

SINGAPORE POST LIMITED

**SUBMISSION TO
THE INFOCOMM DEVELOPMENT AUTHORITY OF SINGAPORE ("IDA")**

**PUBLIC CONSULTATION ON
DRAFT POSTAL SERVICES REGULATIONS 2007
ISSUED ON 9 MAY 2007**

30 MAY 2007

**SUBMISSION BY SINGAPORE POST LIMITED IN RESPONSE TO THE PUBLIC
CONSULTATION ON DRAFT POSTAL SERVICES REGULATIONS 2007**

SECTION 1 – INTRODUCTION

- 1 Section 1 of Singapore Post Limited's ("**SingPost**") submissions to the Ministry of Information, Communications and the Arts dated 9 April ("**SingPost's 2nd Submissions**") discussed the general principles guiding the liberalisation of the postal industry. In particular, SingPost submitted that the safeguards to ensure the maintenance of mail security and public confidence in the quality of Basic Mail Services ("**BMS**") should be enshrined in the proposed Postal Services Act ("**proposed PSA**") and not in subsidiary legislation. The reason is that subsidiary legislation is usually reserved for operational rather than fundamental matters, whereas issues like mail security and public confidence in mail quality were of a fundamental nature¹.
- 2 The issues that SingPost highlighted to be enshrined in the proposed PSA included:
 - 2.1 the duty to provide a universal postal service;²
 - 2.2 the scope of licensing, in particular the distinction between Direct Mail and Letters;³
 - 2.3 the categories of licenses for the provision of BMS, namely the Public Service Operation Licensee ("**PSO**") and Public Postal Licensee ("**PPL**");⁴
 - 2.4 the provisions to ensure and protect national security, public interest and mail integrity;⁵
 - 2.5 the privileges or functions of a designated PPL;⁶ and
 - 2.6 the conditions of access for the PSO to use the postal infrastructure of the PPL.⁷
- 3 SingPost notes that some of the issues it requested have been dealt with by the Draft Postal Services Regulations ("**Draft Regulations**") and the guidelines on submission of application for postal services operator licence ("**Licensing Guidelines**"), including the following:

¹ SingPost's 2nd Submissions, paragraph 11

² SingPost's 2nd Submissions, paragraphs 12 to 18

³ SingPost's 2nd Submissions, paragraphs 28 to 54

⁴ SingPost's 2nd Submissions, paragraphs 55 to 65

⁵ SingPost's 2nd Submissions, paragraphs 66 to 87

⁶ SingPost's 2nd Submissions, paragraphs 94 to 108

⁷ SingPost's 2nd Submissions, paragraphs 109 to 120

- 3.1 the duty to comply with all obligations arising from the Universal Postal Convention (“UPC”) is allocated to the “postal administration”;
 - 3.2 the categories of licenses are provided for in the Licensing Guidelines, and there will be two categories, the PSO and PPL; and
 - 3.3 the functions of a designated PPL, including the exclusive right to print national stamps and maintain the postal codes, are captured in the Licensing Guidelines.
- 4 Although SingPost would have preferred these issues to have been dealt with in the proposed PSA, it nonetheless welcomes the fact that these issues outlined in SingPost’s 2nd Submissions have been dealt with in the Draft Regulations and the Licensing Guidelines.
- 5 In relation to the Draft Regulations, SingPost welcomes the major changes, which include an attempt to delegate the obligations from the UPC to a licensee and the removal of the provisions dealing with Printed Papers, which is now an obsolete category. However, in doing so, the full implications of these changes must be carefully considered. In particular, the fact that there will be multiple operators rather than a single licensee can create lacunas in the Act or Draft Regulations if not dealt with.
- 6 Finally, important issues remain unaddressed. A major concern is that there are no provisions in place to ensure that access to letterbox masterdoor keys is secure and limited to the designated PPL. In the absence of such provisions, there is a danger that mailboxes will be accessed not only by other postal operators, but potentially by people who do not even operate postal services. This will not only endanger mail security and integrity, but may also generally undermine the liberalisation process.

