

Telecommunications (Amendment) Bill

Bill No. /2010.

Read the first time on

2010.

A BILL

intituled

An Act to amend the Telecommunications Act (Chapter 323 of the 2000 Revised Edition), to make consequential amendments to the Telecommunications (Amendment) Act 2005 (Act 10 of 2005) and to make a related amendment to the Info-communications Development Authority of Singapore Act (Cap. 137A).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Telecommunications (Amendment) Act 2010 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of section 2

2. Section 2 of the Telecommunications Act is amended —

(a) by inserting, immediately after the definition of “Authority”, the following definitions:

10 ““basic telecommunication service” means a telecommunication service which has been declared by the Authority, by notification in the *Gazette*, to be a basic telecommunication service;

15 ““basic telecommunication system” means any telecommunication system used or intended to be used for the provision of any basic telecommunication service;”;

(b) by deleting the definition of ““code of practice” and “standard of performance” ” and substituting the following definition:

20 ““code of practice” means a code of practice issued or approved under section 19 or 26;”;

(c) by deleting the definition of “public telecommunication licensee’s installation or plant” and substituting the following definition:

25 ““public telecommunication licensee’s installation or plant” means any installation or plant used for telecommunications that —

(a) belongs to a public telecommunication licensee; and

30 (b) is operated by the public telecommunication licensee for the provision of any basic telecommunication service,

and any reference, in relation to a public telecommunication licensee, to “installation or plant” shall be construed accordingly;” and

(d) by inserting, immediately after the definition of “shares”, the following definition:

““standard of performance” means a standard of performance issued or approved under section 26;”.

5 **New section 5B**

3. The Telecommunications Act is amended by inserting, immediately after section 5A, the following section:

“Power to license satellite orbital slots

10 **5B.**—(1) The Authority may, with the consent of or in accordance with the terms of a general authority given by the Minister, grant a licence for the use of any satellite orbital slot —

(a) unconditionally or subject to such conditions as the Authority may impose and specify in the licence; and

15 (b) irrevocably or subject to revocation as specified in the licence.

(2) A licence under subsection (1) —

(a) may be granted to any person or class of persons, or to a particular person; and

20 (b) may include (without prejudice to the power to impose conditions conferred by that subsection) conditions requiring —

25 (i) the licensee to enter into agreements or arrangements with any person or class of persons, or with another telecommunication licensee, for coordination of radio frequencies;

(ii) the payment to the Authority of a fee on the grant of the licence, of periodic fees during the currency of the licence, or of both, each fee being of such amount as may be determined by or under the licence;

30 (iii) the licensee to comply with any direction given by the Authority as to such matters as are specified in the licence, or as are of a description specified in the licence;

(iv) the licensee to comply with codes of practice and standards of performance that are applicable to the licensee; and

5 (v) the licensee to do, or to refrain from doing, such things as are specified in the licence, or as are of a description specified in the licence.

(3) Any payment required by subsection (2)(b) to be rendered to the Authority may be recovered by the Authority in any court of competent jurisdiction as if the payment were a simple contract debt.

10 (4) No person shall question whether the grant of a licence under subsection (1) was, or was not, effected with the consent of or in accordance with the terms of a general authority given by the Minister, and the validity of a licence granted under that subsection shall not be impugned on the ground that it was granted neither with
15 the consent of nor in accordance with the terms of a general authority given by the Minister.

(5) The grant of licences under this section shall be at the discretion of the Authority.

20 (6) Nothing in this section shall prevent the Minister from directing the Authority to grant a licence in any specific case.”.

Amendment of section 8

4. Section 8 of the Telecommunications Act is amended —

(a) by deleting paragraph (ii) of subsection (1) and substituting the following paragraph:

25 “(ii) require the person to pay, within a specified period, a financial penalty of an amount not exceeding the higher of the following amounts:

(A) 10% of the annual turnover of that part of the person’s business in respect of which the person
30 is granted the licence, as ascertained from the person’s latest audited accounts; or

(B) \$1 million.”;

(b) by deleting subsection (4) and substituting the following subsections:

“(4) An order under subsection (1)(i) —

(a) shall require the person concerned (according to the circumstances of the case) to do, or to refrain from doing, such things as are specified in the order, or as are of a description specified in the order; and

(b) shall take effect at such time (being the earliest practicable time) as is determined by or under that order.

(4A) The Authority may at any time vary, suspend or revoke the whole or any part of an order under subsection (1)(i).”; and

(c) by inserting, immediately after subsection (6), the following subsection:

“(6A) If the Authority, by notice in writing under subsection (1), requires a person who is granted a licence to pay, within a specified period, a financial penalty under subsection (1)(ii), and the person fails or refuses to pay the financial penalty within the specified period, the Authority may, by notice in writing and without payment of any compensation, do all or any of the following:

(a) cancel the licence or part thereof;

(b) suspend the licence or part thereof for such period as it thinks fit;

(c) reduce the period for which the licence is to be in force.”.

Amendment of section 9

5. Section 9 of the Telecommunications Act is amended by deleting the words “telecommunication system or telecommunication line” wherever they appear in subsection (7) and substituting in each case the words “basic telecommunication system”.

Amendment of section 12

6. Section 12(1) of the Telecommunications Act is amended —

(a) by deleting the words “provision of any telecommunication service” and substituting the words “provision of any basic

telecommunication service or installation of any basic telecommunication system”; and

- (b) by inserting, immediately after the words “provision of the service”, the words “or installation of the system, as the case may be”.

Amendment of section 13

7. Section 13(1) of the Telecommunications Act is amended —

- (a) by deleting the words “providing any telecommunication service” and substituting the words “providing any basic telecommunication service or installing any basic telecommunication system”; and

- (b) by deleting the words “providing the telecommunication service” in paragraph (b) and substituting the words “providing the service or installing the system, as the case may be”.

Amendment of section 14

8. Section 14(1) of the Telecommunications Act is amended by deleting the words “providing any telecommunication service” and substituting the words “providing any basic telecommunication service or installing any basic telecommunication system”.

Amendment of section 18

9. Section 18(1) of the Telecommunications Act is amended by deleting the words “telecommunication service” and substituting the words “basic telecommunication service provided by the licensee”.

Repeal and re-enactment of section 19

10. Section 19 of the Telecommunications Act is repealed and the following section substituted therefor:

“Provision of space or facility under code of practice

19.—(1) The Authority may, from time to time —

- (a) issue one or more codes of practice for or in connection with the provision, maintenance and use of, and access to, space and facilities within or on any land or building for the operation of any installation, plant or system used for

telecommunications, and the allocation of costs and expenses incurred thereto; and

(b) amend or revoke any code of practice issued under paragraph (a).

5 (2) A code of practice issued under subsection (1) may, in particular —

(a) require the developer or owner of any land or building to provide and maintain, at his expense, such space or facility within or on the land or building for the operation of any installation, plant or system used for telecommunications; and

10 (b) provide for such fees and charges as may be payable to the Authority in relation to any application or request made to the Authority under the code of practice.

15 (3) If any provision in any code of practice issued under subsection (1) is inconsistent with any provision of this Act, that provision in that code of practice, to the extent of the inconsistency —

(a) shall have effect subject to the provisions of this Act; and

(b) having regard to the provisions of this Act, shall not have effect.

20 (4) A code of practice issued under subsection (1) shall not have legislative effect.

25 (5) Subject to subsection (6), every developer or owner of any land or building, and every telecommunication licensee, to whom any code of practice issued under subsection (1) applies shall comply, at his expense, with that code of practice.

30 (6) The Authority may, either generally or for such time as the Authority may specify, waive the application, to any developer or owner of any land or building or to any telecommunication licensee, of any code of practice issued under subsection (1) or of any part thereof.

