

**POSTAL SERVICES ACT
(CHAPTER 237A)**

POSTAL COMPETITION CODE 2017

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In exercise of the powers conferred by sections 24(1) and 26C of the *Postal Services Act* (Cap. 237A), the Info-communications Media Development Authority hereby issues the following Code of Practice:

1 PRELIMINARY

1.1 Citation and Commencement

1.1.1 This Code may be cited as the Postal Competition Code 2017 and shall come into operation on 9 June 2017.

1.2 Goals of this Code

This Code is intended to:

- (a) ensure that Basic Letter Services are reasonably accessible to all people in Singapore, and are supplied as efficiently and economically as practicable, and at performance standards that reasonably meet the social, industrial and commercial needs of Singapore;
- (b) promote the efficiency and competitiveness of the postal industry in Singapore;
- (c) promote and maintain fair and efficient market conduct between parties engaged in commercial activities connected with the provision of Basic Letter Services in Singapore; and
- (d) encourage, facilitate and promote industry self-regulation in the postal industry in Singapore.

1.3 Legal Effect of this Code

Every entity to which IMDA grants a licence under section 6 of the Act for the provision of a Basic Letter Service in Singapore must comply with the applicable provisions of this Code. Without prejudice to the foregoing, sections 3.4 and 5 of this Code apply to all such entities when they provide a Basic Letter Service and a Direct Mail Service for Direct Mail of up to 500 grams in weight. Section 8 of this Code describes the obligations of Acquiring Parties and Designated Postal Licensees under Part IVA of the Act and the Regulations, and includes, among other things, the procedures to be used and information to be submitted when notifying IMDA or seeking IMDA's approval as required under section 26B of the Act. Acquiring Parties and Designated Postal Licensees must at all times comply with Part IVA of the Act and the Regulations.

1.4 Regulatory Principles

The following regulatory principles provide the foundation for this Code, and will guide IMDA's implementation of its provisions:

1.4.1 Maintaining Integrity of the Postal System

IMDA will seek to preserve public confidence in the postal system by ensuring that Licensees take effective measures to keep mail safe and secure.

1.4.2 Reliance on Market Forces

Market forces are generally far more effective than regulation in

promoting consumer welfare. Competitive markets are most likely to provide consumers with a wide choice of services at just and reasonable prices. Therefore, to the extent that any Basic Letter Services market is competitive, IMDA will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct.

1.4.3 Promotion of Effective and Sustainable Competition

Recognising the effectiveness of market forces in promoting consumer welfare, IMDA will take appropriate measures to promote and maintain effective and sustainable competition to the extent possible. Such measures will include:

- (a) removing or minimising any unnecessary regulatory impediment to entry into and exit from any Basic Letter Services market;
- (b) curtailing any concentration of Significant Market Power that has, or may have, the effect of unreasonably restricting competition in any Basic Letter Services market;
- (c) deterring and remedying any anti-competitive behaviour by industry participants in any Basic Letter Services market;
- (d) ensuring that industry participants and consumers have easy access to information regarding market conditions in any Basic Letter Services market; and
- (e) ensuring that Licensees have reasonable access to postal network services, where necessary, to allow competitive provision of any Basic Letter Service.

1.4.4 Proportionate Regulation

To the extent that a Basic Letter Services market is not yet competitive, *ex ante* regulatory intervention is likely to remain necessary. Where this is the case, IMDA will seek to impose regulatory requirements that are carefully crafted to achieve clearly articulated results. Such requirements will be no broader than necessary to achieve IMDA's stated goals.

1.4.5 Transparent and Reasoned Decision Making

IMDA will apply the provisions of this Code in a transparent manner. IMDA will provide an opportunity for public comments in connection with material issues. Except to the extent that information submitted to IMDA

is confidential, proprietary, commercially sensitive or raises law enforcement or national security concerns, comments will be made available to the public. In arriving at its decisions, IMDA will give full consideration to the comments received. IMDA will generally make available to the public its decisions adopted pursuant to this Code, and will clearly explain the basis for its actions. IMDA will generally also make public any enforcement action taken pursuant to this Code. Where feasible and appropriate, IMDA will make available its decisions on its website (www.imda.gov.sg). IMDA will also issue guidelines, where appropriate, clarifying the standards and procedures that it will use to implement this Code.

1.4.6 Avoidance of Unnecessary Delay

IMDA will strive to make all decisions pursuant to this Code within the timeframes specified herein and, in any case, as quickly as reasonably possible.

1.4.7 Non-discrimination

IMDA's decisions will be non-discriminatory. IMDA will treat similarly situated Licensees on an equivalent basis. Where appropriate, IMDA's decisions will reflect relevant differences between Licensees or categories of Licensees.

1.4.8 Consultation with Other Regulatory Authorities

IMDA, where feasible and appropriate, will consult with other regulatory authorities in Singapore in order to facilitate the development of a consistent regulatory policy that promotes fair and effective competition and serves the public interest.

1.5 Modification and Elimination of Provisions

IMDA will modify and, where appropriate, eliminate the provisions of this Code to reflect changing market conditions. There are 2 ways in which the Code may be modified. In each case, IMDA will seek public comments prior to adopting any modification.

1.5.1 Regulatory Review

IMDA may at any time review or modify this Code on its own initiative. IMDA may modify or eliminate provisions that it determines, based on experience, and the growth and development of competition, are no longer necessary. IMDA may also make any other changes necessary to achieve

the goals of this Code.

1.5.2 Petitions for Modification or Elimination of Provisions of this Code

Licensees may petition IMDA to modify or eliminate any provision of this Code. The Licensee must specify the provisions of this Code that it seeks to have modified or eliminated, and must provide a clear statement of the reasons why the Licensee believes that such actions are justified. The Licensee may propose alternative approaches that, if adopted, would achieve IMDA's regulatory objectives in a less burdensome or more effective manner.

1.6 Exemptions, Waivers and Suspensions

- (a) Where good cause is shown, IMDA may grant exemptions from specific provisions of this Code. Such exemptions may be applied to individual Licensees or to specified categories of Licensees. An exemption may be permanent, temporary (either for a fixed period or effective until the occurrence of a specific event) or on a one-time basis. Where appropriate, IMDA may grant exemptions subject to compliance with specified conditions and may seek public comments before doing so.
- (b) IMDA may waive or suspend any provision of this Code that imposes an obligation on IMDA in any situation in which such action is necessary in the public interest.
- (c) For the avoidance of doubt, as section 8 of this Code describes certain obligations of Acquiring Parties and Designated Postal Licensees under the Regulations, IMDA may only reduce or extend the time required by the Regulations, or waive any other requirement in regulation 6 (3), 7 (5) or (6), 8 (3) or 9 (1) (a) or (b) of the Regulations, for the giving of any notice or making of any application, in accordance with regulation 11 of the Regulations.

1.7 Rules of Construction

IMDA will interpret this Code in a manner that is consistent with the ordinary meaning of the terms used. In case of any ambiguity, IMDA will interpret this Code in the manner most consistent with the regulatory principles specified in section 1.4.

1.8 Definitions

This section defines specialised terms that are used in more than one

section of this Code. Specialised terms that are used in only one section of this Code are defined within that section. In this Code, unless the context otherwise requires:

- (a) “Acquiring Party” means –
 - (i) any person, whether alone or together with its Associates, that is required to obtain IMDA’s approval under sections 26B(2), (3) or (4) of the Act; or
 - (ii) for the purposes of section 8.3, any person, whether alone or together with its Associates, that first acquires 5% or more Voting Shares or control of voting power in a Designated Postal Licensee but is not a 12% Controller or a 30% Controller of the Designated Postal Licensee;
- (b) “Act” means the *Postal Services Act* (Cap. 237A);
- (c) “Affiliate” means, in relation to a person (X), X, is an affiliate of another person, Y, if –
 - (i) X is an entity which has an attributable interest (direct or indirect) in Y of 5% or more (referred to in this paragraph as a parent);
 - (ii) Y is an entity in which X has an attributable interest (direct or indirect) of 5% or more (referred to in this paragraph as a subsidiary); or
 - (iii) X is an entity in which Y’s parent has an attributable interest (direct or indirect) of 5% or more (referred to in this paragraph as a sibling), but X will not be considered an affiliate of Y if the common parent of X and Y has only a passive ownership interest in the 2 sibling entities, such as where the parent entity does not in practice cause the subsidiary entity to take, or prevent the subsidiary entity from taking, decisions regarding the management and major operating decisions of the entity,

and any person’s attributable interest shall be determined using the “sum-the-percentages” methodology applied successively at each level of the ownership chain. For example, if the relevant person has legal or beneficial ownership of 100% of the Voting Shares of Entity A, and Entity A has legal or beneficial ownership of 50% of the Voting Shares of Entity B, and Entity B has legal or beneficial

ownership of 50% of the Voting Shares of Entity C, then the relevant person will be deemed to have a 25% attributable interest in Entity C. In this case, Entity C will be deemed to be an “Affiliate” of the relevant person. Correspondingly, where a person is said to be “affiliated” with another person, the first person is an “Affiliate” of the second person;

- (d) “Basic Letter” means a Letter, other than a Direct Mail or an Express Letter, of up to 500 grams in weight;
- (e) “Basic Letter Service” means a Postal Service for the conveyance of Basic Letters;
- (f) “Competing Licensee”, in relation to a Licensee, means another Licensee that provides, or has the potential to provide, Basic Letter Services that are the same as, or a reasonable substitute for, the Basic Letter Services provided by the Licensee;
- (g) “Customer”, in relation to a Licensee, means a person, that may or may not be another Licensee, that purchases a Basic Letter Service from the Licensee;
- (h) “Designated Postal Licensee” means a Licensee –
 - (i) which has been declared by IMDA, by notification published in the *Gazette*, to be a designated postal licensee for the purposes of Part IVA of the Act; or
 - (ii) which is within a class of Licensees which has been declared by IMDA, by notification published in the *Gazette*, to be a designated class of Licensees for the purposes of Part IVA of the Act;
- (i) “Direct Mail” means a Letter consisting solely of advertising, marketing or publicity material and comprising an identical message (except for the addressee’s name, address and identifying number, and other modifications which do not alter the nature of the message) which is sent to more than one addressee, to be conveyed and delivered at the address indicated by the Sender on the Letter itself or on its wrapping;
- (j) “Direct Mail Service” means a Postal Service for the conveyance of Direct Mail;
- (k) “Dominant Licensee” means a Licensee that IMDA has classified

as dominant, in one or more Basic Letter Services markets, pursuant to one or more of the criteria specified in section 2.2, and which is subject to the special obligations applicable to Dominant Licensees when it provides service in that market;

- (l) “Effective Control” means the ability to cause a Designated Postal Licensee to take, or prevent a Designated Postal Licensee from taking, a decision regarding the management and major operating decisions of the Designated Postal Licensee;
- (m) “Effective Date” means the date this Code comes into effect;
- (n) “Express Letter” has the same meaning as in regulation 2 of the *Postal Services (Class Licence) Regulations 2005* (G.N. No. S481/2005);
- (o) “IMDA” means the Info-communications Media Development Authority established under the *Info-communications Media Development Authority Act 2016* (Act 22 of 2016) and appointed as the Postal Authority responsible for the administration of the Act under section 3 of the Act;
- (p) “Letter” means any communication in written form on any kind of physical medium to be conveyed and delivered (otherwise than electronically) to a particular addressee or address indicated by the Sender on the Letter itself or on its wrapping, and includes a postal article containing such communication, but excludes any book, catalogue, newspaper or periodical;
- (q) “Licensee” means any entity to which IMDA has granted a licence under section 6 of the Act for the provision of a Basic Letter Service;
- (r) “Mandated Licensee” means a Licensee designated by IMDA pursuant to section 5.2;
- (s) “Mandated Service” means a service specified by IMDA pursuant to section 5.6.2;
- (t) “Network Access Agreement” means a written agreement between a Mandated Licensee and a Requesting Licensee for the provision of Mandated Services to the Requesting Licensee pursuant to section 5;
- (u) “Postal Service” means any service for the conveyance of postal

articles from one place to another by post, and includes the incidental services of receiving, collecting, sorting, sending, despatching and delivering such postal articles and any other services which relate to any of those services, and is provided in conjunction with any of them;

- (v) “Reference Access Offer” or “RAO” means a standardised offer made by a Mandated Licensee to provide Mandated Services to a Requesting Licensee pursuant to section 5.6;
- (w) “Regulations” means the *Postal Services (Control of Designated Postal Licensees) Regulations 2012*;
- (x) “Requesting Licensee” means a Licensee that requests for a Mandated Service from a Mandated Licensee;
- (y) “Sender”, in relation to a Letter, means a person whose communication it originates from;
- (z) “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;
- (aa) “Voting Share” has the same meaning as in section 4(1) of the *Companies Act (Cap. 50)*, but does not include a Treasury Share as defined in that section; and
- (ab) “Working Day” means any day other than a Saturday, a Sunday or a public holiday.

2 CLASSIFICATION OF LICENSEES

2.1 Introduction

This Code distinguishes between Licensees that are subject to competitive market forces and Licensees whose conduct is not constrained adequately by competitive market forces in any specific Basic Letter Services market. To the extent that Licensees are subject to competitive market forces, IMDA will impose minimum regulatory “rules of the road” coupled with the *ex post* enforcement of general prohibitions on anti-competitive conduct. In contrast, where IMDA concludes that a Licensee has Significant Market Power in any Basic Letter Services market and, therefore, that the Licensee’s conduct is not adequately constrained by competitive market forces, IMDA will classify the Licensee as a Dominant Licensee in that market, and will require the Licensee to comply with more

stringent regulatory requirements in that market. Section 2.2 sets out the standards and procedures that IMDA will apply in determining whether a Licensee should be classified as a Dominant Licensee in any Basic Letter Services market.

2.2 Standards and Procedures for Classifying a Licensee as a Dominant Licensee

- (a) Upon issuance of this Code, IMDA may classify a Licensee as a Dominant Licensee in all Basic Letter Services markets if prior to 1 April 2007, the Licensee enjoyed the right to provide any Basic Letter Service on an exclusive basis. In such cases, the Dominant Licensee will be subject to the special obligations applicable to Dominant Licensees in all Basic Letter Services markets until such time, if ever, as IMDA reclassifies the Licensee as non-dominant, pursuant to section 2.3, in any Basic Letter Services market in which IMDA has previously classified it as a Dominant Licensee.
- (b) At any other time, IMDA may classify a Licensee as a Dominant Licensee in a specific Basic Letter Services market if IMDA determines, based on the factors specified in section 2.5, and after providing an opportunity for public comments, that the Licensee has Significant Market Power in that market. In such cases, the Dominant Licensee will be subject to the special obligations applicable to Dominant Licensees only in that Basic Letter Services market in which IMDA has determined that the Licensee has Significant Market Power.
- (c) Where IMDA classifies a Licensee as a Dominant Licensee, IMDA will issue a notice in the *Gazette*. In doing so, IMDA will indicate the basis or bases on which it has declared the Licensee to be dominant and, where applicable, the specific market or markets in which IMDA has found the Licensee to be dominant.

2.3 Standards and Procedures for Removing a Dominant Licensee Classification

- (a) In any case in which IMDA has classified a Licensee as a Dominant Licensee in one or more Basic Letter Services markets pursuant to section 2.2, IMDA will remove the classification of a Licensee as a Dominant Licensee in a specific market if IMDA determines, based on the factors specified in section 2.5, that the Licensee no longer has Significant Market Power in that market.
- (b) IMDA may remove the classification of a Licensee as a Dominant

Licensee in a specific market under paragraph (a) either:

- (i) on its own initiative, when IMDA renews the Dominant Licensee's licence or at any other time; or
 - (ii) upon the request of the Dominant Licensee.
- (c) IMDA will not accept a request for reclassification until the Dominant Licensee has provided verifiable data to support its request. After receiving a request for reclassification, IMDA will notify the Dominant Licensee whether it must provide additional information before the request can be accepted. IMDA will notify the Dominant Licensee of the date on which it accepts the request.
- (d) IMDA will provide an opportunity for public comments before issuing a preliminary decision and a final decision granting or denying the request. In each case, IMDA will seek to issue its preliminary and final decision within 90 days from the close of public consultation. Where appropriate, IMDA may extend the time by which IMDA will issue its preliminary and final decision by providing a written notice to the Dominant Licensee before the end of each 90-day period.
- (e) Where IMDA determines that the classification of a Licensee as a Dominant Licensee should be removed, IMDA will issue a notice in the *Gazette* cancelling its earlier notice under section 2.2 (c).

2.4

Transfer of Facilities and Business by Dominant Licensees

- (a) A Dominant Licensee may not avoid the provisions of this Code which are applicable to Dominant Licensees by transferring to another entity any of the following:
- (i) ownership or operational control of facilities that IMDA has licensed the Dominant Licensee to use to provide Basic Letter Services; or
 - (ii) any business of the Dominant Licensee, as a going concern, relating to the provision of Basic Letter Services.
- (b) Where a Dominant Licensee wishes to transfer to another entity ownership or operational control of its facilities and/or its business as a going concern, the Dominant Licensee must obtain IMDA's approval prior to effecting the transfer. IMDA may approve the transfer request in full or in part, and subject the approval to any

appropriate condition that IMDA may impose (including classifying the transferee as a Dominant Licensee in all the markets in which the transferor was classified as a Dominant Licensee prior to the transfer).

