



UTILITIES REGULATION AND COMPETITION AUTHORITY ACT, 2009

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UTILITIES REGULATION AND COMPETITION AUTHORITY ACT, 2009

**A BILL FOR AN ACT TO ESTABLISH A PUBLIC AUTHORITY
CALLED THE UTILITIES REGULATION AND COMPETITION
AUTHORITY AND FOR MATTERS CONNECTED THERETO.**

Enacted by the Parliament of The Bahamas

PART 1 - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Utilities Regulation and Competition Authority Act, 2009.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the Gazette.

2. Interpretation.

In this Act all terms have the meanings given to them by the Interpretation and General Clauses Act unless expressly defined –

“**board**” means the board established under Part III;

“**director of policy and regulation**” means any person appointed as the director responsible for policy and regulation in accordance with section 23(2);

“**document**” has the meaning specified in section 2 of the Evidence Act, 1996, whether in hard or electronic format;

- “electronic communications sector”** means the economic sector encompassing the provision of all electronic communications, including broadcasting;
- “executive member”** means any person appointed as an executive member in accordance with section 23;
- “financial year”** means a calendar year;
- “licensee”** means any person operating under a licence, whether individual or class granted or issued, by URCA under any regulatory or other measure;
- “members”** includes the executive members and the non-executive members (and in respect of any matter where the secretary is entitled to vote, the secretary);
- “the Minister”** means the Minister responsible for relations with URCA;
- “non-executive member”** means any person appointed as a non-executive member in accordance with section 18;
- “regulated sector”** means those sectors for which URCA has specific responsibilities under any Act or any law, including but not limited to the Communications Act 2009;
- “regulatory or other measures”** means all Acts issued by the relevant body, by whatever procedure including but not limited to directions, decisions, adjudications, orders and regulations;
- “statutory fund”** means any fund created under any law for the provision of services in regulated sectors;
- “URCA”** means the Utilities Regulation & Competition Authority established under section 3.

PART II – ESTABLISHMENT OF UTILITIES REGULATION AND COMPETITION AUTHORITY

3. Establishment of URCA.

- (1) A public authority called the Utilities Regulation and Competition Authority (“URCA”) is hereby established.
- (2) URCA shall be a body corporate having perpetual succession and a common seal and have the power to acquire, hold and dispose of land and other property of whatever kind.
- (3) URCA may –
 - (a) sue and be sued in its corporate name;
 - (b) enter into contracts and acquire, hold and dispose of any property; and

- (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

4. Functions and powers of URCA.

- (1) URCA shall have such functions as are conferred on it by this Act or under any other law.
- (2) In performance of its functions, URCA shall have the power to issue all regulatory and other measures, including -
 - (a) to make determinations;
 - (b) to make adjudications;
 - (c) to impose conditions and penalties by order;
 - (d) to issue regulations;
 - (e) to issue directions, decisions, statements, instructions and notifications;
 - (f) to publish and maintain registers or lists;
 - (g) to issue technical rules and standards;
 - (h) to institute prosecutions in accordance with section 7, for the purposes of enforcing compliance with this Act or any other regulated sector law;
 - (i) to issue, suspend, vary or revoke licences, permits and exemptions;
 - (j) to conduct inquiries, investigations and oral hearings;
 - (k) to request such information from operators in regulated sectors as is necessary in pursuance of its duties under any other law;
 - (l) to conduct market investigations and market reviews and publish information and reports;
 - (m) to make such arrangements for regulating its own procedures, and such arrangements for regulating the procedure of the committees established by URCA, as it thinks fit; and
 - (n) any other power conferred on it by this Act or any other law.
- (3) URCA shall exercise its functions through the chief executive officer, who shall –
 - (a) carry out the day to day management of URCA and have the functions delegated to him or her by the board;
 - (b) be subject to the supervision of the board;
 - (c) follow directions and recommendations of the board;
 - (d) have due regard to any recommendations or advice relating to the development and improvement of URCA's regulatory policies made

directly to the chief executive officer or to the board by the director of policy and regulation;

- (e) where he or she considers it expedient be advised by and take into account the views of any committee established by URCA; and
- (f) act in accordance with the guidelines in section 8.

5. Powers of investigation.

- (1) URCA may investigate one or more of the following–
 - (a) any contravention;
 - (b) any alleged contravention; and
 - (c) any circumstance where URCA has reasonable grounds to suspect a contravention,
of any provision of this Act or any regulated sector law.
- (2) In conducting any investigations under subsection (1), URCA shall have the power to enter premises and inspect, copy and retain documents to the extent permitted under any search warrant obtained under section 6.

