

**AUCTION OF
700 MHZ SPECTRUM RIGHTS (2016),
900 MHZ SPECTRUM RIGHTS (2016),
2.3 GHZ SPECTRUM RIGHTS (2016) AND
2.5 GHZ SPECTRUM RIGHTS (2016)**

**APPENDIX 13 – FIT AND PROPER
PERSON CRITERIA**

29 April 2016
(UPDATED ON 14 July 2016)

INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY
REPUBLIC OF SINGAPORE

FIT AND PROPER PERSON CRITERIA

FIT AND PROPER PERSON CRITERIA FOR PROSPECTIVE NEW ENTRANT BIDDERS

Interpretation

For the purpose of this definition, 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;

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- (j) 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 provision of telecommunication services;
 - (k) A is a person with whom B has an agreement or arrangement, whether oral or in writing and whether express or implied, to trade or lease or otherwise transfer the right to use spectrum; or
 - (l) A is related to B in such other manner as prescribed by any regulations made under section 74 of the Telecommunications Act (Cap. 323),

provided always that, notwithstanding the existence of the circumstances stated in (a)-(l) above, IDA shall be entitled to determine that two persons are not associates of each other, based solely on the fact that both persons' ultimate parent has a passive ownership interest in both persons.

“relevant person” shall refer to any person, which shall be a company incorporated under the Companies Act (Cap. 50), applying to be registered as a New Entrant Bidder.

“key responsible persons” shall refer to any persons:

- (a) who are accountable or responsible for the management or oversight of the relevant person, and comprise the relevant person's:
 - (i) directors;
 - (ii) chief executive officer (CEO); and
 - (iii) senior officers (including but not limited to the chief operating officer, chief financial officer and chief technology officer); where senior officers refer to any persons performing a senior management function whose primary or significant responsibility is for the management and performance of significant business activities of the relevant person;
- (b) who are or will be employed by or an associate of a relevant person exercising significant influence over a relevant person; or
- (c) exercising significant influence over:
 - (i) a relevant person;or
 - (ii) an associate of a relevant person,including a person who:

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- (1) has authority over, makes or has substantial influence in making, whether solely or jointly with other persons, decisions that affect the whole or a substantial part of the relevant person's significant business activities;
 - (2) is principally accountable or responsible, whether solely or jointly with other persons, for implementing and enforcing policies and strategies approved by the board;
 - (3) is principally accountable or responsible, whether solely or jointly with other persons, for developing and implementing systems, internal controls and processes that identify, measure, monitor or control the relevant person's risks; and
 - (4) assumes primary or significant responsibility for key control functions, including a person who is principally accountable or responsible, whether solely or jointly with other persons, for monitoring the appropriateness, adequacy and effectiveness of the relevant person's internal controls, risk management and compliance systems and processes.

“**person**” shall refer to, unless the context otherwise requires or as otherwise specified in these Fit and Proper Person Criteria herein, any natural person, company, association, or body of persons, corporate or unincorporate.

Unless the context of this Fit and Proper Person Criteria clearly requires otherwise: (a) all references to the plural shall include the singular, and the singular the plural, and the part the whole; (b) references to one gender shall include all genders; and (c) “including” shall have the inclusive meaning of “including but not limited to” and/or “including without limitation”.

Application of Fit and Proper Person Criteria

These Fit and Proper Person Criteria are issued in the exercise of IDA's powers conferred by the Telecommunications Act (Cap. 323) and the Telecommunications (Radio-communication) Regulations, and set out the qualifying criteria which any person applying to be registered as a New Entrant Bidder to participate in the New Entrant Spectrum Auction (“**NESA**”), referred to in the Auction Rules (“**relevant person**”) must satisfy, at a minimum, before such person can be considered eligible by IDA to take part in the NESA.

The objective of the Fit and Proper Person Criteria is to ensure that all relevant persons, at a minimum, have a strong financial standing, are fully committed and capable entities, possess integrity and credibility, do not raise significant reputational concerns, and do not raise public interest concerns before they are allowed to participate in the NESA.

Since relevant persons are companies incorporated under the Companies Act (Cap. 50), it is also relevant and appropriate for IDA's assessment of their fitness

and propriety, to make reference to the conduct and character of their associates and key responsible persons. IDA considers that such associates and key responsible persons should possess the requisite qualities, and competencies, in order to ensure that the relevant person will be willing and able to fully comply with all of its regulatory and licensing obligations.

In particular, each associate and key responsible person of a relevant person must be assessed by IDA to possess and consistently demonstrate the following qualities in order to meet these Fit and Proper Person Criteria:

- (a) Good character, i.e. personal integrity, credibility, reliability, reputation;
- (b) Competence, capability, soundness of judgment, diligence in his/her discharge of responsibilities; and
- (c) Financial soundness.