- (c) Where a Dominant Licensee transfers to another entity ownership or operational control of its facilities and/or its business as a going concern, without first obtaining IMDA's approval, in addition to the enforcement measures that IMDA may take against the Dominant Licensee for contravention of this Code, the transferee will be required to comply with the provisions applicable to Dominant Licensees under this Code in relation to the transferred facilities and/or business.

2.5 Determining a Licensee's Ability to Exercise Significant Market Power

IMDA will determine whether a Licensee has the ability to exercise Significant Market Power in a market as follows:

- (a) IMDA will first determine the relevant product or service, geographic and functional market or markets in which the Licensee participates.
- (b) For each relevant market, IMDA will conduct a competitiveness assessment by:
 - (i) determining the market participants and their market shares;
 - (ii) considering other factors that would increase or decrease the ability of the Licensee to act anti-competitively; and
 - (iii) considering evidence of actual market performance.

2.6 Exemption from Dominant Licensee Provisions

- (a) A Dominant Licensee that seeks exemption from any provision of this Code specifically applicable to Dominant Licensees must submit an application to IMDA that identifies:
 - (i) the specific provisions of this Code (with section numbers) from which the Dominant Licensee seeks exemption; and
 - (ii) the specific Basic Letter Services market or markets in which the Dominant Licensee seeks exemption.

- (b) The Dominant Licensee must demonstrate that the continued application of the provision to the Basic Letter Service is not necessary to protect Customers that use the service to send their own Letters or to promote and preserve effective competition among Licensees.
- (c) IMDA will notify the Dominant Licensee of the date on which it accepts the request.
- (d) IMDA will provide an opportunity for public comments before issuing a preliminary decision and a final decision granting or denying the request. In each case, IMDA will seek to issue its preliminary and final decision within 90 days from the close of public consultation. Where appropriate, IMDA may extend the time by which IMDA will issue its preliminary and final decision by providing a written notice to the Dominant Licensee before the end of each 90-day period.
- (e) IMDA may grant the request in full or in part, and subject to any appropriate condition that IMDA may impose.
- (f) Where IMDA grants a Dominant Licensee an exemption under section 2.6, IMDA will issue a notice in the *Gazette* specifying the Basic Letter Services market or markets and provisions of the Code to which the exemption applies.

3 DUTY OF LICENSEES TO THEIR CUSTOMERS

3.1 Introduction

All Licensees must comply with the following obligations when providing any Basic Letter Service, and in addition, comply with the obligations set out in section 3.4 when providing any Direct Mail Service.

3.2 Duty to Comply With IMDA's Quality of Service Standards

Licensees must comply with any minimum quality of service standards applicable to Basic Letter Services issued by IMDA. However, a Licensee and a Customer may agree to a lower quality of service standard. In such cases, the Licensee must clearly inform the Customer of the service level that it will provide and the fact that it is different from IMDA's minimum quality of service standards.

3.3 Duty to Disclose Prices, Terms and Conditions

Prior to providing any Basic Letter Service to a Customer, a Licensee must disclose to that Customer the prices, terms and conditions (including quality of service) on which the Licensee provides the service. The Licensee may fulfil this duty by publishing, in a form available to the public, the prices, terms and conditions of that Basic Letter Service no later than the day on which the Licensee begins to provide the service. The information must be in a manner that is readily available, current and easy-to-understand.

3.4 Duty to Prevent Unauthorised Use of End User Service Information

Licensees must take reasonable measures to prevent the unauthorised use of End User Service Information ("EUSI").

For the purposes of section 3.4, in relation to a Basic Letter and/or a Direct Mail, "Recipient" means a person who is the addressee of the communication; and "Sender" means a person whose communication it originates from.

3.4.1 Definition of EUSI

EUSI consists of all information relating to a Sender or Recipient that a Licensee obtains as a result of a Sender's use of a Basic Letter Service and/or a Direct Mail Service provided by the Licensee and/or a Recipient's receipt of Basic Letters and/or Direct Mail delivered by the Licensee. This includes, but is not limited to, information regarding:

- (a) the Sender's usage patterns (including, without limitation, frequency of use, the profile of Recipients of its Basic Letters and/or Direct Mail, etc.);
- (b) the Sender's name and address;
- (c) the source and frequency of Basic Letters and/or Direct Mail delivered to the Recipient; and
- (d) the Recipient's name and address.

3.4.2 Prohibition on Unauthorised Use

- (a) A Licensee must adopt appropriate procedures to ensure that, unless the Sender or Recipient (as the case may be) has provided prior consent, the Licensee will not use EUSI for any purpose other than providing assistance to law enforcement, judicial or other government agencies.
- (b) The Licensee must further ensure that, unless the Sender or Recipient (as the case may be) has provided consent, the Licensee will not provide EUSI to any third party (including its Affiliates).

4 DUTY OF DOMINANT LICENSEES TO PROVIDE BASIC LETTER SERVICES ON JUST, REASONABLE AND NON-DISCRIMINATORY TERMS

4.1 Introduction

To the extent that Licensees are not subject to competitive market forces in any Basic Letter Services market, regulatory intervention is necessary to ensure that Licensees provide such service on just, reasonable and non-discriminatory prices, terms and conditions. Section 4 sets out the requirements with which a Licensee must comply in any market in which IMDA classifies it as a Dominant Licensee. Section 4 also establishes a tariff filing, review and publication regime designed to ensure compliance.

4.2 Duties Applicable to the Provision of Basic Letter Services

The following duties are applicable to the provision of Basic Letter Services by a Dominant Licensee:

4.2.1 Duty to Provide Services at Just and Reasonable Prices, Terms and Conditions

A Licensee that has been classified as a Dominant Licensee in a Basic Letter Services market must provide such service in that market to Customers at prices, terms and conditions that are just and reasonable.

4.2.2 Duty to Provide Services on a Non-discriminatory Basis

- (a) A Licensee that has been classified as a Dominant Licensee in a Basic Letter Services market:
 - (i) must provide such Basic Letter Service in that market to Customers at prices, terms and conditions that are not discriminatory; and
 - (ii) must not discriminate in favour of itself or any Affiliate in the provision of such Basic Letter Service in that market.
- (b) This duty to provide Basic Letter Services on a non-discriminatory basis requires that except where otherwise permitted or required by IMDA, differences in the prices, terms and conditions for comparable Basic Letter Services must be based on objective differences, such as, but not limited to, variations in the cost of the service provided, variations in the quantity or quality of service provided or variations in the duration of the service agreement

period.

4.2.3 Duty to Provide Services on an Unbundled Basis

A Licensee that has been classified as a Dominant Licensee in a Basic Letter Services market must provide the Basic Letter Service in that market on an unbundled basis. Specifically, the Dominant Licensee must not require that, as a condition for purchasing such a Basic Letter Service, a Customer must also purchase any other Postal Service or non-postal service or equipment. However, the Dominant Licensee may offer Customers the option of purchasing a package that contains multiple Postal Services and non-postal services or equipment.

4.3 Wholesale Services

Unless directed to do so by IMDA, a Licensee that has been classified as a Dominant Licensee in a Basic Letter Services market is not required to offer any Basic Letter Service to other Licensees on a wholesale basis. If Dominant Licensee chooses to offer a Basic Letter Service on a wholesale basis, however, the Dominant Licensee:

- (a) must offer the wholesale service at prices, terms and conditions that are just, reasonable and non-discriminatory;
- (b) must not restrict the ability of another Licensee to the wholesale service as an input to provide another service; and
- (c) must not require such Licensee to disclose that it is using the Dominant Licensee's wholesale service as an input into any service that the Licensee provides to its Customers.

4.4 Tariffing

4.4.1 Services for Which A Dominant Licensee Must File Tariffs

A Licensee that has been classified as a Dominant Licensee in a Basic Letter Services market must:

- (a) file a tariff with IMDA and obtain IMDA's written approval prior to offering, or modifying the terms on which it offers, any Basic Letter Service that it provides in that market, including services designed for specific Customers; and
- (b) obtain IMDA's written approval prior to withdrawing the Basic Letter Service that it provides pursuant to an effective tariff.

4.4.2 Tariff Filing and Review

IMDA will use the following process to review a proposed tariff:

4.4.2.1 Information to be Included

Any proposed tariff must:

- (a) fully and clearly describe the Basic Letter Service to be offered;
- (b) contain a clear statement of the prices, terms and conditions (including any eligibility requirements) on which the Dominant Licensee offers to provide the Basic Letter Service;
- (c) list any discounts or special considerations that the Dominant Licensee will offer and the requirements that must be satisfied (such as minimum volume or term requirements) to obtain those discounts;
- (d) list the minimum period of time during which the Basic Letter Service will be available and the minimum period of time, if any, during which the Dominant Licensee will not increase the filed rates;
- (e) be self-contained and must include charges for any good or service not generally subject to tariff regulation when offered as part of a package; and
- (f) be accompanied by a memorandum that describes the proposed offering or modification and provides sufficient information to demonstrate that the proposed offering or modification satisfies the relevant criteria specified in section 4.4.2.2.

4.4.2.2 Review Criteria

In assessing whether a proposed tariff is just and reasonable, IMDA will apply the following criteria:

- (a) In the case of a tariff for a Basic Letter Service other than a wholesale Basic Letter Service, IMDA will assess whether the prices, terms and conditions are either excessive or inadequate. To assess whether the prices are excessive, IMDA will determine whether the prices are competitive with those in a “basket” of benchmark jurisdictions determined by IMDA. To determine

whether the prices are inadequate, IMDA will assess whether the prices are either above average incremental cost or not less than those offered by Licensees that provide a comparable service. IMDA will also seek to determine whether the prices, terms and conditions are not discriminatory by comparing the prices, terms and conditions to those that the Dominant Licensee offers in other tariffs for comparable services. In cases in which IMDA determines that a Basic Letter Service has a widespread public impact, IMDA may also consider other relevant factors.

- (b) In the case of a tariff for a wholesale Basic Letter Service offered under section 4.3, IMDA will seek to determine whether the prices, terms and conditions are no less favourable than the prices, terms and conditions on which the Dominant Licensee offers any comparable service to its Customers.

4.4.2.3 Review Procedures

In general, within 10 Working Days of receiving a proposed tariff, IMDA will either accept or reject the proposed tariff. If IMDA rejects the proposed tariff, it will provide a statement of the basis for its rejection. Where IMDA determines that it would be appropriate, it may take any of the following actions:

- (a) extend the review period;
- (b) seek additional information from the Dominant Licensee (including inspecting the accounts and other documents of the Dominant Licensee);
- (c) conduct an audit on the Dominant Licensee;
- (d) seek public comments;
- (e) allow the proposed tariff to go into effect on an interim basis, subject to retroactive adjustment if IMDA concludes that any price, term or condition in the tariff contravenes this Code; and/or
- (f) allow the proposed tariff to go into effect, subject to the Dominant Licensee's acceptance of specific conditions that IMDA may impose.

4.5 Duty to Publish Tariffs

The Dominant Licensee must disclose, by publishing on its website, the

effective tariff no later than the date on which it begins to provide the service described in the tariff. Where the Dominant Licensee has obtained IMDA's approval to modify the tariff for an existing service, it must make the required publication no later than the date on which the modification becomes effective. The information must, at a minimum, include a service description, prices (including any discount structures), service availability and eligibility requirements.

4.6 Duty to Provide Services Consistent With Effective Tariffs

- (a) Dominant Licensees must provide Basic Letter Services on the prices, terms and conditions specified in the applicable effective tariffs.
- (b) In any case in which IMDA allows a proposed tariff to go into effect, and a Dominant Licensee subsequently enters into an agreement on terms that differ from those in its effective tariff, IMDA may:
 - (i) take enforcement action against the Dominant Licensee under section 9;
 - (ii) direct the Dominant Licensee to amend its agreement to comply with the prices, terms and conditions in its effective tariff; and/or
 - (iii) direct the Dominant Licensee to file a new tariff embodying the terms of the agreement.
- (c) In any case in which a Dominant Licensee enters into an agreement based on the terms of an effective tariff, and IMDA subsequently allows (or directs) the Dominant Licensee to modify the terms of such tariff, the Dominant Licensee must amend the agreement to be consistent with the modified tariff.

4.7 Review of Effective Tariffs

Once IMDA allows a tariff to go into effect, IMDA will presume that the prices, terms and conditions are just, reasonable and non-discriminatory. IMDA may review the effective tariff periodically to determine whether the prices, terms and conditions remain just, reasonable and non-discriminatory, and may direct the Dominant Licensee to make appropriate modifications. In addition, any person that believes that the prices, terms and conditions on which a Dominant Licensee is providing Basic Letter Services pursuant to an effective tariff are unjust, unreasonable or

discriminatory may petition IMDA to review those provisions. The petitioner must provide the basis for its belief. IMDA may also take enforcement action if it concludes that an effective tariff, or the Dominant Licensee's implementation of an effective tariff, contravenes any provision of this Code.

4.8 Transitional Provisions

4.8.1 Existing Effective Tariffs

- (a) All existing effective tariffs filed by any Dominant Licensee before the date this Code comes into effect will remain in effect until such time as the Dominant Licensee modifies or withdraws the tariff, or IMDA directs the Dominant Licensee to modify or withdraw the tariff. Notwithstanding that these pre-Code tariffs remain effective, IMDA may review these tariffs at any time to determine whether the prices, terms and conditions are just, reasonable and non-discriminatory and in accordance with the requirements of this Code.
- (b) Within 90 days of the date this Code comes into effect, all Dominant Licensees must publish on their websites all existing tariffs that are in effect. The information published must comply with the requirements of section 4.5. Where IMDA has directed the Dominant Licensee to review a tariff, the Dominant Licensee shall publish the tariff at such time as specified by IMDA upon completion of the tariff review.

5

PROVISION OF MANDATED SERVICES

5.1

Introduction and Definition of Individualised Access Agreement

- (a) In certain cases, a Licensee may control facilities that are required as an input for the provision of a Basic Letter Service and/or Direct Mail Service, and replicating the facilities, or obtaining the use of such facilities through other means, is infeasible or sufficiently costly or difficult that requiring other Licensees to do so would create a significant barrier to entry into a Basic Letter Service and/or Direct Mail Service market by an efficient competitor. In appropriate cases, IMDA may designate a Licensee that controls such facilities as a Mandated Licensee, and may require the Mandated Licensee to provide access to such inputs to other Licensees as a Mandated Service. The initial list of Mandated Services is set out in the Appendix to this Code.
- (b) A Requesting Licensee may only obtain a Mandated Service in order to provide any Basic Letter Service and/or Direct Mail Service (for Direct Mail of up to 500 grams in weight) to recipients in Singapore including the domestic delivery of inbound international Basic Letters and/or Direct Mail (of up to 500 grams in weight). Requesting Licensees may obtain such Mandated Service by entering into a Network Access Agreement with the Mandated Licensee. To facilitate this process, IMDA will require the Mandated Licensee to adopt a Reference Access Offer that specifies the prices, terms and conditions on which the Mandated Licensee will offer to provide the Mandated Service. IMDA will also establish procedures to resolve disputes where a Requesting Licensee seeks to negotiate an Individualised Access Agreement with the Mandated Licensee.
- (c) To the extent that section 5 and the Appendix to this Code create rights and obligations applicable to services used to provide domestic delivery of Direct Mail Services, these rights and obligations apply only to Direct Mail of up to 500 grams in weight. As such, any reference to Direct Mail Services or Direct Mail in section 5 and the Appendix to this Code is a reference to Direct Mail of up to 500 grams in weight.
- (d) In section 5, unless the context otherwise requires, “Individualised Access Agreement” means a Network Access Agreement negotiated on an individualised basis between a particular Requesting Licensee and a particular Mandated Licensee.

5.2 Standards and Procedures for Classifying a Licensee as a Mandated Licensee

- (a) IMDA will classify a Licensee as a Mandated Licensee where IMDA determines, and after providing an opportunity for public comments, that the Licensee has control over any facility:
 - (i) that is required as an input for the provision of a Basic Letter Service and/or Direct Mail Service; and
 - (ii) that replicating the facility, or obtaining the use of such facility through other means, is infeasible or sufficiently costly or difficult that requiring other Licensees to do so would create a significant barrier to entry into such Basic Letter Service and/or Direct Mail Service market by an efficient competitor.
- (b) Where IMDA classifies a Licensee as a Mandated Licensee, IMDA will issue a notice in the *Gazette* which Licensee has been classified as a Mandated Licensee and the list of Mandated Services to be provided by this Mandated Licensee.

5.3 Standards and Procedures for Removing the Classification of a Licensee as a Mandated Licensee

- (a) In any case in which IMDA has classified a Licensee as a Mandated Licensee pursuant to section 5.2, IMDA will remove the classification of a Licensee as a Mandated Licensee, if IMDA determines, based on the factors specified in section 5.2, that the Licensee no longer satisfies the criteria for classification as a Mandated Licensee.
- (b) IMDA may remove the classification of a Licensee as a Mandated Licensee either:
 - (i) on IMDA's own initiative, when IMDA renews the Licensee's licence or at any other time; or
 - (ii) upon the request of the Mandated Licensee.
- (c) IMDA will seek public comments when reviewing whether to remove the classification of a Licensee as a Mandated Licensee.
- (d) Where IMDA determines that the classification of a Licensee as a Mandated Licensee should be removed, IMDA will issue a notice

in the *Gazette* revoking its earlier notice issued under section 5.2 (b).

