



BERMUDA
**REGULATORY
AUTHORITY**

Interim Administrative Rules

Version 1

January 31, 2013

Administrative Rules of the Regulatory Authority

(Final Draft)

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Interim Administrative Rules of the Regulatory Authority

(Revised Draft 15 September 2012)¹

Pursuant to Section 13(c), 25(10), 31(11) and 61(2) of the Regulatory Authority Act 2011, the Board of Commissioners of the Regulatory Authority has adopted the following Administrative Rules:

Chapter 1

PRELIMINARY

1 Scope of these rules

- (1) The rules establish the procedures that the Authority will use to implement the Regulatory Authority Act 2011 and sectoral legislation.
- (2) In the event of any conflict, the applicable provision of the Regulatory Authority Act 2011, sectoral legislation, or any regulation or administrative determination will prevail.

2 Definitions and Interpretation

- (1) The definitions set forth here apply throughout these rules unless the context clearly requires otherwise.
 - (a) “Adjudication” means an adversarial proceeding that establishes the rights and obligations of the parties thereto.
 - (b) “Adjudicative decision and order” means a decision and order adopted following an adjudication.
 - (c) “Administrative determination” includes a general determination, order, direction, decision, or other written determination by which the Authority establishes the legal rights and obligations of one or more sectoral participants.
 - (d) “Advisory guideline” means a written statement that provides the Authority's views regarding a specific matter, but is not legally binding.
 - (e) “Authority” means the Regulatory Authority.

¹ The Authority is adopting these Rules on an interim basis. The Authority will conduct a public consultation regarding the rules governing adjudications (chapter 9), after which it will issue a general determination adopting those Rules. The Authority may conduct a public consultation regarding the remainder of the Rules.

- (f) “Authorization” means a license, permit or other type of permission granted by the Authority.
- (g) “Board” means the Board of Commissioners of the Authority.
- (h) “Business day” means any day when the Authority’s offices are open to the public.
- (i) “Chairman” means the Chairman of the Board.
- (j) “Chief Executive” means the person appointed by the Board to serve as the chief administrative office of the Authority.
- (k) “Code of practice” or “code” means a set of requirements and procedures governing certain aspects of sectoral providers' business conduct.
- (l) “Commissioner” means a voting member of the Board.
- (m) “Day” means calendar day. The period of time for doing an act governed by these rules is determined by excluding the first day and including the last day, unless the last day is a public holiday (as defined in the Public Holidays Act 1947), Saturday, or Sunday, in which event the period runs until the end of the next day that is not a public holiday, Saturday, or Sunday; provided that, where a period of seven days or less is specified, and that period includes a day that is a Saturday, Sunday, or public holiday, any such day shall be excluded.
- (n) “Discovery request” means a party's written request that calls for another party to produce information in connection with an adjudication.
- (o) “Electronic filing” means the submission of a document to the Authority by uploading the information to the Authority's official website.
- (p) “End-user” means a person that uses goods or services provided by a sectoral provider on a retail basis.
- (q) "Ex parte communication" means any written or oral communication, made to a Commissioner, member of the staff or a presiding officer regarding a matter in issue in an on-going public consultation or adjudication, other than:
 - (i) a written submission made pursuant to a consultation document;
 - (ii) a written submission served on all parties in an adjudication; or
 - (iii) an oral statement made in a hearing for which a transcript is prepared.

- (r) “Filing” of a document means the submission of a document to the Authority by any approved means.
- (s) A "co-regulatory body" means a private sector body authorized by the Authority to adopt and implement a code of practice, and to perform any other functions specified by the Authority, in conjunction with, and subject to the approval of, the Authority.
- (t) “Final Authority action” means a decision and order issued by the Authority in making an administrative determination or concluding an adjudication that is subject to appeal without any further administrative proceeding.
- (u) “General determination” means a statutory instrument made by the Authority that is applicable to all sectoral participants, or to such sub-category of sectoral participants as fall within the scope of the statutory instrument.
- (v) “Interlocutory order” means an order entered by a presiding officer during the course of an adjudication. Examples of interlocutory orders are orders concerning a party's participation in a proceeding, orders concerning discovery, and orders that relate to proposed evidence.
- (w) “Minister” means, in relation to a regulated industry sector, the Minister responsible for that regulated industry sector.
- (x) “Ministerial declaration” means a declaration issued by a Minister pursuant to section 4(2) of the Regulatory Authority Act 2011;
- (y) “Official website” means the digital assets that can be accessed at www.rab.bm.
- (z) “Order” means an administrative determination made by the Authority to take any action within the scope of its authority, other than an action that can only be taken by an adoption of a general determination or an adjudicative decision and order.
- (aa) “Party” means a person: (i) to whom Authority action is specifically directed or (ii) who participates as a party in an Authority proceeding.
- (bb) “Person” means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character.
- (cc) “Presiding officer” means a person selected by the Chairman to serve as the presiding officer in an adjudication.

- (dd)** "Provider" means a person who submits information to the Authority.
 - (ee)** "Public consultation" means the procedure by which the Authority may establish rights and obligations of general applicability.
 - (ff)** "Record" means a record held by the Authority, in any form or medium, in which information is recorded, which was prepared by or given to the Authority that contains information relating to the conduct of Authority's performance of its functions, other than drafts and internal workpapers.
 - (gg)** "Records Officer" means the person responsible for ensuring that the Authority complies with any statutory requirement regarding public access to information, privacy and data protection.
 - (hh)** "Regulated industry sector" means a sector, listed in the first schedule of the Regulatory Authority Act 2011, that is subject to supervision, monitoring and regulation by the Authority.
 - (ii)** "Requester" means a person who requests access to a record of the Authority.
 - (jj)** "Rule" means a rule of procedure or an internal rule applicable to the conduct of the Authority's activities or affairs.
 - (kk)** "Secretary" means the Secretary of the Authority.
 - (ll)** "Sectoral legislation" means primary legislation empowering the Authority to supervise, monitor and regulate an industry sector and specifying substantive provisions governing that sector. "Sectoral provider" means a person who provides a good or service in a regulated industry sector.
 - (mm)** "Service" means the submission of documents to the intended recipients electronically or by any other approved means reasonably calculated to ensure timely receipt.
 - (nn)** "Staff" means the officers, servants and agents of the Authority, including the Chief Executive.
- (2)** In any case in which these Rules state that an action will be taken by the Authority, the action may be taken by the Board of Commissioners or by any member of the Staff to whom the Board, pursuant to the procedures specified in Rule 8(7), has delegated the power to take the action.
 - (3)** In any case in which these Rules state that an action will be taken by the Board, the Chairman, the Chief Executive, the Secretary, the

Records Officer, or by a presiding officer, the action will be taken by the specified person or entity or by any person who has been duly authorized to act on their behalf.

Chapter 2

ORGANIZATION OF THE AUTHORITY

3 Seal of the Authority

- (1) The seal of the Authority is [TBA].

4 Contact information

- (1) The Authority's contact information is:
Location and mailing address: [TBA]
Primary telephone number: (441) XXX-XXXX
Fax number: (441) XXX-XXXX
Official website URL: www.rab.bm.
- (2) Additional contact information is available on the Authority's official website.

5 Office hours

- (1) The Authority's offices are open to the public between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except on public holidays.

6 Official website

- (1) The Authority will maintain an official website, on which it will publish:
 - (a) a directory, which includes the name, position, official telephone number and email address of each Commissioner and each member of the staff;
 - (b) a list of each pending adjudication or public consultation;

- (c) copies of all submissions (other than submissions for which confidential treatment has been granted) made in any public consultation;
- (d) the full text of:
 - (i) the Regulatory Authority Act 2011 and any consequential amendments;
 - (ii) all sectoral legislation;
 - (iii) all regulations, policies, Ministerial directions (other than any portions thereof that have been redacted pursuant to section 7(3) of the Regulatory Authority Act 2011), and Ministerial declarations; and
 - (iv) all general determinations made by the Authority;
- (e) the full text of all other administrative determinations and all adjudicative decisions and orders, with the exception of any portion of any such administrative determinations or adjudicative decisions and orders that contain information that the Authority deems to be confidential;
- (f) an index of the Regulatory Authority Act 2011 and any consequential amendments, all sectoral legislation, and all regulations and administrative determinations adopted pursuant to the Regulatory Authority Act 2011 or pursuant to sectoral legislation;
- (g) the agenda of any Board meeting, and a summary of each action taken by vote at any meeting of the Board, with the exception of any portion that contains information in respect of which the Board has ordered confidential treatment;
- (h) the audited financial statements and reports adopted by the Authority;
- (i) the Authorizations Register, described in Rule 7;
- (j) the information statement described in Rule 20; and
- (k) any additional information that the Authority is required to publish on the website pursuant to the Regulatory Authority Act 2011, sectoral legislation, or any other applicable law.

7 Authorizations register

- (1) The Authority will maintain, and publish on the official website, a public register of all licences, permits or other authorizations that it grants, modifies, revokes or suspends.

- (2) The register will contain:
 - (a) the name of the authorization holder;
 - (b) the address of the authorization holder;
 - (c) the telephone number, fax number and/or email address of the authorization holder;
 - (d) any additional information required by sectoral legislation; and
 - (e) any additional information that the Authority determines would be useful to the public.

Board of Commissioners and Officers

8 Board of Commissioners

- (1) The Board is responsible for the actions of the Authority and the general administration of its affairs and business.
- (2) The three voting members of the Board are:
 - (a) Mr. John C. Cunningham (term ends on 1 January 2017).
 - (b) Mr. Carlyle Musson (term ends on 1 January 2016); and
 - (c) Mr. D. Kent Stewart (term ends on 1 January 2015);
- (3) Commissioner [Name] is the Chairman of the Board. His/her term as Chairman will end on 31 December 2014.
- (4) The Board generally will meet monthly, but may meet more or less often.
 - (a) Meetings of the Board will be held at the places, on days and times, as the Chairman, or two Commissioners acting together, may determine.
 - (b) The quorum of the Board is two Commissioners.
 - (c) Members of the Board may attend meetings, and Commissioners may cast votes, by means of audio or video conference. However, a Commissioner may not vote by proxy or delegate voting authority to any other person.
 - (d) Except as otherwise expressly provided in the Regulatory Authority Act 2011 or in sectoral legislation, the Board will act by simple majority vote of the Commissioners. The vote of each Commissioner will be recorded in the minutes.
 - (e) The Board will only meet without the presence of the Chief Executive with the unanimous consent of the Commissioners.

- (5) The Secretary will prepare minutes of every meeting of the Board, specifying any matters discussed and decisions made. The Board will approve the minutes at its next meeting, subject to any revisions.
- (6) The Board may establish committees, consisting of some or all members of the Board.
- (7) 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:
 - (a) the specific powers being delegated;
 - (b) the person (or title of the position) to whom the powers are being delegated;
 - (c) the duration of the delegation; and
 - (d) any conditions, qualifications or exceptions attached to the delegation.

9 Chairman of the Board

- (1) The Chairman will:
 - (a) ensure that the Authority performs the functions specified in the Regulatory Authority Act 2011 and sectoral legislation;
 - (b) establish the agenda for meetings of the Board;
 - (c) preside over meeting of the Board.
- (2) The Chairman has a deliberative as well as a casting vote in all matters to be decided by the Board.
- (3) If the Chairman is unable to preside at a meeting, or perform any other statutory function, and has not designated another Commissioner to perform that function, the Commissioner who has served on the Board for the longest period of time will perform the function.