SECTION 2 - ACCESS TO THE LETTERBOX MASTERDOOR KEY

- 7 IDA, in its decision and explanatory memorandum on the framework for further liberalisation of the postal services sector in Singapore issued on 5 February 2007 (“**IDA’s Decision Paper**”), recognised the importance of limiting access to letterbox masterdoors in the interest of protecting mail security and integrity:

*“In reviewing the issue of allowing multi-operator access to letterbox masterdoor keys, **IDA recognises that in the mail conveyance business, which involves human handling of personal and corporate mail items, integrity and security of the system is of utmost importance.** The current high level of user confidence in the public postal system is one of the critical success factors of the postal services provided in Singapore today. Hence, the liberalisation of the Basic Mail Services market must not be at the expense of mail integrity and security... **IDA also notes the industry’s comments that however detailed and stringent the regulations, they will never completely address the issues of accountability and traceability once multiple operators have access to the masterdoor keys.** So far, none of the respondents has provided alternatives to effectively address the issue of accountability and traceability with multiple masterdoor key access.”⁸*

(Emphasis in bold)

- 8 As access was to be limited to one operator for mail integrity and security reasons, IDA’s plan was to designate SingPost as this operator because as PPL⁹ it will need such access to comply with its USO obligations:

*“IDA will designate SingPost as the PPL who will then be required to perform a set of USO specified by the IDA. **SingPost, as the designated PPL, will be given the letterbox masterdoor keys to facilitate its performance of the USO.** Other than designated PPLs (i.e. SingPost and any other PPLs similarly designated by IDA), other licensees will not be given these masterdoor keys but IDA will facilitate their access to SingPost’s delivery network at regulated prices, terms and conditions. Competing PSOs may also attempt to deliver mail to letterboxes with open apertures or to recipients’ doorstep.”¹⁰*

(Emphasis in bold)

⁸ IDA’s Decision Paper, paragraph 44

⁹ IDA’s Decision Paper, paragraph 57

¹⁰ IDA’s Decision Paper, paragraph 48

- 9 The restriction of access to the letterbox masterdoor key is central to the entire licensing framework. It is what permits IDA to satisfy the public's need for mail integrity and security and to comply with USO obligations. The importance of this feature was highlighted in SingPost's 2nd Submissions¹¹.
- 10 Given the importance of this mechanism, we are concerned that there is nothing in either the proposed PSA or the Draft Regulations to deal with it. This problem is exacerbated by the fact that access to the letterbox masterdoor key is currently not confined to the PPL but is also available to certain non-postal operators. This creates a significant risk that mail integrity and security may be compromised. In addition, there is a possibility that the PPL may be unjustly blamed for loss or vandalism of mail, where such loss or vandalism was caused by an unlicensed person who had access to a letterbox masterdoor key.
- 11 The licensing process cannot be used to control access to letterbox masterdoor keys if such access is abused by people who do not hold postal services licences or who are not expressly authorised by IDA. For example, assume that someone manages to get a copy of a letterbox masterdoor key. He decides to use this key to grant access to letterbox masterdoors to other postal operators. Has anyone committed an offence or done anything wrong? It does not appear so as the licensees have not obtained access to the key and the person who has obtained access to the key is not a licensee and is not required to comply with the licensing regime.
- 12 It is suggested that tough legislative measures be enacted to ensure that letterbox masterdoor keys are not misused. The following provision is suggested:
- “(1) A letterbox masterdoor key shall not be used by any person, other than a designated Public Postal Licensee, except with the express authorisation of the Minister.
- (2) Any person who:
- (a) contravenes paragraph (1); and
- (b) was aware or could reasonably have been expected to be aware that he was contravening paragraph (1) at the time the offence was alleged to have been committed,
- shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$_____ or to imprisonment for a term of not exceeding _____ or to both.
- (3) In this section:

¹¹ SingPost's 2nd Submissions, paragraphs 79 to 87 and 99

- (a) *“letterbox masterdoor key” means any key to a masterdoor installed in a nest of letterboxes that, when opened, reveals all the pigeonholes in the nest of letterboxes, and includes any duplicate of such a key whether the duplicate is produced lawfully or unlawfully; and*
- (b) *“use”, in all its grammatical variations, for the purposes of this section, means:*
- (i) *to open any letterbox masterdoor with a letterbox masterdoor key;*
 - (ii) *to give, sell or barter a letterbox masterdoor key to any other person;*
 - (iii) *to duplicate or in any other manner create a physical copy of a letterbox masterdoor key; or*
 - (iv) *to destroy a letterbox masterdoor key,*
- and includes any attempt or offer to do any of the actions in (i) to (iv) above.”*

- 13 The language of this provision tracks the language in Sections 2, 3 and 4 of the Arms Offence Act, Chapter 14 of Singapore. Just as the misuse of arms is a danger to public safety, the misuse of the letterbox masterdoor key is a danger to the mail integrity and security of the postal system and to the integrity of the liberalisation process.
- 14 The suggested provision will send a clear message that misuse of letterbox masterdoor keys is a serious offence and will discourage anybody from attempting to misuse such keys. SingPost would prefer that an important provision of this nature to be included in the proposed PSA. However, failing this, it should at the very least be captured in the Draft Regulations.

Summary of Comments and Proposal

- IDA has acknowledged the importance of limiting access to letterbox masterdoors in IDA’s Decision Paper. Yet, despite the centrality of this feature, it is not dealt with in either the Draft Regulations or the proposed PSA.
- It is suggested that a provision be made to ensure that access to letterbox masterdoors is not abused by other operators or any other third parties as follows:

(1) *A letterbox masterdoor key shall not be used by any person, other than a designated Public Postal Licensee, except with the express authorisation of the Minister.*

(2) *Any person who:*

(a) *contravenes paragraph (1); and*

(b) *was aware or could reasonably have been expected to be aware that he was contravening paragraph (1) at the time the offence was alleged to have been committed,*

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$_____ or to imprisonment for a term of not exceeding _____ or to both.

(3) *In this section:*

(a) *“letterbox masterdoor key” means any key to a masterdoor installed in a nest of letterboxes that, when opened, reveals all the pigeonholes in the nest of letterboxes, and includes any duplicate of such a key whether the duplicate is produced lawfully or unlawfully; and*

(b) *“use”, in all its grammatical variations, for the purposes of this section, means:*

(i) *to open any letterbox masterdoor with a letterbox masterdoor key;*

(ii) *to give, sell or barter a letterbox masterdoor key to any other person;*

(iii) *to duplicate or in any other manner create a physical copy of a letterbox masterdoor key; or*

(iv) *to destroy a letterbox masterdoor key,*

and includes any attempt or offer to do any of the actions in (i) to (iv) above.

SECTION 3 - POSTAL ADMINISTRATION AND DUTY TO PROVIDE UNIVERSAL POSTAL SERVICE

- 15 Singapore is a member of the Universal Postal Union (“UPU”). Its obligations (“UPU obligations”) under the UPC have been delegated by the Draft Regulations to the “postal administration”.¹² The postal administration has been defined as:

*“a postal operator that has been designated to be the postal administration of this country to be responsible for fulfilling the obligations under the UPU Convention, and “postal administration in Singapore” means a postal licensee that has been so designated by the Postal Authority as the postal administration in Singapore”.*¹³

- 16 SingPost recognises that it is important to ensure that Singapore’s UPU obligations continue to be met after liberalisation. However, SingPost is concerned about the fact that the Draft Regulations only state that the postal administration is responsible for “fulfilling the obligations under the UPU Convention”. The use of the word ‘obligation’ may create a problem because if a particular function in the UPU Convention is treated as a right rather than an obligation, it may mean that the postal administration will not be able to perform that function. For completeness, it is suggested that both rights and obligations under the UPC be delegated to the postal administration.

- 17 In SingPost’s 2nd Submission, SingPost submitted that the main obligation under the UPC, to provide a universal postal service, should be delegated to the PPL along with the functions to support this to do so¹⁴. The obligation to provide a universal postal service is an onerous one in a competitive environment. This Universal Service Obligation (“USO”) is stated as to:¹⁵

“ensure that all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory at affordable prices.”