5.4 Licensees Entitled to Enter into a Network Access Agreement

Any Licensee may enter into a Network Access Agreement with a Mandated Licensee, pursuant to which the Licensee may obtain any Mandated Service for the provision of any domestic Basic Letter Service and/or Direct Mail Service to recipients in Singapore, including domestic delivery of inbound international Basic Letters and/or Direct Mail.

5.5 Options for Entering into a Network Access Agreement

A Requesting Licensee may obtain any Mandated Service from a Mandated Licensee using either of the following 2 options:

5.5.1 Option 1: Network Access Pursuant to an Approved Reference Access Offer

A Requesting Licensee may obtain any Mandated Service from a Mandated Licensee on the terms specified in a RAO developed by the Mandated Licensee and approved by IMDA.

5.5.2 Option 2: Network Access Pursuant to an Individualised Access Agreement

A Requesting Licensee may obtain any Mandated Service by entering into an Individualised Access Agreement with a Mandated Licensee. Such agreements may be arrived at through voluntary negotiations or via the dispute resolution process specified in sections 5.7.2 through 5.7.2.3.

5.6 The Reference Access Offer

The following provisions govern a Mandated Licensee's RAO:

5.6.1 Duty to Develop and Modify a Reference Access Offer

Within 30 days of being directed to do so by IMDA, a Mandated Licensee must submit a proposed RAO to IMDA for approval.

5.6.2 Services That Must be Offered under the Reference Access Offer

- (a) In its RAO, the Mandated Licensee must offer the Mandated Services specified in the Appendix to this Code. The RAO must incorporate any requirements (including any prices, terms and

conditions) that IMDA specifies in the Appendix to this Code.

- (b) IMDA will require the Mandated Licensee to offer access to inputs as a Mandated Service where IMDA concludes that:
 - (i) the input is necessary for the provision of any Basic Letter Service and/or Direct Mail Service to recipients in Singapore, including the domestic delivery of inbound international Basic Letters and/or Direct Mail; and
 - (ii) providing the input is infeasible or sufficiently costly or difficult such that requiring other Licensees to do so would create a significant barrier to the provision of any Basic Letter Service and/or Direct Mail Service to recipients in Singapore by an efficient competitor.
- (c) IMDA will require the Mandated Licensee, at the minimum, to:
 - (i) provide Mandated Services to Requesting Licensees on prices, terms and conditions that are mandated, or approved, by IMDA;
 - (ii) provide Mandated Services efficiently and without unreasonable delay; and
 - (iii) deliver a Requesting Licensee's Basic Letters and Direct Mail to any valid address within Singapore specified by the Sender.
- (d) IMDA may, at any appropriate time, review and revise the list of Mandated Services, and their applicable requirements (including prices, terms and conditions), in the Appendix to this Code. In each case, IMDA will seek public comments prior to adopting any modification.

5.6.3 Requirements of Reference Access Offer

The RAO must comply with the following requirements:

5.6.3.1 Reference Access Offer Must be Clear, Complete and Modular

- (a) The RAO must:
 - (i) contain a comprehensive and complete written statement of the prices, terms and conditions on which the Mandated

Licensee is prepared to provide Mandated Services to any Requesting Licensee (including a complete technical description of the Mandated Services offered, the procedures that will be used to order and provide such services, and the timeframes that will apply);

- (ii) be clearly written and organised in a logical and consistent manner;
 - (iii) be modular, allowing a Requesting Licensee to purchase only those Mandated Services that it wants to obtain; and
 - (iv) be sufficiently detailed to enable a Requesting Licensee that is willing to accept its prices, terms and conditions to obtain Mandated Services without having to engage in negotiations with the Mandated Licensee.
- (b) If a Requesting Licensee accepts the RAO, further discussions will be limited to implementing the accepted prices, terms and conditions. Such discussions should last no more than 30 days.

5.6.3.2 Additional Required Terms

The RAO must contain the following:

- (a) a description of the quality of service that the Mandated Licensee will provide and the amount and manner in which the Requesting Licensee will be compensated for any failure by the Mandated Licensee to meet the quality of service standards;
- (b) a list and description of any reasonable restrictions or conditions that the Mandated Licensee intends to impose on the terms of the offer contained in the RAO – including any situation in which operational constraints will limit the ability of the Mandated Licensee to meet requests for Mandated Services, and any situation in which a Mandated Licensee will not offer (or will limit or condition an offer of) network access to a Requesting Licensee or class of Requesting Licensees;
- (c) a provision stating that the Mandated Licensee and the Requesting Licensee will refer disputes regarding network access arising from the implementation of the Network Access Agreement to IMDA for resolution and will seek IMDA’s written approval before unilaterally suspending or terminating the Network Access Agreement; and

- (d) statements that:
 - (i) if the RAO is accepted, the Network Access Agreement will constitute the entire agreement between the Mandated Licensee and the Requesting Licensee;
 - (ii) if any provision of the Network Access Agreement is held to be unlawful or is required to be amended, all other provisions of the agreement will survive;
 - (iii) the RAO will be governed by the laws of Singapore; and
 - (iv) the Mandated Licensee will not unreasonably withhold consent from a Requesting Licensee seeking to assign its rights and obligations to another Licensee.

5.6.4 Pricing of Mandated Services

Where a Mandated Licensee is required by IMDA to provide a Mandated Service pursuant to its RAO, the Mandated Licensee must offer the Mandated Service at a price that reflects the methodology specified by IMDA. Unless IMDA specifies otherwise, IMDA will require the Mandated Licensee to offer a Mandated Service at a price that reflects the Mandated Licensee's standard retail price for the most analogous retail service minus any avoidable costs resulting from offering the service in the manner specified by IMDA.

5.6.5 Modification and Duration of Reference Access Offer Agreement

The RAO must provide that:

- (a) unless IMDA authorises the Mandated Licensee to withdraw its RAO and terminate any Network Access Agreement adopted pursuant to its RAO, any Network Access Agreement arrived at by accepting the RAO shall be effective for such period as the Mandated Licensee is required to offer the RAO to Requesting Licensees; and
- (b) the prices, terms and conditions contained in any Network Access Agreement arrived at by accepting the RAO will be effective for the duration of the Network Access Agreement unless one of the following occurs:
 - (i) the Mandated Licensee and Requesting Licensee agree to

modify their Network Access Agreement. In this case, the parties' Network Access Agreement will be treated as an Individualised Access Agreement. The Agreement may not go into effect until approved by IMDA, pursuant to section 5.7.1 (a); or

- (ii) IMDA directs the Mandated Licensee to modify any provision of its RAO, or approves a modification proposed by the Mandated Licensee. In this case, the Mandated Licensee and the Requesting Licensee must amend the Network Access Agreement to conform to the modifications in the RAO.

5.6.6 IMDA Review of the Proposed RAO

- (a) IMDA will review the proposed RAO to determine whether it satisfies the requirements specified in sections 5.6.2 through 5.6.5 and the Appendix to this Code. IMDA will promptly seek public comments regarding the proposed RAO. Within 30 days from the date of the close of consultation on the proposed RAO, IMDA will notify the Mandated Licensee of its approval or rejection of the proposed RAO, or that IMDA requires additional time for its review.
- (b) If IMDA rejects any portion of the proposed RAO, it will provide the Mandated Licensee with a written explanation of the basis for the rejection and the modifications required to bring the proposed RAO into compliance with IMDA's requirements. The Mandated Licensee will have 30 days from the date on which IMDA provides notification to submit a revised proposed RAO that incorporates the modifications required by IMDA. Within 30 days from the date on which IMDA receives the revised proposed RAO, IMDA will approve the RAO, direct the Mandated Licensee to incorporate specific language, or notify the Mandated Licensee that IMDA requires additional time for its review.
- (c) A Mandated Licensee must notify IMDA and obtain IMDA's written approval before making any changes to its RAO.
- (d) IMDA may at any time serve a notice to the Mandated Licensee to review or modify the RAO, in whole or in part, on its own initiative. In each case, IMDA will seek public comments prior to adopting any modification.

5.7 Network Access Pursuant to an Individualised Access Agreement

A Requesting Licensee may seek to enter into an Individualised Access Agreement with a Mandated Licensee through the parties' voluntary negotiations, and if unable to do so, via the dispute resolution process specified in sections 5.7.2 through 5.7.2.3. Licensees are free to enter into an Individualised Access Agreement on any mutually agreeable prices, terms and conditions, provided that they do not unreasonably discriminate against any other Licensee.

5.7.1 IMDA Review

- (a) The Individualised Access Agreement must specify that it will be submitted to, and will not become effective until approved by, IMDA. If IMDA takes no action within 21 days after the agreement is submitted to it, the agreement will be deemed approved. IMDA will only reject a voluntary Individualised Access Agreement if it determines that the agreement discriminates unreasonably against any other Licensee.
- (b) In any case in which IMDA rejects an Individualised Access Agreement, it will direct the Mandated Licensee and the Requesting Licensee to make the necessary changes. In such cases, the Mandated Licensee and the Requesting Licensee must make the required changes, unless both the Mandated Licensee and the Requesting Licensee agree to withdraw the Individualised Access Agreement.

5.7.2 Agreements Arrived at via Dispute Resolution

If the Mandated Licensee and Requesting Licensees fail to voluntarily reach agreement regarding the Individualised Access Agreement within 90 days of the date on which the Requesting Licensee submitted its request, either the Mandated Licensee or the Requesting Licensee may request IMDA to resolve the dispute.

5.7.2.1 Scope of the Dispute Resolution Process

Provided that they do not unreasonably discriminate against any other Licensee, IMDA will not re-open any issue on which the Mandated Licensee and the Requesting Licensee have reached agreement. Instead, the dispute resolution will be limited to those issues on which the Mandated Licensee and the Requesting Licensee are unable to reach agreement.

5.7.2.2 Standards to be Applied

To the extent that an issue in dispute is addressed by the prices, terms and conditions of the Mandated Licensee's approved RAO, IMDA will apply those provisions. To the extent that an issue in dispute is not addressed by the RAO, IMDA may impose any appropriate resolution (including resolutions not advocated by either the Mandated Licensee or the Requesting Licensee).

5.7.2.3 Implementation of Dispute Resolution Decision by Mandated Licensee or Requesting Licensee

- (a) Within 15 days of the date on which IMDA issues its decision, the Mandated Licensee and the Requesting Licensee must either:
 - (i) submit to IMDA an Individualised Access Agreement that complies with the decision; or
 - (ii) inform IMDA that either one or both of the Mandated Licensee or the Requesting Licensee no longer wants to enter into an Individualised Access Agreement.
- (b) In any case in which the Mandated Licensee and the Requesting Licensee submit a revised Individualised Access Agreement, IMDA will have 15 days to either approve the Network Access Agreement or to direct the parties to amend the agreement by including provisions specified by IMDA that fully implement its decision.

5.8 Publication of Network Access Agreements

- (a) For any Network Access Agreement entered into by a Mandated Licensee, the Mandated Licensee must publish on its website (or in such other manner as may be specified by IMDA) either:
 - (i) a summary of the agreement, which at a minimum, must include a service description, along with prices (including any discount structures), service suspension and termination provisions (including any early termination charges), service availability and eligibility requirement offered by the Mandated Licensee; or
 - (ii) the entire agreement.

- (b) IMDA reserves the right to require the Mandated Licensee to publish the entire Network Access Agreement. Before doing so, IMDA will provide the parties with notice and an opportunity to comment.
- (c) In any case in which the entire agreement is to be published, IMDA may, on its own motion or at the request of either of the Mandated Licensee or the Requesting Licensee, allow the Mandated Licensee to withhold from publication any portion of a Network Access Agreement if IMDA determines that it contains proprietary or commercially sensitive information.

5.9 Enforcement of Agreements

In the event of a dispute arising out of any Network Access Agreement with a Mandated Licensee, either person may request IMDA to resolve the dispute. If IMDA declines to intervene, the Mandated Licensee and the Requesting Licensee may resolve the dispute in any mutually agreeable manner.

6 ABUSE OF DOMINANT POSITION AND UNFAIR METHODS OF COMPETITION

6.1 Introduction

A Licensee that has Significant Market Power in any market, whether in Singapore or elsewhere, must not use its dominant position in that market in a manner that unreasonably restricts, or is likely to unreasonably restrict, competition in any Basic Letter Services market in Singapore. In addition, a Licensee must not engage in conduct that constitutes an unfair method of competition. Where a Licensee engages in such conduct, IMDA, either on its own motion or at the request of another person, may initiate an enforcement action pursuant to the procedures set out in section 9.

6.2 Abuse of Dominant Position

6.2.1 General Prohibition

A Licensee that has Significant Market Power in any market, whether in Singapore or elsewhere, must not use its dominant position in that market in a manner that unreasonably restricts, or is likely to unreasonably restrict, competition in any Basic Letter Services market in Singapore.

6.2.2 Specific Prohibited Conduct

Without limiting the generality of section 6.2.1, the following sections provide examples of conduct that constitute an abuse of a dominant position.

6.2.2.1 Pricing Abuses

A Licensee with Significant Market Power must not price its services in a manner that unreasonably restricts, or is likely to unreasonably restrict, competition in any Basic Letter Services market in Singapore. In particular, the Licensee must not engage in the anti-competitive pricing practices described in sections 6.2.2.1.1 through 6.2.2.1.3.

6.2.2.1.1 Predatory Pricing

A Licensee with Significant Market Power must not engage in predatory pricing. IMDA will find that such a Licensee has engaged in predatory pricing if:

- (a) the Licensee is selling a Basic Letter Service in Singapore at a

price that is less than its average incremental cost;

- (b) the Licensee's sales at prices below average incremental cost have driven, or are likely to drive, efficient rivals from the market or deter future efficient rivals from entering the market; and
- (c) entry barriers are so significant that, after driving rivals from the market or deterring entry, the Licensee could impose an increase in prices sufficient (in amount and duration) to enable the Licensee to recoup the full amount of the loss that it incurred during the period of price-cutting.

6.2.2.1.2 Price Squeeze

A Licensee with Significant Market Power must not engage in price-squeezing. IMDA will find that such a Licensee has engaged in price-squeezing if:

- (a) the Licensee provides an input that another Licensee requires in order to provide a competing Basic Letter Service in Singapore; and
- (b) the price that the Licensee charges for the service is so high that the other Licensee, its Affiliate, or a reasonably efficient non-affiliated Licensee could not profitably sell its Basic Letter Services in Singapore.

6.2.2.1.3 Anti-competitive Cross-subsidisation

- (a) A Licensee with Significant Market Power must not engage in anti-competitive cross-subsidisation of Basic Letter Services in Singapore.
- (b) IMDA will find that such a Licensee has engaged in anti-competitive cross-subsidisation if the Licensee uses revenues from the provision of any service that is not subject to effective competition to cross-subsidise the price of any Basic Letter Service in Singapore that is subject to effective competition where this has unreasonably restricted, or is likely to unreasonably restrict, competition in any Basic Letter Services market in Singapore.

6.2.2.2 Anti-competitive Discrimination

A Licensee with Significant Market Power must not engage in anti-competitive discrimination. IMDA will find that such a Licensee has engaged in anti-competitive discrimination if:

- (a) the Licensee provides any Affiliate with access to infrastructure, systems, services, or information that, as a practical matter, are necessary for non-affiliated Licensees to provide Basic Letter Services in Singapore; and
- (b) such access is provided on prices, terms or conditions that are more favourable than those the Licensee provides to non-affiliated Licensees without any objective justification, such as verifiable difference in the cost of providing such a service.

6.2.3 Determining the Existence of Significant Market Power

- (a) IMDA will find that a Licensee has Significant Market Power using the applicable procedures specified below:
 - (i) if, at the time at which the alleged conduct occurred, the Licensee was classified as a Dominant Licensee in the market in which the anti-competitive conduct allegedly occurred, IMDA will presume, absent evidence to the contrary, that the Licensee had Significant Market Power in that market.
 - (ii) if, at the time at which the alleged conduct occurred, the Licensee was not classified as a Dominant Licensee in the market in which the anti-competitive conduct allegedly occurred, IMDA will determine whether the Licensee had Significant Market Power using the methodology specified in section 2.5.

6.2.4 Anti-competitive Preferences

- (a) A Licensee with an Affiliate that has Significant Market Power in any market is prohibited from using the market position of its Affiliate in a manner that enables it to, or is likely to enable it to, unreasonably restrict competition in any Basic Letter Services market in Singapore. These Affiliates may include:
 - (i) other postal operators licensed under section 6 of the Act;

- (ii) non-licensed entities within Singapore; and
 - (iii) non-licensed entities located outside Singapore.
- (b) In particular, a Licensee must not engage in any of the following practices:
 - (i) if a Licensee uses a service that is provided by an Affiliate that has Significant Market Power in the market for that service, and if another Licensee requires such service in order to provide a Basic Letter Service in Singapore, then the Licensee must not obtain such service at a price that is so high that the other Licensee, its Affiliate, or a reasonably efficient non-affiliated Licensee could not profitably sell its Basic Letter Service in Singapore.
 - (ii) a Licensee may not accept any cross-subsidisation from an Affiliate that has Significant Market Power, where a subsidy received by the Licensee from the Affiliate enables the Licensee to provide a Basic Letter Service in Singapore at a price that has unreasonably restricted, or is likely to unreasonably restrict, competition in any Basic Letter Services market in Singapore.
 - (iii) a Licensee with an Affiliate that has Significant Market Power in any market for services that as a practical matter, are necessary to provide a Basic Letter Service in Singapore may not accept access to those services, where such access is provided on prices, terms and conditions that are more favourable than the prices, terms and conditions on which the Affiliate provides those services to non-affiliated Licensees without an objective justification, such as verifiable differences in the cost of providing such a service.

