

10. ACQUISITIONS AND CONSOLIDATIONS INVOLVING DESIGNATED TELECOMMUNICATION LICENSEES, DESIGNATED BUSINESS TRUSTS AND DESIGNATED TRUSTS

10.1 Introduction and Application

- (a) Where an entity seeks to carry out a telecommunication business in Singapore, such entity would typically organise itself as a Corporation, which then owns the underlying telecommunication assets and holds a telecommunication licence issued by IDA. However, IDA recognises that there are other legal structures by which an entity may organise itself to carry out its telecommunication business, including establishing a Business Trust or a trust. In such cases, the legal and beneficial ownership of the underlying telecommunication assets, the management of the business and the holding of the telecommunication licence may be vested in different entities. For example, in the case of a Business Trust, the Trustee-Manager would hold the telecommunication licence and manage the Business, but the Unitholders would be the beneficial owners of the Business.

This section applies to telecommunication licensees, Business Trusts and trusts that have been declared by IDA pursuant to Section 32A(2) of the Telecommunications Act to be Designated Telecommunication Licensees, Designated Business Trusts and Designated Trusts. While all telecommunication licensees are subject to IDA's regulatory purview, IDA will determine the telecommunication licensees to be declared to be Designated Telecommunication Licensees and are therefore required to comply with the requirements specified in this section.

In some cases, parties seek to acquire an Equity Interest or Voting Power in a Designated Telecommunication Licensee, a Designated Business Trust or a Designated Trust even if it would not result in such parties being able to exercise Effective Control over the Designated Telecommunication Licensee, Designated Business Trust or Designated Trust. In other cases, parties may seek to acquire sufficiently significant Equity Interest or Voting Power, or engage in other transactions, that result in the Designated Telecommunication Licensee, Designated Business Trust or Designated Trust ceasing to operate as a separate economic entity and thereby becoming a single economic entity with such parties. In many such cases, such transactions can have pro-competitive effects, such as creating economies of scale and scope. However, such transactions may also harm competition. For example, such transactions could create an entity that is not subject to competitive market forces or could facilitate unlawful collusion among competing licensees.

- (b) Section 10 applies to:
 - (i) Facilities-based Licensees and Services-based Licensees that IDA has declared to be a Designated Telecommunication Licensee pursuant to Section 32A(2) of the Telecommunications Act;
 - (ii) Trustee-Managers of Designated Business Trusts;
 - (iii) trustees of Designated Trust; and
 - (iv) any person that will acquire Equity Interest or Voting Power in a Designated Telecommunication Licensee, Designated Business Trust or Designated Trust, or will enter into a Consolidation, and such person's Associates.

- (c) Among other matters, Section 10 describes:
 - (i) the procedures for a Designated Telecommunication Licensee to notify IDA in connection with transactions resulting in a person holding Voting Shares or being in control of Voting Power in the Designated Telecommunication Licensee of at least 5% but less than 12%;
 - (ii) the procedures for every Acquiring Party and a Designated Telecommunication Licensee to obtain IDA's approval for such Acquiring Party to become a 12% Controller of the Designated Telecommunication Licensee;
 - (iii) the procedures for every Acquiring Party and a Designated Telecommunication Licensee to obtain IDA's approval for such Acquiring Party to become a 30% Controller of the Designated Telecommunication Licensee or otherwise enter into a Consolidation with the Designated Telecommunication Licensee;
 - (iv) the procedures for the Trustee-Manager of a Designated Business Trust to notify IDA in connection with transactions resulting in a person holding Units or being in control of Voting Power in the Designated Business Trust of at least 5% but less than 12%;
 - (v) the procedures for every Acquiring Party, the Trustee-Manager and the Designated Telecommunication Licensee of a Designated Business Trust to obtain IDA's approval for such Acquiring Party to become a 12% Controller of the Designated Business Trust;
 - (vi) the procedures for every Acquiring Party, the Trustee-Manager and the Designated Telecommunication Licensee of a Designated Business Trust to obtain IDA's approval for such Acquiring Party

- to become a 30% Controller of the Designated Business Trust or otherwise enter into a Consolidation with the Designated Business Trust;
 - (vii) the procedures for a trustee of a Designated Trust to notify IDA in connection with transactions resulting in a person holding Equity Interest or being in control of Voting Power in the Designated Trust of at least 5% but less than 12%;
 - (viii) the procedures for every Acquiring Party, the trustee and the Designated Telecommunication Licensee of a Designated Trust to obtain IDA's approval for such Acquiring Party to become a 12% Controller of the Designated Trust;
 - (ix) the procedures for every Acquiring Party, the trustee and the Designated Telecommunication Licensee of a Designated Trust to obtain IDA's approval for each Acquiring Party to become a 30% Controller of the Designated Trust or otherwise enter into a Consolidation with the Designated Trust;
 - (x) the conditions that IDA may impose in granting approval for a Request or Consolidation Application; and
 - (xi) the enforcement actions and remedial measures that IDA may take against the parties in the event of any breach of the provisions of this Section 10 and to address any competitive concerns.
- (d) IDA may issue advisory guidelines under Section 28 of the Telecommunications Act to describe and elaborate the standards and procedures that IDA will apply in reviewing, and deciding whether to approve or deny a Request or a Consolidation Application.

10.1.1 Definitions

In Section 10, unless the context otherwise requires:

- (a) "12% Controller" means —:
 - (i) in relation to a Designated Telecommunication Licensee, a person who, alone or together with his Associates —:
 - (A) holds 12% or more but less than 30% of the total number of Voting Shares in the Designated Telecommunication Licensee; or

- (B) is in a position to control 12% or more but less than 30% of the Voting Power in the Designated Telecommunication Licensee;
 - (ii) in relation to a Designated Business Trust, a person who, alone or together with his Associates —:
 - (A) holds 12% or more but less than 30% of the total number of Units in the Designated Business Trust; or
 - (B) is in a position to control 12% or more but less than 30% of the Voting Power in the Designated Business Trust; or
 - (iii) in relation to a Designated Trust, a person who, alone or together with his Associates —:
 - (A) holds 12% or more but less than 30% of the Equity Interests in the Designated Trust; or
 - (B) is in a position to control 12% or more but less than 30% of the Voting Power in the Designated Trust;
- (b) “30% Controller” means —:
- (i) in relation to a Designated Telecommunication Licensee, a person who, alone or together with his Associates —:
 - (A) holds 30% or more of the total number of Voting Shares in the Designated Telecommunication Licensee; or
 - (B) is in a position to control 30% or more of the Voting Power in the Designated Telecommunication Licensee;
 - (ii) in relation to a Designated Business Trust, a person who, alone or together with his Associates —:
 - (A) holds 30% or more of the total number of Units in the Designated Business Trust; or
 - (B) is in a position to control 30% or more of the Voting Power in the Designated Business Trust; or
 - (iii) in relation to a Designated Trust, a person who, alone or together with his Associates —:
 - (A) holds 30% or more of the Equity Interests in the Designated Trust; or

- (B) is in a position to control 30% or more of the Voting Power in the Designated Trust;
- (c) "Acquiring Party" means any party, whether alone or together with its Associates, that acquires Equity Interest or Voting Power in a Designated Telecommunication Licensee, Designated Business Trust or Designated Trust;
- (d) "Affiliate" in relation to a Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, party or an Acquiring Party, means an entity -
 - (i) that has an attributable interest in the Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, party or Acquiring Party of 5% or more (*parent*);
 - (ii) in which the Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, party or Acquiring Party has an attributable interest of 5% or more (*subsidiary*); or
 - (iii) in which any parent of the Designated Telecommunication Licensee, Designated Business Trust, Designated Trust, party or Acquiring Party has an attributable interest of 5% or more (*sibling*), provided that one party will not be deemed an Affiliate of another based solely on the fact that both parties' ultimate parent has a passive interest in both of them;

For the purposes of this definition, "interest" means any right or interest, whether legal or equitable, which gives the holder of that right or interest voting power. This includes shares in a Corporation, units in a business trust and equitable interest in a trust.

(In determining a relevant party's attributable interest, IDA will use the "sum-the-percentages" methodology. This methodology will be applied successively at each level of the "ownership chain". For example, if the relevant party has legal or beneficial ownership of 100% of the shares or units or equity interest of entity A, and entity A has legal or beneficial ownership of 50% of the shares or units or equity interest of entity B, and entity B has legal or beneficial ownership of 50% of the shares or units or equity interest of entity C, then the relevant party will be deemed to have a 25% attributable shares or units or equity interest in entity C. In this case, entity C will be deemed to be an "Affiliate" of the relevant party. Correspondingly, where a party is said to be "affiliated" with another party, the first party is an "Affiliate" of the second party.)

- (e) “Applicant” means a party that is required to submit an application for IDA’s approval in respect of transactions identified at Sections 32B (5), (6) and (7) of the Telecommunications Act and includes every Acquiring Party, the Designated Telecommunication Licensee, and, as the case may be, the Trustee-Manager of the Designated Business Trust or the trustee of the Designated Trust;
- (f) "Associate" has the same meaning as in Section 32A(4) of the Telecommunications Act;
- (g) "business", means –
- (i) in relation to a Designated Telecommunication Licensee, the business of the Designated Telecommunication Licensee conducted pursuant to a telecommunication licence granted by IDA;
 - (ii) in relation to a Designated Business Trust, the business relating to the trust property of the Designated Business Trust and managed and operated by the Trustee-Manager of the Designated Business Trust in its capacity as Trustee-Manager of the Designated Business Trust; or
 - (iii) in relation to a Designated Trust, the business relating to the trust property of the Designated Trust conducted pursuant to a telecommunication licence granted by IDA [as prescribed by regulations made under Section 74 of the of the Telecommunications Act];
- (h) "Business Trust" has the same meaning as in Section 2 of the Business Trusts Act (Cap. 31A);
- (i) "Consolidation" means any transaction —
- (i) that results in a person —
 - (A) becoming a 30% Controller of a Designated Telecommunication Licensee, Designated Business Trust, or a Designated Trust;
 - (B) acquiring any business of a Designated Telecommunication Licensee, Designated Business Trust or a Designated Trust, conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern; or

(C) obtaining Effective Control over a Designated Telecommunication Licensee, Designated Business Trust or a Designated Trust;

or

(ii) that is prescribed by regulations made under Section 74 of the Telecommunications Act, or that falls within a class of transactions prescribed in such regulations;

(j) “Consolidation Agreement” means an agreement for a transaction that constitutes a Consolidation;

(k) “Corporation” has the same meaning as in Section 4(1) of the Companies Act (Cap. 50);

(l) “Consolidation Application” means an application for approval for every Acquiring Party to enter into a Consolidation, submitted pursuant to Sub-sections 10.3.6 and 10.4.6 of this Code;

(m) “Designated Business Trust” means a Business Trust that —

(i) is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a telecommunication system licensee; and

(ii) has been declared by IDA to be a Designated Business Trust;

(n) “Designated Telecommunication Licensee” means a telecommunication licensee that is a Corporation and that —

(i) has been declared by IDA to be a Designated Telecommunication Licensee; or

(ii) belongs to a class of telecommunication licensees which has been declared by IDA to be a class of Designated Telecommunication Licensees;

(o) “Designated Trust” means a trust that —

(i) is prescribed, or belongs to a class of trusts prescribed, by any regulations made under Section 74 of the Telecommunications Act;

(ii) is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a telecommunication system licensee; and

- (iii) has been declared by IDA to be a Designated Trust;
- (p) “Effective Control” means:
- (i) in relation to a Designated Telecommunication Licensee, the ability to cause the Designated Telecommunication Licensee to take, or to refrain from taking, a major decision regarding the management or operations of the Designated Telecommunication Licensee;
 - (ii) in relation to a Designated Business Trust, the ability to cause the Trustee-Manager of the Designated Business Trust to take, or to refrain from taking, a major decision regarding the management or operations of the Designated Business Trust; or
 - (iii) in relation to a Designated Trust, the ability to cause the trustee of the Designated Trust to take, or to refrain from taking, a major decision regarding the management or operations of the Designated Trust;

For the avoidance of doubt, Effective Control includes such control as may be acquired via contracts, agreements or any other arrangements, or control exercised over the telecommunication licensee or independent entity (as the case may be) by a 30% controller of the telecommunication licensee or independent entity (as the case may be).