- 18 Given that SingPost has undertaken the USO obligations, and to ensure that all functions in the UPU Convention are performed, regardless of their characterisation as rights or obligations, it is suggested that the provision be reworded as follows:-

*“a postal operator that has been designated to be the postal administration of this country to be responsible for fulfilling the **rights and** obligations under the UPU Convention, and “postal administration in Singapore” means a postal licensee that has been so designated by the Postal Authority as the postal administration in Singapore”.*

¹² Draft Regulations, Regulation 2

¹³ Draft Regulations, Regulation 2

¹⁴ SingPost’s 2nd Submissions, Section 7

¹⁵ UPC, Article 3(1)

(Amendments underlined and in bold)

Summary of Comments and Proposal

- SingPost suggests that rights as well as obligations under the UPC should be delegated together.

SECTION 4 – DIRECT MAIL AND LETTERS

19 The importance of distinguishing between Letters and Direct Mail (both terms as defined in the proposed PSA) and the implications of a failure to do so (such as bypassing of quality standards of licensees) was explained and highlighted in SingPost's 2nd Submission.¹⁶ The importance of this conceptual distinction must be recognised and carried out in the day-to-day delivery by licensees in the liberalised market.

20 Direct Mail is defined in the proposed PSA as:

“A letter consisting solely of advertising, marketing or publicity material and comprising an identical message (except for the addressee's name, address and identifying number and other modifications which do not alter the nature of the message) which is sent to more than one addressee, to be conveyed and delivered at the address indicated by the sender on the letter itself or on its wrapping.”

21 Whilst Direct Mail falls under the wide rubric of letters under the proposed PSA, it is a specific sub-set which is carved out, and is specifically excluded from the licensing regime of letters under section 5 of the proposed PSA. As defined, Direct Mail is meant to include only relatively impersonal mass mail used for advertising, marketing or publicity. Mail bearing such impersonal characteristics for example, Direct Mail, would have to be treated differently for the reasons below.

22 It is important for the PPL to be able to distinguish such Direct Mail from more personal Letters, because there are important differences in the treatment accorded to these two categories of mail, including:

22.1 undelivered Letters are treated in a different manner from undelivered Direct Mail ; and

22.2 different standards of service, and consequently different postal rates, would be applicable to the two categories of mail.

23 SingPost would highlight that the UPU treats printed papers including Direct Mail differently from Letters. The UPU's Letter Post Manual sets out several distinct categories of mail. Of these categories, “Letters” and “Printed Papers” are respectively analogous to Letters and Direct Mail under our draft legislations. As with Direct Mail, under the draft legislations, Printed Papers must, under the Letter Post Manual, satisfy a list of requirements to qualify as Printed Papers.¹⁷ To enable the postal administration to verify that the requirements have been met, Article 12; RL 124 of the Letter Post Manual sets out the following provisions:

¹⁶ SingPost 2nd Submission, paragraphs 40 to 54

¹⁷ Letter Post Manual, Conv Art 12; RL 124, Paragraph 4 (page section D.9)

"Paragraph 4.7

Printed papers shall be made up in such a way that their contents are sufficiently protected while permitting quick and easy verification. The conditions shall be determined by the administration of origin.

Paragraph 4.10

Printed Papers may be inserted in closed plastic wrapping, either transparent or opaque, on the conditions laid down by the administration of origin.

Paragraph 4.11

Sealed Printed Papers may be opened for verification of their contents."

- 24 The ability to verify the contents of sealed postal articles is critical, because of the different treatment accorded to Letters and Printed Papers. Apart from differences in delivery times, the most significant difference is the treatment of undelivered items. In particular, under Article 15; RL 147 of the Letter Post Manual, it is not necessary to return Printed Papers unless the sender asks for the return of such Printed Papers by means of a note on the item:

"Paragraph 6.3

The return to origin of undeliverable printed papers shall not be compulsory, unless the sender has asked for their return by means of a note on the item in a language known in the country of destination..."