10 Chief Executive

- (1) The Chief Executive of the Authority is Mr Phillip Micallef. His term will end on 1 January 2016.
- (2) The Chief Executive is the principal administrative officer of the Authority and is responsible, subject to the direction of the Board, for carrying out the functions of the Authority.
- (3) The Chief Executive serves as a non-voting member of the Board.
- (4) The Chief Executive, consistent with the direction of the Board, will:

- (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 monitor the finances, of the Authority;
 - (d) engage persons having technical or special knowledge that the Authority requires to carry out its functions under this Act;
 - (e) enter into contracts for the provision of goods and services required by the Authority for the conduct of its business; and
 - (f) perform such other duties as the Board may direct.
- (5) The Chief Executive is responsible for determining when to initiate an enforcement action.

11 Secretary of the Regulatory Authority

- (1) The Secretary will:
- (a) prepare the minutes of each meeting of the Board;
 - (b) maintain the official website;
 - (c) receive, forward, and file all materials submitted to the Authority;
 - (d) issue administrative determinations and adjudicative decisions and orders; and
 - (e) perform such other duties as the Board may direct.
- (2) 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.

12 Records Officer

- (1) The Records Officer will:
- (a) ensure the Authority complies with any statutory requirement regarding public access to information, privacy and data protection; and
 - (b) perform such other duties as the Board may direct.
- (2) The Chief Executive is the Records Officer of the Authority but, with the written consent of the Chairman, may delegate this function to another member of the staff.

13 Organization of the Authority

- (1) The Authority is organized into the following sections:
 - (a) [TBA] section;
 - (b) [TBA] section; and
 - (c) [TBA] section.
- (2) The head of each section reports to the Chief Executive.

Other matters

14 Conflict of interest

- (1) A conflict of interest exists when a Commissioner or member of the staff participates in a decision-making or advisory capacity in any public consultation or adjudication that concerns:
 - (a) a business in which that person, or that person's spouse, parent or child, is a member or shareholder or has any private interest, whether 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 Commissioner or member of the staff who has the conflict will not participate in a decision-making or advisory capacity in the public consultation or adjudication unless he or she:
 - (a) submits a written declaration to the Board that fully discloses the nature of the conflict; and
 - (b) receives the unanimous approval of the voting members of the Board; and
 - (c) in the case of an adjudication, also receives the written consent of all parties to the adjudication at the time the conflict of interest is disclosed.
- (3) In any case in which a Commissioner is disqualified from participating in an adjudication or public consultation as a result of a conflict of interest, the Chairman (or, in any case in which the Chairman is disqualified, the Commissioner who has served on the Board for the longest period of time), after conferring with the members of the Board who are not disqualified, will appoint a person to act in place of such Commissioner.

- (4) Each Commissioner and each member of the staff must submit an annual written declaration to the Chief Executive stating whether they, or their 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 Authority. The Chief Executive must submit the declaration to the Chairman.
- (5) The Chairman or the Chief Executive will retain the declaration forms for at least three years, and will provide a copy of any declaration, to any person, on request.

15 Gifts and Gratuities

- (1) The Commissioners and the staff may 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 made by the Minister, or from any administrative determination made by the Authority, unless the Board has granted a waiver.
 - (a) Any Commissioner or member of the staff who seeks a waiver must submit a written request to the Board.
 - (b) The waiver request must specify:
 - (i) the person who has offered the gift or gratuity;
 - (ii) the specific gift or gratuity offered, including the estimated monetary value;
 - (iii) the manner in which the person who offered the gratuity has or might benefit directly or indirectly for any regulation made by the Minister or any administrative determination made by the Authority; and
 - (iv) the reason why the Board should grant the waiver.
 - (c) In considering whether to grant a waiver, the Board will consider whether allowing the Commissioners or staff member requesting a waiver to accept the gift or gratuity:
 - (i) would be likely to impair the ability of the Commissioner or staff member to render an impartial decision in any proceeding that could affect the interest of the party that offered the gift or gratuity; or
 - (ii) would be likely to undermine the public's confidence in the impartiality of the Authority.

- (d) A member of the Board who has submitted a waiver request may not participate in the consideration of that request.
 - (e) The Chief Executive may grant a waiver to allow a member of the staff to receive the following gifts or gratuities, for which there may be a legitimate justification:
 - (i) payment, up to \$1,000 per instance, of the cost of attendance at seminars, conferences or educational events directly related to the work of the Authority; and
 - (ii) payment, up to \$50 per instance, of the cost of meals during which matters directly related to the work of the Authority are discussed.
- (2) In any case in which the Board grants a waiver to allow a Commissioner or member of staff to accept a gift or gratuity, the Authority will post a notice on the official website stating:
- (a) the name of the Commissioner or staff member to whom the waiver was granted;
 - (b) the person who is giving the gift or gratuity;
 - (c) the nature of the gratuity, including the estimated monetary value; and
 - (d) the justification for grant of the waiver.

16 Advisory panels

- (1) In any case in which the Board appoints an advisory panel, the Authority will publish a statement on the official website setting out:
- (a) the purpose for which the panel has been established;
 - (b) the membership of the panel, including a brief statement setting out:
 - (i) the current employment or other significant information regarding each member; and
 - (ii) any significant financial interests in any member, or their spouse, parent or child, has in any sectoral provider or in any other person who may directly benefit from the work of the Advisory Committee;
 - (c) any financial, staffing or other resources that the Authority will provide to the panel;
 - (d) any procedures to be used, or deliverables to be provided, by the panel; and
 - (e) the duration of time in which the panel will remain in existence.

- (2) The Authority will specify the date by which the advisory panel will provide a report to the Authority regarding its work.
- (3) The Authority will publish any advisory committee report on the official website, except to the extent that the Authority determines it contains confidential information.

17 Self-regulatory and co-regulatory bodies

In any case in which the Board authorizes or requires the establishment of an industry self-regulatory or co-regulatory body, the Authority will publish in the Gazette and on its official website a statement setting out:

- (1) the specific authority being granted to the body;
- (2) the procedure by which membership in the body will be determined;
- (3) the procedures for disclosing any significant direct or indirect financial interests that any member, or their spouse, parent or child, has in any sectoral provider or in any other person who may directly benefit from the work of the body; and
- (4) any financial, staffing or other resources that the Authority will provide to the body.

Chapter 3

COMMUNICATING WITH THE AUTHORITY

18 General requirements

- (1) Persons must file all written submissions electronically with the Authority using the Authority's official website, unless:
 - (a) a person certifies that he or she is unable to do so, in which case the person may make the submission by any other means authorized in this Rule; or
 - (b) a statute requires, or the Authority directs, that the filing be made in a different manner.
- (2) An electronic filing must comply with the following requirements:
 - (a) Electronic versions of all written submissions must be filed in .pdf format, supplemented by the original separate file in .doc (MS Word), .xls (Excel), or .ppt (Power Point) format, and must not include locked, password protected or hidden data.

- (9) A person who communicates with the Authority concerning a public consultation or an adjudication must identify the proceeding, including the matter number and name of the proceeding.
- (10) A person who communicates with the Authority about an authorization must identify the authorization number (if any), and the name under which the authorization is held.
- (11) The Authority's receipt of a submission for filing, or its assignment of a matter number to a submission, does not mean that the Authority has accepted the submission, or waived any deficiencies that would allow the Authority to reject the submission.
- (12) After receiving a submission, the Authority may require the submission to be resubmitted with deficiencies corrected, or may reject the submission.

19 Official communications from the Authority

- (1) A communication from the Authority is not an “official communication” unless it has been signed (physically or electronically) by the Chairman, the Secretary, or a member of the staff to whom the Board has delegated the authority pursuant to the procedures specified in Rule 8(7).
- (2) A presiding officer may sign (physically or electronically) official communications relating to an adjudication.

Chapter 4

PUBLIC ACCESS TO INFORMATION

20 Information statement

The Authority will post on the official website, and will update annually, an information statement setting out:

- (1) a description of the structure and organization of the Authority and the legislation governing the Authority;
- (2) a description of the functions, powers and duties of the Authority, including its obligations under the Regulatory Authority Act 2011 and sectoral legislation;
- (3) a summary of the services that the Authority provides, including on-going programs of the Authority;

- (4) a detailed description of all classes of records that are held by the Authority;
- (5) a description of any manuals used by employees of the Authority administering or carrying out the programs and activities of the Authority;
- (6) a description of the policies, rules and guidelines used by the Authority to make decisions or recommendations in respect to any person; and
- (7) the name and contact information for the Records Officer and any other information relevant for the purpose of facilitating access by the public to records of the Authority.

21 Access to records

- (1) Every person who is a Bermudian or a resident of Bermuda will, on request, be given access to any record of the Authority, other than an exempt record.
- (2) The Authority will make every reasonable effort to:
 - (a) assist persons in connection with requests for access to records; and
 - (b) respond to requests completely, accurately and in a timely manner.
- (3) A requester is not required to give any reasons for making a request.

22 Request for access

- (1) A request for access to a record of the Authority should be submitted to the Records Officer. Where feasible, the requester should submit the request electronically, using the form posted on the Authority's website. However, the Records Officer will accept any request that includes:
 - (a) the requester's name, address and telephone number;
 - (b) the date on which the requester submitted the request;
 - (c) the identity of any individual, business, or other organization for whom the requester is making the request;
 - (d) a clear indication that the requester is requesting public records;
 - (e) a statement whether the requester wants to inspect the public records or get copies, or both; and
 - (f) a clear description of the public records the requester wants.

- (2) Within five (5) working days after receipt of the request, the Records Officer will acknowledge receipt and at the same time will inform the requester of the process for dealing with the request and of the requester's rights under this act.
- (3) Where the Records Officer receives a request for a record that is not held by the Authority, but which the Records Officer believes is held by one or more other public authorities, the Records Officer, not later than five (5) working days after receipt of the request, will cause a copy of the request to be given:
 - (a) to that other public authority; or
 - (b) in the case of more than one other public authority, to the public authority whose functions are, in the opinion of the Records Officer, most closely related to the subject matter of the request.

23 Decision on request

- (1) No later than twenty-eight (28) days after receiving a sufficient request for access, the Records Officer will determine:
 - (a) whether to grant or refuse to grant the request in whole or in part; and
 - (b) if the request is to be granted:
 - (i) the form and manner in which the right of access to the record concerned is to be given; and
 - (ii) the amount of any fee payable for the provision of access.
- (2) The Records Officer will issue an order, which will be posted on the official website, specifying:
 - (a) the decision;
 - (b) the reasons for the decision; and
 - (c) the procedures for Board review of the decision.
- (3) In any case in which the Records Officer decides to grant a request for access to information to which the Authority previously granted confidential treatment, the Authority will provide written notice to the provider, pursuant to the procedures specified in Rule 30(9).
- (4) The Records Officer may extend the original review period by up to twenty-eight (28) days, if the Records Officer concludes that compliance with the original period is not reasonably practicable because:

- (a) there is insufficient time to consider representations made by third parties or to complete any consultations with regard to whether access to particular information is in the public interest; or
 - (b) dealing with the request within the original period would substantially or unreasonably interfere with the day-to-day operations of the Authority.
- (5) Where the Records Officer extends the review period, the Records Officer will give notice, before the end of the original period, in writing to the requester regarding the length of the extension and the reasons for it.

24 Board review of denial of records requests

- (1) A requester or a third party may request the Board to review any decision made by the Records Officer regarding access to records of the Authority, including:
- (a) a decision to grant or refuse to grant access to a record;
 - (b) a decision as to the manner in which access to a record requested is to be provided;
 - (c) a decision to transfer a request to another authority, in whole or in part;
 - (d) a decision to extend the time limit for compliance with a request;
 - (e) a decision as to the fee charged for access to a record;
 - (f) a decision to refuse a request to amend a record in respect of personal information; and
 - (g) a decision to refuse to disclose the existence of a record.
- (2) A requester or a third party also may request the Board to review the Records Officer's alleged failure to do anything relating to a request within the specified time.
- (3) An application for an internal review must be made within twenty-eight (28) days after the date when the Records Officer took, or failed to take, the action for which review is sought.
- (4) An internal review of a decision of the Records Officer will be conducted by the Board within twenty-one (21) days after receiving an application for an internal review, at which time the Board will:
- (a) make a decision with regard to the review; and
 - (b) notify the requester and any third party concerned of:

- (i) the decision;
- (ii) the reasons for the decision; and
- (iii) the right of the requester or third party to apply for further review of the decision.