As the particular circumstances of each relevant person differ, and the various roles or positions of its associates and/or key responsible persons entail different responsibilities, the relative emphasis and extent of application of these Fit and Proper Person may vary. IDA will look to the substance of each requirement in these Fit and Proper Person Criteria, and the materiality of a failure in meeting any specific criterion.

Without prejudice to the generality of Sections 2.2.3(e) and (f), and Section 9.2.4(d) of the Auction Rules, IDA shall be entitled to consider on a case by case basis, and shall have sole and absolute discretion in determining, whether a relevant person, and/or any of its associates and key responsible persons, fulfil these Fit and Proper Person Criteria. In doing so, IDA may take into account such factors and/or circumstances as IDA considers relevant to its assessment, including the extent or degree to which a relevant person, and/or any of its associates or key responsible persons, may have failed to satisfy any particular criterion, as well as the weight to be accorded to any such findings.

Without limitation, IDA may take into account the following considerations in applying the Fit and Proper Person Criteria:

- (a) The seriousness of, and the surrounding circumstances resulting in, the relevant person and/or any of its associates or key responsible persons not meeting the specific criterion, and its or their impact;
- (b) The nature and context of the relevant person, and/or any of its associates or key responsible persons' conduct in any contravention or finding; and
- (c) The degree of involvement of the relevant person, and/or any of its associates or key responsible persons, in any contravention or finding.

The onus is on each relevant person to establish that it, and each of its associates and key responsible persons, is a fit and proper person, rather than for IDA to show

otherwise.

The Fit and Proper Person Criteria are not discrete or mutually exclusive requirements. Instead, they shall be read in conjunction with each other and holistically, in order to give full effect to the spirit and intent of the criteria.

Further elaboration of the Fit and Proper Person Criteria, which is not meant to be comprehensive or exhaustive, is set out as follows:

(1) Reputation, track record, and ability to carry on regulated activities with integrity, credibility and reliability

IDA will consider all relevant factors, including:

A. *In the case of a relevant person or associate (which is a non-natural person) exercising significant influence over a relevant person:*

- (a) has been refused the right or restricted in its right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law in any jurisdiction;
- (b) has been prohibited or refused a licence by IDA, or has been prohibited from operating in any jurisdiction by any telecommunications regulatory authority;
- (c) has been the subject of any investigations or been censured, disciplined, has had its licence suspended or cancelled or subject to any other regulatory enforcement action, including but not limited to financial penalties by IDA, or any other regulatory authority, professional body or government agency, whether in Singapore or elsewhere, especially where such investigations, censure, disciplinary and/or enforcement action involved some element of dishonesty or fraud;
- (d) has been the subject of any investigation or proceeding of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction; or been issued a warning or reprimand by IDA or any other regulatory authority, professional body or government agency, whether in Singapore or elsewhere, especially where such investigation, proceeding, warning or reprimand involved some element of dishonesty or fraud;
- (e) has submitted or provided false, inaccurate or misleading information to IDA, or has not acted in good faith in any dealings with IDA or any other regulatory authority in any jurisdiction;
- (f) has had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;

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- (g) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction;
 - (h) has failed to demonstrate a willingness or ability to comply with any regulatory obligations pursuant to any Acts, subsidiary legislation, or other regulatory requirements, in letter or in spirit, whether in Singapore or elsewhere that gives IDA reason to believe that it is not fully capable of or committed to fulfilling its regulatory obligations;
 - (i) whether the relevant person's shareholding, associates or affiliates (as defined in the Code of Practice for Competition in the Provision of Telecommunication Services ("**Telecom Competition Code**")), whether in Singapore or elsewhere, would give rise to concerns of anti-competitive preferences set out in Section 8.3 of the Telecom Competition Code;
 - (j) has any key responsible persons who fail to meet the Fit and Proper Criteria set out in Section B below;
 - (k) has failed to demonstrate that it is competent to perform the regulated activities efficiently and effectively; and/or
 - (l) may, with its participation in the NESAs, raise any security or public interest concerns and/or other factors which could be contrary to the public interest.

B. In the case of a key responsible person:

- (a) has failed to demonstrate a willingness or ability to comply with any regulatory obligations pursuant to any Acts, subsidiary legislation, or other regulatory requirements, in letter or in spirit, or to uphold any professional and ethical standards, whether in Singapore or elsewhere that gives IDA reason to believe that he is not fully capable of or committed to fulfilling regulatory obligations;
- (b) has acted dishonestly or fraudulently, or not been truthful in any dealings with customers, auditors and/or other contracting parties to whom legal obligations are owed;
- (c) has not been truthful in any dealings with, or provided false, inaccurate or misleading information to, or not acted in good faith in any dealings with, IDA or any other regulatory authority in any jurisdiction;
- (d) has been convicted of any offence, or is being subject to any criminal investigation or pending proceeding which may lead to such a conviction, under any law in any jurisdiction;
- (e) is or has been a director, partner, substantial shareholder or concerned in the management of a business, that has been censured, disciplined, prosecuted or convicted of a criminal offence, or been the subject of any