- 25 In the premises, SingPost suggests that certain provisions be included in the Draft Regulations to ensure that Direct Mail is easy to distinguish from Letters in day-to-day delivery.
- 26 Printed Papers bear some similarity to Direct Mail, although the category of Printed Papers would have been larger because it was not confined to material that was *"solely for advertising, marketing or publicity."* In this respect, adapting the measures used to identify Printed Papers for use in identifying Direct Mail should be unobjectionable, since much of what is Direct Mail now would have been treated as Printed Papers in the past. The safeguards may broadly be classified as follows:
- 26.1 guidelines on the permitted modifications and annotations to Direct Mail;

- 26.2 transparent packaging and distinctive labelling of Direct Mail, to ease identification of the nature of the item; and
- 26.3 powers to inspect an item labelled as Direct Mail, if necessary, to verify that the item is indeed Direct Mail.
- 27 Since Direct Mail is considered impersonal, and is by definition meant solely for advertising, marketing or publicity, these requirements do not infringe any privacy or confidentiality concerns.
- 28 To this end, Regulations 10 and 11 of the current Postal Services Regulations (“PSR”) provided tools to enable the PPL to assist in identifying the nature of the mail in question. Regulation 12 also provides that only printed papers which conform to the requirements of Regulations 10 and 11 may be admitted at the rates for Printed Papers. It is suggested that these tools be adapted and applied to enable SingPost to distinguish between Letters and Direct Mail.
- 29 The rules on annotations are useful because they can assist in clarifying the scope of the qualifying words in the definition of Direct Mail:

“except for the addressee’s name, address and identifying number and other modifications which do not alter the nature of the message”.

- 30 The following clarification will be useful:

“(1) It is allowed —

(a) to indicate on Direct Mail, by any process —

(i) the name and address of the sender and the addressee with or without showing the title, profession and style;

(ii) the place and date of dispatch of the item; and

(iii) serial or registration numbers referring solely to the item;

(b) to delete, mark or underline certain words or certain parts of the printed text; and

(c) to correct printing errors.

(2) The additions and corrections specified in paragraph (1) must have no direct bearing on the content of the reproduction.”

- 31 The issue of ensuring that Printed Papers were easily identifiable was addressed by Regulation 11 of the PSR. These provisions may be adopted to deal with the issue of making Direct Mail identifiable:

- “(1) Direct Mail shall bear in bold letters on the address side in so far as possible in the top left-hand corner beneath the sender’s name and address where these are given, the expression “Direct Mail, May be Opened for Inspection.” If the sender wishes, he may also indicate in smaller print, “In the event the integrity of the contents have been compromised, please contact [xxx]” where ‘[xxx]’ is the contact details of the person designated by the sender.”*
- (2) The contents of the Direct Mail must to the extent practicable be protected having regard for the need for quick and easy verification.*
- (3) Direct Mail may be inserted in closed plastic wrapping, which is either transparent or opaque, according to the conditions laid down by the public postal licensee.”*

- 32 Finally, there were provisions that provided the PPL with certain powers to inspect Printed Papers. If the Printed Papers were not in conformity with the requirements, they would not be permitted to be mailed under the rates for Printed Papers. In this regard, the provisions relating to Printed Papers may also be adapted to deal with Direct Mail:

- “(1) Only Direct Mail which conforms to the requirements of the regulations above may be admitted at the rates for Direct Mail.*
- (2) Sealed Direct Mail may be opened for verification of their contents.”*

- 33 Provisions such as these are not unusual. In the USA, there are three categories of mail, namely, “First Class Mail”, “Priority Mail” and “Standard Mail”. Standard Mail is very similar to Direct Mail. It is described as:¹⁸

“2.1 Definition and Weight

Standard Mail consists of mailable matter that is neither mailed or required to be mailed as First-Class Mail nor entered as Periodicals (unless permitted or required by standard) and that

¹⁸ United States Postal Services Direct Mail Manual, Chapter 243
(<http://pe.usps.com/text/dmm300/243.htm>)

weighs less than 16 ounces. Standard Mail includes matter formerly classified as Standard Mail (A) and third-class mail.