25 Refusal of requests

The Authority may refuse to grant a request for access to records if:

- (1) the document is exempt from disclosure pursuant to the Regulatory Authority Act 2011, the Public Access to Information Act 2011, or any other applicable statute, regulation or judicial decision;
- (2) the record requested does not exist or cannot be found after all reasonable steps have been taken to find it;
- (3) the request does not contain sufficient information to enable the Authority to identify the record by taking reasonable steps;
- (4) in the opinion of the Authority, granting the request would, by reason of the number or nature of the records requested, require the retrieval and examination of such number of records or an examination of records of such kind as to cause a substantial and unreasonable interference with or disruption of the other work of the Authority;
- (5) publication of the record is required by law and is intended to be effected not later than three months after the receipt of the request by the Authority;
- (6) the request is, in the opinion of the Authority, frivolous or vexatious;
- (7) the information is in the public domain, is reasonably accessible to the public or is reasonably available to the public on request under any other statutory provision, whether free of charge or on payment; or
- (8) the fee payable has not been paid.

26 Manner of access to records

- (1) Where the decision is to grant a request, the Authority will provide access to the record as soon as possible after:
 - (a) the date when the period for applying for a review of the decision has expired without an application having been made;
 - or
 - (b) if an application has been made, the date when a review in respect of a decision has been completed.

- (2) The Authority will give access to a record by providing the requester with the information in the record in any of the following forms or manners:
- (a) a reasonable opportunity to inspect the record;
 - (b) a copy of the record;
 - (c) a transcript of the information;
 - (d) an electronic machine-readable device or other electronic device that contains the information;
 - (e) a reasonable opportunity to hear or view the record, where the record is of sound or visual images;
 - (f) a decoded copy of the information, where the information is in shorthand or another code; or
 - (g) such other means as may be determined by the Authority.
- (3) Where the Authority decides to grant a request and the request is for access to a record in a particular form or manner, access will be given in that form or manner unless the Authority is satisfied that:
- (a) access in another form or manner specified in subsection (2) would be significantly more efficient; or
 - (b) the giving of access in the form or manner requested would:
 - (i) be physically detrimental to the record;
 - (ii) involve an infringement of copyright (other than copyright owned by the Crown, the Government or the Authority);
 - (iii) conflict with a legal duty or obligation of the Authority; or
 - (iv) affect the protection of an exempt record from disclosure.
 - (c) Where the Authority decides to grant a request but, for reasons set out in subsection (3), does not give access to the record requested in the form or manner specified in the request, the Authority will give access in such form or manner as the Authority considers appropriate.

27 Access to part of record

- (1) Where a record requested contains information that constitutes an exempt record, the Authority, if practicable, will prepare a copy of so much of the record requested as does not consist of that material, and

will offer the requester access to the copy, unless the copy would be misleading.

- (2) Where a requester is offered access to a copy of part of a record, the Authority will notify the requester that the copy does not purport to be a copy of the complete record requested.

28 Copying and service charges

- (1) The Authority will charge a fee of twenty-five (25) cents per page for copying public records.
- (2) The Authority may waive or reduce the copying fee, for good cause shown.
- (3) In cases in which a request would impose a substantial administrative burden on the Authority, the Authority may require payment of a service fee designed to recover the costs that the Authority will incur.

29 Access log

- (1) The Records Officer will keep a log of all access requests, excluding the names of requesters, any other information that could reveal the identity of the requester and any personal information about any person.
- (2) The log will indicate whether a request has been granted or refused and, in the case of a refusal, the log will include the reasons for refusal.
- (3) The information in the log will be made available to members of the public upon request, together with any information that has been provided pursuant to an access request that has been granted.

30 Confidential information

- (1) The Authority provides special handling and limited access to confidential information.
- (2) Confidential information includes:
 - (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 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, 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;
 - (e) information, the disclosure of which would constitute a breach of a duty of confidence provided for by a provision of law; and
 - (f) information protected under the terms of a protective order in an adjudication.
- (3) A provider seeking confidential protection must submit the claim of confidentiality in writing, in the same form and at the same time the provider submits the information claimed to be confidential. The provider must state the basis upon which the information is claimed to be confidential.
- (4) The provider must submit a complete version of the document as to which confidentiality is claimed (unredacted version) and a complete version of the document with the information claimed to be confidential masked (redacted version).
- (a) The redacted version must be labelled "redacted version". The redacted version will be available for public disclosure if requested.
 - (b) Each page of the unredacted version that includes information claimed to be confidential must have the confidential information clearly designated (e.g., by legibly highlighting text).
 - (c) The redacted and unredacted versions must have the same pagination and numbering.
- (5) Any party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the Authority will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure.

- (6) If the Authority concludes that the justification offered by the submitting party meets the standard for confidential treatment, the Authority will issue an order granting the request.
- (7) 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 the Ombudsman;
 - (e) to a court of competent jurisdiction; or
 - (f) where necessary to conduct a public consultation or adjudication, to specific parties pursuant to a non-disclosure agreement or protective order.
- (8) If the Authority concludes that the justification offered by the provider does not meet the standard for confidential treatment, the Authority will issue an order denying the request and either:
 - (a) return the information to the provider, in which case the Authority will not consider or rely on the information; or
 - (b) after giving the provider notice and an opportunity to comment, disclose the information, if doing so would be in the public interest.
- (9) The Authority will provide written notice of any request for information that the Authority previously designated confidential to the provider and any person who might be directly affected by release of the information.
 - (a) If the provider consents in writing to the release of the information, or does not submit a written objection to the request within ten (10) days following notice, the Authority will release the information to the requester.
 - (b) If the provider does not consent to the disclosure, the Authority will either:
 - (i) deny access; or
 - (ii) disclose the information, if the Authority concludes that doing so would be in the public interest.
- (10) Except as provided in sub-section (11), the Records Officer will make the initial determination of confidentiality, which may be appealed to the Board.

- (11) In any adjudication in which information is submitted subject to a claim of confidentiality, the presiding officer will make the initial determination of confidentiality, which may be appealed to the Board.

Chapter 5

BUDGET AND FINANCE

31 Work plan and budget

- (1) The Authority will prepares an annual budget, which will includes:
- (a) an estimate of total operating expenditures for the upcoming financial year;
 - (b) an estimate of the total capital expenditures for the upcoming financial year; and
 - (c) an estimate of the total revenues, by source.
- (2) Not later than October 1 of each year, the Authority, pursuant to a vote of the Board, will initiate a public consultation regarding the Authority's work plan for the upcoming financial year, which will include:
- (a) the Authority's strategic priorities for the upcoming financial year;
 - (b) any major activities, such as public consultations, that the Authority anticipates undertaking during the upcoming financial year;
 - (c) any quantitative indicators that the Authority has adopted to measure its performance during the upcoming financial year; and
 - (d) a preliminary estimate of the Authority's budget for the upcoming financial year.
- (3) Not later than January 1 of each year, the Authority, pursuant to a vote of the Board, will submit to the Minister and to the Minister of Finance:
- (a) a preliminary report setting out the Authority's proposed work plan for the next financial year; and
 - (b) a proposed budget, with a request for approval, in such form and in such detail as the Minister of Finance may require, for the upcoming financial year.

- (4) Once the budget has been approved, the Authority, pursuant to a vote of the Board, will adopt a final report setting out the Authority's work plan for the next financial year.
- (5) The Authority's approved budget and workplan for the upcoming financial year will be posted on the official website. The Authority's approved budget will also be published in the Gazette.

32 Regulatory Authority fees

- (1) At the same time that the Authority submits a proposed budget, the Authority, pursuant to a vote of the Board, will submit a request and recommendation that the Minister make regulations establishing the Regulatory Authority fees that some or all sectoral participants will pay to the Authority during the upcoming financial year.
- (2) The Regulatory Authority fees recommended by the Authority will consist of:
 - (a) service fees, which are payable by a sectoral participant in connection with specific functions performed by the Authority; and
 - (b) general regulatory fees, which are payable by a sectoral provider annually or at such other intervals as the Authority may establish.

33 Audits and accounts

- (1) By 30 June of each year, the Authority will submit to the auditor appointed by the Auditor General its financial statements for the year.
- (2) The Authority will meet any reasonable request from the auditor for information relevant to the audit.
- (3) Within thirty (30) days of receiving the auditor's report, the Authority, pursuant to a vote of the Board, will adopt and transmit to the Minister:
 - (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; and
 - (iii) the results achieved; and
 - (b) a copy of the annual financial statements of the Authority certified by the auditor.

Chapter 6

DISPUTE RESOLUTION

34 Informal dispute resolution

- (1) An end-user that has a dispute with a sectoral provider resulting from an act or omission by a sectoral provider that allegedly contravenes the Regulatory Authority Act 2011, sectoral legislation or any regulations made by the Minister or administrative determination made by the Authority must first seek to resolve the dispute through direct negotiations. If the sectoral provider is subject to an approved code that contains a dispute resolution procedure, the end-user must make use of that procedure. If the end-user and the sectoral provider are unable to resolve a dispute through direct negotiation within sixty (60) days, or within the time period specified in any applicable dispute resolution procedure contained in an approved code, the end-user may file a complaint with the Authority.
- (2) A sectoral provider that has a dispute with another sectoral provider regarding a matter resulting from an act or omission by a sectoral provider alleged to have contravened the Regulatory Authority Act 2011, sectoral legislation, any regulations made by a Minister, or any administrative determination made by the Authority, must first seek to resolve the dispute through direct negotiations. If the sectoral providers are unable to resolve the dispute after 90 days of direct negotiation, either sectoral provider may file a complaint with the Authority.
- (3) Any complaint must identify the name, address, telephone number, and email address of the sectoral provider to whom it pertains, and must include:
 - (a) a complete statement of facts which, if true, is sufficient to constitute a violation of the Regulatory Authority Act 2011, sectoral legislation or any regulations made by the Minister or administrative determination made by the Authority
 - (b) an explanation of the reasons why the sectoral provider's conduct violates the the Regulatory Authority Act 2011, sectoral legislation or any regulations made by the Minister or administrative determination made by the Authority;
 - (c) the specific relief requested; and

- (d) certification that the party filing the complaint has complied with the applicable negotiation requirements specified in subsections (1) or (2).
- (4) Upon receipt of a complaint, the Chief Executive will designate a member of the staff who will be responsible for this matter during the informal resolution phase.
- (5) Within ten (10) days of receiving the complaint, the sectoral provider against whom the complaint was made must file an answer. The answer must comply with the requirements contained in Rule 71.
- (6) A party that wants to respond to the answer must do so within five (5) days after being served with the answer.
- (7) The Authority will first seek to resolve disputes informally. The Authority staff may discuss the complaint with the affected persons. Where appropriate, the Authority will investigate to determine if there are violations of any applicable rule or law and if so, will work with the parties to ensure compliance.
- (8) As part of the informal dispute resolution process, the Authority may assign a member of the staff to serve as a mediator. If the Authority does so, the following procedures will apply:
 - (a) Prior to the start of any mediation, the parties must sign a written statement, to be provided by the Authority, confirming that they will treat all information provided during the mediation process as confidential to the extent permitted by law.
 - (b) The parties must provide the mediator with a brief statement of position and relevant background information prior to the first mediation session.
 - (c) The mediator may ask for supplemental information.
 - (d) The mediator may meet individually with the parties or the attorneys during mediation.
 - (e) Only the parties to the negotiation and the mediator may attend mediation sessions, unless all parties and the mediator consent to the presence of others.
 - (f) No stenographic or electronic record of any mediation session will be kept.
 - (g) The mediator may not provide legal advice to the parties, nor are any mediator's stated opinions as to law or policy binding on the Authority.