- (q) “Equity Interest” means -
- (i) in relation to a Corporation, a Voting Share in that Corporation;
 - (ii) in relation to a Designated Business Trust, a Unit in that Designated Business Trust; or
 - (iii) in relation to a Designated Trust, any right or interest, whether legal or equitable, in that Designated Trust which gives the holder of that right or interest Voting Power in that Designated Trust;
- (r) “Equity Interest Buyback” means a purchase by a trustee of a Designated Trust of any portion of its Equity Interest held by holders of Equity Interest, regardless of whether those Equity Interests are traded on a securities exchange;
- (s) “holder” of Equity Interest has the same meaning as in Section 32A(5) of the Telecommunications Act;

- (t) “Licence Assignment” means any transaction that results in a Designated Telecommunication Licensee assigning, transferring, sub-letting or otherwise disposing of any of its rights, duties, liabilities, obligations or privileges under a licence granted by IDA to the Designated Telecommunication Licensee under the Telecommunications Act;
- (u) “Open Market Transaction” means a purchase of Equity Interest via a securities exchange, whether located in Singapore or elsewhere, and includes an acquisition of Equity Interest by means of a Tender Offer;
- (v) “Post-Consolidation Entity” means the economic entity that will be created as a result of a Consolidation;
- (w) “Request” means any application for approval for every Acquiring Party to become a 12% Controller of a Designated Telecommunication Licensee, Designated Business Trust or Designated Trust, submitted pursuant to Sub-sections 10.3.5 and 10.4.5 of this Code;
- (x) “Share” has the same meaning as in Section 4(1) of the Companies Act;
- (y) “Share Buyback” means a purchase by a Designated Telecommunication Licensee of any portion of its issued Shares held by its shareholders, regardless of whether those Shares are traded on a securities exchange;
- (z) “Take-Over Code” means the Singapore Code on Take-Overs and Mergers issued by the Monetary Authority of Singapore under Section 321 of the Securities and Futures Act (Cap. 289);
- (aa) “Tender Offer” means an offer made to the public to acquire some or all of the Equity Interests of a Designated Telecommunication Licensee, a Designated Business Trust or Designated Trust (as the case may be), via a securities exchange;
- (ab) “Treasury Share” has the same meaning as in Section 4(1) of the Companies Act;
- (ac) "Trustee-Manager" has the same meaning as in Section 2 of the Business Trusts Act;
- (ad) "Unit" has the same meaning as in Section 2 of the Business Trusts Act;
- (ae) "Unitholder" has the same meaning as in Section 2 of the Business Trusts Act;

- (af) “Unit Buyback” means a purchase by a Trustee-Manager of a Designated Business Trust of any portion of its issued Units held by its Unitholders, regardless of whether those Units are traded on a securities exchange;
- (ag) "Voting Power" and a reference to control of a percentage of voting power in an entity is 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, whether or not having legal or equitable force and 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 that entity, as the case may be; and
- (ah) "Voting Share" has the same meaning as in Section 4(1) of the Companies Act;

For the purposes of this Section 10, unless the context otherwise requires, words importing the singular include the plural and vice versa.

10.1.2 Compliance with Licence Conditions for Licence Assignments

In addition to the requirements specified in Section 10 of this Code, if an acquisition of Equity Interest or Voting Power in a Designated Telecommunication Licensee, Designated Business Trust or Designated Trust involves a Licence Assignment, the Designated Telecommunication Licensee must also comply with the applicable provisions relating to Licence Assignments in the licence granted by IDA.

10.1.3 Presumption of Effective Control

- (a) For the purposes of this Section 10, IDA will presume that any person who holds 30% or more of the Voting Shares/Units/Equity Interest or is in a position to control 30% or more of the Voting Power in an entity will be able to exercise effective control over that entity.
- (b) In this regard, IDA will presume that:
 - (i) any person who holds 30% or more of the Voting Shares or is in a position to control 30% or more of the Voting Power in the Designated Telecommunication Licensee, will be in a position to exercise Effective Control over the Designated Telecommunication Licensee;
 - (ii) any person who holds 30% or more of the Units or is in a position to control 30% or more of the Voting Power in the Designated Business Trust, will be in a position to exercise Effective Control over the Designated Business Trust; and

- (iii) any person who holds 30% or more of the Equity Interest or is in a position to control 30% or more of the Voting Power in the Designated Trust will be in a position to exercise Effective Control over the Designated Trust.
- (c) Where a person holds 30% or more of the Voting Shares/Units/Equity Interest or is in a position to control 30% or more of the Voting Power in entity A, in the situation where entity A is in the position to control X% of Voting Power in another entity B, that person will be presumed to control that same X% of Voting Power in entity B.

In addition, where a person holds 30% or more of the Voting Shares/Units/Equity Interest or is in a position to control 30% or more of the Voting Power in entity A, in the situation where IDA has presumed entity A to be able to exercise effective control over another entity B, that person will be presumed to be able to exercise effective control over B.

10.2 Declaration of Designated Telecommunication Licensees, Designated Business Trusts and Designated Trusts

IDA may, in accordance with Section 32A(2) of the Telecommunications Act do any of the following:

- (a) declare any telecommunication licensee to be a Designated Telecommunication Licensee;
- (b) declare any class of telecommunication licensees to be a class of Designated Telecommunication Licensees;
- (c) declare any business trust to be a Designated Business Trust, if the business trust is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a telecommunication system licensee;
- (d) declare any trust to be a Designated Trust, if the trust:
 - (i) is prescribed, or belongs to a class of trusts prescribed, by any regulations made under Section 74 of the Telecommunications Act; and
 - (ii) is established wholly or partly in respect of a telecommunication system (or any part thereof) operated by a telecommunication system licensee;
- (e) vary or revoke any declaration of a Designated Telecommunication Licensee, a Designated Business Trust or a Designated Trust; and

- (f) vary or revoke any declaration of a class of Designated Telecommunication Licensees.

10.3 Designated Telecommunication Licensees: Acquisitions of Voting Shares or Voting Power in a Designated Telecommunication Licensee

10.3.1 Duty of Acquiring Party and Designated Telecommunication Licensee in Connection with Acquisition of Voting Shares or Voting Power in a Designated Telecommunication Licensee

Every Acquiring Party and the Designated Telecommunication Licensee must comply with the following provisions in connection with acquisitions of Voting Shares or Voting Power in the Designated Telecommunication Licensee.

10.3.1.1 General Duty to Notify and Seek Approval for Acquisitions of Voting Shares or Voting Power in Designated Telecommunication Licensee and Consolidation with Designated Telecommunication Licensee

- (a) Every Designated Telecommunication Licensee must give notice in writing to IDA on the occasion when a person, whether by a series of transactions over a period of time or otherwise:
 - (i) holds 5% or more but less than 12% of the Voting Shares in the Designated Telecommunication Licensee; or
 - (ii) is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Telecommunication Licensee.
- (b) Every Acquiring Party and the Designated Telecommunication Licensee must seek IDA's approval in connection with the acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee that would result in such Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee.
- (c) Every Acquiring Party and the Designated Telecommunication Licensee must seek IDA's approval in connection with the acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee that would result in a Consolidation with the Designated Telecommunication Licensee or any other transaction that results in a Consolidation with the Designated Telecommunication Licensee.
- (d) In respect of (b) and (c), in the situation where as a result of a transaction, persons acquire sufficient Voting Shares or Voting Power thereby requiring IDA's approval under Section 32B (5), (6) or (7) of the

Telecommunications Act, every Acquiring Party and the Designated Telecommunication Licensee must *jointly* submit a single Request or Consolidation Application to IDA.

10.3.1.2 Exemption from Section 32B of the Telecommunication Act

As set out in Section 32B (10), (11) and (12) of the Telecommunications Act, as well as Regulation 2 of the Telecommunications (Prescribed Transactions) Order 2010:

- (a) A notice in writing need not be given to IDA under Section 32B(1) of the Telecommunications Act in the event where any person, whether by a series of transactions over a period of time or otherwise:
 - (i) holds 5% or more but less than 12% of the total number of Voting Shares in the Designated Telecommunication Licensee; or
 - (ii) is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Telecommunication Licensee.

if the event occurs by virtue only of any of the transactions prescribed by the Minister by order published in the *Gazette*.

- (b) Any person may, without obtaining the prior written approval of IDA, become, whether through a series of transactions over a period of time or otherwise, a 12% Controller or a 30% Controller of a Designated Telecommunication Licensee, if that event occurs by virtue only of any transaction prescribed by the Minister by order published in the *Gazette*.
- (c) A Designated Telecommunication Licensee shall give notice in writing to IDA, within 7 days after the Designated Telecommunication Licensee first becomes aware of the event, in the event that any person:
 - (i) becomes, whether through a series of transactions over a period of time or otherwise, a 12% Controller or a 30% Controller of the Designated Telecommunication Licensee;
 - (ii) acquires any business of the Designated Telecommunication Licensee that is conducted pursuant to a telecommunication licence granted under Section 5 of the Telecommunications Act, or any part of any such business, as a going concern; or
 - (iii) obtains Effective Control over the Designated Telecommunication Licensee,

by virtue only of any transaction prescribed by the Minister for the purposes of this Sub-section by order published in the *Gazette*.

- (d) The transactions prescribed by the Minister and published in the *Gazette* include the transactions which:
- (i) result in the transfer of Shares in a Designated Telecommunication Licensee:
 - (A) from any person to a Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Designated Telecommunication Licensee controlled by that person;
 - (B) from a Corporation to any shareholder of the Corporation, without any change in the percentage of the Voting Power in the Designated Telecommunication Licensee controlled by that shareholder;
 - (C) from a Corporation to its wholly owned subsidiary, or to a Corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the Corporation;
or
 - (D) from one Corporation, any Shares in which are owned or any Voting Power in which is controlled by any person, to another Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Designated Telecommunication Licensee controlled by that person; or
 - (ii) do not change the percentage of the Voting Power in the Designated Telecommunication Licensee controlled by every person who controlled any Voting Power in the Designated Telecommunication Licensee immediately before the transaction.

The above transactions would be deemed to have constituted a pro forma change.

- (e) The written notice given under Section 32B(12) of the Telecommunications Act must include a brief description of the transaction and the basis on which the Designated Telecommunication Licensee believes the transaction falls within Regulation 2 of the Telecommunications (Prescribed Transactions) Order 2010.

10.3.1.3 Deemed and Disregarded Interests

- (a) As set out in Section 32A(5)(a) of the Telecommunications Act, a person holds a Voting Share in a Corporation if he has any legal or equitable interest in that Share, other than an interest that is to be disregarded under Section 32A(7) of the Telecommunications Act.
- (b) As set out in Section 32A(6) of the Telecommunications Act, a person shall be deemed to have an interest in a Share, if:
 - (i) the person has entered into a contract to purchase that Share; or
 - (ii) 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 that Share.
- (c) As set out in Section 32A(7) of the Telecommunications Act, there shall be disregarded:
 - (i) an interest in a Share if the interest is that of a person who holds the Share as bare trustee;
 - (ii) 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;
 - (iii) 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 sub-underwriter to any offering of shares of a Designated Telecommunication Licensee;
 - (iv) an interest in a Share held by a person –
 - (A) in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee; or
 - (B) by reason of his holding such other office as may be prescribed for the purposes of Section 7(9)(c) of the Companies Act;
 - (v) an interest of a Corporation in its own Shares purchased or otherwise acquired in accordance with Sections 76B to 76G of the Companies Act (including Treasury Shares); and

- (vi) 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.

10.3.2 Obligation of Designated Telecommunication Licensee to Monitor Changes in Voting Shares and Voting Power

Every Designated Telecommunication Licensee must adopt reasonable procedures for monitoring changes in the Voting Shares and Voting Power in the Designated Telecommunication Licensee.

10.3.3 Acquisition resulting in a person holding Voting Shares or being in control of Voting Power of less than 5% in a Designated Telecommunication Licensee Not Subject to Notification or Approval

IDA will presume that a person that holds Voting Shares or is in a position to control Voting Power of less than 5% in a Designated Telecommunication Licensee does not have the ability to use such interest in a manner that would substantially lessen competition or in a manner that is contrary to public interest. Therefore, IDA will not subject such transaction to any notification or approval requirement.

10.3.4 Procedures for Notifying Acquisitions resulting in a person holding Voting Shares or being in control of Voting Power of 5% or More but Less Than 12% in a Designated Telecommunication Licensee

- (a) IDA will presume that a person that holds Voting Shares or is in a position to control Voting Power in a Designated Telecommunication Licensee of at least 5%, but less than 12%, is not likely to have the ability to use such interest in a manner that would substantially lessen competition or in a manner that would be contrary to public interest. However, IDA must be notified of the acquisition, as such level of interest is not insignificant and there is the possibility that such person may seek to further increase its interest.
- (b) Pursuant to Section 32B(1) of the Telecommunications Act, a Designated Telecommunication Licensee shall give notice in writing to IDA within 7 days after the Designated Telecommunication Licensee first becomes aware that any person, whether by a series of transactions over a period of time or otherwise:
 - (i) holds 5% or more but less than 12% of the total number of Voting Shares in the Designated Telecommunication Licensee; or

- (ii) is in a position to control 5% or more but less than 12% of the Voting Power in the Designated Telecommunication Licensee.
- (c) For the purposes of Sub-section 10.3.4(b), the notice must include the name (and, if known, the address and contact information) of the person, the percentage of Voting Shares or Voting Power that the person held or controlled prior to the acquisition, and the percentage of Voting Shares or Voting Power that the person has acquired.
- (d) If requested by IDA in writing, the Designated Telecommunication Licensee shall provide further notification of each increase in that person's Voting Shares or Voting Power.

