

CAYMAN ISLANDS



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**A BILL FOR A LAW TO ESTABLISH A MULTI-SECTOR
REGULATORY BODY CORPORATE, TO BE KNOWN AS THE
UTILITY REGULATION AND COMPETITION OFFICE; TO SET OUT
THE OFFICE'S BROAD FUNCTIONS AND POWERS AND THE
ADMINISTRATIVE ARRANGEMENTS FOR ITS GOVERNANCE AND
OPERATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE UTILITY REGULATION AND COMPETITION BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to establish an independent and accountable regulatory body with a view to protecting the rights of consumers, encouraging affordable utility services, and promoting competition. The regulatory body would be called the Utility Regulation and Competition Office and it would have the ability to supervise, monitor and regulate multiple utility undertakings and markets.

The Bill contains seventeen Parts. Part 1 sets out preliminary provisions and is comprised of clauses 1 to 3. Clause 1 provides the short title and commencement of the legislation. Clause 2 defines various words for the purposes of the legislation, including the words “utility services”. Clause 3 makes the legislation applicable to any utility service unless the contrary is provided in another Law.

Part 2 (which contains clauses 4 to 12) makes provision in respect of the establishment, functions and administration of the Utility Regulation and Competition Office. Clause 4 establishes the Office as a body corporate with power to sue and be sued in its own name.

Clause 5 makes provision for the use of a seal and the authentication of documents.

Clause 6 specifies the principal functions of the Office and these include -

- (a) promoting effective and fair competition;
- (b) protecting the interests of consumers in relation to utility services;
- (c) supervising, monitoring, and regulating specified utilities, ensuring that their services are satisfactory and that their charges are reasonable; and
- (d) promoting innovation and facilitating economic and national development in the markets and sectors for which it has responsibility.

Clause 7 imposes upon the Office a duty to consult stakeholders and to consider their comments, prior to issuing any significant administrative determination, and

clause 8 requires the Office to publish any significant administrative determination.

Clause 9 empowers the Office to require the provision of certain information (for example, information that it required for ascertaining whether a contravention of a condition of a licence has occurred). Clause 10 sets out the procedure to be followed by the Office where there is non-compliance with the information requirements and clause 11 specifies the penalties for contravention of information requirements.

Clause 12 empowers the Cabinet to give to the Office directions as to the Policy to be followed by the Office in the performance of its functions.

Part 3 contains clauses 13 to 25 and makes provision in respect of the Board of Directors of the Office. Clause 13 specifies the responsibilities of the Board. The Board would carry out the regulatory duties of the Office and would also be responsible for the general administration of the affairs and business of the Office.

Clause 14 sets out the structure of the Board and contains provisions relating to vacancies in offices on the Board. Clauses 15 to 17 contain provisions relating to the appointment and duties of the Chair and Deputy Chair of the Board

Clauses 18 and 19 relate to the appointment and re-appointment of non-executive members of the Board.

Clauses 20 to 22 contain provisions relating to the tenure of office by Board members, their resignation and the revocation of their appointments.

Clause 23 sets out the procedure to be followed in relation to Board meetings.

Clause 24 sets out the procedure to be followed where Board members have an interest in a matter which is to be determined by the Board.

Clause 25 makes provision for the remuneration of Board and committee members who are not public officers.

Part 4 contains clauses 26 and 27 which make provision in respect of the various committees that the Office may establish and these include -

- (a) a Regulatory Committee to which the Office may delegate decision making powers on certain regulatory matters;
- (b) Policy and Technical Committees, to provide guidance to the Board on specified issues; and
- (c) a Remuneration and Human Resource Committee, to provide guidance to the Board on remuneration and human resources issues.

In addition, the Office is required to establish a Risk and Audit Subcommittee.

Part 5 contains clauses 28 to 32 and makes provision for the staff of the Office. Clauses 28 and 29 contains provisions relating to the appointment and functions of the executive members of the Board, namely, the Chief Executive Officer, the Executive Director of Information, the Executive Director of Energy and the Chief Petroleum Inspector.

Clause 30 contains provisions relating to the Chief Executive Officer and the Executive Directors. The Executive Directors would each have substantial technical, operating and regulatory knowledge and experience in their respective areas of responsibility. The Chief Executive Officer would be responsible for carrying out the functions of the Office and would have the power to -

- (a) retain, suspend and dismiss staff;
- (b) supervise, direct and give assignments to the staff;
- (c) prepare the Office's budget;
- (d) manage and account for the finances of the Office;
- (e) coordinate the implementation of the Office's regulatory agenda and
- (f) supervise the preparation of strategic and annual plans.

Clause 31 provides for the appointment of a Secretary. That person would be present at the meetings of the Board but would not be a member of the Board and would not have a right to vote.

Clause 32 empowers the Office to employ other members of staff.

Part 6 contains clauses 33 to 43 which are financial and accountability provisions. Clause 33 prescribes the financial year of the Office.

Clause 34 sets out the heads of classification and heads of expenditure for the revenue of the Office.

Clause 35 sets out the borrowing powers of the Office.

Clauses 36 and 37 empower the Cabinet to advance sums of money to the Office and make provision for the repayment of the advances.

Clause 38 contains provisions enabling the Office to maintain a reserve fund.

Clause 39 relates to the balancing of the Office's revenue account.

Clause 40 requires the accounts of the Office to be prepared and maintained in accordance with specified standards.

Clause 41 requires the publication of the Office's annual plan and annual budget.

Clause 42 requires the Auditor General to perform a triennial performance audit while clause 43 requires the Office to submit annually to the Cabinet a report on its activities, performance and transactions during the previous financial year.

Part 7 contains clauses 44 and 45 which are provisions dealing with significant market power. Clause 44 enables the Office to determine whether a person has significant market power by considering various factors, including -

- (a) the person's ability to influence market conditions; and
- (b) the person's access to financial resources

Clause 45 empowers the Office to impose specific conditions on persons determined to have significant market power including obligations relating to -

- (a) cost recovery and price controls; and
- (b) retail prices.

Part 8 contains clauses 46 to 54 which are provisions dealing with merger control. Clause 46 prohibits shares from being issued or transferred without the approval of the Office, if the shares belong to a person licensed under a Law specified in Schedule 2 to the Bill (referred to in the Bill as a "licensee").

Clause 47 empowers the Office to regulate changes in control in relation to licensees and clause 48 sets out the factors determining whether there has been a change in control.

Clauses 49 to 51 enable the Office to determine whether it should consent to the transfer of shares that may result in a merger while clauses 52 to 54 set out the procedure to be followed by the Office for the purpose of determining whether consent should be given to a merger.

Part 9 contains clauses 55 to 60 which are provisions relating to consumer protection. Clauses 55 to 57 contain provisions relating to various Codes of Practice approved or adopted by the Office.

Clause 58 enables the Office to require incentive-based customer quality of service standards schemes while clause 59 enables the Office to determine appeals from customers of the service providers in respect of disputes between the customer and the service provider.

Clause 60 empowers the Office to appoint and fund the operation of Consumer Councils to advise it on issues of significance to consumers.

Part 10 contains clause 61 which empowers the Office to establish alternative dispute resolution schemes for disputes between licensees and between licensees and consumers.

Part 11 contains clauses 62 to 64 which make provision for the promotion of economic development. Clause 62 requires the Office to promote innovation with a view to contributing to national economic competitiveness and development.

Clause 63 empowers the Office to formulate and implement programmes to achieve universal access to infrastructure and services in the sectors for which it has responsibility while clause 64 imposes upon the Office a duty to maintain a strategic vision for those sectors.

Part 12 contains clauses 65 to 83 and makes provision in relation to anti-competitive practices. Section 65 provides that Part 12 applies to agreements, decisions and practices relating to utility services.

Clause 66 prohibits agreements that prevent, restrict or distort competition (for example, agreements that directly or indirectly fix purchase or selling prices or any other trading conditions). The Office may grant exemptions to this prohibition (clauses 67 and 68) or cancel the exemption (clause 69).

Conduct on the part of a licensee which amounts to the abuse of a dominant position in a market or sector for which the Office has responsibility is also prohibited (clause 70).

For the purposes of Part 12, the Office has investigatory powers (clauses 71 and 72) and may enter premises under a warrant (clauses 73 to 75).

Clauses 76 to 83 set out the enforcement powers of the Office where a person acts in contravention of Part 12, including the Office's power to publish rules providing for the appropriate amount of penalty under that Part.

Part 13 contains clauses 84 to 87 and makes provision for the Office to require the discontinuation of certain activities. By virtue of clause 84, cease and desist orders may be issued by the Office against persons who are contravening the legislation and these Orders may be enforced by the Grand Court (clauses 85 and 86).

By virtue of clauses 87 and 88, directions to discontinue activities may be issued by the Office in order to protect public health, safety or the environment and these Orders may be enforced by the Grand Court (clauses 89 and 90).

Part 14 contains clause 91 and makes provision for the imposition of administrative fines.

Part 15 contains clause 92 and provides that the Office's administrative determinations are subject to judicial review.

Part 16 contains clauses 93 to 103 and constitutes various offences under the legislation. The offences include a failure to comply with administrative determinations and the unauthorized disclosure of confidential information (clauses 98 and 100).

Part 17 contains clauses 104 to 112 which are miscellaneous provisions. Clause 106 specifies the circumstances in which a conflict of interest arises for the purposes of the legislation.

Clauses 109 and 110 are immunity and indemnity provisions relating to the Office and its staff.

Clause 112 empowers the Cabinet to amend the Schedules to the Bill. Schedule 1 sets out the markets and sectors for which the Office has responsibility while Schedule 2 sets out the various pieces of legislation in respect of which the Office has responsibility.

THE UTILITY REGULATION AND COMPETITION BILL, 2016

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ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Utility Regulation and Competition Law, 2016. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. (1) In this Law -

Interpretation

“administrative determination” includes any order, regulation, direction, decision, or other written determination by which the Office establishes the legal

rights and obligations of one or more sectoral participants, but does not include an advisory guideline;

“advisory guideline” means a written statement, issued by the Office, that provides the Office’s views regarding a specific matter, but is not legally binding;

“annual plan” means a plan published pursuant to section 41(1)(a);

“annual report” means a report published pursuant to section 41(1)(b);

“authorization holder” means a person that holds a valid licence, permit or other form of authorization, in accordance with sectoral legislation;

“Board” means the board of directors established under section 13;

“Chair” means the individual appointed as such under section 15;

“Chief Executive Officer” means the individual appointed as Chief Executive Officer of the Office, pursuant to section 28(a);

“co-regulation” means a process by which an individual or a public or private sector body authorized by the Office adopts and implements a code of practice, and performs any other function specified by the Office pursuant to this Law or sectoral legislation, in consultation with, and subject to the approval of, the Office;

“Court” means the Grand Court;

“covered services” means services provided by a sectoral participant that are subject to supervision by the Office pursuant to sectoral legislation;

“critical national infrastructure” means systems and assets, whether physical or virtual, so vital to the Islands that the incapacity or destruction of the systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters;

“Deputy Chair” means the individual appointed as such under section 16;

“Executive Director of Energy” means the individual appointed under section 28(c) as the Executive Director of Energy and Utilities of the Office;

“Executive Director of Information” means the individual appointed under section 28(b) as the Executive Director of Information and Communications Technologies of the Office;

“Executive Directors” means the Executive Director of Information and the Executive Director of Energy;

“executive member” means a person appointed as such under section 28;

“functions” includes responsibilities and duties;

“licence” means a licence granted under any sectoral legislation;

“licensee” means a person to whom a licence is granted;

“Member” means a member of the Board;

“Minister” means the member of Cabinet charged with responsibility for the Office;

“Nominating Committee” means the committee established under section 18;

“non-executive member” means a person appointed as such under section 18;

“Office” means the Utility Regulation and Competition established under section 4;

“Policy” means the policy to be followed by the Office pursuant to directions given by the Cabinet under section 12(1);

“public officer” has the meaning assigned to it by section 124 of the Constitution set out in Schedule 2 to the Cayman Islands Constitution Order 2009;

S.I. 2009/1379

“regulations” mean regulations made under this Law;

Schedule 2

“sectoral legislation” means any legislation specified in Schedule 2;

“sectoral participant” means a person who provides, uses or seeks to use utility services in a sectoral utility, but does not include the Office;

“sectoral provider” means a person, whether or not an authorization holder, who provides goods or services in a sectoral utility;

“sectoral utility” means a utility market or sector for which the Office has specific responsibility under any sectoral legislation;

“Secretary” means the individual appointed as such under section 31;

“self-regulation” means a process by which an individual or a public or private sector body authorized by the Office adopts and implements a code of practice and performs any other function specified by the Office pursuant to this Law or sectoral legislation;

“significant market power licensee” means an authorization holder or sectoral provider determined by the Office pursuant to section 44(1) as having significant market power in a relevant market;

“staff” means the officers, servants and agents of the Office appointed pursuant to Part 5; and

“utility services” means networks operated or services provided by a sectoral utility.

