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THE GAMBIA

**THE GAMBIA PUBLIC UTILITIES
REGULATORY AUTHORITY
ACT (2001)**

**ENFORCEMENT REGULATIONS
2010**

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GAMBIA PUBLIC UTILITIES REGULATORY

**AUTHORITY ACT (2001)
ENFORCEMENT REGULATIONS**

2010

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**GAMBIA PUBLIC UTILITIES REGULATORY
AUTHORITY ACT (2001)**

**ENFORCEMENT REGULATIONS
2010**

IN EXERCISE of the powers conferred on the Minister by Section 54 (1) of the Gambia Public Utilities Regulatory Authority Act 2001, these Regulations are made.

PART I – PRELIMINARY

Citation

1. These Regulations may be cited as the Enforcement Regulations 2010.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires-

"Act" means The Gambia Public Utilities Regulatory Authority Act 2001;

“Authority” means The Gambia Public Utilities Regulatory Authority;

“commercial launch date” means the date on which a public utility starts providing commercial services;

“non-compliance” means non-compliance with or infringement of any of the provisions of a relevant law or a licence;

“enforcement” includes all acts required for ensuring compliance with or sanctioning the infringement of any of the provisions of a relevant law or a licence;

“harmful interference” means an interference which endangers the functioning of a radio navigation service or other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communication service operating in accordance with radio regulations;

“licence” means a licence granted by the Authority pursuant to the Act and includes subsisting licences that were granted prior to the commencement of the Act;

“licensed area” means the geographical area covered by a licence within which an public utility is authorised to provide a service;

“monitoring” refers to the power of the Authority to monitor compliance with or infringement of any of the provisions of a relevant law or a licence by a public utility;

“public utility” means a provider of a regulated public utility service;

“relevant law” includes the Act, the Information and Communications Act or any regulations made under them;

“regulations” means any regulations published by the Authority pursuant to the Act;

“unauthorised” means an act or omission not within the scope of an operating licence, the Act or any regulations; and

“unlawful” means an act or omission that contravenes the Act, any regulations or any other law governing public utilities.

(2) A word or phrase not specifically defined in these Regulations but defined in the Act shall have the meaning assigned to it in the Act.

PART II – MONITORING AND ENFORCEMENT POWERS AND PROCEDURES OF THE AUTHORITY

Monitoring and enforcement

3. The Authority shall monitor and enforce compliance by every public utility with respect to-

- (a) the requirements of all relevant laws;
- (b) specific directions of the Authority; and
- (c) licence conditions.

Exercise of the Authority's monitoring and enforcement powers

4. (1) Subject to sub regulation (2), the Authority may exercise its monitoring and enforcement powers -

(a) on its own initiative; or

(b) in response to a written enforcement report made by a person in the form specified in Form A1 in Schedule 1 to these Regulations.

(2) Prior to exercising its monitoring and enforcement powers pursuant to any enforcement report made by a person under sub regulation (1) (b), the Authority shall first carry out an investigation in accordance with section 39 of the Act.

(3) The Authority shall promptly respond to enforcement reports made by a person pursuant to sub regulation (1) (b) in the form specified in Form A2 in Schedule 1 to these Regulations.

(4) The Authority shall publish once every three months on its website, the details of its monitoring and enforcement activities carried out pursuant to sub regulation (1).

(5) The publication shall include sufficient details on the actions taken by the Authority with regard to enforcement reports made by persons pursuant to sub regulation (1) (b).

5. Subject to specific monitoring and enforcement provisions contained in a relevant law or a licence, in carrying out its monitoring and enforcement duties and related functions, the Authority -

Principles of monitoring and enforcement

- (a) shall at all times be guided by the following principles and considerations, -
- (i) transparency, fairness and non-discrimination,
 - (ii) the need to provide modern, qualitative, affordable and readily available public utility services in all parts of The Gambia,
 - (iii) the need to promote fair competition and investment in the public utilities,
 - (iv) proportionality of enforcement sanctions with the non-compliance, taking into account the factors specified in regulation 14(2) of these Regulations, and
 - (v) such other principles and considerations as the Authority may from time to time consider necessary;
- (b) may issue directions in writing to any person;
- (c) may enlist and rely on the assistance of law enforcement agencies and other relevant Government agencies; and
- (d) may institute court proceedings against any person for remedies such as injunctive relief, recovery of administrative fines, specific performance or pecuniary awards or damages.

