



# **Electronic Communications Sectoral Review**

## **Public Consultation**

### **Consultation Document**

Matter: 20220727

Date: 27 July 2022

Responses Due: 31 August 2022

## Contents

1	Introduction .....	3
2	Consultation Procedure .....	4
3	Legislative Context .....	7
4	Assessment of Progress Made Since the 2018 Sectoral Review.....	8
	<i>Service continuity – Submarine Communications Cables</i> .....	8
	<i>Service continuity – Integrated Communications Operating Licence (ICOL)</i> .....	8
	<i>Government Authorization Fees</i> .....	11
	<i>Amendments to the RAA – Enforcements</i> .....	12
	<i>Amendments to the RAA – Surplus funds</i> .....	13
	<i>Amendments to the RAA – Public Consultations</i> .....	14
	<i>Amendments to the ECA</i> .....	16
	<i>Moratorium review</i> .....	16
	<i>Consumer protection – Compensation</i> .....	17
	<i>Consumer protection – Email Forwarding</i> .....	17
	<i>Consumer protection – Additional Measures</i> .....	18
	<i>Radio spectrum</i> .....	18
5	Conclusion.....	20
Annex 1	Update to enforcement procedures .....	21
Annex 2	Sectoral Review – Detailed Analysis of Law and Regulations .....	25
	General Determinations considered in the 2018 Sectoral Review .....	25
	General Determinations since 2018 .....	28
	Administrative Determinations considered in the 2018 Sectoral Review .....	29
	Administrative Determinations since 2018 .....	30
	Regulations considered in the 2018 Sectoral Review .....	30
	Regulations since 2018 .....	32
	Internal Policies and Procedures and Ministerial Policies .....	32

# 1 Introduction

1. The Regulatory Authority (**RA**) publishes this Consultation Document initiating a comprehensive review of the Electronic Communications Sector (**EC Sector**), including all applicable policies, legislation, regulations and administrative determinations (**Sectoral Review**).
2. The Sectoral Review is required by section 17 of the Regulatory Authority Act 2011 (**RAA**). The previous Sectoral Review was concluded with the publication of a final report on 30 November 2018 (**2018 Sectoral Review**). The RA must initiate each subsequent sectoral regulatory review no later than three years after the date on which the previous final report was published.
3. Pursuant to section 5(6)(a) of the RAA, the minister responsible for the EC Sector, currently the Minister of Home Affairs (**Minister**), consented to an extension of the period within which the RA must commence the Sectoral Review. The deadline for this is 1 August 2022.<sup>1</sup>
4. At the conclusion of the consultation process, the RA will issue a Final Decision.
5. For the avoidance of doubt, the Sectoral Review is separate from the process relating to the market review of the EC Sector (**Market Review**) required under part 4 of the Electronic Communication Act 2011 (**ECA**). This Final Report does not directly deal with the specific issues raised as part of the Market Review. The last Market Review was completed on 1 September 2020,<sup>2</sup> culminating in the Regulatory Authority (Market Review of the Electronic Communications Sector) General Determination 2020.

---

<sup>1</sup> Gazette Notice 0081/2022. "Extension to Commence Regulatory Review of the Electronic Communications Sector." 14 January 2022. <https://www.gov.bm/theofficialgazette/notices/gn00812022>

<sup>2</sup> Market Review of the Electronic Communications Sector Final Report, Decision & Order. 1 September 2020. [https://www.ra.bm/documents/2020-09-01\\_market-review-of-the-electronic-communications-sector-final-report-decision-and-order/?wpdmdl=15146&refresh=629a670be0f471654286091](https://www.ra.bm/documents/2020-09-01_market-review-of-the-electronic-communications-sector-final-report-decision-and-order/?wpdmdl=15146&refresh=629a670be0f471654286091)

## 2 Consultation Procedure

6. This consultation is being undertaken in accordance with sections 69 to 73 of the RAA and section 18 of the ECA. The procedure and accompanying timelines (as set out in section 70 of the RAA), under which this consultation is taking place has been set out below.
7. Written comments should be submitted before 11:59 PM (Bermuda time) on 31 August 2022.
8. The RA invites general comments from members of the public, electronic communications sectoral participants and sectoral providers, and other interested parties.
9. All submissions will require a 'declaration of interest'. Any submission must include the name, address and occupation of the commenting party. It must be signed by the individual, in the case of a personal submission, or by an authorised representative of any business. Personal submissions must declare any relevant link to a licensed or government body, whether commercial or personal (ie, family, etc). Where a business is not a licensed carrier, any business's submission must declare commercial relationships to any licensed operator. Failure to declare an interest that is subsequently identified will lead to the rejection of the submission.
10. Responses to this Consultation should be filed electronically in MS Word or Adobe Acrobat format. Parties wishing to file comments should go to the RA's website [www.ra.bm](http://www.ra.bm) and follow this link:

**Submit a Response Form**  
HOME > SUBMIT A RESPONSE FORM

**Submit Your Response**  
We welcome your input on Consultations that are currently open for comment.

Name \*  
First  Last

Email \*  Company Name (if applicable)

**Subscribe for Updates:**  
Receive email updates on RA News, Consumer Protection, Public Consultations and more!  
[CLICK HERE TO SUBSCRIBE](#)

11. Submit a Response page for Public Consultations: <https://ra.bm/submit-a-response-form/>.
12. All comments should be clearly marked "Comments on Electronic Communications Sectoral

Review – Consultation Document” and should otherwise comply with Rules 18 and 30 of the RA’s Interim Administrative Rules.

13. The RA intends to make responses to this Consultation Document available on its website. If a commenting party’s response contains any information that is confidential in nature, a clearly marked “Non-Confidential Version”, redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the “Confidential Version.” Redactions should be strictly limited to “confidential information,” meaning a trade secret, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the commenting party, or information that is legally subject to confidential treatment. The “Confidential Version” should highlight the information that has been redacted. Any person claiming confidentiality in respect of the information submitted must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the RA’s Interim Administrative Rules.
14. Individuals making personal submissions may request that personally sensitive information (eg, their name, address) is redacted from the publication of their statements. Any individual claiming that other information submitted is confidential must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the RA’s Interim Administrative Rules.
15. In accordance with section 73 of the RAA, any interested person may make an *ex parte* communication during this consultation process, subject to the requirements set forth in this paragraph 13. An *ex parte* communication is defined as any communication to a Commissioner or member of staff of the RA regarding the matter being consulted on in this Consultation Document, other than a written submission made pursuant to this Section 2. Within two business days after making an *ex parte* communication, the person who made the *ex parte* communication shall submit the following to the RA: a written description of the issues discussed, and positions espoused; and a copy of any written materials provided.
16. The principal point of contact at the RA for interested persons for this Consultation Document is Richard Ambrosio, who may be contacted by email, referencing “Comments on Electronic Communications Sectoral Review – Consultation Document” at [consultation@ra.bm](mailto:consultation@ra.bm)” or by mail at:  

Richard Ambrosio  
Regulatory Authority  
1<sup>st</sup> Floor, Craig Appin House  
8 Wesley Street  
Hamilton, Bermuda
17. The RA tentatively plans to issue a final report in this matter by the end of calendar year 2022. This timeline will ultimately depend on several factors beyond the RA’s control, such as the nature of any public comments submitted. However, reasonable efforts will be made to attempt to adhere to this indicative timeframe.
18. In this Consultation Document, except insofar as the context otherwise requires, words or

expressions shall have the meaning assigned to them by the ECA, the RAA and the Interpretation Act 1951.