6.3 Unfair Methods of Competition

6.3.1 General Prohibition

A Licensee must not engage in any unfair method of competition. An unfair method of competition is an improper practice by which a Licensee seeks to obtain a competitive advantage for itself or an Affiliate in any Basic Letter Services market in Singapore for reasons unrelated to the availability, price or quality of the service that the Licensee or its Affiliate offers. The following sections provide examples of practices that would

constitute unfair methods of competition.

6.3.2 Specific Prohibited Practices

In particular, a Licensee shall not engage in any of the following activities:

6.3.2.1 Degradation of Service Availability or Quality

A Licensee must not take any action, or induce any other person to take any action, that has the effect of degrading the availability or quality of another Licensee's Basic Letter Service in Singapore or raising the other Licensee's costs, without a legitimate business, operational or technical justification.

6.3.2.2 Improper Use of Information Regarding a Competing Licensee's Customers

A Licensee that receives information from another Licensee about the other Licensee's Customers in order to fulfil any duty under this Code must not use that information for any purpose other than the purpose for which it was provided. In particular, the Licensee must not use the information that it receives to market Basic Letter Services in Singapore to the other Licensee's Customers or otherwise interfere in the other Licensee's existing relationship with its Customers.

7 AGREEMENTS INVOLVING LICENSEES THAT UNREASONABLY RESTRICT COMPETITION

7.1 Introduction and Definitions

- (a) IMDA will not routinely review agreements entered into by Licensees (other than Network Access Agreements). However, pursuant to the procedures in section 9, IMDA may take enforcement action (on its own motion or pursuant to a request from a private party) against any Licensee that enters into an agreement with another Licensee or any non-licensed entity that has the effect of unreasonably restricting competition in any Basic Letter Services market. Certain types of agreements are so clearly anti-competitive that IMDA will determine that a Licensee that has entered into such an agreement has contravened the Code, without conducting an assessment of the likely or actual competitive effect of the agreement. In other cases, however, IMDA will assess whether an agreement contravenes the Code based on its likely or actual competitive effect. If IMDA determines that an agreement contravenes the Code, it may:
 - (i) direct the Licensee to revise the agreement to eliminate the contravening terms or terminate the agreement; and/or
 - (ii) take any other appropriate enforcement action.
- (b) In section 7, unless the context otherwise requires:
 - (i) “Horizontal Agreement” means an agreement between or among Competing Licensees;
 - (ii) “Non-horizontal Agreement” means an agreement between a Licensee and another entity that is not a Competing Licensee; and
 - (iii) “Vertical Agreement” means an agreement between a Licensee and a supplier or a distributor.

7.2 Determining the Existence of Agreements

- (a) For the purposes of section 7, an agreement can be established in any of 3 ways:
 - (i) an agreement can be established through direct evidence of an express agreement, such as a signed document;

- (ii) an agreement can also be established using circumstantial evidence that demonstrates the existence of an express agreement. Circumstantial evidence is evidence that a Licensee has engaged in certain conduct that provides a reasonable basis to infer that the Licensee entered into an agreement; or
 - (iii) an agreement may be tacit (i.e., even in the absence of an actual agreement, Licensees may co-ordinate their production and pricing decisions in order to reduce aggregate output and raise market prices).
- (b) IMDA will not find a tacit agreement where Licensees have done nothing more than make similar output and pricing decisions, which could reflect an efficient response to changing market conditions. Instead, IMDA will only find that there has been a tacit agreement if the Licensees have employed “signalling devices”, such as the sharing of price and output information, and that these devices have facilitated coordinated behaviour.
- (c) For the purposes of section 7, an arrangement between a Licensee and an Affiliate over which the Licensee can exercise Effective Control does not constitute an agreement. Neither does this section restrict the ability of a Licensee to enter into an arrangement with another entity in which the second entity acts as a *bona fide* agent of the Licensee.

7.3 Agreements Between Licensees Providing Competing Services (Horizontal Agreements)

The following provisions are applicable to Horizontal Agreements.

7.3.1 General Prohibition

Licensees are prohibited from entering into Horizontal Agreements that unreasonably restrict, or are likely to unreasonably restrict, competition in any Basic Letter Services market.

7.3.2 Specific Prohibited Horizontal Agreements

The following types of Horizontal Agreements constitute unreasonable restrictions of competition and are specifically prohibited, even in the absence of evidence of likely or actual anti-competitive effect.

7.3.2.1 Price Fixing and Output Restrictions

Licensees must not enter into Horizontal Agreements to set the price that one or more Licensees will charge for any Basic Letter Service and/or restrict the total quantity of Basic Letter Services that one or more Licensees will offer, regardless of the levels to which the Licensees agree.

7.3.2.2 Bid Rigging

- (a) Licensees must not enter into Horizontal Agreements in which they agree not to bid, to bid at specific prices, to bid within a specific price range, or to co-ordinate separate bids for:
 - (i) assets, resources or rights auctioned by IMDA;
 - (ii) any good or service that the Licensees use to provide a Basic Letter Service; or
 - (iii) the provision by the Licensees of any Basic Letter Service.
- (b) IMDA will find that such agreements contravene the Code regardless of the price levels to which the Licensees agree.

7.3.2.3 Market and Customer Division

- (a) Licensees must not enter into Horizontal Agreements not to compete to provide a Basic Letter Service to:
 - (i) specific Customers;
 - (ii) any class of Customers; or
 - (iii) Customers in specific geographical areas.
- (b) IMDA will find that such agreements contravene the Code regardless of the terms and conditions on which the Licensees agree.

7.3.2.4 Group Boycotts

Competing Licensees must not agree to refuse to:

- (a) provide a Basic Letter Service to a specific supplier, Licensee or Customer; or

- (b) obtain from a specific supplier, Licensee or Customer any good or service that the Licensees use to provide a Basic Letter Service.

7.3.3 Agreements Necessary for Legitimate Collaborative Ventures

Nothing in sections 7.3.2 through 7.3.2.4 prohibits agreements among Competing Licensees that are ancillary to efficiency-enhancing integration of economic activity, where such agreements are no broader than necessary to achieve the pro-competitive benefit. Rather, IMDA will assess the permissibility of such agreements, pursuant to sections 7.4 through 7.4.3, based on their actual or likely competitive effect.

7.4 Horizontal Agreements that will be Assessed Based on their Actual or Likely Competitive Effect

- (a) Unlike the types of agreements described in sections 7.3.2 through 7.3.2.4, many Horizontal Agreements have the potential to increase competition. Such agreements may include agreements to:
 - (i) produce or obtain goods or services used by multiple Licensees to provide Basic Letter Services;
 - (ii) jointly market or provide Basic Letter Services to Customers; or
 - (iii) engage in joint research and development activities.
- (b) If such Horizontal Agreements are challenged in an enforcement proceeding, IMDA will assess whether the agreements contravene this Code based on their actual or likely effect on competition.
- (c) Where there is evidence that the Horizontal Agreement actually has unreasonably restricted competition, IMDA will find it to be in contravention of this Code. IMDA will find that a Horizontal Agreement actually has unreasonably restricted competition if the evidence of its competitive effect, taken as a whole, demonstrates that the agreement has:
 - (i) restricted output below the level of demand, increased prices above cost, reduced quality below the level that Customers seek, reduced Customers' choice or deterred innovation; or
 - (ii) deterred or precluded efficient entities from participating in the market.

- (d) Where there is no evidence of actual market effect because the Horizontal Agreement is relatively recent, IMDA will determine the permissibility of the agreement by seeking to assess whether it is likely to unreasonably restrict competition. In conducting this assessment, IMDA will consider the factors specified in sections 7.4.1 through 7.4.3.

7.4.1 Business Purpose of the Agreement

In reviewing an agreement, IMDA will make a preliminary assessment of its likely competitive impact (i.e. IMDA will attempt to determine whether the agreement is likely to lead to a reduction in output or an increase in prices of Basic Letter Services). If the agreement is between or among a small number of Licensees that do not have Significant Market Power in the relevant market, and the business purpose of the agreement appears to be to increase output and reduce prices, IMDA will generally conclude, without conducting any further analysis, that the agreement does not contravene this Code.

7.4.2 Likelihood of Competitive Harm

Where an agreement involves a more significant number of Licensees, or a Licensee that has Significant Market Power in the relevant market, or where an agreement has the potential to result in higher prices or reductions in output of Basic Letter Services, IMDA will conduct a more detailed assessment. In particular, IMDA will consider the following factors:

- (a) whether (and, if so, to what extent) the Licensees retain the ability to act independently of the agreed-upon venture;
- (b) the duration of the agreement;
- (c) whether, in the event the Licensees acted anti-competitively, new entry into the market would be likely, sufficient and timely enough to deter or counteract any competitive harm; and
- (d) any other factors that help predict the likely competitive effect of the agreement.

If, after assessing these factors, IMDA concludes that the agreement poses no risk of competitive harm in any Basic Letter Services market, IMDA will conclude that the agreement does not contravene this Code.

7.4.3 Efficiencies

If IMDA's review demonstrates that an agreement has the potential to result in a reduction in output or an increase in prices of Basic Letter Services, IMDA will consider whether the agreement is necessary to achieve efficiencies, which are likely to be passed on to Customers. Such efficiencies could include reductions in the cost of developing, producing, marketing and delivering Basic Letter Services. If such efficiencies offset the potential anti-competitive effect, and could not reasonably be achieved through measures that reduce competition to a lesser extent, IMDA will conclude that the agreement does not contravene this Code. If such efficiencies do not offset the potential anti-competitive effect, or could reasonably be achieved through measures that reduce competition to a lesser extent, IMDA will conclude that the agreement contravenes this Code.

7.5 Agreements Between Licensees and Entities that are Not Direct Competitors (Non-horizontal Agreements)

Non-horizontal Agreements generally do not adversely affect competition. In many cases, Non-horizontal Agreements may promote competition. However, agreements that involve entities that are at different levels in the "supply chain", such as Vertical Agreements, may sometimes raise competitive concerns, especially where one of the parties to the agreement has Significant Market Power.

7.5.1 General Prohibition

Licensees are prohibited from entering into Non-horizontal Agreements with entities (whether licensed or not), which unreasonably restrict, or are likely to unreasonably restrict, competition in any Basic Letter Services market in Singapore.

7.5.2 Agreements will be Assessed Based on an Individualised Assessment of their Actual or Likely Competitive Effect

- (a) IMDA will assess the permissibility of any Non-horizontal Agreement based on its actual or likely effect on competition.
- (b) In assessing whether a Non-horizontal Agreement unreasonably restricts competition, or is likely to unreasonably restrict competition, in a Basic Letter Services market, IMDA will consider both the pro-competitive and anti-competitive effects of the agreement. IMDA will only find that a Non-horizontal Agreement unreasonably restricts competition, or is likely to

unreasonably restrict competition, if IMDA concludes that the actual or likely anti-competitive effects of the agreement outweigh the actual or likely pro-competitive effects of the agreement.

- (c) IMDA will be more likely to find that a Non-horizontal Agreement contravenes the Code if IMDA determines that the agreement is a Vertical Agreement that involves an entity, whether or not a Licensee, that has Significant Market Power in a relevant market.

8 ACQUISITIONS AND CONSOLIDATIONS INVOLVING DESIGNATED POSTAL LICENSEES

8.1 Introduction and Definitions

- (a) In many cases, parties seek to acquire Voting Shares or control of voting power in a Designated Postal Licensee even if it would not result in the Acquiring Party being able to exercise Effective Control over the Licensee. In some cases, the Acquiring Party may seek to acquire sufficiently significant Voting Shares or control of voting power, or engage in other transactions, that result in the Designated Postal Licensee ceasing to operate as a separate economic entity. In many cases, such transactions can have pro-competitive effects, such as creating economies of scale and scope. In other cases, however, such transactions may harm competition. For example, such transactions could create an entity that is not subject to competitive market forces or could facilitate unlawful collusion among Competing Licensees.
- (b) Section 8 describes:
 - (i) the procedures for a Designated Postal Licensee to notify IMDA in connection with the acquisition of Voting Shares or control of voting power in the Designated Postal Licensee of at least 5% but less than 12%;
 - (ii) the procedures for filing a Request and a Consolidation Application;
 - (iii) the Conditions that IMDA may impose; and
 - (iv) the circumstances under which IMDA may order divestiture of a Designated Postal Licensee's Voting Shares.
- (c) IMDA may issue advisory guidelines under section 26 of the Act to describe and elaborate the standards and procedures that IMDA will apply in reviewing, and deciding whether to approve or deny, a Request or a Consolidation Application.

8.1.1 Declaration of Designated Postal Licensees

IMDA shall, in accordance with section 26A(1) of the Act, declare the Licensees or the classes of Licensees which are Designated Postal Licensees for the purposes of Part IVA of the Act.

8.1.2 Definitions

In section 8, unless the context otherwise requires:

- (a) “12% Controller”, in relation to a Designated Postal Licensee, means a person, not being a 30% Controller, who alone or together with his Associates:
 - (i) holds 12% or more of the total number of Voting Shares in the Designated Postal Licensee; or
 - (ii) is in a position to control 12% or more of the voting power in the Designated Postal Licensee;
- (b) “30% Controller”, in relation to a Designated Postal Licensee, means a person who alone or together with his Associates:
 - (i) holds 30% or more of the total number of Voting Shares in the Designated Postal Licensee; or
 - (ii) is in a position to control 30% or more of the voting power in the Designated Postal Licensee;
- (c) “Applicant” means a person that is required to submit a Request or Consolidation Application, as the case may be, and includes every Acquiring Party, the Designated Postal Licensee, and such Associate of the Acquiring Party as IMDA may require;
- (d) “Basic Letter Services Market” means a market in Singapore for Postal Services for the conveyance of Basic Letters;
- (e) “Condition” means a condition, as specified in section 8.9, that IMDA may impose when granting approval in respect of a Request or Consolidation Application;
- (f) “Consolidation” means any transaction that:
 - (i) results in a person:
 - (A) becoming a 30% Controller of a Designated Postal Licensee;
 - (B) acquiring the business of a Designated Postal Licensee (or any part thereof) as a going concern;

- (C) obtaining Effective Control over a Designated Postal Licensee; or
- (ii) is prescribed by regulations made under section 26H of the Act, or that falls within a class of transactions prescribed in such regulations;
- (g) “Consolidation Agreement” means an agreement for a transaction that constitutes a Consolidation;
- (h) “Consolidation Application” means an application for approval for an Acquiring Party to enter into a Consolidation with a Designated Postal Licensee, submitted pursuant to section 8.5.3;
- (i) “Corporation” has the same meaning as in section 4(1) of the *Companies Act* (Cap. 50);
- (j) “Exemption Order” means the *Postal Services (Exemption from Section 26B) Order 2017*;
- (k) “Licence Assignment” means any transaction that results in a Designated Postal Licensee assigning, transferring, sub-letting or otherwise disposing of any of its rights, duties, liabilities, obligations or privileges under a licence granted by IMDA to the Designated Postal Licensee under the Act;
- (l) “Open Market Transaction” means a transaction entered into in the ordinary course of business on, or otherwise subject to the business rules of, a securities exchange, and includes an acquisition of Shares by means of a Tender Offer;
- (m) “Post-Consolidation Entity” means the economic entity that will be created as a result of a Consolidation;
- (n) “Related Corporation”, in relation to a Corporation, has the same meaning as in section 4(1) of the *Companies Act* (Cap. 50);
- (o) “Request” means any application for approval for an Acquiring Party to become a 12% Controller of a Designated Postal Licensee, submitted pursuant to section 8.4.3;
- (p) “Share” includes stock except where a distinction between stock and shares is expressed or implied;
- (q) “Share Buyback” means a purchase by a Designated Postal

Licensee of any portion of its issued Shares held by its shareholders pursuant to the necessary shareholder or general meeting authority, regardless of whether those Shares are traded on a securities exchange;

- (r) “Take-over Code” means the Singapore Code on Take-overs and Mergers issued by the Monetary Authority of Singapore under section 321 of the *Securities and Futures Act* (Cap. 289);
- (s) “Tender Offer” means an offer made to the public to acquire some or all of the Shares of a Designated Postal Licensee whose Shares are traded on a securities exchange;
- (t) “Treasury Share” has the same meaning as in section 4(1) of the *Companies Act* (Cap. 50); and
- (u) “Voting Share” has the same meaning as in section 4(1) of the *Companies Act*, but does not include a treasury share.