Authority's
powers of entry
and investigation

6. (1) The Authority may, through its authorised officials or appointed inspectors-

- (a) demand the testing, operation or use of any radio communication station or apparatus or other public utilities equipment or facilities by the person having custody of the equipment or facilities; and
- (b) seal off or detain in the Authority's custody-
 - (i) any such radio communication station or apparatus or other public utilities equipment or facilities,
 - (ii) any building or premises, or
 - (iii) any book, record, document or other information storage system,

for such periods and on such terms as it considers necessary to carry out and conclude the relevant monitoring and enforcement procedure.

(2) The instrument of appointment of an inspector of the Authority shall be in the form prescribed in Form B in Schedule 1 to these Regulations.

(3) The Authority may seize and detain or seal off any building or premises or any of the items specified in sub regulation (1), if it-

- (a) constitutes part of an unlawful unauthorised operation;
 - (b) is relevant and required for the prosecution of a person under the Act or regulations;
 - (c) is in the national interest to do so.
- (4) Before seizing and detaining or sealing off any building or premises or any of the items specified in sub regulation (1), the Authority shall-
- (a) obtain a warrant from a Magistrate or Judge; and
 - (d) provide the owner or his or her agent, a inventory of the seized equipment, facility, document or other information storage system.

Confidential
information

7. Where information is provided by a public utility or the employee or agent of a public utility to the Authority pursuant to an investigation, it shall be treated as confidential.

PART III – CONSUMER AFFAIRS AND TECHNICAL REGULATIONS

Guidelines for
promotion and
advertisement of
services

8. (1) The Authority may from time to time, for the purposes of protecting consumers and ensuring ethical marketing and promotional standards by a public utility, publish guidelines specifying *inter alia* minimum standards and requirements in respect of advertisement and promotion of products and services offered by a public utility.

(2) A public utility shall abide by the guidelines published in accordance with sub regulation (1) in respect of the contents and representations contained in any promotion or advertisement of products or services offered to the public.

(3) A public utility shall notify the Authority in writing before it rolls out any promotion or advertisement of its services.

(4) The Authority shall order a public utility which infringes the advertisement or promotion guidelines to-

- (a) stop the advertisement or promotion forthwith; and
- (b) pay the fine prescribed in schedule 2.

(5) A public utility is liable to pay the extra penalty specified in Schedule 2 for each day that it continues the advertisement or promotion after it had been ordered to stop pursuant to sub regulation (4).

9. In carrying out its type approval functions pursuant to section 109 of the Information and Communications Act, the Authority shall from time to time determine and publish the processes and procedures involved in type approval.

10. Where a licence is issued based on assigned bands of frequencies and operating geographical regions, a public utility shall ensure that the strength of radio signals from its network emitting

into adjacent or other public utility's regions or frequency bands do not cause harmful interference in such regions or frequency bands.

Contravening acts in technical regulations etc

11. Without prejudice to such other enforcement measures contained in a relevant law or a licence, the following conduct by a person or public utility shall constitute a contravention under these Regulations-

- (a) occasioning harmful interference in the context of regulation 10 of these Regulations;
- (b) breach or violation of the guidelines and standards that may be specified and published by the Authority in respect of advertisements and promotion of products and services by operators pursuant to regulation 8(1) of these Regulations;
- (c) failure to meet such power limits as the Authority may from time to time specify or publish pursuant to section 89 of the Information and Communications Act in respect of the radio frequency power output of any transmitting device; or
- (d) failure to fulfil or satisfy the type approval provisions and requirements in the Information and Communications Act, regulations or a licence;

Type approval processes and procedures

Spectrum frequency interference

Quality of service

12. Without prejudice to other enforcement measures contained in the Act, regulations or a licence, the failure by any public utility to meet such minimum standards of quality of service as the Authority may from time to time specify or publish pursuant to a relevant law shall constitute a contravention under these Regulations.

Administrative sanctions for contravention of technical regulations, etc.

Schedule 2

13. Without prejudice to other enforcement measures contained in a relevant law or a licence, contravention of the provisions contained in regulations 8, 11 and 12 of these Regulations shall attract the administrative sanctions specified in Schedule 2 to these Regulations.