10.3.5 Procedures in Connection with Acquisitions resulting in a person becoming a 12% Controller of a Designated Telecommunication Licensee

10.3.5.1 *Presumption*

IDA will presume that an Acquiring Party that becomes a 12% Controller of a Designated Telecommunication Licensee is not likely to have the ability to exercise Effective Control over that Designated Telecommunication Licensee. Therefore, IDA will presume that such an acquisition is not likely to constitute a Consolidation. However, in certain circumstances, an Acquiring Party that becomes a 12% Controller of a Designated Telecommunication Licensee could have the ability to use its Voting Shares or Voting Power in a manner that would substantially lessen competition or in a manner that is contrary to the public interest. For example, an Acquiring Party that becomes a 12% Controller in two competing Designated Telecommunication Licensees could use its Voting Shares or Voting Power to facilitate anti-competitive coordination between the two Designated Telecommunication Licensees.

10.3.5.2 *Duty to Seek Approval and to Notify IDA*

- (a) Pursuant to Section 32B(5) of the Telecommunications Act, no person shall, without obtaining the prior written approval of IDA to do so, become, whether through a series of transactions over a period of time or otherwise, a 12% Controller of a Designated Telecommunication Licensee.

For this purpose, every Acquiring Party and the Designated Telecommunication Licensee must seek IDA's approval in connection with such Acquiring Party acquiring Voting Shares or Voting Power that results in such Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee.

- (b) Where written approval has been granted by IDA to a person to become a 12% Controller of a Designated Telecommunication Licensee, such

person is not required to seek IDA's approval for any further acquisition of Voting Shares or Voting Power unless such an acquisition results in such person becoming a 30% Controller of the Designated Telecommunication Licensee or otherwise constitutes a Consolidation with the Designated Telecommunication Licensee. If requested by IDA in writing, the Designated Telecommunication Licensee must notify IDA within 7 days of each further acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee by such person, provided that such person does not become a 30% Controller of the Designated Telecommunication Licensee, or otherwise enters into a Consolidation with the Designated Telecommunication Licensee. The written notifications must state the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that such person held or controlled prior to the acquisition and the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that such person has further acquired.

10.3.5.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may acquire Voting Shares or Voting Power in a Designated Telecommunication Licensee that would result in the Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee by various means. Without limitation, this may occur when:
 - (i) an Acquiring Party acquires Voting Shares in a Designated Telecommunication Licensee by:
 - (A) purchasing Voting Shares in the Designated Telecommunication Licensee in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Designated Telecommunication Licensee that allows the Acquiring Party to acquire Voting Shares in the Designated Telecommunication Licensee;
 - (C) entering into a privately negotiated agreement with an entity that holds Voting Shares in the Designated Telecommunication Licensee;
 - (D) exercising an option to acquire Voting Shares in the Designated Telecommunication Licensee or exercising a right to have Voting Shares in the Designated Telecommunication Licensee transferred; or

- (E) entering into any other transaction that results in the acquisition of Voting Shares in the Designated Telecommunication Licensee.
- (ii) an Acquiring Party acquires Voting Power in a Designated Telecommunication Licensee by:
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power in the Designated Telecommunication Licensee;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power in the Designated Telecommunication Licensee;
 - (C) exercising an option to acquire, or right to transfer, Voting Shares in an entity that controls Voting Power in the Designated Telecommunication Licensee; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power in the Designated Telecommunication Licensee.
- (b) Every Acquiring Party and the Designated Telecommunication Licensee must *jointly* submit a Request to IDA in respect of such Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee. The Request shall contain the information and documents specified in Sub-section 10.3.5.4 of this Code and, except for Requests relating to a Tender Offer, shall be submitted in accordance with the following time frames:
 - (i) in cases where the Acquiring Party intends to acquire Voting Shares of the Designated Telecommunication Licensee in an Open Market Transaction, not less than 60 days before the Acquiring Party proceeds to make an offer for the Voting Shares;
 - (ii) in other cases where the Acquiring Party intends to acquire Voting Shares of the Designated Telecommunication Licensee, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to exercise an option to acquire Voting Shares of the Designated Telecommunication Licensee or to exercise a right to have Voting Shares of the Designated Telecommunication Licensee transferred to it or to its

order, not less than 60 days before the Acquiring Party exercises such an option or right; or

- (iv) in all other cases where the Acquiring Party enters into any transaction that results in the Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee, not less than 60 days before the Acquiring Party completes the transaction.
- (c) IDA will seek to make a determination within 30 days of receiving all the information necessary to enable IDA to review the Request. In exceptional cases, IDA may extend the review period and may, where appropriate, conduct consultations on the Request in accordance with Sub-section 10.6 of this Code. In the event that IDA extends the review period, no Acquiring Party shall proceed to become a 12% Controller of a Designated Telecommunication Licensee until such time as IDA may grant its approval upon completion of its determination.
- (d) For transactions relating to a Tender Offer, every Acquiring Party and the Designated Telecommunication Licensee must submit a Request in accordance with Sub-section 10.3.7 of this Code.

10.3.5.4 Information and Documents to be Included in a Request

- (a) Each Request shall contain all the required information reasonably necessary for IDA to determine the likely impact of the acquisition on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information):
 - (i) the name, address and contact information of every Acquiring Party;
 - (ii) the names of all Associates and Affiliates of the Designated Telecommunication Licensee, and all Associates and Affiliates of every Acquiring Party;
 - (iii) the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that every Acquiring Party, and all Associates of every Acquiring Party, holds or held (if any) prior to the proposed acquisition or acquisition, respectively;
 - (iv) the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that every Acquiring Party proposes to acquire or has acquired;

- (v) the Services provided by every Acquiring Party, the Designated Telecommunication Licensee and their respective Associates and Affiliates, and the estimated market shares thereof;
 - (vi) any special or preferential rights granted to every Acquiring Party and its Associates; and
 - (vii) any anticipated significant changes in the management or operations of the Designated Telecommunication Licensee.
- (b) Until IDA issues its written decision on whether to approve or deny a Request, the Applicants must promptly inform IDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IDA's consideration of the Request.

10.3.5.5 Request for Separate Filing and Direct Submission of Information

- (a) Without prejudice to Sub-sections 10.3.1.1(d) and 10.3.5.3(b) of this Code, an Applicant may apply in writing to IDA for a waiver of the requirement for the Applicant to submit a joint Request with other Applicants if the Applicant can establish that:
- (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IDA may grant a waiver under paragraph (a) include (without limitation) the following:
- (i) where an Acquiring Party reasonably believes that the Designated Telecommunication Licensee is likely to be opposed to its acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee;
 - (ii) where an Applicant reasonably believes that the submission of a joint Request would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another Applicant has refused to cooperate with it to submit a joint Request.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Request, IDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IDA but the

Applicant shall otherwise submit a joint Request with other Applicants containing such other information as may be required under this Code.

10.3.5.6 Standard for Approval or Denial of a Request

- (a) IDA will deny a Request where IDA determines that the acquisition to which the Request relates is likely to result in a substantial lessening of competition in any telecommunication market or it is in the public interest to deny the Request.
- (b) If IDA denies a Request, IDA will provide a written statement of the reasons for its denial.
- (c) In those cases in which:
 - (i) every Acquiring Party and the Designated Telecommunication Licensee have filed a Request in connection with a proposed acquisition of Voting Shares or Voting Power that would result in such Acquiring Party becoming a 12% Controller of the Designated Telecommunication Licensee; and
 - (ii) IDA determines that the transaction constitutes a Consolidation,

IDA shall notify the Applicants of its determination and the Applicants must submit a Consolidation Application in accordance with Sub-section 10.3.6 of this Code. In the event that the Applicants inform IDA that they do not intend to submit a Consolidation Application or a Consolidation Application is not submitted within 30 days of the date of IDA's notification to the Applicants, IDA may deny the Request and, if so, will provide a written statement of the reasons for its denial.

- (d) IDA may approve a Request with or without conditions. Without prejudice to Section 32D of the Telecommunications Act, IDA may issue a direction under Section 32D(2) of the Telecommunications Act (described in Sub-section 10.8 of this Code) in the event that any condition is not complied with.
- (e) Once IDA comes to a decision on the Request, IDA will notify, in writing, the Applicants as well as all other parties identified to IDA by the Applicants as requiring IDA's approval under Section 32B(5) of the Telecommunications Act.

10.3.6 Procedures in Connection with Acquisitions resulting in a person becoming a 30% Controller of a Designated Telecommunication Licensee and Other Transactions That Constitute a Consolidation with a Designated Telecommunication Licensee

10.3.6.1 *Duty to Seek Approval and to Notify IDA*

- (a) Under Sections 32B and 32C of the Telecommunications Act, every Acquiring Party and the Designated Telecommunication Licensee must seek IDA's approval in connection with such Acquiring Party acquiring Voting Shares or Voting Power that results in such Acquiring Party becoming a 30% Controller of the Designated Telecommunication Licensee or entering into any other transaction that constitutes a Consolidation with the Designated Telecommunication Licensee.
- (b) Where written approval has been granted by IDA to a person to become a 30% Controller of a Designated Telecommunication Licensee or to otherwise enter into a Consolidation with a Designated Telecommunication Licensee, such person is not required to seek IDA's approval for any further acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee. If requested by IDA in writing, the Designated Telecommunication Licensee must notify IDA within 7 days of each further acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee by such person. The written notifications must state the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that such person held or controlled prior to the acquisition and the percentage of Voting Shares or Voting Power in the Designated Telecommunication Licensee that such person has further acquired.

10.3.6.2 *Determining the Existence of a Consolidation*

- (a) A Consolidation may involve:
 - (i) an acquisition of Voting Shares or Voting Power that results in the Acquiring Party becoming a 30% Controller in a Designated Telecommunication Licensee, whether by a series of transactions over a period of time or otherwise;
 - (ii) obtaining the ability to exercise Effective Control over a Designated Telecommunication Licensee;
 - (iii) the acquisition of any business of a Designated Telecommunication Licensee conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern; or

- (iv) any transaction or class of transactions that is prescribed by regulations made under Section 74 of the Telecommunications Act, or that falls within a class of transactions prescribed in such regulations.
- (b) An Acquiring Party may obtain Effective Control over a Designated Telecommunication Licensee through a transaction where, for example, the transaction confers on the Acquiring Party the right to appoint a majority of a Designated Telecommunication Licensee's board of directors or to veto certain management or major operating decisions of the Designated Telecommunication Licensee.
- (c) The acquisition of any business of a Designated Telecommunication Licensee conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern may occur where an Acquiring Party:
 - (i) acquires all or substantially all of the assets of the Designated Telecommunication Licensee used for such business; or
 - (ii) enters into an agreement pursuant to which it acquires the right to provide Services to, and receive compensation from, the substantial majority of the Designated Telecommunication Licensee's customers in respect of such business.
- (d) A Consolidation may, but need not, result in the dissolution of an existing legal entity, the creation of a new legal entity or a Licence Assignment.