- (h) The mediator may offer proposals for settlement, but may not impose a settlement.
- (9) Each party must bear its own fees and costs related to informal dispute resolution.
- (10) Parties must advise the Authority if they reach a full or partial settlement.
- (11) A member of the staff who assists the participants in the informal settlement process may not participate in any adjudication, or approval process for the same proceeding, unless all parties consent in writing.

35 Formal dispute resolution

- (1) If the Authority is unable to facilitate an informal resolution of the dispute between an end-user and sectoral provider within thirty (30) days after receiving the complaint, the Authority will:
 - (a) if both parties consent, and the Authority concludes it would be appropriate, refer the matter to arbitration, at the parties' expense;
 - (b) conduct an adjudication pursuant to the procedures specified in Chapter 9 of these Rules; or
 - (c) if the Authority determines that the complaint is plainly without merit, issue a decision and order dismissing the complaint.
- (2) If the Authority is unable to facilitate an informal resolution of a dispute between sectoral providers within sixty (60) days after receiving the complaint, the Authority, pursuant to a vote of the Board, will:
 - (a) if both parties consent, and the Authority concludes it would be appropriate, refer the matter to either binding or non-binding arbitration at the parties' expense;
 - (b) conduct an adjudication; or
 - (c) if the Authority determines that the complaint is plainly without merit, issue a decision summarily dismissing the complaint.
- (3) In any case in which the Authority decides to conduct an adjudication, the Chairman will appoint a presiding officer in the manner specified in Rule 61.
- (4) Unless the Board, by unanimous vote, establishes a longer period, the Authority will issue an adjudicative decision and order:

- (a) within three months after the commencement of the adjudication in connection with a dispute between an end-user and a sectoral provider; and
- (b) within four months after the commencement of the adjudication in connection with a dispute between sectoral providers.

36 Settlement procedure

- (1) At any point during the complaint process, some or all parties in a dispute may present a proposed settlement of some of or all disputed issues to the Authority for its review. In such cases, the parties must submit the proposed settlement, along with an explanation of why approval of the settlement would be in the public interest. Supporting documentation must include:
 - (a) a narrative outlining the scope of the underlying dispute;
 - (b) the scope of the settlement and its principal aspects;
 - (c) a statement of parties' views about why the proposal satisfies both their interests and the public interest; and
 - (d) a summary of legal points that bear on the proposed settlement.
- (2) If the Chairman has appointed a presiding officer, the presiding officer will prepare a recommendation for consideration by the Board.
- (3) The Board will determine whether a proposed settlement meets all applicable legal and policy standards. The Board may ask questions of the parties or request additional information from them.
- (4) The Board may schedule a formal settlement hearing and/or provide an opportunity for public comment.
- (5) Parties opposed to adoption of a proposed settlement may present argument in opposition to the proposal and may present evidence, in support of their preferred result.
- (6) Unless all participants agree otherwise, no statement, admission, or offer of settlement made during settlement negotiations is admissible in evidence in any formal hearing before the Authority without the consent of the participants.

37 Authority discretion to accept settlement, impose conditions, or reject a proposed settlement

- (1) The Board will approve settlements when doing so is lawful, when the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest.
- (2) If the Board rejects a proposed settlement, the dispute resolution procedure returns to its status at the time the settlement was offered and the time frames for resolving the dispute will be extended by the elapsed time for consideration of the settlement.
- (3) If the Board accepts a proposed settlement subject to conditions not proposed in the settlement, the parties may seek reconsideration of the proposed conditions or may reject the conditions.
- (4) If a party rejects a proposed condition, the settlement is deemed rejected.

Chapter 7

ADMINISTRATIVE PROCEEDINGS AND DETERMINATIONS

General

38 Pre-commencement

- (1) The Authority may perform research, conduct analysis, and hold informal discussions with any person for the purposes of collecting information with respect to any matter over which it has authority without commencing a public consultation or an adjudication.
- (2) The performance of any pre-commencement activities does not obligate the Authority to commence an administrative proceeding.

39 Commencement of administrative proceedings

- (1) The Authority may commence an administrative proceeding at any time with respect to any matter within its authority.
- (2) Except where specifically required by the Regulatory Authority Act 2011 or by sectoral legislation, the Board may choose whether the Authority will conduct a public consultation or adjudication.

- (a) A public consultation commences when the Authority publishes a Consultation Document on the official website.
- (b) An adjudicative proceeding commences when a presiding officer gives notice to the parties that a prehearing conference, or initial hearing, will be conducted.
- (3) The Authority will publish on the official website a list of each public consultation or adjudication that it has commenced.

40 Conversion of proceedings

- (1) The Authority, pursuant to a vote of the Board, may convert a regulatory proceeding from public consultation to an adjudicative proceeding, or vice versa, at any time for good cause. Upon conversion, the Authority will commence a new proceeding and will issue a notice to all interested parties that describes:
 - (a) the reason(s) for conversion; and
 - (b) the scope and schedule of the new proceeding.
- (2) The official record developed prior to conversion will be included in the official record of the newly commenced proceeding.

41 Consolidation of proceedings

- (1) The Authority, pursuant to a vote of the Board, may:
 - (a) consolidate two or more administrative proceedings in which the facts or principles of law are related; or
 - (b) sever an administrative proceeding into two or more separate proceedings.
- (2) Parties may request consolidation of separate administrative proceedings or the severance of an administrative proceeding by motion to the Board. If the request concerns an adjudication, the presiding officer will prepare a recommendation for consideration by the Board.

42 Evidence

- (1) The Authority will maintain an official record of each administrative proceeding.

- (2) Findings of fact in an administrative proceeding will be based exclusively on the record and on matters officially noticed in that proceeding.
- (3) The Authority will rely on the best evidence that is reasonably available. In the absence of sufficient evidence that is specific to Bermuda, the Authority may consider and rely on international best practices, benchmarks and data from countries that the Authority concludes are relevant to Bermuda.

Administrative determinations, clarifications and advisory guidance

43 General determinations

- (1) Except where the Regulatory Authority Act 2011 or sectoral legislation authorizes the Minister or the Minister of Finance to make regulations, the Authority, pursuant to a vote of the Board, may make general determinations to carry out the provisions and purposes of this Act, sectoral legislation or any regulations.
 - (a) Any general determination:
 - (i) will be made following a public consultation;
 - (ii) will constitute a statutory instrument, which imposes legally binding obligations on all sectoral participants, or on those sub-categories of sectoral participants that fall within the scope of the general determination;
 - (iii) will be subsidiary to the Regulatory Authority Act 2011, sectoral legislation and any regulations; and
 - (iv) may be revoked or modified by the Authority through the adoption of a subsequent general determination.

44 Orders

- (1) The Authority may issue orders that do any or all of the following:
 - (a) grant or deny any application or request received from a sectoral participant;
 - (b) approve, modify or disapprove any submission received from a sectoral participant;
 - (c) clarify the application of any statutory provision, regulations or administrative determination to a specific factual situation; and

- (d) take any other action within the scope of its authority, other than an action that may only be taken by the adoption of a general determination or an adjudicative decision and order.
- (2) The Authority will provide written notice of the order to any sectoral participant specified in an order.
- (3) Any order will be binding on any sectoral participant specified therein.

45 Directions

- (1) In any case in which the Authority concludes that a sectoral participant is acting in a manner that is not in accordance with its duties and obligations under the Regulatory Authority Act 2011, sectoral legislation, any regulations, any administrative determination, any adjudicative decision and order or any authorization, the Authority, pursuant to a vote of the Board, may direct the sectoral participant to take, or refrain from taking, such actions as the Authority reasonably determines to be necessary to ensure that the sectoral participant acts in conformity with its duties and obligations.
- (2) Before issuing a direction, the Authority will give the sectoral participant notice and shall specify a reasonable period of time, typically fifteen (15) to thirty (30) days, to present its views or take action that would obviate the need for the direction.
- (3) Any direction:
 - (a) will be binding on the sectoral participant to which it is addressed; and
 - (b) may be modified or revoked by the Authority, pursuant to a vote of the Board, after giving notice of the proposed modification or revocation and following the procedures specified in subsection (2), at any time.

46 Decisions

- (1) The Authority will issue a written decision specifying the relevant facts and providing a reasoned explanation for its actions:
 - (a) in connection with the adoption of any administrative determination; and
 - (b) in any other circumstances in which it is required to do so pursuant to the Regulatory Authority Act 2011 or sectoral legislation.

47 Effectiveness of administrative determinations

- (1) A general determination becomes effective on the later of:
 - (a) the date on which it is published in the Gazette; or
 - (b) the date specified by the Authority in the general determination.
- (2) Any administrative determination, other than a general determination, becomes effective on the later of:
 - (a) the date on which it is published on the Authority's official website; or
 - (b) the date specified by the Authority in the administrative determination.
- (3) A final adjudicative decision and order does not constitute final Authority action until either:
 - (a) the time for filing petitions for reconsideration has ended, and no party has filed a request for reconsideration; or
 - (b) one or more petitions for reconsideration have been filed and the Authority has issued an adjudicative decision and order on reconsideration.

48 Request for clarification of final Authority action

- (1) A party may file a motion for clarification of a final Authority action at any time.
- (2) The purpose of a motion for clarification is to ask for clarification of the meaning of an administrative determination or an adjudicative decision and order so that compliance may be enhanced. A motion for clarification may also request that obvious or non-substantive errors in orders be corrected.
- (3) A party may not file a request for clarification or challenge a finding of fact or conclusion of law, or to alter a substantive determination made by the Authority.
- (4) No party may file a response to a request for clarification unless requested by the Authority.

49 Stay

- (1) The Board may stay the effect of a final Authority action on its own initiative either at the time it takes an action that constitutes final

authority action or at any time prior to the date on which the action becomes effective.

- (2) Any party may petition to stay of the effectiveness of a final Authority action prior to the date on which the action becomes effective.
- (3) The effect of a final Authority action is not automatically stayed when a party files a motion for clarification, or a petition for reconsideration.

50 Advisory guidelines

- (1) The Authority, pursuant to a vote of the Board, may issue advisory guidelines in order to remove uncertainty regarding any matter within the scope of its authority.
- (2) An advisory guideline provides the Authority's reasoned views, but is not legally binding on either the Authority or sectoral participants.
- (3) Before adopting an advisory guideline, the Authority generally will conduct a public consultation.
- (4) The Authority will publish any advisory guidelines on the official website.

51 Correction of non-substantive errors

- (1) The Chief Executive may act on his or her own initiative or on the motion of any party to correct obvious or non-substantive errors in an administrative determination or adjudicative decision and order.
- (2) Any corrections made pursuant to section (1) will be made by publishing a corrected version on the official website and, in the case of a final adjudicative decision and order, by serving each party to the adjudication with a corrected version.

Exceptions to rules

52 Exemptions from, modifications to, or administrative determinations

- (1) The Authority, on its own initiative, pursuant to a vote of the Board, may grant an exemption from or modify the application of the Authority's administrative determinations in individual cases if consistent with the public interest, the purposes underlying administrative determinations, and applicable law.

- (2) A person may request an exemption or modification for an administrative determination by filing a request identifying the administrative determinations for which an exemption is sought, and providing an explanation of the reason for requesting the exemption.
- (3) Where appropriate, the Authority will conduct a public consultation before acting on the request.
- (4) The Board will enter an order granting or denying the request.

