

# Guidelines ICT Model Law and Policy

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Accra, Septembre 2005



## Agenda

- Introduction
- Guidelines for Model ICT Policy
- Guidelines for Model ICT Law



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# Introduction

- **Policy** is the key determinant of legislation and regulation. It sets out the vision for ICT and its links to national development goals. Although good legislation and regulation is essential to translate policy into reality, governments must first identify and prioritize their policy objectives. In turn, these policy objectives will have to be translated into policies, legislation and regulatory rules that the regulator can implement.
- **Legislation** establishes how policy is implemented by defining the basic regulatory principles (for example the right to access) and processes (for example, licensing) and by providing the statutory foundation and mandate for the required institutions (for example, consultative, advisory and regulatory bodies.) Legislation also generally specifies the financial, staffing and reporting regimes under which the regulator operates and which define its functions and degree of independence.
- **Regulatory agencies** are responsible for developing regulations that detail the legal principles and that lead to the implementation of policy and policy objectives, such as, for example, new tariff structures and universal access programs.



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# Introduction

- In establishing policy and policy goals, it is necessary to consider the macro environment responds to the question: *“What is it in the social, economic, legal, and political environment that needs to be taken into account in order to ensure that policy is responsive and will be successful?”* Policy can then be shaped, and specific policy objectives formulated in a realistic and achievable manner.
  - *As is stated in the 2004 Tanzanian ICT Policy: “ICT is both cross-sectoral and a sector in its own right. An ICT policy has to relate to other relevant sectoral policies, whether they are infrastructural (such as telecommunications or e-commerce), or vertical (such as education, tourism, manufacturing or health), or horizontal (such as information, or governance). Consequently, in addition to developing and implementing an ICT policy, other relevant sectoral policies and their related institutions and regulations must accommodate ICT and its multiple convergences. It is also necessary to review existing legislation, thereby enacting requisite changes while introducing new legislation to create the appropriate legal framework within which this policy will be implemented.”*



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# Introduction

- At the same time, sufficient consideration must also be given to the institutional framework governing the ICT policies.
  - Today in many countries, there are various bodies regulating or overseeing particular aspects of ICTs; such as for example the NRAs for telecommunications including spectrum management, Broadcasting organizations for broadcasting, and agencies for IT for questions relating to information technology. Convergence however has led to a blurring in the boundaries of sectors under ICT. As a result, infrastructure falling in various ICT sectors can be utilized to provide services in other ICT sectors such as Internet over cable TV systems, TV using computers, Internet telephony using PC and this has had an effect on the institutional framework governing ICT Policies.
  - A certain level of cooperation among the agencies responsible for the different sectors that make up information and communication technology must take place initially, with the ultimate goal being a merger of such tasks under single political direction.



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# Introduction

- Key questions regarding ICT policy and regulatory issues are:
  - What are the objectives of ICT policy?
  - How does it link to legislation and regulation?
  - Who are the key players nationally and globally?
  - Who governs the internet?
  - How has telecommunications reform evolved?
  - What are the objectives of regulation and how does it work?
  - What are key reform and regulatory issues and their consequences?
  - What can be done to make decision-making processes more participatory, democratic and transparent?



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# WATRA Challenges for ICT Regulation

- WATRA has identified the following challenges facing ICT regulation in the Region as being:
  - Harmonizing existing national ICT Policies, including regional spectrum, licensing, etc.
  - Evolving common principles for interconnection, universal access, etc.
  - Establishing common responsibilities for NRAs.
  - Safeguarding the interest of citizens (control of content, maintaining standards, etc).
  - Encouraging investments to develop infrastructures & networks for access to services & information.
  - Using ICTs to reduce barriers of distances among the dispersed populations.



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# Guidelines for Model ICT Policy



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# Objectives for ICT Policy

ICT Policy should address the following objectives:

- Increasing the benefits from information technology for the country
- Building and contributing to a competitive national and regional ICT sector respectively
- Providing affordable, ubiquitous and high quality services
- Creating an enabling environment for sustainable ICT diffusion and development
- Providing wide-spread access to ICT, including broadband through relevant universal access policies and programs. Some key actions which generally help in the further development of NII and the fulfilment of universal access goals are:-
  - Provision of broadband capacity
  - Availability of services at affordable costs
  - Establishment of international reliability and redundancy standards
  - Ensuring adequate capacity to provide service on demand
  - Accessibility of services by the large majority of consumers
  - Facilitating the delivery of a wide range of value-added services
  - Facilitating the chance to access information



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# Objectives for ICT Policy

ICT Policy should address the following objectives (continued:)

- Encouraging innovations in technology development and use of technology
- Promoting information sharing, transparency and accountability and reducing bureaucracy within and between organizations, and towards the public at large
- Attaining a specified minimum level of information technology resources for educational institutions and government agencies
- Providing individuals and organizations with a minimum level of ICT knowledge, and the ability to keep it up to date
- Helping to understand information technology, its development and its cross-disciplinary impact.