10.3.6.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may enter into an agreement or a transaction that constitutes a Consolidation by various means. Without limitation, this may occur when:
 - (i) an Acquiring Party acquires Voting Shares in a Designated Telecommunication Licensee by:
 - (A) purchasing Voting Shares of the Designated Telecommunication Licensee in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Designated Telecommunication Licensee that allows the Acquiring Party to acquire Voting Shares in the Designated Telecommunication Licensee;

- (C) entering into a privately negotiated agreement with an entity that holds Voting Shares in the Designated Telecommunication Licensee;
 - (D) exercising an option to acquire Voting Shares in the Designated Telecommunication Licensee or exercising a right to have Voting Shares in the Designated Telecommunication Licensee transferred; or
 - (E) entering into any other transaction that results in the acquisition of Voting Shares in the Designated Telecommunication Licensee.
 - (ii) an Acquiring Party acquires Voting Power in a Designated Telecommunication Licensee by:
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power in the Designated Telecommunication Licensee;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power in the Designated Telecommunication Licensee;
 - (C) exercising an option to acquire, or right to transfer, Voting Shares in an entity that controls Voting Power in the Designated Telecommunication Licensee; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power in the Designated Telecommunication Licensee.
 - (iii) an Acquiring Party acquires any business of a Designated Telecommunication Licensee conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern.
- (b) Every Acquiring Party and the Designated Telecommunication Licensee must *jointly* file a Consolidation Application in respect of such Acquiring Party becoming a 30% Controller of the Designated Telecommunication Licensee or otherwise entering into a Consolidation with the Designated Telecommunication Licensee. Each Consolidation Application shall contain the information and documents specified in Sub-sections 10.3.6.4 or 10.3.6.5 of this Code (as the case may be) and, except for Consolidation

Applications relating to a Tender Offer, shall be submitted in accordance with the following time frames:

- (i) in cases where the Acquiring Party intends to acquire Voting Shares of the Designated Telecommunication Licensee in an Open Market Transaction, not less than 60 days before the Acquiring Party proceeds to make an offer for the Voting Shares;
 - (ii) in other cases where the Acquiring Party intends to acquire Voting Shares of the Designated Telecommunication Licensee, within 30 days from the day on which the Acquiring Party enters into the agreement and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to acquire any business of the Designated Telecommunication Licensee conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iv) in cases where the Acquiring Party intends to exercise an option to acquire Voting Shares of the Designated Telecommunication Licensee or to exercise a right to have Voting Shares of the Designated Telecommunication Licensee transferred to it or to its order, not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (v) in all other cases where the Acquiring Party enters into any transaction that results in a Consolidation with the Designated Telecommunication Licensee, not less than 60 days before the Acquiring Party completes the transaction.
- (c) While IDA is reviewing the Consolidation Application, no Acquiring Party shall proceed to become a 30% Controller of a Designated Telecommunication Licensee or otherwise enter into a Consolidation with the Designated Telecommunication Licensee until such time as IDA may grant its approval upon completion of its determination.
- (d) For transactions relating to a Tender Offer, every Acquiring Party and the Designated Telecommunication Licensee must submit a Consolidation Application in accordance with Sub-section 10.3.7 of this Code.

10.3.6.4 Information and Documents to be Included in a Long Form Consolidation Application

- (a) Except as provided in Sub-section 10.3.6.5, each Consolidation Application shall contain all the required information reasonably necessary for IDA to determine the likely impact of the Consolidation on competition and the public interest (i.e. Long Form Consolidation Application), including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information):
 - (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
 - (ii) a copy of each of the following agreements:
 - (A) the Consolidation Agreement, including any appendices, side letters and supporting documents; and
 - (B) all agreements 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 useful for IDA to fully assess the likely competitive impact of the Consolidation, provided that in any case in which the Designated Telecommunication Licensee is not a party to the Consolidation Agreement or any other agreement specified in this paragraph (B), the Acquiring Party shall provide these materials directly to IDA (in the case where the acquisition will trigger a mandatory offer under the Take-Over Code, the Applicants must submit information based on the assumption that the mandatory offer will be successful);
 - (iii) any supporting document that would assist IDA in assessing the likely competitive effect of the Consolidation including, at the minimum:
 - (A) a copy of the Applicants' current annual reports or audited financial statements;
 - (B) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and their relevant interest in the Designated Telecommunication Licensee;

- (C) information about any situation in which the Voting Shares (in the Designated Telecommunication Licensee) grant the holder thereof a special or preferential right, and any pending change in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application;
 - (D) any anticipated significant changes in management or operations of the Designated Telecommunication Licensee;
 - (E) a copy of the Applicants' business plans for the current and previous years; and
 - (F) a copy of all reports, studies or analyses prepared for the shareholders, beneficiaries of a trust, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the Post-Consolidation Entity;
- (iv) a detailed statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith assessment of the likely impact of the Consolidation on competition in any telecommunication market in which the Applicants and their Associates and Affiliates participate, and a discussion of why approval of the Consolidation would serve the public interest. The competitive assessment should generally include information regarding:
- (A) the telecommunication markets in which the Applicants and their Associates and Affiliates participate;
 - (B) the market participants;
 - (C) the estimated market shares of the participants and the level of concentration in those markets;
 - (D) the structure of the markets (and the extent to which they facilitate unilateral anti-competitive conduct or concerted action by multiple participants);
 - (E) 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;

- (F) the likelihood of customers switching to a competing service provider in response to a significant and non-transitory price increase; and
 - (G) any efficiency that would likely result from the Consolidation;
- and
- (v) any conditions that the Applicants may wish to propose for IDA's consideration (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact of the Consolidation. If the Applicants choose to propose such conditions, they should provide a complete description of the proposed conditions and an assessment of why such conditions would be adequate to address any competitive concern that might arise from the Consolidation.
- (b) Each Long Form Consolidation Application must be accompanied by payment of an application fee of \$10,000, to be paid by the Acquiring Party.
 - (c) Until IDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IDA's consideration of the Consolidation Application.

10.3.6.5 *Information and Documents to be Included in a Short Form Consolidation Application*

- (a) Where a Consolidation has met any of the requirements set out in Sub-section 10.3.6.5(b), the Applicants must follow the procedures for submitting a Short Form Consolidation Application as set out below.
- (b) Situations in which a Short Form Consolidation Application must be submitted:
 - (i) the Consolidation is a Horizontal Consolidation that will not result in the Post-Consolidation Entity having more than a 15% share in the telecommunication market in Singapore; or
 - (ii) the Consolidation is a Non-horizontal Consolidation in which none of the Applicants has more than a 25% share of any telecommunication market, whether in Singapore or elsewhere, in which it participates.

- (iii) As used in this Sub-section:
 - (A) "Horizontal Consolidation" means a Consolidation involving 2 or more entities that are current competing providers of the same Services or Services that are reasonable substitutes; and
 - (B) "Non-horizontal Consolidation" means a Consolidation in which all the involved entities are not current competitors.
- (c) In submitting a Short Form Consolidation Application, Applicants should submit an abbreviated statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith description of the basis on which the Applicants believe that the Consolidation does not raise significant competitive issues and a brief discussion of why the approval of the Consolidation would serve the public interest. The competitive assessment generally should include information regarding:
 - (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
 - (ii) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and the relevant interest in the Designated Telecommunication Licensee;
 - (iii) information about any situation in which the Voting Shares (in the Designated Telecommunication Licensee) grant the holder thereof a special or preferential right, and any pending change in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application;
 - (iv) the telecommunication markets in which the Applicants and their Affiliates and Associates participate;
 - (v) the market participants; and
 - (vi) the estimated market shares of the participants and the level of concentration in those markets.

Applicants should include any additional relevant information that demonstrates that the Consolidation would not be likely to substantially lessen competition and would serve the public interest. Applicants should make reasonable and diligent efforts to collect and provide the necessary information.

- (d) Each Short Form Consolidation Application must be accompanied by payment of an application fee of \$2,500, to be paid by the Acquiring Party.
- (e) Until IDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IDA's consideration of the Consolidation Application.

10.3.6.6 Request for Separate Filing and Direct Submission of Information

- (a) Without prejudice to Sub-sections 10.3.1.1(d) and 10.3.6.3(b) of this Code, an Applicant may apply in writing to IDA for a waiver of the requirement for the Applicant to submit a joint Consolidation Application with other Applicants if the Applicant can establish that:
 - (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IDA may grant a waiver under paragraph (a) include (without limitation) the following:
 - (i) where an Acquiring Party reasonably believes that the Designated Telecommunication Licensee is likely to be opposed to its acquisition of Voting Shares or Voting Power in the Designated Telecommunication Licensee or to the Acquiring Party entering into a Consolidation with the Designated Telecommunication Licensee;
 - (ii) where an Applicant reasonably believes that the filing of a joint Consolidation Application would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another party has refused to cooperate with it to file a joint Consolidation Application.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Consolidation Application, IDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IDA but the Applicant shall otherwise submit a joint Consolidation Application with other Applicants containing such other information as may be required under this Code.

- (d) Where IDA grants permission for separate filing of a Consolidation Application under paragraph (a) in cases where more than one Acquiring Party requires IDA's approval for a particular transaction, no additional application fee shall be payable but all Acquiring Parties shall be *jointly* liable for the stipulated application fee.

10.3.6.7 Standard for Approval or Denial of Consolidation Applications

- (a) IDA will deny a Consolidation Application where IDA determines that the Consolidation to which the Consolidation Application relates to is likely to result in a substantial lessening of competition in any telecommunication market or it is in the public interest to deny the Consolidation Application.
- (b) If IDA denies a Consolidation Application, IDA will provide a written statement of the reasons for its denial.
- (c) IDA may approve a Consolidation Application with or without conditions. Without prejudice to Section 32D of the Telecommunications Act, IDA may issue a direction under Section 32D(2) of the Telecommunications Act (described in Sub-section 10.8 of this Code) in the event that any condition is not complied with.
- (d) Once IDA comes to a decision on the Consolidation Application, IDA will notify, in writing, the Applicants as well as all other parties identified to IDA by the Applicants as requiring IDA's approval under Section 32B(5) of the Telecommunications Act.

10.3.6.8 Consolidation Review Period

The following provisions govern the length of the Consolidation Review Period:

- (a) The Consolidation Review Period will be deemed to have begun on the day on which the Applicants first satisfy the applicable requirements specified in Sub-sections 10.3.6.3, and 10.3.6.4 or 10.3.6.5 of this Code.
- (b) IDA will ordinarily complete its Consolidation Review within 30 days after the start of the Consolidation Review Period. In exceptional cases, IDA may, where appropriate, conduct consultations on the Consolidation in accordance with Sub-section 10.6 of this Code. IDA will seek to give expedited consideration to requests made in connection with Consolidations to be achieved through Open Market Transactions. In any case in which IDA determines that a Consolidation Application raises novel or complex issues, IDA will notify the Applicants that it intends to extend the Consolidation Review Period by up to 90 days, to a maximum of 120 days.

- (c) In any case in which IDA requests supplemental information, it will specify a reasonable period of time within which the Applicant(s) are to provide the supplemental information. If the Applicant(s) request additional time to comply with this request, or if they do not provide all supplemental information by the date specified, IDA will deem the Consolidation Review Period to have been suspended until such time as the Applicant(s) provide all specified supplemental information.

10.3.7 Additional Procedures Relating to Tender Offers

10.3.7.1 *Partial Offers That Do Not Amount to a Consolidation*

- (a) Where an Acquiring Party intends to make a partial offer under rule 16 of the Take-Over Code that would result in the Acquiring Party becoming a 12% Controller of a Designated Telecommunication Licensee, the Acquiring Party and the Designated Telecommunication Licensee shall, after the Acquiring Party announces its pre-conditional offer (i.e. makes an announcement that a partial offer will be made only after IDA's approval has been obtained) and not less than 60 days before making the offer, submit a Request to IDA in accordance with Sub-section 10.3.5 of this Code.
- (b) IDA will seek to make a determination within 30 days of receiving all the information necessary to enable IDA to review the Request. In exceptional cases, IDA may extend the review period and may, where appropriate, conduct consultations on the Request in accordance with Sub-section 10.6 of this Code. In the event that IDA extends the review period, the Acquiring Party shall not proceed to become a 12% Controller of a Designated Telecommunication Licensee until such time as IDA may grant its approval upon completion of its determination.

10.3.7.2 *Voluntary Offers or Partial Offers That Amount to a Consolidation*

- (a) Where an Acquiring Party intends to make a voluntary offer or a partial offer under rules 15 and 16 respectively of the Take-Over Code that would result in the Acquiring Party becoming a 30% Controller of a Designated Telecommunication Licensee or entering into a Consolidation with a Designated Telecommunication Licensee, the Acquiring Party and the Designated Telecommunication Licensee shall, after the Acquiring Party announces its offer (i.e. makes an announcement that a voluntary offer or partial offer will be made only after IDA's approval has been obtained) and not less than 60 days before it makes its offer, submit a Consolidation Application in accordance with Sub-section 10.3.6 of this Code.
- (b) IDA will seek to make a determination within 30 days of receiving all information necessary to enable IDA to review the Consolidation

Application. In exceptional cases, IDA may extend the review period and may, where appropriate, conduct consultations on the Consolidation in accordance with Sub-section 10.6 of this Code. In the event that IDA extends the review period, the Acquiring Party shall not proceed to become a 30% Controller of a Designated Telecommunication Licensee, or otherwise enter into a Consolidation with the Designated Telecommunication Licensee until such time as IDA may grant its approval upon completion of its determination.

10.3.7.3 Mandatory Offers

An Acquiring Party and the Designated Telecommunication Licensee must obtain IDA's written approval under Section 32B of the Telecommunications Act before the Acquiring Party enters into any transaction that will trigger a mandatory offer under rule 14 of the Take-Over Code.

10.3.7.4 Other Tender Offers

Where the rules of the securities exchange on which the Voting Shares in a Designated Telecommunication Licensee are traded conflict with the procedures specified in Sub-section 10.3.7 of this Code, or where the provisions of Sub-section 10.3.7 do not address any specific situation in connection with a Tender Offer, the Acquiring Party must seek IDA's guidance as to the appropriate course of action and procedures to be followed to obtain IDA's approval. Nothing in this paragraph shall exempt an Acquiring Party from complying with the Telecommunications Act to obtain IDA's approval not less than 60 days before making an offer for the Voting Shares of a Designated Telecommunication Licensee.