PART IV – ADMINISTRATIVE FINES

14. In imposing administrative fines, the Authority shall be guided by the following factors and considerations-

- (a) the severity of the contravention and the need to impose such fine as would act as a deterrent both to the offender and other persons;
- (b) the need to be non-discriminatory and transparent in the imposition of fines generally and particularly to fines on different persons for similar offences committed in identical circumstances;
- (c) the prevalence of the contravention in the industry generally and the likelihood of repetition by the offender and other persons;

Imposition of administrative fines generally

- (d) the duration of the contravention;
- (e) the circumstances of the contravention and in particular whether or not the contravention was deliberately, recklessly or negligently committed;
- (f) record of a previous similar contravention;
- (g) record of previous contraventions generally;
- (h) attitude and conduct of the offender prior to and leading up to the act of contravention and consequent upon the contravention;
- (i) danger to life and property consequent upon the contravention;
- (j) effect of contravention on the relevant service provision generally;
- (k) any gain (financial or otherwise) made by the offender directly or indirectly consequent upon the contravention;
- (l) the degree of harm caused or increased cost incurred by consumers or other public utilities sector participants;
- (m) size and annual turnover of the offender;

- (n) the extent to which any contravention was caused by a third party or any relevant circumstances beyond the control of the offender;
- (o) the absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent contravention by the offender;
- (p) possible mitigating circumstances such as -
 - (i) whether or not the contravention was of a minor nature and the consequences and effect thereof were equally minor in nature, or
 - (ii) whether the offender took immediate steps to remedy the contravention soon after becoming aware of it;
- (q) such other factors as the Authority may in specific circumstances consider relevant and necessary.

15. (1) The Authority may calculate and impose administrative fines for each contravening conduct of a public utility in the manner specified in Schedule 2 to these Regulations.

(2) Any administrative fine imposed by the Authority shall become due and payable by the offender within fourteen days from the date of the receiving a written notification from the Authority.

Specific administrative fines

(3) The payment of an administrative fine by an offender shall be without prejudice to the Authority's power to impose any other enforcement sanctions under any relevant law or a licence.

PART V – REVOCATION OF LICENCE

Revocation of licence

16. (1) Without prejudice to any other provision of a relevant law or a licence, the Authority may at any time recommend the revocation of a public utility's licence by giving the public utility three months notice in writing if-

- (a) the public utility fails for a continuous period of thirty days after commercial launch date, to provide in the licensed area or any part or location thereof, the service for which the licence was granted;
- (b) an amount payable under the terms of a licence remains unpaid after it became due, and remains unpaid for a period of twenty one days after the Authority notifies the public utility in writing that the payment is due;
- (c) the public utility fails to ensure that its equipment is type approved by the Authority pursuant to Section 109 of the Information and Communications Act;

- (d) within twelve months of the effective date of the licence, the public utility has not commenced full operations to the satisfaction of the Authority after the Authority has given prior notice to it specifying the details of the default and requiring that remedial steps be taken within thirty days of the notice; or
- (e) the public utility makes a statement of a material nature in the course of applying for a licence which is found to be false or misleading.

(2) In addition to the sanction provided for in sub regulation (1), the Authority may impose the administrative fines stipulated in Schedule 2 to these Regulations in respect of the contraventions specified in sub regulation (1);

(3) The licence fee that has been paid in respect of a licence that has been revoked pursuant to sub regulation (1) shall not be refunded whether in part or whole consequent upon such revocation.

Surrender of
licence

17. The original copy of any licence that has been revoked shall be surrendered to the Authority by the public utility within fourteen days of the revocation.

PART VI – OFFENCES AND PENALTIES

offences

18. (1) A person who-

- (a) assaults, obstructs or aids another person to assault or obstruct an official or inspector of the Authority in the performance of his or her duties; or
- (b) impersonates an official or inspector of the Authority,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dalasis or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

(2) An operator who fails to notify the Authority under regulation 8 (2) commits an offence and is liable to the penalty prescribed in Schedule 2 to these Regulations.