6. Search warrants.

- (1) Where information provided by URCA (or any other person) satisfies a magistrate that URCA has reason to believe that –
 - (a) any person is contravening any part of this Act or any regulated sector law; and
 - (b) entry to specified premises, vehicle, vessel, aircraft, hovercraft, buoy or beacon is necessary for the enforcement of this Act,
the magistrate may issue a search warrant to a peace officer.
- (2) The peace officer to whom a warrant is issued may be accompanied by an authorised representative of URCA and may enter the specified premises, carry out search and inspection of those premises and test and seize any relevant apparatus, equipment or documents in accordance with the terms of the warrant.
- (3) Where under this section a person has the right to examine and test any equipment or apparatus on any premises or in any vehicle, vessel, aircraft, buoy or beacon, it shall be the duty of any person who is on the premises, or is in charge of, or in attendance on, the vehicle, vessel, aircraft, buoy or beacon, to give him such assistance as he may reasonably require in the examination or testing of the equipment or apparatus.

7. General provisions as to prosecution.

- (1) Subject to the provisions of Article 78 of the Constitution, proceedings for an offence under this Act or any regulated sector law shall not be

instituted except by URCA, alone or in conjunction with the Attorney General, by or with the consent of the board or by the chief executive or other officer authorised in that behalf by special or general directions of the board.

- (2) It shall not be necessary for the chief executive officer or other officer, to be qualified as a counsel or attorney, in order to prosecute or conduct those proceedings mentioned in subsection (1) before a court of summary jurisdiction.
- (3) Notwithstanding any provision in any law prescribing the period within which summary proceedings may be commenced, proceedings for an offence under this Act or any regulated sector law may be commenced at any time within the period of three months from the date on which, in the opinion of the board, sufficient evidence to justify a prosecution for the offence comes to its knowledge, or within the period of twelve months after the commission of the offence, whichever period last expires; and, for the purposes of this subsection, a certificate purporting to be signed on behalf of the board as to the date on which such evidence came to the knowledge of the board shall be conclusive evidence thereof.
- (4) In any proceedings for an offence under this Act or any regulated sector law the wife or husband of the accused shall be competent to give evidence, whether for or against the accused provided that the wife or husband shall not be compellable either to give evidence, or, in giving evidence, to disclose any communication made to her or him by the accused during the marriage.
- (5) Where an offence under this Act, or any regulated sector law, which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

8. Guidelines.

- (1) All regulatory and other measures by URCA shall be proportionate to their purpose and introduced in a manner that is transparent, fair and non-discriminatory.
- (2) URCA shall carry out its functions and exercise its powers in a manner that makes best use of the economic and other resources available to it and that is best calculated to promote any policy objectives applicable to any regulated sector.

9. Duty to consult.

- (1) When issuing regulatory and other measures, subject to any specific procedures under any regulated sector law –
 - (a) URCA shall allow persons with sufficient interest a reasonable opportunity to comment on proposed regulatory and other measures which, in the reasonable opinion of URCA, are of public significance; and
 - (b) URCA shall give due consideration to those comments prior to introducing those measures.
- (2) URCA shall, as soon as practicable, publish its standard procedures for seeking comments, which shall include -
 - (a) how consultations will be published;
 - (b) the minimum time for responding to consultations, which in ordinary circumstances shall be no less than thirty (30) days;
 - (c) how URCA will publish comments or summaries of comments received; and
 - (d) guiding principles for determining when URCA may derogate from the standard procedures.
- (3) A regulatory or other measure is likely to be of public significance if it relates to a regulated sector and can lead to one or more of the following –
 - (a) a major change in the activities carried on by URCA under this Act or any other enactment;
 - (b) a significant impact on persons carrying on activities in a regulated sector;
 - (c) a significant impact on the general public in The Bahamas or in a part of The Bahamas.

10. Duty to publish documents.

- (1) Subject to section 11, URCA shall take proportionate measures to make available to the public regulatory and other matters which in its opinion, are of public significance. URCA shall also -
 - (a) publish such regulatory and other measures on its website as soon after these are issued; ensure that URCA's website includes a notification system for registered users; and take steps to ensure that the website is regularly updated and remains available to the public; and
 - (b) maintain copies of documents at its principal office for inspection by the public on request during normal business hours without charge.

- (2) URCA shall consider whether notice of certain regulatory and other measures of public significance should also be given by publication in one or more newspapers circulating in The Bahamas.

11. Confidentiality.

- (1) Subject to subsection (2), URCA shall not be required to publish or otherwise divulge information that in the view of URCA would be commercially confidential.
- (2) Nothing in this Act shall limit URCA's duty to provide information to the court.
- (3) All members, officers, employees and agents of URCA must comply with any confidentiality provisions under their terms of employment. Any person who contravenes such provisions shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

PART III – THE BOARD

12. Functions of the board.

The board shall have the functions specified in this Act.