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- disciplinary or criminal investigation or proceeding, in Singapore or elsewhere, in relation to any matter that took place while the person was a director, partner, substantial shareholder or concerned in the management of the business, especially where such censure, disciplinary action, prosecution, conviction, investigation and/or proceeding involved some element of dishonesty or fraud;
- (f) is or has been a director, partner, substantial shareholder or concerned in the management of a business that is or has been contravening or has contravened any Acts, any regulations or any regulatory obligations such as those pursuant to directions or codes of practice issued by IDA, and/or licence conditions, especially where such contravention involved some element of dishonesty or fraud;
 - (g) is or has been a director, partner, substantial shareholder or concerned in the management of a business that has been suspended or refused a licence or has had its licence cancelled by IDA, any other regulatory authority, any professional body or government agency, whether in Singapore or elsewhere;
 - (h) is or has been a director, partner, substantial shareholder or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, the person was a director, partner, substantial shareholder or concerned in the management of the business, whether in Singapore or elsewhere;
 - (i) is or has been a director, partner, substantial shareholder or concerned in the management of a business that has not met substantial obligations to investors;
 - (j) has been dismissed or asked to resign from:
 - (i) office;
 - (ii) employment;
 - (iii) a position of trust; or
 - (iv) a fiduciary appointment or similar position,whether in Singapore or elsewhere;
 - (k) is or has been subject to disciplinary proceedings by his current or former employer(s), whether in Singapore or elsewhere;
 - (l) has been disqualified from acting as a director or disqualified from acting in any managerial capacity, whether in Singapore or elsewhere;
 - (m) has been an officer found liable for an offence committed by a body
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corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, whether in Singapore or elsewhere; and/or

- (n) may, with his participation in the NESA, raise any security or public interest concerns and/or other factors which could be contrary to the public interest.

(2) Competence and Capability

IDA will consider all relevant factors, including:

A. *In the case of a relevant person or associate (which is a non-natural person) exercising significant influence over a relevant person:*

- (a) has not had satisfactory past performance or expertise, having regard to the nature of the relevant person's business and duties, whether in Singapore or elsewhere;
- (b) lacks relevant personnel, sufficient resources and/or adequate commitment to Singapore, including the composition of the board and management team and the shareholding, to be able to fulfil any of its regulatory and/or legal obligations; and/or
- (c) lacks the requisite management skills, competencies, operational experience, and/or technical knowledge or ability pertaining to the Singapore telecommunication market, specifically in the running and provisioning of telecommunication systems and/or services, including the provisioning of retail telecommunication services to consumers in Singapore.

B. *In the case of a key responsible person:*

- (a) is an individual who is assuming concurrent responsibilities, where such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his duties in relation to any activity regulated by IDA.; and/or
- (b) lacks the requisite management skills, competencies, knowledge, expertise, qualifications and/or experience or abilities pertaining to the Singapore telecommunication market, having regard to the nature of the duties he is required to perform, specifically in the running and provisioning of telecommunication systems and/or services, including the provisioning of retail telecommunication services to consumers in Singapore.

(3) Financial Soundness

IDA will consider all relevant factors, including:

A. *In the case of a relevant person or associate (which is a non-natural person) exercising significant influence over a relevant person:*

- (a) is or has been unable to fulfil any of its financial obligations or capital requirements, whether in Singapore or elsewhere;
- (b) has entered into a compromise or scheme of arrangement with its creditors or made an assignment for the benefit of its creditors, being a compromise or

scheme of arrangement or assignment that is still in operation, whether in Singapore or elsewhere;

- (c) is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in Singapore or elsewhere;
- (d) is or has been the subject of a winding up petition, whether in Singapore or elsewhere;
- (e) is in the course of being wound-up or otherwise dissolved, whether in Singapore or elsewhere; and/or
- (f) is or has been a corporation where a receiver, receiver and manager, judicial manager, or such other person having the powers and duties of a receiver, receiver and manager, or judicial manager, has been appointed, in relation to, or in respect of any property of, the corporation, whether in Singapore or elsewhere.

B. *In the case of a key responsible person:*

- (a) is or has been unable to fulfil any financial obligations or capital requirements, whether in Singapore or elsewhere;
- (b) has entered into a compromise or scheme of arrangement with creditors or made an assignment for the benefit of creditors, being a compromise or scheme of arrangement or assignment that is still in operation, whether in Singapore or elsewhere;
- (c) is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in Singapore or elsewhere;
- (d) has been adjudicated a bankrupt and the bankruptcy is undischarged, is currently subject to bankruptcy proceedings, or is a bankrupt who has been discharged, whether in Singapore or elsewhere; and/or
- (e) is subject to receivership or other similar proceedings.