(2) References in this Law to services rendered by a sectoral utility shall be deemed to include references to -

- (a) services provided in the information and communications technologies sector;
- (b) commodities supplied within a market or sector for which the Office has responsibility or supplied by a sectoral utility in rendering such services.

(3) A sectoral provider shall be deemed to have Significant Market Power if, either individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and consumers.

3. (1) Subject to subsection (2), the functions and powers vested in the Office by this Law - Application

- (a) shall apply notwithstanding that the subject matter in respect of which the powers are exercisable is the subject matter of any other Law or any agreement;
- (b) shall apply in respect of rates and service, whether fixed by or the subject of any other Law or any agreement or otherwise; and
- (c) where the rates and service are fixed by or are the subject of an agreement, shall apply whether the agreement is incorporated in or ratified or made binding by any Law or otherwise.

(2) This Law applies to any utility service unless the contrary is provided expressly or by necessary implication in any other Law.

PART 2 - ESTABLISHMENT, FUNCTIONS AND ADMINISTRATION OF THE UTILITY REGULATION AND COMPETITION OFFICE

4. (1) There is established a body to be called the Utility Regulation and Competition Office, having the functions and powers conferred or imposed upon it by this and any other Law. Establishment of the
Utility Regulation and
Competition Office

(2) The Office shall be a body corporate having perpetual succession and a common seal and, subject to the provisions of this Law, shall have power to buy, sell, hold, deal and otherwise acquire and dispose of land and other property of any kind and to enter into contracts and to do all things necessary or desirable for the purposes of its functions and powers.

(3) The Office may sue and be sued in its corporate name and it shall have exclusive right to use the name the "Office of Competition and Regulation".

(4) The Office shall establish and maintain its head office and principal place of business within the Islands, and shall cause details thereof to be gazetted, and service of all documents on the Office shall be deemed to be effective if delivered at the head office.

Use of seal and authentication of documents

5. (1) The seal of the Office shall be authenticated by the Chair and one other Member authorized to act in that behalf and shall be judicially noticed.

(2) The Office may, by resolution, appoint an officer of the Office or any other agent either generally or in a particular case to execute or sign on behalf of the Office any instrument not under seal in relation to any matter coming within the functions and powers of the Office.

Principal functions of the Office

6. (1) The principal functions of the Office, in the markets and sectors for which it has responsibility, are -

- (a) to promote objectives set out in any Policy;
- (b) to promote effective and fair competition;
- (c) to protect the interests of consumers in relation to utility services and in so doing -
 - (i) supervise, monitor, and regulate any sectoral utility, in accordance with this Law, the regulations and sectoral legislation and any general policies made by Cabinet in writing;
 - (ii) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services; and
 - (iii) publish information, reports and other documents relating to utility services; and
- (d) to promote innovation and facilitate economic and national development.

(2) In performing its functions under this or any other Law, the Office may -

- (a) collect, retain and expend funds;
- (b) establish its internal organization and procedures;
- (c) conduct its internal administrative operations;
- (d) make administrative determinations, decisions, orders and regulations;
- (e) provide advisory guidance to sectoral participants;
- (f) establish external advisory panels and take appropriate actions to foster industry self-regulation and co-regulation;
- (g) establish and maintain an official website;

- (h) purchase, acquire or lease real property and other assets that the Board considers necessary for the provision or future provision of business premises for the Office or incidental to the performance of its functions under this Law;
- (i) enter into leases for real property and contracts for goods and services;
- (j) grant, modify and revoke authorizations;
- (k) collect from authorization holders such information as the Office considers necessary for any one or more of the following purposes -
 - (i) identifying the geographic position and nature of critical national infrastructure;
 - (ii) enabling the security and continuity of services over critical national infrastructure; and
 - (iii) any other prescribed purpose;
- (l) collect prescribed fees;
- (m) establish operating and reserve funds, open bank accounts, and accept grants and loans;
- (n) issue, suspend, vary or revoke licences, permits and exemptions;
- (o) conduct research and studies into any matter or technology which may be relevant to its functions and publish its findings, if appropriate;
- (p) assign resources and implement initiatives designed to enable the introduction of new and innovative technologies and systems in the markets and sectors for which it has responsibility;
- (q) initiate and conduct inquiries and investigations into any matter or complaint, either on its own initiative or referred to it, which in the opinion of the Office, is not frivolous;
- (r) take such action as it considers necessary to ensure the continuity and reliability of operations of critical national infrastructure;
- (s) allocate finite resources used by sectoral providers to provide covered services;
- (t) establish technical standards for the provision of covered services;
- (u) review and, as appropriate, approve, reject or modify tariffs filed by a sectoral provider governing the provision of covered services;

- (v) establish and enforce quality of service standards applicable to covered services;
- (w) take such action as the Office considers necessary to protect the health and safety of the public in relation to covered services;
- (x) take into account and have regard for the protection of the environment;
- (y) define relevant markets, assess the competitiveness of relevant markets and identify sectoral providers that have significant market power in such markets;
- (z) adopt remedies to deter anti-competitive conduct by sectoral providers in any relevant market;
- (aa) modify or find to be void, agreements involving one or more sectoral providers that unreasonably restrict competition in any relevant market;
- (bb) prohibit unfair trade practices by sectoral providers in any relevant market;
- (cc) resolve disputes between sectoral providers, and between sectoral providers and sectoral participants;
- (dd) conduct public consultations;
- (ee) require the production of documents and other information, conduct inspections and compel attendance at proceedings;
- (ff) publish and maintain registers or lists;
- (gg) take appropriate enforcement action, including the imposition of administrative fines, in any case in which a sectoral participant has contravened this Law, the regulations and any sectoral legislation or any administrative determination; and
- (hh) take any other action, not expressly prohibited by Law, that is necessary and proper to perform its duties under this Law and sectoral legislation.

(3) Without prejudice to subsection (1) or (2), the Office has power to carry on any activity which appears to it to be requisite, advantageous or convenient for or in connection with the performance of its functions under this or any other Law.

(4) In performing its functions and exercising its powers under this or any other Law, the Office shall -

- (a) act in a timely manner;
- (b) rely on self-regulation and co-regulation, where appropriate;

- (c) act in a reasonable, proportionate, impartial and consistent manner;
- (d) operate transparently, to the full extent practicable;
- (e) engage in reasoned decision-making, based on the administrative record;
- (f) act without favouritism to any sectoral participant, including any sectoral participant in which the Government has a direct or indirect financial interest;
- (g) subject to section 12, act free from political interference.

(5) The markets and sectors for which the Office has responsibility are set out in Schedule 1.

Schedule 1

7. (1) Prior to issuing an administrative determination which, in the reasonable opinion of the Office, is of public significance, and subject to specific procedures under sectoral legislation, the Office shall -

Duty to consult

- (a) issue the proposed determination in the form of a draft administrative determination;
- (b) allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination; and
- (c) give due consideration to those comments with a view to determining what administrative determination (if any) should be issued.

(2) The Office shall, within six months of the date of commencement of this section, publish its procedures for seeking comments, which shall include -

- (a) how the Office will issue draft administrative determinations under subsection (1);
- (b) how consultations will be published;
- (c) the minimum time for responding to consultations;
- (d) how the Office will publish comments or summaries of comments received; and
- (e) guiding principles for determining when the Office may derogate from the standard procedures.

(3) An administrative determination is likely to be of public significance if it relates to a sectoral utility and can lead to -

- (a) a major change in the activities carried on by the Office under this or any other Law;
- (b) a significant impact on persons carrying on activities in a sectoral utility; or
- (c) a significant impact on members of the public.

Duty to publish

8. Subject to section 12, the Office shall take proportionate measures to make available to the public administrative determinations which in its opinion, are of public significance and, for this purpose, shall -

- (a) publish such administrative determinations on its website as soon as possible after these are issued;
- (b) take steps to ensure that the website is regularly updated and available to the public; and
- (b) maintain copies of administrative determinations at its principal office, for inspection by the public on request during normal business hours without charge.

Information gathering powers

9. (1) The Office may require a person to provide it with all such information as it considers necessary for the purpose of carrying out its functions under this or any other Law.

(2) The information that may be required by the Office under subsection (1) includes, in particular, information that it requires for -

- (a) ascertaining whether a contravention of a condition or other requirement set or imposed by or under this Law has occurred or is occurring;
- (b) ascertaining or verifying the charges payable by a person under this Law;
- (c) ascertaining whether a contravention of a condition of a licence has occurred or is occurring;
- (d) statistical purposes connected with the carrying out of any of the Office's functions under this Law; and
- (e) such other purposes as may be prescribed.

(3) A person required to provide information under this section shall provide it in such manner and within such reasonable period as may be specified by the Office.

(4) The Office shall not require the provision of information under this section except -

- (a) by a demand for the information that describes the required information and sets out the Office's reasons for requiring it; and
- (b) where the making of a demand for the information is proportionate to the use to which the information is to be put in the carrying out of the Office's functions.

(5) The reasons for requiring information for statistical purposes under this section shall set out the statistical purposes for which the information is required.

(6) A demand for information required under this section shall be made in writing to the person from whom the information is required.

10. (1) Where the Office determines that there are reasonable grounds for believing that a person is contravening, or has contravened, a requirement imposed under section 9, the Office may give that person a notification under this section.

Notification of
contravention of
information
requirements

(2) A notification under this section shall -

- (a) set out the determination made by the Office;
- (b) specify the requirement and contravention in respect of which that determination has been made; and
- (c) specify the period during which the person notified has an opportunity of -
 - (i) making representations about the matters notified; and
 - (ii) complying with any notified requirement of which the person remains in contravention.

(3) Subject to subsections (4) and (5), the period for doing the things specified in subsection (2)(c)(i) and (ii) shall be the period of one month beginning with the day after the one on which the notification was given.

(4) The Office may, if it thinks fit, allow a longer period for doing the things specified in subsection (2)(c)(i) and (ii) -

- (a) by specifying a longer period in the notification; or

(b) by subsequently, on one or more occasions, extending the specified period.

(5) The person notified shall have a shorter period for doing the things specified in subsection (2)(c)(i) and (ii) -

(a) if a shorter period is agreed between the Office and the person notified; or

(b) if -

(i) the Office has reasonable grounds for believing that the contravention is a repeated contravention;

(ii) the Office has determined that, in those circumstances, a shorter period would be appropriate; and

(iii) the shorter period has been specified in the notification.

(6) A notification under this section -

(a) may be given in respect of more than one contravention; and

(b) if it is given in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.

(7) Where a notification under this section has been given to a person in respect of a contravention of a requirement, the Office may give a further notification in respect of the same contravention of that requirement if -

(a) the contravention is one occurring after the time of the giving of the earlier notification;

(b) the contravention is a continuing contravention and the subsequent notification is in respect of so much of a period as falls after a period to which the earlier notification relates; or

(c) the earlier notification has been withdrawn without a penalty having been imposed in respect of the notified contravention.

(8) For the purposes of this section, a contravention is a repeated contravention, in relation to a notification with respect to that contravention, if a previous notification under this section has been given in respect of the same contravention or in respect of another contravention of the same requirement.

Penalties for
contravention of
information
requirements

11. (1) This section applies where -

- (a) a person (in this section referred to as “the notified person”) has been given a notification under section 10;
- (b) the Office has allowed the notified person an opportunity of making representations about the matters notified; and
- (c) the period allowed for the making of the representations has expired.

(2) The Office may impose a penalty on the notified person if -

- (a) the Office is satisfied that the person has, in one or more of the respects notified, been in contravention of the requirement notified under section 10;
- (b) the notified person has not, during the period allowed under that section, complied with the notified requirement; and
- (c) no proceedings for an offence under this Law have been brought against the notified person in respect of the contravention.

(3) Where a notification under section 10 relates to more than one contravention, a separate penalty may be imposed in respect of each contravention but, where the notification relates to a continuing contravention, no more than one penalty may be imposed in respect of the period of contravention specified in the notification.

(4) The amount of a penalty imposed under this section is to be an amount not exceeding twenty thousand dollars as the Office determines to be -

- (a) appropriate; and
- (b) proportionate to the contravention in respect of which it is imposed.

(5) Where the Office imposes a penalty on a person under this section, it shall -

- (a) within thirty days of making its decision to impose the penalty, notify that person of that decision and of its reasons for that decision; and
- (b) in that notification, fix a reasonable period after it is given as the period within which the penalty is to be paid.

12. (1) The Cabinet may, after consultation with the Board, give to the Office general and lawful directions in written form as to the policy to be followed by

Cabinet may give
general directions

the Office in the performance of its functions and the exercise of its powers under this or any other Law, and the Office shall give effect to such directions.

