



BERMUDA
REGULATORY
AUTHORITY

Governance Policy

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1. Introduction

The aim of the Board is to maintain an independent and accountable Regulatory Authority (RA) in the public interest to protect the rights of consumers, encourage the deployment of innovative and affordable services, promote sustainable competition, foster investment, promote Bermudian ownership and employment and enhance Bermuda's position in the global market.

The Board recognizes the importance of good corporate governance and will ensure that the management of the Regulatory Authority is consistent with the generally accepted practices of fairness, transparency, responsibility and accountability. *References from the Regulatory Act, 2011 (the Act) are noted in Italics.*

2. Terms of Reference of the Board

2.1 Constitution

The RA shall be led by the Board made up of three Commissioners and the Chief Executive (Chief Executive).

Initially the Commissioners will be appointed as follows: one for a period of two years, one for a period of three years and one for a period of four years. Subsequent appointments will be for a term of three years.

The Board and the RA will comply with all relevant legislation contained within the Act with regards consultation with the relevant Ministers and the application of Ministerial directions issued.

The Commissioners will select a Chairman by simple majority vote. If no majority vote is received by one of the Commissioners the Chairman of the Selection Committee will select a Commissioner to serve as Chairman.

The Chairman may resign his position by giving written notice to the other Commissioners, in which event he may serve out the remainder of his term as Commissioner.

2.2 Principles and actions of the Board

The Board is responsible for the actions of the Authority and the general administration of its affairs and business.

To accomplish its work the Board has adopted the following principles and actions:

To ensure that all transactions and decisions are made in a transparent manner requiring that appropriate records are kept and that all conflicts of interests have been appropriately declared and mitigated. The Board recognises that the avoidance of conflicts of interest requires continual monitoring and compliance as conflicts will emerge, evolve or diminish over time.

- The Board will ensure that the integrity of the RA is upheld by establishing policies and procedures, and taking appropriate disciplinary action where breaches occur.
- The Board will manage and mitigate risks faced by the RA ensuring that all decisions are made within their risk framework.

- The Board will acknowledge stakeholder interests in their decisions and consult where appropriate.
- The Board will ensure ethical and responsible decision making by following the Regulatory Authority Act, 2011 and any other applicable legislation.
- The Board will define and delegate authority as per section 3 below.

The Board is responsible for monitoring and approving policies and procedures and publishing these on the RA website where applicable.

2.3 Meetings

The Chairman is responsible for setting the agenda and calling of the Board meetings.

The Board may only meet without the Chief Executive present with the consent of all three Commissioners.

If the Chairman is not present and has not delegated his duties to another Commissioner, the Commissioner who has served the longest will perform the Chairman function. Where all Commissioners have served the same length on the Board the members will elect a Chairman for the meeting.

The Board shall meet as often as necessary or expedient for the performance of its functions.

Minutes shall be kept by the Secretary from every Board meeting noting the matters discussed and decisions made. Minutes will be approved by the Board at their next meeting.

2.4 Voting

Each Commissioner will be a voting member of the Board; the Chief Executive shall be a non-voting member.

Two Commissioners constitute a quorum. For any decision to be finalized a quorum must be present. A simple majority vote is needed for a decision to be accepted.

The Chairman will have a deliberative and casting vote in all matters to be decided by the Board.

Voting may be carried out via video or audio conference but may not be cast by proxy vote.

The overall outcome from any voting will be recorded in the minutes.

2.5 Roles

Chairman:

The Chairman is appointed for a term of two years. No more than two consecutive terms can be served by any Commissioner as Chairman.

The Chairman shall ensure that the RA performs the function specified in the Act and sectoral legislation and is answerable to the Board for any actions and decisions made.

The Chairman will establish the agenda for meetings of the Board and will preside over these meetings.

Chief Executive:

The Chief Executive is appointed for a term of three year and will have day-to- day responsibility of the RA under the direction of the Commissioners.

The Chief Executive will also serve as the Secretary and Records Officer but may with the consent of the Chairman delegate this to another member of staff.