19. This Consultation Document is not a binding legal document and does not contain legal, commercial, financial, technical or other advice. The RA is not bound by this Consultation Document, nor does it necessarily set out the RA's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this Consultation Document and the due exercise by the RA of its functions and powers, and the carrying out of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the RA.

### 3 Legislative Context

20. The RA has a duty under section 12 of the RAA to ensure that the regulation of the electronics communications sector promotes competition, the interests of residents and consumers of Bermuda, the development of the Bermudian economy, Bermudian employment and Bermudian ownership, and innovation.
21. The RA has a legal obligation under section 17 of the RAA to conduct a comprehensive review of each regulated industry sector every three years, including all policies, legislation, regulations, and administrative determinations applicable to the sector.
22. Section 17(3) of the RAA requires the RA to issue a preliminary report no later than six months after the date on which the RA issued the Consultation Document.
23. Section 72 of the RAA outlines the required contents of the preliminary report which are set out below. The preliminary report should:
  - a. summarise significant material in the administrative record;
  - b. provide a reasoned explanation of the basis on which the RA made any significant factual finding, policy determination and legal conclusion;
  - c. ...in the case of a preliminary report, state the RA's preliminary conclusions; and
  - d. establish the procedures and time frames for submitting responses regarding the preliminary report, recommendation or decision and order.
24. On this basis, this document constitutes the RA's Consultation Document under section 17 of the RAA.
25. The RA is not bound by the Consultation Document, nor any resulting Preliminary Report, nor does it necessarily set out the RA's final or definitive position on any matter. To the extent that there may be any inconsistency between the contents of this Consultation Document and the carrying out of the RA's duties and achievement of its objectives under law, such contents are without prejudice to the legal position of the RA.

## 4 Assessment of Progress Made Since the 2018 Sectoral Review

26. This section of the Consultation Document summarizes the recommendations made in the Final Report of the 2018 Sectoral Review and the progress made on those recommendations since then.

### *Service continuity – Submarine Communications Cables*

*The RA recommends to the Minister the development of Regulations which identify underwater areas and/or zones to be designated as “protected” to prevent commercial fishing or dredging to avoid damage to sub-sea cables and safeguard service continuity, and further offers to enter into consultation with the relevant Government Ministries to aid in the drafting of relevant Regulations.*

27. Service continuity, and in particular the in-shore protection of submarine cable or “off-island” connectivity to Bermuda, was identified as a key issue in the 2018 Sectoral Review.
28. The RA previously identified two separate risks impacting upon service continuity. The first such risk concerns damage to submarine cables and the ability for service providers to ensure service continuity in the event that its submarine cable infrastructure suffers due to a technical fault, or a particular submarine cable is cut or otherwise damaged.
29. The Submarine Communications Cable Act 2020 (**SCCA**) came into force on 27 November 2020. This legislation sought to create a new regulatory regime for submarine communications cables to introduce and establish this new sector in Bermuda.
30. Part 4 of the SCCA also establishes protection zones. The purpose of such zones is to protect the landing of cables and help to ensure backhaul service continuity in Bermuda. Schedule 1 sets out the boundaries of Bermuda’s protection zones while Schedule 2, Section 1 sets out prohibited and restricted activities in such zones.
31. **No further recommendation is made in respect of this matter.**

### *Service continuity – Integrated Communications Operating Licence (ICOL)*

*The RA recommends the inclusion of express language in appropriate legislation and/or an amendment to [ICOLs] which imposes an obligation on sectoral providers to:*

- establish a specific service restoration plan, which the RA can order to be amended if it is considered inadequate;*
- submit periodic financial reports to the RA to allow the RA to effectively assess their*

*financial stability;*

- *notify the RA of any risks to their future financial stability (i.e. legal proceedings) or significant changes in their financial position (i.e. risk of insolvency); and*
- *notify the RA before discontinuing any service to wholesale customers due to non-payment or insolvency;*

32. The second risk identified impacting upon service continuity is the insolvency of an ICOL holder. Continuity of service to customers, whether businesses or consumers, is also dependent on the continued solvency of the relevant ICOL holder. The RA previously considered the risk of customers losing their service in the event that an ICOL holder becomes insolvent.
33. The RA recommended in the 2018 Sectoral Review that ICOL holders that are in possession of submarine cables and/or provide services subject to SMP *ex ante* remedies should be required to have detailed service restoration plans and these should be reviewed periodically and made readily available at the request of the RA. Little progress has been made with respect to since 2018. **The RA adopts this recommendation again for the purposes of the present review.**
34. To the extent that the Submarine Communications Cable sector is concerned, the RA notes that an Order dated 22 July 2021 sets the Master Application Form, the Submarine Cable Licence and/or Protection Zone Installation Permit. The Order deals with the obligation to safeguard submarine cables, submit financial information and advise the RA of any risks to future financial stability or significant changes in future financial stability.
35. There is also an obligation to notify the RA of any fact or event likely to affect materially the Permittee's ability to comply with any condition of the Permit or an insolvency-related fact or event in respect of the Permittee or any Affiliate, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon becoming aware of the fact or event (condition 17.2 of the Protection Zone Installation Permit and condition 19.2 of the Submarine Cable Licence). **Similar obligations may be required in respect of all COLs, including ICOLs and SubCOLs.**
36. The RA recommended that ICOL holders should submit detailed periodic reports to the Authority that will allow the RA to assess the financial stability of the ICOL holder, to the extent that is not already provided for under section 4.6 of the Fee Filing Instructions.<sup>3</sup>
37. Under section 53 of the RAA, ICOL holders are required to submit certain information to the Authority (ie annual reports, financial statements and auditor's reports).
38. **First, the RA proposes to make robust use of this provision in future and to develop business**

---

<sup>3</sup> See the Fee Filing Instructions at Annex 1 of the Schedule to the General Determination: Process for Payment of Regulatory Authority and Government Authorization Fees, of 1 December 2016 (BR 109/2016), available at: <http://www.rab.bm/index.php/legislation-menu/tele-admin-determinations-landing-menu/1440-payment-of-fees-gd-december-2-2016/file>

processes aimed at ensuring compliance by all sectoral providers. The RA will adopt a staggered approach and provide sufficient advance notice of this so that sectoral providers can begin to develop their own business process geared towards compliance.