13. Structure of the board.

- (1) Subject to subsection (3) below, the board shall consist of five persons being—
 - (a) non-executive members, comprising
 - (i) a chairperson and
 - (ii) two non-executive members, and
 - (b) executive members, comprising
 - (i) the chief executive officer and
 - (ii) the director of policy and regulation.
- (2) Subject to section 14(2) no more than one public officer shall be appointed as a non-executive member at any time.
- (3) The number of non executive members of the board may be increased by order of the Minister published in the Gazette, provided however that the number of non-executive-members may only be increased if –
 - (a) URCA's obligations are extended to sectors other than the electronic communications sector; and

- (b) such a change in number is necessary to ensure that all sectors are sufficiently represented.
- (4) Prior to increasing the number of non-executive members under subsection (3), the Minister shall—
 - (a) have regard to whether the non-executive members together have sufficient experience in each of the regulated sectors;
 - (b) consider whether the non-executive members together provide for a proper representation of The Bahamas as a whole; and
 - (c) request and consider the views of the board.
- (5) The secretary to the board shall be entitled to attend meetings of the board although he or she shall not be entitled to vote at the meetings unless otherwise specified in this Act.
- (6) The secretary to the board shall be the person responsible for ensuring URCA's compliance with its legal obligations.

14. The chairperson.

- (1) The Governor-General shall appoint the chairperson for a term of three years.
- (2) The chairperson shall be a non-executive member.
- (3) The chairperson shall not be a Member of Parliament or a public officer.
- (4) In appointing the chairperson, the Governor General shall ensure that the chairperson has appropriate expertise and good standing and reputation.
- (5) The chairperson shall be appointed at the expiry of the previous chairperson's term or as soon as reasonably practicable thereafter
- (6) In the absence of a nominated chairperson, the deputy chairperson appointed under section 15 shall act as chairperson.
- (7) No person may be a chairperson if he or she has been the chairperson for an aggregate duration of six years or more in the preceding nine years.

15. The deputy chairperson.

- (1) The chairperson shall appoint one of the other non-executive members as the deputy chairperson.
- (2) The deputy chairperson shall be entitled to carry out the functions of the chairperson, in such cases and manner as may be determined by or in accordance with any directions given by the chairperson and the deputy chairperson shall, in the absence of the chairperson, take on the duties of the chairperson as required.
- (3) One or both of the executive members may require the deputy chairperson to call a board meeting if they have requested that the chairperson call

such a meeting and the chairperson has not done so within a reasonable period of time.

16. Resignation of members.

- (1) Any member may at any time resign his or her office by notice in writing to –
 - (a) in the case of the chairperson, the board; and
 - (b) in the case of all other members, the chairperson.

17. Proceedings of the board.

- (1) The board shall be convened by the chairperson as frequently as necessary so as to carry out its functions and not less than twelve (12) times per year.
- (2) The procedure for carrying out functions which are conferred on the board shall be in accordance with such arrangements as may be determined by a majority of the board.
- (3) Unless otherwise specified in this Act, the quorum for the proceedings of the board shall be two (2) non-executive members and one (1) executive member.
- (4) Unless otherwise specified in this Act, voting at a meeting of the board duly convened under subsection (3) shall be by a simple majority of the members present and voting and, if there is an equality of votes, the chairperson shall have a casting vote. No member (including the secretary) shall discuss with or disclose to any person who is not a member, any views or votes of any member.
- (5) No member shall vote at a meeting of the board on any matter regarding his or her appointment or the terms of his or her appointment.
- (6) In determining whether a member is present and voting for the purposes of subsection (4), the member must participate in the meeting but need not be physically present at the meeting.

PART IV – NON-EXECUTIVE MEMBERS

18. Appointment of non-executive members.

- (1) Non-executive members shall be appointed by the Governor-General.
- (2) Before appointing a non-executive member, the Governor-General shall –
 - (a) have regard to any recommendations from the non-executive members for the replacement or reappointment of any of the non-executive members; and

- (b) ensure that the non-executive members would together have -
 - (i) appropriate expertise in the relevant regulated sectors;
and
 - (ii) broad experience, such as experience that would be expected of professionally qualified economists, lawyers or accountants or persons having backgrounds in business or, subject to section 13(2), public service.

Provided always that no Member of Parliament may be appointed a non executive member of the board.

- (c) unless the non-executive member is reappointed in accordance with section 20, the appointment shall be made following an open and transparent process in accordance with section 28.that any person who is appointed has appropriate experience, knowledge, good standing and reputation, taking into account the criteria in subsection (b);
- (3) Subject to the following provisions of this section, the non-executive members shall each hold and vacate office in accordance with the terms of their appointment.
 - (4) Non-executive members shall be appointed for a term of three years.
 - (5) No person may be appointed as a non-executive member if –
 - (a) he held office as an executive member within the previous twelve (12) months;
 - (b) he has held office as a non-executive member for two consecutive terms unless a period of three (3) years has expired since the expiration of the last appointment; or
 - (c) he has held office as a non-executive member for an aggregate of four terms.

19. Removal, resignation or death of members.

- (1) If the board is satisfied that any non-executive member–
 - (a) is an undischarged bankrupt or has had his estate sequestrated without being discharged; or
 - (b) had such financial or other interest as is likely to affect prejudicially the carrying out by him or her of his or her functions as a member; or
 - (c) is absent from meetings of the board for a period longer than six consecutive meetings without the permission of the board; or
 - (d) has neglected the duties of a member; or

- (e) has been found to be guilty of material misconduct; or
 - (f) is incapacitated by physical health or mental illness,
- the board may by notice in writing remove that member from the board.
- (2) For the purposes of this section, the quorum for proceedings of the board at which matters in subsection (1) are to be discussed shall be all other members. Voting at such meetings shall be by unanimity of those members.
 - (3) In the event of death, resignation or removal of a non-executive member, the Governor-General may appoint a new non-executive member in accordance with section 18.