10.3.8 Additional Procedures Relating to Share Buybacks

- (a) Subject to paragraph (b), a Designated Telecommunication Licensee need not seek IDA's approval to carry out a Share Buyback.
- (b) Before entering into any transaction for a Share Buyback, a Designated Telecommunication Licensee must calculate the percentage of Voting Shares held by each shareholder following completion of the Share Buyback. If, as a result of the Share Buyback:
 - (i) any person who previously held less than 5% of the total number of Voting Shares or Voting Power in the Designated Telecommunication Licensee would, after the transaction, hold 5% or more, but less than 12% of the total Voting Shares or Voting Power in the Designated Telecommunication Licensee, the Designated Telecommunication Licensee may proceed with the

Share Buyback and shall file the appropriate notification under Sub-section 10.3.4 of this Code;

- (ii) any person will become a 12% Controller of the Designated Telecommunication Licensee, such person and the Designated Telecommunication Licensee must seek IDA's approval before the Designated Telecommunication Licensee proceeds with the Share Buyback; and
 - (iii) any person will become a 30% Controller of the Designated Telecommunication Licensee, or otherwise enters into a Consolidation with the Designated Telecommunication Licensee, such person and the Designated Telecommunication Licensee must seek IDA's approval before the Designated Telecommunication Licensee proceeds with the Share Buyback.
- (c) For the purposes of paragraphs (b)(ii) and (iii), the Designated Telecommunication Licensee shall notify those parties who are required to seek IDA's approval in accordance with that paragraph, and the Designated Telecommunication Licensee and such parties shall submit a Request in accordance with Sub-section 10.3.5 or a Consolidation Application in accordance with Sub-section 10.3.6 of this Code.

10.4 Designated Business Trust or Designated Trust: Acquisitions of Units, Equity Interests or Voting Power in a Designated Business Trust or Designated Trust

This Sub-section 10.4 deals with: (a) acquisitions of Units or Voting Power in the Designated Business Trust; and (b) acquisitions of Equity Interests or Voting Power in a Designated Trust.

Every Acquiring Party, the Designated Telecommunication Licensee, and the Trustee-Manager or the trustee, must comply with the following provisions in connection with acquisition of Units or Voting Power in the Designated Business Trust, or Equity Interests or Voting Power in the Designated Trust.

For acquisitions involving Voting Shares or Voting Power in either the Trustee-Manager or the trustee, the parties must comply with Sub-section 10.3 in the situation where the Trustee-Manager or trustee is a Designated Telecommunication Licensee.

In this Sub-section 10.4, unless otherwise stated, Trustee-Manager refers to Trustee-Manager of a Designated Business Trust, trustee refers to trustee of a Designated Trust, Units refer to Units in a Designated Business Trust, Equity Interest refers to such interest in a Designated Trust and Voting Power refers to

Voting Power in a Designated Business Trust or Designated Trust (as the case may be).

Where any provision in this Sub-section specifies an obligation, or otherwise makes reference to a Trustee-Manager, such provision shall apply to the Trustee-Manager in relation to the Units or Voting Power in a Designated Business Trust. Similarly, where any provision specifies an obligation, or otherwise makes reference to a trustee, such provision shall apply to the trustee in relation to the Equity Interests or Voting Power in a Designated Trust.

10.4.1 Duty of Acquiring Party, Designated Telecommunication Licensee, Trustee-Manager and Trustee in Connection with Acquisition of Units, Equity Interests or Voting Power

Every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee, must comply with the following provisions in connection with acquisitions of Units, Equity Interests or Voting Power.

10.4.1.1 *General Duty to Notify and Seek Approval for Acquisitions of Units, Equity Interests or Voting Power in or Consolidation with Designated Business Trust or Designated Trust*

- (a) Every Trustee-Manager/trustee must give notice in writing to IDA on the occasion when a person, whether by a series of transactions over a period of time or otherwise:
 - (i) first holds 5% or more but less than 12% of the Units or Equity Interests; or
 - (ii) first is in a position to control 5% or more but less than 12% of the Voting Power.
- (b) Every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee, must seek IDA's approval in connection with the acquisition of Units, Equity Interests or Voting Power, that would result in such Acquiring Party becoming a 12% Controller of the Designated Business Trust or the Designated Trust.
- (c) Every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/ trustee, must seek IDA's approval in connection with the acquisition of Units, Equity Interests or Voting Power, that would result in a Consolidation with the Designated Business Trust or the Designated Trust, or any other transaction that results in a Consolidation with the Designated Business Trust or the Designated Trust.

- (d) In respect of (b) and (c), in the situation where, as a result of a transaction, persons acquire sufficient Units, Equity Interests or Voting Power thereby requiring IDA's approval under Section 32B (5), (6) or (7) of the Telecommunications Act, every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/ trustee, must *jointly* submit a single Request or Consolidation Application to IDA.

10.4.1.2 Exemption from Section 32B of the Telecommunication Act

As set out in Section 32B (10), (11), (13) and (14) of the Telecommunications Act, as well as Regulations 3 and 4 of the Telecommunications (Prescribed Transactions) Order 2010:

- (a) A notice in writing need not be given to IDA under Sections 32B(2) and 32B(3) of the Telecommunications Act in the event where any person, whether by a series of transactions over a period of time or otherwise:
 - (i) holds 5% or more but less than 12% of the total number of Units or Equity Interests; or
 - (ii) is in a position to control 5% or more but less than 12% of the Voting Power,if the event occurs by virtue only of any of the transactions prescribed by the Minister by order published in the *Gazette*.
- (b) Any person may, without obtaining the prior written approval of IDA, become, whether through a series of transactions over a period of time or otherwise, a 12% Controller or a 30% Controller of a Designated Business Trust or Designated Trust, if that event occurs by virtue only of any transaction prescribed by the Minister by order published in the *Gazette*.
- (c) A Trustee-Manager/trustee shall give notice in writing to IDA, within 7 days after first becoming aware of the event, in the event that any person:
 - (i) becomes, whether through a series of transactions over a period of time or otherwise, a 12% Controller or a 30% Controller of the Designated Business Trust or Designated Trust;
 - (ii) acquires any business of the Designated Business Trust or Designated Trust that is conducted pursuant to a telecommunication licence granted under Section 5 of the Telecommunications Act, or any part of any such business, as a going concern; or
 - (iii) obtains Effective Control over the Designated Business Trust or Designated Trust,

by virtue only of any transaction prescribed by the Minister for the purposes of this Sub-section by order published in the *Gazette*.

- (d) The transactions prescribed by the Minister and published in the *Gazette* include the transactions which:
 - (i) result in the transfer of Units or Equity Interests in a Designated Business Trust or Designated Trust (as the case may be):
 - (A) from any person to a Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Designated Business Trust or Designated Trust controlled by that person;
 - (B) from a Corporation to any shareholder of the Corporation, without any change in the percentage of the Voting Power controlled by that shareholder;
 - (C) from a Corporation to its wholly owned subsidiary, or to a Corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the Corporation; or
 - (D) from one Corporation, any Shares in which are owned or any Voting Power in which is controlled by any person, to another Corporation, any Shares in which are owned or any Voting Power in which is controlled by that person, without any change in the percentage of the Voting Power in the Designated Business Trust or Designated Trust controlled by that person; or
 - (ii) do not change the percentage of the Voting Power controlled by every person who controlled any Voting Power immediately before the transaction.

The above transactions would be deemed to have constituted a pro forma change.

- (e) The written notice given under Sections 32B(13) and 32B(14) of the Telecommunications Act must include a brief description of the transaction and the basis on which the Trustee-Manager/trustee believes the transaction falls within Regulations 3 and 4 of the Telecommunications (Prescribed Transactions) Order 2010.

10.4.1.3 Deemed and Disregarded Interests

- (a) As set out in Section 32A(5)(b) of the Telecommunications Act, a person holds a Unit in a Business Trust if he has any legal or equitable interest in that Unit, other than an interest that is to be disregarded under Section 32A(10) of the Telecommunications Act.
- (b) As set out in Section 32A(9) of the Telecommunications Act, a person shall be deemed to have an interest in a Unit, if:
 - (i) the person has entered into a contract to purchase that Unit; or
 - (ii) the person, not being the registered holder of that Unit, is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of Unitholders of a Business Trust or of a class of its Unitholders) to exercise or control the exercise of a right attached to that Unit.
- (c) As set out in Section 32A(11) of the Telecommunications Act, a person shall be deemed to have an interest in a Designated Trust, if:
 - (i) the person has entered into a contract to purchase that Equity Interest; or
 - (ii) the person, not being the registered holder of that Equity Interest, is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of holders of Equity Interests in the Designated Trust or of a class of its holders of Equity Interests) to exercise or control the exercise of a right attached to that Equity Interest.
- (d) As set out in Sections 32A(10) and 32A(12) of the Telecommunications Act, there shall be disregarded:
 - (i) an interest in a Unit or an Equity Interest if the interest is that of a person who holds it as bare trustee;
 - (ii) an interest in a Unit or an Equity Interest 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;
 - (iii) an interest in a Unit or an Equity Interest of a person whose ordinary business includes the underwriting of securities, if he holds the interest only as an underwriter or sub-underwriter to any offering of Units or Equity Interests;

- (iv) an interest in a Unit or an Equity Interest held by a person in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee.

10.4.2 Obligation of Trustee-Manager/Trustee to Monitor Changes in Units, Equity Interests and Voting Power

Every Trustee-Manager/trustee must adopt reasonable procedures for monitoring changes in the Units, Equity Interests and Voting Power.

10.4.3 Acquisition resulting in a person holding Units, Equity Interests or control of Voting Power of less than 5% Not Subject to Notification or Approval

IDA will presume that a person that holds Units, Equity Interests or is in a position to control Voting Power of less than 5% does not have the ability to use such interest in a manner that would substantially lessen competition or in a manner that is contrary to public interest. Therefore, IDA will not subject such transaction to any notification or approval requirement.

10.4.4 Procedures for Notifying Acquisitions resulting in a Person holding Units, Equity Interests or being in control of Voting Power of 5% or More but Less than 12%

- (a) IDA will presume that a person that holds Units, Equity Interests or is in a position to control Voting Power of at least 5%, but less than 12%, is not likely to have the ability to use such interest in a manner that would substantially lessen competition or in a manner that would be contrary to public interest. However, IDA must be notified of the acquisition, as such level of interest is not insignificant and there is the possibility that such person may seek to further increase its interest.
- (b) Pursuant to Sections 32B(2) and 32B(3) of the Telecommunications Act, a Trustee-Manager/trustee shall give notice in writing to IDA within 7 days after the Trustee-Manager/trustee first becomes aware that any person, whether by a series of transactions over a period of time or otherwise:
 - (i) holds 5% or more but less than 12% of the total number of Units or Equity Interests; or
 - (ii) is in a position to control 5% or more but less than 12% of the Voting Power.
- (c) For the purposes of Sub-section 10.4.4(b), the notice must include the name (and, if known, the address and contact information) of the person, the percentage of Units, Equity Interests or Voting Power that the person

held or controlled prior to the acquisition, and the percentage of Units, Equity Interests or Voting Power that the person has acquired.

- (d) If requested by IDA in writing, the Trustee-Manager/trustee shall provide further notification of each increase in that person's Units, Equity Interests or Voting Power.

10.4.5 Procedures in Connection with Acquisitions resulting in a person becoming a 12% Controller of a Designated Business Trust or Designated Trust

10.4.5.1 *Presumption*

IDA will presume that an Acquiring Party that becomes a 12% Controller of a Designated Business Trust or Designated Trust is not likely to have the ability to exercise Effective Control over that Designated Business Trust or Designated Trust. Therefore, IDA will presume that such an acquisition is not likely to constitute a Consolidation. However, in certain circumstances, an Acquiring Party that becomes a 12% Controller of a Designated Business Trust or Designated Trust could have the ability to use its Units, Equity Interests or Voting Power in a manner that would substantially lessen competition or in a manner that is contrary to the public interest. For example, an Acquiring Party that becomes a 12% Controller in a Designated Business Trust or Designated Trust and that also has control in a competing telecommunication licensee could use its Units, Equity Interests or Voting Power to facilitate anti-competitive coordination between the two competing entities.

10.4.5.2 *Duty to Seek Approval and to Notify IDA*

- (a) Pursuant to Section 32B(5) of the Telecommunications Act, no person shall, without obtaining the prior written approval of IDA to do so, become, whether through a series of transactions over a period of time or otherwise, a 12% Controller of a Designated Business Trust or Designated Trust.

For this purpose, every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must seek IDA's approval where such Acquiring Party acquires Units, Equity Interests or Voting Power that results in such Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust.

