

Telecommunications (Amendment) Bill

Bill No. 67/2004.

Read the first time on 24th November 2004.

A BILL

intituled

An Act to amend the Telecommunications Act (Chapter 323 of the 2000 Revised Edition) and to make a related amendment to the Broadcasting Act (Chapter 28 of the 2003 Revised Edition).

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

Short title and commencement

1. This Act may be cited as the Telecommunications (Amendment) Act 2004 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of section 2**

2. Section 2 of the Telecommunications Act is amended —

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

10 “ “broadcasting apparatus” and “broadcasting service”
have the same meanings as in the Broadcasting Act
(Cap. 28);” and

(b) by deleting the words “section 29” in the definition of “telecommunication cable detection work licence” and substituting the words “section 30”.

15 **Amendment of section 5**

3. Section 5(6) of the Telecommunications Act is amended by deleting the words “and any person aggrieved by a refusal of the Authority to grant a licence may, within 14 days of the refusal, appeal to the Minister whose decision shall be final”.

20 **New section 5A**

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

“Power to grant spectrum right

25 **5A.—**(1) The Authority may, with the consent of or in accordance with the terms of a general authority given by the Minister, grant any spectrum right —

30 (a) unconditionally or subject to such conditions as the Authority may impose and specify in the grant of the spectrum right, including conditions on the sharing and trading of radio frequency spectrum; and

(b) irrevocably or subject to revocation as specified in the grant of the spectrum right for the allocation and use of the radio frequency spectrum specified in the grant.

5 (2) A spectrum right may be granted under subsection (1) to any person or class of persons, or to a particular person.

(3) Any condition imposed under subsection (1)(a) requiring payment to be rendered to the Authority may be recovered by it in any court of competent jurisdiction as if it were a simple contract debt.

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

(5) The grant of spectrum rights under subsection (1) shall be at the discretion of the Authority.

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

(7) Anything done under and in accordance with a spectrum right granted under subsection (1) shall not constitute an infringement of the privilege conferred by section 3.

25 (8) For the purposes of giving effect to this section or any of the regulations referred to in subsection (9), the Authority may give directions to any person who has been granted a spectrum right under subsection (1) concerning the use of the spectrum right.

(9) For the purposes of giving effect to this section, the Authority may by regulations made under section 74 —

30 (a) provide for the variation of the conditions of the grant of any spectrum right;

(b) provide for the resumption, by agreement or compulsorily, of any spectrum right or part of any spectrum right;

- (c) provide for the suspension or cancellation of the grant of any spectrum right or part of any spectrum right and the grounds therefor; and
- (d) impose a financial penalty not exceeding \$1 million for the breach of any of the conditions of the grant of any spectrum right or of any direction issued under this section.”.

Amendment of section 7

5. Section 7 of the Telecommunications Act is amended —

(a) by deleting subsection (4); and

(b) by deleting subsection (5) and substituting the following subsection:

“(5) The Authority shall not enforce its direction —

(a) during the period referred to in section 69(1) or (7);

(b) whilst a reconsideration request of the public telecommunication licensee under section 69 in respect of a decision of the Authority under this section is under consideration by the Authority; or

(c) whilst an appeal of the public telecommunication licensee under section 69 in respect of a decision of the Authority under this section is under consideration by the Minister.”.

Amendment of section 8

6. Section 8 of the Telecommunications Act is amended —

(a) by deleting the word “or” at the end of subsection (1)(b);

(b) by inserting, immediately after the words “section 27,” in subsection (1)(c), the words “32D or 32F(2); or”;

(c) by inserting, immediately after paragraph (c) of subsection (1), the following paragraph:

“(d) section 32B.”;

(d) by deleting subsections (2) and (3) and substituting the following subsection:

“(2) If the Authority is satisfied that —

- (a) the person mentioned in subsection (1) is again likely to contravene, whether by act or omission, any condition, provision, direction or section referred to in that subsection;
- (b) the person mentioned in subsection (1) has gone into liquidation other than for the purpose of amalgamation or reconstruction;
- (c) the person mentioned in subsection (1) is no longer in a position to comply with this Act or the terms or conditions of his licence; or
- (d) the public interest so requires,

the Authority may (in lieu of an order or a financial penalty under subsection (1)(i) or (ii)) by notice in writing and without payment of any compensation, do all or any of the following:

- (i) cancel the licence or part thereof;
- (ii) suspend the licence or part thereof for such period as it thinks fit;
- (iii) reduce the period for which the licence is to be in force.”; and

- (e) by inserting, immediately after the words “an offence” in subsection (5), the words “and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both”.

25 **Amendment of section 13**

7. Section 13(1) of the Telecommunications Act is amended by deleting the words “the Collector of Land Revenue” in paragraph (b) and substituting the words “the Singapore Land Authority”.

Amendment of section 14

30 **8.** Section 14 of the Telecommunications Act is amended —

- (a) by deleting the words “any land, other than State land” in the 4th line of subsection (1) and substituting the words “any land (other than State land) or in any building on any land”;

- (b) by inserting, immediately after the word “land” in subsection (2), the word “, building”;
- (c) by deleting the words “land or property” in subsection (3) and substituting the words “land, building or other property”;
- 5 (d) by inserting, immediately after the word “land” in subsections (4), (5) and (6) and in the section heading, the words “or building”;
- (e) by inserting, immediately after the word “land” in subsection (7), the words “or enter the building”;
- 10 (f) by deleting the words “Subject to subsection (10), upon” in subsection (9) and substituting the word “Upon”; and
- (g) by deleting subsection (10).