8.1.3 Meanings of Holding a Voting Share, Control of Voting Power and Associate

For the purposes of section 8:

- (a) a person holds a Voting Share in a Designated Postal Licensee if it has any legal or equitable interest in that Share, other than an interest that is to be disregarded under section 8.2.2;
- (b) except as otherwise provided in section 8.2.2, a person shall be deemed to have an interest in a Share, if:
 - (i) that person has entered into a contract to purchase that Share; or
 - (ii) that person, not being the registered holder of that Share, is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a Corporation or of a class of its members) to exercise or control the exercise of a right attached to that Share;
- (c) 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 section 8.1.3 (b);

- (d) a reference to the control of a percentage of voting power in a Designated Postal Licensee, 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 Postal Licensee;
- (e) where a Designated Postal Licensee is a Corporation limited both by shares and by guarantee or does not have a share capital, paragraph (d) shall have effect as if the members or policy holders of the Designated Postal Licensee were shareholders in the Designated Postal Licensee; and
- (f) a person, *A*, is an “Associate” of another person, *B*, if:
 - (i) *A* is a relative of *B*;
 - (ii) *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*;
 - (iii) *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*;
 - (iv) *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*;
 - (v) *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*;
 - (vi) *A* is a Related Corporation of *B*;
 - (vii) *A* is a Corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 12% or 30%, as the case may be, of the voting power in *A*;

- (viii) *B* is a Corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (ii) to (vi), is in a position to control not less than 12% or 30%, as the case may be, of the voting power in *B*; or
 - (ix) *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 or other interests in, or with respect to the exercise of their voting power in relation to, the Designated Postal Licensee;
- (g) for the purposes of section 8.1.3 (f), a “relative”, in relation to a person, means –
- (i) the person’s spouse;
 - (ii) a parent or remoter linear ancestor, or a step-parent, of the person;
 - (iii) a child or remoter issue, or a step-child, of a person; or
 - (iv) a sibling or a step-sibling of the person.

8.1.4 Compliance with Licence Conditions for Licence Assignments

In addition to the requirements specified in section 8, if an acquisition of Voting Shares or control of voting power in a Designated Postal Licensee, or a transaction that results in a Consolidation with a Designated Postal Licensee, involves a Licence Assignment, the Designated Postal Licensee must also comply with the applicable provisions relating to Licence Assignments in the licence granted by IMDA to the Designated Postal Licensee under the Act.

8.2 Exemption from Section 26B

- (a) A Designated Postal Licensee shall be exempted from the requirement to give notice under section 26B(1) of the Act in accordance with any applicable exemption issued by the Minister under the Act.
- (b) Acquiring Parties shall be exempted from seeking IMDA’s approval under sections 26B(2), (3) and (4) of the Act in accordance with any applicable exemption issued by the Minister under the Act.

- (c) For the avoidance of doubt, if an Acquiring Party is exempted from seeking IMDA's approval under section 26B(2), (3) or (4) of the Act, for an acquisition of Voting Shares or control of voting power of a Designated Postal Licensee, and such Voting Shares or control of voting power is subsequently acquired by another Acquiring Party that is not exempted from seeking IMDA's approval, the other Acquiring Party and the Designated Postal Licensee must comply with section 8.

8.2.1 Exemption from Notice Requirement in Section 26B(1)

Under the Exemption Order, a Designated Postal Licensee is exempt from the requirement to give notice under section 26B(1) of the Act where any person who, because of a pro forma transaction (described in section 8.2.3):

- (a) acquires 5% or more but less than 12% of the Voting Shares in the Designated Postal Licensee; or
- (b) controls 5% or more but less than 12% of the voting power in the Designated Postal Licensee.

8.2.2 Exemption from Approval under Section 26B(2), (3) and (4) for Control or Consolidation

Under the Exemption Order, a person is exempt from the requirement to obtain prior written approval under section 26B(2), (3) or (4) of the Act if the person will:

- (a) by reason of a pro forma transaction (described in section 8.2.3), become a 12% Controller or a 30% Controller of a Designated Postal Licensee; or
- (b) enter into a pro forma transaction (described in section 8.2.3) that would constitute a Consolidation with a Designated Postal Licensee.

8.2.3 Pro Forma Transaction

For the purposes of the Exemption Order, a transaction constitutes a pro forma transaction if the transaction:

- (a) does not result in any change to the percentage of voting power in a Designated Postal Licensee controlled by any person who, at the

time immediately before the transaction is made, controlled any voting power in the Designated Postal Licensee; or

- (b) results in the transfer of shares in a Designated Postal Licensee —
 - (i) from a person to a corporation, being a corporation in which a person controls any percentage of voting power or in which a person holds any percentage of Shares, without any change to the percentage of voting power in the Designated Postal Licensee controlled by that person at the time immediately before the transaction is made;
 - (ii) from a corporation to any shareholder of the corporation, without any change to the percentage of voting power in the Designated Postal Licensee controlled by that shareholder at the time immediately before the transaction is made;
 - (iii) from a corporation to its wholly owned subsidiary, or to a corporation from its wholly owned subsidiary, whether or not the subsidiary is a direct subsidiary of the corporation; or
 - (iv) from one corporation, being a corporation in which a person controls any percentage of voting power or in which a person holds any percentage of Shares, to another corporation in which the same person controls any percentage of voting power or holds any percentage of Shares, without any change to the percentage of the voting power in the Designated Postal Licensee controlled by that person immediately before the transaction is made.

8.2.4 Disregarded Interests

In determining whether a person holds a Voting Share in a Designated Postal Licensee, the following interests shall be disregarded:

- (a) an interest in a Share of a person that 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;

- (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 Postal Licensee;
- (d) an interest in a Share held by a person:
 - (i) in his capacity of a liquidator, the Official Receiver, the Official Assignee or the Public Trustee; or
 - (ii) by reason of its holding such other office as may be prescribed for the purposes of section 7(9) (c) of the *Companies Act* (Cap. 50);
- (e) an interest of a Corporation in its own Share purchased or otherwise acquired in accordance with sections 76B to 76G of the *Companies Act* (Cap. 50); and
- (f) such interest in a Share as may be prescribed for the purposes of section 7 (9) (d) of the *Companies Act* (Cap. 50), 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.

8.2.5 Designated Postal Licensee’s Duty to Notify IMDA of Transactions that Constitute Pro Forma Transactions

A Designated Postal Licensee must provide written notification to IMDA within 5 Working Days of becoming aware of an acquisition of Voting Shares or control of voting power that constitutes a pro forma transaction under the Exemption Order (described in section 8.2.3). The notification must include a brief description of the transaction and the basis on which the Licensee believes the transaction constitutes a pro forma transaction.

8.3 Procedures for Notifying Acquisitions of Voting Shares or Control of Voting Power of 5% or More but Less Than 12%

- (a) A Designated Postal Licensee shall give notice in writing to IMDA within 5 Working Days of becoming aware that an Acquiring Party, whether by a series of transactions over a period of time or otherwise, has first acquired Voting Shares or control of voting power in the Designated Postal Licensee of 5% or more but less than 12%.
- (b) For the purposes of paragraph (a), the notice must include the name, the address and contact information of the Acquiring Party,

the class, number and percentage of Voting Shares or the percentage of voting power that the Acquiring Party held or controlled immediately prior to the acquisition, the percentage of Voting Shares or voting power that the Acquiring Party has acquired, the effective date of acquisition of the Voting Shares or voting power, and such other particulars and information as IMDA may require in any particular case.

- (c) If requested by IMDA in writing, the Designated Postal Licensee shall provide further notification of each increase in that Acquiring Party's Voting Shares or control of voting power, provided that the Acquiring Party's Voting Shares or control of voting power in aggregate does not equal or exceed 12%.

8.4 Procedures in Connection with Acquiring Voting Shares or Control of Voting Power of 12% or More but Less Than 30%

Section 8.4 sets out the procedures for a Designated Postal Licensee and an Acquiring Party to obtain IMDA's approval in connection with acquisitions of Voting Shares or control of voting power that result in the Acquiring Party becoming a 12% Controller of the Designated Postal Licensee.

8.4.1 Duty to Seek Approval and to Notify IMDA

- (a) Under section 26B(2) of the Act and regulation 7 of the Regulations, a Designated Postal Licensee and an Acquiring Party must seek IMDA's approval in connection with an Acquiring Party acquiring Voting Shares or control of voting power that results in the Acquiring Party becoming a 12% Controller of the Designated Postal Licensee, whether by a series of transactions over a period of time or otherwise.
- (b) For the avoidance of doubt, subject to paragraph (c), if an Acquiring Party has been granted written approval by IMDA to become a 12% Controller of a Designated Postal Licensee, the Acquiring Party and the Designated Postal Licensee are not required to seek IMDA's approval for any further acquisition by the Acquiring Party of Voting Shares or control of voting power unless such an acquisition results in the Acquiring Party becoming a 30% Controller of the Designated Postal Licensee or constitutes a Consolidation with the Designated Postal Licensee.
- (c) If requested by IMDA in writing, the Designated Postal Licensee must notify IMDA within 5 Working Days of each further acquisition by the Acquiring Party of Voting Shares or control of

voting power in the Designated Postal Licensee, provided that the Acquiring Party's Voting Shares or control of voting power in aggregate does not equal or exceed 30%. Such written notifications must state the percentage of the Voting Shares or voting power in the Designated Postal Licensee that the Acquiring Party held or controlled prior to the acquisition and the percentage of Voting Shares or voting power in the Designated Postal Licensee that the Acquiring Party has further acquired.

8.4.2 Presumption

IMDA will presume that an Acquiring Party that becomes a 12% Controller of a Designated Postal Licensee is not likely to have the ability to exercise Effective Control over that Designated Postal Licensee. Therefore, IMDA will presume that an acquisition of Voting Shares or control of voting power in a Designated Postal Licensee of 12% or more but less than 30%, is not likely to constitute a Consolidation. However, in certain circumstances, an Acquiring Party that acquires Voting Shares or control of voting power in this range could have the ability to use its Voting Shares or voting power in a manner that would substantially lessen competition or in a manner that is contrary to the public interest. For example, a Licensee that has Voting Shares or voting power of 12% or more but less than 30% in each of 2 Competing Licensees could use its Voting Shares or voting power to facilitate anti-competitive coordination between the 2 Competing Licensees.

8.4.3 Procedures to Seek Prior Approval

- (a) An Acquiring Party may acquire Voting Shares or control of voting power in a Designated Postal Licensee that would result in the Acquiring Party becoming a 12% Controller of the Designated Postal Licensee by various means. Without limitation, this may occur when:
 - (i) an Acquiring Party acquires Voting Shares in a Designated Postal Licensee by:
 - (A) purchasing Voting Shares of the Designated Postal Licensee in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Designated Postal Licensee that allows the Acquiring Party to acquire Voting Shares in the Designated Postal Licensee;

- (C) entering into a privately negotiated agreement with an entity that holds Voting Shares in the Designated Postal Licensee;
 - (D) entering into any other transaction that results in the acquisition of Voting Shares in the Designated Postal Licensee;
 - (E) exercising an option to acquire Voting Shares in the Designated Postal Licensee or exercising a right to have Voting Shares in the Designated Postal Licensee transferred; or
- (ii) an Acquiring Party acquires control of voting power in a Designated Postal Licensee by:
- (A) purchasing Shares in an entity that controls voting power in the Designated Postal Licensee in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Designated Postal Licensee that allows the Acquiring Party to acquire control of voting power in the Designated Postal Licensee;
 - (C) entering into a privately negotiated agreement with an entity that controls voting power in the Designated Postal Licensee;
 - (D) entering into any other transaction that results in the acquisition of control of voting power in the Designated Postal Licensee; or
 - (E) exercising an option to acquire, or right to transfer, Voting Shares in an entity that controls voting power in the Designated Postal Licensee.
- (b) Every Acquiring Party, the Designated Postal Licensee and Associate of the Acquiring Party (as may be required by IMDA) must jointly submit a Request to IMDA in respect of the Acquiring Party becoming a 12% Controller of the Designated Postal Licensee. Each Request shall contain the information and documents specified in section 8.4.4 and, except for Requests relating to a Tender Offer, shall be submitted in accordance with the following time frames:

- (i) in cases where the Acquiring Party intends to acquire Voting Shares of the Designated Postal Licensee in an Open Market Transaction, the Request must be submitted not less than 60 days before the Acquiring Party proceeds to make an offer for the Shares;
 - (ii) in cases where the Acquiring Party intends to acquire Voting Shares of the Designated Postal Licensee that are not traded on a securities exchange, or to acquire, other than by Open Market Transaction, Voting Shares of the Designated Postal Licensee that are traded on a securities exchange, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to acquire the business of the Designated Postal Licensee (or any part thereof) as a going concern, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iv) in cases where the Acquiring Party intends to exercise an option to acquire Voting Shares of the Designated Postal Licensee or to exercise a right to have Voting Shares of the Designated Postal Licensee transferred to it, not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (v) in all other cases where the Acquiring Party enters into any transaction that results in the Acquiring Party becoming a 12% Controller of the Designated Postal Licensee, not less than 60 days before the Acquiring Party completes the transaction.
- (c) In the event that IMDA does not grant its approval within 60 days of the submission of the Request, the Acquiring Party shall not proceed to become a 12% Controller of a Designated Postal Licensee until such time as IMDA may grant its approval.
- (d) For transactions relating to a Tender Offer, the Acquiring Party and the Designated Postal Licensee must submit a Request in accordance with section 8.7.

8.4.4 Information and Documents to be Included in a Request

- (a) Each Request shall contain all the required information reasonably necessary for IMDA to determine the likely impact of the acquisition on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information):
 - (i) the names, addresses and contact information of the Acquiring Party and the Designated Postal Licensee;
 - (ii) the names, addresses and contact information of all Associates and Affiliates of the Designated Postal Licensee, and all Associates and Affiliates of the Acquiring Party;
 - (iii) the percentage of Voting Shares or voting power in the Designated Postal Licensee that the Acquiring Party holds or held (if any) prior to the proposed acquisition or acquisition, as the case may be;
 - (iv) the percentage of Voting Shares or voting power in the Designated Postal Licensee that the Acquiring Party proposes to acquire or has acquired;
 - (v) the percentage of Voting Shares or voting power in the Designated Postal Licensee that the Acquiring Party will hold or control if the Request is approved;
 - (vi) a description of the Postal Services provided by the Acquiring Party, the Designated Postal Licensee and their respective Associates and Affiliates, and their estimated market shares thereof;
 - (vii) any special or preferential rights granted or that will be granted to the Acquiring Party if the Request is approved; and
 - (viii) any anticipated significant changes in management or operations of the Designated Postal Licensee.
- (b) Until IMDA issues its written decision on whether to approve or deny a Request, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably

likely to have a material impact on IMDA's consideration of the Request.

8.4.5 Separate Filing and Direct Submission of Information

- (a) Without prejudice to regulation 11 of the Regulations, an Applicant may apply in writing to IMDA for a waiver of the requirement for the Applicant to submit a joint Request with other Applicants if the Applicant can establish that:
 - (i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or
 - (ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.
- (b) Circumstances under which IMDA may grant a waiver under paragraph (a) include (without limitation) the following:
 - (i) where an Acquiring Party reasonably believes that a Designated Postal Licensee is likely to be opposed to its acquisition of Voting Shares or control of voting power in the Designated Postal Licensee;
 - (ii) where an Applicant reasonably believes that the submission of a joint Request would be unduly burdensome or infeasible; or
 - (iii) where an Applicant can demonstrate that the other Applicant has refused to cooperate with it to submit a joint Request.
- (c) Where an Applicant does not want to disclose confidential, commercially sensitive or proprietary information to the other Applicant for inclusion in a Request, IMDA may allow the Applicant to submit its confidential, commercially sensitive or proprietary information directly to IMDA but the Applicant shall otherwise submit a joint Request with other Applicants containing such other information as may be required under this Code.

8.4.6 Approval or Denial of a Request

- (a) IMDA will deny a Request where IMDA determines that the acquisition to which the Request relates is likely to result in a

substantial lessening of competition in any Basic Letter Services Market or it is in the public interest to deny the Request.

- (b) If IMDA denies a Request, IMDA will provide a written statement of the reasons for its denial.
- (c) In those cases in which:
 - (i) a Designated Postal Licensee and an Acquiring Party have filed a Request in connection with a proposed acquisition of Voting Shares or control of voting power that would result in the Acquiring Party becoming a 12% Controller of the Designated Postal Licensee; and
 - (ii) IMDA determines that the transaction constitutes a Consolidation,

IMDA shall notify the Applicants of its determination and the Applicants must submit a Consolidation Application in accordance with the Regulations and section 8.5. In the event that the Acquiring Party informs IMDA that it does not intend to submit a Consolidation Application or a Consolidation Application is not submitted within 30 days of the date of IMDA's notification to the Applicants, IMDA may deny the Request and, if so, will provide a written statement of the reasons for its denial.

- (d) IMDA may approve a Request with or without Conditions. Without prejudice to section 26D of the Act, IMDA may issue a direction under section 26D(3) or (4) of the Act (described in section 8.12 of this Code) in the event that any Condition is not complied with.
- (e) An approval or denial of a Request shall take effect on the day specified in IMDA's decision.

8.5 Procedures in Connection with Acquiring Voting Shares or Control of Voting Power of 30% or More and Other Transactions That Constitute a Consolidation with a Designated Postal Licensee

Section 8.5 sets out the procedures for a Designated Postal Licensee and an Acquiring Party to obtain IMDA's approval in connection with acquisitions of Voting Shares or control of voting power that result in the Acquiring Party becoming a 30% Controller of the Designated Postal Licensee or entering into a Consolidation with the Designated Postal Licensee.