20. Reappointment of non-executive members.

Non-executive members shall be reappointed for a further term unless

- (a) he advises the Governor-General that he does not wish to be reappointed;
- (b) he has been appointed to the board for an aggregate of two consecutive terms
- (c) he has held office as a non-executive member for an aggregate of four terms.; and
- (d) he could be removed under section 19(1).

21. Remuneration of non-executive members.

URCA shall pay non-executive members for their services to URCA –

- (a) such compensation as approved by the Minister; and
- (b) reasonable expenses which the non-executive members properly incur in connection with the exercise of their powers and the discharge of their responsibilities in relation to URCA.

PART V – STAFFING OF THE REGULATOR

22. Appointment of staff.

- (1) URCA shall have the power to appoint officers, employees and agents as it considers necessary for the performance of its functions.
- (2) Subject to subsection (3), no officer, employee or agent may enter into an agreement for the provision of his or her services with any company primarily or substantially active in a regulated sector.
- (3) Subsection (2) shall not apply where –

- (a) the officer, employee or agent will enter into the agreement referred to in subsection (2) on behalf or at the direction of URCA, or
- (b) the board of URCA has approved the agreement.

23. Appointment of executive members.

- (1) The chief executive officer and director of policy and regulation shall be executive members.
- (2) The executive members shall be appointed by the board for an initial term not exceeding five years and shall be selected using a competitive selection process under section 28, provided always that no Member of Parliament may be appointed as an executive member of the board.
- (3) Upon expiry of the initial term the board may renew the appointment of an executive member for a further term not exceeding five years.

24. Remuneration of staff.

- (1) URCA shall pay to the staff –
 - (a) such remuneration as approved by the Board after consultation with the Minister; and
 - (b) reasonable expenses which the staff properly incur, and in accordance with any established procedures, in connection with the discharge of their responsibilities.
- (2) URCA shall also make for the staff (or previous staff) such provision (if any) for pensions, allowances or gratuities, and payments when special circumstances arise.

PART VI – GENERAL PROVISIONS RELATING TO MEMBERS AND STAFF

25. Conflicts of interest.

- (1) Throughout the term of his or her employment with URCA and for such further period determined in accordance with section 26, no non-executive member or executive member shall have a financial interest in, whether directly held or indirectly held through an associate, or be an employee, a consultant or board member of any entity that is licensed by URCA or is otherwise primarily or substantially engaged in a regulated sector.
- (2) Each non-executive member and executive member shall present a written declaration as to the non-existence of any such interest in accordance with subsection (1) and shall promptly inform the board of any such interest that arises or is likely to arise during his or her employment at URCA.

- (3) Any other member of staff shall comply with subsection (1) and (2) if so reasonably required by the board.
- (4) If any non-executive member, executive member or other member of staff of URCA (to whom subsection (3) applies) knowingly contravenes the prohibition in subsection (1), that person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand dollars.
- (5) Each non-executive member and executive member shall declare on his or her appointment, reappointment, annually during his or her term and on request by the board any interest that he or she has, or know his or her associates has, in any entity who is licensed by URCA or is otherwise primarily or substantially engaged in a regulated sector and such a declaration shall be published on URCA's website. Any other member of staff shall comply with this subsection if so required by the board.
- (6) For the purposes of this section 25, "associate" means in relation to any individual –
 - (a) that individual's spouse or partner or parents or minor dependents;
 - (b) any body corporate of which that individual is a director or where that individual can exercise voting control; and
 - (c) any employee or business partner of that individual.
- (7) For the purposes of this section 25, "voting control" mean the control of or the ability to control, whether directly or indirectly, the exercise of the right to vote attaching to one or more voting shares in a body corporate -
 - (a) by the exercise of a right, where such exercise confers the ability to exercise a right to vote or to control the exercise of a right to vote;
 - (b) by an entitlement to exercise such a right to vote-
 - (i) through a nominee; or
 - (ii) through or by means of a trust, agreement or arrangement, understanding or practice, whether or not the trust, agreement or arrangement, understanding or practice has legal or equitable force or is based on legal or equitable rights.