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# Key Challenges for ICT Policy

Key Challenges to the adoption of an acceptable and sustainable ICT Policy include:

- **Promotion of Stakeholder awareness**
  - Promote stakeholder participation and constitution building throughout society
  - Start early e.g. through Internet to school programs
- **Guarantee of broad-based Stakeholder participation and planning**
  - Promote ICT in the field through workshops, seminars, media events and pilot projects to show practical benefits of ICTS
  - Cultivate ICT champions
- **Political buy-in/champions on a local and national level**
  - Ensure communication between interested parties (regulator, ministries, private sector, NGOs, beneficiaries)
  - Ensure local politics participation and buy in
  - Ensure that ICT Policy is tailored to realities of market, amongst others through prior analysis of situation and participation of local actors in process



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# Key Challenges for ICT Policy

Key Challenges to the adoption of an acceptable and sustainable ICT Policy include (continued:)

- **Coordination with other policies/priorities**
  - Stay focused on objectives of ICT Policy but do not ignore the synergy between sectors
- **Relevance and usefulness of policy and projects**
  - Aim for innovation (e.g. Grameen-type projects)
  - Define targets (e.g.: Internet to municipalities, broadband to rural areas,...)
- **Sustainability of projects (training, financing, appropriateness of technologies)**
  - Ensure sufficient training- make it part of the package
  - Technologies introduced through ICT initiatives must take account of realities
  - Timing must be appropriate
- **Regional and International Framework**
  - Coordinate with regional initiatives



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# Guidelines for Model ICT Law



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## 1. Preliminary

### PART I—PRELIMINARY.

1. Short title.
2. Objectives of the Act.
3. Definitions.

- **RECOMMENDATION: USE INTERNATIONAL REFERENCES AND OR DEFINITIONS SUCH AS THOSE USED IN OFFICIAL ITU TEXTS (E.G. RADIO REGULATIONS.)**

- **ISSUES:**

- Recently, more and more countries are expanding the scope of their telecommunications laws to adapt it to the realities being faced by the countries in the region – it is important to be clear though and to make sure that any changes or additions to the Law are clearly defined and consistent. Any term being added must, of course, be defined clearly.
- International best practice shows that in revising telecommunications law to include ICT, it is important to make sure that the definitions too are completed. Indeed, in order to deal with convergence, it is important that the Law recognizes that there is not only the reality of transmitting, emitting or receiving signs, signals, writings, images and sounds or intelligence by any nature by wire, radio, optical or other electronic systems (which is the globally recognized definition of telecommunications as defined by ITU), but that there is also the act/reality of the actual generation, manipulation and storage of information using electronic means. In many cases, it does make sense to add the term ICT to the Law since it is a term which is recognized in the context of many countries Government Policy initiatives and therefore a reality which must be dealt with. Obviously technology and content are a different issue so it is also important to define what it is that needs to be caught in the definitions and indeed in the scope of the Law.
- Adding a definition of ICT to the Law aims to compliment the definition of telecommunications in the strictest sense. It does not imply that information technology as defined must be regulated in exactly the same way as telecommunications. It also has nothing to do with IT as a technology nor with the content of the information but rather with the identification of the fact that there are other realities that are linked to but not covered by a more traditional definition of telecommunications. And when countries struggle with the different levels of regulation and conditions applying to the different realities of a converged market, they are faced with realities like ISPs or companies storing information using electronic means – some countries have included the latter reality in their definition of value added services.



