



**COVER NOTE ISSUED BY
THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE
POSTAL SERVICES (CONTROL OF DESIGNATED POSTAL LICENSEES)
REGULATIONS 2012**

25 May 2012

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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 (Cap 237A) (the “**Act**”), the Info-communications Development Authority of Singapore (“**IDA**”), with the approval of the Minister for Information, Communications and the Arts, hereby issues the finalised Postal Services (Control of Designated Postal Licensees) Regulations 2012 (the “**Regulations 2012**”). This document provides IDA’s response to the comments received to the draft Postal Services (Control of Designated Postal Licensees) Regulations (the “**draft Regulations**”), which was issued for public consultation on 20 September 2007.

PART I: INTRODUCTION

1. Part IVA of the Act sets out the basic legal framework for IDA to regulate parties who acquire control over designated postal licensees. Section 26H(1) of Part IVA of the Act provides that IDA may, with the approval of the Minister, make regulations to carry out the purposes of that Part. Section 26H(2) further provides that such regulations may prescribe the circumstances under which a person may be considered an associate, and circumstances under which a person would be considered to be in a position to control a percentage of the voting power in a designated postal licensee.
2. On 20 September 2007, IDA invited the industry and public to provide comments on IDA’s draft Regulations, which were meant to elaborate, and to provide guidance, on Part IVA of the Act.
3. The public consultation on the draft Regulations (the “**Consultation**”) closed on 12 November 2007 with comments from Singapore Post Limited (“**SingPost**”). IDA thanks SingPost for its participation in the Consultation and its comments on the draft Regulations.
4. Taking into account IDA’s policy objectives, as well as the views received during the Consultation, IDA has completed our review of the draft Regulations.
5. This cover note sets out the following:
 - (a) A summary of the comments received during the Consultation on the draft Regulations; and
 - (b) IDA’s response to the comments.

PART II: SUMMARY OF COMMENTS RECEIVED IN PUBLIC CONSULTATION AND IDA'S RESPONSE

Submission Timeframes

6. The draft Regulations provide for the timeframes for application in respect of the following scenarios under which an acquiring party becomes a 12% or 30% controller of a designated postal licensee or enters into a transaction that constitutes a consolidation with a designated postal licensee:
 - (a) acquisition of voting shares which are traded on a securities exchange;
 - (b) acquisition of voting shares which are not traded on a securities exchange;
 - (c) acquisition of the business of a designated postal licensee as a going concern; and
 - (d) all other cases.
7. SingPost commented that the proposed timeframe of "*not more than 90 days and not less than 60 days*" for submission of applications for approval for the scenarios specified in (d) above is "*too long*", and "*not realistic from the perspective of market practice*". SingPost also noted that this set of timeframe has no precedent under the equivalent frameworks in the telecommunication and media sectors.
8. IDA has considered the matter and is of the view that the majority of all transactions would already be caught under the scenarios under (a) to (c) above. Indeed, this is IDA's experience with regard to mergers and acquisitions ("**M&A**") in the telecommunication sector. The scenario under (d) is intended to be a catch-all provision for all other types of transactions that do not fall into scenarios (a), (b) and (c) – which IDA does not expect to be high in volume or frequency. In the Regulations 2012, IDA has also removed the maximum 90-day limit for submission of applications under scenario (d). IDA believes that this provides acquiring parties and designated postal licensees with more flexibility to submit their applications earlier, should they choose to do so.
9. IDA assures all parties that, acquiring parties and designated postal licensees who have legitimate reasons for their inability to comply with the timeframes specified under the Regulations 2012, can seek the appropriate time reduction or extension (as the case may be) from IDA, in accordance with the Regulations. IDA will also endeavour to expedite any urgent requests for approval for changes in ownership interest in a designated postal licensee.

Waivers for Joint Applications

10. SingPost submitted that IDA should clarify in the draft Regulations that the requirement to submit “joint applications” may be waived for regulation 6 of the draft Regulations.
11. In relation to SingPost’s concerns, IDA notes that the proposed regulation 6 of the draft Regulations pertains only to notifications by the designated postal licensee. There is no need for the waiver of “joint applications” as under regulation 6 it is clear that only the designated postal licensee needs to notify IDA.
12. Nevertheless, if SingPost’s concern is in relation to the regulation 7 of the draft Regulations (which requires Acquiring Parties and the designated postal licensee to submit joint applications to IDA to seek approval for changes in ownership), IDA has addressed this concern as regulation 7(1) of the Regulations 2012 provides that IDA may allow separate applications. In addition, the circumstances under which IDA may waive the requirement for the submission of joint applications are set out in section 8.5.5 (Separate Filing and Direct Submission of Information) of the Postal Competition Code (the “**Code**”).

Waivers to Definition of “Associates”

13. SingPost submitted that IDA should allow waivers to the definition of “Associates” as full compliance by designated postal licensees may not be practicable or feasible given the width of the definition of “Associates”.
14. IDA would highlight that the concept of “Associates” takes into consideration parties who may control or influence the acquiring party, or who may be controlled or influenced by the acquiring party. It is necessary for IDA to adopt the concept of associates so that IDA will be better able to ascertain, and thus adequately take into account, which parties have actual control over a designated postal licensee. Allowing waivers to the definition of “Associates” would dilute the effectiveness of IDA’s M&A framework. IDA further notes that the use of the concept of associates in the context of M&A reviews is consistent with legislative best practices adopted in other sectors, such as the electricity and aviation sectors.
15. Nonetheless, whether persons are deemed to be associates under the Regulations 2012 will depend largely on the nature of each M&A transaction. IDA is open to providing, on a case-by-case basis, the necessary guidance and advice to applicants involved in M&A transactions in the basic letter services market.

Applications for Appointment of Chief Executive, Director, etc.

16. IDA has introduced a new regulation 8 in the Regulations 2012, which sets out the minimum information that designated postal licensees should submit to IDA pursuant to any applications for appointment of chief executive officer,

director etc. Regulation 8 draws powers from section 26F(1) of the Act, which requires designated postal licensees to seek IDA's prior written approval for appointment of chief executive officer, director or chairman of its board of directors.

17. Regulation 8 of the Regulations 2012 is necessary to provide the industry with clarity on the means by which designated postal licensees can apply to IDA for the above mentioned appointments, and on what information designated postal licensees should include in their applications. IDA believes such clarity will expedite IDA's review process and lead to faster approvals and decisions on the appointments.

Other Amendments to the Regulations 2012

18. Editorial amendments have also been made to the Regulations 2012 to ensure clarity and consistency in the usage of terms. These amendments do not substantively change or affect the requirements that IDA had previously set out, and consulted upon, in the draft Regulations.

Consequential Changes to the Code

19. Arising from the finalisation of the Regulations 2012, IDA will be making consequential changes to the relevant provisions in section 8 of the Code. IDA will issue the revised Code when ready.

PART III: CONCLUSION

20. The finalised Regulations 2012 are attached as an Annex to this cover note. The Regulations 2012 can also be found on IDA's website at www.ida.gov.sg under the "Policies and Regulation" section.