26. Services in related sectors.

- (1) No non-executive member, executive member or member of staff may, during his or her term of employment, engage in any employment, consulting or similar service relating to a regulated sector within the duties of his or her engagement by URCA.
- (2) For twelve months after his or her term of employment, any such person referred to in subsection (1) may only engage in such employment, consulting or similar service with the prior written approval of –
 - (a) in the case of executive or non-executive members, the board; or

- (b) in all other cases, the chief executive officer.
- (3) The board shall have the authority to waive the application of subsections (1) and (2) to any person or category of persons if it would be disproportionate to enforce it.
- (4) Any person who knowingly employs a person in contravention of subsections (1) and (2) shall be guilty of an offence and shall be subject to a fine not exceeding fifty thousand dollars
- (5) A person who engages in employment, consulting or similar service in contravention of subsection (1) and (2) shall be guilty of an offence and shall be subjected to a fine not exceeding twenty thousand dollars

27. Duty to act in good faith.

- (1) The non-executive members, executive members and members of staff shall –
 - (a) act in a manner that is independent of, separate from, and not accountable to any licensee or other entity that is primarily or substantially engaged in a regulated sector; and
 - (b) exercise their functions, issue instruments and follow procedures that are impartial with respect to any licensee or other entity that is primarily or substantially engaged in a regulated sector.
- (2) Nothing in this Act shall prevent URCA from –
 - (a) consulting with any person or organisation on any matter related to URCA's functions, duties or powers; or
 - (b) issuing an instrument that has a differential or prejudicial effect on a licensee or other business that is primarily or substantially engaged in a regulated sector.

28. Competitive selection process.

When appointing a person under a competitive selection procedure, URCA shall conduct an open, competitive and transparent selection process that seeks to identify well-qualified candidates. This procedure may include publishing advertisements for applications nationally and internationally, reviewing any available references and holding interviews.

PART VII– DELEGATION, SELF-REGULATION AND CO-REGULATION

29. Delegation of powers.

- (1) Other than as provided for in this Act or any other law, the powers of URCA shall be exercised by the chief executive officer under delegation by the board and he or she may be advised by an executive committee established under section 32 as expedient. The chief executive officer shall be accountable to the board as set forth in this Act.
- (2) URCA may recognise or establish, or assist or encourage the establishment of, bodies that have expertise in, or represent persons having interests in, any matter concerning competition, monopolies, utilities or any matter connected with any regulated sector.
- (3) The functions of those bodies shall include one or more of the following –
 - (a) the provision to URCA of advice, information and proposals in relation to any one or more of those matters;
 - (b) the representation of the views of any one or more groups of persons.

30. Self-regulation and co-regulation.

URCA shall have regard, in performing its functions, to the desirability of promoting and facilitating the development and use of effective forms of self-regulation and co-regulation.

31. Committees.

- (1) URCA shall establish –
 - (a) an audit committee; and
 - (b) such other committees as URCA considers from time to time to be appropriate.
- (2) For each committee, URCA shall –
 - (a) appoint the committee's members, who shall be members, officers, employees or agents of URCA; and
 - (b) establish the remit of each committee.
- (3) A committee of URCA may itself establish sub-committees whose members shall be members, officers, employees, or agents of URCA.
- (4) The chief executive officer may from time to time establish an executive committee as expedient to assist him or her in carrying out his or her duties.

32. Executive committee.

- (1) In establishing an executive committee the chief executive officer shall have regard to any specialist advice that may be required.
- (2) The executive committee, if so required by the chief executive officer, shall advise the chief executive officer on matters related to the performance of his or her duties, including the day-to-day management of URCA and any such other functions or duties delegated to the chief executive officer by the board.
- (3) Decisions at meetings of an executive committees shall be taken by the chief executive officer, who shall –
 - (a) give due consideration to the views of the other members of the executive committee; and
 - (b) act in good faith in accordance with section 27.
- (4) The executive committee may include –
 - (a) the chief executive officer;
 - (b) the director responsible for policy and regulation; and
 - (c) representative members of staff for the conduct of –
 - (i) legal affairs;
 - (ii) URCA’s finances; and
 - (iii) such other functions as are considered necessary by the chief executive officer.

33. Audit committee.

- (1) The board shall appoint an audit committee chairperson and such chairperson shall -
 - (a) at the time of his or her appointment, not be a non-executive member, executive member or a member of staff of URCA; and
 - (b) have appropriate accountancy skills and experience and shall be registered as a public accountant in accordance with the Public Accountants Act.
- (2) The audit committee shall –
 - (a) comprise the non-executive members, the secretary and the audit committee chairperson;
 - (b) meet at least twice every year; and
 - (c) report to the board within four months of publication of URCA’s annual report on–
 - (i) URCA’s performance against its annual plan; and

- (ii) the extent to which URCA's deployment of its financial resources has delivered value for money.
- (3) The quorum for the proceedings of the audit committee shall be three audit committee members, including the audit committee chairperson. Voting shall be by a majority with the audit committee chairperson having a casting vote.
- (4) URCA shall publish, in accordance with section 10, the audit committee's report within two months of it being delivered to the board.

34. Proceedings of the committees.

URCA shall make arrangements for the keeping of proper records –

- (a) of its proceedings;
- (b) of the proceedings of any committee or sub-committee established under section 31; and
- (c) of the proceedings of any meetings of the board.

