the "sum-the-percentages" methodology applied successively at each level of the ownership chain.

Meaning of "associate"

3.—(1) For the purposes of the definition of "associate" in section 26A(1) and Part IVA of the Act, a person, *A*, is an associate of another person, *B*, if —

- (a) *A* is a relative of *B*;
- (b) *A* is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B* or, where *B* is a corporation, of the directors of *B*;
- (c) *B* is a corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *A* or, where *A* is a corporation, of the directors of *A*;
- (d) *A* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *B* or, where *B* is a corporation, of the directors of *B*;
- (e) *B* is a person who is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of *A* or, where *A* is a corporation, of the directors of *A*;
- (f) *A* is a related corporation of *B*;
- (g) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (b) to (f), is in a position to control not less than 12% or 30%, as the case may be, of the voting power in *A*;

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- (h) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (b) to (f), is in a position to control not less than 12% or 30%, as the case may be, of the voting power in *B*; or
- (i) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares or other interests in, or with respect to the exercise of their voting power in relation to, the designated postal licensee.

(2) In this regulation, “corporation” and “related corporation” have the same meanings as in section 4(1) of the Companies Act (Cap. 50).

Meaning of “holder” of shares

4.—(1) For the purposes of Part IVA of the Act and these Regulations, a person holds shares in a corporation if he has any legal or equitable interest in those shares, other than an interest that is to be disregarded under paragraph (3).

(2) Except as otherwise provided in paragraph (3), for the purposes of these Regulations, a person shall be deemed to have an interest in a share if —

- (a) the person has entered into a contract to purchase the share; or
- (b) the person, not being the registered holder of that share, is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share.

(3) For the purposes of paragraphs (1) and (2), there shall be disregarded —

- (a) an interest in a share of a person who holds the share as bare trustee;
- (b) an interest in a share of a person whose ordinary business includes the lending of money, if he holds the interest only by way of security for the purposes of a transaction entered into

in the ordinary course of business in connection with the lending of money;

- (c) an interest in a share of a person whose ordinary business includes the underwriting of securities, if he holds the interest only as an underwriter or a sub-underwriter to any offering of shares of a designated postal licensee;
- (d) an interest in a share held by a person —
 - (i) in his capacity of a liquidator, the Official Receiver, the Official Assignee or the Public Trustee; or
 - (ii) by reason of his holding such other office as may be prescribed for the purposes of section 7(9)(c) of the Companies Act (Cap. 50);
- (e) an interest of a corporation in its own share purchased or otherwise acquired in accordance with sections 76B to 76G of the Companies Act; and
- (f) such interest in a share as may be prescribed for the purposes of section 7(9)(d) of the Companies Act, being an interest of such person, or of a person belonging to such class of persons as may be prescribed for the purposes of that provision.

(4) Section 7(7), (8) and (10) of the Companies Act shall apply in determining whether a person has an interest in a share for the purposes of paragraph (2).

Meaning of “voting power”

5.—(1) For the purposes of Part IVA of the Act and these Regulations, a reference therein to control of a percentage of the voting power in a corporation shall be a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices —

- (a) whether or not having legal or equitable force; and
- (b) whether or not based on legal or equitable rights,

of that percentage of the total number of votes that may be cast in a general meeting of the corporation.

(2) Where a corporation is limited both by shares and by guarantee or does not have a share capital, this regulation shall have effect as if the members or policy holders of the corporation were shareholders in the corporation.

Notice by designated postal licensee

6.—(1) For the purposes of section 26B(1) of the Act, a designated postal licensee shall give notice in writing to the Postal Authority on the occasion when a person, whether by a series of transactions over a period of time or otherwise —

- (a) first acquires 5% or more but less than 12% of the voting shares in the designated postal licensee; or
- (b) first controls 5% or more but less than 12% of the voting power in the designated postal licensee,

within a period of 5 working days after the designated postal licensee first becomes aware of the acquisition or control, as the case may be.

(2) The notice in paragraph (1) shall be in such form as may be approved by the Postal Authority.

(3) Every notice under paragraph (1) shall —

- (a) contain the name, address and contact information of the person who has acquired the 5% or more but less than 12% of the voting shares in the designated postal licensee or who controls 5% or more but less than 12% of the voting power in the designated postal licensee, as the case may be;
- (b) specify —

- (i) the percentage of voting shares in the designated postal licensee acquired by the person, and the class, number and percentage of voting shares held by the person immediately before he first acquires 5% or more but less than 12% of the voting shares in the designated postal licensee; or
- (ii) the percentage of voting power controlled by the person, and the percentage of voting power controlled by the person immediately before he first controls 5%

or more but less than 12% of the voting power in the designated postal licensee;

- (c) specify the effective date of acquisition of the shares or control; and
- (d) contain such other particulars and information as the Postal Authority may require in any particular case.