39. **Second, this provision should be expanded upon, either through legislative amendments or through the making of a general determination in accordance with section 63 of the RAA, requiring the production of, for example, profit and loss statements, balance sheets, cash flow statements, management accounts and certificates of good standing.**
40. The RA recommended in 2018 that the existing ICOL conditions be revised so that ICOL holders are required to notify the RA of any substantial change in their financial position that is liable to affect their viability as an ongoing provider of electronic communication services in Bermuda. Little progress has been made with respect to since 2018. **The RA adopts this recommendation again for the purposes of the present review. This reporting obligation should be imposed on sectoral providers through the inclusion of additional ICOL conditions via a General Determination, in accordance with section 51 of the RAA. Alternatively, the Minister might consider a legislative amendment to be appropriate.**
41. The RA recommended that the ECA be updated so that ICOL holders, particularly those offering services which are subject to SMP remedies, are required to notify the RA before discontinuing any services to wholesale customers (ie other ICOL holders) due to non-payment or insolvency. Little progress has been made with respect to this since 2018. **The RA adopts this recommendation again for the purposes of the present review. This performance obligation can be imposed on sectoral providers through amendments to the ECA and/or through the inclusion of additional ICOL conditions via a General Determination, in accordance with section 51 of the RAA.**
42. Oftentimes, issues relating to financial insolvency may be indicative of broader operational concerns. As part of its obligation to adopt proportionate measures, the RA would expect to manage such issues as part of its regulatory relationship with sectoral providers. It would hope to resolve any issues through informal discussions. Failing this, the RA would escalate the matter to formal directions and/or enforcement action. However, there may be instances where a more intermediate intervention is required that does not involve a full-scale adjudication or enforcement action.
43. **Accordingly, the RA further recommends that the RAA be amended to allow it to order management or operations audits into the any sectoral provider which it oversees. The expectation would be that such audits are ordered in extreme cases requiring such heavy intervention by the RA and where less intrusive and more targeted interventions prove incapable of addressing concerns not just about the solvency of a sectoral provider but also other more substantial concerns about its operations.**
44. Such audits would involve: (a) an investigation of the sectoral provider's financial, technical or operational capacity to comply with any duties imposed on it by this Act, sectoral legislation, any regulations made pursuant thereto or any administrative determination; (b) an evaluation of the efficiency of the company's management, performance or operations in any respect; (c) recommendations on any matter arising in connection with any investigation or evaluation performed in connection with the audit; and (d) the timing with respect to the implementation

of such recommendations.

## Government Authorization Fees

**The RA recommends to the Minister the adoption of a tiered Government Authorization Fee (GAF) structure to replace the current GAF structure which has the unintended consequence of disincentivizing prospective smaller sectoral providers from entering into, or participating in, the electronic communications market. The recommendation of a tiered GAF structure will thereby foster competition by encouraging the entry or expansion of prospective and/or existing smaller market participants.**

**The RA further recommends to the Minister that the lowest band of the proposed GAF tiered structure be exempt from taxation.**

45. Historically, electronic communications service providers have been charged the following two independent sets of fees: Regulatory Authority Fees (**RAF**) and GAF. Under section 52 of the RAA, the Authority has a legislative obligation to make recommendations to the Minister regarding the level of GAF. Section 52(5) of the RAA stipulates that the Minister, after giving due consideration to the recommendations made by the Authority, must forward a recommendation to the Minister of Finance. Presently, GAF and RAF are calculated as a flat percentage of the relevant turnover of each ICOL holder.
46. The following table contains the fees for each fiscal year since the inception of the RA:

Fiscal Year	RAF	GAF	Total
2013/14	1.75%	2.05%	3.80%
2014/15	1.75%	2.05%	3.80%
2015/16	1.50%	2.05%	3.55%
2016/17	1.75%	2.50%	4.25%
2017/18	1.75%	2.50%	4.25%
2018/19	1.75%	3.50%	5.25%
2019/20	1.75%	3.50%	5.25%
2020/21	1.75%	3.50%	5.25%
2021/22	1.70%	3.50%	5.20%
2022/23	1.65%	3.50%	5.15%

47. In 2018, the RA expressed concerns that the current RAF level may compound existing disincentives smaller market participants already face in respect of entry or expansion in the market. In particular, the RA recognizes that it is difficult for smaller market participants in the Bermudian electronic communications sector as both wholesale charges and network infrastructure investment costs, relative to actual turnover, are high.<sup>4</sup>

<sup>4</sup> Any review of the current level of wholesale charges by SMP operators is to be addressed through the Market Review process, and not in this Sectoral Review.

48. Further, the RA noted that for smaller market participants it may take time to generate profit, particularly in smaller niche markets. This means that any such fees, despite being the same percentage of turnover, may be a much higher proportion of profit generated. The imposition of a fixed percentage fee based on revenue, irrespective of the size or market share of the relevant ICOL holder can therefore result in overly burdensome regulatory fees for smaller providers. Due to economies of scale, the imposition of a fixed percentage fee based strictly on revenue can potentially have a disproportionate impact. Further analysis suggests that the fixed existing percentage fee can also act to constrain existing smaller businesses, especially local businesses, that may not have readily available access to outside capital or investment, and thereby limit their ability to expand. Failing to resolve this seemingly disproportionate regulatory fee structure may ultimately lead to reduced competition in the electronic communications sector.
49. The RA previously recommended that a tier-based GAF structure be developed in order to incentivize further investment in the electronic communications sector. Such a structure would involve pre-determined bands of annual sales revenue subject to pre-determined rates of fees (ie revenue up to \$100k may be levied a fee at 0.5%, \$100k-\$250k may be levied a fee at 1%, \$250k-\$500k may be levied a fee at 2%).
50. Such an approach would align with the RA’s legislative duty under section 12 of the RAA to promote competition in the electronic communications sector in Bermuda. It would also encourage market entry and expansion by smaller market participants who may otherwise be deterred by high investment costs. The practical application of this proposed tiered GAF structure would also ensure that both smaller sectoral providers and larger sectoral providers will be equally able to benefit from the tiered structure and is effectively nondiscriminatory.
51. **The RA adopts this recommendation again for the purposes of the present review, namely that a tiered GAF structure based on Relevant Turnover be adopted, with the lowest band exempt from taxation. Such a recommendation would be effected under the process noted under section 19 of the ECA and section 52 of the RAA.**

### *Amendments to the RAA – Enforcements*

*The RA recommends to the Minister the amendment of various sections of the RAA identified during the RA’s fully comprehensive review. These suggested amendments include, but are not limited to, the following:*

- *Amend the existing adjudication process and enforcement process to ensure that the RA is afforded the ability to quickly and effectively resolve circumstances and impose remedies where there has been a breach, or alleged breach of an ICOL holder’s legal obligations, or there are disputes between two sectoral providers or a sectoral provider and a consumer.*

*[...]*

52. In 2018, the RA stated that it found the operation of the current adjudication and enforcement processes to be somewhat counterproductive and cumbersome. It also noted the problematic nature of its role as both party to an adjudication or enforcement and ultimate decision-maker.
53. As a result of these concerns, it was recommended that the RAA be amended to allow the RA, while strictly adhering to principles of due process, to take enforcement action directly against sectoral providers. The new process would apply in:
- a. traditional enforcement actions under Part 8 of the RAA (in which the RA would effectively ‘prosecute’ a sectoral provider alleged to be in breach of any of its legal obligations); and
  - b. resolving disputes between two sectoral providers, or between a sectoral provider and customer, under sections 57 and 58 of the RAA respectively.
54. The RA conducted its first enforcements under the RAA in 2020 and 2021. The experience reinforces the observations previously made regarding the enforcement and adjudication processes. The adjudications proved to be expensive, cumbersome, and time-consuming processes not too dissimilar to a fully contested court proceeding. Combined with rights of reconsideration and appeal of a decision in accordance with sections 82 and 96 of the RAA respectively, the legislation creates much uncertainty, takes a considerable amount of time to reach any sense of finality, and reduces its effectiveness in discouraging statutory non-compliance.
55. In fact, the RA regards the current procedures as not fit for purpose insofar as the need for an effective, efficient and dissuasive regime for the resolution of alleged breaches by sectoral providers is concerned.
56. **Accordingly, the RA recommends that amendments be made to the RAA replacing the cumbersome adjudication and enforcement process with a simpler warning-and-decision-notice procedure based on that used in the sectoral legislation of the Bermuda Monetary Authority.** Annex 1 to this Consultation Document contains further detail on the RA’s proposed enforcement regime. For the avoidance of doubt, this recommendation supersedes paragraphs 109 to 112 of the Final Report of the 2018 Sectoral Review.