Chapter 8

PUBLIC CONSULTATIONS

53 Situations in which the Authority may initiate a public consultation

- (1) The Authority, pursuant to a vote of the Board, may initiate a public consultation in order to:
 - (a) prepare a report;
 - (b) make a recommendation to a Minister; or
 - (c) adopt, modify or repeal an administrative determination.
- (2) The Authority will initiate a consultation when directed to do so by a Minister or where required to do so pursuant to the Regulatory Authority Act 2011 or sectoral legislation.

54 Request to initiate a public consultation

- (1) Any person may request the Authority to initiate a public consultation. The request should contain sufficient information so that the Authority and public can understand the proposal.
 - (a) A person who requests the Authority to initiate a public consultation to prepare a report should specify the topic of the proposed report, the specific questions to be asked, and the reason for preparing the report.
 - (b) A person who requests the Authority to initiate a public consultation for the purpose of making a recommendation to the Minister should provide the text of the proposed recommendation along with a description of the need for, and expected effect of, adopting the recommendation.

- (c) A person who requests initiation of a public consultation for the purpose of adopting an administrative determination, should provide the text of the proposed administrative determination along with an explanation of the need for, and expected effect of, adopting the proposal.
- (d) A person who requests initiation of a public consultation for the purpose of modifying or repealing an administrative determination should identify the specific administrative determination to be modified or repealed, and provide an explanation of the specific changes proposed (such as specific changes to the text), along with an explanation of the need for, and expected effect of, adoption of the proposal. To the extent relevant, the request should address whether the administrative determination:
 - (i) is within the scope of the Authority's legal authority;
 - (ii) conflicts with or duplicates other laws, regulations, or administrative determinations;
 - (iii) has a discriminatory effect on certain sectoral participants;
 - (iv) no longer serves the purposes for which it was adopted;
 - (v) imposes disproportionate burdens; or
 - (vi) is ambiguous or inconsistent.
- (2) In any case in which a person submits a request to initiate a public consultation, but the Authority, pursuant to a vote of the Board, determines not to grant the request, the Authority, within six (6) months of receiving the request, will issue a decision and order denying the request.

55 Consultation documents

- (1) The Authority will commence a public consultation by publishing a consultation document on its official website.
- (2) The consultation document will include:
 - (a) the relevant factual and legal background;
 - (b) the issues on which public comment is sought;
 - (c) any tentative conclusions that the Authority has reached including, where appropriate, proposed language for any regulations that the Authority proposes to recommend to a

Minister or any administrative determination that the Authority proposes to adopt;

- (d) any questions that the Authority may request interested parties to address;
- (e) the date by which responses must be filed;
- (f) the deadline for completion of the consultation process and the issuance of a final report, recommendation or decision and order; and
- (g) the name and contact information for the staff member who will serve as the principal point of contact (case officer) for interested persons during the public consultation.

56 General procedures

- (1) Within a reasonable period after the conclusion of the initial consultation period, which typically will be no more than sixty (60) days, the Authority, pursuant to a vote of the Board, will issue:
 - (a) a preliminary report;
 - (b) a preliminary recommendation; or
 - (c) a preliminary decision and order.
- (2) The preliminary report, recommendation or decision and order will:
 - (a) summarise significant material in the administrative record;
 - (b) provide a reasoned explanation of the basis on which the Authority made any significant factual finding, policy determination and legal conclusion;
 - (c) in the case of a preliminary report, state the Authority's preliminary conclusions;
 - (d) in the case of a preliminary recommendation, state any policy or regulations that the Authority proposes to recommend to a Minister;
 - (e) in the case of a preliminary decision and order, state the proposed administrative determination that the Authority proposes to make; and
 - (f) establish the procedures and time frames for submitting responses regarding the preliminary report, recommendation or decision and order.
- (3) The Authority will post all responses to the consultation document, other than those for which a requested for confidential treatment has been granted, on the official website.

- (4) The Authority will provide the public with a reasonable period, which typically will be fifteen (15) to forty-five (45) days after the responses have been posted on the official website, in which to file written responses to the preliminary report, recommendation or decision and order.
- (5) The Authority will post all responses to the preliminary report, recommendation or decision and order, other than those for which a requested for confidential treatment has been granted, on the official website.
- (6) Within a reasonable period of time after the close of the response period, which typically will be no more than forty-five (45) days after the responses have been posted on the official website, the Authority, pursuant to a vote of the Board, will publish a final report, recommendation or decision and order, which will:
 - (a) summarise the responses received regarding the preliminary report, recommendation or decision and order;
 - (b) provide a reasoned explanation of the basis on which the Authority revised any significant factual finding, policy determination or legal conclusion contained in the preliminary report, recommendation or decision and order;
 - (c) in the case of a final report, state the Authority's final conclusions;
 - (d) in the case of a final recommendation, state the policy or regulations that the Authority recommends the Minister adopt; and
 - (e) in the case of a final decision and order, specify:
 - (i) any administrative determinations that the Authority has adopted; and
 - (ii) the date on which such administrative determinations will become effective.

57 Official record in a public consultation

The official record in a public consultation includes:

- (1) the consultation document;
- (2) any public notices issued by the Authority;
- (3) any responses submitted to the Authority;
- (4) the transcript of any hearing conducted by the Authority;

- (5) a record of any ex parte communications regarding the public consultation;
- (6) any additional material, not generally available to the public, on which the Authority relied;
- (7) any reports, recommendations or decisions, whether preliminary or final, adopted in the course of the public consultation; and
- (8) the decision and order adopting any administrative determination following a public consultation.

58 Restrictions on ex parte communications

- (1) Unless the Authority provides otherwise, any interested person may make an ex parte communication during the course of a public consultation.
- (2) In any case in which a person makes an ex parte communication to the Authority during the course of a public consultation, within two business days after the date on which the ex parte communication occurred, the person who made the ex parte communication must submit to the Secretary:
 - (a) a written description of the issues discussed and the positions espoused; and
 - (b) a copy of any materials provided.
- (3) The Authority will promptly review all submissions and will reject any submission that does not contain a sufficiently detailed description to provide reasonable notice to the public of the issues discussed and positions espoused or is otherwise incomplete.
- (4) Within two business days after the required submission has been made, the Authority will post on the official website:
 - (a) a notice of the ex parte communication;
 - (b) a copy of the submission; and
 - (c) any written materials submitted, other than materials for which the Authority has granted confidential treatment.
- (5) In any case in which a person submits written materials to the Authority during an ex parte meeting subject to a request for confidential treatment, but the Authority has not made a determination as to whether to grant the request by the date on which the Authority is required to post the submission on the official website, the Authority will post any portion of the submission for which confidential treatment has not been sought along with a notice indicating that the

Authority is reviewing a request to grant confidential treatment to additional materials submitted. The Authority will post any subsequent determination to grant the request regarding the confidentiality request.

59 Emergency administrative proceedings

- (1) The Authority, pursuant to a vote of the Board, may issue a general determination on an emergency basis without conducting a public consultation or complying with other procedural requirements.
- (2) The Authority will take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare that justifies use of emergency administrative proceedings.
- (3) The Authority will enter an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the Authority's discretion, to justify the determination of an immediate danger and the Authority's decision to take the specific action.
- (4) The Authority will promptly publish on the official website any general determination made on an emergency basis.
- (5) Any general determination made on an emergency basis will be effective, as applied to a specific sectoral participant, at the earlier of the date on which:
 - (a) the sectoral participant has actual notice of the general determination; or
 - (b) the general determination is published in two newspapers of general circulation in Bermuda, one of which will be the Gazette.
- (6) In any case in which the Authority makes a general determination on an emergency basis, the Authority will:
 - (a) file the emergency general determination with the Cabinet Secretary for publication in the Gazette as promptly as possible; and
 - (b) within fourteen (14) days after the day on which the Authority makes the emergency general determination, or any longer period approved by the Minister, commence a public consultation.
- (7) Any general determination adopted on an interim or emergency basis pursuant to this section will remain in effect for no more than six (6) months, unless the Authority, with the approval of the Minister, causes

a notice to be published in the Gazette extending the effective period for up to an additional six (6) months.

Chapter 9

ADJUDICATIONS

Commencement and participation

60 Situation in which the Authority will conduct an adjudication

- (1) The Authority will proceed by means of adjudication:
 - (a) when conducting an enforcement proceeding; or
 - (b) in any case in which the Authority is required to do so by the Regulatory Authority Act 2011 or sectoral legislation.
- (2) The Authority may conduct an adjudication to resolve a dispute between an end-user and a sectoral provider, or between sectoral providers, in any case in which the Authority was not able to resolve the dispute using the informal dispute resolution procedures described in Rule 34.

61 Presiding officers

- (1) Prior to the commencement of an adjudication, the Chairman will select a qualified person to serve as a presiding officer. The person selected:
 - (a) must not have had any prior direct involvement in the matter that is the subject of the adjudication;
 - (b) must not have any conflict of interest or experience that would preclude the person from being able to act, and being perceived as acting, in an impartial manner in regard to the adjudication over which he or she is to preside; and
 - (c) must be a barrister, solicitor or attorney in good standing in the jurisdiction in which he or she practices.
- (2) In any case in which the Authority conducts an adjudication in connection with an enforcement action, the Chairman, with the consent of the Minister responsible for justice, will select an independent presiding officer who:
 - (a) meets the standards specified in subsection (1); and

- (b) is not:
 - (i) a member of the Board;
 - (ii) a member of the staff; or
 - (iii) an agent or legal representative of the Authority.
- (3) The presiding officer may issue orders necessary for the conduct of the proceedings, including orders:
 - (a) convening hearings;
 - (b) summoning witnesses, expert or otherwise;
 - (c) requiring the examination of witnesses on oath or otherwise; and
 - (d) compelling the production of any document, record or thing relevant to the subject matter of the proceeding.
- (4) If any party fails to comply with a valid order issued by a presiding officer, the Authority may issue a direction and, in addition, may either:
 - (a) initiate an enforcement action; or
 - (b) refer the matter to the Director of Public Prosecutions.
- (5) The Board may only remove an independent presiding officer:
 - (a) for cause;
 - (b) with the unanimous consent of the Commissioners; and
 - (c) with the approval of the Minister responsible for justice.
- (6) Any person, other than a member of the Authority staff, who serves as a presiding officer will receive remuneration for services rendered, in accordance with the Government Authorities (Fees) Act 1971. Any remuneration will be paid without regard to any substantive or procedural decision made by the presiding officer.

62 Commencement

- (1) An adjudication commences when the presiding officer gives notice to the parties that a pre-hearing conference or initial hearing will be conducted.
- (2) The notice will:
 - (a) contain a concise statement of the purpose for which the Authority has commenced the adjudication;
 - (b) summarise the rights and obligations of the parties to the adjudication; and

- (c) set the time and place of the conference or hearing, which will be at least fourteen (14) days after the date on which the notice is served on the parties.