35 (7) Where any code of practice issued under subsection (1) applies to a person who is a developer or an owner of any land or building, if the Authority is satisfied that the person is contravening, or has contravened, whether by act or omission, any provision of that code

of practice, the Authority may, by notice in writing, issue such written order to the person as the Authority considers necessary for the purpose of securing compliance with that provision.

(8) An order under subsection (7) —

5 (a) shall require the person concerned (according to the circumstances of the case) to do, or to refrain from doing, such things as are specified in the order, or as are of a description specified in the order; and

10 (b) shall take effect at such time (being the earliest practicable time) as is determined by or under that order.

(9) The Authority may at any time vary, suspend or revoke the whole or any part of an order under subsection (7).

(10) Any person referred to in subsection (7) who fails to comply with an order under that subsection shall be guilty of an offence.

15 (11) Any relevant specifications in force immediately before the appointed day —

 (a) shall be deemed to be a code of practice issued under subsection (1); and

20 (b) shall remain in force until revoked or replaced by a code of practice issued under subsection (1).

(12) In subsection (11) —

 “appointed day” means the date of commencement of section 7 of the Telecommunications (Amendment) Act 2010;

25 “relevant specifications” means any specifications published by the Authority under section 19 in force immediately before the appointed day.”.

Amendment of section 21

11. Section 21 of the Telecommunications Act is amended by deleting subsection (6) and substituting the following subsection:

30 “(6) The Authority may at any time vary, suspend or revoke the whole or any part of a direction under subsection (1) or (4).”.

Deletion and substitution of heading to Part IV

12. Part IV of the Telecommunications Act is amended by deleting the Part heading and substituting the following Part heading:

5 “CODES OF PRACTICE, STANDARDS OF PERFORMANCE,
DIRECTIONS AND ADVISORY GUIDELINES
ON TELECOMMUNICATIONS”.

Repeal and re-enactment of section 26

13. Section 26 of the Telecommunications Act is repealed and the following section substituted therefor:

10 **“Codes of practice and standards of performance on
telecommunications**

26.—(1) The Authority may, from time to time —

- (a) issue one or more codes of practice or standards of performance;
- 15 (b) approve as a code of practice or standard of performance any document prepared by a person other than the Authority, if the Authority considers the document as suitable for this purpose; or
- (c) review, amend or revoke any code of practice or standard of performance issued under paragraph (a) or approved under
- 20 paragraph (b),

with respect to all or any of the following:

- (i) the operation of telecommunication systems and equipment;
- 25 (ii) the provision of telecommunication services;
- (iii) the activities and conduct of telecommunication licensees in the provision of telecommunication services;
- (iv) the provision of services relating to the use of, or access to, telecommunication systems;
- 30 (v) the activities and conduct of telecommunication licensees in the provision of services relating to the use of, or access to, telecommunication systems;

(vi) competition, abuse of a dominant position in the market and fair market conduct in the telecommunication industry in Singapore;

5 (vii) the acquisitions or consolidations involving a telecommunication licensee and any other person (whether a telecommunication licensee or otherwise);

(viii) the carrying out of the purposes and provisions of this Act and for the due administration thereof.

10 (2) A code of practice issued or approved under subsection (1) may, in particular —

(a) specify the duties and obligations of any person in relation to his business operation in the telecommunications industry; and

15 (b) provide for such fees and charges as may be payable to the Authority in relation to any application or request made to the Authority.

(3) If any provision in any code of practice or standard of performance issued or approved under subsection (1) is inconsistent with any provision of this Act, that provision in that code of practice or standard of performance, to the extent of the inconsistency —

(a) shall have effect subject to the provisions of this Act; and

(b) having regard to the provisions of this Act, shall not have effect.

25 (4) A code of practice or standard of performance issued or approved under subsection (1) shall not have legislative effect.

(5) Subject to subsection (6), every telecommunication licensee to whom any code of practice or standard of performance issued or approved under subsection (1) applies shall comply with that code of practice or standard of performance.

30 (6) The Authority may, either generally or for such time as the Authority may specify, waive the application, to any telecommunication licensee, of any code of practice or standard of performance issued or approved under subsection (1).”.

Amendment of section 27

14. Section 27 of the Telecommunications Act is amended by deleting subsection (2) and substituting the following subsections:

“(2) A direction under subsection (1) —

5 (a) shall require the telecommunication licensee concerned (according to the circumstances of the case) to do, or to refrain from doing, such things as are specified in the direction, or as are of a description specified in the direction; and

10 (b) shall take effect at such time (being the earliest practicable time) as is determined by or under that direction.

(2A) The Authority may at any time vary, suspend or revoke the whole or any part of a direction under subsection (1).”.

Repeal and re-enactment of Part VA and new Part VB

15 15. Part VA of the Telecommunications Act is repealed and the following Parts substituted therefor:

“PART VA

CONTROL OF DESIGNATED TELECOMMUNICATION
LICENSEES, DESIGNATED BUSINESS TRUSTS AND
20 DESIGNATED TRUSTS

Interpretation of this Part

32A.—(1) In this Part, unless the context otherwise requires —

“12% controller” means —

25 (a) in relation to a designated telecommunication licensee, a person who, alone or together with his associates —

(i) holds 12% or more but less than 30% of the total number of voting shares in the designated telecommunication licensee; or

30 (ii) is in a position to control 12% or more but less than 30% of the voting power in the designated telecommunication licensee;

(b) in relation to a designated business trust, a person who, alone or together with his associates —

(i) holds 12% or more but less than 30% of the total number of units in the designated business trust; or

(ii) is in a position to control 12% or more but less than 30% of the voting power in the designated business trust; or

(c) in relation to a designated trust, a person who, alone or together with his associates —

(i) holds 12% or more but less than 30% of the equity interests in the designated trust; or

(ii) is in a position to control 12% or more but less than 30% of the voting power in the designated trust;

“30% controller” means —

(a) in relation to a designated telecommunication licensee, a person who, alone or together with his associates —

(i) holds 30% or more of the total number of voting shares in the designated telecommunication licensee; or

(ii) is in a position to control 30% or more of the voting power in the designated telecommunication licensee;

(b) in relation to a designated business trust, a person who, alone or together with his associates —

(i) holds 30% or more of the total number of units in the designated business trust; or

(ii) is in a position to control 30% or more of the voting power in the designated business trust; or

(c) in relation to a designated trust, a person who, alone or together with his associates —

(i) holds 30% or more of the equity interests in the designated trust; or

(ii) is in a position to control 30% or more of the voting power in the designated trust;

“business”, in relation to a designated business trust, means 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;

“business trust” has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);

“corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“designated business trust” means a business trust that —

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

(b) has been declared by the Authority under subsection (2) to be a designated business trust for the purposes of this Part;

“designated telecommunication licensee” means a telecommunication licensee that is a corporation and that —

(a) has been declared by the Authority under subsection (2) to be a designated telecommunication licensee for the purposes of this Part; or

(b) belongs to a class of telecommunication licensees which has been declared by the Authority under subsection (2) to be a class of designated telecommunication licensees for the purposes of this Part;

“designated trust” means a trust that —

(a) is prescribed, or belongs to a class of trusts prescribed, by any regulations made under section 74;

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

(c) has been declared by the Authority under subsection (2) to be a designated trust for the purposes of this Part;

“effective control” means —

- 5 (a) 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;
- 10 (b) 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
- 15 (c) 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;

“equity interest” means —

- 20 (a) in relation to a corporation, a voting share in that corporation;
- (b) in relation to a designated business trust, a unit in that designated business trust; or
- 25 (c) 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;

“related corporation” has the same meaning as in section 4(1) of the Companies Act;

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

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

“share” has the same meaning as in section 4(1) of the Companies Act;

“treasury share” has the same meaning as in section 4(1) of the Companies Act;

5 “trustee-manager” has the same meaning as in section 2 of the Business Trusts Act;

“unit” has the same meaning as in section 2 of the Business Trusts Act;

10 “unitholder” has the same meaning as in section 2 of the Business Trusts Act;

“voting share” has the same meaning as in section 4(1) of the Companies Act.