(2) Any direction given by the Cabinet shall be published in the Gazette but no such direction shall apply in respect of a matter pending before the Office on the day on which the directions are published.

PART 3 - THE BOARD

Board of directors

13. (1) There shall be a board of directors of the Office which, subject to this Law, shall be responsible for -

- (a) carrying out the regulatory duties of the Office under this or any other Law; and
- (b) the general administration of the affairs and business of the Office.

(2) When making a decision on any regulatory issue, the Board shall have regard to the views and recommendations of the executive members.

Structure of Board

14. (1) Subject to section 105(1) to (4), the directors referred to in section 13(1) shall be appointed by the Cabinet on such terms and conditions as the Cabinet may specify in their instruments of appointment.

(2) Subject to subsections (3) and (4), the Board shall consist of nine individuals being -

- (a) –the Chair who shall be a non-executive officer;
- (b) four non-executive members; and
- (c) executive members, comprising -
 - (i) the Chief Executive Officer;
 - (ii) the Executive Director of Information;
 - (iii) the Executive Director of Energy; and
 - (iv) the Chief Petroleum Inspector.

(3) The number of non-executive members of the Board may be increased by the Cabinet after consultation with the Board, by Order published in the Gazette; but the number of non-executive-members shall only be increased if -

- (a) the Office's responsibilities or assigned sectors are extended; and

- (b) such an increase in number is necessary to ensure that the requisite plurality of skills among the non-executive members is available to the Board as a whole.
 - (4) Prior to increasing the number of non-executive members under subsection (3), the Cabinet shall -
 - (a) have regard to whether the non-executive members together have sufficient experience in each of the regulated sectors; and
 - (b) consider whether the non-executive members together have the requisite plurality of professional skills as a whole.
 - (5) The Board shall be deemed to be properly constituted notwithstanding that there is a vacancy in the office of Chair, Deputy Chair or any other Member.
15. (1) The Cabinet shall appoint the Chair for a term of three years and the Chair may be reappointed for a subsequent term of three years. The Chair
- (2) The Chair shall not be the Speaker or a member of the Legislative Assembly or a public officer.
 - (3) In appointing the Chair, the Cabinet shall ensure that the Chair -
 - (a) has appropriate expertise, good standing and good reputation;
 - (b) has no personal or pecuniary interest, direct or indirect, in a sectoral utility;
 - (c) has not been adjudged bankrupt;
 - (d) has not been convicted in the Islands or elsewhere of any offence involving dishonesty or fraud or any other offence that, in the opinion of the Cabinet, is likely to bring the Office into disrepute; and
 - (e) is not otherwise unable or unfit to discharge the functions of a Member.
 - (4) The Chair shall be appointed at the expiry of the previous Chair's term or as soon as reasonably practicable after the expiry.
 - (5) In the absence of a nominated Chair, the Deputy Chair shall act as Chair.

(6) No person may be Chair if that person has been in that office for an aggregate duration of six years or more in the preceding nine years.

The Deputy Chair

16. (1) The non-executive members shall elect one of the other non-executive members as the Deputy Chair who having been elected shall serve for the duration of the term as a non-executive member.

(2) The Deputy Chair shall not be the Speaker or a member of the Legislative Assembly or a public officer.

(3) The Deputy Chair may carry out the functions of the Chair, in such cases and manner as may be determined by or in accordance with any directions given by the Chair; and the Deputy Chair shall, in the absence of the Chair, perform the functions of the Chair as required.

(4) Three or more of the Members may require the Deputy Chair to call a Board meeting if they have requested that the Chair call such a meeting and the Chair has not done so within a reasonable period of time.

Duties of Chair and Deputy Chair

17. (1) The duties of the Chair include -

- (a) chairing meetings of the Board;
- (b) instructing the Chief Executive Officer on behalf of the Office;
- (c) signing Minutes of meetings of the Board;
- (d) apprising the Office of matters raised by stakeholders;
- (e) making best efforts to guide the Office in accordance with sectoral legislation and any Policy directives; and
- (f) participating in public relations or education campaigns on behalf of the Office.

(2) In the case of the absence or inability of the Chair to act, the Deputy Chair shall perform the duties of the Chair.

Appointment of non-executive members

18. (1) The Cabinet shall appoint a non-executive member from among the nominations received by the Cabinet from the Nominating Committee but the Speaker or a member of the Legislative Assembly or a public officer may not be appointed as a non-executive member.

(2) There is established a body to be called the Nominating Committee which shall consist of -

- (a) the Cabinet Secretary who shall be the chairperson;
- (b) the Deputy Governor;
- (c) a member appointed by the Premier;
- (d) a member appointed by the Leader of the Opposition; and
- (e) the Chair.

(3) A simple majority of the members of the Nominating Committee shall constitute a quorum.

(4) The Nominating Committee shall make its decisions by simple majority vote and each member shall have a single vote; and the chairperson of the Nominating Committee shall not have a vote but may exercise a casting vote in the event of an inconclusive vote among the other members.

(5) The chairperson of the Nominating Committee shall cause a notice soliciting applications for the position of non-executive member to be published in newspapers in wide circulation in the Islands -

- (a) in respect of the initial non-executive members, within fifteen days of the coming into effect of this section; and
- (b) in respect of any subsequent vacancy for the non-executive member at either the earlier of -
 - (i) ninety days prior to the date on which a non-executive member's term is set to expire; or
 - (ii) fifteen days after receiving a notice from a non-executive member stating that the member intends to resign prior to the expiration of the member's term or fifteen days after a vacancy occurs for any reason.

(6) The notice shall set out the required background and experience required reflecting the skills and experience required on the Board which together will enable the Office to discharge its functions.

(7) An application for the position of non-executive member shall be submitted to the Nominating Committee in writing, in accordance with the procedures specified in the notice, together with a written declaration that the applicant -

- (a) has no personal or pecuniary interest, direct or indirect, in a sectoral utility;
- (b) has not been adjudged bankrupt;

- (c) has not been convicted in the Islands or elsewhere of any offence involving dishonesty or fraud or any other offence that is likely to bring the Office into disrepute; and
- (d) is not otherwise unable or unfit to discharge the functions of a Member.

(8) A person who has previously served as a non-executive member for two consecutive terms may apply in the manner specified in this section for appointment as a non-executive member following a minimum period of three years following the end of the person's second term of the consecutive period.

(9) Within forty-five days after the date on which a notice specified in subsection (5) has been published but not earlier than twenty-one days after such date, the Nominating Committee shall submit its recommendations to the Cabinet.

(10) In making its nominations, the Nominating Committee shall -

- (a) use a merit-based and objective approach;
- (b) ensure that the non-executive members will together have appropriate expertise in the relevant regulated sectors;
- (c) ensure that the non-executive members will together have broad experience, such as experience that would be expected of professionally qualified economists, engineers, lawyers, accountants or persons having backgrounds in business;
- (d) present a plurality of options and skills to enable the Cabinet to make selections from the widest choice of candidates possible; and
- (e) provide the Cabinet with a description of the recruitment, assessment and selection processes used and the results of those processes.

Reappointment of non-executive members

19. (1) A non-executive member who is eligible for reappointment shall indicate by instrument in writing addressed to the Cabinet Secretary the member's interest in being reappointed as a non-executive member not later than one hundred and twenty days prior to the expiration of the member's term.

(2) The Cabinet Secretary shall cause the expression of interest from the member to be considered by the Nominating Committee and shall within thirty days of receipt make its recommendations known to the Cabinet, with reasons.

20. (1) The members of the Board shall hold and vacate office in accordance with the provisions of this section and the terms of their appointment. Tenure of office
- (2) A non-executive member shall be appointed for a term of three years.
21. A Member may resign office by instrument in writing addressed to the Cabinet, and the resignation shall take effect as from the date of the receipt of the instrument by the Cabinet Secretary. Resignation
22. (1) The Cabinet shall terminate the appointment of any Member who - Revocation of appointments
- (a) resigns the office;
 - (b) has been adjudged bankrupt;
 - (c) is convicted in the Islands or elsewhere of any offence involving dishonesty or fraud or any other offence that, in the opinion of the Cabinet, is likely to bring the Office into disrepute;
 - (d) has been absent from three consecutive meetings of the Board without the consent of the Chair;
 - (e) fails to comply with obligations under section 24; or
 - (f) is otherwise unable or unfit to discharge the functions of a Member.
- (2) Where any Member ceases to be a Member before the normal expiration of the Member's term in office, the Cabinet in accordance with this Law, may appoint another person to hold that office until the time that the Member's term in office would have expired.
23. (1) The Chair shall summon regular meetings of the Board as often as may be required but not less than six times in any one year. Procedure and meetings
- (2) Meetings of the Board shall be held at such places on such days, and at such times as the Chair shall determine, and due notice of such place, date and time shall be given to each Member in writing at least seven days before the time at which the meeting is to be held.
- (3) The Chair or Deputy Chair may at any time, in accordance with this Law, call a special meeting of the Board within two days of receipt of request for that purpose addressed to the Chair in writing and signed by any two Members.

(4) At every meeting of the Board a quorum shall consist of a simple majority of the voting members plus two executive members.

(5) The Executive Directors and the Chief Petroleum Inspector shall have no right to vote at meetings of the Board but the non-executive members and the Chief Executive Officer shall each have one vote; and decisions of the Board shall be adopted by a simple majority of the votes of the members present and voting except that in the case of an equality of votes the Chair shall have an additional casting vote.

(6) When considering decisions on regulatory issues including regulatory measures, the Board shall have due regard to the advice and recommendations of the executive members.

(7) In the event that a decision is taken by round robin, the majority rule applies, but the decisions shall be confirmed and entered into the minutes of the next meeting of the Board.

(8) The decisions of the Board and the reasons for those decisions shall be recorded in the minutes and kept by the Secretary.

(9) Decisions, resolutions, orders, policies and rules, made by the Board, which affect members of the public shall be published in the Gazette, on a website or in a newspaper of the Islands.

(10) The Board may decide its own procedures, except so far as its procedures are prescribed by this Law.

Disclosure of Members' interests

24. (1) If a Member has any personal or pecuniary interest, direct or indirect, in any matter which is to be determined by the Board, the Member shall, if present at the meeting of the Board at which such matter is to be determined, as soon as practicable after the commencement thereof, disclose the fact and leave the meeting, and shall not take part in the consideration or discussion of such matter or vote on any question with respect to such matter.

(2) A disclosure under subsection (1) shall be recorded in the Minutes of the relevant Board meeting.

(3) If the Board is in receipt of information indicating that a Member is in breach of subsection (1), the Secretary shall -

- (a) in writing, advise the Member of the information that is the subject of concern;
- (b) provide the Member with a copy of the information and allow the Member to provide an explanation; and
- (c) if the explanation is not satisfactory, provide the Member with a warning that, if the Member continues to breach subsection (1), criminal proceedings may be instituted under subsection (6).

(4) If, after the process specified in subsection (3) has been completed, the Board is of the view that criminal proceedings should be instituted under subsection (6), the Board may forward its view to the Director of Public Prosecutions for consideration.

(5) If, after the process specified in subsection (3) has been completed, the Board is of the view that the Member is no longer in breach of subsection (1), the Board shall advise the Member in writing of that fact and that the warning has expired.

(6) If a Member fails to comply with subsection (1) after receiving a warning under subsection (3)(c), the Member commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of six months, or both.

(7) No act or proceeding of the Board shall be questioned on the ground that a Member contravened this section.

25. (1) Subject to subsection (2), a member of the Board or of a subcommittee or committee established under Part 4 is entitled to receive such remuneration, and the Chair and Deputy Chair may receive such additional remuneration, as may be determined by the Cabinet.

Remuneration: Board
and committee members

(2) A public officer who is a member of the Board or of a subcommittee or committee established under Part 4 is not entitled to receive remuneration under subsection (1).

PART 4 - COMMITTEES

The Risk and Audit Subcommittee

26. (1) The Office shall establish a Risk and Audit Subcommittee comprised of a chairperson and three non-executive members.

(2) The Office shall appoint the chairperson and the chairperson shall -

- (a) not be a Member or a member of the staff of the Office; and
- (b) have appropriate accountancy skills and experience and shall be registered as an accountant in accordance with the Accountants Law, 2016.

Law 6 of 2016

(3) The chairperson shall be appointed for a term of three years and may be reappointed for one or more subsequent terms of three years.

(4) The Risk and Audit Subcommittee may liaise with external auditors, pursuant to section 40(4), in the preparation of audited statements and shall report to the Board within four months of publication of the Office's annual report on -

- (a) the Office's performance against its annual plan;
- (b) the extent to which the Office's deployment of its financial resources has delivered value for money; and
- (c) the Office's risk profile and any mitigation steps that may be necessary.

(5) The Risk and Audit Subcommittee shall meet at least twice every year and the quorum for the proceedings of the Subcommittee shall be three Risk and Audit Subcommittee members, including the Risk and Audit Subcommittee chairperson.