8.5.1 Duty to Seek Approval and to Notify IMDA

- (a) Under sections 26B(2), (3) and (4) of the Act and regulation 7 of the Regulations, a Designated Postal Licensee and an Acquiring Party must seek IMDA's approval in connection with the Acquiring Party acquiring Voting Shares or control of voting power that results in the Acquiring Party becoming a 30% Controller of the Designated Postal Licensee or entering into any transaction that constitutes a Consolidation with the Designated Postal Licensee, whether by a series of transactions over a period of time or otherwise.
- (b) For the avoidance of doubt, subject to paragraph (c), if an Acquiring Party has been granted written approval by IMDA to become a 30% Controller of a Designated Postal Licensee or to enter into a Consolidation with a Designated Postal Licensee, the Acquiring Party and the Designated Postal Licensee are not required to seek IMDA's approval for any further acquisition by the Acquiring Party of Voting Shares or control of voting power in the Designated Postal Licensee.
- (c) If requested by IMDA in writing, the Designated Postal Licensee must notify IMDA within 5 Working Days of each further acquisition by the Acquiring Party of Voting Shares or control of voting power in the Designated Postal Licensee. Such written notifications must state the percentage of the Voting Shares or voting power in the Designated Postal Licensee that the Acquiring Party held or controlled prior to the acquisition and the percentage of Voting Shares or voting power in the Designated Postal Licensee that the Acquiring Party has further acquired.

8.5.2 Determining the Existence of a Consolidation

- (a) A Consolidation may involve:
 - (i) the acquisition of Voting Shares or control of voting power of 30% or more in a Designated Postal Licensee, whether by a series of transactions over a period of time or otherwise;
 - (ii) obtaining the ability to exercise Effective Control over a Designated Postal Licensee;
 - (iii) the acquisition of the business of a Designated Postal Licensee (or any part thereof) as a going concern; or

- (iv) any transaction or class of transactions that is prescribed by regulations made under section 26H of the Act.
- (b) An Acquiring Party may obtain Effective Control over a Designated Postal Licensee through a transaction where, for example, the transaction confers on the Acquiring Party the right to appoint a majority of a Designated Postal Licensee's board of directors or to veto certain management or major operating decisions of the Designated Postal Licensee.
- (c) The acquisition of the business of a Designated Postal Licensee as a going concern may occur where an Acquiring Party:
 - (i) acquires all or substantially all of the assets of the Designated Postal Licensee; or
 - (ii) enters into an agreement pursuant to which it acquires the right to provide service to, and receive compensation from, the substantial majority of the Designated Postal Licensee's Customers.
- (d) A Consolidation may, but need not, result in the dissolution of an existing legal entity, the creation of a new legal entity or a Licence Assignment.

8.5.3 Procedures to Seek Prior Approval

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

- Postal Licensee;
 - (D) entering into any other transaction that results in the acquisition of Voting Shares in the Designated Postal Licensee;
 - (E) exercising an option to acquire Voting Shares in the Designated Postal Licensee or exercising a right to have Voting Shares in the Designated Postal Licensee transferred;
- (ii) an Acquiring Party acquires control of voting power in a Designated Postal Licensee by:
- (A) purchasing Shares in an entity that controls voting power in the Designated Postal Licensee in an Open Market Transaction;
 - (B) entering into a privately negotiated agreement with the Designated Postal Licensee that allows the Acquiring Party to acquire control of voting power in the Designated Postal Licensee;
 - (C) entering into a privately negotiated agreement with an entity that controls voting power in the Designated Postal Licensee;
 - (D) entering into any other transaction that results in the acquisition of control of voting power in the Designated Postal Licensee; or
 - (E) exercising an option to acquire, or right to transfer, Voting Shares in an entity that controls voting power in the Designated Postal Licensee; or
- (iii) an Acquiring Party acquires the business of a Designated Postal Licensee (or any part thereof) as a going concern.
- (b) Every Acquiring Party, the Designated Postal Licensee and Associate of the Acquiring Party (as may be required by IMDA) must jointly file a Consolidation Application in respect of the Acquiring Party becoming a 30% Controller of the Designated Postal Licensee or entering into a Consolidation with the Designated Postal Licensee. Each Consolidation Application shall contain the information and documents specified in section 8.5.4

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

- (i) in cases where the Acquiring Party intends to acquire Voting Shares of the Designated Postal Licensee in an Open Market Transaction, the Request must be submitted not less than 60 days before the Acquiring Party proceeds to make an offer for the Shares;
 - (ii) in cases where the Acquiring Party intends to acquire Voting Shares of the Designated Postal Licensee that are not traded on a securities exchange, or to acquire, other than by Open Market Transaction, Voting Shares of the Designated Postal Licensee that are traded on a securities exchange, within 30 days from the day on which the Acquiring Party enters into the agreement and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iii) in cases where the Acquiring Party intends to acquire the business of the Designated Postal Licensee (or any part thereof) as a going concern, within 30 days from the day on which the Acquiring Party enters into the agreement for the acquisition and not less than 60 days before the day upon which the Acquiring Party completes the acquisition;
 - (iv) in cases where the Acquiring Party intends to exercise an option to acquire Voting Shares of the Designated Postal Licensee or to exercise a right to have Voting Shares of the Designated Postal Licensee transferred to it, not less than 60 days before the Acquiring Party exercises such an option or right; or
 - (v) in all other cases where the Acquiring Party enters into any transaction that results in the Acquiring Party becoming a 30% Controller of the Designated Postal Licensee or that results in a Consolidation with the Designated Postal Licensee, not less than 60 days before the Acquiring Party completes the transaction.
- (c) In the event that IMDA does not grant its approval within 60 days of the submission of the Consolidation Application, the Acquiring Party shall not proceed to become a 30% Controller of a Designated Postal Licensee or enter into a Consolidation with a

Designated Postal Licensee until such time as IMDA may grant its approval.

- (d) For transactions relating to a Tender Offer, the Acquiring Party and the Designated Postal Licensee must submit a Consolidation Application in accordance with section 8.7.

8.5.4 Information and Documents to be Included in a Consolidation Application

- (a) Each Consolidation Application shall contain all the required information reasonably necessary for IMDA to determine the likely impact of the Consolidation on competition and the public interest, including (without limitation) the following documents and information (based on the Applicants' reasonable and diligent efforts to collect and provide such information):

- (i) the information referred to in section 8.4.4 (a);

- (ii) a copy of each of the following agreements:

- (A) the Consolidation Agreement, including any appendices, related side letters and supporting documents; and

- (B) all agreements in the possession of either the Designated Postal Licensee or the Acquiring Party that, while not directly addressing the Consolidation, are an integral part of the transaction (such as covenants not to compete or licensing agreements) or that are necessary or useful for IMDA to fully assess and determine the likely competitive impact of the Consolidation,

provided that in any case in which the Designated Postal Licensee is not a party to the Consolidation Agreement or any other agreement specified in paragraph (B), the Acquiring Party shall provide these materials directly to IMDA;

- (iii) any supporting document that would assist IMDA in assessing and determining the likely competitive effect of the Consolidation including, at the minimum:

- (A) a copy of the Applicants' current annual reports or

audited financial statements;

- (B) a chart indicating the relationship between each Applicant and its respective Associates and Affiliates and the relevant interest in the Designated Postal Licensee;
 - (C) information about any situation in which the Voting Shares grant the holder thereof a special or preferential right, and any pending change in the ownership structure of any of the Applicants in addition to the change that is the subject of their Consolidation Application; and
 - (D) any anticipated significant changes in management or operations of the Designated Postal Licensee;
- (iv) a detailed statement that provides a clear, accurate and comprehensive description of the Consolidation, a good faith assessment of the likely impact of the Consolidation on competition in any Basic Letter Services Market in which the Applicants and their Associates and Affiliates participate, and a discussion of how approval of the Consolidation would serve the public interest. The competitive assessment should generally include information regarding:
- (A) the Basic Letter Services Markets in which the Applicants and their respective Associates and Affiliates participate;
 - (B) the names, addresses and contact information of the Applicants and their respective Associates and Affiliates who are the market participants;
 - (C) the estimated market shares of the market participants and the level of concentration in those markets;
 - (D) the structure of the markets (and the extent to which it facilitates unilateral anti-competitive conduct or concerted action by multiple participants);
 - (E) the likelihood that output would be increased (either by existing market participants or new entrants) in

response to a significant and non-transitory price increase;

(F) the likelihood of Customers switching to a competing service provider in response to a significant and non-transitory price increase; and

(G) any efficiency that would likely result from the Consolidation; and

(v) any conditions that the Applicants may wish to propose for IMDA's consideration (such as partial divestiture or the imposition of behavioural safeguards) that could reduce any potential adverse competitive impact of the Consolidation. If the Applicants choose to propose such conditions, they should provide a complete description of the proposed conditions and an assessment of why such conditions would be adequate to address any competitive concern that might arise from the Consolidation.

(b) Each Consolidation Application must be accompanied by payment of an application fee of \$5,000, to be paid by the Acquiring Party.

(c) Until IMDA issues its written decision on whether to approve or deny a Consolidation Application, the Applicants must promptly inform IMDA in writing of any new or different fact or matter that is reasonably likely to have a material impact on IMDA's consideration of the Consolidation Application.

8.5.5 Separate Filing and Direct Submission of Information

(a) Without prejudice to regulation 11 of the Regulations, an Applicant may apply in writing to IMDA for a waiver of the requirement for the Applicant to submit a joint Consolidation Application with other Applicants if the Applicant can establish that:

(i) it is unable to comply with the requirement due to circumstances beyond its reasonable control; or

(ii) requiring it to comply with the requirement would be unduly burdensome or would prejudice its legitimate commercial interests.

(b) Circumstances under which IMDA may grant a waiver under paragraph (a) include (without limitation) the following:

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

8.5.6 Approval or Denial of Consolidation Applications

- (a) IMDA will deny a Consolidation Application where IMDA determines that the Consolidation to which the Consolidation Application relates is likely to result in a substantial lessening of competition in any Basic Letter Services Market or it is in the public interest to deny the Consolidation Application.
- (b) If IMDA denies a Consolidation Application, IMDA will provide a written statement of the reasons for its denial.
- (c) IMDA may approve a Consolidation Application with or without Conditions. Without prejudice to section 26D of the Act, IMDA

may issue a direction under section 26D(3) or (4) of the Act (described in section 8.12 of this Code) in the event that any Condition is not complied with.

8.6 Associated Acquiring Parties

- (a) For the avoidance of doubt, where an Acquiring Party enters into a transaction that requires IMDA's approval under section 26B of the Act, other Acquiring Parties that are Associates of the Acquiring Party may also require IMDA's approval. In such a case, all the Acquiring Parties (including the first-mentioned Acquiring Party and Acquiring Parties that are its Associates) and the Designated Postal Licensee must jointly submit a single Request or Consolidation Application to IMDA, as the case may be.
- (b) For example, without limitation, in the situation where Entity A acquires the Voting Shares in a Designated Postal Licensee and that Entity A is in turn a wholly-owned subsidiary of Entity B, then in such a case both Entities A and B would be Acquiring Parties under section 26B of the Act. This is because the Entity A would have acquired Voting Shares in the Designated Postal Licensee, whereas Entity B would have acquired control of voting power in the Designated Postal Licensee. Accordingly, if the acquisition of Voting Shares by Entity A and control of voting power by Entity B cross the relevant thresholds of a 12% Controller or 30% Controller, then both entities together with the Designated Postal Licensee, must jointly submit a single Request or Consolidation Application to IMDA, as the case may be.

8.7 Additional Procedures Relating to Tender Offers

Section 8.7 sets out the additional procedures to be followed where an Acquiring Party intends to make a Tender Offer.

8.7.1 Tender Offers under the Singapore Code on Take-overs and Mergers

Section 8.7.1 sets out the applicable procedures for mandatory offers, voluntary offers and partial offers under the Take-over Code.

8.7.1.1 Partial Offers That Do Not Amount to a Consolidation

- (a) Where an Acquiring Party intends to make a partial offer under rule 16 of the Take-over Code that would result in the Acquiring Party becoming a 12% Controller of a Designated Postal Licensee, the Licensee and the Acquiring Party shall, after the Acquiring Party

announces its pre-conditional offer (i.e. makes an announcement that a partial offer will be made only after IMDA's approval has been obtained) and not less than 60 days before making the offer), submit a Request to IMDA in accordance with section 8.4.3.

- (b) In the event that IMDA does not grant its approval within 60 days of the submission of the Request, the Acquiring Party shall not proceed to make its offer until such time as IMDA may grant its approval.

8.7.1.2 Voluntary Offers or Partial Offers That Amount to a Consolidation

- (a) Where an Acquiring Party intends to make a voluntary offer or a partial offer under rules 15 and 16 respectively of the Take-over Code that would result in the Acquiring Party becoming a 30% Controller of a Designated Postal Licensee or entering into a Consolidation with a Designated Postal Licensee, the Acquiring Party and the Designated Postal Licensee shall, after the Acquiring Party announces its offer (i.e. makes an announcement that a voluntary offer or partial offer will be made only after IMDA's approval has been obtained) and not less than 60 days before it makes its offer, submit a Consolidation Application in accordance with section 8.5.3.
- (b) In the event that IMDA does not grant its approval within 60 days of the submission of the Consolidation Application, the Acquiring Party shall not proceed to make its offer until such time as IMDA may grant its approval.

8.7.1.3 Mandatory Offers

No Acquiring Party shall enter into any transaction for the acquisition of shares in a Designated Postal Licensee that will trigger a mandatory offer under rule 14 of the Take-over Code, unless the completion of such transaction is conditional upon the Acquiring Party and Designated Postal Licensee obtaining IMDA's prior written approval under section 26B of the Act, not less than 60 days before the Acquiring Party proceeds to make such offer.

8.7.2 Other Tender Offers

Where the rules of the securities exchange on which a Designated Postal Licensee's Shares are traded conflict with the procedures specified in section 8.7, or where the provisions of section 8.7 do not address any specific situation in connection with a Tender Offer, the Acquiring Party

must seek IMDA's guidance as to the appropriate course of action and procedures to be followed to obtain IMDA's approval. Nothing in this paragraph shall exempt an Acquiring Party from complying with Part IVA of the Act and the Regulations including, without limitation, the requirement under regulation 7 of the Regulations to obtain IMDA's approval not less than 60 days before making an offer for the Voting Shares of a Designated Postal Licensee.

8.8 Additional Procedures Relating to Share Buybacks

- (a) Subject to paragraph (b), a Designated Postal Licensee need not seek IMDA's approval to carry out a Share Buyback.
- (b) Before entering into any transaction for a Share Buyback, a Designated Postal Licensee must calculate the percentage of Voting Shares held by each shareholder following completion of the Share Buyback. If, as a result of the Share Buyback:
 - (i) any shareholder who previously held less than 5% of the total number of Voting Shares in the Designated Postal Licensee, or had control of less than 5% of the voting power in the Designated Postal Licensee would, after the transaction, hold 5% or more, but less than 12% of the total Voting Shares in the Designated Postal Licensee, or control 5% or more but less than 12% of the voting power in the Designated Postal Licensee, the Designated Postal Licensee may proceed with the Share Buyback and shall file the appropriate notification under section 8.3;
 - (ii) any shareholder will become a 12% Controller of the Designated Postal Licensee, the Designated Postal Licensee and the shareholder must seek IMDA's approval before the Designated Postal Licensee proceeds with the Share Buyback; and
 - (iii) any shareholder will enter into a Consolidation with the Designated Postal Licensee, the Designated Postal Licensee and the shareholder must seek IMDA's approval before the Designated Postal Licensee proceeds with the Share Buyback.
- (c) For the purposes of paragraph (b), the Designated Postal Licensee shall notify shareholders who are required to seek IMDA's approval in accordance with that paragraph, and the Designated Postal Licensee and the relevant shareholders shall, as the case may

be, submit a Request in accordance with section 8.4.3 or a Consolidation Application in accordance with section 8.5.3.

8.9 Conditions of Approval

Section 8.9 specifies the terms and conditions which IMDA may impose in granting any approval under section 26B of the Act in respect of a Request or a Consolidation Application.

8.9.1 Non-discrimination Requirements

(a) IMDA may require the Applicants to agree that the Designated Postal Licensee or the Post-Consolidation Entity will:

- (i) provide access to infrastructure, information or services to other Licensees (including Designated Postal Licensees and Licensees which are not Designated Postal Licensees), entities or Customers on a reasonable and non-discriminatory basis; or
- (ii) reject any preferential access to infrastructure, information or services from any specified entity.

(b) IMDA may also require the Applicants to agree that the Designated Postal Licensee or the Post-Consolidation Entity will contract for independent audits to confirm compliance or to periodically self-certify its compliance with conditions under paragraph (a).

8.9.2 Accounting Separation

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

8.9.3 Structural Separation

IMDA may require the Applicants to agree that the Designated Postal Licensee or the Post-Consolidation Entity will conduct certain operations

through a structurally separate entity. The separate entity may be required to have separate books of accounts, separate facilities, separate offices, separate personnel, separate credit lines, and other appropriate forms of separation.