(2) The Authority may, by notification in the *Gazette*, do one or more of the following:

15 (a) declare any telecommunication licensee to be a designated telecommunication licensee for the purposes of this Part;

(b) declare any class of telecommunication licensees to be a class of designated telecommunication licensees for the purposes of this Part;

20 (c) declare any business trust to be a designated business trust for the purposes of this Part, 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;

25 (d) declare any trust to be a designated trust for the purposes of this Part, if the trust —

(i) is prescribed, or belongs to a class of trusts prescribed, by any regulations made under section 74; and

30 (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;

(f) vary or revoke any declaration of a class of designated telecommunication licensees.

(3) For the purposes of this Part, in relation to a designated telecommunication licensee the whole or any portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the designated telecommunication licensee having the same nominal amount as the amount of that stock and having attached to it the same rights as are attached to that stock.

(4) For the purposes of this Part, a person, *A*, is an associate of another person, *B*, if —

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

position to control not less than 12% of the voting power in *B*;

- (i) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of shares, units or other equity interests in, or with respect to the exercise of their voting power in relation to, a designated telecommunication licensee, a designated business trust or a designated trust; or
- (j) *A* is related to *B* in such other manner as may be prescribed by any regulations made under section 74.

(5) For the purposes of this Part —

- (a) 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 subsection (7); and
- (b) 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 subsection (10).

(6) Except as otherwise provided in subsection (7), for the purposes of this Part, a person shall be deemed to have an interest in a share, if —

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

(7) For the purposes of subsections (5)(a) and (6), there shall be disregarded —

- (a) an interest in a share of a person who holds the share as bare trustee;
- (b) an interest in a share of a person whose ordinary business includes the lending of money, if he holds the interest only

by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

- 5 (c) an interest in a share of a person whose ordinary business includes the underwriting of securities, if he holds the interest only as an underwriter or a sub-underwriter to any offering of shares of a designated telecommunication licensee;
- (d) an interest in a share held by a person —
- 10 (i) in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee; or
- (ii) by reason of his holding such other office as may be prescribed for the purposes of section 7(9)(c) of the Companies Act (Cap. 50);
- 15 (e) 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
- (f) such interest in a share as may be prescribed for the purposes of section 7(9)(d) of the Companies Act, being an interest of such person, or of a person belonging to such class of persons, as may be prescribed for the purposes of that provision.
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(8) Sections 7(7), (8) and (10) of the Companies Act (Cap. 50) shall apply in determining whether a person has an interest in a share for the purposes of subsections (5)(a) and (6).

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(9) Except as otherwise provided in subsection (10), for the purposes of this Part, a person shall be deemed to have an interest in a unit, if —

- 30 (a) the person has entered into a contract to purchase that unit; or
- (b) 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.
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(10) For the purposes of subsections (5)(b) and (9), there shall be disregarded —

- (a) an interest in a unit of a person who holds the unit as bare trustee;
- 5 (b) an interest in a unit 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;
- 10 (c) an interest in a unit of a person whose ordinary business includes the underwriting of securities, if he holds the interest only as an underwriter or a sub-underwriter to any offering of units of a designated business trust; and
- 15 (d) an interest in a unit held by a person in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee.

(11) Except as otherwise provided in subsection (12), for the purposes of this Part, a person shall be deemed to have an equity interest in a designated trust, if —

- 20 (a) the person has entered into a contract to purchase that equity interest; or
- (b) the person, not being the 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.
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(12) For the purposes of subsection (11), there shall be disregarded —

- 30 (a) an equity interest of a person who holds the interest as bare trustee;
- (b) 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;
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(c) an equity interest of a person whose ordinary business includes the underwriting of securities, if he holds the interest only as an underwriter or a sub-underwriter to any offering of equity interests in a designated trust; and

5 (d) an equity interest held by a person in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee.

(13) For the purposes of this Part, a reference to control of a percentage of the voting power in a designated telecommunication licensee, designated business trust or designated trust 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 the designated telecommunication licensee, designated business trust or designated trust, as the case may be.

(14) For the purposes of subsection (13), there shall be disregarded any control of any voting power in a designated telecommunication licensee, designated business trust or designated trust that is exercisable —

(a) by a person, by virtue of holding an interest in a share of the designated telecommunication licensee, a unit of the designated business trust or an equity interest in the designated trust, as the case may be, as a bare trustee;

(b) by a person whose ordinary business includes the lending of money, by virtue of holding an interest in a share of the designated telecommunication licensee, a unit of the designated business trust or an equity interest in the designated trust, as the case may be, only by way of security for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money;

(c) by a person whose ordinary business includes the underwriting of securities, by virtue of holding an interest in a share of the designated telecommunication licensee, a unit of the designated business trust or an equity interest in the designated trust, as the case may be, only as an underwriter

or a sub-underwriter to any offering of shares of the designated telecommunication licensee, units of the designated business trust or equity interests in the designated trust, as the case may be; or

5 (d) by a person, by virtue of holding an interest in a share of the designated telecommunication licensee, a unit of the designated business trust or an equity interest in the designated trust, as the case may be —

10 (i) in his capacity as a liquidator, the Official Receiver, the Official Assignee or the Public Trustee; or

(ii) by reason of his holding such other office as may be prescribed for the purposes of section 7(9)(c) of the Companies Act (Cap. 50).

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

Control of equity interests and voting power in designated telecommunication licensee, designated business trust or designated trust

20 **32B.**—(1) Subject to subsection (10), a designated telecommunication licensee shall give notice in writing to the Authority, within 7 days after the designated telecommunication licensee first becomes aware of the event, in the event that any person, whether by a series of transactions over a period of time or
25 otherwise —

(a) holds 5% or more but less than 12% of the total number of voting shares in the designated telecommunication licensee; or

30 (b) is in a position to control 5% or more but less than 12% of the voting power in the designated telecommunication licensee.

(2) Subject to subsection (10), the trustee-manager of a designated business trust shall give notice in writing to the Authority, within 7 days after the trustee-manager first becomes aware of the event, in the
35 event that any person, whether by a series of transactions over a period of time or otherwise —

(a) holds 5% or more but less than 12% of the total number of units in the designated business trust; or

(b) is in a position to control 5% or more but less than 12% of the voting power in the designated business trust.

5 (3) Subject to subsection (10), the trustee of a designated trust shall give notice in writing to the Authority, within 7 days after the trustee first becomes aware of the event, in the event that any person, whether by a series of transactions over a period of time or otherwise —

10 (a) holds 5% or more but less than 12% of the equity interests in the designated trust; or

(b) is in a position to control 5% or more but less than 12% of the voting power in the designated trust.

15 (4) Every person required to give a notice under subsection (1), (2) or (3) shall ensure that the notice —

(a) is given in such form and manner as the Authority may, from time to time, determine; and

(b) is supported by such information as the Authority may require.

20 (5) Subject to subsection (11), no person shall, without obtaining the prior written approval of the Authority to do so, 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, designated business trust or designated trust.

25 (6) Subject to subsection (11), no person shall, without obtaining the prior written approval of the Authority to do so, acquire any business (of a designated telecommunication licensee, designated business trust or designated trust) that is conducted pursuant to a telecommunication licence granted under section 5, or any part of any such business, as a going concern.

30 (7) Subject to subsection (11), no person shall, without obtaining the prior written approval of the Authority to do so, obtain effective control over a designated telecommunication licensee, designated business trust or designated trust.

35

(8) An application for the written approval of the Authority under subsection (5), (6) or (7) —

(a) shall be made in such form and manner as the Authority may, from time to time, determine; and

5 (b) shall be supported by such information as the Authority may require.