(6) Voting shall be by a majority with the Risk and Audit Subcommittee chairperson having a casting vote.

(7) The Office shall publish the Risk and Audit Subcommittee's report within two months of it being delivered to the Board.

Committees

27. (1) The Office may establish -

- (a) a Regulatory Committee to which the Office may delegate decision making powers on regulatory matters and such other matters as the Board may decide, other than decisions on tariffs

- or the grant, renewal, amendment, suspension or revocation of licences;
- (b) Policy and Technical Committees on a sectoral basis, to provide guidance to the Board on sectoral issues;
 - (c) a Remuneration and Human Resource Committee, to provide guidance to the Board on remuneration and human resources issues; and
 - (e) such other committees as the Office thinks best suited to assist it in the discharge of its functions under this or any other Law.
- (2) For each committee established under this section, the Office shall -
- (a) appoint the committee's members, who shall be members, officers and employees of the Office;
 - (b) appoint such professionals as the Office considers necessary to assist the Office in an advisory capacity; and
 - (c) establish the remit of each committee.

PART 5 - THE STAFF

28. Subject to section 105(5), the Board shall appoint the Chief Executive Officer to the Board. Appointment of Chief Executive Officer

29. (1) The Board shall appoint the following as executive members of the Board- Executive members

- (a) the Executive Director of Information;
- (b) the Executive Director of Energy; and
- (c) the Chief Petroleum Inspector.

(2) Each executive member specified in subsection (1)(a), (b) and (c), consistent with Policy, the direction of the Board and the guidance of the Chief Executive Officer, shall be -

- (a) the principal advisor to the Board; and
- (b) responsible for directing the activities of the Office,

in the member's area of responsibility.

30. (1) The Chief Executive Officer and the Executive Directors shall each have substantial knowledge and experience in one or more of the following fields - Chief Executive Officer and Executive Directors

- (a) utility regulation or competition;
- (b) accounting;
- (c) economics;
- (d) engineering;
- (e) finance;
- (f) law;
- (g) public policy; or
- (h) any other field related to the functions of the Office;

and the Executive Directors shall each have substantial technical, operating and regulatory knowledge and experience in their respective areas of responsibility.

(2) The Chief Executive Officer and the Executive Directors shall each serve for a term of three years, and may each be reappointed by the Board for one or more subsequent terms.

(3) The Chief Executive Officer, subject to the policies and delegated authorities of the Board, shall be the principal administrative officer of the Office and shall be responsible, subject to the direction of the Board, for carrying out the functions of the Office.

(4) The Chief Executive Officer, consistent with policies of the Board may -

- (a) retain, suspend and dismiss staff as otherwise allowed by law;
- (b) supervise, direct and give assignments to the staff;
- (c) prepare the proposed budget, and manage and account for the finances, of the Office;
- (d) engage persons having technical or special knowledge that the Office requires to carry out its functions under this Law;
- (e) coordinate the implementation of the Office's regulatory agenda;
- (f) supervise the preparation of strategic and annual plans;
- (g) enter into contracts for the provision of goods and services required by the Office for the conduct of its business; and
- (h) perform such other duties as the Board may direct.

(5) The Board, after providing the Chief Executive Officer or any of the Executive Directors, with notice and an opportunity to comment, by unanimous vote of the Members, may -

- (a) suspend or revoke the appointment of the Chief Executive Officer; or
- (b) suspend or revoke the appointment of any of the Executive Directors,

for serious misconduct or unsatisfactory performance.

- (6) In any case in which -
 - (a) the Board has suspended or revoked the appointment of the Chief Executive Officer or any of the Executive Directors pursuant to subsection (5); or
 - (b) the Chief Executive Officer or any of the Executive Directors is unable to perform duties for an extended period due to ill health or absence from the Islands or other good cause,

the Board shall appoint a member of the staff, or other qualified person not being a non-executive member, to serve as the interim Chief Executive Officer or Executive Director.

(7) A person appointed pursuant to subsection (6), when acting within the scope of the appointment, shall exercise the full authority of the Chief Executive Officer or relevant Executive Director, and shall be eligible for remuneration commensurate to the service provided.

31. (1) The Board shall appoint an individual, not being a Member, to be the Secretary of the Office, who shall be present at all meetings of the Board and shall take Minutes of the business transacted but shall have no right to vote at meetings of the Board.

Secretary

(2) The Secretary shall manage the affairs of the Board in accordance with Board directives and policies.

32. (1) The Office may employ, at such remuneration and on such terms and conditions as may be approved from time to time by the Board, such persons for such offices and such purposes as the Board considers necessary for the performance of the functions of the Office.

Power to employ staff, etc.

(2) The Office shall create and maintain or subscribe to a fund for the payment of pensions to employees of the Office in accordance with a scheme, the terms of which shall be approved by the Cabinet.

(3) The fund shall be vested in trustees to be appointed by the Office for that purpose and shall be maintained at a sufficient level according to accepted actuarial principles to enable pensions to be paid to all employees of the Office in accordance with the approved scheme.

(4) The Cabinet may, subject to such conditions as it may impose, approve of the appointment of any public officer in the service of Government by way of secondment to any position on the staff of the Office, and any public officer so appointed shall, in relation to pension, gratuity or other allowance and to other rights and obligations as a public officer, be treated as continuing in the service of Government.

PART 6 - FINANCIAL AND ACCOUNTABILITY PROVISIONS

Financial year

33. The financial year of the Office shall end on the 31st December or such other date as the Board may, by resolution, determine.

Financial procedure

34. (1) The revenue of the Office shall be classified under the following heads of receipt-

- (a) fees received under this Law, the regulations or any sectoral legislation;
- (b) amounts borrowed by the Office;
- (c) other sums which may in any manner become payable or available to the Office in respect of any matter incidental to its functions; and
- (d) such funds as may be available to the Office, for special or designated purposes, under this or any other Law,

and such revenue shall, within seven days of the receipt thereof, be paid into a bank account approved by the Minister of Finance.

(2) The revenue of the Office shall be applied to meet the following heads of expenditure-

- (a) interest on loans;
- (b) repayment of overdraft, if any, on current account;

- (c) current expenses;
- (d) staff costs, including, salaries, pensions and gratuities;
- (e) special projects to promote innovation and economic development;
- (f) general reserve fund; and
- (g) miscellaneous expenditure, that is relevant to its functions under this or any other Law, approved by the Board.

(3) The Office shall -

- (a) submit to the Cabinet, for approval, a general investment strategy for managing its reserve and other funds; and
- (b) invest such funds in a manner consistent with the approved investment strategy.

35. (1) Subject to subsection (2), the Office may borrow sums required by it for meeting any of its obligations or discharging its functions. Borrowing powers

(2) The power of the Office to borrow shall be exercisable only with the approval of the Cabinet as to the amount, sources of the borrowing and terms on which the borrowing may be effected; and an approval given in any respect for the purpose of this subsection may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

36. (1) The Cabinet may, from time to time, make advances and grants to the Office out of sums placed upon the estimates of the Islands for the purpose and approved by the Legislative Assembly. Advances, grants and guarantees

(2) With the approval of the Legislative Assembly, the Cabinet may guarantee, in such manner and on such conditions as the Cabinet thinks fit, the payment of the principal and interest on any authorised borrowings of the Office made otherwise than by way of advance under subsection (1).

(3) Where the Cabinet is satisfied that there has been default in the repayment of any principal moneys or interest guaranteed under subsection (2), the Cabinet shall, with the prior approval of the Finance Committee of the Legislative Assembly, direct the repayment out of the general assets and revenue of the Islands of the amount in respect of which there has been such default.

37. The Office shall pay into the Treasury, at such times and in such manner as the Cabinet may direct, such amounts as may be so directed in or towards Repayment of advances

repayment of advances made to the Office under section 36, and any sums issued in fulfilment of any guarantee given thereunder, and shall pay into the Treasury on what is outstanding for the time being in respect of such advances and of any sum so issued at such rate as the Cabinet may direct, and different rates of interest may be directed as respects different periods.

Reserve fund

38. (1) The Office shall maintain a reserve fund.

(2) The management of the reserve fund, the sums to be carried, from time to time, on the credit thereof, and the application of the fund, shall be as the Office may determine.

(3) Notwithstanding subsection (2), no part of the reserve fund shall be applied otherwise than for the purposes of the Office.

(4) The Office shall set aside up to thirty percent of its reserve as a dedicated fund to promote innovation and economic development and the fund shall be called the “Innovation Support Fund”.

(5) The power of the Cabinet to give directions to the Office shall extend to the giving to the Office of directions as to any matter relating to the establishment or management of the reserve fund, the carrying of funds to the credit thereof or the application thereof, notwithstanding that the direction may be of a specific character; but the Cabinet shall consult with the Board before giving directions in relation to the reserve fund and the directions shall be limited in the scope of application of the funds to activities related to the sectors for which the Office has responsibility.

Balancing of revenue account

39. It is the duty of the Office so to exercise and perform its functions as to secure that its revenues are sufficient to meet all sums properly chargeable to its revenue account.

Accounts and audit

40. (1) The accounts of the Office shall be prepared and maintained in accordance with International Public Sector Accounting Standards.

(2) The accounts shall, to the fullest extent possible, allocate the Office’s revenues, costs and expenses, whether in respect of personnel or otherwise, to each of the regulated sectors.

(3) In allocating costs and expenses under subsection (2), the Office shall use its best endeavours to -

- (a) allocate directly incurred costs and expenses -
 - (i) to the regulated sector to which they relate; or
 - (ii) where relating to a number of regulated sectors, to each of the regulated sectors to which they relate in proportion to the burden from each of the regulated sectors; and
- (b) allocate indirectly incurred costs and expenses on a reasonable and transparent basis.

(4) The accounts of all transactions of the Office shall be audited annually by the Auditor General who shall have such powers in relation to the Office, its Board, and the property, securities and accounts of the Office as the Auditor General has in relation to other public money and public officers by virtue of the Public Management and Finance Law (2013 Revision).

(2013 Revision)

(5) On completion of the audit of the Office's accounts under subsection (4), the Auditor General shall prepare a report thereon within three months of the close of the financial year to which the audited accounts relate.

41. (1) No later than one month before the end of each financial year, the Office shall prepare and publish -

Annual plan and annual budget

- (a) a plan of its proposed objectives for the forthcoming year; and
 - (b) a report of the carrying out of its functions during that financial year; and
 - (c) its approved budget for the forthcoming year.
- (2) The annual plan shall -
- (a) set out the Office's strategy for the forthcoming financial year to meet the objectives set out in any sectoral legislation;
 - (b) set out the broad priorities of the Office for the two years following the forthcoming year provided that these may require adjustments in light of any sectoral policy published by the Government in any sectoral utility under the terms of any sectoral legislation;
 - (c) include a series of key performance indicators against which it shall measure its performance during the forthcoming year;

- (d) include the level of remuneration to be received by non-executive and executive members for the forthcoming year; and
- (e) set out the Office's budget based upon its target activities for the forthcoming year.

(3) No later than six months after the end of each financial year, the Office shall prepare and publish a detailed report of the performance of each of the sectors for which it has responsibility.

(4) The Office shall, within twelve months of the coming into force of this section, prepare its five-year strategic plan for the sectors for which it has responsibility and shall update the plan every three years.

Performance audit

42. The Auditor General shall, every three years, report to the Board on -

- (a) the Office's performance against its annual plan;
- (b) the extent to which the Office's deployment of its financial resources has delivered value for money; and
- (c) the impact of the Office's regulatory decisions when compared to the expected impacts established through regulatory impact assessments carried out by the Office.

Publication of accounts and annual report

43. (1) The Office shall submit annually to the Cabinet, not later than four months following the end of the financial year, a report on its activities, performance and transactions during the previous financial year, together with audited accounts including a balance sheet and income and expenditure accounts as at the close of the previous financial year.

(2) The annual report shall -

- (a) outline the Office's financial performance against its budget,
- (b) include a detailed report of the Office's performance against the key performance indicators published in the previous year's annual plan;
- (c) include a detailed report of the performance of the sectoral utilities; and
- (d) set out the key activities carried out during the previous financial year, whether or not envisaged in the previous year's annual plan.

(3) The report and accounts under subsection (1) shall be laid on the table of the Legislative Assembly by the Minister not later than six months following the end of the financial year.

PART 7 - SIGNIFICANT MARKET POWER

44. (1) The Office may at any time determine that an authorization holder or sectoral provider has significant market power in a relevant market.

Office's power to determine that a licensee has significant market power

(2) The Office shall establish and publish criteria -

- (a) relating to the definition of relevant markets in the respective sectors; and
- (b) against which market power may be assessed, for the purpose of making a determination under subsection (1).

(3) The Office's criteria referred to in subsection (2) shall include references to -

- (a) the licensee's market share;
- (b) the licensee's ability to influence market conditions;
- (c) the licensee's access to financial resources;
- (d) the licensee's experience in providing products to the market; and
- (e) any other criteria considered relevant by the Office.