63 Intervention

- (1) Any person who seeks to intervene in an adjudication must file a written request to intervene at least five (5) business days before the prehearing conference date or initial hearing date, whichever occurs first. The Presiding Officer will grant a late-filed request to intervene only on a showing of good cause, including a satisfactory explanation of why the person did not timely file a petition.
- (2) Any request to intervene must contain:
 - (a) the petitioner's name and address;
 - (b) the petitioner's interest in the proceeding;
 - (c) the petitioner's position(s) with respect to the matters in controversy;
 - (d) whether the petitioner proposes to broaden the issues in the proceeding and, if so, a statement of the proposed issues; and
 - (e) the name and address of petitioner's representative, if any.
- (3) Parties may respond to any request to intervene. Responses may be written, or may be heard orally at a prehearing conference or at hearing. A party's written response to a petition to intervene must be filed and served at least two (2) business days before the next prehearing conference or hearing date, or at such other time as the presiding officer establishes.
- (4) The presiding officer will only grant a petition for intervention upon determining that:
 - (a) the person seeking to intervene has:
 - (i) a legal interest in the matter that is the subject of the adjudication that will be affected by the outcome of the adjudication; or
 - (ii) any other substantial interest that will be affected by the outcome of the adjudication; and
 - (b) intervention by that person will not impair the orderly conduct of the proceedings.
- (5) The presiding officer may impose conditions or limitations upon an intervenor's participation in the proceedings at any time. Conditions may include:

- (a) limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;
 - (b) limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and
 - (c) requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.
- (6) The presiding officer will promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

64 Legal representatives

- (1) Within five (5) days after the commencement of an adjudication, or within five (5) days after being granted leave to intervene, a party must designate any representative by written notice to the presiding officer.
- (2) Each party must supply the following information about the individual that it names as its representative:
 - (a) name;
 - (b) e-mail address;
 - (c) mailing address;
 - (d) telephone number;
 - (e) fax number (if any); and
 - (f) basis on which the person satisfies the qualifications contained in subsection (4) of this Rule.
- (3) A party must make any subsequent changes to the designation of its representative by written notice to the presiding officer, and must serve a copy on each other party in the proceeding.
- (4) A person may only serve as a representative of a party to an adjudicative proceeding if the person is:
 - (a) a member in good standing with a current practicing certificate issued by the Bermuda Bar Association; or
 - (b) an officer or employee of a party, if granted permission by the presiding officer to represent the party.
- (5) The presiding officer may refuse to allow a person who does not have the requisite degree of legal training, experience, or skill to appear in a representative capacity.

- (6) Persons appearing in adjudicatory proceedings in a representative capacity must be familiar with, and conform to, the requirements of the Barristers' Code of Professional Conduct 1981. If any representative fails to conform to those standards, the presiding officer may exclude the person from the proceeding. In addition, the Authority may report the ethical violation to the Bermuda Bar Council, and may refuse to permit the person to appear before it in a representative capacity in any future proceeding.

Conferences and hearings

65 Prehearing conferences

- (1) The presiding officer may require, by written notice or by oral notice on the record of the hearing, that all parties (and all persons who seek to intervene) attend a prehearing conference.
- (2) The presiding officer will provide reasonable notice of the time and place established for a prehearing conference and the matters to be addressed.
- (3) The following topics may be discussed at a prehearing conference:
 - (a) identification and simplification of the issues;
 - (b) the necessity or desirability of amendments to the pleadings;
 - (c) the possibility of obtaining stipulations of fact and to documents that might avoid unnecessary proof;
 - (d) limitations on the number of witnesses;
 - (e) coordinated examination of witnesses;
 - (f) procedure at the hearing;
 - (g) the need for, and timing of, distribution of written testimony and exhibits to the parties and the bench prior to the hearing;
 - (h) disposition of petitions for leave to intervene;
 - (i) resolution of discovery disputes;
 - (j) resolution of pending motions; and
 - (k) any other matters that may aid in the disposition of the proceeding, whether by decision or by settlement.
- (4) A party's failure to attend a prehearing conference constitutes the party's waiver of all objections to any order or ruling arising out of the conference or any agreement reached at conference, unless the party shows good cause for its failure to attend.

- (5) The presiding officer may make an oral statement on the record or may enter an order describing the actions taken at the prehearing conference and agreements among the parties concerning all of the matters considered. Parties may object to the oral statement on the record at the time the oral statement is made, or may object to any written prehearing conference order within ten (10) days after the date the order is served.
- (6) The results of the prehearing conference will control the course of the proceeding unless modified by subsequent order or decision of the presiding officer to accommodate the needs of the case.

66 Hearing Schedule

- (1) The presiding officer will set all hearings sufficiently in advance so that all parties will have a reasonable time to prepare, considering the procedural schedule, other pending matters, and the need to minimize postponements.
- (2) When a hearing is not concluded as scheduled, the time and place for continued hearing sessions may be set by the presiding officer:
 - (a) orally at the hearing; or
 - (b) by notice served on the parties.

67 Failure to appear at a hearing

- (1) The presiding officer may dismiss a party or find a party in default for failure to appear at the time and place set for hearing. When the presiding officer dismisses a party or finds a party in default, it will implement the dismissal or default by a written order. When a party is found in default, the order stating that finding may also dispose of the issues in the proceeding.
- (2) A party who is dismissed from a proceeding or found in default may contest the order of dismissal or default by written motion filed within ten (10) days after service of the order. The Board will decide such matters in the manner specified in Rule 87.

Submissions

68 Filings made to the Authority in an adjudication

- (1) Unless the presiding officer directs otherwise:
 - (a) all filings made in an adjudication must be made electronically.
 - (b) electronic filings must be completed by 5:00 p.m. on the date established for filing.
 - (c) All filings must be simultaneously served on all parties by e-mail or fax.
- (2) Courtesy or informational copies may be sent, by e-mail, to the presiding officer or other Authority employees.

69 Requirements for submissions

- (1) All pleadings, motions and other submissions filed in an adjudication must meet the following format requirements:
 - (a) The submission must be prepared on A4 size paper, with standard margins, and must be double spaced. The text must be in a standard double-spaced, 12-point font, with footnotes in the same font and of at least 10-point type.
 - (b) If longer than ten (10) pages, the submission must contain a table of contents, table of authorities, and a summary.
- (2) The cover or first page of all submissions must contain:
 - (a) the number of the matter;
 - (b) the title of the matter;
 - (c) the title of the pleading;
 - (d) the date on which it was served;
 - (e) the name, address, telephone number and email address of the party on whose behalf it is being filed; and
 - (f) the name, address, telephone number and email address of the attorney or representative by whom it was served.
- (3) Every submission of a party must be signed by the party, or by the party's representative.
- (4) Unless the presiding officers orders otherwise, submissions must not exceed fifty (50) pages (exclusive of exhibits, appended authorities, supporting affidavits and other documents).
- (5) All factual allegations must be supported. If a party relies on affidavits, deposition transcripts, or documentary evidence, the party must quote

the cited material verbatim or attach a photocopy of relevant pages to an affidavit that identifies and verifies the documents.

- (6) All legal arguments must be supported. The presiding officer may require a party to file copies of the text of authorities that are cited in the party's submission on which the party places substantial reliance.
- (7) The presiding officer may return a submission to a party for correction if the presiding officer finds the submission to be defective or insufficient.
- (8) The presiding officer will liberally construe submissions with a view to effect justice among the parties.
- (9) The presiding officer may allow amendments to submissions on such terms as promote fair and just results.
- (10) Parties must update their submission whenever necessary to ensure the completeness and accuracy any factual assertion or legal argument.

70 Service of documents

- (1) Within five (5) days after the commencement of an adjudication, or within five (5) days after being granted leave to intervene, a party must designate one person to receive service of documents relating to the adjudication by written notice to the presiding officer.
- (2) Service on the representative is valid service upon the party.
- (3) Each party must supply the following information about the individual that it names to receive service:
 - (a) name;
 - (b) e-mail address;
 - (c) mailing address;
 - (d) telephone number;
 - (e) fax number (if any); and
 - (f) relationship to party.
- (4) The presiding officer will maintain a master service list, which will be served on each party.
- (5) A party must make any subsequent changes to the designation of the party to receive service on its behalf by written notice to the presiding officer, and must serve a copy on each other party in the proceeding.
- (6) Parties must serve documents on each other by e-mail, unless one or both parties confirms that it is unable to do so, in which case the parties must serve each other by one of the following methods:
 - (a) in person;

- (b) by mail, properly addressed with first class postage prepaid;
 - (c) by delivering to a commercial parcel delivery company and making or arranging payment of the pertinent fee; or
 - (d) by fax transmission.
- (7) Unless otherwise ordered by the presiding officer, service is complete as follows:
- (a) Personal service is complete when the document has been physically tendered to the recipient;
 - (b) Service by e-mail is complete when the document being served has been entirely received at the recipient's designated e-mail address.
 - (c) Service by mail is complete when a copy of the document is properly addressed, stamped, and deposited in the Bermuda mail.
 - (d) Service by commercial parcel delivery is complete when the parcel delivery company accepts a copy of the document for delivery.
 - (e) Service by fax transmission is complete when the document being served has been entirely received in the recipient's fax machine.
- (8) Each person making a filing that must be served on other parties must include with the filing the following certification:
- “I hereby certify that I have this day served this document upon all parties of record in this proceeding, by [state the authorized method of service]”
- Dated at this day of
. . .
- (signature of person who served the document)
- (9) All documents required to be served by the Authority in an adjudication will be served by e-mail unless a party certifies that it is unable to receive documents in that manner, in which case the Authority will serve the document by one of the methods described in sub-section (6).

Specific pleadings

71 Answers

- (1) In any case in which a party is required to file an answer, the answer must:
 - (a) contain a counter-statement of the facts;
 - (b) admit or deny specifically all material allegations of the complaint;
 - (c) fully and completely disclose the nature of the party's affirmative defences, if any; and
 - (d) provide a legal analysis in support of the answer.
- (2) The following time frames apply to the filing of an answer:
 - (a) If the complaint is filed by an end-user or a sectoral provider, the answer must be filed within ten (10) days after the complaint has been filed, unless the staff member designated pursuant to Rule 34(4) specifies a different period.
 - (b) If the complaint is filed by the Authority, the answer must be filed within twenty-one (21) days after the Chief Executive has served the complaint, unless the Chief Executive specifies a different period.

72 Motions: General requirements

- (1) Parties must file written motions separately from any pleading or other communication with the Authority.
- (2) A written motion must include the following information in the body of its text:
 - (a) a statement of the specific relief requested;
 - (b) a succinct statement of the facts that the moving party contends are material to the requested remedy; and
 - (c) a concise statement of the legal issue or issues upon which the presiding officer is requested to rule.
- (3) Unless another Rule establishes a different deadline, a party who opposes a written motion may file a written response within five (5) business days after the motion is served, or may make an oral or written response at such other time as the presiding officer may set.
- (4) A party may make an oral motion during a hearing, unless the presiding officer rules otherwise. The presiding officer will provide an

opportunity for other parties to respond to any oral motion, either orally or in writing. The presiding officer may require that an oral motion be reduced to writing and, if so, will provide an opportunity for a written response.

73 Motions to dismiss

- (1) A party may move to dismiss another party's complaint (in whole or part) on the grounds that the opposing party's complaint fails to state a claim on which the Authority may grant relief.
 - (a) A party may file a motion to dismiss at any time during the period after the presiding officer issues a notice commencing the adjudication and the date of the first hearing.
 - (b) A party who opposes a written motion to dismiss may file a response within ten (10) days after service of the motion, or at such other time as may be set by the presiding officer.
 - (c) The presiding officer may allow oral argument at the first hearing following the filing of a response.
- (2) Filing a motion to dismiss does not automatically stay any schedule proceedings.

74 Motions for summary determination

- (1) A party may move for summary determination of one or more issues if the pleadings filed in the proceeding, together with any properly admissible evidentiary support (e.g., affidavits, fact stipulations, matters of which official notice may be taken), show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
 - (a) A party must file any motion for summary determination at any time after the presiding officer issues the notice commencing the adjudication, unless the presiding officer establishes a specific date.
 - (b) A party who answers a motion for summary determination must file its answer and any cross-motion for summary determination within twenty (20) days after the motion is served, unless the presiding officer establishes a different date.
- (2) Filing a motion for summary determination does not automatically stay any scheduled proceedings.