- (b) Where written approval has been granted by IDA to a person to become a 12% Controller of a Designated Business Trust or Designated Trust, such person is not required to seek IDA's approval for any further acquisition of Units, Equity Interests or Voting Power unless such an acquisition results in such person becoming a 30% Controller of the Designated Business Trust or Designated Trust, or otherwise constitutes a

Consolidation with the Designated Business Trust or Designated Trust. If requested by IDA in writing, the Trustee-Manager/trustee must notify IDA within 7 days of each further acquisition of Units, Equity Interests or Voting Power by such person, provided that such person does not become a 30% Controller of the Designated Business Trust or Designated Trust, or otherwise enters into a Consolidation with the Designated Business Trust or Designated Trust. The written notifications must state the percentage of Units, Equity Interests or Voting Power that such person held or controlled prior to the acquisition and the percentage of Units, Equity Interests or Voting Power that such person has further acquired.

10.4.5.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may acquire Units, Equity Interests or Voting Power that would result in the Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust by various means. Without limitation, this may occur when:
 - (i) an Acquiring Party acquires Units or Equity Interests by:
 - (A) purchasing Units or Equity Interests in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Trustee-Manager/trustee that allows the Acquiring Party to acquire Units or Equity Interests;
 - (C) entering into a privately negotiated agreement with an entity that holds Units or Equity Interests;
 - (D) exercising an option to acquire Units or Equity Interests, or exercising a right to have Units or Equity Interests transferred; or
 - (E) entering into any other transaction that results in the acquisition of Units or Equity Interests.
 - (ii) an Acquiring Party acquires Voting Power by:
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power;

- (C) exercising an option to acquire, or right to transfer, Voting Shares in an entity that controls Voting Power; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power.
- (b) Every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must *jointly* submit a Request to IDA in respect of such Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust. The Request shall contain the information and documents specified in Sub-section 10.4.5.4 of this Code and, except for Requests relating to a Tender Offer, shall be submitted in accordance with the following time frames:
 - (i) in cases where the Acquiring Party intends to acquire Units or Equity Interests in an Open Market Transaction, not less than 60 days before the Acquiring Party proceeds to make an offer for the Units or Equity Interests;
 - (ii) in other cases where the Acquiring Party intends to acquire Units or Equity Interests, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to exercise an option to acquire Units or Equity Interests, or to exercise a right to have Units or Equity Interests transferred to it or to its order, not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (iv) in all other cases where the Acquiring Party enters into any transaction that results in the Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust, not less than 60 days before the Acquiring Party completes the transaction.
- (c) IDA will seek to make a determination within 30 days of receiving all the information necessary to enable IDA to review the Request. In exceptional cases, IDA may extend the review period and may, where appropriate, conduct consultations on the Request in accordance with Sub-section 10.6 of this Code. In the event that IDA extends the review period, no Acquiring Party shall proceed to become a 12% Controller of a Designated Business Trust until such time as IDA may grant its approval upon completion of its determination.

- (d) For transactions relating to a Tender Offer, every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must submit a Request in accordance with Sub-section 10.4.7 of this Code.

10.4.5.4 Information and Documents to be Included in a Request

- (a) Each Request shall contain all the required information reasonably necessary for IDA to determine the likely impact of the acquisition on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information):
 - (i) the name, address and contact information of every Acquiring Party;
 - (ii) the names of all Associates and Affiliates of the Trustee-Manager/trustee and the Designated Telecommunication Licensee, and all Associates and Affiliates of every Acquiring Party;
 - (iii) the percentage of Units, Equity Interests or Voting Power that every Acquiring Party and its Associates holds or held (if any) prior to the proposed acquisition or acquisition, respectively;
 - (iv) the percentage of Units, Equity Interests or Voting Power that every Acquiring Party proposes to acquire or has acquired;
 - (v) the Services provided by every Acquiring Party, the Designated Telecommunication Licensee, the Trustee-Manager/trustee and their respective Associates and Affiliates, and the estimated market shares thereof;
 - (vi) any special or preferential rights granted to every Acquiring Party and its Associates prior to the proposed acquisition or acquisition respectively; and
 - (vii) any anticipated significant changes in the management or operations of the Designated Business Trust or Designated Trust.
- (b) Until IDA issues its written decision on whether to approve or deny a Request, the Applicants must promptly inform IDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IDA's consideration of the Request.

10.4.5.5 Request for Separate Filing and Direct Submission of Information

- (a) Without prejudice to Sub-sections 10.4.1.1(d) and 10.4.5.3(b) of this Code, an Applicant may apply in writing to IDA for a waiver of the requirement for the Applicant to submit a joint Request with other Applicants if the Applicant can establish that:
 - (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IDA may grant a waiver under paragraph (a) include (without limitation) the following:
 - (i) where an Acquiring Party reasonably believes that the Designated Telecommunication Licensee and/or Trustee-Manager/trustee is likely to be opposed to its acquisition of Units, Equity Interests or Voting Power;
 - (ii) where an Applicant reasonably believes that the submission of a joint Request would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another Applicant has refused to cooperate with it to submit a joint Request.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Request, IDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IDA but the Applicant shall otherwise submit a joint Request with other Applicants containing such other information as may be required under this Code.

10.4.5.6 Standard for Approval or Denial of a Request

- (a) IDA will deny a Request where IDA determines that the acquisition to which the Request relates is likely to result in a substantial lessening of competition in any telecommunication market or it is in the public interest to deny the Request.
- (b) If IDA denies a Request, IDA will provide a written statement of the reasons for its denial.
- (c) In those cases in which:

- (i) every Acquiring Party, the Designated Telecommunication Licensee, and the Trustee-Manager/trustee have filed a Request in connection with a proposed acquisition of Units, Equity Interests or Voting Power that would result in such Acquiring Party becoming a 12% Controller of the Designated Business Trust or Designated Trust; and
- (ii) IDA determines that the transaction constitutes a Consolidation,

IDA shall notify the Applicants of its determination and the Applicants must submit a Consolidation Application in accordance with Sub-section 10.4.6 of this Code. In the event that the Applicants inform IDA that they do not intend to submit a Consolidation Application or a Consolidation Application is not submitted within 30 days of the date of IDA's notification to the Applicants, IDA may deny the Request and, if so, will provide a written statement of the reasons for its denial.

- (d) IDA may approve a Request with or without conditions. Without prejudice to Section 32D of the Telecommunications Act, IDA may issue a direction under Section 32D(2) of the Telecommunications Act (described in Sub-section 10.8 of this Code) in the event that any condition is not complied with.

10.4.6 Procedures in Connection with Acquisitions resulting in a person becoming a 30% Controller of a Designated Business Trust or Designated Trust and Other Transactions That Constitute a Consolidation with a Designated Business Trust or Designated Trust

10.4.6.1 Duty to Seek Approval and to Notify IDA

- (a) Under Sections 32B and 32C of the Telecommunications Act, every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must seek IDA's approval in connection with such Acquiring Party acquiring Units, Equity Interests or Voting Power that results in such Acquiring Party becoming a 30% Controller of the Designated Business Trust or Designated Trust or entering into any other transaction that constitutes a Consolidation with the Designated Business Trust or Designated Trust.
- (b) Where written approval has been granted by IDA to a person to become a 30% Controller of a Designated Business Trust or Designated Trust, or to otherwise enter into a Consolidation with a Designated Business Trust or Designated Trust, such person is not required to seek IDA's approval for any further acquisition of Units, Equity Interests or Voting Power. If requested by IDA in writing, the Trustee-Manager/trustee must notify IDA within 7 days of each further acquisition of Units, Equity Interests or

Voting Power by such person. The written notifications must state the percentage of Units, Equity Interests or Voting Power that such person held or controlled prior to the acquisition and the percentage of Units, Equity Interests or Voting Power that such person has further acquired.

10.4.6.2 *Determining the Existence of a Consolidation*

- (a) A Consolidation may involve:
 - (i) an acquisition of Units, Equity Interests or Voting Power that results in the Acquiring Party becoming a 30% Controller in a Designated Business Trust or Designated Trust, whether by a series of transactions over a period of time or otherwise;
 - (ii) obtaining the ability to exercise Effective Control over a Designated Business Trust or Designated Trust;
 - (iii) the acquisition of any business of a Designated Business Trust or Designated Trust conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern; or
 - (iv) any transaction or class of transactions that is prescribed by regulations made under Section 74 of the Telecommunications Act, or that falls within a class of transactions prescribed in such regulations.
- (b) An Acquiring Party may obtain Effective Control over a Designated Business Trust or Designated Trust through a transaction where, for example, the transaction confers on the Acquiring Party the right to appoint a majority of board of directors of the Trustee-Manager/trustee or the Designated Telecommunication Licensee or to veto certain management or major operating decisions of the Designated Business Trust or Designated Trust.
- (c) The acquisition of any business of a Designated Business Trust or Designated Trust conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern may occur where an Acquiring Party:
 - (i) acquires all or substantially all of the assets of the Designated Business Trust or Designated Trust used for such business; or
 - (ii) enters into an agreement pursuant to which it acquires the right to provide Services to, and receive compensation from, the substantial majority of the customers in respect of such business.

- (d) A Consolidation may, but need not, result in the dissolution of an existing legal entity, the creation of a new legal entity or a Licence Assignment.

10.4.6.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may enter into an agreement or a transaction that constitutes a Consolidation by various means. Without limitation, this may occur when:
 - (i) an Acquiring Party acquires Units or Equity Interests by:
 - (A) purchasing Units or Equity Interests in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Trustee-Manager/trustee that allows the Acquiring Party to acquire Units or Equity Interests;
 - (C) entering into a privately negotiated agreement with an entity that holds Units or Equity Interests;
 - (D) exercising an option to acquire Units or Equity Interests, or exercising a right to have Units or Equity Interests transferred; or
 - (E) entering into any other transaction that results in the acquisition of Units or Equity Interests.
 - (ii) an Acquiring Party acquires Voting Power by:
 - (A) purchasing, through an Open Market Transaction, Voting Shares in an entity that controls Voting Power;
 - (B) entering into a privately negotiated agreement with an entity that controls Voting Power;
 - (C) exercising an option to acquire, or right to transfer, Voting Shares in an entity that controls Voting Power; or
 - (D) entering into any other transaction that results in the acquisition of Voting Power.
 - (iii) an Acquiring Party acquires any business of a Designated Business Trust or Designated Trust conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern.

- (b) Every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must *jointly* file a Consolidation Application in respect of such Acquiring Party becoming a 30% Controller of the Designated Business Trust or Designated Trust or otherwise entering into a Consolidation with the Designated Business Trust or Designated Trust. Each Consolidation Application shall contain the information and documents specified in Sub-sections 10.4.6.4 or 10.4.6.5 of this Code (as the case may be) and, except for Consolidation Applications relating to a Tender Offer, shall be submitted in accordance with the following time frames:
- (i) in cases where the Acquiring Party intends to acquire Units or Equity Interests in an Open Market Transaction, not less than 60 days before the Acquiring Party proceeds to make an offer for the Units or Equity Interests;
 - (ii) in other cases where the Acquiring Party intends to acquire Units or Equity Interests, within 30 days from the day on which the Acquiring Party enters into the agreement and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to acquire any business of the Designated Business Trust or Designated Trust conducted pursuant to a telecommunication licence granted by IDA (or any part thereof) as a going concern, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iv) in cases where the Acquiring Party intends to exercise an option to acquire Units or Equity Interests, or to exercise a right to have Units or Equity Interests transferred to it or to its order, not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (v) in all other cases where the Acquiring Party enters into any transaction that results in a Consolidation with the Designated Business Trust or Designated Trust, not less than 60 days before the Acquiring Party completes the transaction.
- (c) While IDA is reviewing the Consolidation Application, no Acquiring Party shall proceed to become a 30% Controller of a Designated Business Trust or Designated Trust or otherwise enter into a Consolidation with the

Designated Business Trust or Designated Trust until such time as IDA may grant its approval upon completion of its determination.

- (d) For transactions relating to a Tender Offer, every Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must submit a Consolidation Application in accordance with Sub-section 10.4.7 of this Code.