(4) Without prejudice to subsection (1), licensees shall be deemed to have significant market power in the termination of utility services on their own networks, unless the Office determines otherwise.

45. (1) The Office may impose specific conditions on licensees determined to have significant market power in the relevant markets, including obligations relating to -

Conditions on significant market power licensees

- (a) cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems;
- (b) the publication of a reference offer ensuring equivalence of access or interconnection to any of those services or facilities in which the licensee has significant market power at tariffs based on an efficient licensee's costs;

(2016 Revision)

- (c) the submission of regulatory accounts or financial statements separating out the key business activities of the licensee;
 - (d) retail prices;
 - (e) sharing of infrastructure, facilities and systems used for the provision of ICT services as defined in section 2 of the Information and Communications Technology Authority Law (2016 Revision);
 - (f) technical compatibility of and access to conditional access systems used in the provision of content;
 - (g) offering services to the businesses which comprise the licensees and their parent companies on a non-discriminatory, commercial basis;
 - (h) provision of standard terms of business, which should be published and accessible to customers;
 - (i) provision of service level guarantees with associated compensation payment to retail customers; and
 - (j) such other obligations as the Office may consider necessary in pursuance of the electronic communications policy objectives and the sector policy.
- (2) Prior to imposing any obligations under subsection (1), the Office -
- (a) shall review the market in which the licensee has significant market power;
 - (b) shall consider the regulatory burden and the benefits to consumers of imposing any such obligation on a licensee;
 - (c) shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits;
 - (d) shall take into account the investment made by the relevant licensee and allow the licensee a reasonable rate of return on capital efficiently employed, taking into account the risks involved;
 - (e) shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a determination of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs; and
 - (f) may also take account of prices available in comparable markets.

- (3) Significant market power licensees shall -
- (a) not unduly discriminate against particular persons or a particular description of persons in relation to utility services offered by them;
 - (b) provide technical specifications, or other relevant information about any interconnection, essential facilities or other mandated wholesale services on a reasonable and timely basis, when the information is required by another licensee to provide its licensable services and when the information is not readily available from other sources; and
 - (c) not adopt technical specifications for a network that prevents interconnection or interoperability with a network or facility of a competitor.

(4) Nothing done in any manner by a significant market power licensee shall be regarded as undue discrimination if and to the extent that the licensee is required or expressly permitted to do such thing in that manner under this or any other Law.

(5) Where a significant market power licensee is made subject to an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on capital efficiently employed shall lie with the significant market power licensee concerned.

(6) For the purpose of calculating the cost of efficient services, the Office may direct the significant market power licensee to employ specific cost accounting methods or the Office may use cost accounting methods independent of those used by the relevant licensee.

(7) The Office may require the significant market power licensee to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

PART 8 - MERGER CONTROL

46. (1) Where a licensee is a company (other than a company referred to in subsection (5)), the licensee shall not issue shares or a person owning or having an interest in shares in the licensee shall not transfer or otherwise dispose of or

Shares of licensee not to be issued or transferred without approval of the Office

deal in those shares or that interest without the prior written consent of the Office whose consent shall not be unreasonably withheld; but the Office may refuse to give its consent where, among other things, it considers that the giving of the consent may result in a lessening of competition in the operation of networks or the provision of utility services.

(2) In subsection (1), the reference to shares being issued, transferred, disposed of, or dealt with includes the issue, transfer or disposal of, or dealing with either the legal or a beneficial interest in the shares.

(3) A licensee or person who wishes to deal with shares as indicated in subsection (1) shall request the approval of the Office in writing, and the Office shall reply in writing to such request within thirty days of the receipt of the request.

(4) Where the Office refuses to give its consent it shall give reasons in writing for such refusal.

(5) The Office may, in respect of a licensee whose shares are publicly traded on a stock exchange recognised by the Cayman Islands Monetary Authority, waive the obligation to obtain consent under subsection (1), and any such waiver -

- (a) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Authority of -
 - (i) any change in control of the licensee;
 - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee's issued share capital or total voting rights; or
 - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the parent company of the licensee;
- (b) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Office, and within such period of time as the Office may require, for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the

- circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) shall be subject to such terms and other conditions as the Office may deem necessary.

(6) In the event of shares in a company which has not been granted a waiver under subsection (5) and which is a licensee under this Law vesting automatically through process of law in a person, the secretary or registrar of the company shall, upon becoming aware of such vesting, inform the Office of the number of shares and the identity of the person in whom they have vested, and the Office shall have power to impose conditions on the licence and to issue instructions as to the management and operations of the licensee.

(7) Where -

- (a) a licensee or a person referred to in subsection (1) fails or refuses to obtain the consent of the Office in accordance with this section or proceeds to deal with shares where the Office has refused to consent to such dealing; or
- (b) a licensee fails to comply with subsection (5),

the Office may suspend or revoke the licence.

47. (1) Without prejudice to -

- (a) any other Law; or
- (b) any further obligations in a licence to notify the Office of changes in control,

Office to regulate changes in control in relation to licensees

no change in control of a licensee can be implemented without obtaining the prior written approval of the Office in accordance with this Part.

(2) The acquirer or the licensee shall notify the Office within seven days of -

- (a) concluding an agreement; or
- (b) announcing a public bid,

that would result in a change of control of a licensee.

(3) The notification referred to in subsection (2) shall be in writing and in such form and manner as may be specified by the Office and shall include -

- (a) a description of the terms of the transaction;
- (b) information about the acquirer and the licensee, each of their shareholders and any person being the beneficial owner or voting controller of more than fifteen percent of the voting shares of either or both of the acquirer and the licensee; and
- (c) financial information of the persons involved in the transaction, including -
 - (i) annual revenues from the provision of networks or carriage services or content services identified by specific product and geographic markets;
 - (ii) copies of the most recent annual and quarterly reports and financial statements; and
 - (iii) a description of the communications markets in which the persons involved in the transaction operate.

(4) Where the Office is satisfied that there are reasonable grounds for believing that an acquirer or a licensee may have failed to comply with subsection (2), the Office may take appropriate enforcement action, including the imposition of an administrative fine not exceeding five hundred thousand dollars in respect of the failure to comply, and section 91 shall apply with necessary changes.

Change in control

48. For the purposes of this Part, a change in control shall be deemed to occur in relation to a licensee when a person, either alone or with any affiliated company -

- (a) acquires control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating the licensee or any other corporation or otherwise, to ensure that strategic decisions of the licensee are conducted in accordance with the wishes of that person;
- (b) becomes the beneficial owner or voting controller of more than thirty percent of the voting shares in the licensee; or
- (c) becomes the beneficial owner or voting controller of more than fifteen percent of the voting shares but not more than thirty percent of the voting shares in the licensee concerned unless that person, either alone or with any affiliated company -

- (i) is not, or does not concurrently become, the beneficial owner or voting controller of more than five percent of the voting shares in any other licensee; and
- (ii) does not have the power (including by the holding of voting shares), or does not concurrently acquire control (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating any other licensee or any other corporation or otherwise, to ensure that the affairs of such other licensee are conducted in accordance with the wishes of that person.

49. The Office, on receiving a notification made under section 47(2), shall form an opinion whether a proposed change of control of a licensee -

Questions to be determined

- (a) would have, or be likely to have, the effect of substantially lessening competition in a market in the Islands; and
- (b) in the case of a change of control involving a media public interest, whether the change of control would have an effect, or would be likely to have an effect contrary to the public interest.

50. (1) In determining whether to give its consent, the Office shall take into account in particular -

Principles to be applied in appraising a change of control

- (a) the promotion of sustainable competition in the sectors for which it has responsibility within the Islands or part of the Islands in view of, among other things, the structure of all the markets concerned and the actual or potential competition from undertakings located either within or outside the Islands; and
- (b) the market position of the licensees concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

(2) To the extent that the creation of a joint venture or arrangement involving one or more licensees has as its object or effect the coordination of the competitive behaviour of licensees that remain independent, the creation of such

joint venture shall be considered as though it were a change of control under this Part and, in making this appraisal, the Office shall take into account in particular -

- (a) whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market which is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market; and
- (b) whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question.

Media enterprises
(2016 Revision)

51. Section 25A of the Information and Communications Technology Authority Law (2016 Revision) shall apply for the purposes of determining whether a change of control shall be deemed to involve a media public interest.

Appraisal of change in
control

52. (1) Where the Office, on receiving a notification made under this Part -

- (a) forms an opinion that the proposed change of control would not have adverse effects, the Office shall issue an administrative determination giving consent to the merger; or
- (b) forms an opinion that the proposed change would have adverse effects, the Office shall by adjudication take one of the following actions -
 - (i) declare the merger incompatible with this Part and deny its consent;
 - (ii) give consent subject to an order that the acquirer or the licensee concerned takes the action that the Office considers necessary to eliminate or avoid any such effect; or
 - (iii) give consent without issuing an order under subparagraph (ii) if the Office is satisfied that any substantiated and likely efficiencies put forward by the acquirer or the licensee are necessary and outweigh any potential harm to consumers and citizens.

(2) The Office shall, before forming any opinion or issuing any adjudication under subsection (1) -

- (a) give the acquirer, the licensee and any interested persons a reasonable opportunity to make representations; and

- (b) consider the representations, if any, made under subsection (1)(a).
- (3) The Office shall, by notice in writing, inform the acquirer and the licensee of -
 - (a) the adjudication made under subsection (1); and
 - (b) where adjudication is made under subsection (1)(b)(ii), the action that the Office orders the acquirer or the licensee to take.

53. The Office may require the payment of a prescribed fee in connection with the exercise of the Office's functions -

Fees in respect of merger applications

- (a) in processing an application under this Part; and
- (b) in making an adjudication and, if applicable, an order under this Part.

54. (1) The Office shall promptly review a notification under this Part and shall within thirty days of receiving a complete notification -

Timetable for appraisal of changes in control

- (a) issue its adjudication under section 52(2); or
- (b) inform the acquirer and relevant licensees that it is opening an in-depth investigation under subsection (2) of this section.

(2) The Office may open an in-depth investigation where it considers that there is a significant prospect that the change of control is likely to have the adverse effects and the parties have not volunteered any proposals to eliminate the Office's concerns.

(3) Within ninety days of opening an in-depth investigation under subsection (2), the Office shall issue its adjudication under section 51(1).

(4) The timetable in this section shall be paused if the Office requests further information from the acquirer or relevant licensee and complete response is not provided to the Office within twenty-four days of the request; but, from the date when the Office acknowledges receipt of a complete response to its request, the timetable shall re-start from the place that it was paused.

PART 9 - CONSUMER PROTECTION

Industry Codes

55. (1) The Office may authorize industry self-regulatory or co-regulatory bodies to adopt codes of practice concerning the provision of covered services to end-users.

(2) Any code adopted pursuant to subsection (1) shall comply with any applicable requirements contained in sectoral legislation, and may contain any or all of the following -

- (a) procedures regarding disclosure of the rates, terms and conditions on which a sectoral provider will supply covered services to end-users;
- (b) quality of service requirements;
- (c) requirements regarding the accuracy, contents and timeliness of bills for covered services provided to end-users;
- (d) dispute resolution procedures designed to resolve end-user complaints; and
- (e) any additional consumer protection requirements.

(3) In any case in which the Office has delegated to a co-regulatory body the power to adopt a code, the Office may take any or all of the following actions -

- (a) review and, if appropriate, approve any code proposed by the co-regulatory body;
- (b) review and, if appropriate, approve any modifications to the code;
- (c) withdraw approval of the code; or
- (d) give notice that the Office will not approve, or will withdraw its approval, unless the co-regulatory body makes specific modifications to the code.

(4) The Office shall only approve a code of practice prepared by a co-regulatory body if the Office concludes that the dispute resolution procedures contained in the code -

- (a) are administered by a person who is independent of both the Office and the parties to the dispute;
- (b) are easy to use and effective;

- (c) allow end-users who are natural persons to use the procedures free of charge;
- (d) ensure that all information necessary to resolve the dispute is obtained;
- (e) ensure that disputes are effectively investigated;
- (f) include provisions conferring power to make awards of appropriate compensation; and
- (g) provide for review by the Office.

(5) The Office shall publish in the Official Gazette -

- (a) any code adopted or approved pursuant to subsection (1) or (3);
- (b) any modification approved pursuant to subsection (3); and
- (d) any withdrawal of approval of a code pursuant to subsection (3),

as soon as possible after the code or modification has been adopted or approved or the approval has been withdrawn.

56. (1) The Office may adopt, modify or revoke codes specifying the obligations of sectoral providers, or of any category of sectoral provider, in the conduct of their businesses.