(9) Where a person contravenes subsection (5), (6) or (7), it shall be a defence for him to prove that he did not knowingly contravene the applicable subsection if, and only if —

10 (a) he notifies the Authority of the contravention within 14 days after becoming aware of the contravention; and

(b) he complies with such direction as the Authority may issue under section 32D(2)(d), (e) or (f) within such time as the Authority may determine thereunder.

15 (10) A notice in writing need not be given to the Authority under subsection (1), (2) or (3), if the event referred to in the applicable subsection occurs by virtue only of any transaction prescribed by the Minister for the purposes of this subsection by order published in the *Gazette*.

20 (11) Any person may, without obtaining the prior written approval of the Authority to do so, do any thing referred to in subsection (5), (6) or (7), if the doing of that thing occurs by virtue only of any transaction prescribed by the Minister for the purposes of this subsection by order published in the *Gazette*.

25 (12) A designated telecommunication licensee shall give notice in writing to the Authority, within 7 days after the designated telecommunication licensee first becomes aware of the event, in the event that any person, by virtue only of any transaction prescribed by the Minister for the purposes of this subsection by order published in the *Gazette* —

30 (a) 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;

35 (b) acquires any business of the designated telecommunication licensee that is conducted pursuant to a telecommunication

licence granted under section 5, or any part of any such business, as a going concern; or

- (c) obtains effective control over the designated telecommunication licensee.

5 (13) The trustee-manager of a designated business trust shall give notice in writing to the Authority, within 7 days after the trustee-manager first becomes aware of the event, in the event that any person, by virtue only of any transaction prescribed by the Minister for the purposes of this subsection by order published in the
10 *Gazette* —

- (a) 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;

- 15 (b) acquires any business of the designated business trust that is conducted pursuant to a telecommunication licence granted under section 5, or any part of any such business, as a going concern; or

- (c) obtains effective control over the designated business trust.

20 (14) The trustee of a designated trust shall give notice in writing to the Authority, within 7 days after the trustee first becomes aware of the event, in the event that any person, by virtue only of any transaction prescribed by the Minister for the purposes of this subsection by order published in the *Gazette* —

- 25 (a) becomes, whether through a series of transactions over a period of time or otherwise, a 12% controller or a 30% controller of the designated trust;

- 30 (b) acquires any business of the designated trust that is conducted pursuant to a telecommunication licence granted under section 5, or any part of any such business, as a going concern; or

- (c) obtains effective control over the designated trust.

(15) Any person who contravenes subsection (2), (3), (13) or (14) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

Power to issue code of practice relating to control of designated telecommunication licensees, designated business trusts and designated trusts

5 **32C.**—(1) Without prejudice to the generality of section 26, the Authority may issue a code of practice under that section which specifies such matters as are generally necessary for carrying out the purposes and provisions of this Part and for the due administration thereof.

10 (2) Without prejudice to the generality of subsection (1), the Authority may specify in the code of practice —

 (a) the rules and procedures that each of the following must comply with:

 (i) a designated telecommunication licensee;

15 (ii) a person who holds any voting shares, or controls any voting power, in a designated telecommunication licensee;

 (iii) a person who holds any units, or controls any voting power, in a designated business trust;

20 (iv) a person who holds any equity interest, or controls any voting power, in a designated trust;

 (v) a person who acquires any business (of a designated telecommunication licensee, designated business trust or designated trust) that is conducted pursuant to a telecommunication licence granted under section 5, or any part of any such business, as a going concern;

25 (vi) a person who obtains effective control over a designated telecommunication licensee, designated business trust or designated trust;

30 (b) the terms and conditions which the Authority may impose when granting any written approval under section 32B(5), (6) or (7); and

 (c) the fees and charges payable to the Authority in respect of any application or request made to the Authority under the code of practice.

Power to issue directions relating to control of designated telecommunication licensees, designated business trusts and designated trusts

5 **32D.**—(1) Without prejudice to the generality of section 27, the Authority may issue a direction under subsection (2) if —

(a) a person (referred to in this section as the specified person) —

10 (i) becomes a 12% controller or 30% controller of a designated telecommunication licensee, designated business trust or designated trust;

15 (ii) acquires any business (of a designated telecommunication licensee, designated business trust or designated trust) that is conducted pursuant to a telecommunication licence granted under section 5, or any part of any such business, as a going concern; or

(iii) obtains effective control over a designated telecommunication licensee, designated business trust or designated trust; and

(b) the Authority is satisfied that —

20 (i) the specified person has thereby contravened section 32B(5), (6) or (7);

25 (ii) any condition of approval imposed by the Authority on the specified person when granting its written approval under section 32B(5), (6) or (7) has not been complied with;

(iii) the specified person has furnished false or misleading information or documents in connection with his application for written approval under section 32B(5), (6) or (7);

30 (iv) the Authority would not have granted its written approval under section 32B(5), (6) or (7) had it been aware, at the time the approval was granted, of any matter relevant to the specified person's application for such approval; or

- (v) the applicable matter referred to in paragraph (a)(i), (ii) or (iii) is likely to substantially lessen competition or is against the public interest.

(2) The Authority may, in the circumstances specified in subsection (1), issue such of the following directions as may be applicable:

- (a) direct the designated telecommunication licensee to do all or any of the following:

- (i) to restrict the exercise of all or any of the voting rights in respect of the shares which the specified person holds, or which the specified person and his associates together hold, in the designated telecommunication licensee (referred to in this section as 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 the Authority expressly permits such rights or power to be exercised;

- (ii) 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 the Authority expressly permits such issue or offer;

- (iii) 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 the Authority expressly authorises such payment subject to such conditions as the Authority may specify;

- (b) direct the trustee-manager of the designated business trust to do all or any of the following:

- (i) 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 (referred to in this section as 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 the Authority expressly permits such rights or power to be exercised;

5 (ii) 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 the Authority expressly permits such issue or offer;

10 (iii) 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 the Authority expressly authorises such payment subject to such conditions as the Authority may specify;

15 (c) direct the trustee of the designated trust to do all or any of the following:

20 (i) 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 (referred to in this section as 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 the Authority expressly permits such rights or power to be exercised;

30 (ii) 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 the Authority expressly permits such issue or offer;

35 (iii) 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 the Authority expressly authorises such payment subject to such conditions as the Authority may specify;

- 5 (d) direct 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 the Authority may determine and subject to such conditions as the Authority considers appropriate;
- 10 (e) direct 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 under section 5, and that is acquired from the designated telecommunication licensee, designated business trust or designated trust as a going concern, within such time as the Authority may determine and subject to such conditions as the Authority considers appropriate;
- 15 (f) direct the specified person to relinquish effective control over the designated telecommunication licensee, designated business trust or designated trust, within such time as the Authority may determine and subject to such conditions as the Authority considers appropriate.
- 20 (3) Before issuing a direction to any person under subsection (2), the Authority shall, unless the Authority decides that it is not practicable or desirable to do so, cause to be given to that person notice in writing of the Authority's intention to issue the direction, specifying a date by which that person may make written representations with regard to the proposed direction.
- 25 (4) Upon receipt of any written representations referred to in subsection (3), the Authority shall consider them for the purpose of determining whether to issue the direction.
- 30 (5) Any person to whom a direction is given under subsection (2) shall comply with the direction.
- (6) The Authority may at any time vary, suspend or revoke any direction issued under this section.
- (7) Any direction issued to a person under subsection (2) shall take effect, notwithstanding —
- 35 (a) the provisions of any other written law; and

(b) the provisions of the memorandum or articles of association, trust deed or other constitution of the designated telecommunication licensee, designated business trust or designated trust.