PART VIII– ACCOUNTS AND AUDIT

35. The URCA Fund.

- (1) URCA shall establish a fund which shall be referred to in this Act as the “fund”.
- (2) The fund may be applied for the purposes of –
 - (a) paying remuneration and compensation to the non-executive members, executive members and members of staff;
 - (b) meeting all other costs and expenditures properly incurred by URCA in exercising its functions and powers.
- (3) URCA may open, operate and close bank accounts for the fund.
- (4) There shall be paid into the fund –
 - (a) all fees and other payments received from licensees and applicants for licences issued by URCA;
 - (b) any loans obtained by URCA;
 - (c) any other money, income, profit or proceeds derived from or representing any money or property which is lawfully vested in URCA from time to time.

36. Loans.

Subject always to section 8(2) and if approved by the board and subject to those terms and conditions (whether as to repayment, payment of interest or otherwise) as approved by the board –

- (a) URCA may apply to the Minister for a guarantee from the Government. No such guarantee shall be given unless previously approved by the House of Assembly in accordance with section 17 of the Financial Administration and Audit Act 1973.
- (b) URCA may apply for commercial loans, subject to the following provisions -
 - (i) any application for a loan or loans in the aggregate exceeding one million dollars shall be approved by the Minister and subject to the consent of the Minister of Finance; and
 - (ii) unless exceptional circumstances apply and unless so approved by the Minister with the consent of the Minister of Finance any loan or loans in the aggregate exceeding one million dollars must be applied for the purposes of infrastructure or premises properly required by URCA in carrying out its functions and exercising its powers.
- (c) URCA may apply to the Minister for an emergency loan should the revenues provided for under section 41(1) be insufficient to carry out its duties. A loan under this subsection shall be on such terms as the Minister may specify and shall be repaid by URCA within three years.

37. Investment of funds.

Monies paid into the fund which are not immediately required by URCA may be –

- (a) deposited with any banking institution regulated by the Central Bank of The Bahamas; or
- (b) invested in securities issued by the Government of The Bahamas.

38. Exemption from business licence.

URCA shall not require a business licence under the terms of the Business Licence Act.

39. Accounts and Audit.

- (1) URCA shall –

- (a) keep proper accounts and proper records in relation to those accounts; and
 - (b) prepare in respect of each year a statement of account giving a true and fair view of the state of affairs of URCA.
- (2) The accounts shall, to the fullest extent possible, allocate URCA's revenues, costs and expenses, whether in respect of personnel or otherwise, to each of the regulated sectors.
- (3) In allocating URCA's costs and expenses under subsection (2), URCA shall use its reasonable endeavours to –
- (a) allocate directly incurred costs and expenses –
 - (i) to the regulated sector to which they relate; or
 - (ii) where relating to a number of regulated sectors, to each of the regulated sectors to which they relate in proportion to the burden from each of the regulated sectors;
 - (b) allocate indirectly incurred costs and expenses on a reasonable and transparent basis.
- (4) The annual accounts of URCA in respect of each financial year –
- (a) shall be prepared in accordance with International Financial Reporting Standards and International Auditing Standards;
 - (b) shall be audited within four months of the end of the financial year by an independent auditing firm selected by the audit committee and approved by the Minister; and
 - (c) shall be published together with the auditors report in the annual report published under section 42.
- (5) Any statutory funds shall be audited in accordance with subsection (4).

40. Funding of URCA.

- (1) URCA shall conduct its affairs so as to ensure that its revenues which –
- (a) are derived from the exercise of powers to impose charges or fees under any law in respect of the carrying out its functions; and
 - (b) are not subject to any law to be paid to any statutory fund,
- are at least sufficient to enable URCA to meet the costs of carrying out its functions, including anticipated costs for the forthcoming financial year.
- (2) URCA shall retain any excess sums collected under subsection (1) for application the following financial year or years.

41. Annual Plan and Annual Report.

- (1) As soon as possible and in any event no later than four months after the end of each financial year URCA shall prepare and publish –
 - (a) a plan of its proposed objectives for the forthcoming year (the “Annual Plan”); and
 - (b) a report of the carrying out of their functions during that financial year (the “Annual Report”)whether as two separate documents or as a joint document.
- (2) The annual plan shall –
 - (a) set out URCA’s strategy for the forthcoming financial year to meet the objectives set out in any regulated sector law;
 - (b) set out the broad priorities of URCA for the two years following the forthcoming year provided that these may require adjustments in light of any sector policy published by the Government in any regulated sector under the terms of any law;
 - (c) include a series of key performance indicators against which it shall measure its performance during the forthcoming year;
 - (d) include the level of remuneration to be received by non-executive and executive members for the forthcoming year; and
 - (e) set out URCA’s budget based upon its target activities for the forthcoming year.
- (3) The annual report shall –
 - (a) outline URCA’s financial performance against its budget,
 - (b) include a detailed report of URCA’s performance against the key performance indicators published in the previous year’s annual plan; and
 - (c) set out the key activities carried out during the previous financial year, whether or not envisaged in the previous year’s annual plan.
- (4) URCA shall publish the annual plan in draft form on its website in accordance with section 8 by no later than the end of the financial year and shall give interested third parties the opportunity to comment.
- (5) URCA shall publish its final annual plan on its website as soon as practicable after the deadline for receipt of comments from third parties (whether orally or in writing).
- (6) URCA shall publish its annual report in conjunction with the annual plan under subsection (5).
- (7) URCA shall arrange at least one oral hearing during which the annual plan and report shall be presented and questions from interested third parties answered.