Codes adopted by the Office

(2) In particular, any code adopted pursuant to this section may contain procedures governing end-user billing practices, including requirements regarding -

- (a) timeliness;
- (b) clarity;
- (c) accuracy; and
- (d) the identification of any dedicated charge.

57. The Office may produce Consumer Codes of practice which will serve as the minimum guidelines to govern the relationship between the service providers and their customers.

Consumer Codes of Practice

58. Notwithstanding section 45, when authorized to do so by sectoral legislation, the Office may impose *ex ante* obligations on a sectoral provider, including incentive-based customer quality of service standards schemes.

Remedies

59. (1) The Office shall receive and determine appeals from customers of the service providers in respect of disputes between the customer and the service

Handling appeals from customers

provider and, in this regard, the parties will be bound by the decision and remedies (if any) determined by the Office.

(2) The Office will establish and publish the procedures for the handling of such appeals.

Consumer Councils

60. The Office may appoint and fund the operation of Consumer Councils to advise it on issues of significance to consumers; and the terms of reference, composition and appointment of the Councils shall be at the discretion of the Office.

PART 10 - ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution schemes

61. (1) The Office may, as soon as reasonably practicable after this section comes into force, establish one or more alternative dispute resolution schemes for disputes between licensees and between licensees and consumers or approve a scheme proposed by licensees under subsection (4).

(2) In establishing alternative dispute resolution schemes, the Office shall request and take into account proposals from licensees.

(3) Alternative dispute resolution schemes may be comprised of -

- (a) mediation, whether conducted by the Office, persons appointed by the Office or persons appointed by the parties to a dispute or a third party;
- (b) arbitration of specific identified matters having limited scope by an expert appointed by the Office or the parties or a third party; or
- (c) such other methods of alternative dispute resolution as the Office may determine.

(4) The Office may approve an alternative dispute resolution procedure proposed by licensees if it is -

- (a) fair, transparent and non-discriminatory;
- (b) administered by persons who are independent of the licensees to whom the alternative dispute resolution scheme applies;
- (c) administered in compliance with the policy objectives; and
- (d) designed to ensure that individuals to be employed under the alternative dispute resolution scheme as mediators, adjudicators,

arbitrators or such other roles as may be contemplated have qualifications and experience to carry out such functions.

(5) The Office may require those responsible for the management and operation of an approved alternative dispute resolution scheme to report to the Office regarding its functioning, and it shall withdraw its approval if the alternative dispute resolution scheme ceases to meet any of the conditions in subsection (4).

(6) An alternative dispute resolution scheme established under subsection (3)(b) may provide for binding decisions, including interim and conservatory measures, and for the payment of costs by the parties to a dispute.

(7) An alternative dispute resolution scheme established under this section shall not prejudice any rights under any other provision of this Law or any other Law.

PART 11 - PROMOTION OF ECONOMIC DEVELOPMENT

62. The Office shall have a duty to promote innovation within the sectors for which it has responsibility with a view to contributing to national economic competitiveness and development, and in doing so it may -

Duty to promote innovation

- (a) through its policies actively facilitate the development and introduction of relevant innovative technologies into the national economy;
- (b) facilitate and adopt relevant programmes designed to prepare the current and future workforce to meet the needs of the society;
- (c) leverage the advances in technology in the regulated sectors to advance national policy initiatives to enhance work place productivity and quality of life;
- (d) design and implement programmes, including dedicated Universal Service funding mechanisms to achieve universal access to infrastructure and services in the sectors for which it has responsibility; and
- (e) take such other initiatives as it considers to be consistent with its mandate to contribute to national development and economic growth.

Duty to promote and facilitate Universal Service

63. The Office may under this or any other Law formulate and implement programmes to achieve universal access to infrastructure and services in the sectors for which it has responsibility; and, in doing so, the Office may -

- (a) subject to sector policy, specify universal services and universal service obligations;
- (b) provide for service providers to be designated as having universal service obligations; and
- (c) establish universal service funds which shall include the rules for contributions to and management of the funds, such funds to be managed by and accounted for by the Office.

Strategic vision

64. The Office shall maintain a strategic vision for the sectors for which it has responsibility and when necessary shall make proposals to the Government on changes to national policies.

PART 12 – ANTI-COMPETITIVE PRACTICES

Interpretation for the purposes of this Part

65. (1) This Part applies to -

- (a) abuse of a dominant position relating to utility services;
- (b) agreements, decisions and practices relating to utility services;
- (c) intent or attempts to enter into agreements or practices relating to utility services; and
- (d) other related agreements, decisions, practices, intent and attempts.

(2) In this Part -

“section 66 prohibition” means the prohibition specified in section 66; and

“section 70 prohibition” means the prohibition specified in section 70.

(3) The offences to which sections 72 and 73 relate are the offences set out in Part 16.

Agreements, etc. preventing, restricting or distorting competition

66. (1) Agreements by or between licensees or between one or more licensees and any other person, decisions by licensees or concerted practices which -

- (a) may affect trade in the Islands; and

- (b) have as their object or effect the prevention, restriction or distortion of competition in the markets and sectors for which the Office has responsibility subject to this Law,

are prohibited.

(2) Subsection (1) applies, in particular, to agreements, arrangements, decisions or practices which -

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage; or
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Subsection (1) applies only if the agreement, arrangement, decision or practice is, or is intended to be, implemented in the Islands or is, or is intended to be, implemented in such other manner as will affect the operation of any sectoral utility service in the Islands.

(4) Any agreement, arrangement, or decision which is prohibited by subsection (1) is void.

(5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by a licensee or a concerted practice, but with any necessary modifications unless the context otherwise requires.

(6) In this section -

“the Islands” mean, in relation to an agreement which operates or is intended to operate only in a part of the Islands, that part.

- Individual exemptions
67. (1) The Office may grant an exemption from section 66 with respect to a particular agreement, arrangement, decision or practice if -
- (a) a request for an exemption has been made to the Office by a party to the agreement, arrangement, decision or practice; and
 - (b) the agreement, arrangement, decision or practice is one to which section 68 applies.
- (2) The exemption referred to in subsection (1) may be granted -
- (a) subject to such conditions or obligations; and
 - (b) shall have effect for such period, as the Office considers appropriate.
- (3) The period referred to in subsection (2) shall be specified in the grant of the exemption.
- (4) The Office may grant an exemption which has effect from a date earlier than the date on which it is granted.
- (5) The Office, on an application made in accordance with rules made by the Office, may extend the period for which an exemption has effect; and the extension shall be made subject to such terms and conditions set out in such rules.
- Exemptions
68. The Office may declare provisions of section 66 inapplicable in the case of any agreement, arrangement, decision or practice which -
- (a) contributes to -
 - (i) improving trade, production or distribution; or
 - (ii) promoting technical or economic progress, while allowing subscribers a fair share of the resulting benefit, but
 - (b) does not -
 - (i) impose on the parties to the agreement, arrangement, decision or practice restrictions which are not indispensable to the attainment of those objectives; or
 - (ii) afford the parties concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- Cancellation, etc. of individual exemptions
69. (1) Where the Office has reasonable grounds for believing that there has been a material change of circumstance since it granted an individual exemption, it may by notice in writing-

- (a) cancel the exemption;
- (b) vary or remove any condition or obligation; or
- (c) impose additional terms, conditions or obligations.

(2) Where the Office has reasonable grounds for believing that the information on which it based its decision to grant an individual exemption was incomplete, false or misleading in a material particular, it may, by notice in writing, take any of the steps mentioned in subsection (1).

(3) Where a term, condition or requirement of an exemption has been breached, the Office may, in its sole discretion, cancel the exemption.

(4) The Office may, by notice in writing, take a step under subsection (1) where it has reasonable grounds for believing there has been failure to comply with a term, condition or requirement of an exemption.

(5) Any step taken by the Office under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.

(6) Where an exemption is cancelled under subsection (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.

(7) The Office may act under subsection (1), (2) or (4) on its own initiative or on a complaint made by any person.

70. (1) Any conduct on the part of one or more licensees which amounts to the abuse of a dominant position in a market or sector for which the Office has responsibility is prohibited but an authorization holder that has been issued with a licence pursuant to the Electricity Regulatory Authority Law (2010 Revision) shall be entitled to protect its legitimate business interests subject to this Law and any other relevant Law.

Abuse of dominant position

(2010 Revision)

(2) The conduct referred to in subsection (1) may, in particular, constitute such an abuse if it consists in -

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of subscribers;

- (c) applying dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts; and
- (e) using revenues attributed to a particular service or activity to cross subsidize unfairly or affect competition for another service or activity.

(3) A licensee which is in a dominant position shall be deemed to have significant market power.

(4) In this section -

“dominant position” means a dominant position within the Islands.

Office’s power to investigate

71. Without limiting the generality of section 6(2)(q), the Office may conduct an investigation under this Part, on application by any party or on its own initiative, if there are reasonable grounds for believing -

- (a) that the section 66 prohibition has been infringed; or
- (b) that the section 70 prohibition has been infringed.

Powers when conducting investigations

72. (1) For the purposes of an investigation under section 71, the Office may, by notice in writing, require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.

(2) A notice under subsection (1) shall indicate -

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the alleged offence to which the investigation relates.

(3) In subsection (1) -

“specified” means -

- (a) specified, or described, in the notice; or
- (b) falling within a category which is specified, or described, in the notice.

- (4) The Office may also specify in the notice -
 - (a) the time and place at which any document is to be produced or any information is to be provided; and
 - (b) the manner and form in which the document is to be produced or the information is to be provided.
- (5) The power under this section to require a person to produce a document includes a power -
 - (a) where the document is produced -
 - (i) to take copies of it or extracts from it; and
 - (ii) to require that person or anyone who is a present or past officer or employee of that person, to provide an explanation of the document; or
 - (b) where the document is not produced, to require the person to verify by affidavit, or state on oath, where, to the best of that person's knowledge, information and belief, the document is or may be found.

73. (1) On an application made by the Office to the Court in accordance with rules of court, a judge may issue a warrant if he is satisfied that -

Power to enter premises under a warrant

- (a) there are reasonable grounds for believing that there are, on any premises, documents or information -
 - (i) the production of which has been required under section 72; and
 - (ii) which have not been produced as required;
- (b) there are reasonable grounds for believing that -
 - (i) there are on any premises documents or information which the Office has power under section 72 to require to be produced; and
 - (ii) if the documents or information were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise a named officer of the Office, and any other officers of the Office or other person or persons whose assistance the named officer considers reasonably necessary in the circumstances -

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (in this Part referred to as “the relevant kind”);
- (c) to take possession of any documents appearing to be of the relevant kind if -
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to verify by affidavit, or state on oath, where to the best of that person’s knowledge, information and belief the document is or may be found; and
- (f) to require any information which is held in a computer and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form in which it can be taken away, and in which it is visible and legible.

(3) Where, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to believe that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action under subsection (2) that the Judge considers necessary to be taken in relation to any such document.

(4) Any person entering premises by virtue of a warrant under this section may take such equipment and materials as appears to that person to be necessary.

(5) The named officer, on leaving any premises which the named officer has entered by virtue of a warrant under this section, shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured as he found them.

(6) A warrant under this section continues in force until the end of the period of twenty-eight days beginning with the day on which it is issued.

(7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months; and where no action is taken by the Office in respect of an offence relating to the document within three months after seizure under this Law, or, if action is taken but no decision relating to forfeiture is made, the document shall be returned by the Office to the person from whom it is seized.

74. (1) A warrant issued under section 73 shall indicate -

Entry of premises under
warrant: supplementary

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offence to which the warrant relates.

(2) The powers conferred by section 73 shall only be exercised on production of a warrant issued under that section.

(3) Where there is no one at the premises when the named officer proposes to execute such a warrant, the named officer shall, before executing the warrant -

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
- (b) if the occupier is informed, afford the occupier or the occupier's legal or other representative a reasonable opportunity to be present when the warrant is executed.

(4) Where the named officer is unable to inform the occupier of the intended entry the named officer shall, when executing the warrant, leave a copy of it in a prominent place on the premises as well as a written notice showing the date and time of the execution of the warrant and the address of the Office to which enquiries may be made.