Repeal and re-enactment of section 17

9. Section 17 of the Telecommunications Act is repealed and the
15 following section substituted therefor:

“Alteration or relocation of public telecommunication licensee’s installation or plant

17.—(1) Where a public telecommunication licensee’s installation or plant has been laid, placed, carried or erected in, on, over, under,
20 upon, along or across any land or building under section 13 or 14, as the case may be, and the owner or occupier of the land or building desires to use the land or building in a manner which renders it necessary or convenient for such installation or plant to be altered, removed, relocated or diverted, the owner or occupier may request
25 the public telecommunication licensee to alter, remove, relocate or divert such installation or plant accordingly.

(2) The public telecommunication licensee shall, at the request of the owner or occupier of the land or building under subsection (1), alter, remove, relocate or divert the installation or plant if it is
30 satisfied that such alteration, removal, relocation or diversion is reasonable and the owner or occupier complies with such reasonable terms and conditions as the licensee may impose.

(3) The terms and conditions a public telecommunication licensee may impose under subsection (2) may include terms and conditions relating to the payment by the owner or occupier of the land or building of all costs and expenses necessary for such alteration, removal, relocation or diversion.”

Repeal of section 19

10. Section 19 of the Telecommunications Act is repealed.

Amendment of section 20

11. Section 20(5) of the Telecommunications Act is amended by deleting the words “and section 19”.

Repeal and re-enactment of section 21

12. Section 21 of the Telecommunications Act is repealed and the following section substituted therefor:

“Provision of space or facility or installation, plant or system by direction of Authority

21.—(1) Where the Authority considers it necessary that any telecommunication service should be provided to any land or building, whether completed or not, or that the quality of a telecommunication service provided to any land or building should be enhanced, the Authority may by direction —

- (a) require the developer or owner of the land or building to provide at his expense, within such period as may be specified in the direction, such space or facility within or on the land or building, and access thereto, as the Authority may specify in its direction; and
- (b) require any telecommunication licensee to install, within such period as may be specified in the direction, such installation, plant or system as the Authority considers necessary for the provision, or the enhancement of quality, of the telecommunication service to the land or building.

(2) Where a telecommunication licensee is using any space or facility provided by the developer or owner of any land or building pursuant to any direction under subsection (1) or any code of practice issued by the Authority, and the licensee intends to use that space or

facility to provide any telecommunication service or to enhance the quality of any telecommunication service provided to any other land or building, the licensee shall notify the developer or owner of the licensee's intention.

5 (3) Where the developer or owner objects to the use of the space or facility for a purpose referred to in subsection (2), the telecommunication licensee shall refer the matter to the Authority for determination.

10 (4) The Authority may, upon being satisfied by the telecommunication licensee that the use of the space or facility for a purpose referred to in subsection (2) would be reasonable, by direction —

(a) require the developer or owner of the land or building to allow the licensee to use the space or facility; and

15 (b) require the licensee to install and operate any installation, plant or system within the space or facility,

in such manner and on such terms as the Authority may specify in the direction.

(5) Any direction under subsection (1) or (4) may include —

20 (a) a requirement that the telecommunication licensee shall contribute, wholly or partly, to such costs and expenses incurred for the provision and use of any space or facility or installation, plant or system under subsection (1) or (4) as the Authority may determine;

25 (b) terms and conditions relating to the payment of costs and expenses necessary for any alteration, removal, relocation or diversion of the installation, plant or system that may subsequently be required; and

(c) such other requirements as the Authority may specify.

30 (6) Any direction under subsection (1) or (4) may be varied, suspended or revoked at any time by the Authority.

(7) Any person who fails to comply with any requirement in a direction under this section shall be guilty of an offence.”

Repeal of section 22

13. Section 22 of the Telecommunications Act is repealed.

Repeal and re-enactment of section 23

14. Section 23 of the Telecommunications Act is repealed and the
5 following section substituted therefor:

“Disputes as to compensation

23. If any dispute arises under sections 12(2), 13(2), 14(1), 16(2), 18(3) and 20(4), it shall, on application for that purpose by any aggrieved person to the Authority, be determined by the Authority.”.

10 Repeal and re-enactment of section 26

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

“Codes of practice and standards of performance

26.—(1) The Authority may, by notification in the *Gazette* or in
15 any other manner it considers appropriate, issue or approve one or more codes of practice and standards of performance for or in connection with —

- (a) the operation of telecommunication systems and equipment;
- (b) the provision of telecommunication services;
- 20 (c) the activities and conduct of telecommunication licensees in the provision of telecommunication services;
- (d) competition, abuse of a dominant position in the market and fair market conduct in the telecommunication industry in Singapore;
- 25 (e) the acquisitions or consolidations involving a telecommunication licensee and any other person (whether a telecommunication licensee or otherwise);
- (f) the provision and use of, and access to, space and facilities within or on a land or building for the operation of any
30 installation, plant or system used for telecommunications, and the allocation of costs and expenses incurred in relation thereto; and

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

(2) A code of practice may, in particular —

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

(b) specify that the provision of any space or facility within or on any land or building for the operation of any installation, plant or system used for telecommunications shall be at the expense of the developer, owner or occupier of the land or building; and

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

(3) If any provision in any code of practice or standard of performance issued or approved by the Authority is inconsistent with any regulations made under this Act, such provision shall, to the extent of the inconsistency, either have effect subject to such regulation or, where appropriate, having regard to such regulation, shall not have effect.

