

ELECTRICITY ACT
(CHAPTER 89A, SECTIONS 30C, 97 AND 103)

ELECTRICITY (CONTROL OF DESIGNATED ELECTRICITY LICENSEES AND
ENTITIES) REGULATIONS

Rg 6

G.N. No. S 432/2006

REVISED EDITION 2008

(31st January 2008)

[24th July 2006]

Citation

1. These Regulations may be cited as the Electricity (Control of Designated Electricity Licensees and Entities) Regulations.

Definitions

2. In these Regulations, unless the context otherwise requires —

“acquiring party” means —

- (a) any person who is required to obtain the Authority’s approval under section 30B(2) of the Act; or
- (b) any person, other than a designated licensee or a designated entity, who is required to obtain the Authority’s approval under section 30B(3) of the Act;

“application” means an application made under section 30B of the Act;

“related corporation”, in relation to a corporation, means a corporation that is deemed to be related to the first-mentioned corporation under section 6 of the Companies Act (Cap. 50);

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

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

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

Meaning of equity interest in Part IVA of Act

3.—(1) For the purposes of Part IVA of the Act, “equity interest” —

- (a) in relation to a corporation, means a voting share in that corporation;
- (b) in relation to an entity other than a corporation, means any right or interest, whether legal or equitable, in that entity, by whatever name called, which gives the holder of that right or interest voting power in that entity; and

- (c) in relation to a business trust, means a unit in that business trust.
- (2) For the purpose of paragraph (1)(a), a person holds a voting share in a corporation if —
- (a) he is deemed to have an interest in that share under section 7 of the Companies Act; or
 - (b) he otherwise has a legal or an equitable interest in that share except for such interest as is to be disregarded under section 7 of the Companies Act.
- (3) For the purpose of paragraph (1)(b), a person holds a right or an interest in an entity other than a corporation if he has a legal or an equitable interest in that right or interest.
- (4) For the purpose of paragraph (1)(c), a person holds a unit in a business trust if he has a legal or an equitable interest in that unit.

Meaning of control of voting in Part IVA of Act

4. For the purposes of Part IVA of the Act and these Regulations, a reference to the control of a percentage of voting power in a designated electricity licensee, a designated entity or a designated business trust is a reference to the control, whether direct or indirect, of that percentage of the total number of votes that may be cast in a general meeting of the licensee, the entity or the business trust.

Meaning of associate in Part IVA of Act

5. For the purposes of Part IVA of the Act, a person, *A*, is an associate of another person, *B*, if —
- (a) *A* is the spouse, or a parent, step-parent or remoter lineal ancestor, or a son, step-son, daughter, step-daughter or remoter issue, or a brother or sister, of *B*;
 - (b) *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*;
 - (c) *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*;
 - (d) *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*;
 - (e) *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*;
 - (f) *A* is a related corporation of *B*;
 - (g) *A* is a corporation in which *B*, alone or together with other associates of *B* as described in sub-paragraphs (b) to (f), is in a position to control not less than 20% of the voting power in *A*;

- (h) *B* is a corporation in which *A*, alone or together with other associates of *A* as described in sub-paragraphs (b) to (f), is in a position to control not less than 20% of the voting power in *B*; or
- (i) *A* is a person with whom *B* has an agreement or arrangement, whether oral or in writing and whether express or implied, to act together with respect to the acquisition, holding or disposal of equity interest in, or with respect to the exercise of their voting power in relation to, the designated electricity licensee, the designated entity or the designated business trust concerned.

Notice under section 30B(1) of Act

6.—(1) A designated electricity licensee, a designated entity or the trustee-manager of a designated business trust shall give notice in writing to the Authority of any acquisition of equity interest described in section 30B(1) of the Act within 5 days of becoming aware of the acquisition.

(2) The notice shall be given in such form and manner as may be specified by the Authority and shall contain such information as the Authority may require, including —

- (a) the name, address and contact information of the person who has acquired the equity interest;
- (b) the percentage of equity interest held by the person following the acquisition of the equity interest; and
- (c) the effective date of acquisition of the equity interest.

Application for approval under section 30B of Act

7.—(1) An application for approval under section 30B(3) of the Act shall be made jointly by the acquiring party, and the designated electricity licensee or the designated entity, as the case may be.

(2) Any application under section 30B of the Act shall be made in such form and manner as may be specified by the Authority and shall contain such information as the Authority may require, including —

- (a) the name, address and contact information of the acquiring party;
- (b) any anticipated significant changes in the management or operations of the designated electricity licensee, designated entity or designated business trust; and
- (c) where the application is made under section 30B(2) of the Act —
 - (i) the percentage of equity interest held by the acquiring party;
 - (ii) the percentage of voting power controlled by the acquiring party;
 - (iii) the percentage of equity interest the acquiring party will hold if the application is approved;

- (iv) the percentage of voting power the acquiring party will control if the application is approved;
- (v) any special or preferential rights granted to the acquiring party; and
- (vi) any special or preferential rights that will be granted to the acquiring party if the application is approved.

Conditions of approval

8. The conditions that the Authority may impose under section 30B(6) of the Act include, but are not limited to —

- (a) a condition restricting the acquiring party's disposal or further acquisition of equity interest or voting power in the designated electricity licensee, the designated entity or the designated business trust; and
- (b) a condition restricting the acquiring party's exercise of voting power in the designated electricity licensee, the designated entity or the designated business trust.

Monitoring changes in equity interest and voting power

9. A designated electricity licensee, a designated entity or the trustee-manager of a designated business trust shall comply with such procedures as may be reasonably required by the Authority for the purposes of monitoring changes in the holding of equity interest or the controlling of voting power in the licensee, the entity or the business trust.

Exempted transactions

10.—(1) Section 30B(1) of the Act shall not apply to a designated electricity licensee, a designated entity or the trustee-manager of a designated business trust in relation to any acquisition by a person of equity interest in the licensee, the entity or the business trust if the acquisition results in a pro forma change in the percentage of equity interest held by the person in the licensee, the entity or the business trust.

(2) Section 30B(2) of the Act shall not apply to any person who enters into any transaction which results in a pro forma change in the percentage of equity interest held by the person in a designated electricity licensee, a designated entity or a designated business trust.

(3) In this regulation, “pro forma change” means any transfer by a person of any equity interest held by him in a designated electricity licensee, a designated entity or a designated business trust to his associate, which does not result in any change in the percentage of equity interest held by the person in the licensee, the entity or the business trust.

Illustration

The transfer by *A* (a corporation) of equity interest held by it in a designated electricity licensee to *B* (a wholly-owned subsidiary of *A*) constitutes a pro forma change.

LEGISLATIVE HISTORY

ELECTRICITY (CONTROL OF DESIGNATED ELECTRICITY LICENSEES AND ENTITIES) REGULATIONS (CHAPTER 89A, RG 6)

This Legislative History is provided for the convenience of users of the Electricity (Control of Designated Electricity Licensees and Entities) Regulations. It is not part of these Regulations.

1. G. N. No. S 432/2006—Electricity (Control of Designated Electricity Licensees and Entities) Regulations 2006

Date of commencement : 24 July 2006

2. 2008 Revised Edition—Electricity (Control of Designated Electricity Licensees and Entities) Regulations

Date of operation : 31 January 2008