(5) In this section -

“named officer” means the principal officer of the Office named in the warrant; and

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

- Decisions following an investigation
75. (1) Subsection (2) applies where, as the result of an investigation conducted under section 71, the Office proposes to make -
- (a) a decision that the section 66 prohibition has been infringed, or
 - (b) a decision that the section 70 prohibition has been infringed.
- (2) Before making the decision, the Office shall -
- (a) give written notice to any person likely to be affected by the proposed decision; and
 - (b) afford that person an opportunity to make written representations to show cause why the Authority ought not to make such a decision.
- Directions in relation to agreements
76. (1) Where the Office has made a decision that an agreement, arrangement or practice infringes the section 66 prohibition, it may give to such person as it considers appropriate such written directions as it considers necessary to bring the infringement to an end.
- (2) A direction under this section may, in particular, include provision requiring the parties to the agreement, arrangement or practice to modify the agreement or requiring them to terminate the agreement.
- Directions in relation to conduct
77. (1) Where the Office has made a decision that conduct infringes the section 70 prohibition, it may give to such person or persons as it considers necessary such written directions as it considers necessary to bring the infringement to an end.
- (2) A direction under this section may, in particular, include provisions requiring the person concerned to modify the conduct in question or requiring him to cease that conduct.
- Enforcement of directions
78. (1) Where a person fails, without reasonable excuse, to comply with a direction under section 76 or 77, the Office may apply to the court for an order -
- (a) requiring the person in default to comply with the direction within a time specified in the order; or
 - (b) if the direction related to anything to be done in the management or administration of a sectoral utility, requiring the sectoral utility or any of its officers to do it.

(2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by the person in default or any officer of an undertaking who is responsible for the default.

79. (1) This section applies where the Office -

Interim measures

- (a) has grounds for believing that the section 66 prohibition has been infringed; or
- (b) has grounds for believing that the section 70 prohibition has been infringed,

but has not completed its investigation into the matter.

(2) Where the Office considers that it is necessary for it to act under this section as a matter of urgency for the purpose -

- (a) of preventing serious, irreparable damage to a particular person or category of person; or
- (b) of protecting the public interest or security interests of the Islands,

it may give such directives as it considers necessary for that purpose without first giving notice to the person to whom the directive is issued.

(3) In all other cases, the Office shall, before giving a direction under this section -

- (a) give written notice to any person to whom it proposes to give the direction; and
- (b) afford that person an opportunity to make oral or written representations to show cause why the Office ought not to give such a direction.

(4) A subsequent notice under subsection (2) and any advance notice under subsection (3) shall indicate the nature of the direction which the Office is proposing to give and its reasons therefor.

(5) A direction given under this section has effect while subsection (1) applies, but may be replaced, if the circumstances permit, by a direction under section 76or, as appropriate, section 77.

(6) In any case where the section 66 prohibition is believed to have been infringed, sections 76(1) and 78 also apply to directives given under this section

(7) In any case where the section 70 prohibition is believed to have been infringed, sections 77(1) and 78 also apply to directives given under this section.

Penalties for infringing
section 66 or 70
prohibitions

80. (1) Where the Office has decided that an agreement has infringed either or both of the section 66 or section 70 prohibition, the Office shall give to the licensee or the undertaking involved notice in writing of the decision and the Office's reasons for the decision and shall invite the licensee or the undertaking to show cause why the Office should not proceed to act on its decision.

(2) A notice to show cause shall state that, within fourteen days of service, the licensee or the undertaking on whom it is served may make representations in writing or otherwise show cause to the Office concerning the matter, and the Office shall not determine the matter without considering any submissions or representations received within that period of fourteen days.

(3) Where, after hearing representations under subsection (2), the Office is of the opinion that its decision is correct, it shall so notify the licensee or the undertaking as soon as possible and, in the case of an infringement of a section 66 prohibition or section 70 prohibition, the Office -

- (a) may require the licensee or undertaking to pay a penalty in respect of the infringement; and
- (b) may suspend or revoke any licence issued to the licensee.

(4) The Office may impose a penalty on a licensee or an undertaking under subsection (3)) only if it is satisfied that the infringement has been committed intentionally or negligently by the undertaking.

(5) Notice of a penalty under this section shall be in writing and shall specify the date before which the penalty is required to be paid.

(6) The date specified under subsection (5) shall not be earlier than the end of the period within which an appeal against the notice may be brought.

(7) A penalty fixed by the Office under this section in respect of any single infraction of section 66 or 70 by a licensee or undertaking shall not exceed ten per cent of the turnover of the licensee or undertaking, and such turnover shall

be determined in accordance with such provisions as may be specified in an order made by the Cabinet.

(8) Any sums received by the Office under this section shall be paid into the reserve fund.

81. (1) Where the specified date in a penalty notice has passed and - Recovery of penalties

- (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made; or
- (b) such an appeal has been made and determined,

the Office may recover from the undertaking, as a civil debt due to it, any amount payable under the penalty notice which remains outstanding.

(2) In this section -

“penalty notice” means a notice given under section 80; and

“specified date” means the date specified in the penalty notice.

82. (1) The Office, with the approval of the Cabinet, may prepare and publish rules providing for the appropriate amount of any penalty under this Part and the Office, with the approval of the Cabinet, may amend the rules. Appropriate level of a penalty

(2) The Office shall also consult with such persons as it considers appropriate when making or amending rules under this section.

(3) The Office, when setting the amount of a penalty under this Part, shall have regard to the rules for the time being in force under this section.

83. (1) This section applies to any period of time prior to a person entering into an agreement where that person is of the opinion that the agreement may infringe the section 66 prohibition and the person has notified the Office of the intended agreement and has requested a decision as to whether an exemption can be granted with respect to the intended agreement. Agreements notified to Office

(2) The Office may not impose a penalty under this Part in respect of any infringement of the section 66 prohibition after notification but before the Office determines whether an exemption shall be granted.

(3) Where the Office determines not to grant an exemption with respect to the intended or completed agreement, subsection (2) ceases to apply from the date on which that determination has been made and notified to the applicant.

(4) The fact that an intended agreement has been notified to the Office does not prevent the investigation of it under this Part.

PART 13 - DISCONTINUATION OF ACTIVITIES

Cease and desist orders

84. (1) Where the Office is satisfied that there are reasonable grounds for believing that any conduct specified in subsection (2) is being carried out by any person, the Office may issue a cease and desist order to the person concerned.

(2) The conduct referred to in subsection (1) includes any operations in contravention of this Law, the regulations or sectoral legislation.

(3) An order under subsection (1) shall -

- (a) state the nature of the alleged conduct and the name of the person against whom the allegation is made; and
- (b) be accompanied by documents, if any, in support of the allegation.

(4) Any person aggrieved by, or dissatisfied with, the order of the Office may, within twenty-one days of the communication of the order to the person, or such longer period as the Office may, for good cause shown, allow, apply to the Office in writing for its decision to be reviewed.

(5) On receipt of the application for review, the Office shall, if the applicant has applied to be heard personally or by a representative, decide whether the applicant shall be so heard and, if it is so decided, fix a time and a date for such hearing and notify the applicant.

(6) At every hearing of a review where the applicant or the applicant's representative is present, the applicant or the applicant's representative shall be given an opportunity to address the Office.

(7) The decision of the Office shall be notified to the applicant with the least possible delay.

85. Where the Court is satisfied on an application by the Office that a licensee - Application for enforcement

- (a) has failed to comply with any term or conditions of the licence;
- (b) has failed to comply with an order made under section 84; or
- (c) has contravened this Law, the regulations or sectoral legislation,

the Court may exercise any of the powers specified in section 86.

86. (1) The Court may, under an application under section 85 - Powers of Court

- (a) order the offending licensee to pay to the Government such pecuniary penalty not exceeding five hundred thousand dollars in the case of an individual and not exceeding three million dollars in the case of any other person;
- (b) grant an injunction restraining the offending licensee from engaging in conduct described in section 85; or
- (c) make such other order as the Court thinks fit,

in respect of each contravention or failure specified in that section.

(2) In exercising its powers under this section, the Court shall have regard to -

- (a) the nature and extent of the conduct giving rise to the application;
- (b) the nature and extent of any loss suffered by a person as a result of the alleged contravention;
- (c) the circumstances of the alleged contravention; and
- (d) any previous determination against the licensee concerned.

87. (1) Subject to subsection (2), where the Office is satisfied that action is necessary to - Directions for immediate discontinuation of activity

- (a) protect public health, safety or the environment;
- (b) protect the continuity of supply of essential services;
- (c) protect the interests of other licensees;

- (d) prevent a licensee from contravening or attempting to contravene a term, condition or requirement of its licence or a provision of this Law or any other Law; or
- (e) prevent dissipation of the assets of a licensee other than in the ordinary course of business,

the Office may, by notice in writing, direct the licensee concerned to immediately discontinue or refrain from a practice or to do or perform such act or thing as may be specified in the notice or procure that such act or thing be done.

(2) Nothing in this section shall permit the Office to give directives to a licensee demanding compliance with -

- (2012 Revision) (a) the National Pensions Law (2012 Revision);
- (2016 Revision) (b) the Health Insurance Law (2016 Revision);
- (1996 Revision) (c) the Workmen's Compensation Law (1996 Revision);
- (2011 Revision) (d) the health and safety provisions of the Labour Law (2011 Revision); or
- (e) matters relating to an industrial dispute.

(3) Subject to section 88, a licensee who fails or refuses to immediately discontinue or refrain from a practice specified in a notice issued under subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of fifty thousand dollars; or
- (b) on conviction on indictment to a fine of one hundred thousand dollars,

and one thousand dollars for each day that the offence continues after the date it first occurred.

Matters to be included in directions

88. (1) The notice referred to in section 87 shall -
- (a) specify the term, condition or requirement which the Office considers that the licensee may be contravening or may be likely to contravene;
 - (b) specify the licensee's acts or omissions which, in the opinion of the Office, may constitute or would be likely to constitute contravention of the term, condition or requirement concerned;
 - (c) contain a directive to the licensee to -
 - (i) immediately discontinue or refrain from any practice specified in the said notice; or

- (ii) do or perform such act or thing as may be specified in the notice or procure that any such act or thing be done, and where appropriate, take such remedial action as the Office may reasonably require to cure the contravention or prevent its repetition; and
 - (d) specify the penalty for failure to comply with the notice and the period, being not less than fourteen days from the date of the notice, within which representations or objections regarding the matters contained in the notice may be made by the licensee.
- (2) The Office may -
- (a) after consideration of representations or objections made under subsection (1)(d); or
 - (b) at any time by its own motion,

suspend, amend, modify or revoke a direction given under section 87.

89. In order to ensure compliance with a direction given under section 87, the Office may apply in a summary manner *ex parte* or on notice to the Court for an order requiring a licensee who, in the opinion of the Office, has not complied with the relevant notice to do all necessary things to comply with the notice or to refrain from practices as specified in the notice.

Compliance with directions

90. The Court may confirm, revoke or vary a direction made by the Office and shall have such powers as are necessary to enforce such orders as the Court may make under section 89.

Powers of Court in respect of directions

PART 14 - ADMINISTRATIVE FINES

91. (1) Where the Office is satisfied that there are reasonable grounds for believing that a licensee may have failed to comply with or contravened one or more terms, conditions, specifications or requirements of any licence, order, directive, rule or regulation, the Office shall -

Administrative fines

- (a) notify the licensee in writing, stating the nature of such suspected failure to comply or contravention and of the Office's intention to make a determination in respect of any such suspected failure to comply or contravention; and
- (b) provide to the licensee documents, if any, in support of the suspected failure or contravention.

(2) A notice under subsection (1) shall be sent by post and shall be deemed to have been communicated to the licensee at the time it would have been received in the ordinary course of post.

(3) A licensee notified in accordance with subsection (1) may, within twenty-one days of the date of the notice, provide to the Office a written response in respect of any such suspected failure to comply or such contravention, and shall also provide any other documentation which the licensee wishes the Office to consider in making any determination in relation to any suspected failure to comply or contravention.

(4) A licensee, in any response submitted to the Office as specified in subsection (3), may request that the Office hear the licensee in person or through a representative and, if so requested, the Office may in its discretion allow such request.

(5) Any document which the licensee wishes the Office to consider at a hearing shall be submitted within the time permitted in subsection (3).

(6) Where a licensee, notified as specified in subsection (1), makes no submission as specified in subsection (3) in respect of a suspected failure to comply or contravention, then the licensee shall be considered by the Office to have no evidence to refute the allegation of failure to comply or the contravention.

(7) Where the Office has decided to hold a hearing, it shall hold such hearing within twenty-one days next following the twenty-one-day period set out in subsection (3) and in accordance with such procedure as it may determine.

(8) At every hearing under this section where the licensee or the licensee's representative is present, the licensee or the licensee's representative shall be given an opportunity to address the Office.

(9) After any hearing under this section, the Office shall set out its findings in writing and shall make a determination in regard to any suspected failure to comply or contravention as specified in subsection (1), and where the Office determines that a licensee has failed to comply with or contravened any term, condition, specification or requirement of any licence, order, directive, rule or regulation, the Office may consider the nature, circumstances and any actual or

potential consequences of any such failure to comply or contravention by the licensee as well as any prior determinations in respect of that licensee by the Office, and may issue a warning or impose a fine not exceeding five hundred thousand dollars in respect of each such failure to comply or contravention and twenty-five thousand dollars for each day that the failure or contravention occurs.

(10) The Office shall notify the licensee of its findings and determinations and any fine or warning within twenty-one days of its determination and, following the period provided for an appeal as specified in subsection (11), may cause its findings and any warning and the quantum of any fine imposed to be published in any manner and in its discretion.