(4) The Authority may at any time review, add to, vary or revoke any code of practice or standard of performance.

(5) The Authority may exempt, either generally or subject to such terms or conditions as the Authority may specify, any person from all or any of the provisions in any code of practice or standard of performance.

(6) An exemption granted under subsection (5) need not be published in the *Gazette*.

(7) Any person to whom a code of practice or standard of performance applies shall comply with the relevant code of practice or standard of performance.

(8) Any person who fails to comply with any code of practice issued under subsection (1)(f) shall be guilty of an offence.”.

Amendment of section 27

16. Section 27 of the Telecommunications Act is amended —

(a) by deleting the word “or” at the end of paragraph (c) of subsection (1), and by inserting immediately thereafter the following paragraph:

“(ca) to ensure the co-ordination and co-operation, on such terms as the Authority may specify, with any other person in the use or sharing of any installation, plant or system, or part thereof owned or used by the telecommunication licensee for the provision of any telecommunication or broadcasting service; or”;

(b) by deleting paragraph (c) of subsection (2) and substituting the following paragraph:

“(c) may be varied, suspended or revoked at any time by the Authority.”;

(c) by inserting, immediately after the words “subsection (1)” in the 2nd line of subsection (3), the words “or varying a direction under subsection (2)(c)”;

(d) by inserting, immediately after the words “to make” in subsection (3)(a), the words “or vary”;

(e) by inserting, immediately after the words “proposed direction” in subsection (3)(b), the words “or variation”; and

(f) by deleting subsection (4).

Amendment of section 31

17. Section 31(1) of the Telecommunications Act is amended by deleting the words “3 years” and substituting the words “12 months”.

Amendment of section 32

18. Section 32 of the Telecommunications Act is amended by inserting, immediately after the words “guilty of an offence”, the words “and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both”.

New Part VA

19. The Telecommunications Act is amended by inserting, immediately after section 32, the following Part:

“PART VA

CONTROL OVER DESIGNATED
TELECOMMUNICATION LICENSEES

Interpretation of this Part

5 **32A.**—(1) In this Part —

 “consolidation” has the meaning given to it in the code of
 practice referred to in section 32C;

 “designated telecommunication licensee” means a
 telecommunication licensee which has been declared or which
10 is of a class of telecommunication licensees which has been
 declared by the Authority, by notification in the *Gazette*, to be
 a designated telecommunication licensee for the purposes of
 this Part;

 “ownership interest” has the meaning given to it in the code of
15 practice referred to in section 32C;

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

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

 (3) The Authority may, by notification in the *Gazette*, vary or
25 revoke any declaration of a designated telecommunication licensee.

Control of acquisition of designated telecommunication licensee

30 **32B.**—(1) A designated telecommunication licensee shall give
 notice in writing, in the prescribed manner and within the prescribed
 period, to the Authority if any person acquires an ownership interest
 in the voting shares of the designated telecommunication licensee,
 whether by a series of transactions over a period of time or otherwise,
 that would result in that person holding an ownership interest of 5%

or more but less than 12% of the voting shares in that designated telecommunication licensee.

(2) Subject to subsection (3), no person shall, whether through a series of transactions over a period of time or otherwise, become —

5 (a) a 12% controller; or

 (b) a 30% controller,

of a designated telecommunication licensee without obtaining the written approval of the Authority in the prescribed manner and within the prescribed period.

10 (3) To the extent that the acquisition by a person of an ownership interest in the voting shares in a designated telecommunication licensee under subsection (2) constitutes a consolidation with that designated telecommunication licensee, the person and the designated telecommunication licensee shall, in addition to the approval required under that subsection, obtain the written approval of the Authority in
15 the prescribed manner and within the prescribed period.

 (4) No person shall acquire the business of a designated telecommunication licensee conducted pursuant to a telecommunication licence granted under section 5 as a going
20 concern, unless the person and the designated telecommunication licensee obtain the written approval of the Authority in the prescribed manner and within the prescribed period.

(5) In subsection (2) —

25 “12% controller”, in relation to a designated telecommunication licensee, means a person, not being a 30% controller, who holds an ownership interest in the voting shares of the designated telecommunication licensee of 12% or more;

30 “30% controller”, in relation to a designated telecommunication licensee, means a person who holds an ownership interest in the voting shares of the designated telecommunication licensee of 30% or more.

Power to issue code of practice relating to control of designated telecommunication licensees

35 **32C.**—(1) Without prejudice to the generality of section 26, the Authority may issue a code of practice under that section which

specifies such matters as are generally necessary for carrying out the purposes and provisions of this Part and for the due administration thereof.