### *Amendments to the RAA – Surplus funds*

*The RA recommends to the Minister the amendment of various sections of the RAA identified during the RA’s fully comprehensive review. These suggested amendments include, but are not limited to, the following:*

*[...]*

- *Provide the ability to carry forward Surplus Funds from one financial year to the next in order to remove unnecessary budgeting difficulties and to afford the RA the ability to*

*account for workstreams that are conducted across multiple fiscal years.*

*[...]*

57. Section 41(1) of the RAA prescribes exactly how the RA must treat surplus funds, subject to limited exceptions. After recouping any net losses for the fiscal year, and in accordance with section 40(5), the RA must transfer any remaining surplus as follows: (i) 50% to the Consolidated Fund; (ii) 25% to paid-up capital; and (iii) 25% to the RA's Reserve Fund.
58. Typically, the RA, in exercising due financial prudence, attempts to err on the side of caution in its spending throughout the fiscal year. This often results in a surplus at the end of the fiscal year in order to avoid a deficit. The likelihood of a surplus being generated is further increased by the fact that the RA is required to begin estimating its likely operational costs several months in advance.
59. Therefore, section 41(1) of the RAA means that any net surplus that is available at the end of the RA's fiscal year is not readily available for use by the RA in the following fiscal year, even if such funds were allocated to projects that are still in process. The RA has identified this as a key consideration that limits the RA's ability to operate efficiently. An inability by the RA to carry over net surplus funds may result in the RA's budget for the following year being higher than necessary, and may lead to increased RAF fees for sectoral providers if there were to be a subsequent increase in regulatory fees as a result.
60. In 2018, the RA recommended amending section 41(1) of the RAA so that net surplus funds can be utilized for any deferred projects, or projects that carry over from the previous fiscal years, as well as for start-up funding for any new sectors assigned to the RA. Additionally, the RA proposed that express language be included under section 111 of the RAA to allow the RA to utilize initial and subsequent paid up capital to fund new sectors which may come under the remit of the RA. The inclusion of this type of provision was expected to ensure that the RA has the financial capability and flexibility to build out, among other things, any appropriate regulatory framework(s).
61. **The RA adopts this recommendation again for the purposes of the present review.**

### *Amendments to the RAA – Public Consultations*

*The RA recommends to the Minister the amendment of various sections of the RAA identified during the RA's fully comprehensive review. These suggested amendments include, but are not limited to, the following:*

*[...]*

- *Amend the statutory requirement to conduct an initial public consultation as part of the*

*General Determination process to account for exceptional circumstances where an initial public consultation may not be required (i.e. due to technological and market developments, timing and sensitivity of the matter, inherent simplicity of the matter).*

62. The current consultation process set out in sections 69-73 of the RAA requires the RA to obtain public responses at two stages: an initial Consultation Document and a preliminary report, recommendation or decision and order.
63. Section 72(1) stipulates that within a reasonable period after the conclusion of the initial consultation period that RA must issue (i) a preliminary report; (ii) a preliminary recommendation; and (iii) a preliminary decision and order. Once the preliminary report, preliminary recommendation and preliminary decision and order are published, section 72(3) stipulates that the RA must provide the public with a reasonable period in which to file written responses.
64. In 2018, the RA noted that the practical application of these two requirements can not only affect the RA's ability to respond to market and technological developments quickly and effectively, but also allows potential respondents to delay the process by requesting extensions to the deadline to submit responses. The RA has found that the public consultation process that is required as part of developing a General Determination can be lengthy and cumbersome, particularly where an issue requires a prompt resolution in response to market developments or where the subject of the consultation is not overly complex and does not require extensive deliberation. The RA considers that the current process is not appropriate in all circumstances and therefore seeks to introduce an element of discretion to address this matter.
65. For example, the RA held a public consultation for such a simple administrative task as decommissioning the Price Check Website which invited no controversy or comments from sectoral providers, and which took over two years to complete.
66. The RA recommends that the provisions governing the consultation process as set forth in sections 69-73 of the RAA be amended in order to streamline the process, which would include at a minimum:
  - a. Creating a two-stage process for public consultations instead of a three-stage one (while still retaining an optional ability to prepare as many additional documents as the RA, in its discretion, regards as appropriate; and
  - b. Requiring consultations for the making of General Determinations only in cases of 'public significance', allowing the RA to bypass consultations for routine administrative tasks. The RA should follow the approach of OfReg in the Cayman Islands – see section 7(3) of the Utility Regulation and Competition Act, which defines a matter as having 'public significance':

*“where it relates to a sectoral utility and is likely to 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 a sectoral provider; or (c) a significant impact on members of the public.”*

67. **The RA again recommends that the legislative provisions regarding the conduct of public consultations be streamlined.** For the avoidance of doubt, this recommendation supersedes paragraphs 109 to 112 of the Final Report of the 2018 Sectoral Review.

### *Amendments to the ECA*

*The RA recommends to the Minister the amendment of various identified sections of the ECA in response to the RA's fully comprehensive review. These suggested amendments include, but are not limited to, the following:*

- *Remove the references to the adjudication process in sections 41 and 50 of the ECA and replace with a reference to consultation. As currently constructed, section 41 of the ECA stipulates that in order to impose remedies for the inefficient use of Spectrum, the RA must have completed a lengthy and cumbersome adjudication process. Similarly, section 50(2)(b) of the ECA stipulates that an adjudication must be completed in order to approve an electronic communications technology, in accordance with section 50(2)(b) of the ECA. The proposed recommendation will ensure that the processes outlined in sections 41 and 50 of the ECA are more efficient.*

68. **The RA adopts this recommendation again for the purposes of the present review.**

### *Moratorium review*

*The RA recommends to the Minister that the current Moratorium restricting the issuance and re-issuance of ICOLs is lifted given the results obtained as part of the Sectoral Review and Market Review (i.e technological, market developments).*

69. The Moratorium was lifted by the Minister on 19 March 2019.
70. On 16 August 2019, the Regulatory Authority (Master Communications Operating Licence Application Process) General Determination 2019 came into force. This General Determination sets out the criteria, conditions, requirements and procedures, the general terms and conditions and the transitional conditions which must apply to the licensing framework for all COLs including ICOLs.
71. On 25 October 2019, the Minister issued the Communications Operating Licence Policy. This Policy sets up the policies for the RA to implement going forward regarding the issuance of any new public COL including any ICOL.