5 (8) Notwithstanding the provisions of any other written law and the provisions of the memorandum or articles of association, trust deed or other constitution of the designated telecommunication licensee, the designated business trust or the designated trust —

10 (a) where any direction is issued under subsection (2)(a), unless the direction is suspended or revoked —

15 (i) the voting rights in respect of the specified shares, and the voting power which the specified person controls, or which the specified person and his associates together control, in the designated telecommunication licensee, shall not be exercisable unless the Authority expressly permits such rights or power to be exercised;

20 (ii) no shares in the designated telecommunication licensee shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified shares, unless the Authority expressly permits such issue or offer; and

25 (iii) except in a liquidation of the designated telecommunication licensee, no amount shall be paid (whether by way of dividends or otherwise) in respect of the specified shares, unless the Authority expressly authorises such payment;

(b) where any direction is issued under subsection (2)(b), unless the direction is suspended or revoked —

30 (i) the voting rights in respect of the specified units, and the voting power which the specified person controls, or which the specified person and his associates together control, in the designated business trust, shall not be exercisable unless the Authority expressly permits such rights or power to be exercised;

35 (ii) no units in the designated business trust shall be issued or offered (whether by way of rights, bonus or

otherwise) in respect of the specified units, unless the Authority expressly permits such issue or offer; and

(iii) except in a winding up of the designated business trust, no amount shall be paid (whether by way of profits, income or otherwise) in respect of the specified units, unless the Authority expressly authorises such payment; or

(c) where any direction is issued under subsection (2)(c), unless the direction is suspended or revoked —

(i) the voting rights in respect of the specified equity interests, and the voting power which the specified person controls, or which the specified person and his associates together control, in the designated trust, shall not be exercisable unless the Authority expressly permits such rights or power to be exercised;

(ii) no equity interests in the designated trust shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of the specified equity interests, unless the Authority expressly permits such issue or offer; and

(iii) except in a winding up of the designated trust, no amount shall be paid (whether by way of profits, income or otherwise) in respect of the specified equity interests, unless the Authority expressly authorises such payment.

(9) Any person (other than a designated telecommunication licensee) who contravenes section (5) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or

(b) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not

exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

Power of Authority to obtain information relating to control of designated telecommunication licensees, designated business trusts and designated trusts

32E.—(1) Without prejudice to sections 27 and 59, the Authority may, by notice in writing —

(a) direct any designated telecommunication licensee to obtain from any shareholder of the designated telecommunication licensee, and to transmit to the Authority within such time as may be specified in the notice, the following information:

(i) whether that shareholder holds any voting share in the designated telecommunication licensee as a trustee; and

(ii) if so —

(A) the name of the person for whom that shareholder holds the voting share as a trustee, or such other particulars as are sufficient to enable the identification of that person; and

(B) the nature of that person's interest;

(b) direct the trustee-manager of any designated business trust to obtain from any unitholder of the designated business trust, and to transmit to the Authority within such time as may be specified in the notice, the following information:

(i) whether that unitholder holds any unit in the designated business trust as a trustee; and

(ii) if so —

(A) the name of the person for whom that unitholder holds the unit as a trustee, or such other particulars as are sufficient to enable the identification of that person; and

(B) the nature of that person's interest; and

(c) direct the trustee of any designated trust to obtain from any holder of equity interests in the designated trust, and to

transmit to the Authority within such time as may be specified in the notice, the following information:

(i) whether that holder holds any equity interest in the designated trust as a trustee; and

5 (ii) if so —

(A) the name of the person for whom that holder holds the equity interest as a trustee, or such other particulars as are sufficient to enable the identification of that person; and

10 (B) the nature of that person's interest.

(2) The Authority may, by notice in writing —

(a) direct any shareholder of a designated telecommunication licensee to provide to the Authority, within such time as may be specified in the notice, the following information:

15 (i) whether that shareholder holds any voting share in the designated telecommunication licensee as a trustee; and

(ii) if so —

20 (A) the name of the person for whom that shareholder holds the voting share as a trustee, or such other particulars as are sufficient to enable the identification of that person; and

(B) the nature of that person's interest;

(b) direct any unitholder of a designated business trust to provide to the Authority, within such time as may be specified in the notice, the following information:

25 (i) whether that unitholder holds any unit in the designated business trust as a trustee; and

(ii) if so —

30 (A) the name of the person for whom that unitholder holds the unit as a trustee, or such other particulars as are sufficient to enable the identification of that person; and

(B) the nature of that person's interest; and

(c) direct any holder of equity interests in a designated trust to provide to the Authority, within such time as may be specified in the notice, the following information:

5 (i) whether that holder holds any equity interest in the designated trust as a trustee; and

(ii) if so —

10 (A) the name of the person for whom that holder holds the equity interest as a trustee, or such other particulars as are sufficient to enable the identification of that person; and

(B) the nature of that person's interest.

(3) Any person who —

(a) fails to comply with a notice under subsection (1) or (2); or

15 (b) in purported compliance with a notice under subsection (1) or (2), knowingly or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence and shall be liable on conviction —

20 (i) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction; or

25 (ii) in any other case, to a fine not exceeding \$250,000 and, in the case of a continuing offence, to a further fine not exceeding \$25,000 for every day or part thereof during which the offence continues after conviction.

Appointment of chief executive officer, director, etc., of designated telecommunication licensee

30 **32F.**—(1) No designated telecommunication licensee shall appoint a person as its chief executive officer, its director or the chairman of its board of directors, unless it has obtained the approval of the Authority to do so.

(2) Where a designated telecommunication licensee appoints a person as its chief executive officer, its director or the chairman of its board of directors without the approval of the Authority, in contravention of subsection (1), the Authority may issue a direction to the licensee to remove that person from his appointment as chief executive officer, director or chairman of the board of directors, as the case may be, of the licensee.

(3) The Authority may at any time vary, suspend or revoke any direction issued under subsection (2).

(4) This section shall have effect notwithstanding the provisions of any other written law and the provisions of the memorandum or articles of association, or other constitution, of the designated telecommunication licensee.

(5) In this section —

“chief executive officer”, in relation to a designated telecommunication licensee —

(a) means any person, by whatever name described, who —

(i) is in the direct employment of, or acting for or by arrangement with, the designated telecommunication licensee; and

(ii) is principally responsible for the management and conduct of any type of business of the designated telecommunication licensee in Singapore; and

(b) includes any person for the time being performing all or any of the functions or duties of a chief executive officer;

“director” has the same meaning as in section 4(1) of the Companies Act (Cap. 50).

PART VB

SPECIAL ADMINISTRATION ORDER

Interpretation of this Part

32G.—(1) In this Part —

“critical support infrastructure” means any infrastructure that belongs to, or is under the control of, a telecommunication licensee, and that satisfies all of the following criteria:

- 5 (a) the infrastructure is required by other telecommunication licensees to provide a telecommunication service;
- (b) the infrastructure cannot be replicated within the foreseeable future, or obtained from a third party, by an efficient new entrant to the market for telecommunication services in Singapore, in either case,
10 at a cost that would reasonably allow market entry;
- (c) the failure or refusal by the first-mentioned telecommunication licensee to allow other telecommunication licensees to use the infrastructure would unreasonably restrict competition in any market
15 for telecommunication services in Singapore;

“prescribed transferee” means —

- (a) the Authority; or
- (b) a person nominated by the Authority;

20 “specified telecommunication licensee” means a telecommunication licensee which the Minister has declared under section 32H to be a specified telecommunication licensee for the purposes of this Part;

Declaration of specified telecommunication licensee

25 **32H.**—(1) The Minister may, after consulting with the Authority, by notification in the *Gazette*, declare any telecommunication licensee to be a specified telecommunication licensee for the purposes of this Part, if —

- (a) the licensee —
 - (i) is a public telecommunication licensee; or
 - (ii) owns or controls any critical support infrastructure; or
- 30 (b) the Minister is satisfied that it is in the public interest to do so.