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

- (a) the circumstances under which a person would be considered to have an ownership interest in the voting shares of a designated telecommunication licensee;
- (b) the circumstances under which a person would be considered to have entered into a consolidation with a designated telecommunication licensee;
- (c) the circumstances under which a person would be considered to have acquired the business of a designated telecommunication licensee as a going concern;
- (d) the categories of persons that shall obtain the written approval of the Authority for —
 - (i) any consolidation with a designated telecommunication licensee; or
 - (ii) an acquisition of the business of a designated telecommunication licensee;
- (e) the duties and obligations of a designated telecommunication licensee and a person acquiring the business as a going concern or an ownership interest in the voting shares of a designated telecommunication licensee;
- (f) the rules and procedures that a designated telecommunication licensee and a person acquiring the business as a going concern or an ownership interest in the voting shares of a designated telecommunication licensee must comply with;
- (g) the terms and conditions which the Authority may impose in granting any approval under section 32B; and
- (h) the circumstances under which a person who holds voting shares in the designated telecommunication licensee would be considered to be an affiliate of the specified person under section 32D.

Power to issue direction

32D.—(1) Without prejudice to section 27, if the Authority is satisfied that a person has —

- 5 (a) acquired an ownership interest in the voting shares of a designated telecommunication licensee;
- (b) entered into a consolidation with a designated telecommunication licensee; or
- (c) acquired the business of a designated telecommunication licensee as a going concern,

10 (referred to in this section as the specified person), in contravention of section 32B(2), (3) or (4), or that the acquisition or consolidation is likely to substantially lessen competition or is against the public interest, the Authority may issue a direction under subsection (3) or (4), as the case may be.

15 (2) The Authority may issue a direction under subsection (3) or (4) if the Authority is satisfied that —

- (a) any condition of approval imposed on the person has not been complied with;
- 20 (b) the person has furnished false or misleading information or documents in connection with an application under section 32B to obtain the approval of the Authority; or
- (c) the Authority would not have granted its approval under section 32B had it been aware, at that time, of circumstances relevant to the person’s application for such approval,

25 and the existing ownership interest in the designated telecommunication licensee held by the person is likely to substantially lessen competition or be against the public interest.

(3) The Authority may, under the circumstances specified in subsection (1)(a) or (b) or (2), direct —

- 30 (a) the designated telecommunication licensee to do all or any of the following:
 - (i) to restrict the exercise of all or any of the voting rights in respect of the shares through which any specified person has an ownership interest in the designated

telecommunication licensee (referred to in this section as the specified shares), unless the Authority expressly permits such rights to be exercised;

5 (ii) to restrict the issuance or offer of shares in the designated telecommunication licensee (whether by way of rights, bonus or otherwise) in respect of the specified shares, unless the Authority expressly permits such issue or offer;

10 (iii) except in a liquidation of the designated telecommunication licensee, to restrict the payment of any amount (whether by way of dividends or otherwise) in respect of the specified shares, unless the Authority expressly authorises such payments subject to such conditions as the Authority may specify; and

15 (b) any specified person or an affiliate of the specified person to transfer or dispose of all or any part of the specified shares within such time and subject to such conditions as the Authority considers appropriate.

20 (4) The Authority may, under the circumstances specified in subsection (1)(c) or (2), direct any specified person to transfer or dispose of all or any part of the business acquired from the designated telecommunication licensee within such time and subject to such conditions as the Authority considers appropriate.

25 (5) Before issuing a direction to any person under subsection (3) or (4), the Authority shall, unless the Authority decides that it is not practicable or desirable to do so, cause to be given to that person notice in writing of the Authority's intention to serve the direction, specifying a date by which that person may make written representations with regard to the proposed direction.

30 (6) Upon receipt of any written representation referred to in subsection (5), the Authority shall consider it for the purpose of determining whether to issue the direction.

35 (7) Any person to whom a direction is given under subsection (3) or (4) shall comply with the direction and the direction shall take effect notwithstanding the provisions of any other written law or anything contained in the memorandum or articles of association, or other constitution, of the designated telecommunication licensee.

(8) The Authority may vary or revoke any direction issued under this section.

Power of Authority to obtain information

5 **32E.**—(1) Without prejudice to sections 27 and 59, the Authority may, by notice in writing, direct any designated telecommunication licensee to obtain from any of its shareholders and to transmit to the Authority information —

10 (a) as to whether that shareholder holds any share in the designated telecommunication licensee as a beneficial owner or trustee; and

(b) if the shareholder holds the share as a trustee, to indicate as far as he can, the person for whom he holds the share (either by name or by other particulars sufficient to enable that person to be identified) and the nature of his interest,

15 and the designated telecommunication licensee shall comply with that direction within such time as may be specified in the notice.

20 (2) The Authority may, by notice in writing, require any shareholder of a designated telecommunication licensee to inform the Authority whether he holds that interest as a beneficial owner or trustee, and if he holds the interest as trustee, to indicate so far as he can, the person for whom he holds the interest (either by name or by other particulars sufficient to enable that person to be identified) and the nature of his interest.

(3) Any person who —

25 (a) fails to comply with a notice under this section; or

(b) in purported compliance of the notice, knowingly or recklessly, makes a statement which is false in a material particular,

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

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

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

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

10 **32F.**—(1) No designated telecommunication licensee shall appoint a person as its chief executive officer, its director or the chairman of its board of directors unless it has obtained the approval of the Authority.

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

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

(4) In this section —

25 “chief executive officer”, in relation to a designated telecommunication licensee, means any person, by whatever name described, who is —

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

30 (b) principally responsible for the management and conduct of any type of business of the designated telecommunication licensee in Singapore,

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

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

Amendment of section 41

20. Section 41 of the Telecommunications Act is amended by deleting the words “and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both”
5 in the 11th, penultimate and last lines.