72. Additionally, on 25 October 2019, the RA issued the ICOL Application and Open Window Decision and Order. This defined the initial Open Window for new applications as 27 Jan 2020 – 28 Feb 2020.
73. The initial Open Window (27 Jan – 28 Feb 2020) resulted in the RA receiving only two applications regarding new ICOLs. One from Wave Bermuda Ltd trading as Horizon Communications and one from Paradise Mobile Ltd. Horizon Communications ICOL was granted on 1 September 2020. Paradise Mobile Ltd ICOL was granted on 2 September 2020.
74. Subsequent to the Moratorium being lifted in 2019 and the initial Open Window (27 Jan 2020 – 28 Feb 2020), the RA continues to consider the need to open any new window for applications on an annual basis.
75. **No further recommendation is made in respect of this matter.**

### *Consumer protection – Compensation*

*The RA recommends to the Minister the imposition of consumer compensation provisions for consumers in the event of service failures, through a consumer protection general determination and the inclusion of supporting ICOL terms and conditions through an ICOL general determination.*

76. The RA recommended in 2018 that the ECA and/or ICOL conditions be amended to require sectoral providers to compensate consumers, based on established levels of compensation, in the event of service failures resulting in service outages such as mobile outages or leased line outages.
77. **The RA adopts this recommendation again for the purposes of the present review.**

### *Consumer protection – Email Forwarding*

*The RA recommends to the Minister the imposition of email forwarding provisions for consumers that switch internet service providers, through a consumer protection general determination and the inclusion of supporting ICOL terms and conditions through an ICOL general determination.*

78. The RA recommended in 2018 that the ECA and/or ICOL conditions be amended to impose a requirement on ISPs to offer an email forwarding service for a nominal fee and for a prescribed period of time to customers who have switched, or wish to switch, to an alternative provider, in order to facilitate customer switching.

79. **The RA adopts this recommendation again for the purposes of the present review.**

### *Consumer protection – Additional Measures*

*The RA recommends to the Minister the adoption of additional Consumer Protection measures which will be considered as part of a consumer protection general determination.*

80. The RA also proposed in 2018 to consider these and further consumer protection measures as part of a consumer protection general determination.
81. While little progress has been made in respect of the previous two items, the RA did enact the Regulatory Authority (Principles of Consumer Protection) General Determination 2020. This General Determination sets out Principles of Consumer Protection in both the electricity and electronic communications sectors.
82. **The RA intends to update the Principles of Consumer Protection in the 2023-2024 fiscal year. No further recommendation is made in respect of this matter.**

### *Radio spectrum*

83. The 2018 Sectoral Review Final Report made a number of statements in connection with radio spectrum:
- a. The Spectrum Policy Statement issued by the Government of Bermuda on 22 September 2014 was considered out of date and should be renewed, including consideration of whether a new Frequency Allocation Table should be developed and whether other changes should be made in response to technological and market developments.
  - b. The provisions relating to spectrum liberalization and trading contained in section 39 of the RAA and the resulting processes were too onerous. While the recommendation was set in the context of changes to the consultation procedure noted earlier in the report, measures should be taken to ensure further liberalization.
  - c. The process relating to the criteria and procedures for assigning high demand spectrum was noted as having been completed and as possibly serving as a template for future spectrum allocations. See the Regulatory Authority (Request for Applications for the Assignment of Designated HDS-1 Frequencies in the 850 MHz, 700 MHz, and 2100 MHz Bands) General Determination 2016. Future revisions were accordingly suggested.

84. Since the 2018 Sectoral Review, the Regulatory Authority (Grant of Spectrum Licences, Permits, and Exempted Frequencies) General Determination 2020 was also made to set out the procedure for grant of new HDS/NHDS licences, permits and exemptions.
85. The RA is aware of certain inconsistencies in Annex 1-3 of the Regulatory Authority (Grant of Spectrum Licences, Permits, and Exempted Frequencies) General Determination 2020. A revision to this document has been prepared and will be sent out for consultation in fiscal year 2022-2023.
86. The RA's 2022-2023 Annual Work Plan noted that the RA intends to investigate whether any form of spectrum liberalization is appropriate for the Bermuda Market and determine what form of future licences may take. As part of this assessment, the RA will conduct an analysis of effective and efficient use of all the existing spectrum licences in preparation for the potential renewals of spectrum licenses in 2023-2024.
87. The RA will recommend that the Minister consult on potential recommendations for updates to the Spectrum Policy 2014. This would include a potential update to the High Demand Spectrum (HDS) frequency bands based on the significant shift in usage over the past 12 months with the advent of 5G. Additionally, this process will include a discussion on whether any changes should be proposed to the HDS fee structure and when HDS fees should be required (similar to the recommendation earlier in this Sectoral Review about tiered Government Authorization Fees).

### *Legislative Amendment to allow the fulfilment of RA's mandate in the EC Sector*

88. The RA recommends that section 21(1)(b)(i) of the RAA be amended to improve the administration and assist with continuity of the RA's Board. As such, the notice soliciting applications for the position of Commissioner should be published in the Gazette 180 days prior to the date on which a Commissioner's term is set to expire rather than 90 days. The RAA should also be amended to allow for a meaningful means of enforcing the deadline for appointing a Commissioner by the Selection Committee under section 21(4) of the RAA.

## 5 Conclusion

89. This Consultation Document sets forth the RA's initial views on recommendations to be made as part of the Sectoral Review. The RA welcomes comment on the proposed recommendations or any other matter related to this Consultation Document.

## Annex 1 Update to enforcement procedures

1. The current IPO-led adjudication process is cumbersome and costly. It should be replaced with a new procedure based on the warning-and-decision-notice procedure used by the Bermuda Monetary Authority (**BMA**).
2. A new enforcement regime under the RAA and Sectoral Legislation should achieve the following objectives:
  - a. The procedures should be simple to navigate;
  - b. The enforcement process should be streamlined;
  - c. Enforcement options should be wide and varied;
  - d. Decisions should be taken internally by the RA to the greatest extent possible, with a view to minimizing costs;
  - e. All actions and decisions taken should continue to be guided by the regulatory principles of the RA contained in section 16 of the RAA;
  - f. There should be appropriate consideration of the rules of fairness and natural justice, with an appropriate appeal to the Courts; and
  - g. To achieve each of the foregoing objectives, the legislation should provide only a framework and avoid being overly prescriptive; the RA should be able to flesh out the processes through policy documents and a statement of enforcement principles published on its website.