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# 1. Preliminary

## EXAMPLE:

*In Jordan, the definition of ICT has been added to the Law. The term "telecommunications" is not simply replaced with the term "ICT. The term Information Technology was simply added where it was thought that this was relevant – for example to the provisions dealing with the tasks of the Ministry (Art.3) and of the Regulator (art. 4). An interesting illustration of this is also Article 6 of the Jordanian Law, which talks about the powers and duties of the TRC and states:*

*".....a. To regulate postal and telecommunications services in the Kingdom through the application of the declared general policy for providing reliable postal and telecommunications services to users in **line with the development and deployment of postal, telecommunications and information technologies** at just, reasonable and affordable rates.*

*b. To **encourage investment and competition in the postal, telecommunications and information technology** sectors.*

*c. To protect the interests of those making use of postal and **telecommunications services**, and to oversee the performance of the licensees to offer postal and telecommunications services, and to take the necessary measures for the licensees to observe the terms of the license, including the quality and standard of the services and the endeavors to develop the same."*



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# 2. Functions of the Minister and of the NRA

## PART II – FUNCTIONS OF THE MINISTER

- **RECOMMENDATION: RESPONSIBILITIES AND MANDATE OF EACH PLAYER MUST BE CLEARLY DEFINED SO THAT MISUNDERSTANDINGS OR DUPLICATION OF EFFORTS ARE AVOIDED.**
- **ISSUES:**
  - *The issue of the actual mandate of the Authority is really a question of delegation of powers of the State and the degree of delegation of such powers depends on the political tradition and context of the country and on the political will to create an independent and competent Regulatory Authority or not. This will, in fact, determine the true future of the sector.*
  - *In practice, there is a wide diversity in how countries divide regulatory roles and responsibilities between the Ministry and the independent regulatory authority. This is partly due to a lack of a clear-cut distinction between policy functions and regulatory functions. To look at international examples, it has often been the case that where an independent regulatory authority has been set up the establishment of the regulatory framework is in principle the responsibility of the Ministry and the implementation and administration of this regulatory framework is the responsibility of the independent regulatory authority.*
  - *In order to ensure regulatory clarity and confidence though, it is essential to define the institutional structure in the sector clearly. This was appropriately described in the McKinsey Quarterly of 1995 which stated that: "Where a regulator exists, it is important to ensure clarity of jurisdiction and defined resolution mechanisms, adequate organizational competence and funding and political insulation. Independence derives more from this latter factor than from a formal definition, and manifests itself by the regulators powers to dissent".*
  - *The division of tasks must be reflected in any Law governing the sector as it will determine the relationship between the different entities in the future and really determine the credibility of each in fulfilling their roles. Too many countries do not spell this out clearly from the start and thus set the scene for power-struggles in the worst case or uncertainty about who does what in the "best" case.*



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## 2. Functions of the Minister and of the NRA

	Licensing public telecommunications networks and services	General Authorizations/class licenses	Operators with Significant Market Power	Interconnection	USO	Frequency allocation and assignment	Consumer protection	Tariff control	Number management and allocation
Austria	NRA	NRA	NRA	NRA	NRA	MIN	NRA	NRA	NRA
Belgium	MIN	NRA	NRA	NRA	NRA	MIN	NRA	NRA	NRA
Denmark	NRA	N/A	NRA	NRA	NRA	NRA	NRA	NRA	NRA
Finland	MIN	MIN	MIN	NRA	MIN	NRA	MIN	N/A	NRA
France	MIN	NRA	NRA	NRA	NRA	ANF		COMP. DIR.	NRA
Ireland	NRA	NRA	NRA	NRA	NRA	NRA	NRA	NRA	NRA
Portugal	NRA/Min	NRA	NRA	NRA	NRA	NRA	NRA	NRA/Dir. Gen Comp.	NRA
Spain	MIN	NRA	NRA	NRA	NRA	Min.Dev.	NRA	NRA	NRA
Sweden	NRA	NRA	NRA	NRA	NRA	NRA	NRA	NRA	NRA
Italy	MIN	NRA	NRA	NRA	NRA	MIN	NRA	NRA	NRA



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## 2. Functions of the Minister and of the NRA

### EXAMPLE:

- *In Portugal the government is responsible for the definition of the general communications policy. ICP- ANACOM (the regulator) acts in its advisory capacity when necessary. There are a few areas where a combined action between the Government and ICP is needed.*
- *ICP- ANACOM is a public institute, which differs from public administrations as it has more powers in decisions concerning the internal management of the organization including financial and human resources.*
- *Article 5, entitled Telecommunications Tutelage, of Law no. 91/97, of 1 of August (the Basic Law) states that:*
  1. *It is the State's duty to define the strategic guidelines and the general policies, the approval of the applicable legislation to the sector, the supervision and inspection of telecommunications and of the activity of the telecommunications operators.*
  2. *Within the carrying out of the State's responsibilities, it is the duty of the "Instituto das Comunicações de Portugal", as the sector's regulatory entity, and without prejudice of other duties under the law:*
    - a. *to manage the radio electric spectrum and of the orbital positions;*
    - b. *to normalize, approve and certify the telecommunications equipment and materials, according to the applicable legislation;*
    - c. *to inspect the telecommunications apparatus for compliance with the respective legal and regulatory provisions concerning their use, as well as the application of corresponding sanctions; and*
    - d. *to define the conditions of interconnection of public use telecommunications services and networks exploited by operators holding a significant position in the markets.*