2.2 Personal Information

Personal information may not be included in a Standard Mail mailpiece unless all of the following conditions are met:

- a. The mailpiece contains explicit advertising for a product or service for sale or lease or an explicit solicitation for a donation.*
- b. All of the personal information is directly related to the advertising or solicitation.*
- c. The exclusive reason for inclusion of all of the personal information is to support the advertising or solicitation in the mailpiece.*

2.3 Bills and Statements of Account

Mail containing bills or statements of account as defined in 233.2.2 may not be entered as Standard Mail except under the conditions described in 2.5.2.

2.4 Handwritten and Typewritten Matter

Mail containing handwritten or typewritten matter may not be entered as Standard Mail except under the conditions described in 2.6.

3.1.1 Service Objectives

Standard Mail may receive deferred handling. Service objectives for delivery are 2 to 9 days; however, delivery time is not guaranteed.

3.1.2 Minimum Quantity

Standard Mail provides economical rates for mailings of 200 or more pieces or 50 or more pounds of mail.

3.2.8 Identical Pieces

The contents of printed matter in a Standard Mail mailing must be identical to a piece sent to at least one other addressee.

Standard Mail may include the addressee's name and address but may not transmit personal information except as permitted under 2.2."

- 34 Standard Mail bears similarities with Direct Mail in that both categories represent mail that is relatively impersonal and which may enjoy cheaper rates than other classes of mail. Although not explicitly restricted to advertising or marketing material, such functions are likely to be the most likely use of Standard Mail since one must send a minimum of 200 letters which have no personal markings to enjoy economical rates.
- 35 Standard Mail is also subject to marking and inspection requirements:¹⁹

"3.2.2 Preparation Requirements

Standard Mail is subject to specific volume, marking, and preparation requirements.

3.2.3 Inspection of Contents

Standard Mail is not sealed against postal inspection."

- 36 Subjecting Direct Mail to easy inspection and other requirements is found in the UPU Letter Post Manual. Such practices were used in Singapore in relation to Printed Papers in the past and are practised in the US in relation to Standard Mail.
- 37 As mentioned above, the need to distinguish between Letters and Direct Mail and the implications of a failure to do so have been explained and highlighted in SingPost's 2nd Submission.
- 38 A particularly important reason that there should not be ambiguity at the points of access to SingPost's distribution system as to whether a piece of correspondence is Direct Mail or a Letter is that SingPost's distribution systems have been set up to handle the aggregate of its mail volume based on its QoS requirement of Next-Day Delivery. Accordingly, access to the system at a rate other than Next-Day Delivery represents an abnormality in, or retardation of, its distribution systems. Such inefficiency may be unavoidable in the case of legitimate instances of "Direct Mail" required under the proposed regime, but it is submitted that inefficiencies to SingPost's QoS-compliant systems should be minimised by ensuring that it has a fair opportunity to verify the nature of the mail accessing its distribution systems.
- 39 Including the amendments referred to above in the Draft Regulations would greatly assist in determining whether an item of mail is Direct Mail or a Letter. These

¹⁹ United States Postal Services Direct Mail Manual, Chapter 243
(<http://pe.usps.com/text/dmm300/243.htm>)

provisions have been applied in relation to Printed Papers and SingPost submits that they should be adapted for use in relation to Direct Mail.

Summary of Comments and Proposal

- The permitted modifications for Direct Mail should be clearly explained. The following clarification is suggested:

"(1) It is allowed —

(a) to indicate on Direct Mail, by any process —

(i) the name and address of the sender and the addressee with or without showing the title, profession and style;

(ii) the place and date of dispatch of the item; and

(iii) serial or registration numbers referring solely to the item;

(b) to delete, mark or underline certain words or certain parts of the printed text; and

(c) to correct printing errors.

(2) The additions and corrections specified in paragraph (1) must have no direct bearing on the content of the reproduction."

- In order to allow a licensee to be able to distinguish Direct Mail from other Letters, the following insertion is suggested in the Draft Regulations:

"(1) Direct Mail shall bear in bold letters on the address side in so far as possible in the top left-hand corner beneath the sender's mail and address where these are given, the expression "Direct Mail, May be Opened for Inspection." If the sender wishes, he may also indicate in smaller print, "In the event the integrity of the contents have been compromised, please contact [xxx]" where '[xxx]' is the contact details of the person designated by the sender."