Schedule 1
General Form

Form A1
(regulation 4)

GAMBIA PUBLIC UTILITIES REGULATORY AUTHORITY

ENFORCEMENT REGULATIONS 2010

ENFORCEMENT REPORT FORM

1. Particulars of Person making Report

- Names:
- Address:
- Occupation:
- Telephone Number
- Facsimile Number:
- Mobile Telephone Number:
- E-mail Address:

Any other Relevant Detail or Information on Person Reporting:

2. Particulars of Person against whom Report is made:

- Names:
- Head Office or Relevant Operational Address:
- Service Provided and which is basis for Report:
- Contact Person for purposes of investigating Report:
- Telephone Numbers:
- Facsimile Number:
- Mobile Telephone Number:
- E-mail Address:

Any other Relevant Detail or Information:

3. Full details of Enforcement Report based only on personal knowledge of Person Reporting. Also indicate circumstances of the personal knowledge. (Additional sheets may be used for details)

4. List of supporting documents and materials in proof of Enforcement Report, photocopies and samples (where possible) of which must be sent with the Report.

Attestation of Person Reporting: I, the Person making the Report in this matter, do hereby state that all the facts that are contained in this Enforcement Report are true and within my personal knowledge and that I am ready, willing and able to orally testify thereto at any time, in any place and in any circumstance, before any person or body including but not limited to the Authority or any of its constituted organs or any judicial body or person and I further state that I am willing, ready and able to make such testimony before and in the presence of the person against whom this Report is made or his representative whomsoever.

Date: _____ Signature of Person Reporting: _____

Form A2
(regulation 4)

Print on Authority's letterhead and insert name and address of Person Making Report

**ACKNOWLEDGEMENT OF ENFORCEMENT REPORT
PURSUANT TO ENFORCEMENT REGULATIONS 2010**

THIS IS TO ACKNOWLEDGE receipt of your Enforcement Report dated day of 20... in respect of *[insert name and particulars of person against whom the Report was made]*. Be assured that the Authority shall, on the basis of your report, carry out its monitoring and enforcement

processes and procedures in accordance with its mandate under the Gambia Public Utilities Regulatory Authority Act 2001 and the Enforcement Regulations 2010.

PLEASE NOTE that the Authority routinely publishes at its website (www.pura.gm), on a quarterly basis, developments and progress reports on its monitoring and enforcement activities and you may wish to check periodically on the said website for further developments in regard to your Report.

Dated this day of 20...

.....

SIGNED FOR THE AUTHORITY

Form B
(regulation 6)

Print on Authority's letterhead and insert name of Authority Official or appointed inspector

LETTER OF AUTHORITY PURSUANT TO SECTION 40 (1) of The GAMBIA PUBLIC UTILITES REGULATORY AUTHORITY ACT 2001

TAKE NOTICE that this letter serves as requisite mandate and authority given to you by The Gambia Public Utilities Regulatory Authority ("**The Authority**"), in exercise of its powers under section 40 (1) of The Gambia Public Utilities Regulatory Authority Act 2001 ("**The Act**"), to carry out on its behalf, the functions and duties specified hereunder:

[Provide details of assignment.]

AND FURTHER understand that you are expected to exercise your best of judgement and reasonable discretion in carrying out the said functions and duties with the sole aim of attaining the Authority's objectives and goals pursuant to the aforementioned section of the Act.

BY THIS letter of authority, you are also authorised to carry out all functions and duties that are ancillary and related howsoever to the specific assignment(s) detailed in this letter and that are necessary and required for carrying out and achieving the specific assignment and objective of the Authority detailed hereafter.

Dated this day of 20..

.....

SIGNED FOR THE AUTHORITY

Form C1
(regulation 6)

IN THE COURT OF OF THE GAMBIA

APPLICATION FOR WARRANT PURSUANT TO PROVISIONS OF ENFORCEMENT REGULATIONS 2010
(Made under The Gambia Public Utilities Regulatory Authority Act, 2001)

Insert Public Utility's names and address

Application under regulation in conjunction with section 32 of the Act. I hereby apply for an order of this Honourable Court that(insert particulars of Agency) or any authorised officer be at liberty to inspect and obtain any records of Telephone number/Name.....

Being a customer of the above named public utility showing the following information on the within-named customer-

.....

for:
 (Name of Agency)

.....
 (Rank of officer)

.....
 (Signature/Stamp)

I the undersigned Magistrate/Judge, pursuant to the request made by hereby order that the Facilities as prayed in the application be subject to the inspection and detention of (Insert name of Agency) or any authorised Officer.

Dated this day of 20..