10.4.6.4 *Information and Documents to be Included in a Long Form Consolidation Application*

- (a) Except as provided in Sub-section 10.4.6.5, each Consolidation Application shall contain all the required information reasonably necessary for IDA to determine the likely impact of the Consolidation on competition and the public interest (i.e. Long Form Consolidation Application), including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information):
 - (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
 - (ii) a copy of each of the following agreements:
 - (A) the Consolidation Agreement, including any appendices, side letters and supporting documents; and
 - (B) all agreements 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 useful for IDA to fully assess the likely competitive impact of the Consolidation, provided that in any case in which the Trustee-Manager/trustee and the Designated Telecommunication Licensee is not a party to the Consolidation Agreement or any other agreement specified in this paragraph (B), the Acquiring Party shall provide these materials directly to IDA (in the case where the acquisition will trigger a mandatory offer under the Take-Over Code, the Applicants must submit information based on the assumption that the mandatory offer will be successful);
 - (iii) any supporting document that would assist IDA in assessing the likely competitive effect of the Consolidation including, at the minimum:

- (A) a copy of the Applicants' current annual reports or audited financial statements;
 - (B) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and their relevant interest in the Designated Business Trust or Designated Trust;
 - (C) information about any situation in which the Units or Equity Interests grant the holder thereof a special or preferential right, and any pending change in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application;
 - (D) a copy of the trust deed of the Designated Business Trust or Designated Trust;
 - (E) any anticipated significant changes in management or operations of the Designated Business Trust or Designated Trust;
 - (F) a copy of the Applicants' business plans for the current and previous years; and
 - (G) a copy of all reports, studies or analyses prepared for the shareholders, Unitholders or holders of Equity Interests, beneficiaries of a trust, directors, or executive officers of the Applicants assessing the proposed Consolidation and describing the proposed operation of the Post-Consolidation Entity;
- (iv) a detailed statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith assessment of the likely impact of the Consolidation on competition in any telecommunication market in which the Applicants and their Associates and Affiliates participate, and a discussion of why approval of the Consolidation would serve the public interest. The competitive assessment should generally include information regarding:
- (A) the telecommunication markets in which the Applicants and their Associates and Affiliates participate;
 - (B) the market participants;

- (C) the estimated market shares of the participants and the level of concentration in those markets;
 - (D) the structure of the markets (and the extent to which they facilitate unilateral anti-competitive conduct or concerted action by multiple participants);
 - (E) 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;
 - (F) the likelihood of customers switching to a competing service provider in response to a significant and non-transitory price increase; and
 - (G) any efficiency that would likely result from the Consolidation;
- and
- (v) any conditions that the Applicants may wish to propose for IDA's consideration (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact of the Consolidation. If the Applicants choose to propose such conditions, they should provide a complete description of the proposed conditions and an assessment of why such conditions would be adequate to address any competitive concern that might arise from the Consolidation.
- (b) Each Long Form Consolidation Application must be accompanied by payment of an application fee of \$10,000, to be paid by the Acquiring Party.
 - (c) Until IDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IDA's consideration of the Consolidation Application.

10.4.6.5 *Information and Documents to be Included in a Short Form Consolidation Application*

- (a) Where a Consolidation has met any of the requirements set out in Sub-section 10.4.6.5(b), the Applicants must follow the procedures for submitting a Short Form Consolidation Application as set out below.

- (b) Situations in which a Short Form Consolidation Application must be submitted:
 - (i) the Consolidation is a Horizontal Consolidation that will not result in the Post-Consolidation Entity having more than a 15% share in the telecommunication market in Singapore; or
 - (ii) the Consolidation is a Non-horizontal Consolidation in which none of the Applicants has more than a 25% share of any telecommunication market, whether in Singapore or elsewhere, in which it participates.
 - (iii) As used in this Sub-section:
 - (A) "Horizontal Consolidation" means a Consolidation involving 2 or more entities that are current competing providers of the same Services or Services that are reasonable substitutes; and
 - (B) "Non-horizontal Consolidation" means a Consolidation in which all the involved entities are not current competitors.
- (c) In submitting a Short Form Consolidation Application, Applicants should submit an abbreviated statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith description of the basis on which the Applicants believe that the Consolidation does not raise significant competitive issues and a brief discussion of why the approval of the Consolidation would serve the public interest. The competitive assessment generally should include information regarding:
 - (i) the name, address and contact information of the Applicants and their Associates and Affiliates;
 - (ii) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and the relevant interest in the Designated Business Trust or Designated Trust;
 - (iii) information about any situation in which the Units or Equity Interests grant the holder thereof a special or preferential right, and any pending change in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application;
 - (iv) a copy of the trust deed of the Designated Business Trust or Designated Trust;

- (v) the telecommunication markets in which the Applicants and their Affiliates and Associates participate;
- (vi) the market participants; and
- (vii) the estimated market shares of the participants and the level of concentration in those markets.

Applicants should include any additional relevant information that demonstrates that the Consolidation would not be likely to substantially lessen competition and would serve the public interest. Applicants should make reasonable and diligent efforts to collect and provide the necessary information.

- (d) Each Short Form Consolidation Application must be accompanied by payment of an application fee of \$2,500, to be paid by the Acquiring Party.
- (e) Until IDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IDA's consideration of the Consolidation Application.

10.4.6.6 *Request for Separate Filing and Direct Submission of Information*

- (a) Without prejudice to Sub-sections 10.4.1.1(d) and 10.4.6.3(b) of this Code, an Applicant may apply in writing to IDA for a waiver of the requirement for the Applicant to submit a joint Consolidation Application with other Applicants if the Applicant can establish that:
 - (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IDA may grant a waiver under paragraph (a) include (without limitation) the following:
 - (i) where an Acquiring Party reasonably believes that the Designated Telecommunication Licensee and/or Trustee-Manager/trustee is likely to be opposed to its acquisition of Units, Equity Interests or Voting Power, or to the Acquiring Party entering into a Consolidation with the Designated Business Trust or Designated Trust;

- (ii) where an Applicant reasonably believes that the filing of a joint Consolidation Application would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that another party has refused to cooperate with it to file a joint Consolidation Application.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to another Applicant for inclusion in a Consolidation Application, IDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IDA but the Applicant shall otherwise submit a joint Consolidation Application with other Applicants containing such other information as may be required under this Code.
- (d) Where IDA grants permission for separate filing of a Consolidation Application under paragraph (a) in cases where more than one Acquiring Party requires IDA's approval for a particular transaction, no additional application fee shall be payable but all Acquiring Parties shall be *jointly* liable for the stipulated application fee.

10.4.6.7 Standard for Approval or Denial of Consolidation Applications

- (a) IDA will deny a Consolidation Application where IDA determines that the Consolidation to which the Consolidation Application relates to is likely to result in a substantial lessening of competition in any telecommunication market or it is in the public interest to deny the Consolidation Application.
- (b) If IDA denies a Consolidation Application, IDA will provide a written statement of the reasons for its denial.
- (c) IDA may approve a Consolidation Application with or without conditions. Without prejudice to Section 32D of the Telecommunications Act, IDA may issue a direction under Section 32D(2) of the Telecommunications Act (described in Sub-section 10.8 of this Code) in the event that any condition is not complied with.
- (d) Once IDA comes to a decision on the Consolidation Application, IDA will notify, in writing, the Applicants as well as all other parties identified to IDA by the Applicants as requiring IDA's approval under Section 32B(5) of the Telecommunications Act.

10.4.6.8 Consolidation Review Period

The following provisions govern the length of the Consolidation Review Period:

- (a) The Consolidation Review Period will be deemed to have begun on the day on which the Applicants first satisfy the applicable requirements specified in Sub-sections 10.4.6.3, and 10.4.6.4 or 10.4.6.5 of this Code.
- (b) IDA will ordinarily complete its Consolidation Review within 30 days after the start of the Consolidation Review Period. In exceptional cases, IDA may where appropriate, conduct consultations on the Consolidation in accordance with Sub-section 10.6 of this Code. IDA will seek to give expedited consideration to requests made in connection with Consolidations to be achieved through Open Market Transactions. In any case in which IDA determines that a Consolidation Application raises novel or complex issues, IDA will notify the Applicants that it intends to extend the Consolidation Review Period by up to 90 days, to a maximum of 120 days.
- (c) In any case in which IDA requests supplemental information, it will specify a reasonable period of time within which the Applicant(s) are to provide the supplemental information. If the Applicant(s) request additional time to comply with this request, or if they do not provide all supplemental information by the date specified, IDA will deem the Consolidation Review Period to have been suspended until such time as the Applicant(s) provide all specified supplemental information.

10.4.7 Additional Procedures Relating to Tender Offers

10.4.7.1 Partial Offers That Do Not Amount to a Consolidation

- (a) Where an Acquiring Party intends to make a partial offer under rule 16 of the Take-Over Code that would result in the Acquiring Party becoming a 12% Controller of a Designated Business Trust or Designated Trust, the Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee shall, after the Acquiring Party announces its pre-conditional offer (i.e. makes an announcement that a partial offer will be made only after IDA's approval has been obtained) and not less than 60 days before making the offer, submit a Request to IDA in accordance with Sub-section 10.4.5 of this Code.
- (b) IDA will seek to make a determination within 30 days of receiving all the information necessary to enable IDA to review the Request. In exceptional cases, IDA may extend the review period and may, where appropriate, conduct consultations on the Request in accordance with Sub-section 10.6 of this Code. In the event that IDA extends the review period, the Acquiring Party shall not proceed to become a 12% Controller of a

Designated Business Trust or Designated Trust until such time as IDA may grant its approval upon completion of its determination.

10.4.7.2 *Voluntary Offers or Partial Offers That Amount to a Consolidation*

- (a) Where an Acquiring Party intends to make a voluntary offer or a partial offer under rules 15 and 16 respectively of the Take-Over Code that would result in the Acquiring Party becoming a 30% Controller of a Designated Business Trust or Designated Trust, or entering into a Consolidation with a Designated Business Trust or Designated Trust, the Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee shall, after the Acquiring Party announces its offer (i.e. makes an announcement that a voluntary offer or partial offer will be made only after IDA's approval has been obtained) and not less than 60 days before it makes its offer, submit a Consolidation Application in accordance with Sub-section 10.4.6 of this Code.
- (b) IDA will seek to make a determination within 30 days of receiving all information necessary to enable IDA to review the Consolidation Application. In exceptional cases, IDA may extend the review period and may, where appropriate, conduct consultations on the Consolidation in accordance with Sub-section 10.6 of this Code. In the event that IDA extends the review period, the Acquiring Party shall not proceed to become a 30% Controller of a Designated Business Trust or Designated Trust, or otherwise enter into a Consolidation with the Designated Business Trust or Designated Trust until such time as IDA may grant its approval upon completion of its determination.

10.4.7.3 *Mandatory Offers*

An Acquiring Party, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must obtain IDA's written approval under Section 32B of the Telecommunications Act before the Acquiring Party enters into any transaction that will trigger a mandatory offer under rule 14 of the Take-Over Code.

10.4.7.4 *Other Tender Offers*

Where the rules of the securities exchange on which the Units or Equity Interests are traded conflict with the procedures specified in Sub-section 10.4.7 of this Code, or where the provisions of Sub-section 10.4.7 do not address any specific situation in connection with a Tender Offer, the Acquiring Party must seek IDA's guidance as to the appropriate course of action and procedures to be followed to obtain IDA's approval. Nothing in this paragraph shall exempt an Acquiring Party from complying with the Telecommunications Act to obtain IDA's approval not less than 60 days before making an offer for the Units or Equity Interests.

10.4.8 Additional Procedures Relating to Unit or Equity Interest Buybacks

- (a) Subject to paragraph (b), a Designated Telecommunication Licensee and Trustee-Manager/trustee need not seek IDA's approval to carry out a Unit Buyback or Equity Interest Buyback.
- (b) Before entering into any transaction for a Unit Buyback or Equity Interest Buyback, a Designated Telecommunication Licensee and Trustee-Manager/trustee must calculate the percentage of Units held by each Unitholder or Equity Interests held by each holder of Equity Interest following completion of the Unit Buyback or Equity Interest Buyback. If, as a result of the Unit Buyback or Equity Interest Buyback:
 - (i) any person who previously held less than 5% of the total number of Units, Equity Interests or Voting Power would, after the transaction, hold 5% or more, but less than 12% of the total Units, Equity Interests or Voting Power, the Trustee-Manager/trustee may proceed with the Unit Buyback or Equity Interest Buyback, and shall file the appropriate notification under Sub-section 10.4.4 of this Code;
 - (ii) any person will become a 12% Controller of the Designated Business Trust or Designated Trust, such person, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must seek IDA's approval before proceeding with the Unit Buyback or Equity Interest Buyback; and
 - (iii) any person will become a 30% Controller of the Designated Business Trust or Designated Trust, or otherwise enters into a Consolidation with the Designated Business Trust or Designated Trust, such person, the Designated Telecommunication Licensee and the Trustee-Manager/trustee must seek IDA's approval before proceeding with the Unit Buyback or Equity Interest Buyback.
- (c) For the purposes of paragraphs (b)(ii) and (iii), the Designated Telecommunication Licensee and Trustee-Manager/trustee shall notify those parties who are required to seek IDA's approval in accordance with that paragraph, and the Designated Telecommunication Licensee, Trustee-Manager/trustee and such parties shall submit a Request in accordance with Sub-section 10.4.5 or a Consolidation Application in accordance with Sub-section 10.4.6 of this Code.

10.5 Conditions of Approval

Sub-section 10.5 of this Code specifies the terms and conditions which IDA may impose in granting any approval under Section 32B of the Telecommunications Act in respect of a Request or a Consolidation Application.