(2) A declaration of a specified telecommunication licensee under subsection (1)(a)(i) shall remain in force only so long as the licensee remains a public telecommunication licensee.

5 (3) A declaration of a specified telecommunication licensee under subsection (1)(a)(ii) shall remain in force only so long as the licensee continues to own or control any critical support infrastructure.

(4) The Minister may, after consulting with the Authority, by notification in the *Gazette*, revoke any declaration under subsection (1).

10 **Meaning and effect of special administration order**

32I.—(1) A special administration order is an order of the Minister, made in accordance with section 32J in relation to a specified telecommunication licensee, directing that during the period for which the order is in force, the affairs, business and property of that
15 licensee shall be managed by a person appointed by the Minister (which may include the Authority) —

(a) for securing one or more of the purposes of such an order set out in subsection (2); and

(b) in a manner which protects the respective interests of the
20 shareholders and the creditors of the licensee.

(2) The purposes referred to in subsection (1)(a) are —

(a) the security and reliability of the supply of telecommunication services in Singapore;

(b) the survival of the specified telecommunication licensee, or
25 the whole or any part of its business or undertaking, as a going concern;

(c) the transfer to another person, or (as respects different parts of its business or undertaking) to 2 or more different persons, as a going concern, of so much of the specified
30 telecommunication licensee's business or undertaking as it is necessary to transfer in order to ensure that the functions and duties which have been vested in the licensee by virtue of its licence may be properly carried out; and

(d) the carrying out of the functions and duties vested in the
35 specified telecommunication licensee, pending the making

of the transfer and the vesting of those functions and duties in any other person or persons.

(3) The Minister may make regulations for giving effect to this Part, including —

- 5 (a) regulations governing the transfer of a specified telecommunication licensee's business or undertaking referred to in subsection (2)(c); and
- (b) where a special administration order is made, regulations for applying, omitting or modifying the provisions of Part
10 VIIIA of the Companies Act (Cap. 50).

Power to make special administration order, etc.

15 **32J.**—(1) If, on an application made to the Minister by the Authority in relation to any specified telecommunication licensee, the Minister is satisfied that any one or more of the grounds specified in subsection (2) are satisfied in relation to that licensee, the Minister may make any one or more of the following orders:

- (a) a special administration order in relation to that licensee;
- 20 (b) an order requiring the licensee immediately to take any action or to do or not to do any act or thing in relation to its business as the Minister may consider necessary;
- (c) an order appointing a person to advise that licensee in the proper conduct of its business.

(2) The grounds referred to in subsection (1) are that —

- 25 (a) there has been, is or is likely to be a contravention by the specified telecommunication licensee of the conditions of its licence or of this Act which is serious enough to make it inappropriate for the licensee to continue to hold the licence;
- (b) the specified telecommunication licensee is or is likely to be unable to pay its debts;
- 30 (c) the Minister considers it in the interest of the security and reliability of the supply of telecommunication services in Singapore; and
- (d) the Minister considers it to be in the public interest.

(3) The Minister may make a special administration order in relation to a specified telecommunication licensee notwithstanding the commencement of —

- 5 (a) any proceedings relating to the making of an order under section 210 of the Companies Act (Cap. 50) in relation to the specified telecommunication licensee;
- (b) any proceedings relating to the making of a judicial management order under the Companies Act in relation to the specified telecommunication licensee; or
- 10 (c) any proceedings under the Companies Act relating to the winding up of the affairs of the specified telecommunication licensee.

(4) Notice of any application under subsection (1) shall be given immediately by the Authority to such persons and in such manner as
15 may be determined by the Authority.

(5) Any decision of the Minister under subsection (1) shall be final.

(6) For the purposes of this section, a specified telecommunication licensee, being a company, is unable to pay its debts if it is deemed to be unable to pay its debts under section 254(2) of the Companies Act
20 (Cap. 50).

(7) The Minister may at any time (whether or not the appointment of the person has terminated) fix the remuneration and expenses to be paid by a specified telecommunication licensee to any person appointed by the Minister under subsection (1)(c) to advise the
25 licensee in the proper conduct of its business.

(8) Where the Minister issues an order to a specified telecommunication licensee under subsection (1) and the licensee fails to comply with that order, the licensee shall be guilty of an offence.

30 **Transfer of property, etc., under special administration order**

32K.—(1) Without prejudice to the generality of sections 32I and 32J, a special administration order may provide for the following matters:

(a) the transfer of the property, rights and liabilities of a specified telecommunication licensee to one or more prescribed transferees; and

(b) matters that are consequential or related to any such transfer.

5 (2) If the Minister makes a special administration order providing for any matter referred to in subsection (1), he shall, within 6 months after the making of the order, by notification published in the *Gazette*, establish a scheme for determining the amount of any compensation payable to the specified telecommunication licensee for the transfer
10 of its property, rights and liabilities.

(3) A scheme established under subsection (2) may provide for —

(a) the manner in which any compensation or consideration is to be assessed, including methods of calculation, valuation
15 dates and matters to be taken into account or disregarded when making valuations;

(b) the assessment to be made by an independent valuer appointed by the Minister; and

(c) the remuneration and expenses of the independent valuer.

Restrictions on voluntary winding up, etc.

20 **32L.**—(1) Notwithstanding any other written law —

(a) a specified telecommunication licensee shall not be wound up voluntarily without the consent of the Authority;

(b) a person shall not make any application under section 210 of the Companies Act (Cap. 50) in relation to a specified
25 telecommunication licensee, unless that person has served 14 days' notice in writing of his intention to make that application on the Authority;

(c) a person shall not make any application for a judicial management order under the Companies Act in relation to a
30 specified telecommunication licensee, unless that person has served 14 days' notice in writing of his intention to make that application on the Authority;

(d) a person shall not take any step to enforce any security over a specified telecommunication licensee's property, unless

that person has served 14 days' notice in writing of his intention to take that step on the Authority; and

- (e) a person shall not take any step to execute or enforce any judgment or order of court obtained against a specified telecommunication licensee, unless that person has served 14 days' notice in writing of his intention to take that step on the Authority.

(2) The Authority shall be a party to —

- (a) any proceedings relating to the making of an order under section 210 of the Companies Act (Cap. 50) in relation to a specified telecommunication licensee;
- (b) any proceedings relating to the making of a judicial management order under the Companies Act in relation to a specified telecommunication licensee; and
- (c) any proceedings under the Companies Act relating to the winding up of the affairs of a specified telecommunication licensee.”.

Amendment of section 69

16. Section 69 of the Telecommunications Act is amended —

- (a) by inserting, immediately after “32D” in subsection (1)(b), “, 32E(1)”;
- (b) by deleting subsection (2) and substituting the following subsection:

“(2) Any person (other than a telecommunication licensee) who is aggrieved by —

- (a) any decision of the Authority under section 5(1), 5A, 5B(1), 8(1), 14, 19(6) or (7), 23 or 32B; or
- (b) anything contained in any code of practice issued under section 19 or 32C or in any direction of the Authority given under section 21, 32D or 32E(1) or (2),

may, within 14 days of the receipt of the decision or direction of the Authority or the issue of the code of practice, as the case may be —

- (i) make a request to the Authority to reconsider the matter; or
 - (ii) appeal to the Minister.”; and
- (c) by deleting the words “arising from the same decision or direction of the Authority” in subsections (3) and (5)(b) and substituting in each case the words “in respect of the same decision or direction of the Authority or thing contained in a code of practice or standard of performance”.