(2) The contents of the Direct Mail must to the extent practicable be protected having regard for the need for quick and easy verification.

(3) Direct Mail may be inserted in closed plastic wrapping, which is either transparent or opaque, according to the conditions laid down by the public postal licensee."

- Finally, it is also suggested that the PPL be granted the power to inspect mail:
 - “(1) *Only Direct Mail which conforms to the requirements of the regulations above may be admitted at the rates for Direct Mail.*
 - (2) *Sealed Direct Mail may be opened for verification of their contents.”*

SECTION 5 - PROHIBITED POSTAL ARTICLES

- 40 Regulation 3(1) of the Draft Regulations updates the list of prohibited postal articles. This update to Regulation 3(1) is to be welcomed, as the revised list of prohibited postal articles removes categories of items which are no longer of severe concern and includes dangerous items which previously fell outside the scope of the PSR. However, SingPost is concerned about the scope of the offence created under Regulation 3 of the Draft Regulations.
- 41 Regulation 3(1) provides that “Except as may be provided in regulation 4, no person shall post, convey or deliver by post” any of the prohibited postal articles set out in Regulation 3(1). Regulation 3(2) further provides that “Any person who contravenes paragraph (1) shall be guilty of an offence”.
- 42 The language of Regulation 3(2) means the mere act of posting, conveying or delivering by post any prohibited postal article is sufficient to constitute an offence. This is at odds with the fundamental principle of criminal justice that in order for an accused person to be guilty of an offence, it must not only be proved that the accused person had committed the offence, it must also be proved that the accused person had some form of knowledge or awareness of committing the offence. *Mens rea* or a guilty mind on the part of the offender must be proved.
- 43 In particular, it would impose disproportionate logistical burdens on postal licensees if they could be found guilty of an offence merely upon proof of the fact that they had posted, conveyed or delivered by post prohibited postal articles, for the following reasons:
- 43.1 postal licensees (especially SingPost) handle a very large volume of postal articles;
 - 43.2 some of the items set out in Regulation 3(1) (e.g. bank notes and currency notes, public lottery tickets, prohibited pamphlets and magazines), once enclosed in a sealed envelope, are indistinguishable from ordinary postal articles; and
 - 43.3 by virtue of the deletion of Regulation 5(1) in the proposed Postal Regulations, the public postal licensee no longer has the power to open sealed postal articles to determine whether the postal article contains any prohibited articles.
- 44 SingPost appreciates that the new Regulation 3(3) allows postal licensees and their employees or agents a defence against a charge under Regulation 3(2) if they could prove that, having taken reasonable measures, they were not aware and could not reasonably be expected to have been aware that they were posting, conveying or delivering by post prohibited postal articles at the time the offence was alleged to have been committed. However, as the postal licensee and its employees or agents

would bear the burden of establishing this defence, Regulation 3(3) may not adequately address our concerns as set out above.

- 45 Typically, strict liability offences or offences where the burden of disproving *mens rea* is shifted to the accused are underpinned with public policy concerns. In the case of the postal services industry, SingPost submits that there is no strong policy reasoning which justifies this heavy burden being placed on postal licensees instead of the State.
- 46 Therefore, SingPost submits that Regulations 3(2) and 3(3) should be reworded so as to require the prosecution to establish knowledge or awareness on the part of the offender, without undermining the importance of having postal licensees act as the first line of defence against the posting, conveying or delivering by post of prohibited postal articles. A suggested redrafting of Regulations 3(2) and 3(3) is:

"Regulation 3(2)

Any person who:

- (a) contravenes paragraph (1); and*
- (b) was aware or could reasonably have been expected to be aware that he was contravening paragraph (1) at the time the offence was alleged to have been committed,*

shall be guilty of an offence.

Regulation 3(3)

Every postal licensee and each of their respective employees or agents shall take reasonable measures to secure compliance with paragraph (1)."