(4) The Postal Authority may permit notices under paragraph (1) to be given by any means, including electronic means, that it thinks fit.

Applications for control or consolidation

7.—(1) For the purposes of section 26B(2), (3) and (4) of the Act, an application for the prior written approval of the Postal Authority thereunder shall be made jointly by —

- (a) every person, alone or together with his associates, (collectively referred to in this regulation as the acquiring party) who is about —
 - (i) to become a 12% controller or 30% controller of a designated postal licensee; or
 - (ii) to enter into a transaction that constitutes a consolidation with a designated postal licensee; and
- (b) the designated postal licensee concerned,

unless separate applications are allowed by the Postal Authority.

(2) An application under paragraph (1) shall be in such form as may be approved by the Postal Authority.

(3) An application under paragraph (1) shall be made within the following periods:

- (a) where the acquiring party intends to acquire, by open market transaction, voting shares that are traded on a securities exchange, whether in Singapore or elsewhere —
 - (i) if the acquiring party is required to make an offer to purchase all the voting shares in the designated postal licensee — a period starting at least 60 days before making such offer until any time after the acquiring

party publicly announces its intention to make such an offer; or

- (ii) in any other case — a period starting at least 60 days before the day upon which the acquiring party intends to make an offer for the voting shares in the designated postal licensee;
- (b) where the acquiring party intends to acquire voting shares that are not traded on a securities exchange or to acquire other than by open market transaction voting shares that are traded on a securities exchange, whether in Singapore or elsewhere — within a period of 30 days after entering into an agreement for the acquisition of the voting shares but at least 60 days before completion of the agreement;
- (c) where the acquiring party wishes to acquire the business of the designated postal licensee (or any part thereof) as a going concern — within a period of 30 days after entering into an agreement for the acquisition of the business but at least 60 days before completion of the agreement;
- (d) in all other cases — at least 60 days before the acquiring party enters into a transaction, exercises an option to acquire voting shares or exercises a right to have voting shares transferred to him —
- (i) that would result in the acquiring party becoming a 12% controller or 30% controller of the designated postal licensee; or
 - (ii) that constitutes a consolidation with the designated postal licensee.

(4) An application for the written approval of the Postal Authority under section 26B(3) or (4) of the Act shall be accompanied by a non-refundable fee of \$5,000, which shall be paid by the acquiring party.

(5) Every application for the written approval of the Postal Authority under section 26B(2), (3) or (4) of the Act shall —

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- (a) contain the name, address and contact information of the acquiring party and of all associates and affiliates of the acquiring party;
 - (b) contain the name, address and contact information of all associates and affiliates of the designated postal licensee in question;
 - (c) describe any anticipated significant changes in the management or operations of the designated postal licensee;
 - (d) describe the postal services provided by the designated postal licensee in question and the acquiring party, and by their respective associates and affiliates, and an estimate of their respective market share in postal services;
 - (e) specify the following:
 - (i) the percentage of voting shares held by the acquiring party;
 - (ii) the percentage of voting power controlled by the acquiring party;
 - (iii) the percentage of voting shares the acquiring party will hold if the application is approved;
 - (iv) the percentage of voting power the acquiring party will control if the application is approved;
 - (v) any special or preferential rights granted to the acquiring party; and
 - (vi) any special or preferential rights that will be granted to the acquiring party if the application is approved; and
 - (f) contain such other particulars and information as the Postal Authority may require in any particular case.
- (6) Without prejudice to paragraph (5), every application for the written approval of the Postal Authority under section 26B(3) or (4) of the Act shall, in addition —
- (a) be accompanied by the following documents and information concerning the transaction that constitutes a consolidation with the designated postal licensee in question:

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- (i) the consolidation agreement, including all its appendices, related side letters and other supporting documents;
 - (ii) all other agreements in the possession of either the designated postal licensee or the acquiring party that, while not directly addressing the consolidation, are an integral part of the transaction (such as covenants not to compete or licensing agreements) or that are necessary or relevant to assess and determine the likely competitive impact of the consolidation;
- (b) contain a chart indicating the relationship between the designated postal licensee in question and the acquiring party and their respective associates and affiliates, and the relevant interest in the designated postal licensee;
- (c) be accompanied by a copy of the latest annual report or audited annual financial statements of each of the designated postal licensee and the acquiring party;
- (d) contain a detailed statement describing the consolidation clearly, accurately and comprehensively and a good faith assessment of the likely impact of the consolidation on competition in any basic letter services market in which the designated postal licensee and the acquiring party and their respective associates and affiliates participate, together with a submission as to how the consolidation would serve the public interest, including the following information:
- (i) the basic letter services market in which the designated postal licensee and the acquiring party and their respective associates and affiliates participate;
 - (ii) the names, addresses and contact information of designated postal licensee, the acquiring party and their respective associates and affiliates who are the market participants;
 - (iii) an estimate of their respective market share and level of concentration in that market;