8.9.4 Voluntary Partial Divestiture of Assets to an Acceptable Purchaser

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

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

8.9.5 Validity of Approval

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

8.9.6 Other Conditions

IMDA may impose other conditions that are designed to preserve or increase competition or meet public interest objectives. These include, but are not limited to, conditions designed to increase entry into Basic Letter Services Markets that are not yet fully competitive.

8.10 Requests for Information and Public Consultation

- (a) Without prejudice to sections 25, 26E and 46 of the Act, where IMDA is of the view that an Applicant has not submitted in its Request or Consolidation Application all information reasonably necessary for IMDA to determine the likely impact of an acquisition on competition and the public interest, IMDA may request additional information from the Applicant.
- (b) Without prejudice to section 1.4.5, where appropriate, IMDA will provide the public with an opportunity to comment on a Consolidation Application. In those cases in which IMDA seeks public comment in connection with a Consolidation, it will release the non-confidential portions of the detailed statement specified in section 8.5.4 (a) (iv). IMDA will consider all comments received to be public documents, and will make them available on the IMDA website. However, a commenting party may seek confidential treatment of specific information that is proprietary or commercially sensitive by submitting a separate confidential appendix. In those cases in which IMDA does not conduct a public consultation, IMDA may nonetheless request comments from individuals or entities where appropriate. IMDA does not assume any obligation to consider any unsolicited comments.

8.11 Failure to Seek IMDA's Approval

- (a) Pursuant to section 26D(9) of the Act and regulation 9 of the Regulations, where an Acquiring Party fails to obtain IMDA's approval and thereby contravenes section 26B(2), (3) or (4) of the Act and it was not aware that it had contravened the provision in question, it shall:
 - (i) notify IMDA in writing of the contravention within 14 days of becoming aware of the contravention;
 - (ii) provide IMDA with such information as IMDA may require for the purpose of determining what directions to give to the

Acquiring Party under section 26D of the Act, including (without limitation):

- (A) an explanation of why it contravened section 26B(2), (3) or (4) of the Act, as the case may be; and
 - (B) the information specified in section 8.4.4 or 8.5.4, as the case may be; and
- (iii) where the Acquiring Party has contravened section 26B(3) or (4) of the Act, pay to IMDA the application fee specified in section 8.5.4 (b).
- (b) An Acquiring Party specified in paragraph (a) shall not acquire any further Voting Shares in any Designated Postal Licensee or control of voting power in any Designated Postal Licensee until it has complied with paragraph (a) and such directions as IMDA may give under section 26D of the Act.

8.12 IMDA's Power to Issue Directions

- (a) Pursuant to section 26D(1) of the Act, if IMDA is satisfied that an Acquiring Party has acquired Voting Shares or control of voting power in any Designated Postal Licensee or entered into a Consolidation with a Designated Postal Licensee in contravention of section 26B(2), (3) or (4) of the Act (that is, without obtaining IMDA's written approval in the prescribed manner and within the prescribed period), or that the acquisition (of Voting Shares or control of voting power) or Consolidation is likely to substantially lessen competition or is against the public interest, IMDA may issue a direction as described in paragraph (c).
- (b) Pursuant to section 26D(2) of the Act, IMDA may also issue a direction as described in paragraph (c) if IMDA is satisfied that:
- (i) any condition of approval imposed on the Acquiring Party has not been complied with;
 - (ii) the Acquiring Party has furnished false or misleading information or documents in connection with an application under section 26B of the Act to obtain the approval of IMDA (that is, in connection with a Request or a Consolidation Application); or
 - (iii) IMDA would not have granted its approval under section

26B of the Act had it been aware, at that time, of circumstances relevant to the Acquiring Party's application for such approval,

and the existing Voting Shares or voting power in the Designated Postal Licensee held or controlled by the Acquiring Party is likely to substantially lessen competition or be against the public interest.

- (c) Pursuant to sections 26D(3) and (4) of the Act, IMDA may, in the circumstances specified in those sections, direct:
 - (i) the Designated Postal Licensee to do all or any of the following:
 - (A) to restrict the voting power in respect of the Shares through which an Acquiring Party holds or controls in the Designated Postal Licensee, unless IMDA expressly permits such rights to be exercised;
 - (B) to restrict the issuance or offer of Shares in the Designated Postal Licensee (whether by way of rights, bonus or otherwise) in respect of the Shares specified in paragraph (A), unless IMDA expressly permits such issue or offer; and
 - (C) except in a liquidation of the Designated Postal Licensee, to restrict the payment of any amount (whether by way of dividends or otherwise) in respect of the Shares specified in paragraph (A), unless IMDA expressly authorises such payments subject to such conditions as IMDA may specify;
 - (ii) any Acquiring Party or an Associate of the Acquiring Party to transfer or dispose of all or any part of the Shares specified in paragraph (i) (A) within such time and subject to such conditions as IMDA considers appropriate; and
 - (iii) any Acquiring Party to transfer or dispose of all or any part of the business acquired from the Designated Postal Licensee within such time and subject to such conditions as IMDA considers appropriate.

8.13 Extension of Time and Waiver of Requirements

For the purposes of sections 8.3, 8.4, 8.5 and 8.11, IMDA may reduce or extend the time for the giving of the notice or waive any other requirement for the giving of any notice or making of any application, if it is satisfied, on application –

- (a) that the person required to give the notice or make the application is unable to comply with the requirement due to circumstances beyond the person's reasonable control;
- (b) that requiring the person to comply with the requirement would be unduly burdensome for the person or would prejudice the legitimate commercial interests of the person; or
- (c) that a reduction or extension of any such time would be otherwise appropriate having regard to the circumstances of the case.

9 ADMINISTRATIVE PROCEDURES

9.1 Introduction and Definitions

- (a) This section describes the administrative procedures that IMDA will use to implement this Code.
- (b) In section 9, unless the context otherwise requires:
 - (i) “Party Requesting Enforcement” means a person that submits a Request for Enforcement;
 - (ii) “Request for Enforcement” means a written request asking IMDA to take enforcement action against a Licensee for a contravention of this Code;
 - (iii) “Responding Licensee” means a Licensee against which a Request for Enforcement has been submitted; and
 - (iv) “Response” means a Responding Licensee’s written response to a Request for Enforcement.

9.2 Enforcement Actions for Contravention of this Code

Enforcement actions for contravention of this Code can be brought by IMDA, either at the request of a private party pursuant to section 9.2.1 or on its own motion pursuant to section 9.2.2. IMDA has discretion to determine whether it will conduct any enforcement action. Whilst the enforcement process is designed to provide a significant deterrent to impermissible conduct, any enforcement action taken by IMDA will be proportionate to the severity of the contravention.

9.2.1 Requests for Enforcement by a Private Party

Any person that has been injured, or is likely to be injured, as a direct result of the contravention of any provision of this Code by a Licensee, may submit a Request for Enforcement. Where IMDA receives 2 or more Requests for Enforcement against the same Licensee that arise out of the same action or course of action by that Licensee, IMDA may consider the Requests for Enforcement in a single consolidated proceeding.

9.2.1.1 Submission of Written Requests for Enforcement

- (a) Any Party Requesting Enforcement must submit to IMDA a Request for Enforcement. The Request for Enforcement must cite

the specific provisions of this Code that the Party Requesting Enforcement claims the Licensee has contravened and must allege facts that, if proven to be true, would demonstrate a contravention. Whenever possible, the Party Requesting Enforcement should attach to the Request for Enforcement copies of all relevant documents necessary to prove the allegations of fact contained in the Request for Enforcement. Where this is not possible, the Party Requesting Enforcement must provide a statement explaining why it cannot provide the supporting documentation. The Request for Enforcement must include a signed statement that:

- (i) the Party Requesting Enforcement has used reasonable diligence in collecting the facts;
 - (ii) the facts alleged are true to the best of the Party Requesting Enforcement's knowledge;
 - (iii) the Party Requesting Enforcement believes in good faith that the facts alleged, if proven, would constitute a contravention of the provisions of this Code as cited in the Request for Enforcement;
 - (iv) describes the manner in which the Party Requesting Enforcement has been injured, or is likely to be injured, as a direct result of the alleged contravention; and
 - (v) the Party Requesting Enforcement has made an effort in good faith to resolve the underlying dispute through direct negotiations with the Licensee against which enforcement action is being sought.
- (b) IMDA may require the Party Requesting Enforcement to provide IMDA with a statutory declaration attesting to the facts that provide the basis for the Request for Enforcement within 7 days from the date of IMDA's written request.

9.2.1.2 IMDA's Response to Request for Enforcement

- (a) IMDA will seek to respond to the Party Requesting Enforcement with its decision as to whether IMDA accepts or declines the Request for Enforcement within 15 days from the date of IMDA's receipt of the Request for Enforcement.
- (b) Where IMDA determines that the Request for Enforcement raises novel or complex issues, IMDA may, by written notification to the

Party Requesting Enforcement, extend the review period by up to 30 days.

- (i) IMDA will find that a Request for Enforcement involves a novel issue when disposition of the Request for Enforcement requires IMDA to consider an issue that IMDA has not previously addressed, either under this Code or in a prior enforcement request.
 - (ii) IMDA will find that a Request for Enforcement involves a complex issue when disposition of the Request for Enforcement requires IMDA to obtain significant factual information to resolve difficult legal, factual or policy issues that cannot be adequately resolved within the ordinary 15-day period.
- (c) IMDA will decline the Request for Enforcement if:
- (i) the Party Requesting Enforcement fails to show that it has been injured, or is likely to be injured, as a direct result of the alleged contravention of the provisions of this Code as cited in the Request for Enforcement;
 - (ii) the factual allegations are unsupported or clearly without merits;
 - (iii) the factual allegations contained in the Request for Enforcement, even if proven to be true, would not constitute a contravention of this Code;
 - (iv) IMDA determines that the Request for Enforcement does not satisfy the requirements specified in section 9.2.1.1; or
 - (v) IMDA concludes that the exercise of its enforcement discretion would not be appropriate.
- (d) Where IMDA declines to take enforcement action, IMDA will notify the Party Requesting Enforcement and provide a written explanation.

9.2.1.3 Deferment of Consideration for Requests for Enforcement

In an appropriate case, IMDA may defer its consideration of a Request for Enforcement. Where IMDA defers its consideration of a Request for Enforcement, IMDA will notify the Party Requesting Enforcement and

provide a written explanation.

9.2.1.4 Notifications of Enforcement Action

If IMDA accepts the Request for Enforcement, IMDA will issue a written notification to the Responding Licensee. A copy of the written notification will be made available to the Party Requesting Enforcement. The written notification will clearly indicate the specific provisions of this Code that the Responding Licensee has been alleged to contravene and reasonable details of the alleged facts constituting the contravention. IMDA will also provide the Responding Licensee a copy of the Request for Enforcement and all supporting documents submitted by the Party Requesting Enforcement unless, and to the extent that, IMDA has granted an application by the Party Requesting Enforcement for confidential treatment of information pursuant to section 9.5.

9.2.1.5 Opportunity to Respond

Where IMDA accepts the Request for Enforcement and issues a written notification to the Responding Licensee, the Responding Licensee will have 15 days from the date of IMDA's written notification to submit its Response to IMDA. The Response must provide a clear statement, supported by documents, affidavits or other relevant materials, providing the basis on which the Responding Licensee disputes the allegations of contravention. IMDA will provide a copy of the Response to the Party Requesting Enforcement unless, and to the extent that, IMDA has granted an application by the Responding Licensee for treatment of confidential information pursuant to section 9.5.

9.2.1.6 Opportunity for Further Reply

- (a) The Party Requesting Enforcement will have 15 days from the day on which IMDA provides the Response, to submit its further written reply to the Response.
- (b) Where the Party Requesting Enforcement submits a further reply, the Responding Licensee will have 15 days from the day on which IMDA provides the further reply, to submit a final written reply to IMDA.
- (c) In both cases above, IMDA will provide a copy of the person's reply to the other person unless, and to the extent that, IMDA has granted an application by the person submitting the reply for confidential treatment of information pursuant to section 9.5.

9.2.1.7 Requests for Extension of Time

Where a person demonstrates good cause, IMDA may grant a further extension of time of up to 7 days for making its submissions. Any request for an extension of time must be made in writing to IMDA at least 3 days before the expiration of the specified period for which the person must submit its response. IMDA will seek to inform both the Responding Licensee and the Party Requesting Enforcement of its decision within 2 days of the date of receipt of the request for extension.

9.2.1.8 Requests for Further Information

After reviewing the information submitted by the Party Requesting Enforcement and the Responding Licensee, IMDA may request either or both parties to submit additional information at any time during the course of the enforcement proceedings pursuant to section 9.4. IMDA may provide a copy of the response to the other person unless, and to the extent that, IMDA has granted an application by either person for confidential treatment of information pursuant to section 9.5.

9.2.1.9 Withdrawal of Requests for Enforcement

- (a) The Party Requesting Enforcement may, at any time, withdraw its Request for Enforcement. To withdraw its Request for Enforcement, the Party Requesting Enforcement must notify IMDA in writing of its request for withdrawal and provide reasons for its request (copied to the Responding Licensee).
- (b) The person's decision to withdraw its Request for Enforcement does not preclude IMDA from taking enforcement action on its own initiative in the case where IMDA concludes that it is in the public interest to do so. In such a case, while IMDA will initiate a separate enforcement proceeding pursuant to section 9.2.2, IMDA may continue to rely on the submissions made previously by the parties in the enforcement proceeding.

9.2.1.10 Issuance of IMDA's Decisions

IMDA will seek to issue its decision within 60 days of receiving all necessary information. Where appropriate, IMDA may, by written notice to the parties before the expiry of the 60-day review period, extend the time by which IMDA will issue its decision. In such cases, IMDA will specify the number of days by which it is extending the review period.

9.2.2 Enforcement Actions Initiated by IMDA

IMDA may commence enforcement actions on its own initiative against a Licensee that it believes has contravened this Code. IMDA will use the procedures as set out in sections 9.2.2.1 through 9.2.2.4 in any enforcement action initiated by IMDA.

9.2.2.1 Notifications to Licensee of Enforcement Action

IMDA will provide a written notification to the Licensee that IMDA is initiating enforcement action against that Licensee. The notification will clearly indicate the specific provisions of this Code that IMDA believes the Licensee has contravened, and will describe in reasonable detail the basis for IMDA's belief.

9.2.2.2 Opportunity to Respond

The Licensee will have 15 days to respond in writing to IMDA's notification. IMDA may extend this period in appropriate cases. For each allegation which the Licensee disputes, the Licensee's response must provide a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the Licensee disputes the allegation.

9.2.2.3 Requests for Additional Information

After reviewing the response submitted by the Licensee, IMDA may request the Licensee to provide additional information pursuant to section 9.4.

9.2.2.4 Issuance of IMDA's Decisions

IMDA will carefully consider the matters set out in the responses submitted by the Licensee before issuing its decision. IMDA will seek to issue its decision within 60 days of receiving all necessary information required by IMDA. Where appropriate, IMDA may, by written notice to the Licensee before the expiry of the 60-day period, extend the time by which IMDA will issue its decision. In such cases, IMDA will specify the number of days by which it is extending the review period.

9.2.3 Interim Directions to Cease and Desist

At any time during an enforcement proceeding pursuant to section 9.2.1 or 9.2.2, IMDA may issue an interim direction to a Licensee to cease and desist from any specified conduct. In determining whether to issue such an

interim direction, IMDA will consider whether:

- (a) there is persuasive evidence that the Licensee has contravened a provision of this Code;
- (b) continuation of the Licensee's conduct is likely to cause serious harm to Customers or the general public;
- (c) the potential anti-competitive harm from allowing the Licensee to continue its conduct outweighs the burden on the Licensee of ceasing the conduct; or
- (d) issuance of the interim direction is in the public interest.

9.2.4 Enforcement Measures

In the event that IMDA concludes that a Licensee has contravened any provision of this Code, IMDA may take such enforcement measures as it considers appropriate, including the following enforcement actions:

9.2.4.1 Warnings

IMDA may issue a warning to the Licensee. The warning will contain a statement of IMDA's basis for concluding that the Licensee has acted in contravention of any provision of this Code, but will impose no further sanction.

9.2.4.2 Directions to Cease and Desist

Where appropriate, IMDA will direct the Licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Code.

9.2.4.3 Remedial Actions

Where appropriate, IMDA will direct the Licensee to take specific remedial action.

9.2.4.4 Financial Penalties

- (a) IMDA may impose financial penalties of up to \$1 million per contravention on the Licensee that contravenes any provision of this Code.

- (b) In imposing financial penalties, IMDA will consider any aggravating factors. These factors include:
 - (i) whether the contravention was serious;
 - (ii) whether the contravention continued for an extended period;
 - (iii) whether the contravention resulted in harm to third parties;
 - (iv) whether the Licensee acted willfully, recklessly or in a grossly negligent manner;
 - (v) whether the Licensee has a previous history of contraventions; and
 - (vi) whether the Licensee made any effort to conceal the contravention.

- (c) In imposing financial penalties, IMDA will also consider any mitigating factors. These factors include:
 - (i) whether the contravention was minor;
 - (ii) whether the adverse consequences to third parties from the contravention were minor;
 - (iii) whether the Licensee took prompt action to correct the contravention;
 - (iv) whether the contravention was accidental; and
 - (v) whether the Licensee voluntarily disclosed the contravention to IMDA and co-operated with IMDA in its investigation.