10.5.1 Non-discrimination Requirements

- (a) IDA may require the Applicants to agree that the Post-Consolidation Entity will:
 - (i) provide access to infrastructure, information or Services to other licensees (including Designated Telecommunication Licensees and licensees which are not Designated Telecommunication Licensees), entities or customers on a reasonable and non-discriminatory basis; or
 - (ii) reject any preferential access to infrastructure, information or Services from any specified entity.
- (b) IDA may also require the Applicants to agree that the Post-Consolidation Entity will contract for independent audits to confirm compliance or to periodically self-certify its compliance with conditions under paragraph (a).

10.5.2 Accounting Separation

IDA may require the Applicants to agree that the Post-Consolidation Entity will account separately for revenues from operations that are subject to effective competition and operations that are not subject to effective competition, and to comply with rules governing allocation of joint costs and transactions between the competitive and non-competitive operations, in order to deter cross-subsidisation. IDA may require the Applicants to agree that the Post-Consolidation Entity will contract for independent audits to confirm compliance or to periodically self-certify its compliance with such conditions.

10.5.3 Structural Separation

IDA may require the Applicants to agree that the Post-Consolidation Entity will conduct certain operations through a structurally separate entity. The separate entity may be required to have separate books of accounts, separate facilities, separate offices, separate personnel, separate credit lines, and other appropriate forms of separation.

10.5.4 Voluntary Partial Divestiture of Assets to an Acceptable Purchaser

IDA may require any of the Applicants to agree to divest certain assets to an acceptable purchaser in an arm's length transaction. In order for a voluntary partial divestiture to constitute an adequate remedy, the Applicants must agree to the following provisions:

- (a) the divestiture must involve the sale of sufficient assets to eliminate the risk that the Consolidation will create, preserve or increase the Post-Consolidation Entity's ability to substantially lessen competition; and
- (b) the divestiture must be made to an entity that, in IDA's reasonable opinion, has the ability and incentive to operate the divested assets as a viable, competitive business.

10.5.5 Validity of Approval

- (a) IDA may require the transaction to which a Request or Consolidation Application relates to be legally completed within one year from the date of IDA's written approval, failing which the approval will cease to be valid. In exceptional cases, IDA may specify a longer validity period for its approval. IDA will consider requests from Applicants for an extension of the validity period of its approval on a case-by-case basis. Applicants must provide IDA with strong justification why they require the extension and must satisfy IDA that the basis on which the approval was granted will remain applicable throughout the period of extension.
- (b) If there is any material change affecting any basis on which IDA previously approved a Request or Consolidation Application and the transaction related to such Request or Consolidation Application remains uncompleted, the Applicants must immediately notify IDA in writing with full disclosure of the change in circumstances and seek IDA's decision on the continued validity of the earlier approval granted. In such a situation, IDA's earlier approval will continue to be valid unless IDA notifies the Applicants to submit a new Request or Consolidation Application incorporating the changed circumstances.

10.5.6 Other Conditions

IDA may impose other conditions that are designed to preserve or increase competition or meet public interest objectives. These include, but are not limited to, conditions designed to increase entry into telecommunication markets that are not yet fully competitive.

10.6 Requests for Information and Consultation

- (a) Without prejudice to Sections 27, 32E and 59 of the Telecommunications Act, where IDA is of the view that an Applicant has not submitted in its Request or Consolidation Application all information reasonably necessary for IDA to determine the likely impact of an acquisition on competition and the public interest, IDA may request additional information from the Applicant.
- (b) An Applicant that believes that any such information request by IDA is unnecessary or overly broad may submit a written request to IDA to reconsider or narrow the scope of the information request. The Applicant should submit the reconsideration request to IDA within 5 working days of receiving the information request. The reconsideration request should describe, in good faith and with specificity, the basis for the Applicant's objection and, where feasible, propose alternative means by which IDA can obtain the information necessary to assess the Request or the Consolidation Application.
- (c) Upon receiving a request for reconsideration, IDA will deem the applicable period in which it is to take action to have been suspended on the day on which IDA initially makes the information request. The applicable period will resume either on the day on which IDA grants the reconsideration request or the day on which the requested information is submitted to IDA.
- (d) Without prejudice to Sub-section 1.5.6 of this Code, where appropriate, IDA will provide the public with an opportunity to comment on a Request or Consolidation Application. In those cases in which IDA seeks public comment in connection with a Request or Consolidation Application, it will release the non-confidential portions of the detailed statement specified in Sub-sections 10.3.6.4(a)(iv) (in the case of a Designated Telecommunication Licensee) or 10.4.6.4(a)(iv) (in the case of a Designated Business Trust or a Designated Trust) of this Code. IDA will consider all comments received to be public documents, and will make them available on the IDA website. However, a commenting party may seek confidential treatment of specific information that is proprietary or commercially sensitive by submitting a separate confidential appendix. In those cases in which IDA does not conduct a public consultation, IDA may nonetheless request comments from individuals or entities where appropriate. IDA does not assume any obligation to consider any unsolicited comments.

10.7 Failure to Seek IDA's Approval for 12% Controller, 30% Controller and Consolidation

- (a) Where an Acquiring Party contravenes the Telecommunications Act by failing to obtain IDA's approval under Sections 32B (5), (6) and (7), and it was not aware that it had contravened the provision in question, it shall:
 - (i) notify IDA in writing of the contravention within 14 days of becoming aware of the contravention;
 - (ii) provide IDA with such information as IDA may require for the purpose of determining what directions to give to the Acquiring Party under Section 32D of the Telecommunications Act, including (without limitation):
 - (A) an explanation of why it contravened Sections 32B (5), (6) or (7) of the Telecommunications Act, as the case may be; and
 - (B) the information specified in Sub-sections 10.3.5.4 or 10.3.6.4 and/or 10.3.6.5 (in relation to a Designated Telecommunication Licensee) of this Code, the information specified in Sub-sections 10.4.5.4 or 10.4.6.4 and/or 10.4.6.5 (in relation to a Designated Business Trust or Designated Trust) of this Code;
- and
- (iii) where the Acquiring Party has contravened Sections 32B (5), (6) or (7) of the Telecommunications Act by failing to seek IDA's approval for Consolidation, pay to IDA the application fee specified in Sub-sections 10.3.6.4(b) and 10.3.6.5(d) (in relation to a Designated Telecommunication Licensee), Sub-sections 10.4.6.4(b) and 10.4.6.5(d) (in relation to a Designated Business Trust or Designated Trust) of this Code.
- (b) An Acquiring Party specified in paragraph (a) shall not acquire any further Voting Shares, Units or Equity Interests or Voting Power in any Designated Telecommunication Licensee, Designated Business Trust or Designated Trust until it has complied with paragraph (a) and such directions as IDA may give under Section 32D of the Telecommunications Act.
- (c) Nothing in this Sub-section 10.7 shall constitute any excuse for the Acquiring Party's failure to comply with the requirements of Sections 32B (5), (6) and (7) of the Telecommunications Act, nor affect IDA's right to

take enforcement measures against the Acquiring Party for such contravention.

10.8 IDA's Power to Issue Directions

- (a) Pursuant to Section 32D(1) of the Telecommunications Act, IDA may issue any direction as described in paragraph (b) if:
 - (i) a person ("**Specified Person**"):
 - (A) becomes a 12% Controller or 30% Controller of a Designated Telecommunication Licensee, Designated Business Trust or Designated Trust;
 - (B) acquires any business (of a Designated Telecommunication Licensee, Designated Business Trust or Designated Trust) that is conducted pursuant to a telecommunication licence granted by IDA, or any part of any such business, as a going concern; or
 - (C) obtains Effective Control over a Designated Telecommunication Licensee, Designated Business Trust or Designated Trust; and
 - (ii) IDA is satisfied that:
 - (A) the Specified Person has thereby contravened Section 32B (5), (6) or (7) of the Telecommunications Act;
 - (B) any condition of approval imposed on the Specified Person has not been complied with;
 - (C) the Specified Person has furnished false or misleading information or documents in connection with an application for approval under Section 32B (5), (6) or (7) of the Telecommunications Act;
 - (D) IDA would not have granted its approval under Section 32B (5), (6) or (7) of the Telecommunications Act had it been aware, at that time, of circumstances relevant to the Specified Person's application for such approval; or
 - (E) the applicable matter referred to in Sub-sections 10.8(a)(i)(A), 10.7(a)(i)(B) or 10.7(a)(i)(C) is likely to

substantially lessen competition or is against the public interest.

- (b) Pursuant to Section 32D(2) of the Telecommunications Act, IDA may, in the circumstances specified in Sub-section 10.8(a) above, direct:
 - (i) the Designated Telecommunication Licensee to do all or any of the following:
 - (A) to restrict the exercise of all or any of the voting rights in respect of the Voting Shares which the Specified Person holds, or which the Specified Person and his Associates together hold, in the Designated Telecommunication Licensee (the “**Specified Shares**”), or to restrict the exercise of the Voting Power which the Specified Person controls, or which the Specified Person and his Associates together control, in the Designated Telecommunication Licensee, unless IDA expressly permits such rights or power to be exercised;
 - (B) to restrict the issuance or offer of Shares in the Designated Telecommunication Licensee (whether by way of rights, bonus or otherwise) in respect of the Specified Shares, unless IDA expressly permits such issue or offer;
 - (C) except in a liquidation of the Designated Telecommunication Licensee, to restrict the payment of any amount (whether by way of dividends or otherwise) in respect of the Specified Shares, unless IDA expressly authorises such payment subject to such conditions as IDA may specify;
 - (ii) the Trustee-Manager of the Designated Business Trust to do all or any of the following:
 - (A) to restrict the exercise of all or any of the voting rights in respect of the Units which the Specified Person holds, or which the Specified Person and his Associates together hold, in the Designated Business Trust (the “**Specified Units**”), or to restrict the exercise of the Voting Power which the Specified Person controls, or which the Specified Person and his Associates together control, in the Designated Business Trust, unless IDA expressly permits such rights or power to be exercised;

- (B) to restrict the issuance or offer of Units in the Designated Business Trust (whether by way of rights, bonus or otherwise) in respect of the Specified Units, unless IDA expressly permits such issue or offer;
 - (C) except in a winding up of the Designated Business Trust, to restrict the payment of any amount (whether by way of profits, income or otherwise) in respect of the Specified Units, unless IDA expressly authorises such payment subject to such conditions as IDA may specify;
- (iii) the trustee of the Designated Trust to do all or any of the following:
- (A) to restrict the exercise of all or any of the voting rights in respect of the Equity Interests which the Specified Person holds, or which the Specified Person and his Associates together hold, in the Designated Trust (the “**Specified Equity Interests**”), or to restrict the exercise of the Voting Power which the Specified Person controls, or which the Specified Person and his Associates together control, in the Designated Trust, unless IDA expressly permits such rights or power to be exercised;
 - (B) to restrict the issuance or offer of Equity Interests in the Designated Trust (whether by way of rights, bonus or otherwise) in respect of the Specified Equity Interests, unless IDA expressly permits such issue or offer;
 - (C) except in a winding up of the Designated Trust, to restrict the payment of any amount (whether by way of profits, income or otherwise) in respect of the Specified Equity Interests, unless IDA expressly authorises such payment subject to such conditions as IDA may specify;
- (iv) the Specified Person, or any Associate of the Specified person, to transfer or dispose of all or any part of the Specified Shares, Specified Units or Specified Equity Interests, as the case may be, within such time as IDA may determine and subject to such conditions as IDA considers appropriate;
- (v) the Specified Person to transfer or dispose of all or any part of the business or part thereof that is conducted pursuant to a telecommunication licence granted by IDA, and that is acquired from the Designated Telecommunication Licensee, Designated Business Trust or Designated Trust as a going concern, within such

time as IDA may determine and subject to such conditions as IDA considers appropriate;

- (vi) direct the Specified Person to relinquish Effective Control over the Designated Telecommunication Licensee, Designated Business Trust or Designated Trust, within such time as IDA may determine and subject to such conditions as IDA considers appropriate.

10.8.1 Opportunity to Respond to IDA's Direction

Prior to issuing a direction under the Telecommunications Act for the circumstances stated in Sub-section 10.8 of this Code, IDA will, unless IDA decides that it is not practicable or desirable to do so provide a written notification to the entity to which the direction will be addressed to, and will give such person an adequate opportunity to submit written representations in relation to the proposed direction.

10.9 Telecom Consolidation and Tender Offer Guidelines

IDA has adopted, and may periodically revise, the Telecom Consolidation and Tender Offer Guidelines. These guidelines are advisory in nature and further elaborate the procedures and standards that IDA will apply in conducting a Consolidation review as well as explain the procedures that an Acquiring Party must observe before making a Tender Offer where the Take-Over Code applies.