The Chief Executive is the principal administrative officer of the RA and is responsible, subject to the direction of the Board, for carrying out the functions of the RA.

The Chief Executive will:

- *Retain, suspend and dismiss staff as otherwise allowed by law;*
- *Supervise, direct and give assignments to staff;*
- *Prepare the proposed budget, and monitor the finances, of the RA;*
- *Engage persons having technical or special knowledge that the RA requires to carry out its functions under the Act;*
- *Enter into contract for the provision of goods and services required by the RA for the conduct of its business; and*
- *Perform such other duties as the Board may direct.*

The Chief Executive is responsible for determining when to initiate an enforcement action.

Secretary of the RA:

The Secretary will:

- Prepare the minutes of each meeting of the Board;
- Maintain the official website;
- Receive, forward, and file all materials submitted to the Authority;
- Issue administrative determinations and adjudicative decisions and orders; and
- Perform such other duties as the Board may direct.

The Chief Executive is the Secretary of the Authority but, with the written consent of the Chairman, may delegate this function to another member of the staff.

2.6 Board Compensation

The RA will pay the Commissioners for their service subject to approval of all Ministers responsible for regulated industry sectors.

The compensation of the Chief Executive is set and agreed between the Commissioners and the Minister. The Commissioners will recommend to the Minister adjustments in compensation annually as part of the budget setting process.

3. Scheme of Delegated Authority

Except where prohibited by law, the Board may delegate any function of the Authority to any Commissioner or member of the staff.

In order to do so, the Board will issue an order, which will be posted on the official website, that specifies:

- The specific powers being delegated;
- The person (or title of the position) to whom the powers are being delegated;
- The duration of the delegation; and
- Any conditions, qualifications or exceptions attached to the delegation.

The Board supports the separation of the role of Chairman and Chief Executive and delegates the responsibility of managing the business and affairs of the RA to the Chief Executive.

The three Commissioners and the Chief Executive have signing authority for affairs of the RA. The signing authority applies to all banking transactions whether by cheque or online transaction.

The following scheme of delegation is in place for all transactions by the RA.

- Any expenditure below \$ 500 (or an annual commitment) requires the Business Manager's approval.
- Any expenditure below \$10,000 (or an annual commitment) requires the authorization of the Business Manager and the Chief Executive
- Any expenditure above \$10,000 (or an annual commitment) requires the Chief Executive and 1 Commissioner's authorization.
- Any expenditure above \$100,000 (or an annual commitment) requires at least 2 Commissioners' authorization (a quorum at Board).
- Petty cash of \$100 for day to day requirements, e.g., courier services, stationery, is managed by the Business Manager.

Use of the Corporate Seal:

All deeds, documents and other instruments required to be made under seal shall be sealed with the common seal of the RA in the presence of the Chairman and the Secretary. The seal should be authenticated by the signature of the Chairman and the Secretary.

Where the Chairman is unavailable he may delegate these duties to another Commissioner.

4. Ethical Standards:

As per the Regulatory Act 2011 the following applies to all staff at the RA:-

4.1 Confidentiality

Section 33

"(1) Any person submitting information to the Authority may request that the Authority treat such information as confidential.

(2) The Authority shall grant a request to treat information as confidential if the Authority 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 Authority by a third party (other than another public authority) in confidence on the understanding that it would be treated as confidential; and*
 - ii) *the disclosure of which would be likely to prevent the Authority from receiving further similar information required by the Authority 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 law.*
- (3) *A person claiming confidentiality in respect of any information submitted to the Authority must 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.*
- (4) *Following receipt of any information submitted subject to a request for confidential treatment, the Authority shall issue a decision as to whether the justification offered by the submitting party meets the standard for confidential treatment specified in subsection (2).*
- (5) *If the Authority concludes that the justification offered by the submitting party meets the standard for confidential treatment, the Authority shall issue an order granting the request.*
- (6) *In any case in which the Authority grants a request for confidential treatment, the information may only be disclosed—*
- a) *to the Minister responsible for the regulated industry sector;*
 - b) *to the Commissioners;*
 - c) *to the staff;*
 - d) *to a court of competent jurisdiction; or*
 - e) *where necessary to conduct a public consultation or adjudication, to specific parties pursuant to a non-disclosure agreement or protective order.*
- (7) *If the Authority concludes that the justification offered by the submitting party does not meet the standard for confidential treatment, the Authority shall—*
- a) *issue an order denying the request; and*
 - b) *either—*
 - (i) *return the information to the submitting party, in which case the Authority 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.”*

4.2 Unauthorized disclosure of confidential information

Section 34

"A Minister, the Commissioners 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 Authority has granted confidential treatment."