Amendment of section 69B

10 **17.** Section 69B of the Telecommunications Act is amended —

- (a) by deleting subsections (1), (2) and (3) and substituting the following subsections:

“(1) The Minister may issue a written order to any person that acquires the assets or business of, or equity interests in, a telecommunication licensee, designated business trust or designated trust (referred to in this section as the relevant person), that telecommunication licensee, the trustee-manager of that designated business trust or the trustee of that designated trust (as the case may be), or both the relevant person and that telecommunication licensee, trustee-manager or trustee (as the case may be), if the Minister is satisfied that —

- (a) the relevant person is not a fit and proper person; and
- (b) it is not in the national interest to allow the relevant person to continue to own the assets or business of, or to hold the equity interests in, that telecommunication licensee, designated business trust or designated trust (as the case may be).

(2) The Minister may, in any written order issued under subsection (1), direct the relevant person, that telecommunication licensee, the trustee-manager of that designated business trust or the trustee of that designated trust (as the case may be), or both the relevant person and that telecommunication licensee, trustee-manager or trustee (as the case may be), to do all or any of the following:

- 5 (a) direct the transfer or disposal of all of the assets, business and equity interests acquired by the relevant person in that telecommunication licensee, designated business trust or designated trust (as the case may be) within such time and subject to such conditions as the Minister considers appropriate;
- 10 (b) restrict the transfer or disposal of the assets, business and equity interests in that telecommunication licensee, designated business trust or designated trust (as the case may be) by the relevant person;
- (c) restrict the exercise of voting power in that telecommunication licensee, designated business trust or designated trust (as the case may be) by the relevant person;
- 15 (d) require that no payment shall be made by that telecommunication licensee, the trustee-manager of that designated business trust or the trustee of that designated trust (as the case may be) of any amount (whether by way of dividends, profits, income or otherwise) in respect of the equity interests acquired by the relevant person;
- 20 (e) restrict the issuance or offer of equity interests (whether by way of rights, bonus or otherwise) by that telecommunication licensee, the trustee-manager of that designated business trust or the trustee of that designated trust (as the case may be) in respect of the equity interests acquired by the relevant person.
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- 30 (3) In the case of any written order made under subsection (2)(a) or (b) relating to the equity interests, until a transfer or disposal is effected in accordance with the written order or until the restriction on the transfer or disposal is removed, as the case may be, notwithstanding the provisions of any written law or anything contained in the memorandum or articles of association, trust deed or other constitution, of that telecommunication licensee, designated business trust or designated trust (as the case may be) —
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- (a) no voting rights shall be exercisable in respect of the equity interests unless the Minister expressly permits such rights to be exercised;
- 5 (b) no equity interests of that telecommunication licensee, designated business trust or designated trust (as the case may be) shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of the equity interests unless the Authority expressly permits such issue or offer; and
- 10 (c) except in a liquidation of that telecommunication licensee, designated business trust or designated trust (as the case may be), no payment shall be made by that telecommunication licensee, the trustee-manager of that designated business trust or the trustee of that
- 15 designated trust (as the case may be) of any amount (whether by way of dividends, profits, income or otherwise) in respect of the equity interests unless the Minister expressly authorises such payment.”;
- (b) by inserting, immediately after the words “telecommunication licensee,” in subsection (4), the words “designated business trust or designated trust,”;
- 20 (c) by deleting subsection (7) and substituting the following subsection:
- 25 “(7) Any person to whom a written order is issued under subsection (1) shall comply with the written order, and the written order shall take effect notwithstanding the provisions of any other written law and anything contained in the memorandum or articles of association, trust deed or other constitution, of the telecommunication licensee, designated
- 30 business trust or designated trust (as the case may be).”;
- (d) by inserting, immediately after subsection (8), the following subsection:
- 35 “(9) In this section —
“designated business trust” and “designated trust” have the same meanings as in section 32A(1);
“equity interest” means —

- (a) in relation to a telecommunication licensee, a voting share in that telecommunication licensee;
- (b) in relation to a designated business trust, a unit in that designated business trust; or
- 5 (c) 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.”; and
- 10 (e) by inserting, immediately after the words “telecommunication licensee” in the section heading, the words “, designated business trust or designated trust”.

New section 69C

- 15 **18.** The principal Act is amended by inserting, immediately after section 69B, the following section:

“Power of Minister to issue separation order

20 **69C.**—(1) The Minister may issue a written order (referred to in this section as the separation order) to any telecommunication licensee (referred to in this section as the relevant telecommunication licensee), if —

- (a) either of the following applies:
 - 25 (i) the relevant telecommunication licensee is licensed to operate a telecommunication system, or any installation or plant used for telecommunications, that is so costly or difficult to replicate that a requirement to do so would create a significant barrier to rapid and successful entry into the market for telecommunication services in Singapore by an efficient competitor of the relevant telecommunication licensee; or
 - 30 (ii) the relevant telecommunication licensee has the ability to exercise significant market power in any market for telecommunication services in Singapore, and both of the following apply:

- 5 (A) the telecommunication services provided by the relevant telecommunication licensee in that market (referred to in this subsection as the relevant telecommunication services) are required by other telecommunication licensees for the provision of telecommunication services in Singapore on a competitive basis;
- 10 (B) it is so costly or difficult to provide the relevant telecommunication services that a requirement to do so would create a significant barrier to the provision of telecommunication services in Singapore on a competitive basis by an efficient competitor of the relevant telecommunication licensee; and
- 15 (b) the Minister is satisfied that it is in the public interest to issue the separation order.

(2) In deciding whether it is in the public interest to issue the separation order, the Minister shall have regard to whether the issue of the separation order is necessary or desirable for one or more of the following purposes:

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- (a) to promote and maintain fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with telecommunication technology in Singapore;
- 25 (b) to promote the efficiency and international competitiveness of the telecommunication industry in Singapore;
- (c) to eliminate or reduce barriers to competition arising from the control of any telecommunication system, or the possession of significant market power, by the relevant telecommunication licensee;
- 30 (d) to promote transparency, non-discrimination and equivalence of supply in relation to the provision of telecommunication services in Singapore.

(3) The separation order may —

(a) direct the relevant telecommunication licensee to transfer to a separate entity or an independent entity either or both of the following:

5 (i) the whole or any part of any business of the relevant telecommunication licensee that is conducted pursuant to a telecommunication licence granted under section 5;

10 (ii) the whole or any part of any property of the relevant telecommunication licensee that is used by it to provide any telecommunication services, and any rights, obligations and liabilities relating to that property;

(b) for the purposes of paragraph (a), direct the relevant telecommunication licensee —

15 (i) to establish a separate entity; and

(ii) to ensure that the separate entity applies for a licence under section 5; and

(c) contain such other directions as the Minister considers appropriate, including (but not limited to) directions relating to all or any of the following matters:

20 (i) the types of transactions, dealings, arrangements and relationships that the relevant telecommunication licensee may engage in, or is prohibited from engaging in, with the separate entity or independent entity;

25 (ii) the measures to be implemented to ensure that the relevant telecommunication licensee will not obtain effective control over the independent entity;

(iii) any future or contingent right or liability of the relevant telecommunication licensee;

30 (iv) the conditions of the transfer directed under paragraph (a); and

(v) any incidental, consequential or supplementary matters which, in the Minister's opinion, are necessary to ensure that the transfer directed under paragraph (a) is effective.

(4) In determining the directions to be included in the separation order, the Minister shall have regard to whether the directions are proportionate, taking into account —

- 5 (a) the contestability of the relevant market for telecommunication services in Singapore; and
- (b) the effectiveness of the directions in eliminating or minimising any incentive or opportunity for the relevant telecommunication licensee to act in a manner that prevents, restricts or distorts competition in the relevant market for
10 telecommunication services in Singapore.

(5) A licence granted under section 5 to a separate entity established by a relevant telecommunication licensee may include (without prejudice to the power to impose conditions conferred by that section) conditions requiring the separate entity —

- 15 (a) to operate on a stand-alone basis;
- (b) to deal at arm's length with the relevant telecommunication licensee or any of its associates;
- (c) to provide to other telecommunication licensees any service on the same terms and conditions (including in relation to
20 price, service levels and time frames), and by means of the same systems and processes (including operational support processes), as it provides to the relevant telecommunication licensee or any of its associates; and
- 25 (d) to do, or to refrain from doing, such things as are specified in the licence, or as are of a description specified in the licence.