75 Motions for postponement or extension of time

- (1) Any party may request a postponement or extension of time by oral or written motion. The presiding officer may require a written request if a party makes an oral request. The presiding officer may rule on such motions orally at a prehearing conference or hearing, or may issue an order.
- (2) The presiding officer will grant a postponement or extension of time if the requesting party demonstrates good cause and the request will not prejudice any party or the Authority and is not inconsistent with the public interest or the Authority's administrative needs.
- (3) A party must file any written motion for postponement or extension of time at least five (5) business days prior to the deadline as to which the postponement or extension of time is requested and must serve the motion by means that ensure its receipt by other parties the next business day after filing. Parties must file any written response within three (3) business days after the motion is served, or two (2) days prior to the deadline that is sought to be continued, postponement or extended, whichever is earlier. Parties may orally respond when a hearing session is held prior to the stated deadline for a written response.
- (4) A party must make any oral request for postponement or extension of time on the record in a proceeding at least two (2) business days prior to the deadline as to which the postponement or extension of time is requested. The Authority will permit oral responses at the time the oral request is made.
- (5) The presiding officer may consider requests for postponement or extension of time that are made after the deadlines stated in this Rule if the requester demonstrates good cause that prevented a timely request.
- (6) The presiding officer will grant postponements or extensions of time only to a specified date.

Discovery

76 Right to discovery

- (1) Parties to an adjudication are entitled to discovery relating to matters in question in the adjudication.
- (2) Parties to an adjudication may agree:

- (a) to informal discovery procedures in addition to, or in place of, the procedures contained in these Rules; and
 - (b) to dispense with or limit the discovery to which they would otherwise be entitled.
- (3) Discovery requests must seek only information that is relevant to the issues in the adjudicative proceeding or that may lead to the production of information that is relevant.
- (4) Parties must not seek discovery that is unnecessary, unreasonably duplicative, or unduly burdensome or expensive. Discovery must not be used to harass or to cause unnecessary delay or needlessly increase in the costs of the adjudication.

77 Discovery methods

- (1) The presiding officer may establish a schedule for discovery in a prehearing order prior to the initial hearing. The schedule will provide deadlines sufficient to allow a timely opportunity for responses and for disputes to be resolved. The presiding officer may subsequently modify the time limits to the extent necessary.
- (2) The presiding officer may order any party to an adjudication to make and serve on any other party a list of the documents that are or have been in its possession, custody or power relating to any matter in question in the adjudication.
- (3) The presiding officer may permit other methods of discovery, to the extent necessary for disposing fairly of the matter and controlling costs, including:
 - (a) discovery by interrogatories;
 - (b) notices to admit facts; and
 - (c) examinations on oath.
- (4) Parties should use the Rules of the Supreme Court 1985 as a guide when conducting discovery.

78 Protective orders

- (1) The presiding officer may enter a protective order designed to promote the free exchange of information when parties reasonably anticipate that discovery in a proceeding will call for the production of confidential information.

- (2) Upon motion by a party or by the person from whom discovery is sought that establishes a need to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, the presiding officer may make any order, including one or more of the following, that:
- (a) the discovery will not be allowed;
 - (b) the discovery will be allowed only on specified terms and conditions;
 - (c) the discovery will be allowed only by a method of discovery other than the method selected by the party seeking discovery;
 - (d) certain matters may not be inquired into, or that the scope of the discovery will be limited to certain matters;
 - (e) discovery will be conducted with no one present except persons designated by the Authority or the presiding officer;
 - (f) the contents of a deposition will not be disclosed or will be disclosed only in a designated way;
 - (g) a trade secret or other confidential research, development, or commercial information will not be disclosed or will be disclosed only in a designated way; or
 - (h) the parties must file specified documents or information enclosed in sealed envelopes to be opened as directed by the Authority or the presiding officer.

79 Disputes

- (1) Parties must make good faith efforts to resolve informally all discovery disputes.
- (2) A party may file a written motion, or move orally at prehearing conference, to compel discovery if a dispute cannot be informally resolved.
- (3) The presiding officer will hear discovery disputes, on shortened notice, at the earliest reasonable time. The presiding officer may conduct telephone hearings or conferences for the argument of discovery disputes. The presiding officer may make discovery rulings orally on the record or by written order.
- (4) Any party may by motion, or the presiding officer may on his or her own motion, propose that sanctions be imposed if a party fails or refuses to comply with an oral or written order resolving a dispute under this rule.

Evidence

80 Evidentiary procedures

- (1) The presiding officer will regulate the course of the proceedings, in conformity with the procedures specified in these Rules.
- (2) The presiding officer, at appropriate stages of the proceeding, will give all parties full opportunity to submit and respond to pleadings, motions, objections and offers of settlement.
- (3) The presiding officer will establish the order of presentation of evidence. However, evidence will ordinarily be received in the following order:
 - (a) Party having the burden of proof;
 - (b) Parties supporting the party having the burden of proof;
 - (c) Parties opposing the party having the burden of proof;
 - (d) Rebuttal by the party having the burden of proof.
- (4) The presiding officer will administer an oath or affirmation to each witness before the witness testifies in an adjudicative proceeding.
- (5) The presiding officer will cause any hearing to be recorded by audio or video recording or by the preparation of a written transcript. Any party who seeks recording of the hearing by a means other than that selected by the presiding officer may request permission to do so, at its own expense.

81 Admissibility of evidence

- (1) The presiding officer may follow the rules of evidence governing civil proceedings under the Rules of the Supreme Court 1985, or may adapt them as appropriate.
- (2) The presiding officer may exclude evidence that is irrelevant, repetitive, or inadmissible, whether or not a party objects to the evidence. Parties objecting to the introduction of evidence must state the grounds for the objection at the time the evidence is offered. The presiding officer may permit the party offering rejected evidence to describe briefly for the record its nature and purpose as an offer of proof. A written offer of proof may be required.
- (3) The presiding officer may take official notice of any judicially cognizable fact. Examples of such facts include, but are not limited to:

- (a) regulations, rules, administrative rulings and orders, exclusive of findings of fact, of the Authority and other governmental agencies;
 - (b) contents of authorizations issued by the Authority; and
 - (c) tariffs, classifications, and schedules regularly established by or filed with the Authority as required or authorized by law.
 - (d) technical or scientific facts within the Authority's specialized knowledge; and
 - (e) codes or standards that have been adopted by a self-regulatory or co-regulatory body; and
 - (f) international best practices, and benchmarks and data from other countries that are relevant to Bermuda.
- (4) The presiding officer will notify parties of material officially noticed and its source. The presiding officer will afford parties an opportunity to contest facts and material so noticed. The presiding officer may require a party proposing that official notice be taken to provide copies of officially noted matter to the record and to all other parties.
- (5) Any evidence offered is subject to appropriate and timely objection. Parties that have objections must state them. Failure to object constitutes a waiver of the right to object.

82 Stipulation of facts

- (1) The parties may agree to stipulate some or all of the facts involved in a dispute. The parties to a stipulation may file it in writing or enter it orally into the record.
- (2) The presiding officer may reject the stipulation or require proof of the stipulated facts, despite the parties' agreement to the stipulation.
- (3) If the presiding officer accepts the stipulation:
 - (a) it is binding on the stipulating parties; and
 - (b) the parties may present it as evidence at a hearing.

83 Documentary evidence

- (1) A party who offers evidence that consists of a portion of a document must designate the portion that is offered.
- (2) Official records contained in official publications or nationally recognized reporting service publications that are in general circulation and readily accessible to all parties may be introduced by reference.

The presiding officer may require the party offering such evidence to provide a copy for the record and to each party.

84 Official record in an adjudication

- (1) The official record in an adjudication includes:
 - (a) notices of all proceedings;
 - (b) any order;
 - (c) any motions, pleadings or stipulations filed by the parties;
 - (d) all evidence submitted;
 - (e) any intermediate rulings;
 - (f) the recording or transcript of any hearing; and
 - (g) any preliminary adjudicative decision and order, final adjudicative decision and order or adjudicative decision and order on reconsideration.

85 Prohibitions on ex parte communications

- (1) A member of the Board may not initiate or receive an ex parte communication regarding any issue in an adjudication once the Notice of Commencement has been issued.
- (2) A presiding officer may not initiate or receive an ex parte communication regarding any issue in the adjudication over which he or she is presiding.
- (3) A member of the Board or a presiding officer may receive aid from staff members who:
 - (a) are subject to the presiding officer's or Board Member's supervision;
 - (b) have no conflict of interest or who have complied with the procedures specified in Rule 14; and
 - (c) have not had any prior direct involvement in the specific matter that is the subject of the adjudication.
- (4) A member of the Board or a presiding officer may:
 - (a) provide information to persons employed by the Authority regarding scheduling and administrative matters related to the adjudication; and
 - (b) conduct settlement negotiations with the parties.
- (5) A member of the Board or a presiding officer who receives a prohibited ex parte communication will, within one (1) business day

after receiving the communication, place a notice in the administrative record stating the substance of the communication received, and the identity of each person from whom the presiding officer received such a communication.

- (6) The member of the Board or presiding officer will not consider any information provided as a result of a prohibited ex parte communication in making any adjudicative decision and order.

86 Informal adjudication

- (1) Unless the Regulatory Authority Act 2011 or any sectoral legislation requires an adjudicative hearing, the Authority may conduct an informal adjudication.
- (2) In any informal adjudication, the presiding officer may prepare a proposed preliminary adjudicative decision and order, solely on the basis of written pleadings filed by the parties.

Orders and Post-order Process

87 Interlocutory orders

- (1) The Board may review interlocutory orders issued by a presiding officer in an adjudication if:
 - (a) the ruling terminates a party's participation in the proceeding and the party's inability to participate thereafter could cause it substantial and irreparable harm;
 - (b) a review is necessary to prevent substantial prejudice to a party that would not be remediable by post-hearing review; or
 - (c) a review could save the Authority and the parties substantial effort or expense, or some other factor is present that outweighs the costs in time and delay of exercising review.
- (2) Any party may petition the Board for review of an interlocutory order. Petitions for interlocutory review must be filed and served on other parties within ten (10) days after service of the order or issuance of the ruling for which review is requested. The petition must state why the ruling is in error or should be changed and why interlocutory review is necessary, and must cite reasons that support the petition. Answers must be filed within five (5) days after the petition is filed. The Board may alter these filing deadlines for good cause shown.

88 Post-hearing process

- (1) The presiding officer will confer with the parties concerning post-hearing process.
- (2) The presiding officer will determine whether oral argument, briefs, or both will be required. The presiding officer may establish a common format or outline to be used by all parties if briefs are required.
- (3) The presiding officer may require parties to file proposed findings of fact and conclusions of law.

89 Preliminary adjudicative decisions and final orders

- (1) The presiding officer will prepare a preliminary adjudicative decision and order, which will be submitted to the Board and provided to the parties, typically within thirty (30) days after the submission of all pleadings and the conclusion of any hearing.
- (2) The preliminary adjudicative decision and order will contain:
 - (a) a summary of the positions of the parties;
 - (b) proposed findings of fact and conclusions of law; and
 - (c) the proposed disposition of the matter, including any enforcement action to be taken or damages to be awarded.
- (3) The preliminary adjudicative decision and order also may propose requiring the payment of costs, which may include:
 - (a) costs incurred by a party in connection with the adjudication; and
 - (b) administrative costs and expenses incurred by the Authority in connection with the adjudication.

90 Responding to a Preliminary Adjudicative Decision and Order

- (1) Unless the Board directs otherwise, any party that seeks to challenge any aspect of the preliminary adjudicative decision and order must do so within ten (10) days of the day on which they are served with the order. The Board will accept only one submission from any party.
- (2) Submissions challenging a preliminary adjudicative decision and order must clearly identify the evidence, law, rule or other authority that the submitting party relies upon to support the challenge, and state the modifications that the submitting party seeks.