9.2.5 Suspension or Cancellation of the Licence under the Act

In serious cases, where IMDA is satisfied that a Licensee has contravened, and is likely to again contravene, any provision of this Code, IMDA may, instead of taking any of the enforcement action specified in section 9.2.4, cancel or suspend the relevant licence under section 9 of the Act.

9.2.6 Timeliness of Enforcement Actions

- (a) The following time limits must be complied with in respect of every enforcement action:
 - (i) in any case in which a person files a Request for Enforcement pursuant to section 9.2.1, the person must do so within 2 years after the date of the occurrence of the action that constitutes the alleged contravention of this Code; and
 - (ii) in any case in which IMDA initiates enforcement action on its own motion, IMDA will issue the written notification provided for in section 9.2.2.1 within 2 years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
- (b) In determining the date of the occurrence of the action that constitutes the alleged contravention of this Code, the following will apply:
 - (i) where the alleged contravention could not reasonably have been discovered at the time it was committed, the earlier of the dates on which the conduct was, or reasonably should have been, discovered will constitute the date on which the alleged contravention occurred; or
 - (ii) where a Licensee engages in an on-going course of conduct that allegedly contravenes this Code, the date of the most recent action taken as part of that course of conduct will constitute the date on which the alleged contravention occurred. For example, where conduct undertaken pursuant to an agreement is continuing, IMDA may bring an enforcement action while the conduct is continuing or at the latest, within 2 years from the date on which the Licensee ceases its conduct under the Agreement.

9.3 Binding Effect of Initial Submissions

- (a) Any person who is a party to an enforcement or dispute resolution proceeding under this Code must, in its initial submission to IMDA:
 - (i) in relation to a Request for Enforcement under section 9.2.1, make all relevant allegations of contravention;

- (ii) in relation to a Response to a Request for Enforcement under section 9.2.1.5 or a response under section 9.2.2.2, raise all relevant grounds to dispute the allegations of contravention; and
 - (iii) in relation to a petition for dispute resolution and a response to a petition for dispute resolution, raise all relevant issues in dispute and submit all relevant information to substantiate the person's position taken on the issues in dispute.
- (b) IMDA will reject the relevant portion of any subsequent submission made by the person in the course of the relevant proceeding that:
- (i) in relation to an enforcement proceeding, makes any new allegation of contravention not previously disclosed in the Request for Enforcement or raises any new ground to dispute the allegations of contravention not previously disclosed in the response;
 - (ii) in relation to a dispute resolution proceeding, raises any new issue in dispute not previously disclosed in the petition for dispute resolution or response to the petition for dispute resolution;
 - (iii) contains information that could have been submitted in its initial submission; or
 - (iv) takes any position that is inconsistent with its initial submission.

9.4 Request for Information

- (a) In carrying out its duties and functions under this Code, IMDA may, by notice in writing, require a Licensee or other person specified in this Code to produce specified documents or to provide specified information by a specified timeframe. IMDA may also request a person to participate in an interview or require a person to allow IMDA to physically inspect its accounts, documents, records, facilities and operations.
- (b) All information submitted to IMDA by any Licensee or other person pursuant to the provisions of this Code must, to the best of

that Licensee's or person's ability and knowledge, be accurate, complete and responsive. At the time it submits the information, the Licensee or person must submit a statement in a form acceptable to IMDA, certifying that it has satisfied this obligation.

9.4.1 Effect of Failure to Submit Required Information

- (a) In any proceeding under this Code, if a person fails or refuses to submit information required by this Code, or requested by IMDA, within the timeframe specified, IMDA will base its decision on the information provided by any other person who is a party to the proceeding (if any) and on the best information available to IMDA from whatever source derived.
- (b) Where a person requesting IMDA to take a particular action fails to respond accurately and completely to IMDA's information request within the timeframe specified, IMDA may refuse to take the action requested.
- (c) Any failure by a Licensee to comply with IMDA's information requests, and any destruction, disposal, falsification or concealment of requested documents, constitutes a contravention of this Code for which IMDA can take enforcement action pursuant to section 9.2.4.

9.5 Confidential Treatment of Information

A person submitting information to IMDA, whether voluntarily, or pursuant to the requirements of this Code or a request from IMDA, may request that the information submitted be treated as confidential. Where feasible, all information for which a person is seeking confidential treatment must be provided in a separate annex. Alternatively, the requesting party must identify the specific document, or portion thereof, or other information for which confidential treatment is sought. IMDA generally will not accept requests to treat all information submitted as confidential. Parties should take reasonable measures to minimise the amount of information for which they request confidential treatment.

9.5.1 Standards Governing Grant of Confidential Treatment

- (a) IMDA will grant a request for confidential treatment if the requesting party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment contains commercially sensitive information (including information that is subject to a pre-existing non-disclosure agreement with a third

party), or that the disclosure of the information would have a material adverse impact.

- (b) IMDA considers information to be commercially sensitive if:
 - (i) it is not otherwise available to the public; or
 - (ii) there is a reasonable possibility that its disclosure would cause harm to the requesting party or otherwise provide a commercial benefit to the requesting party's competitors.
- (c) IMDA will generally find that information that describes the disclosing party's business procedures, practices, plans or its assessment of market conditions or similar matters is commercially sensitive.

9.5.2 Notification of Denial of Confidential Treatment

- (a) If IMDA rejects a request for confidential treatment, IMDA will provide the person that submitted the information with the reason for its decision. Within 7 days from the date of IMDA's rejection of the request for confidential treatment of information, the requesting party may either:
 - (i) request IMDA in writing to return the information, in which case unless the information is otherwise generally available to the public, IMDA will not consider this information in relation to the proceeding; or
 - (ii) withdraw in writing its request for confidential treatment of information, in which case IMDA may consider, and where appropriate, disclose the information provided.
- (b) If the requesting party fails to do either of the above within the specified period, IMDA will deem the requesting party to have withdrawn its request for confidential treatment of information, in which case IMDA may consider, and where appropriate disclose, the information provided.
- (c) IMDA's decision not to grant confidential treatment does not excuse a person from complying fully with any obligation that it may have to provide complete and accurate information to IMDA.

9.6 Consultation with Other Interested Parties

In addition to obtaining information directly from the parties to a proceeding under this Code, IMDA may, where appropriate, conduct a public consultation to provide interested parties with an opportunity to comment on any proceeding. In those cases in which IMDA does not conduct a public consultation, IMDA may nonetheless request comments from individuals or entities where appropriate. IMDA does not assume any obligation to consider any unsolicited comments.

9.7 Appeal to Minister

- (a) Any Licensee that is aggrieved by, *inter alia*:
 - (i) any decision of IMDA in the exercise of any discretion vested in it under the Act, including (without limitation) any decision under section 9 of the Act; or
 - (ii) anything contained in any direction given by IMDA under section 25, 26D or 26F(2) of the Act,

may appeal to the Minister within 14 days of being notified of the decision or direction in accordance with sections 56(1) and (3) of the Act.

- (b) Any person (other than a Licensee) that is aggrieved by, *inter alia*, any decision or direction of IMDA given by or under section 9 (1), 26B or 26D of the Act may appeal to the Minister within 14 days of being notified of the decision or direction in accordance with sections 56(2) and (3) of the Act.
- (c) Under section 56(6) of the Act, unless otherwise provided, where an appeal is lodged under section 56 of the Act, the decision, direction or other thing being appealed against shall be complied with until the determination of the appeal.
- (d) In considering whether to stay the effectiveness of a decision or direction pending review, IMDA generally will consider factors including the merits of the appeal, whether the potential harm to any person outweighs the benefits of allowing the decision or direction to go into effect and the public interest.

10 REVOCATION, SAVINGS AND TRANSITIONAL

10.1 Introduction

10.1.1 Application

All provisions in this section apply to all Licensees.

10.1.2 Over-view

This section sets out the savings provisions and transitional rules governing the implementation of the provisions of this Code.

10.2 Revocation

IMDA issued the Postal Competition Code 2008 (“Code 2008”) on 2 May 2008. The Code 2008 is hereby cancelled as of the date of issuance of this Code.

10.3 Savings Provision

Except as otherwise provided, and so far as it is not inconsistent with the provisions of this Code, any action, approval, decision, designation, direction, exemption and notification taken, granted, issued, made, published or approved by IMDA in relation to any matter under the Code 2008 will continue in effect and will be deemed to have been taken, granted, issued, made, published or approved by IMDA under the corresponding provisions of this Code.

10.4 General Transition Rules

10.4.1 Contraventions Before the Effective Date of this Code

- (a) Subject to section 10.4.2 of this Code, a person will not be found to be in contravention of any provision of this Code in respect of any agreement entered into, or act or conduct that occurred, before the Effective Date of this Code. Rather, the person shall remain liable for any contravention under the Code 2008 in respect of such agreement, act or conduct, as if the Code 2008 had not been revoked. Any such enforcement action is subject to the time limitation set out in section 9.2.6 of the Code 2008. In this respect, any enforcement proceeding commenced before the Effective Date of this Code may be continued and completed under the provisions of the Code 2008, as if the Code 2008 had not been revoked. However, any right of appeal in relation to that proceeding shall be

exercised, heard and determined under section 9.7 of this Code.

- (b) Where the enforcement action is commenced after the Effective Date of this Code, the procedures set out in sections 9.2 through 9.7 (except section 9.2.6) of this Code shall apply to the enforcement action.

10.4.2 Application of this Code to Continuing Agreement, Act and Conduct

Any agreement entered into or act or conduct that occurred prior to the Effective Date of this Code, but which continues after the Effective Date of this Code, will be governed by the terms of this Code from the Effective Date of this Code. IMDA will not take enforcement action against a person under the Code 2008 for the same contravening agreement, act or conduct.

10.4.3 Uncompleted Proceedings under the Revoked Postal Competition Code

- (a) Without prejudice to section 10.4.1 of this Code, any proceeding commenced before the Effective Date of this Code, but which remains uncompleted after the Effective Date of this Code, will be deemed to have been made under the corresponding provision of this Code and governed by this Code, provided that IMDA is able to determine the proceeding in a manner that is consistent with the provisions of this Code. Where IMDA is unable to determine a proceeding in a manner that is consistent with the provisions of this Code, IMDA will notify the parties within 30 days from the Effective Date of this Code and the proceeding shall be deemed withdrawn by the parties. In such an event, the parties may initiate a new proceeding under the corresponding provision of this Code. Where necessary, IMDA may issue directions to the parties of any uncompleted proceeding to specify additional transitional rules for the purpose of determining such proceeding under the corresponding provision of this Code.
- (b) Where a proceeding commenced under the Code 2008 has been completed before the Effective Date of this Code but any right of appeal is exercised after the Effective Date of this Code, such right of appeal in relation to that proceeding shall be exercised, heard and determined under section 9.7 of this Code.

10.5 Specific Transitional Rules

10.5.1 Classification of Dominant Licensees and Exemptions from Special Provisions Applicable to Dominant Licensees

- (a) IMDA intends that every Dominant Licensee classification made under the Code 2008 will continue to be in effect and deemed to have been made pursuant to the corresponding provision in this Code. However, where IMDA considers it appropriate to do so, it may for the purpose of clarity and without affecting the validity of any existing classification, by notice on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate, specify the Licensees that are classified as dominant.
- (b) Except as otherwise provided, and so far as is not inconsistent with the provisions of this Code, IMDA intends that every exemption granted to a Dominant Licensee under the Code 2008 will continue to be in effect and deemed to have been granted in respect of, and constitute an exemption from, the corresponding provision in this Code. However, where IMDA considers it appropriate to do so, it may for the purpose of clarity and without affecting the validity of any existing exemption, by notice on the IMDA website (www.imda.gov.sg) or by any other means of publication as IMDA considers appropriate, specify the corresponding provision of this Code from which a Dominant Licensee is exempted.
- (c) For the avoidance of doubt, it will not be necessary for IMDA to seek any comment, or initiate any process for Dominant Licensee classification or exemption, provided for in this Code prior to issuing any notification under this section 10.5.1.

10.5.2 RAO and RAO-based Agreements

Subject to the requirements of this section, in relation to a Mandated Licensee's RAO that has been approved by IMDA based on the requirements of the Code 2008, the RAO will continue in effect and will be deemed to have been approved by IMDA under the corresponding provisions of this Code.

APPENDIX

MANDATED SERVICES THAT MUST BE OFFERED UNDER THE REFERENCE ACCESS OFFER

1. Introduction

1.1 This Appendix describes the terms and conditions on which a Mandated Licensee must offer to provide Mandated Services. These terms and conditions must be contained in the Mandated Licensee's RAO.

1.2 A Mandated Licensee must offer to provide the following Mandated Services, upon request, to any Requesting Licensee:

“downstream delivery services” as an input for the provision of any Basic Letter Service and/or Direct Mail Service to recipients in Singapore, including the domestic delivery of inbound international Basic Letters and Direct Mail.

2. Mandated Services

2.1 Downstream Delivery Services

2.1.1 A Mandated Licensee must offer to provide “downstream delivery services” at the following access points:

- (a) the Mandated Licensee's central mail sorting centre (“Mail Centre”) and
- (b) premises at which Mandated Licensee's post office boxes or mail boxes (“Post Office Boxes”) are located.

2.1.2 Unless IMDA mandates or allows the use of a different methodology, a Mandated Licensee must offer to provide “downstream delivery services” using the following pricing methodology:

- (a) for delivering homogeneous and/or pre-sorted domestic mail, the access prices for new entrants shall be no less favourable than the discounted charges offered by the Mandated Licensee to existing bulk mailers;
- (b) for delivering other unsorted and heterogeneous domestic mail, the access prices will be determined using the standard of retail price for delivery of such mail minus avoidable costs, taking into

account the extra handling costs for heterogeneous mail; and

- (c) for delivering incoming international mail to recipients in Singapore, the access prices will be determined using the Universal Postal Union Terminal Dues System as reference points.

2.2 Mail Centres

2.2.1 A Mandated Licensee must offer to provide Requesting Licensees with the following in its RAO:

- (a) an offer to provide domestic delivery service to a Requesting Licensee that has undertaken a collection of Basic Letters and/or Direct Mail from Senders and has transported such Basic Letters and/or Direct Mail to the Mail Centre;
- (b) an offer to transport and deliver Basic Letters and/or Direct Mail to any recipient in Singapore. The services offered by the Mandated Licensee may include the sorting and/or the bar-coding prior to sorting of Basic Letters and/or Direct Mail;
- (c) an offer to allow a Requesting Licensee to provide bar-coding and/or sorting services. If the Requesting Licensee chooses to provide these services, the Mandated Licensee must reduce the price that it charges to reflect the costs that the Mandated Licensee avoids as a result of the Requesting Licensee performing these functions;
- (d) the address and location information of the Mail Centre at which Basic Letters and/or Direct Mail may be deposited;
- (e) the sortation requirement options that the Mandated Licensee will offer, if a Requesting Licensee chooses to pre-sort Basic Letters and/or Direct Mail. This should include grouping addresses by postal sectors as used and specified by the Mandated Licensee;
- (f) any addressing requirements that the Mandated Licensee will impose. This may include the bar codes required if a bar code reading machine is to be used, or any required formatting of addresses to enable automatic machine reading;
- (g) the presentation requirements that the Mandated Licensee will impose, including the specification of containers to be used for the handover of Basic Letters and/or Direct Mail;

- (h) the minimum volumes of Basic Letters and/or Direct Mail that a Requesting Licensee must provide;
- (i) any requirements for interfacing with a Requiring Licensee's information systems;
- (j) the weight and format of Basic Letters and/or Direct Mail to be accepted;
- (k) the times at which the Mandated Licensee will accept Basic Letters and/or Direct Mail at the Mail Centre;
- (l) the delivery standard for Basic Letters and/or Direct Mail received at the specified time, the percentage target for achieving this standard, and compensation to Requesting Licensee upon failure to meet the target;
- (m) any conditions reasonably relating to health, safety and security;
- (n) any restrictions on vehicles that seek to enter the facility; and
- (o) the price that the Mandated Licensee will charge for the services offered.

2.3 Post Office Boxes

- 2.3.1 A Mandated Licensee must offer to provide Requesting Licensees with the ability to have Basic Letters and/or Direct Mail delivered to Post Office Boxes to enable the Requesting Licensee to deliver Basic Letters and/or Direct Mail to parties that choose to use Post Office Boxes as a delivery address.
- 2.3.2 A Mandated Licensee must offer to deliver Basic Letters and/or Direct Mail to Post Office Boxes on prices, terms and conditions approved by IMDA. Any charges, if applicable, must be based on the incremental cost of providing such access.
- 2.3.3 A Mandated Licensee must provide to Requesting Licensees:
 - (a) the address or location details for "handing off" Basic Letters and/or Direct Mail for delivery to Post Office Boxes;
 - (b) the terms and conditions for access to the Post Office Boxes;
 - (c) the times at which the Mandated Licensee will accept Basic Letters

and/or Direct Mail at the Post Offices;

- (d) any conditions regarding the Basic Letters and/or Direct Mail (e.g., pre-sorting);
- (e) the delivery standard for Basic Letters and/or Direct Mail received at the specified time, the percentage target for achieving this standard, and compensation to Requesting Licensee upon failure to meet the target; and
- (f) any conditions reasonably relating to health, safety and security.