- 47 SingPost would also be grateful if IDA could set out further details, either in the PSR or in a subsequent set of guidelines, on what measures and procedures would constitute "reasonable measures":
- 47.1 for the purpose of compliance with our suggested redraft of Regulation 3(3), if the reworded Regulation 3(3) is accepted by IDA; or
 - 47.2 for the purpose of establishing a defence against a charge of an offence under Regulation 3(2), if our suggested redraft of Regulation 3(3) is not accepted by IDA.

Summary of Comments and Proposal

- The posting, conveying and delivering by post of prohibited postal articles should not be a strict liability offence. The following amendments are suggested to Regulations 3(2) and 3(2) of the Draft Regulations:

“Regulation 3(2)

Any person who:

- (a) contravenes paragraph (1); and*
- (b) was aware or could reasonably have been expected to be aware that he was contravening paragraph (1) at the time the offence was alleged to have been committed,*

shall be guilty of an offence.

Regulation 3(3)

Every postal licensee and each of their respective employees or agents shall take reasonable measures to secure compliance with paragraph (1).”

- SingPost would also be grateful if IDA could set out further details, either in the Draft Regulations or in a subsequent set of guidelines, on what measures and procedures would constitute “reasonable measures”:
 - (a) for the purpose of compliance with our suggested redraft of Regulation 3(3), if the reworded Regulation 3(3) is accepted by IDA; or
 - (b) for the purpose of establishing a defence against a charge of an offence under Regulation 3(2), if our suggested redraft of Regulation 3(3) is not accepted by IDA.

SECTION 6 – UNDELIVERED MAIL

- 48 Part VI of the Draft Regulations deals with undelivered and redirected postal articles which are transmissible in accordance with the UPC.
- 49 The issue is: what if the postal article that could not be delivered overseas originated from another PSO in Singapore? The postal administration would still need to incur the costs of dealing with the article, which could include returning it to the sender.
- 50 A suggested solution to this problem is to provide the postal administration the opportunity to return it to the PSO concerned instead of the addressee. The suggested amendment would read:

“An undelivered postal article, other than a parcel, originating in Singapore shall, when returned to the postal administration in Singapore by the postal administration of the country from which it is returned, be dealt with by the postal administration in Singapore as follows:

- (a) *if **applicable it shall be directed and forwarded to the postal licensee who collected the postal article in Singapore for delivery in the first place, or where that licensee is the postal administration in Singapore**, it shall be redirected and forwarded to the addressee **by the postal administration in Singapore if practicable**; or*
- (b) *if it cannot be directed and forwarded **to the postal licensee who collected the postal article in Singapore for delivery in the first place or** to the addressee **pursuant to (a) above**, it shall, if the name and address of the sender appears on the outside, or can be ascertained by an officer authorised by the postal administration in Singapore to open such articles and bound to secrecy, be returned to the sender on payment of any charges due.”*

(Amendments underlined and in bold)

- 51 This places the responsibility for dealing with the postal articles with the postal licensees concerned and would relieve the postal administration of the responsibility of tracking down addressees or senders that the postal administration did not deal with.

Summary of Comments and Proposal

- In relation to postal articles originating in Singapore, the following amendments are suggested to Regulation 13(1) of the Draft Regulations:

“An undelivered postal article, other than a parcel, originating in Singapore shall, when returned to the postal administration in Singapore by the postal administration of the country from which it is returned, be dealt with by the postal administration in Singapore as follows:

- (a) *if **applicable it shall be directed and forwarded to the postal licensee who collected the postal article in Singapore for delivery in the first place, or where that postal licensee is the postal administration in Singapore**, it shall be redirected and forwarded to the addressee **by the postal administration in Singapore if practicable**; or*
- (b) *if it cannot be directed and forwarded **to the postal licensee who collected the postal article in Singapore for delivery in the first place or** to the addressee **pursuant to (a) above**, it shall, if the name and address of the sender appears on the outside, or can be ascertained by an officer authorised by the postal administration in Singapore to open such articles and bound to secrecy, be returned to the sender on payment of any charges due.”*