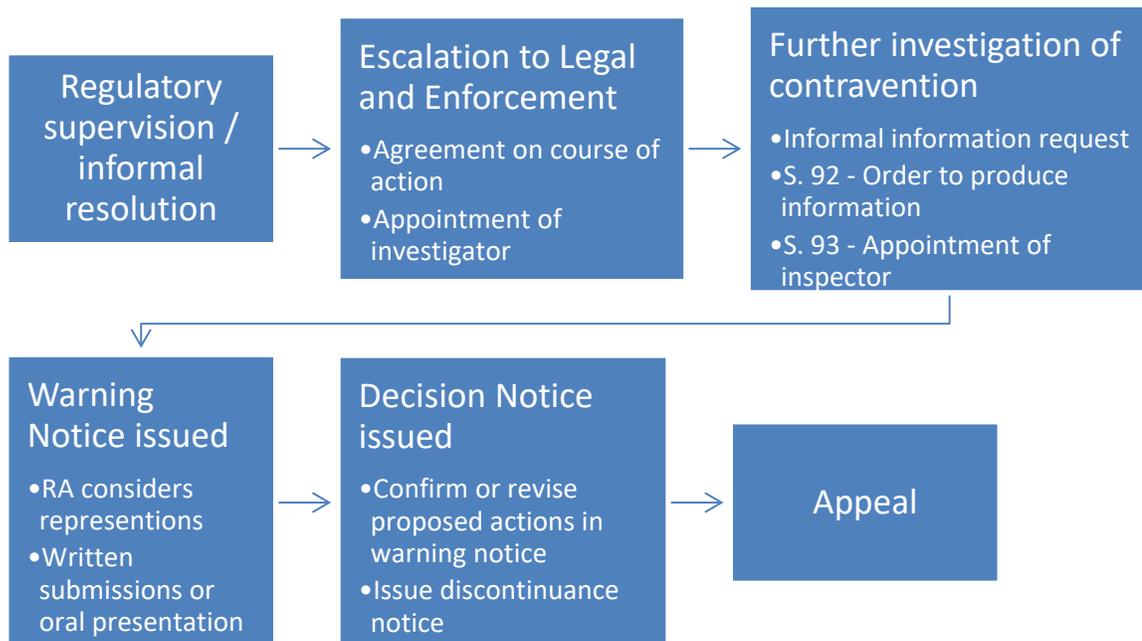
### Disposal options for enforcement

3. As noted above, the RA should have a wide variety of disposal options for any enforcement. This allows it to take an appropriate course of action to alleviating any offending behaviour. As with the BMA legislation, “appropriate” should mean that which is effective, proportionate, and dissuasive.
4. **Civil Penalties** – The BMA legislation allows for the imposition of a civil penalty of up to \$500,000. The RAA allows for a penalty of up to 10% of total annual turnover. The maximum penalty imposed by the RA should be whichever is the higher of these two numbers.
5. **Restitution** – The BMA legislation does not address restitution. The RAA does allow the RA to require a sectoral participant to make restitution to any person directly injured or otherwise prejudiced as a result of any contravention. This should be retained.
6. **Directions** – The BMA legislation does allow for the issuing of directions, with variance across the sectoral legislation. The RAA allows for a uniform power to direct a sectoral participant to take, or refrain from taking, actions the RA reasonably determines to be necessary to ensure that the sectoral participant acts in conformity with its duties and obligations. This uniform power should be retained. For the avoidance of doubt, this provision should also make reference to powers by the RA to seek prohibition orders and court injunctions where appropriate.

7. **Suspension, revocation or modification of licence** – The BMA legislation does not address these matters as part of its enforcement and/or disciplinary measures, whereas the RAA treats this as a separate disposal option following enforcement proceedings. If the legislation is to be amended to allow for streamlined processes, then there should be no practical difference as to how the RA approaches the question. However, for the sake of completeness, these should remain under the ‘enforcement’ heading.
8. **Public censure** – The BMA legislation specifically contemplates this as a disposal option, but the RAA does not. This option should be included.
9. **Refer a matter to criminal prosecution** – This option exists in both the BMA legislation and RAA. It should continue as a disposal option, but it should also exist independently of the process for enforcement action.

Procedure for enforcement

10. The RAA should be amended to remove the cumbersome procedure that currently exists (appointment of independent presiding officer, hearing notice, hearings, preliminary adjudicative order, final adjudicative order, motion to reconsider, appeal to the courts) with a streamlined procedure that reflects the approach contained within the BMA legislation.



11. First, when the RA believes that a sectoral participant or provider is in breach of any legal obligation to which they are subject, it should try to resolve matters informally as the first matter of course. This should be taken primarily by the Regulation Team as part of its day-to-day oversight of the regulated sectors. Sometimes, a simple matter can be resolved without having to escalate it to the Legal and Enforcement Team.

12. The RAA does allow the RA to enter into an undertaking in lieu of taking enforcement proceedings – see section 95. This power should be retained, and it should be permissible at any stage of an enforcement. However, a formal “decision and order” should not be required to give effect to this; the matter should be delegated to the Regulation and/or Legal Teams.
13. Second, all decisions to initiate, continue or conclude an enforcement should be taken directly by the RA. The matter should not be vested in an independent presiding officer especially as the decision will ultimately be taken by the Board of the RA and subject to appeal.
14. Historically, all BMA decisions with respect to enforcement were delegated to the Chief Executive. However, the BMA Board recently created an Enforcement Committee to which it delegated the powers of enforcement. This committee comprises the Chief Executive, Director of Legal Services and Enforcement and other senior members of staff not involved in the day-to-day management of any particular file. The point to note here is that the legislation should not be overly prescriptive as to the decision-maker, giving the RA flexibility to adopt the procedure it considers appropriate and to evolve with time.
15. The staff recommendation would be to follow similar suit, by creating an enforcement committee comprising of the Chief Executive, one Commissioner and one member of the legal team.
16. Third, where a particular matter cannot be resolved internally and must be the subject of enforcement proceedings, the RA may need to engage its investigative and information-gathering powers to understand whether a contravention has, in fact, occurred. It would need to consider the evidence available to it in deciding whether to adopt any of the disposal options noted above or whether to issue a discontinuance notice.
17. Fourth, where the RA proposes to adopt any of the disposal options noted above, it should issue the offending sectoral provider with a “warning notice”. This would be the opportunity for the sectoral participant to make representations on the matter.
18. The warning notice should: state the action which the RA proposes to take; be in writing; and give reasons for the proposed action. It should also specify a reasonable period within which the person to whom it is given may make representations to the RA, which must be taken into account when deciding whether to give a decision notice. The warning notice should also set out other specified particulars which may be required, dependent on which disposal option is proposed.
19. Fifth, upon considering the sectoral participant’s representations, the RA should then adopt a “decision notice” setting out the relevant disposal option(s).
20. The decision notice should: state the action which the RA will take; be in writing; give reasons for the action; and indicate the sectoral participant of its right of appeal. It should be issued within 90 days of the warning notice being given, beyond which, the matter would be treated as

discontinued. The decision notice should also set out other specified particulars which may be required, dependent on which disposal option is adopted.

21. Sixth, appropriate information about the decision notice may be published on the RA's website, subject to confidentiality considerations. Note that the BMA legislation permits but does not require publication, except in the case of public censure. Even then, the BMA may choose to just issue general information about a decision notice and not necessarily the entire decision notice.
22. Finally, any decision notice (together with certain other aspects under the legislation) should be subject to an appeal to the Supreme Court.

#### Special word about consumer and sectoral provider complaints

23. Sections 57 and 58 of the RAA respectively empower the RA to resolve disputes between (1) end-users and sectoral providers, and (2) sectoral providers, which concern alleged contraventions of the RAA, sectoral legislation or any regulations made by the Minister or administrative determination made by the RA.
24. Both provisions foresee a process whereby disputes should first be resolved by direct negotiations. Failing that, the RA then acts to facilitate an informal resolution of the dispute. In the case of an end-user dispute, this is within 30 days. In the case of a sectoral provider dispute, this is within 60 days.
25. At the end of that process, the RA may decide to dispose of the matter in one of three ways:
  - a. if both parties consent, and the RA concludes it would be appropriate, the RA may escalate the matter to arbitration, at the parties' expense;
  - b. the RA may conduct an adjudication; or
  - c. if the RA determines that the complaint is plainly without merit, issue a Decision and Order, dismissing the complaint.
26. Since all such complaints must be predicated on an allegation of a contravention which can potentially be the subject of enforcement proceedings, it is not immediately apparent why the RAA needs to contain sections 57 and 58.
27. A far more sensible solution would be to allow the RA to consider complaints informally. The RA could be empowered to settle its own complaint intake process without the need for legislation. When a complaint is judged to have merit, it should be escalated to the Legal Department for consideration of enforcement proceedings.
28. Accordingly, sections 57 and 58 should be deleted. Alternatively, consequential amendments are needed to replace the references to adjudications with more generic references to 'enforcement' or 'enforcement actions'.