Amendment of section 42

21. Section 42(1) of the Telecommunications Act is amended —

- (a) by deleting the word “secretes” in paragraph (a) and substituting the word “divulges”; and
- 10 (b) by deleting the words “and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both” in the 10th, penultimate and last lines.

Amendment of section 43

15 22. Section 43 of the Telecommunications Act is amended by deleting the words “and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both”.

Amendment of section 46

23. Section 46 of the Telecommunications Act is amended —

- 20 (a) by deleting the word “secretes” in paragraph (a) and substituting the word “divulges”; and
- (b) by deleting the words “and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or to both” in the 8th, penultimate and last
25 lines.

Amendment of section 51

24. Section 51(1) of the Telecommunications Act is amended by deleting the words “and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years or
30 to both”.

Amendment of section 58

25. Section 58 of the Telecommunications Act is amended —

- (a) by deleting the words “public telecommunication licensee” in subsections (1), (2) (21st and penultimate lines), (5), (6) and (7)(a) and substituting in each case the words “telecommunication licensee”; and
- 5 (b) by deleting the words “public telecommunication licensees” in subsection (7)(b) and substituting the words “telecommunication licensees”.

Amendment of section 59

26. Section 59 of the Telecommunications Act is amended —

- 10 (a) by deleting subsection (1) and substituting the following subsection:
- “(1) The Authority or any officer authorised by the Authority in that behalf may, for the purposes of conducting an investigation or for discharging its functions under this Act, by order require any person to produce to the Authority any document, or to provide the Authority with any information, which the Authority considers to be related to any matter relevant to the investigation or for discharging its functions under this Act.”;
- 15
- 20 (b) by inserting, immediately after the words “any copy or extract” in subsection (2), the words “of any document”;
- (c) by inserting, immediately after the words “purpose of” in subsection (3), the words “conducting an investigation or”;
- 25 (d) by inserting, immediately after subsection (5), the following subsection:
- “(5A) The power under this section to require a person to produce a document includes the power —
- (a) if the document is produced, to require such person, or any person who is a present or past officer of his or is or was at any time employed by him, to provide an explanation of the document; or
- 30 (b) if the document is not produced, to require such person to state, to the best of his knowledge and belief, where it is.”;

(e) by deleting the words “and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction” in the 11th, 12th, 13th, penultimate and last lines of subsection (6);

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

“(6A) If a person is charged with an offence under subsection (6) in respect of a requirement to produce any document or information under subsection (1), it shall be a defence for him to prove that —

(a) the document was not in his possession or under his control;

(b) it was not reasonably practicable for him to comply with the requirement; or

(c) he had a reasonable excuse for failing to provide the information required.”; and

(g) by inserting, immediately after subsection (7), the following subsection:

“(8) In this section and sections 61 and 63 —

“document” includes any electronic record;

“electronic record” has the same meaning as in the Electronic Transactions Act (Cap. 88).”.

25 **Amendment of section 64**

27. Section 64(1) of the Telecommunications Act is amended by deleting “\$1,000” and substituting “\$5,000”.

Amendment of section 65

30 28. Section 65 of the Telecommunications Act is amended by inserting, immediately after the words “or to both”, the words “and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction”.

Repeal and re-enactment of section 69 and new sections 69A and 69B

29. Section 69 of the Telecommunications Act is repealed and the following sections substituted therefor:

“Reconsideration by Authority and appeal to Minister

- 5 **69.**—(1) Any telecommunication licensee aggrieved by —
- (a) any decision of the Authority in the exercise of any discretion vested in it by or under this Act; or
 - (b) anything contained in any code of practice or standard of performance or in any direction of the Authority given under section 21, 27, 32D or 32F(2),
- 10 may, within 14 days of the receipt of the decision or direction of the Authority or the issue or approval of the code of practice or standard of performance, as the case may be —
- (i) make a request to the Authority to reconsider the matter; or
 - (ii) appeal to the Minister.
- 15 (2) Any person (other than a telecommunication licensee) who is aggrieved by any decision or direction of the Authority given by or under section 5(1), 5A, 8(1), 14, 21, 23, 32B or 32D may, within 14 days of the receipt of the decision or direction of the Authority —
- (a) make a request to the Authority to reconsider the matter; or
 - (b) appeal to the Minister.
- 20 (3) A person shall not make both a reconsideration request to the Authority and an appeal to the Minister arising from the same decision or direction of the Authority.
- 25 (4) Where a reconsideration request and an appeal have been made in contravention of subsection (3), the appeal shall be deemed to be withdrawn.
- (5) Where —
- (a) a reconsideration request has been made to the Authority by
- 30 any person; and

- (b) an appeal arising from the same decision or direction of the Authority is made or has been made to the Minister by any other person,

the appeal to the Minister shall be deemed to be withdrawn.

5 (6) The Authority may determine any reconsideration request under this section by confirming, varying or reversing any decision or direction or by amending any code of practice or standard of performance.

10 (7) Any telecommunication licensee or person referred to in subsection (2), as the case may be, who is aggrieved by any decision of the Authority under subsection (6) may appeal to the Minister within 14 days of the receipt of the decision.