.....
 Magistrate or Judge

Schedule 2
 Specific Administrative Fines

(regulations 8,13,14,15,16 and 18)

A. Fines calculated on basis of each occurrence of Contravention

No.	Act of Contravention	Maximum Fine for each occurrence
1.	Failure to provide information required by the Authority or providing such information which the person knows or has reason to believe is false or misleading.	D25,000.00
2.	Obstructing or preventing the exercise of the Authority's powers of monitoring and enforcement.	D500,000.00
3.	Occasioning Harmful Interference in the context of Section 11 of these Regulations.	D500,000.00

4.	Contravention of section 31 of the Act.	D500,000.00
5.	Exceeding such power limits as the Authority may from time to time specify and publish pursuant to Section 89 of the Information and Communications Act in respect of radio frequency power output of any transmitting device.	D250,000.00
6.	Violation of the guidelines that may be published from time to time by the Authority specifying <i>inter alia</i> minimum standards and requirements in respect of advertisement of products and services by a public utility pursuant to section 8 of these Regulations.	D100,000.00
7.	Failure to notify the Authority in respect of any promotion of products or services by a public utility.	D100,000.00
8.	Failure to file with the Authority as at when due any required returns, forms or information pursuant to a relevant law or Licence Condition.	D500,000.00
9.	Failure to provide required records, data, forms or information pursuant to a relevant law or Licence Condition.	D500,000.00 and a further sum of D500,000.00 per day after the expiration of the notice for as long as the contravention persists.
10.	Operation of services outside the scope of Licence.	D5,000,000.00
12.	Failure to comply with the Authority's Direction	D500,000.00 and a further sum of D25,000.00 per day after the expiration of the notice for as long as the contravention persists..

13.	Transmission by a public utility of any indecent, subversive or obscene material, as may be defined from time to time by law in The Gambia provided that the material was prepared by and originated from the public utility.	D1,000,000.00
14.	Using antenna specifications other than that contained in a public utility's Licence.	D500,000.00

B. Fines calculated on other basis

No.	Act of Contravention	Maximum Fine Amount and basis for calculation
1.	Failure to meet minimum standard of quality of service specified by the Authority.	D500,000.00 per month for every month that the contravention persists and calculated from the deadline specified by the Authority for the public utility to meet the minimum standard of quality of service.
2.	Non-payment as and when due of annual levy or any other fees or charges imposed by the Authority pursuant to the Act, Regulations or Licence.	D500,000.00 per day payable for as long as the contravention persists and calculated from the date following the due date for the payment of the annual levy, fees or charges.
3.	Failure by a public utility to commence full licensed operations to the satisfaction of the Authority within 12 (twelve) months of the effective date of the Licence after the Authority has given prior notice to the public utility specifying the details of the default and requiring that remedial steps be taken within 30 (thirty) days of the notice.	D25,000.00 per day payable for as long as the contravention persists and calculated from the date following the expiration date of the 30 (thirty) days remedial step notice given by the Authority to the public utility.

4.	Where a public utility charges a tariff not approved by the Authority.	Forfeiture to the Authority of the entire margin between the approved tariffs and the unapproved tariffs applied by the public utility calculated on the basis of the subscriber numbers of the public utility during the period of the contravention and payable for as long as the contravention persists.
5.	Failure by a public utility to provide the service for which a Licence was granted in the Licensed area or any part or location thereof, for a continuous period of 30 days at any time after Commercial Launch Date.	A maximum of D1,000,000.00 for the first one month and thereafter D25,000.00 per day for as long as the contravention persists.
6.	Transfer or assignment by a public utility to a third party, without the prior written consent of the Authority, of any rights, interests or obligations under a Licence	D500,000.00 per day calculated from the effective date of the transfer or assignment as determined by the Authority and payable for as long as the contravention persists.
7.	Failure to obtain the prior written consent of the Authority in respect of any joint venture arrangement by or with a public utility or such percentage level of changes in the shareholding structure of a public utility as the Authority may from time to time specify.	D25,000.00 per day calculated from the effective date of the joint venture arrangement or change in shareholding structure, as determined by the Authority and payable for as long as the contravention persists.
8.	Using frequency modulation other than that which is authorised under the public utility's Licence or in Regulations.	D25,000.00 for every day that the contravention persists.
9.	Using carrier frequencies other than those which are authorised under public utility's Licence or Regulations	D500,000.00 for every day that the contravention persists.

MADE THIS 26TH AUGUST 2010

**ABDOU KOLLEY
MINISTER OF FINANCE**