## Annex 2 Sectoral Review – Detailed Analysis of Law and Regulations

### General Determinations considered in the 2018 Sectoral Review

General Determination	RA's 2018 Comments	RA's 2018 Proposal(s)	Current Status
<b>Regulatory Authority (Adjudication Rules) General Determination 2014 and Schedule</b>	The RA discussed the new enforcement/adjudication procedure at Section IV of the 2018 Final Report.	As part of the changes discussed as part of the 2018 Sectoral Review, the Regulatory Authority (Adjudication Rules) General Determination 2014 and Schedule should be revoked.  In support of the proposed legislative changes to the enforcement process, a further Adjudication Rules General Determination would have to be developed following the completion of the 2018 Sectoral Review.	The RA believes that the proposals made in 2018 are still necessary.  Depending on our earlier recommendations relating to new enforcement procedures, this General Determination may need to be amended or revoked.
<b>Regulatory Authority (Consumer Rights: Residential Contracts) General Determination 2014</b>	Due to limited RA resources this General Determination was not fully enforced.  However, the RA considered that the measures outlined in Section IV of the 2018 Final Report would provide sufficient consumer protection.	This General Determination should be revoked or amended in accordance with section 62(2)(d) of the RAA.  Additionally, the RA anticipated the commencement of the consultation process for a Consumer Protection General Determination in the 2019/2020 fiscal year which would address contract rights, amongst other things.	This was complemented by the Regulatory Authority (Principles of Consumer Protection) General Determination 2020. This General Determination sets out Principles of Consumer Protection in both the electricity and electronic communications sectors.  The RA intends to update the Principles of Consumer protection in the 2023-2024 fiscal year.
<b>Regulatory Authority (Electronic</b>	As part of the Sectoral Review, it was identified	It is proposed that this General Determination	The Regulatory Authority (Electronic Communications Price

<p><b>Communications Price Comparison Website) General Determination 2015</b></p>	<p>that this General Determination appears too burdensome on the sectoral providers to regularly submit tariff updates and is not actively used by consumers.</p> <p>Given the associated financial costs and the administrative burden, the benefits of the price comparison website do not seem to outweigh the costs to the RA.</p> <p>Ultimately it has been determined that consumers have other means of comparing prices (i.e. physical premises of sectoral providers, product descriptions and tariff lists on sectoral provider website).</p>	<p>be revoked.</p>	<p>Comparison Website) General Determination 2015 was revoked on the 29 June 2021 by the Regulatory Authority (Electronic Communications Price Comparison Website) Revocation General Determination 2021.</p>
<p><b>Regulatory Authority (Request for Applications of Designated HDS-1 Frequencies in the 850 MHz, 700 MHz and 1200 MHz bands) General Determination 2016</b></p>	<p>The purpose of this General Determination was to develop a process that would facilitate the allocation of HDS-1 Frequencies to sectoral providers. It established the procedures, criteria and conditions for the assignment of designated HDS-1 frequencies in the 850 MHz, 700 MHz and 2100 MHz bands in the form of a request for applications in the schedule.</p>	<p>The process that this document related to was completed, and so is no longer directly relevant.</p> <p>However, this document may be used as a template for any future spectrum allocations and may subsequently require revision in the future.</p>	<p>The Regulatory Authority (Grant of Spectrum Licences, Permits and Exempted Frequencies) General Determination 2020 sets out the procedure for grant of new HDS/NHDS licences, permits and exemptions.</p> <p>An update to Annex 1-3 of the December 2020 Spectrum GD will be issued via public consultation in 2022-2023.</p>
<p><b>Regulatory Authority (Process for Payment of Regulatory Authority and Government Authorization Fees)</b></p>	<p><u>Submission of Annual Financial Statements</u> Sectoral providers have an ongoing obligation to provide the RA with their most recent year-end</p>	<p><u>Submission of Annual Financial Statements</u> The RA was of the view that active management of the Fees Policy was its underlying responsibility.</p>	<p>The RA believes that the proposals made in 2018 are still necessary.</p>

<p><b>General Determination 2016 (the “Fees Policy”)</b></p>	<p>financial statements. However, in the RA’s experience, sectoral providers often failed to comply with the deadline for submission or submit management (unaudited) financial statements / draft audited financial statements, and failed to provide status updates regarding the submission of the final versions.</p> <p>Furthermore, the RA observed numerous circumstances where sectoral providers would only provide their financial statements following several reminders from the RA.</p>	<p>To aid the RA in managing its ongoing responsibility, the RA considered that the development of further internal guidelines which outline the management process were needed.</p> <p>In addition, the proposed amendments to the enforcement procedure, outlined in the 2018 Sectoral Review, would enable the RA to manage non-compliance problems more effectively going forward (ie imposition of financial penalties and/or performance directives).</p>	
	<p><u>Treatment of late filing</u> ICOL holders are required to file their most recent year-end financial statements within 60 days of their fiscal end. In the past the RA has experienced complications in enforcing this reporting obligation.</p>	<p><u>Treatment of late filing</u> The RA also concluded that in the event audited, or finalized year-end financial statements, were not available within 60 days of its fiscal year-end, ICOL holders should have readily available management accounts. As the Directors have a statutory duty to present true and fair financial statements to the RA, management accounts could be submitted to the RA to meet the required deadlines. Any submitted management financial statements could then be supplemented by the audited financials once available. There should not in most cases be any material differences between the two. The late filing deadline for <u>audited accounts</u> could also need to be</p>	<p>The RA believes that the proposals made in 2018 are still necessary.</p>

		extended from 60 days to allow sectoral providers more time to comply with their obligations. If the deadline was extended, imposing penalties for missing it could be considered. Amending the legislation to reflect the possibility of filing management accounts rather than audited accounts should also be considered.	
		<u><i>Amendment of Fee Filing Instructions</i></u> In light of the proposed amendments above, it could be necessary to revisit the Fees Policy and the supplemental Fee Filing Instructions.	The RA believes that the proposals made in 2018 are still necessary.
		The RA stated that the above would have to be completed by a General Determination and would subsequently have to be considered as part of the 2019/2020 Work Plan.	The RA believes that the proposals made in 2018 are still necessary.

### General Determinations since 2018

	<b>RA's 2022 Comments</b>	<b>Current status</b>
<b>Regulatory Authority (Market Review of the Electronic Communications Sector) General Determination 2020</b>	This General Determination was made in 2020 allowing for the designation of certain sectoral providers as possessing significant market power. It also imposes several remedies to prevent anti-competitive conduct and promote effective competition.	As noted above, this Sectoral Review is separate from the Market Review. The next such review will need to be concluded by 2024, and any further comment relating to this General Determination will be reserved to that review.
<b>Regulatory Authority (Removal of Moratorium; Exposure to 5G Radiofrequency Electromagnetic Fields) General Determination 2021</b>	This General Determination follows from the Radiofrequency and 5G Safety Preliminary Report Consultation and recommendations made by the Advisory Panel on 5G safety to the Board of Commissioners.	No further proposal is made by the RA regarding this General Determination.