(8) Any person who makes an appeal to the Minister under subsection (1), (2) or (7) shall within the period specified therein —

15 (a) state as concisely as possible the circumstances under which the appeal arises, the issues and grounds for the appeal; and

(b) submit to the Minister all relevant facts, evidence and arguments for or against the appeal, as the case may be.

20 (9) The Minister may reject any appeal of an appellant who fails to comply with subsection (8) or (10).

(10) Where an appeal has been made to the Minister under subsection (1), (2) or (7), the Minister may require any person to whom subsection (11) applies to provide him with all such information as he may require for the purpose of considering the appeal and making a determination for resolving it.

25 (11) Subsection (10) shall apply to —

(a) any party to the appeal; and

30 (b) any person who is not a party to the appeal but appears to the Minister to have information that is relevant to the matters mentioned in that subsection.

(12) Any person required to provide information under subsection (10) must provide it in such manner and within such period as may be specified by the Minister.

(13) The Minister may determine an appeal under this section by confirming, varying or reversing any decision or direction of the Authority or by amending any code of practice or standard of performance.

5 (14) Any decision of the Minister under subsection (13) shall be final.

10 (15) Unless otherwise provided, where a reconsideration request or an appeal is made under this section, the decision, direction or other matter which requires reconsideration by the Authority or which is appealed against shall be complied with until the determination of the reconsideration request or the appeal, as the case may be.

(16) The Minister may make regulations in respect of the manner in which an appeal may be made to the Minister under subsection (1), (2) or (7) and the procedure to be adopted in hearing such appeals.

15 **Interest on sums unpaid**

20 **69A.** If any sum required to be paid by a telecommunication licensee or a person granted a spectrum right under this Act or any code of practice or regulation made thereunder is not paid when it is required to be paid, that licensee or person shall be liable to pay the Authority the prescribed interest on such unpaid sums for the period such sums remain unpaid.

Power of Minister to issue written order relating to acquisition of assets, etc., of telecommunication licensee

25 **69B.—**(1) The Minister may issue a written order to any person that acquires the assets or business of, or shares in, a telecommunication licensee (referred to in this section as the relevant person), that telecommunication licensee, or both, if the Minister is satisfied that —

(a) the relevant person is not a fit and proper person; and

30 (b) it is not in the national interest to allow the relevant person to continue to own the assets or business of, or to hold the shares in, that telecommunication licensee.

(2) The Minister may, in any written order issued under subsection (1), direct the relevant person, that telecommunication licensee, or both, to do all or any of the following:

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- (a) direct the transfer or disposal of all of the assets, business and shares acquired by the relevant person in that telecommunication licensee, within such time and subject to such conditions as the Minister considers appropriate;
- 5 (b) restrict the transfer or disposal of the assets, business and shares by the relevant person in that telecommunication licensee;
- (c) restrict the exercise of voting power in that telecommunication licensee by the relevant person;
- 10 (d) require that no payment shall be made by that telecommunication licensee of any amount (whether by way of dividends) in respect of the shares acquired by the relevant person;
- 15 (e) restrict the issuance or offer of shares by that telecommunication licensee (whether by way of rights, bonus or otherwise) in respect of the shares acquired by the relevant person.
- (3) In the case of any written order made under subsection (2)(a) or (b) relating to the shares, until a transfer or disposal is effected in accordance with the written order or until the restriction on the transfer or disposal is removed, as the case may be, notwithstanding the provisions of any written law or anything contained in the memorandum or articles of association, or other constitution, of that telecommunication licensee —
- 20
- 25 (a) no voting rights shall be exercisable in respect of the shares unless the Minister expressly permits such rights to be exercised;
- (b) no shares of that telecommunication licensee shall be issued or offered (whether by way of rights, bonus or otherwise) in respect of the shares unless the Authority expressly permits such issue or offer; and
- 30
- (c) except in a liquidation of that telecommunication licensee, no payment shall be made by that telecommunication licensee of any amount (whether by way of dividends or otherwise) in respect of the shares unless the Minister expressly authorises such payment.
- 35

(4) Before issuing the written order under subsection (1), the Minister shall, unless he decides that it is not practicable or desirable to do so, cause to be given to the relevant person and the telecommunication licensee, as the case may be, notice in writing of his intention to issue the written order, specifying the date by which written representations may be made to the Minister with regard to the written order.

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

(6) The Minister may vary or revoke any written order issued under this section.

(7) Any person to whom a written order is issued under subsection (1) shall comply with the written order and the written order shall take effect notwithstanding the provisions of any other written law and anything contained in the memorandum or articles of association, or other constitution, of the designated telecommunication licensee.

(8) Any person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction —

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

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

Amendment of section 72

30. Section 72 of the Telecommunications Act is amended by deleting the words “Singapore Broadcasting Authority Act (Cap. 297)” and substituting the words “Broadcasting Act (Cap. 28)”.

Amendment of section 74

31. Section 74(2) of the Telecommunications Act is amended by inserting, immediately after the words “grant of licences” in paragraph (b), the words “and spectrum rights”.

