

**INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY
OF SINGAPORE**

TELECOMMUNICATIONS ACT

(CHAPTER 323)

**ADVISORY GUIDELINES GOVERNING TENDER OFFER PROCESS UNDER
SECTION 10 OF THE CODE OF PRACTICE FOR COMPETITION
IN THE PROVISION OF TELECOMMUNICATION SERVICES 2005**

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**ADVISORY GUIDELINES GOVERNING TENDER OFFER PROCESS UNDER
SECTION 10 OF THE CODE OF PRACTICE FOR COMPETITION
IN THE PROVISION OF TELECOMMUNICATION SERVICES 2005**

18 February 2005

The Info-Communications Development Authority of Singapore (“IDA”), pursuant to Section 28 of the Telecommunications Act (Cap.323) (the “Act”), hereby issues these Advisory Guidelines Governing Tender Offer Process under Section 10 of the Code of Practice for Competition in the Provision of Telecommunication Services 2005 (these “Guidelines”).

1. INTRODUCTION

1.1 Definitions

Unless otherwise defined in these Guidelines, capitalised terms used in these Guidelines have the same meaning as in the Code.

When used in these Guidelines, the following terms will have the meanings specified in this paragraph:

- (a) “Code” means the Code of Practice for Competition in the Provision of Telecommunication Services 2005, issued by IDA on 18 February 2005;
- (b) “Licensee” means a Facilities-based Licensee or a Services-based Licensee that IDA has declared to be a Designated Telecommunication Licensee pursuant to Section 32A (1) of the Act;
- (c) “Offer” refers to an offer made pursuant to Rules 14, 15 or 16 of the Take-over Code; and
- (d) “Take-over Code” means the Singapore Code on Take-overs and Mergers.

1.2 IDA’s Authority to Review and Approve Acquisitions of Ownership Interests in Licensees by way of Tender Offers

IDA’s authority to review and approve acquisitions of Ownership Interests in Licensees is set out in Part VA of the Act. This includes acquisitions of Direct Ownership Interests in Licensees by way of Tender Offers.

Subsection 10.8.1 of the Code specifies that IDA's prior written approval must be obtained in the case where an Acquiring Party proposes to acquire a Direct Ownership Interest in a Licensee by a Tender Offer, which would result in that Acquiring Party holding an Ownership Interest in the Licensee of 12 percent or more.

1.3 Legal Effect of These Guidelines

The provisions contained in these Guidelines are advisory and are intended to clarify the procedures applicable to an Acquiring Party seeking to make a Tender Offer under Section 10 of the Code and where the Take-over Code is applicable. In the case of any conflict between the Code and these Guidelines, the terms of the Code will prevail.

1.4 Short Title

These Guidelines may be referred to as the "Tender Offer Guidelines".

2. OBTAINING IDA'S WRITTEN APPROVAL FOR TENDER OFFER WHERE THE TAKE-OVER CODE APPLIES

These Guidelines apply to an acquisition of a Direct Ownership Interest in a Licensee by an Acquiring Party in a situation where the Take-over Code is applicable¹.

2.1 Rule 14 of the Take-over Code: Mandatory Offer

Rule 14 of the Take-over Code requires an Acquiring Party to make a mandatory offer for a Licensee if:

- (a) the Acquiring Party, together with parties acting in concert with it, acquire shares in the Licensee which carry 30 percent or more in the voting rights of the Licensee; or
- (b) the Acquiring Party and parties acting in concert with it hold not less than 30 percent but not more than 50 percent of the voting rights of the Licensee and acquire in any period of 6 months, additional shares in the Licensee carrying more than 1 percent of the voting rights in the Licensee.

¹ The Take-over Code applies to all Singapore-incorporated listed companies and other Singapore-incorporated public companies with 50 or more shareholders and net tangible assets of S\$5 million or more.

2.2 Rule 15 of the Take-over Code: Voluntary Offer

Rule 15 of the Take-over Code provides for voluntary offers that will result in the Acquiring Party, together with parties acting in concert with it, holding more than 50 percent of the voting rights of the Licensee.

2.3 Rule 16 of the Take-over Code: Partial Offer

Under Rule 16 of the Take-over Code, a partial offer can be made for shares in the Licensee that carry:

- (a) less than 30 percent of the voting rights of the Licensee; or
- (b) more than 50 percent of the voting rights of the Licensee.

2.4 Rule 22 of the Take-over Code: Offer Timetable

Rule 22 of the Take-over Code sets out the applicable timelines relating to the making of an Offer under the Take-over Code.

3. PROCEDURES FOR SEEKING IDA'S WRITTEN APPROVAL

The Acquiring Party shall observe the following procedures before making any initial public announcement of the Offer.

3.1 Partial Offer of at least 12 percent but less than 30 percent

Where an Acquiring Party intends to make a partial offer for the shares in a Licensee that will result in the Acquiring Party holding at least 12 percent but less than 30 percent of the voting rights of the Licensee, and such acquisition does not amount to a Consolidation, the following procedures apply:

- (a) the Acquiring Party shall concurrently:
 - (i) announce a pre-conditional offer (i.e. an announcement that a partial offer will be made and the Offer timetable under Rule 22 of the Take-over Code will apply only after IDA's written approval is obtained); and
 - (ii) notify the Licensee that it proposes to acquire a Direct Ownership Interest in the Licensee by a partial offer; and

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- (b) The Licensee and the Acquiring Party shall jointly submit a Request for approval to IDA and obtain IDA's written approval before the Acquiring Party makes the partial offer.

Please refer to Sub-section 10.3.6.3.1 of the Code for the process applicable to the submission of the Request for approval to IDA.

3.2 Voluntary Offer or Partial Offer which amounts to Consolidation

Where an Acquiring Party intends to make a voluntary offer or a partial offer for the shares in a Licensee which amounts to a Consolidation (i.e. including an acquisition of shares which would result in the Acquiring Party holding at least 12 percent but less than 30 percent of the voting rights of the Licensee and being able to exercise Effective Control over the Licensee), the following procedures apply:

- (a) the Acquiring Party shall concurrently:
 - (i) announce a pre-conditional offer (an announcement that a voluntary or partial offer will be made and the Offer timetable under Rule 22 of the Take-over Code will apply only after IDA's written approval is obtained); and
 - (ii) notify the Licensee that it proposes to acquire a Direct Ownership Interest in the Licensee by a voluntary offer or partial offer (as the case may be) and that the acquisition amounts to a Consolidation; and
- (b) The Acquiring Party and the Licensee shall jointly file a Consolidation Application with IDA and obtain IDA's written approval before the Acquiring Party makes the voluntary offer or partial offer (as the case may be).

Please refer to Sub-section 10.4.3.1 of the Code for the process applicable to the filing of the Consolidation Application to IDA.

3.3 Mandatory Offer

Where an Acquiring Party is required to make a mandatory offer under Rule 14 as a result of an acquisition of shares carrying the voting rights of a Licensee, the acquisition of such shares shall be conditional on the Acquiring Party and the

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Licensee jointly filing a Consolidation Application with IDA and obtaining IDA's written approval. The acquisition of these shares may be by way of a conditional sale and purchase agreement which specifies the obtaining of IDA's written approval as a condition for completion of the transaction. Alternatively, the transaction may be structured as a put and call option agreement in respect of such shares where the put and/or call options can be exercised only after IDA's written approval is obtained.

3.4 The Take-over Code

A copy of the Take-over Code can be downloaded from www.mas.gov.sg/regulations/download/sgCodeOnMergersnTakeovers.pdf