<b>Regulatory Authority (Interconnection and Interoperability) Emergency General Determination 2021</b>	<p>The purpose of this Emergency General Determination was to ensure that new operators could compete on an even playing field. Key policies included obligations on interconnection ensuring that incumbent sectoral providers allowed new operators access to services at fair prices and interoperability ensuring that interconnection was technically feasible.</p>	<p>The RA will finalize this consultation process in the future imposing on all sectoral providers interconnection and interoperability obligations as detailed in the Regulatory Authority (Interconnection and Interoperability) Emergency General Determination 2021.</p>
---	--	--

### Administrative Determinations considered in the 2018 Sectoral Review

Administrative Determination	RA's 2018 Comments	RA's 2018 Proposal(s)	Current Status
<b>Change in BTC's Local Access Charge</b>	<p>When introduced, the Bermuda Telephone Company Limited (<b>BTC</b>) proposed that the Local Access Charge (<b>LAC</b>) rate remained unchanged for five years, which would have allowed for the proposed rate to remain in effect until 2019. LinkBermuda opposed this, submitting that the dynamic nature of Bermuda's newly liberalized electronic communications market made it hard to predict for such a long period how the cost components and future usage of the BTC network will change.</p> <p>The RA agreed with LinkBermuda that a fixed term of five years for the LAC rate was too long since the sector changes rapidly due to technological advancements and suggested that a three-year term for the LAC rate would be more appropriate.</p> <p>BTC subsequently provided a</p>	<p>The RA suggested the revocation of this administrative determination as it would be replaced with the results of the RA's Market Review.</p>	<p>No movement has occurred in this area since 2018. However, the Regulatory Authority (Interconnection and Interoperability) Emergency General Determination 2021 will also seek to address this matter.</p>

	new cost model using the required three-year period, which was submitted on 10 February 2014. It was decided that the administrative determination would be subject for revision after three years, ie on 10 February 2017.		
--	---	--	--

### Administrative Determinations since 2018

	RA's 2022 Comments	RA's 2022 Proposal(s)
<b>Order setting out Consultancy Deposits under the Submarine Communications Cables Act 2020, dated 27 December 2020</b>	The RA issued a Final Decision and Order setting the Consultancy Deposits required under the Submarine Communications Cables Act 2020.	No further proposal is made by the RA regarding this Administrative Determination.
<b>Order setting Application Form, Permit and Licence Templates under the Submarine Communications Cable Act 2020, dated 22 July 2021</b>	The RA issued a Final Decision and Order setting the Application Form, Permit and Licence Templates under the Submarine Communications Cables Act 2020.	No further proposal is made by the RA regarding this Administrative Determination.

### Regulations considered in the 2018 Sectoral Review

Regulation	RA's 2018 Comments	RA's 2018 proposal(s)	Current Status
<b>Electronic Communications (Integrated Communications Operating Licence) Regulations 2013</b>	<p>It was proposed in the 2018 Sectoral Review that the Moratorium imposed on the issuance of new ICOL licences should be lifted to promote a more competitive electronic communications sector.</p> <p>The RA stated that if the Moratorium was lifted, this General Determination document would need to be reviewed and amended.</p>	<p>The RA proposed amendments to the following sections of the General Determination / standard ICOL template:</p> <ul style="list-style-type: none"> <li>• Section 6 – Compliance;</li> <li>• Section 7 – Operation of Networks and Provision of Services;</li> <li>• Section 11 – to be amended in line with the new SMP Remedies;</li> </ul>	<p><b>The Moratorium was lifted by the Minister on 19<sup>th</sup> March 2019.</b></p> <p>On the 16 August 2019, the Regulatory Authority (Master Communications Operating Licence Application Process) General Determination 2019 came into force. This General Determination sets up the criteria, conditions, requirements and procedures, the general terms and conditions and the transitional conditions which must</p>

		<ul style="list-style-type: none"> <li>• Section 13 – Confidentiality of Personal Data: to be amended to comply with the Personal Information Protection Act (“PIPA”), coming into force at the end of 2018;</li> <li>• Section 14 – Consumer Protection: to be amended to comply with the Consumer Protection General Determination that is to be passed following the Sectoral Review;</li> <li>• Section 16 – Modification: to be amended to afford the RA greater flexibility to issue and modify ICOL licences without having to a conduct an overly onerous public consultation;</li> <li>• Section 17 – Enforcement and Revocation: to be amended to reflect the proposed changes to the proposed adjudication process and subsequent enforcement proceedings</li> </ul>	<p>apply to the licensing framework for all COLs including ICOLs. On the 25 October 2019, the Minister issued the Communications Operating Licence Policy. This Policy sets out the policies for the RA to implement going forward regarding the issuance of any new public COL including any ICOL.</p> <p>Additionally, on the 25 October 2019, the RA issued the ICOL Application and Open Window Decision and Order.</p> <p>Since lifting the Moratorium the RA received only two applications regarding new ICOLs. One from Wave Bermuda Ltd trading as Horizon Communications and one from Paradise Mobile Ltd. Horizon Communications ICOL was granted on 1 September 2020. Paradise Mobile Ltd ICOL was granted on 2 September 2020.</p> <p>Subsequent to the Moratorium being lifted in 2019 and the initial Open Window (27 Jan 2020 – 28 Feb 2020), the RA continues to consider the need to open any new window for applications on an annual basis.</p>
--	--	---	---

		<p>outlined in this Sectoral Review;</p> <ul style="list-style-type: none"> <li>• Section 20 – Change of Control (to be expanded).</li> </ul> <p>Administrative policies, procedures and guidance for the assignment of new ICOLs would have to be passed.</p> <p>Additionally, applicants would require formal guidance on the application process which is both transparent and based on relevant criteria.</p>	
--	--	---	--

## Regulations since 2018

Regulations post 2018 Sectoral Review	RA's 2022 Comments	RA's 2022 Proposal(s)
<b>Electronic Communications (Regulatory Authority Fees) Regulations 2022</b>	The purpose of this Regulation was to set up the RAF for the Financial Year 2022-2023.	No further proposal is made by the RA regarding this Regulation.

## Internal Policies and Procedures and Ministerial Policies

Administrative Determination	RA's 2018 Comments	RA's 2018 Proposal(s)	Current Status
<b>Spectrum Policy Statement issued by the Government of Bermuda on 22 September 2014 (the "Spectrum Policy")</b>	<p>The RA considers the Spectrum Policy to be a rigid document.</p> <p>When the Spectrum Policy was drafted it was initially intended to be amended frequently to afford the RA greater flexibility in the assignment of Spectrum</p>	Given that the Spectrum Policy was outdated, the RA believed it was prudent to undertake a separate review of the Spectrum Policy to consider whether a new Frequency	The RA continues to believe it is prudent to review the Spectrum Policy to consider whether a new Frequency Allocation Table should be developed and whether other changes should be

		Allocation Table should be developed and whether other changes should be made in response to technological and market developments.	made in response to technological and market developments.
<b>RA Outage Report Procedures 2013 (the “Outage Reporting Procedures”)</b>	<p>Under the Outage Reporting Procedures sectoral providers have an ongoing obligation to report any scheduled or unscheduled service outages to the RA.</p> <p>In support of the Outage Reporting Procedures under condition 7.5 of the ICOL, licensees are compelled to report planned and unplanned outages of the Electronic Communications Networks and Electronic Communications Services in accordance with any requirements established by the RA. However, the RA has observed that sectoral providers have not complied with this reporting requirement.</p>	The RA considered the reporting important and believed that the proposed changes to ICOLs regarding the compensations for consumer outages and subsequent Consumer Protection General Determination would address this issue more effectively.	<p>The Regulatory Authority (Principles of Consumer Protection) General Determination 2020. This General Determination sets out Principles of Consumer Protection in both the electricity and electronic communications sectors.</p> <p>The RA intends on updating the Principles of Consumer protection in future.</p>