5 **Related amendment to Broadcasting Act**

32. Section 26 of the Broadcasting Act (Cap. 28) is repealed and the following section substituted therefor:

“Sharing of facilities

10 26.—(1) The Authority may direct any broadcasting licensee or broadcasting apparatus licensee to co-ordinate and co-operate, in such manner and on such terms as the Authority may specify, with any other licensee or any other person specified by the Authority in the use or sharing of any broadcasting apparatus or related equipment or facility (other than a telecommunication system licensed under
15 section 5 of the Telecommunications Act (Cap. 323)) owned, operated or used by the broadcasting licensee or broadcasting apparatus licensee for the purpose of broadcasting, whether or not they have been provided, or are intended to be provided, by the licensee or any other licensee or any other person specified by the
20 Authority.

(2) The Authority may direct any broadcasting licensee to co-ordinate and co-operate, in such manner and on such terms as the Authority may specify, with any telecommunication licensee in the use or sharing of any installation, plant or system, or part thereof
25 owned or used by the telecommunication licensee, where the Authority is of the view that such co-ordination and co-operation is necessary for the provision of any broadcasting service.

(3) In this section, “telecommunication licensee” and “telecommunication system” have the same meanings as in section 2
30 of the Telecommunications Act.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Telecommunications Act (Cap. 323) for the following main purposes:

- (a) to expressly empower the Info-communications Development Authority of Singapore (the Authority) to grant spectrum rights;
- (b) to expand the scope of the Authority's power to suspend or cancel licences issued under the Act;
- (c) to enable a telecommunication licensee to use space or facilities of one land or building for the purpose of providing telecommunication services to another land or building;
- (d) to empower the Authority to give directions for the sharing of any installation, plant or system owned by a telecommunication licensee for the provision of any telecommunication or broadcasting service;
- (e) to expressly empower the Authority to issue codes of practice dealing with the control, acquisition and consolidation of telecommunication licensees; and
- (f) to provide a process for an aggrieved person or licensee to make a request to the Authority for reconsideration of the Authority's decision.

The Bill also makes a related amendment to the Broadcasting Act (Cap. 28).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to insert definitions for "broadcasting apparatus" and "broadcasting service" and to make a technical amendment to the definition of "telecommunication cable detection work licence".

Clause 3 makes a consequential amendment to section 5(6) arising from the repeal and re-enactment of section 69 by clause 29.

Clause 4 inserts a new section 5A to expressly empower the Authority to grant spectrum rights, and to make regulations to provide for the variation, resumption, suspension or cancellation of the grant of spectrum rights and the imposition of a financial penalty for the breach of any condition of the grant or any direction issued.

Clause 5 makes consequential amendments to section 7 arising from the repeal and re-enactment of section 69 by clause 29.

Clause 6 amends section 8 —

- (a) to empower the Authority to issue a written order or impose a financial penalty for a contravention of a direction issued under section 27, 32D or 32F(2) or a contravention of section 32B;
- (b) to extend the power of the Authority under the section to cancel or suspend licences issued under the Act where a licensee has gone into liquidation or is

no longer in a position to operate in conformity with the Act or the terms or conditions of his licence, or in the public interest;

- (c) to increase the penalty for a contravention of an order issued under that section; and
- (d) to make a consequential amendment arising from the repeal and re-enactment of section 69 by clause 29.

Clause 7 makes a technical amendment to section 13(1) to replace the Collector of Land Revenue with the Singapore Land Authority as one of the authorities which approves the erection of any telecommunications installation or plant in or upon State land.

Clause 8 amends section 14 to empower a public telecommunication licensee to enter any building for the purpose of laying, placing or carrying on and erecting any installation or plant necessary or proper for the purposes of providing any telecommunication service. The clause also makes consequential amendments to that section arising from the repeal and re-enactment of section 69 by clause 29.

Clause 9 repeals and re-enacts section 17 to remove the role of the Authority as the adjudicator of disputes under the section and to make consequential amendments arising from the amendment to section 14 by clause 8.

Clause 10 repeals section 19 which is no longer necessary in view of the power to issue a code of practice in respect of the provision of space or facility under the new section 26.

Clause 11 makes a consequential amendment to section 20(5) arising from the repeal of section 19 by clause 10.

Clause 12 repeals and re-enacts section 21 to enable a telecommunication licensee to use any space or facility provided by a developer or an owner of any land or building to provide telecommunication services or to enhance telecommunication services provided to any other land or building, provided that the licensee notifies the developer or owner. Where the developer or owner of the land or building objects to such use, the licensee must refer the matter to the Authority. If the Authority is satisfied that such use would be reasonable, the Authority may make directions to require the developer or owner of the land or building to allow the licensee to use the space or facility.

Clause 13 repeals section 22 which is no longer necessary as a result of the amendment of section 27 by clause 16.

Clause 14 repeals and re-enacts section 23 —

- (a) to extend the scope of the provision to all issues relating to compensation and not only to disputes concerning the sufficiency of compensation only; and
- (b) to make consequential amendments to the section arising from the repeal and re-enactment of section 17 by clause 9 and section 69 by clause 29.

Clause 15 repeals and re-enacts section 26. The new section 26 expands the scope of matters for which the Authority may issue or approve codes of practice or standards

of performance, by way of notification in the *Gazette*, in particular relating to competition in the telecommunications sector. The new section also expands the scope of such codes or standards to cover persons who are not telecommunication licensees and expressly empowers the Authority to review, add to, vary or revoke any code of practice or standard of performance.