PART IX – TRANSITIONAL PROVISIONS RELATING TO URCA

42. Initial funding.

- (1) URCA may apply to the Minister for a loan from the Government not exceeding one million dollars in order to carry out its functions and exercise its powers prior to URCA collecting any funding under section 41.
- (2) Any loan made under subsection (1) shall be on such terms as the Minister may specify and shall be repaid by URCA within three years.

43. Dissolution of the legacy regulators.

- (1) On the commencement of this Act, each of the following regulators is dissolved –
 - (a) the Public Utilities Commission established under the Public Utilities Commission Act; and
 - (b) the Television Regulatory Authority established under the Television Regulatory Authority Act.
- (2) The property and contracts of each of the regulators referred to in subsection (1) together with all functions and powers required to ensure the effectiveness and continuity of regulation, are transferred to URCA.

44. Initial provisions relating to the non-executive members.

- (1) The number of non-executive members shall be determined to be three at the date of commencement of this Act.
- (2) The Governor General shall appoint the non-executive member, who shall be the first chairperson of the board, as soon as possible after commencement of this Act. The Governor General shall appoint the first chairperson having regard to section 14(4) and the first chairperson shall serve an initial term of three years.
- (3) The Governor General shall appoint the remaining non-executive members of the first board in accordance with the procedure set out at section 18(4)(b) to (e) and one such non-executive member shall serve an initial term of three (3) years and the other non-executive member shall serve an initial term of four (4) years.
- (4) The first chairperson shall be eligible to be reappointed for a second term upon expiry of his or her respective initial term under section 14(3).

- (5) The remaining non-executive members of the initial board shall each be reappointed for a second term upon expiry of their initial term under section 18(3).

45. Repeal enactments.

- (1) Subject to subsections (2) and (3) and to section 44(2), the enactments in the Schedule hereto are hereby repealed.
- (2) Nothing in this section shall affect –
 - (a) the continuation of any civil or criminal proceedings under the legislation referred to in the Schedule hereto;
 - (b) any liability to pay fees or penalties under any of the legislation referred to in the Schedule hereto or subordinate legislation made under or pursuant to those Acts that accrues before the date on which this section comes into operation.
- (3) Any subordinate legislation or instructions that relates to the functions or powers of the Public Utilities Commission or the Television Regulatory Authority shall continue to apply to URCA, *mutatis mutandis*, until such time as URCA issues regulatory or other measures for similar purposes under this Act that are inconsistent with that subordinate legislation or those instructions. Once URCA issues regulatory or other measures that are inconsistent with that subordinate legislation or those instructions, then, to the extent of the inconsistency, the subordinate legislation or instructions will cease to apply.

PART X – MISCELLANEOUS

46. Protection of members of the board and members of staff.

- (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the board or member of staff of URCA in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.
- (2) Where any member of the board or member of staff of URCA is exempt from liability by reason only of the provisions of this section, URCA shall be liable to the extent that it would be if the said member of the board or member of staff was a servant or agent of URCA.

SCHEDULE**REPEAL OF ENACTMENTS**

The following enactments or parts of enactments shall be repealed pursuant to section 44(1) of the Act:

- (1) Public Utilities Commission Act (*Ch. 306*) ; and
- (2) Television Regulatory Authority Act (*Ch. 307*) .

OBJECTS AND REASONS

PART I

PRELIMINARY

This Part includes the formalities giving the Act legal effect and also includes the definitions.

Section 1.

The new Regulator will be called the Utilities Regulation & Competition Authority (URCA).

Section 2.

The definition of “Minister” states that the Minister responsible for URCA shall not be responsible for any other regulated sector. This will ensure that no conflict arises between the interests of URCA (whose remit may extend beyond the electronic communications sector) and the interests of the electronic communications sector.

PART II

ESTABLISHMENT OF URCA

This Part establishes URCA. It sets out the functions and powers of URCA and includes guidance to ensure URCA complies with principles of regulatory best practice.

Section 3.

URCA will be a corporate body, similar to the PUC that it replaces.

Section 4.

This section sets out some of the powers that URCA will have. URCA has all of the necessary powers under the URCA Act to perform its functions under sector-specific legislation.

URCA will operate through its chief executive officer.

Section 5.

Section 5 refers to URCA’s powers of investigation.

Section 6.

This section allows URCA to accompany a peace officer and inspect premises. A person whose premises is being inspected or a person who is in charge of that premises provide assistance in relation to the search process.

Sections 8 – 11.

These sections require that URCA acts fairly. There is an obligation on URCA to publish significant documents, consult with the public and protect commercially confidential information. URCA must also conduct its affairs and carry out its functions in a manner that is economically sound and responsible.

PART III**THE BOARD**

This Part sets out the structure of the board of URCA and governs the proceedings of the board. The Governor-General will appoint the non-executive members.

Section 13.