4.3 Disclosure of confidential information by the Authority

Section 106

"Any Commissioner or member of the staff who knowingly contravenes section 34 commits an offence which shall be punishable-

- a) On summary conviction by imprisonment for up to one year or a fine of up to \$20,000, or both, or*
- b) On conviction on indictment by imprisonment for up to two years or a fine of up to \$50,000, or both."*

This Ethical Standards Policy is to also be read in conjunction with the Regulatory Authority's formal Conflicts of interest policy and the Regulatory Authority's Employee Handbook.

5. Audit Requirements

Accounts and Audit

Section 46 of Regulatory Authority Act states:-

(1) The Authority shall—

- a) keep proper accounts and records of its transactions and affairs;*
- b) do all things necessary to ensure that all payments out of its moneys are properly authorized and correctly made, and that adequate control is maintained over its assets, or those assets in its custody, and its expenditure; and*
- c) for each financial year, prepare financial statements in such form as the Accountant General may direct.*

(2) The accounts of the Authority shall be audited by the Auditor General or such other auditor as may be appointed annually by the Auditor General.

(3) A person shall not be qualified for appointment as an auditor under subsection (2) unless he is a public accountant who is registered or deemed to be registered under the Institute of Chartered Accountants of Bermuda Act 1973.

(4) If the Auditor General appoints an auditor under subsection (2), the remuneration of that auditor shall be paid by the Authority.

(5) Within three months of the end of its financial year, the Authority shall submit to the auditor its financial statements for the year and shall meet any reasonable request from the auditor for information relevant to the audit.

(6) The auditor shall, as soon as practicable after the financial statements have been submitted for audit, conduct the audit and send a report of his audit to the Authority.

(7) The auditor shall in the report state—

- a) whether the financial statements shows fairly the financial transactions and the state of affairs of the Authority;*
- b) whether proper accounting and other records have been kept, including records of all assets of the Authority, whether purchased, donated or otherwise;*
- c) whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the Authority during the financial year were in accordance with the provisions of this Act; and*
- d) such other matters arising from the audit as he considers necessary.*

(8) The auditor shall also submit such periodical and special reports to the Minister and to the Authority

as may appear to the auditor to be necessary or as the Minister or the Authority may require.

(9) The Authority shall provide the auditor with all reasonable cooperation including, at all reasonable times, full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the Authority and the making of copies of, or extracts from, any such accounting and other records.

(10) In subsections (5) to (9), where an auditor has not been appointed under subsection (2), "auditor" includes the Auditor General.

Publication of accounts and annual report

Section 47 states:-

(1) The Authority, within 30 days of receiving the auditor's report referred to in section 46(6), shall prepare and transmit to each Minister responsible for a regulated industry sector—

- a) a report on the operations of the Authority during the preceding financial year, including a discussion of—
 - i) the major activities undertaken;*
 - ii) any significant deviations from the work plan adopted by the Authority pursuant to section 43; and*
 - iii) the results achieved; and**
- b) a copy of the annual financial statements of the Authority certified by the auditor.*

(2) The Minister responsible for telecommunications shall as soon as practicable after receipt thereof—

- a) cause a copy of the report referred to in subsection (1)(a) and the annual financial statements to be laid before both Houses of the Legislature; and*
- b) cause a copy of the annual financial statements to be published in the Gazette.*

(3) As soon as practicable after the Minister has taken the actions specified in subsection (2), the Authority shall publish the report referred to in subsection (1)(a) and the financial statements on its official website.