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- (iv) the structure of the market and the extent to which it facilitates unilateral anti-competitive conduct or concerted action by multiple participants;
 - (v) the likelihood that output would be increased (either by existing market participants or new entrants) in response to a significant and non-transitory price increase;
 - (vi) the likelihood of customers switching to a competing service provider in response to a significant and non-transitory price increase; and
 - (vii) any efficiency that will result from the consolidation;
- (e) contain any condition that the applicants may wish to propose for the consideration of the Postal Authority (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact of the consolidation and an explanation why such conditions would be adequate to address any competitive concern that might arise from the consolidation; and
- (f) contain such other particulars and information as the Postal Authority may require in any particular case to determine the likely impact of the consolidation on competition and the public interest.

(7) If an application is made for the written approval of the Postal Authority under section 26B(2), (3) and (4) of the Act but before the Postal Authority approves or refuses to approve the application, the applicant becomes aware of any material change to a matter, or significant event that affects a matter, being a matter that would have been required to be contained in or accompany the application under this regulation, the applicant must without delay inform the Postal Authority in writing of that material change or significant event.

Applications for appointment of chief executive, director, etc.

8.—(1) For the purposes of section 26F(1) of the Act, an application thereunder for the prior written approval of the Postal Authority shall be made by the designated postal licensee concerned.

(2) The Postal Authority may permit applications under paragraph (1) to be made by any means, including electronic means, that it thinks fit.

(3) Every application under paragraph (1) shall —

- (a) contain the name, address and qualifications of the individual to be appointed as the designated postal licensee's chief executive or director, or the chairman of its board of directors;
- (b) specify the office to which the individual is to be appointed; and
- (c) contain such other particulars and information as the Postal Authority may require in any particular case.

Exculpatory notice

9.—(1) A notice by a designated postal licensee under section 26D(9)(b) of the Act shall —

- (a) specify the matters referred to in regulation 7(5);
- (b) contain such information as the Postal Authority may require for the purpose of determining what directions to give under section 26D of the Act; and
- (c) be accompanied by payment of \$5,000 unless otherwise waived by the Postal Authority.

(2) A person who has become aware that he has contravened section 26B(2), (3) or (4) of the Act shall not acquire any further voting shares in any designated postal licensee or control over the voting power in any designated postal licensee until he has notified the Postal Authority in accordance with section 26D(9)(b) of the Act and complied with such directions as the Postal Authority may give thereunder.

Postal Authority's decision

10.—(1) After considering an application, the Postal Authority must make a decision —

- (a) approving the application with or without conditions; or
- (b) disapproving the application.

(2) In considering whether to approve or disapprove an application, the Postal Authority shall have regard to —

- (a) whether the transaction to which the application relates is likely to result in a substantial lessening of competition in any basic letter services market in Singapore; and
- (b) the public interest.

(3) A decision of the Postal Authority under section 26B(2), (3) or (4) or 26F(1) of the Act takes effect on the day specified in the decision.

(4) Where the Postal Authority grants an approval under section 26B(4) of the Act, the approval shall, unless otherwise specified by the Postal Authority in writing, be deemed to also have the effect of an approval under section 26B(2) of the Act on the same conditions (if any) specified in the approval under section 26B(4) of the Act.

(5) In this regulation —

“basic letter services market” means a market in Singapore for postal services for the conveyance of letters (excluding direct mail or express letters) of up to 500 grams in weight, and for the incidental services of receiving, collecting, sorting, sending, despatching and delivering such letters;

“express letter” has the same meaning as in the Postal Services (Class Licence) Regulations 2005 (G.N. No. S 481/2005).

Extension of time, etc.

11. The Postal Authority may reduce or extend the time required by these Regulations, or waive any other requirement in regulation 6(3), 7(5) or (6), 8(3) or 9(1)(a) or (b), for the giving of any notice or making of any application if it is satisfied, on application —

- (a) that the person required to give the notice or make the application is unable to comply with the requirement due to circumstances beyond the person’s reasonable control;

- (b) that requiring the person to comply with the requirement would be unduly burdensome for the person or would prejudice the legitimate commercial interests of the person; or
- (c) that a reduction or extension of any such time would be otherwise appropriate having regard to the circumstances of the case.

Made this 4th day of May 2012.

YONG YING-I
Chairman,
Info-communications Development
Authority of Singapore.

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