

**Auction of Radio Spectrum in the 900 MHz and 1800 MHz Bands
for the Provision of Public Telecommunications Services**
- Questions and Answers

The Communications Authority (the “Authority”) has received questions in relation to the Information Memorandum (“IM”) published on 21 September 2018. The Authority hereby sets out under paragraph F.2.1 of the IM its responses to the questions.

Terms not otherwise defined herein shall have the same meaning ascribed thereto in the Notice issued by the Authority on 21 September 2018 (the “Notice”), or as the case may be, in Annex E “Glossary of Terms” of the IM.

AUCTION ARRANGEMENTS AND LOGISTICS (AL)

AL.1 Section A.6 of the Application Form requires Bidders to describe: (a) the scope of service proposed to be provided using the Frequency Band(s); (b) the technical configuration of the networks and systems to be deployed for the operation of the proposed service; and (c) the technical expertise available for operation of the proposed service. As the Existing Assignees are already using the spectrum in the 900/1800 MHz Bands to provide services, is it necessary for them to provide the required information under Section A.6 of the Application Form if they wish to participate in the Auction?

Ans. The information requested under section A.6 of the Application Form applies to all Bidders including Existing Assignees and new entrants who wish to take part in the Auction. As a matter of fact, the same set of information was also requested in the past auctions held by the Authority.

All Bidders should endeavour to provide the requested information in sufficient details as far as possible. Bidders’ attention is drawn to paragraph D.3.1(a) of the IM which stipulates that Bidders must provide a duly completed Application Form containing all requested information and supporting documents; and paragraph D.3.4 of the IM which stipulates that Applications that do not contain all the requested information may be rejected and such Bidders may not be qualified.

AL.2 Is there any reason for the Letter of Credit for payment of the Deposit to have a long expiry date, i.e. 16 May 2019, given that the Letter of Credit for guaranteeing payment of Spectrum Utilization Fee will have already been provided to the Authority within 60 business days after publication of the Provisional Successful Bidder Notice?

Ans. The expiry date of the Letter of Credit for payment of the Deposit is set on 16 May 2019 to provide the Authority with sufficient time to check whether the Bidders have complied with the terms and conditions of the Auction following the completion of the Bidding Stage. If a Bidder is found in breach of the terms and conditions of the Auction, the Authority may forfeit all or parts of the Bidder's Deposit as Penalty, in which case the Authority will make a claim under the Letter of Credit to the extent of the amount of Penalty. For return of the Deposit, please refer to paragraphs D.4.5 – D.4.7 of the IM for details.

If the Deposit is provided by a Letter of Credit, the Letter of Credit must remain valid and fully effective until the Deposit is returned to the Bidder. A Bidder who fails to ensure that its Letter of Credit remains valid and fully effective will not be qualified to participate in the Auction or will be disqualified from the Auction, as the case may be.

AL.3 At present, Existing Assignees accepting the RFR Offer for reassignment of the RFR Spectrum in 2021 have lodged with the Authority the letter of credit for guaranteeing payment of the spectrum utilization fee in the maximum amount of HK\$70 million per MHz. If the spectrum utilization fee for the RFR Spectrum turns out to be less than HK\$70 million per MHz after the Auction, when will Existing Assignees be permitted to reduce the amount of their letter of credit?

Ans. If the per MHz spectrum utilization fee payable for the RFR Spectrum turns out to be less than \$70 million following the conclusion of the Auction, the Authority will advise each of the Existing Assignees the exact amount of spectrum utilization fee payable for the RFR Spectrum as soon as reasonably practicable after the announcement of the Auction results, and invite them to

provide replacement or amended letters of credit to the required amount of spectrum utilization fee payable. The timing for the Authority to advise on the exact amount of spectrum utilization fee payable for the RFR Spectrum, if applicable, will depend on the circumstances of the case. For reference, the advice was generally issued in around two weeks' time following announcement of the results in previous auctions.

AL.4 Appendix 7 to Annex B of the IM provides a template for the preparation of the Connected Bidder Statutory Declaration which indicates that the signing of the declaration must be witnessed and signed by a “Justice of the Peace/Notary Public/Commissioner of Oaths/Solicitor”. Is it acceptable for the signing of the declaration to be witnessed and signed by a qualified Solicitor who is an employee of the Bidder?

Ans. We have no objection that the execution of the Connected Bidder Statutory Declaration be witnessed and signed by a qualified solicitor employed by the Bidder, so long as the execution of the Connected Bidder Statutory Declaration complies with the relevant laws (including the Oaths and Declarations Ordinance (Cap.11)). The solicitor witnessing the execution must also comply with the relevant laws (including the Legal Practitioners Ordinance (Cap.159)) and the professional codes issued by the Law Society of Hong Kong (including Guide to Professional Conduct). The relevant laws and professional codes mean those currently in force in Hong Kong. If in doubt, the solicitor witnessing the execution should check with the Law Society of Hong Kong.

NETWORK ROLLOUT (NR)

NR.1 Paragraph C.7.1 of the IM states that Existing Assignees which are assigned Frequency Bands where 50% or more of the spectrum in any of these Frequency Bands is not currently held by them are required to lodge a Performance Bond with the Authority to guarantee compliance with the network and service rollout requirement. In computing whether or not the Existing Assignee has met or exceeded the 50% threshold, will the Authority look at the combined amount of 900 and 1800 MHz Bands spectrum acquired by the Existing Assignee at the

Auction, or will the Authority consider the 900 MHz Band and the 1800 MHz Band separately?

Ans. According to paragraph C.7.1 of the IM, a Performance Bond is imposed on each of the Frequency Bands A1 – A4 and B1 – B5 to ensure compliance with the network and service rollout requirements by the Relevant Licensees. For assessment of whether an Existing Assignee currently holds 50% or more of the spectrum in a Frequency Band it acquires from the Auction, the Existing Assignee's current holding of spectrum in that Frequency Band alone will be considered. In other words, the percentage will be calculated by dividing the current bandwidth held by an Existing Assignee in a particular Frequency Band by the total bandwidth of that Frequency Band.

The frequency range and bandwidth of each Frequency Bands are given in Figure 1 of the IM.

**Office of the Communications Authority
25 October 2018**