This section sets out the membership and structure of the board. The board is to be made up of non-executive members (comprising a chairperson and two other non-executive members) as well as two executive members: the chief executive officer of URCA and the director of policy and regulation.

The Minister may increase the number of non-executive members above three as URCA's responsibilities extend to regulated sectors beyond the electronic communications sector.

The secretary of the board responsible for legal operations will be able to attend meetings of the board but will not be able to vote at those meetings unless otherwise set out under the Act.

Section 14-16.

The chairperson will be appointed by the Governor General. The chairperson will have a casting vote at meetings of the board and, subject to the transitional provisions, will serve a term of three years.

Section 17.

A board meeting must have at least two non-executive members and one executive member present. Decisions are made by a majority of those members

in attendance and voting. Under this section, board meetings can be held remotely; members need not be physically present.

PART IV

NON-EXECUTIVE MEMBERS

This Part sets out the process for appointing, removing and compensating non-executive members.

Section 18.

The non-executive members will be appointed by the Governor-General. They cannot be Members of Parliament

The Governor General will not have absolute discretion when appointing the non-executive members. He must consider the factors in section 18(4) and will have to follow the competitive selection procedure set out under section 28. These factors should ensure that collectively the non-executive members have diverse sectoral, legal and business experience..

Section 19.

This section allows the board to remove a non-executive member if they are likely to harm the reputation of URCA or are unlikely to be able to perform their duties effectively. The Governor General will also be able to appoint a new non-executive member in the event that a non-executive member is removed, resigns or dies.

Section 20.

This sections deals with reappointments of non executive members A non-executive member who has not held office for an aggregate of two consecutive terms, or has not held office as a non-executive for an aggregate of four terms shall be reappointed.

Section 21.

Compensation of the non-executive members must be approved by the Minister.

PART V

STAFFING OF THE REGULATOR

This Part governs the employment of staff by URCA.

Section 22.

This section sets out the procedure for appointing members of staff at URCA other than executive members. Under these provisions, all staff should be selected under a competitive selection procedure under section 28.

Section 23.

This section sets out the procedure for appointing executive members. Under these provisions, executive members shall be appointed by the board for a term not exceeding five years. They can be reappointed for a further term not exceeding five years. Executive members should be selected under the competitive selection procedure under section 28. They cannot be Members of Parliament.

Section 24.

Remuneration of the staff is set by the Board after consultation with the Minister.

PART VI

GENERAL PROVISIONS RELATING TO NON-EXECUTIVE MEMBERS AND STAFF

Section 25.

This section governs any conflicts of interest which may arise in relation to the employees, executive members and non-executive members. No person is to have a financial interest, or have any employment or agency relationship, in any entity engaged in a regulated sector. A financial interest in any such entity, held through a spouse, partner or minor dependent of a member, will be considered a conflict. Where a member has a conflict of interest in any matter considered by the board that member should disclose such interest in writing to the board. URCA may request that any other staff member complies with this section. A

fine of up to fifty thousand dollars may be imposed for contravention of this provision.

Section 26.

This section governs the restrictions placed on employees, executive members and non-executive members in relation to engaging in any employment, or similar services, in a regulated sector other than URCA. The restriction remains in place for a period of one year after termination of employment with URCA, although it can be waived. The board will have the ability to waive the restrictions under this section to various categories of persons if it considers it appropriate to do so. Fines can be imposed on both the employee of URCA and the new employer of that person for contravention of this section.

Section 27.

URCA shall act impartially in carrying out its functions.

Section 28.

When appointing a person under a competitive selection procedure, URCA must act in accordance with this section to ensure fairness and transparency.

PART VII

REGULATION, SELF-REGULATION AND CO-REGULATION

This Part states that URCA may establish or recognise bodies which can provide it with advice. Under this Part: an audit committee is established to prepare the annual accounts and reports of URCA.

The chief executive officer may set up an executive committee in order to advise him or her on his or her duties.

Under section 30, URCA must also consider whether, in carrying out its functions, it should develop forms of self-regulation and co-regulation.

PART VIII

ACCOUNTS AND AUDIT

This Part sets out the financial aspects relating to the URCA.

Section 35.

URCA is under an obligation to set up a fund under this section in order to pay remuneration to executive members and staff and compensation to non-executive members, and for meeting all of its other expenditure. Monies received by URCA, including all fees and loans, shall also be deposited into this fund.

Section 36.

URCA may apply to the Minister for a guarantee from the Government, apply for a commercial loan or apply for an emergency loan from the Government. In some cases, it will be necessary for URCA to obtain the consent of the Minister when applying or taking out commercial loan(s) in the aggregate exceeding \$1 million

Section 37.

Any surplus monies of URCA can only be deposited or invested in accordance with this section.

Section 38.

URCA will not require a licence under the Business Licence Act.

Section 39

This provides for URCA to keep accounts which must be audited annually.

Section 40

This section provides for the funding of URCA.

Section 41

This section requires URCA to produce an Annual Plan and to make an Annual Report.

PART IX

This deals with transitional provisions