- (a) A submission that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding of fact.
- (b) A submission that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law.
- (3) Any party to the adjudication may respond to another party's submission. Any response to a submission must be filed and served within ten (10) days after the submission is filed, unless the Authority designates a different time.
- (4) Submissions and responses must not exceed fifty (50) pages, without prior permission from the Board, and must be served on all other parties.
- (5) A party has no right to reply to a response, but may petition the Board for leave to reply. Any party seeking leave to reply must identify the new matters raised in the response and must demonstrate why those matters could not reasonably have been anticipated and why a reply is necessary. The party may attach the reply to the petition for leave to accept the reply. A reply must be filed no later than five (5) days after service of the response. The Board may extend the time upon a showing of good cause.
- (6) The Board will allow oral argument only where plainly necessary to assist the Board in making its decision.

91 Motion to reopen the record prior to entry of a final order

- (1) Any party may file a motion to reopen the record at any time after the close of the record and before the Board issues a final adjudicative decision and order. The Board also may reopen the record in a proceeding on its own motion.
- (2) The Board will only reopen the record to allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of the adjudicative proceeding or for any other good and sufficient cause.
- (3) The Board will give all parties an opportunity to respond to any evidence received during the period after the record has been reopened.

92 Final adjudicative decision and order

- (1) After the Board has made any revisions to the preliminary adjudicative decision and order that it concludes are appropriate, typically within 30 days after all submissions have been made, it will adopt a final adjudicative decision and order which will be:
 - (a) served on the parties; and
 - (b) published on the official website.
- (2) In the event that any Commissioner concurs with, or dissents from, the final adjudicative decision and order, the Authority will publish any formal statement issued by the concurring or dissenting Commissioner.
- (3) A final adjudicative decision and order will not constitute final Authority action until either:
 - (a) the time for filing petitions for reconsideration has ended, and no party has filed a request for reconsideration; or
 - (b) one or more petitions for reconsideration has been filed and the Authority has issued an adjudicative decision and order on reconsideration.
- (4) In lieu of adopting a final adjudicative decision and order, the Board may return the matter to the presiding officer for further consideration, including further hearing or other process when appropriate.

93 Reconsideration of a final adjudicative decision and order by petition

- (1) Any party to an adjudication may seek reconsideration of the adjudicative decision and order on the grounds that it is:
 - (a) inconsistent with this Act or with any applicable sectoral legislation, regulations or general determination;
 - (b) procedurally improper; or
 - (c) not supported by the administrative record.
- (2) Any party seeking reconsideration must submit a written petition for reconsideration to the Board within twenty-one (21) days of the date on which the final adjudicative decision and order is published on the official website, unless the Board specifies a longer period.
- (3) Any petition for reconsideration must specify in reasonable detail the basis on which the party seeks reconsideration. The petitioner must clearly identify each portion of the challenged order that it contends is erroneous or incomplete, must cite those portions of the record and

each law or Authority administrative determination that the petitioner relies on to support its petition, and must present a brief argument in support of its petition.

- (4) A petition for reconsideration must not:
 - (a) repeat arguments that were made during the adjudication; or
 - (b) without good cause shown, introduce new arguments, or new evidence, that could have been, but were not, presented during the adjudication.
- (5) No party may file an answer to a petition for reconsideration unless requested by the Board. If the Board requests answers to a petition for reconsideration, it will issue a notice stating the date by which answers must be filed and the date by which the board intends to enter an order resolving the petition.
- (6) The Board will not hear oral argument on a petition for reconsideration unless the Board determines on its own motion that oral argument is required.
- (7) Within a reasonable period of time following the close of the period for filing petitions for reconsideration, typically no more than thirty (30) days, the Board will issue an adjudicative decision and order on reconsideration that:
 - (a) denies the petition in full;
 - (b) grants the petition in part, and denies it in part; or
 - (c) grants the petition in full.
- (8) The adjudicative decision and order on reconsideration will be:
 - (a) served on the parties; and
 - (b) published on the official website.
- (9) If the Board grants a petition, the Board may modify its prior order or take other appropriate action. If the Board denies the petition, no further action will be taken in the matter with respect to the final order. No party may petition for reconsideration of an adjudicative decision and order on reconsideration.
- (10) Filing a petition for reconsideration does not automatically stay the effect of an order or serve as a request for a stay. A party may request that the Board stay the effectiveness of an adjudicative decision and order pending reconsideration by filing a petition for stay.
- (11) Filing a petition for reconsideration is not a prerequisite for seeking judicial review of a final adjudicative decision and order.

Chapter 10

INVESTIGATIONS AND ENFORCEMENT

94 Investigations

- (1) The Authority may conduct an investigation, either on its own initiative or at the request of any person:
 - (a) to gather information prior to, or as part of, a public consultation;
 - (b) to assess whether to initiate enforcement action;
 - (c) to respond to a request for information from a Minister;
 - (d) for any purpose provided for by sectoral legislation; or
 - (e) in other situations in which the Authority determines that doing so would be expedient.
- (2) In order to conduct an investigation, the Authority may:
 - (a) convene an investigative hearing;
 - (b) issue an order requesting the production of information; and
 - (c) appoint or designate inspectors to gather information.

95 Investigative hearings

- (1) In any case in which the Authority, pursuant to a vote of the Board, chooses to conduct an investigative hearing, the Chairman will designate a presiding officer.
- (2) The presiding officer will cause the investigative hearing to be recorded or transcribed.
- (3) At the conclusion of the hearing, the presiding officer will submit a report to the Board.
- (4) The presiding officer's report will:
 - (a) summarise the evidence gathered;
 - (b) state any factual findings; and
 - (c) make any appropriate recommendations.

96 Order to produce information

- (1) Where necessary to perform its obligations under the Regulatory Authority Act 2011 or under sectoral legislation, the Authority may

issue an order requiring a person to take any or all of the following actions:

- (a) furnish such information as the Authority may reasonably require;
 - (b) produce to the Authority any documents specified or described; or
 - (c) keep such records as may be specified or described.
- (2) An order under subsection (1) may specify the means by which, and the period during which, it is to be complied with.
- (3) The power under this section to require a person to produce documents includes the power:
- (a) if the documents are produced, to take copies of them or extracts from them; or
 - (b) if the documents are not produced, to require the sectoral participant who was required to produce them to state, to the best of the sectoral participant's knowledge and belief, where they are located.

97 Inspectors

- (1) The Authority may from time to time designate for such period as it deems fit any member of the staff, or appoint any other qualified person, to be an inspector for the purposes of this Act.
- (2) An inspector may:
- (a) at any reasonable time, without a warrant, enter any premises for the purpose of inspecting:
 - (i) anything required to be maintained or kept by any provision of this Act or sectoral legislation; or
 - (ii) any records maintained in connection therewith which are maintained by a sectoral provider in connection with the provision of covered services.
 - (b) subject to subsection (3), where authorized by the Authority:
 - (i) search and, if necessary, seal the premises;
 - (ii) seize any document or object; and
 - (iii) take any other reasonable action necessary to obtain relevant information.
- (3) The Authority will first obtain a warrant from a magistrate in any case in which it seeks to have an inspector:
- (a) search or seal any premises; or

- (b) seize any document or object.
- (4) The Authority will provide every inspector with a written instrument of appointment, which will specify the scope of the inspector's authority.
- (5) An inspector, when acting within the scope of his or her authority, will, upon request, produce the instrument of appointment and any warrant.
- (6) All persons must give the inspector all reasonable assistance in their power, and will furnish h such access and information as the inspector may reasonably require.

98 Enforcement procedures

- (1) The Authority may initiate enforcement proceedings in any case in which there is reason to believe that a sectoral participant has contravened:
 - (a) the Regulatory Authority Act 2011;
 - (b) sectoral legislation;
 - (c) any regulations;
 - (d) any administrative determination;
 - (e) any adjudicative decision and order; or
 - (f) a condition contained in any authorization.
- (2) The Chief Executive is responsible for determining when to initiate an enforcement proceeding. The Chief Executive will only initiate an enforcement action after making a determination there is probable cause to believe that a contravention has occurred. The Chief Executive will notify the Board of the determination.
- (3) The Chief Executive will serve a written complaint on the person believed to have committed the contravention, which will:
 - (a) set out the alleged facts;
 - (b) state the statutory, administrative or authorization provisions that the person allegedly contravened; and
 - (c) state the time frame and procedures by which the person must respond. Unless the complaint provides otherwise, the sectoral participant must file an answer that complies with the requirements contained in Rule 71.
- (4) Within thirty (30) days after the complaint has been served, the Chairman will appoint an independent presiding officer in the manner described in Rule 61. The presiding officer will commence an adjudication in the manner specified in Rule 62.

- (5) In lieu of appointing a presiding officer, the Chairman, with the consent of the affected sectoral participant, may refer the matter to:
 - (a) voluntary mediation; or
 - (b) binding arbitration.
- (6) If the Authority, following an adjudication, determines that a sectoral participant has committed a contravention, the Authority may:
 - (a) issue a warning;
 - (b) direct the sectoral participant to take such actions as may be necessary to remedy the violation;
 - (c) impose financial penalties;
 - (d) require the sectoral participant to make restitution to any person directly injured as a result of the contravention; or
 - (e) issue a decision and order modifying, suspending or revoking any authorization held by the sectoral participant.
- (7) In lieu of imposing financial penalties, the Authority may refer a matter that involves an offence specified in this Act, or sectoral legislation, to the Director of Public Prosecutions for prosecution of an offence.

99 Financial penalties

- (1) The Authority, following an adjudication, may impose a penalty of up to 10 percent of total annual turnover if it finds that a person subject to its authority has contravened:
 - (a) the Regulatory Authority Act 2011;
 - (b) sectoral legislation;
 - (c) any regulations;
 - (d) any administrative determination; or
 - (e) any condition contained in any authorization held by the sectoral provider,
- (2) In determining the amount of any financial penalty, the Authority will consider all relevant factors including:
 - (a) the seriousness of the contravention;
 - (b) the duration of the contravention;
 - (c) whether the contravention resulted in harm to third parties;
 - (d) whether the person acted wilfully, recklessly or in a grossly negligent manner;
 - (e) whether the person has a previous history of contraventions;and

- (f) whether the person disclosed or sought to conceal the contravention.
- (3) The Authority will specify the date by which any such financial penalty must be paid.
- (4) The Authority will pay all penalties collected to the Consolidated Fund.

100 Undertakings in lieu of enforcement

- (1) In lieu of taking enforcement action, the Authority, pursuant to a vote of the Board, may issue a decision and order accepting, from any persons subject to enforcement action, an undertaking to take or not take specific actions.
- (2) Any party that wants the Authority to consider accepting an undertaking pursuant to section (1), must make a written submission that:
 - (a) describes the relevant factual background;
 - (b) describes, with specificity, the proposed undertaking; and
 - (c) explains the reason why the Authority should accept the undertaking, rather than taking enforcement action.
- (3) In considering whether to accept an undertaking in lieu of taking enforcement action, the Authority will consider the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect caused by the conduct that provided the basis for the enforcement action.
- (4) The Authority, pursuant to a vote of the Board, may allow an undertaking to be varied or superseded by another undertaking or may release a person from all or part of the undertaking.
- (5) Any party that wants the Authority to consider varying, superseding or releasing a party from an undertaking must make a written submission that:
 - (a) describes the relevant factual background, including the reasons for, and content of, the undertaking;
 - (b) confirms that the person has complied with the undertaking or describes, and explains the reasons for, any non-compliance;
 - (c) describes, with specificity, the proposed action to be taken in regarding to the undertaking; and
 - (d) explains the reason why the Authority should take the proposed action.