(6) The separation order shall take effect, notwithstanding —

- (a) the provisions of any other written law or any rule of law; and
- 30 (b) the provisions of the memorandum or articles of association, or other constitution, of the relevant telecommunication licensee.

(7) Notwithstanding any other written law or any rule of law, where the separation order contains a direction under subsection (3)(a), on

the date appointed for the transfer of any business or property of the relevant telecommunication licensee to a transferee —

- 5 (a) that business or property shall be transferred to, and shall vest in, the transferee without other or further assurance, act or deed, and the separation order shall have effect according to its tenor and be binding on any person thereby affected;
- 10 (b) every deed, bond, agreement or other arrangement subsisting immediately before that date which relates to that business or property, and to which the relevant telecommunication licensee is a party, shall continue in full force and effect, and shall be enforceable by or against the transferee, from that date, as if the transferee had been named therein or had been a party thereto instead of the relevant telecommunication licensee; and
- 15 (c) any proceedings or cause of action, by or against the relevant telecommunication licensee, pending or existing immediately before that date and relating to that business or property shall, if continued, be enforceable by or against, the transferee from that date.

20 (8) Subject to subsection (11), the Minister may award compensation to the relevant telecommunication licensee for any damage caused to it by reason of its compliance with the separation order.

25 (9) For the purposes of subsection (8), the Minister shall, within 6 months after the making of the separation order, by notification published in the *Gazette*, establish a scheme for determining the amount of any compensation payable to the relevant telecommunication licensee.

(10) A scheme established under subsection (9) may provide for —

- 30 (a) the manner in which any compensation or consideration is to be assessed, including methods of calculation, valuation dates and matters to be taken into account or disregarded when making valuations;
- 35 (b) the assessment to be made by an independent valuer appointed by the Minister; and
- (c) the remuneration and expenses of the independent valuer.

(11) No compensation shall be awarded under subsection (8) if, when issuing the separation order, the Minister was satisfied that —

(a) the relevant telecommunication licensee had engaged in conduct that prevents, restricts or distorts competition in any market for telecommunication services in Singapore, through —

(i) its control of the telecommunication system, or the installation or plant used for telecommunications, referred to in subsection (1)(a)(i); or

(ii) the exercise of its market power referred to in subsection (1)(a)(ii); and

(b) it was in the public interest to issue the separation order.

(12) Any compensation awarded by the Minister under subsection (8) shall be paid out of the Consolidated Fund.

(13) Before issuing the separation order, the Minister shall, unless he decides that it is not practicable or desirable to do so, cause to be given to the relevant telecommunication licensee notice in writing of his intention to issue the separation order, specifying the date by which written representations may be made to the Minister with regard to the separation order.

(14) Upon receipt of any written representation, the Minister shall consider it for the purpose of determining whether to issue the separation order.

(15) The Minister may at any time vary, suspend or revoke the whole or any part of the separation order.

(16) The relevant telecommunication licensee and any person affected by the separation order shall comply with the separation order.

(17) Any person who contravenes subsection (16) shall be guilty of an offence and shall be liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$125,000 or to imprisonment for a term not exceeding 3 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$12,500 for every day or part thereof during which the offence continues after conviction;

(b) in the case of an entity which is granted a licence under section 5, to a fine not exceeding the higher of the following amounts:

5 (i) 10% of the annual turnover of that part of its business in respect of which it is granted the licence, as ascertained from its latest audited accounts; or

(ii) \$1 million,

10 and, in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day or part thereof during which the offence continues after conviction; or

(c) in any other case, to a fine not exceeding \$1 million and, in the case of a continuing offence, to a further fine not exceeding \$100,000 for every day or part thereof during which the offence continues after conviction.

15 (18) Section 32A(4), (5)(a), (6), (7) and (8) shall apply with the necessary modifications to this section as they apply to Part VA.

(19) In this section —

“30% controller”, in relation to a telecommunication licensee, means a person who, alone or together with his associates —

20 (a) holds 30% or more of the total number of voting shares in the telecommunication licensee; or

(b) is in a position to control 30% or more of the voting power in the telecommunication licensee;

25 “business” includes any business affairs, property, right, obligation or liability;

“broadcasting licensee” has the same meaning in section 2(1) of the Broadcasting Act (Cap. 28), but does not include a class licensee as defined in section 2(1) of that Act;

30 “effective control”, in relation to a telecommunication licensee or an independent entity, means the ability to cause the telecommunication licensee or independent entity (as the case may be) to take, or to refrain from taking, a major decision regarding the management or operations of the telecommunication licensee or independent entity (as the case may be), and includes such control as may be exercised over
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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);

“independent entity” means an entity that —

- 5 (a) whether alone or together with its associates, does not have effective control over any telecommunication licensee or broadcasting licensee; and
- (b) is not under the effective control of —
- 10 (i) any telecommunication licensee, whether alone or with its associates; or
- (ii) any broadcasting licensee, whether alone or with its associates; or
- (c) is not under the effective control of any other entity which, whether alone or together with its associates, has effective control over any telecommunication licensee or broadcasting licensee;
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“property” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and includes —

- 20 (a) any property, right or power of any description; and
- (b) in relation to a telecommunication licensee, the telecommunication licensee’s telecommunication system and installation or plant used for telecommunications;

“separate entity”, in relation to a telecommunication licensee, means an entity which is a separate legal entity from the telecommunication licensee, and includes any such entity the equity interests of which are wholly owned by the telecommunication licensee;

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“significant market power” means the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces;

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“voting share” has the same meaning as in section 4(1) of the Companies Act (Cap. 50).”.

Repeal and re-enactment of section 70

19. Section 70 of the Telecommunications Act is repealed and the following section substituted therefor:

“Exclusion of liability of public telecommunication licensees

5 **70.** A public telecommunication licensee shall not be liable in respect of any injury, loss or damage suffered by any person by reason of —

10 (a) any failure to provide, or delay in providing, any basic telecommunication service or any equipment associated therewith or service ancillary thereto;

 (b) any failure, interruption, suspension or restriction of any basic telecommunication service provided by the licensee or any service ancillary thereto;

15 (c) any error in, or omission of, any information transmitted through any basic telecommunication service provided by the licensee; or

 (d) any loss of secrecy in communication arising from the use of any basic telecommunication service provided by the licensee,

20 which is due to the act or default of another person, or an accident or some other cause beyond the licensee’s control.”.

Amendment of section 74

25 **20.** Section 74(2) of the Telecommunications Act is amended by deleting the full-stop at the end of paragraph (f) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

 “(g) the control and regulation of the allocation and use of —

 (i) telephone numbers; and

 (ii) any other numbers used for or in connection with either or both of the following:

30 (A) the operation of telecommunication systems;

 (B) the provision of telecommunication services.”.

Miscellaneous amendments

21. The Telecommunications Act is amended by inserting, immediately after the words “section 5” in the definition of “telecommunication licensee” in section 2 and in sections 7(1) and 8(1), the words “or 5B”.

5 **Consequential amendments to Telecommunications (Amendment) Act 2005**

22. Sections 10 and 11 of the Telecommunications (Amendment) Act 2005 (Act 10 of 2005) are repealed.

10 **Related amendment to Info-communications Development Authority of Singapore Act**

23. Section 6(1)(i) of the Info-communications Development Authority of Singapore Act (Cap. 137A) is amended by deleting the words “satellite orbits” and substituting the words “satellite orbital slots”.

EXPLANATORY STATEMENT

[The Explanatory Statement will be inserted after the Bill has been finalised.]

EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.