Clause 16 amends section 27 to empower the Authority to give directions to a telecommunication licensee in respect of the use or sharing of any installation, plant or system owned or used by the telecommunication licensee for the provision of any telecommunication or broadcasting service. The clause also expressly empowers the Authority to vary, suspend or revoke the direction and makes a consequential amendment arising from the repeal and re-enactment of section 69 by clause 29.

Clause 17 amends section 31(1) to reduce the maximum term of imprisonment for an offence under the section from 3 years to 12 months.

Clause 18 amends section 32 to increase the penalty imposed under the section to be consistent with similar offences under the Act.

Clause 19 inserts a new Part VA (consisting of new sections 32A to 32F) to provide for the control over designated telecommunication licensees.

The new Part VA sets out the Authority's power to review acquisitions and consolidations involving telecommunication licensees so as to address ownership changes that raise regulatory concerns or have an impact on national interest.

The new section 32A defines certain terms used in the Part, provides for the making, variation or revocation of a declaration of a designated telecommunication licensee.

The new section 32B sets out the obligation for notifying and obtaining the Authority's approval for acquisitions and consolidations of a designated telecommunication licensee. A person must obtain the written approval of the Authority if he becomes a 12% controller or a 30% controller of a designated telecommunication licensee within the meaning of the section. To the extent that the acquisition of an ownership interest in the voting shares in a designated telecommunication licensee constitutes a consolidation with that licensee, the person must also obtain the written approval of the Authority. In addition, a person must obtain the written approval of the Authority for the acquisition of the business of a designated telecommunication licensee conducted pursuant to a licence issued under the Act as a going concern.

The new section 32C clarifies that the Authority may issue a code of practice to specify the implementation details of the Part under section 26.

The new section 32D empowers the Authority, where any person has acquired an ownership interest in or the business of, or entered into a consolidation with, a designated telecommunication licensee without obtaining the Authority's approval in breach of the new section 32B or where the acquisition or consolidation is likely to substantially lessen competition or is against the public interest, to issue directions for remedial action to a designated telecommunication licensee or that person.

The new section 32E empowers the Authority to require a designated telecommunication licensee to provide information in relation to its shareholders and a shareholder of a designated telecommunication licensee to provide information regarding his shareholding in the licensee.

The new section 32F requires a designated telecommunication licensee to obtain the Authority's approval before any person can be appointed as chief executive officer, director or chairman of the board of directors of that licensee and empowers the Authority to issue directions for the removal of a person from his appointment where the licensee has contravened that requirement.

Clause 20 amends section 41 to align the penalty under the section with the general penalty under section 65.

Clause 21 amends section 42(1) to clarify the provision and to align the penalty under the section with the general penalty under section 65.

Clause 22 amends section 43 to align the penalty under the section with the general penalty under section 65.

Clause 23 amends section 46 to clarify the provision and to align the penalty under the section with the general penalty under section 65.

Clause 24 amends section 51(1) to align the penalty under the section with the general penalty under section 65.

Clause 25 amends section 58 to make the section applicable to all telecommunication licensees.

Clause 26 amends section 59 to empower the Authority to require information for the purposes of conducting an investigation and to broaden the scope of the Authority's power to require a person to produce a document. The clause also aligns the penalty under the section with the general penalty under section 65 and provides for certain defences where a person is charged with an offence in respect of a requirement to produce any document or information. New definitions are also inserted in the section to clarify the meanings of "document" and "electronic record".

Clause 27 amends section 64(1) to increase the penalty for an offence under the section from \$1,000 to \$5,000.

Clause 28 amends section 65 to provide for penalties for the section in the event of a continuing offence.

Clause 29 repeals and re-enacts section 69 and introduces new sections 69A and 69B.

The new section 69 provides a new procedure for a telecommunication licensee or an aggrieved person to make a request to the Authority for reconsideration of the Authority's decision (reconsideration request) or appeal to the Minister. A person may choose to make a reconsideration request to the Authority or appeal to the Minister on a decision or direction of the Authority, but may not do both. If a reconsideration request has been made to the Authority, any appeal made to the Minister arising from the same decision or direction will be deemed to be withdrawn, even where the appeal is made

by a person other than the person making the reconsideration request. If any person is aggrieved by the outcome of a reconsideration request, he may appeal to the Minister. The Minister may make regulations in respect of the manner in which appeals may be made and the procedure for hearing such appeals.

The new section 69A enables the Authority to recover interest on unpaid sums that are required to be paid under the Act or any code of practice or regulation.

The new section 69B empowers the Minister to order a person who acquires the assets, business or shares of a telecommunication licensee (relevant person), the telecommunication licensee concerned, or both, to take certain remedial actions if the Minister is satisfied that —

- (a) the relevant person is not a fit and proper person; and
- (b) the continued ownership of the assets, business or shares by the relevant person is contrary to national interest.

Clause 30 makes a technical amendment to section 72.

Clause 31 makes a consequential amendment to section 74(2) arising from the insertion of section 5A by clause 4.

Clause 32 makes a related amendment to section 26 of the Broadcasting Act (Cap. 28) to empower the Media Development Authority of Singapore to give directions to a broadcasting licensee to ensure co-ordination and co-operation with a telecommunication licensee in the use or sharing of any installation, plant or system or any part of any installation, plant or system owned or used by the telecommunication licensee, where the Media Development Authority of Singapore is of the view that such co-ordination and co-operation is necessary for the provision of any broadcasting service.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