(11) An appeal against a determination of the Office made under subsection (9) shall be made to the Court within twenty-one days next following the date of the notification made under subsection (10).

(12) Any notification of a fine under subsection (10) shall be deemed to also be notice of an intention to suspend any and all licences of the licensee at the expiration of the twenty-one days next following notification as specified in subsection (10), and any fine imposed by the Office shall be paid in full by the licensee within that same twenty-one days of notification.

(13) Any failure to pay any fine imposed by the Office within the period specified in subsection (12) shall be deemed to be a contravention of this Law and shall be deemed to be sufficient grounds for the suspension of any and all licences of the licensee by the Office under relevant sectoral legislation.

(14) Representatives appearing on behalf of a licensee do not need to be persons having legal qualifications.

(15) The power to impose fines under this Part is in addition to or an alternative to any other penalty or remedy provided under this Law.

PART 15 - REVIEW OF DETERMINATIONS OF THE OFFICE

92. A person affected by an administrative determination of the Office may, within forty-five days of the administrative determination, appeal to the Grand Court by way of judicial review of the administrative determination.

Review of Office's
determinations

PART 16 - OFFENCES

- | | |
|---|---|
| Powers of summary court (2014 Revision) | 93. Notwithstanding sections 6(2) and 8 of the Criminal Procedure Code (2014 Revision), a court of summary jurisdiction may pass any sentence which it is authorized by this Law to pass. |
| Failure to obtain required authorization | 94. Unless sectoral legislation provides otherwise, any sectoral participant that knowingly provides a service for which a licence, permit or other authorization is required pursuant to sectoral legislation and fails to obtain the required licence, permit or authorization commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years, or to both. |
| Failure to comply with a direction of the Office | 95. Any sectoral participant that knowingly refuses or fails to comply with a direction issued to it by the Office directing the sectoral participant to comply with its duties and obligations under this Law, the regulations or any sectoral legislation, commits an offence and is liable on summary conviction to a fine of five thousand dollars for each day during which the refusal or failure continues. |
| Failure to pay penalty for contravention of information requirement | 96. A penalty imposed on a person under section 11 shall be paid to the Office and, if the person fails to pay the penalty within the period fixed by the Office, the person commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years, or to both. |
| Failure to comply with statutory duties or regulations | 97. Any sectoral participant that knowingly contravenes a statutory duty contained in this Law, the regulations or any sectoral legislation, commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years, or to both. |
| Failure to comply with administrative determinations | 98. Any sectoral participant that knowingly fails to comply with any administrative determination commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years, or to both. |
| Obstruction of the Office | 99. Any person who wilfully obstructs, or knowingly fails to comply with a reasonable request for information by any Member or any member of the staff in the exercise of any function conferred by this Law or by sectoral legislation commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of six months, or to both. |

100. Any person who knowingly reveals or in any manner communicates to any other person, except as authorized or required by this Law or any sectoral legislation, any information for which the Office has granted confidential treatment commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of six months, or to both.

Unauthorized disclosure
of confidential
information

101. (1) Where a body corporate commits an offence under this Law, the regulations or sectoral legislation, every director or other officer concerned in the management of the body corporate commits that offence unless the director or other officer proves that the offence was committed without the consent or connivance of the director or other officer or that the director or other officer exercised reasonable diligence to prevent the commission of the offence.

Liability where offence
committed by
corporation

(2) In subsection (1), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

102. (1) Where a person that is a partnership commits an offence under this Law, the regulations or sectoral legislation, every partner, other than a partner who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, commits the offence and is liable to be proceeded against and punished accordingly.

Liability where offence
committed by
unincorporated entity

(2) Where any other association, incorporated or not, commits an offence under this Law, the regulations or sectoral legislation -

- (a) every officer of the association who is bound to fulfil any duty of which the breach is the offence; or
- (b) if there is no such officer, every member of the governing body other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

commits the offence and is liable to be proceeded against and punished accordingly.

103 Any penalty provided for in this Part -

Repeat offences

- (a) may be doubled where the party has been convicted of the same offence on one previous occasion; and
- (b) may be trebled where the party has been convicted of the same offence on more than one previous occasion.

PART 17 - MISCELLANEOUS PROVISIONS

Initial funding

104. (1) The Office may apply to the Cabinet for a loan from the Government not exceeding one million dollars in order to carry out its functions and exercise its powers prior to the Office collecting any funding under this Law.

(2) Any loan made under subsection (1) shall be on such terms as the Cabinet may specify and shall be repaid by the Office within three years.

Appointment of first Board and first Chief Executive Officer

105. (1) On the date of commencement of this section, the Cabinet shall appoint the non-executive member who shall be the first Chair of the Board, and the first Chair shall serve an initial term of three years.

(2) The Cabinet shall appoint the remaining four non-executive members of the first Board in accordance with the procedure set out in this Law and two such non-executive members shall serve an initial term of two years and the other two non-executive members shall serve an initial term of four years.

(3) The first Chair shall be eligible to be reappointed for a second term, upon expiry of the initial term, in accordance with the provisions of Part 3.

(4) The remaining non-executive members of the first Board shall each be eligible for reappointment for a second term, upon expiry of their initial term, in accordance with Part 3.

(5) On the date of commencement of this section, the Cabinet shall appoint the individual who shall be the first Chief Executive Officer, and the first Chief Executive Officer shall serve an initial term of three years or such lesser period as may be agreed by the Cabinet and the individual.

(6) The first Chief Executive Officer shall be eligible to be reappointed for a second term, upon expiry of the initial term, in accordance with the provisions of Part 3.

Conflict of interest

106. (1) A conflict of interest shall be deemed to exist in any case in which a member of the Board or a member of the staff of the Office, participates in a decision-making or advisory capacity in any regulatory proceeding that concerns -

- (a) a business in which that person, or that person's spouse, parent or child, is a member, shareholder or employee or has any personal or pecuniary interest, direct or indirect; or
- (b) any other matter in which the person's private interest may reasonably be perceived as conflicting with the person's official duties.

(2) In any case in which a conflict of interest exists, the member of the Board or the member of the staff of the Office who has the conflict shall not participate in a decision-making or advisory capacity in the regulatory proceeding.

(3) The Chair shall take all reasonable actions to ensure that no member of the Board contravenes the prohibition contained in subsection (2).

(4) The Chief Executive Officer shall take all reasonable actions to ensure that no member of the staff contravenes the prohibition contained in subsection (2).

(5) In any case in which a member of the Board is disqualified from participating in any regulatory proceeding pursuant to subsection (2), the Board shall be deemed to be properly constituted notwithstanding the vacancy.

(6) Each member of the Board and each member of the staff shall submit an annual written declaration to the Secretary stating whether the member, or the member's spouse, parent or child, has any direct or indirect financial interest in any sectoral provider or in any other person who has or may directly benefit from any regulations, or from any administrative determination made by the Office, and the Secretary shall submit such a declaration to the Board.

(7) The Board shall retain the declaration forms submitted pursuant to subsection (6) for not less than three years, and shall provide a copy of any declaration, to any person, on request.

(8) The members of the Board and the staff shall not accept any gift or gratuity, either directly or indirectly, from any sectoral provider or from any other person who has or may directly benefit from any regulations, or from any

administrative determination made by the Office, unless the Office has granted a waiver pursuant to subsection (10).

(9) Contravention of either of the prohibitions contained in subsection (2) or (8) shall provide a basis for removal of a member of the Board or dismissal of a member of the staff.

(10) The Office shall make rules specifying the circumstances and the procedures by which a member of the Board or member of the staff may be granted a waiver of the prohibition contained in subsection (8).

Confidentiality

107. (1) Subject to subsection (9), the Office shall not be required to publish or otherwise divulge information which is given in confidence to the Office and which, in the case of a document, is marked “Confidential” by the person giving the document.

(2) Any person submitting information to the Office may request that the Office treat such information as confidential.

(3) The Office shall grant a request to treat information as confidential if the Office concludes that the information is -

- (a) a trade secret of any person;
- (b) information, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure;
- (c) other information, the disclosure of which would have, or could reasonably be expected to have, an adverse effect on the commercial interests of any person to whom the information relates;
- (d) information -
 - (i) that is given to the Office by a third party (other than another sectoral utility) in confidence on the understanding that it would be treated as confidential; and
 - (ii) the disclosure of which would be likely to prevent the Office from receiving further similar information required by the Office to properly fulfil its functions; or
- (e) information, the disclosure of which would constitute a breach of a duty of confidence provided for by a provision of a Law.

(4) A person claiming confidentiality in respect of any information submitted to the Office shall provide -

- (a) a full justification for its claim; and
- (b) a version of such information without the confidential provisions and in a form that may be made available to the public.

(5) Following receipt of any information submitted subject to a request for confidential treatment, the Office shall issue a decision as to whether the justification offered by the submitting party meets the standard for confidential treatment specified in subsection (3).

(6) If the Office concludes that the justification offered by the submitting party meets the standard for confidential treatment, the Office shall issue an order granting the request.

(7) In any case in which the Office grants a request for confidential treatment, the information may only be disclosed -

- (a) to the Minister;
- (b) to the Minister responsible for the sector to which the confidential information is relevant;
- (c) to the Members;
- (d) to the staff;
- (e) to a court; or
- (f) where necessary to conduct a public consultation, to specific parties pursuant to a non-disclosure agreement.

(8) If the Office concludes that the justification offered by the submitting party does not meet the standard for confidential treatment, the Office shall -

- (a) issue an order denying the request; and
- (b) either -
 - (i) return the information to the submitting party, in which case the Office shall not consider or rely on the information; or
 - (ii) after providing the submitting party with notice and an opportunity to comment, disclose the information, if doing so would be in the public interest.

(9) Nothing in this Law, any sectoral legislation or the regulations shall limit the Office's duty to provide information to a court.

Unauthorized disclosure
of confidential
information

108. A Minister, the Members and the members of the staff shall not reveal or in any manner communicate to any other person, except as authorized or required by Law, any information for which the Office has granted confidential treatment.

Immunity

109. Neither the Office, a member of the Office, the Board, a member of the Board, an executive member, a member of the staff, nor the Secretary, shall be liable in damages for anything done or omitted in the discharge of their respective functions or duties unless it is shown that the act or omission was negligent or in bad faith.

Indemnity

110. The Government shall indemnify a member of the Office, a member of the Board, an executive member, a member of the staff, and the Secretary against all claims, damages, costs, charges or expenses incurred by those respective persons in the discharge or purported discharge of their functions and powers under this Law, except claims, damages, costs, charges or expenses caused by the negligence or bad faith of those persons.

Regulations

111. (1) The Cabinet may make regulations for the better carrying out of this Law and for giving effect thereto and in particular -

- (a) for prescribing the form of any document authorized or required by this Law to be served, made, issued or done;
- (b) for any purpose for which regulations are authorized or required to be made under this Law and for prescribing anything that by this Law is required or authorized to be prescribed by regulations;
- (c) for empowering such persons as may be specified in the regulations to administer or execute the regulations and to make orders, impose requirements or give directions for the purposes of the regulations;
- (d) for empowering such persons as may be specified in the regulations to take measures, including the entry and inspection of any land or building, to secure compliance with the regulations or any order, requirement or direction made, imposed or given thereunder; and for enabling such persons to recover expenses incurred by them in the exercise of any such power; and

- (e) for the review of decisions given under the Regulations.
- (2) The Office may make regulations relating to-
 - (a) licence fees;
 - (b) infrastructure sharing;
 - (c) radio and television content obligations;
 - (d) the numbering system; and
 - (e) quality standards,

and the Office shall consult with the Minister before making such regulations.

(3) Without prejudice to the power of the Office to impose a fine under section 91(9), any regulation made under this Law may provide for the imposition of a fine of five thousand dollars and imprisonment for six months or both, for any contravention of, or failure to comply with, such regulation.

112. The Cabinet may, by Order, amend Schedule 1 or Schedule 2.

Amendment of
Schedules

SCHEDULE 1

(Sections 6 and 112)

MARKETS AND SECTORS FOR WHICH THE OFFICE HAS RESPONSIBILITY

Electricity markets, including the generation, transmission, distribution and supply of electricity

Fuels markets

Information and Communications Technology markets, including broadcasting and content services

Production, distribution and supply of potable water and non-potable water as a utility service

Provision of wastewater services as a utility service

SCHEDULE 2

(Sections 2 and 112)

SECTORAL LEGISLATION

For the purposes of this Law, “sectoral legislation” means the following Laws and any regulations made under them -

The Dangerous Substances Handling and Storage Law, 2003, Law 21 of 2003

The Electricity Law (2008 Revision)

The Electricity Regulatory Authority Law (2010 Revision)

The Electronic Transactions Law (2003 Revision)

The Information and Communications Technology Authority Law (2016 Revision)

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.