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## 2. Functions of the Minister and of the NRA

### EXAMPLE:

- *In France, the ART has its own areas of competence and shares some others with the Minister in charge of telecommunications.*
- **Areas of competence shared with the Minister**
  - *The Authority is consulted on draft legislation or regulations relating to the telecommunications sector and takes part in implementation thereof.*
  - *The Authority may specify certain rules of a technical nature in terms of network and services operations, interconnection and terminals; its decisions are then approved by the Minister.*
  - *On behalf of the Minister for telecommunications, the Authority deals with licence applications for the establishment and operation of networks open to the public, and also for requests for licences to provide the public telephone service. It also deals with applications for licences required for the supply to the public of services using radio frequencies. It transmits the processed files to the Minister, who is entrusted with issuing licences.*
  - *The Authority assesses the net cost of the universal service and the contributions payable by operators and sends its proposal to the Minister, who records the amounts.*
  - *The Authority delivers a public opinion on universal service tariffs and multi-annual tariff objectives, and also on tariffs for services for which there are no competitors on the market.*
  - *As far as international aspects are concerned, the Authority ensures respect of legislative provisions relating to equivalent treatment of operators authorised to route international traffic. It is also associated, at the Minister's request, with Community and international negotiations.*



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## 2. Functions of the Minister and of the NRA

### FRANCE (continued):

- **Own areas of competence**
  - *The Authority issues licences for the opening and operation of private networks intended to provide telecommunications services reserved for closed user groups (networks internal to businesses or administrations, for example).*
  - *The Authority draws up and manages the national numbering plan and assigns frequency and numbering resources to operators and users in objective, transparent and non-discriminatory conditions.*
  - *Public network operators whose market share is greater than 25 % are declared to be "powerful" and must for that reason publish a standard interconnection offer. The Authority draws up a list of such operators every year and approves their standard offer. The Authority may request modification of interconnection agreements made between two operators, where this is necessary to guarantee equality of competitive conditions or the interoperability of services.*



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## 2. Functions of the Minister and of the NRA

**FRANCE (continued):**

- **Own areas of competence (continued)**
  - **Power for Conciliation and Settlement of Disputes**
    - *The Authority is entrusted with settling disputes between operators in three areas :*
      - refusal to make an interconnection, conclusion and performance of interconnection agreements and telecommunications network access conditions;
      - bringing into conformance of agreements with clauses excluding or making restrictions of a legal or technical nature on the supply of telecommunications services over cable networks;
      - possibilities and conditions for shared use of existing facilities located in the public field or on a private property;
    - *The Authority may be called upon to play a conciliation role, to settle disputes that do not come under the jurisdiction of the dispute settlement procedure. In addition to the Minister responsible for telecommunications, any individual or legal entity, any professional organisation or consumers association may thus refer matters to the Regulator, who informs the Competition authority thereof.*
  - **Power to Take Sanctions**
    - *The Authority may impose penalties on operators for any breach of legislative or regulatory provisions. It may thus take measures to suspend a licence temporarily or permanently or impose a fine up to 5 % of the operator's turnover, where the offence is repeated*



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## 3. Establishment and Functions of the NRA

PART III:

5. Establishment of the Commission.
  6. Functions of the Commission.
  7. Powers of the Commission.
  8. Composition of the Commission.
  9. Disqualification from membership.
  10. Vacation of Office of Commission.
  11. Meetings of the Commission.
  12. Remuneration of members.
  13. Independence of the Commission
- **RECOMMENDATION 1: BE CLEAR AND PRECISE ON THE RESPONSIBILITIES AND MANDATE OF THE REGULATOR – THIS WILL ASSIST THE REGULATOR IN MAINTAINING ITS INDEPENDENCE, ESPECIALLY FROM POLITICAL INFLUENCE.**
    - **COMMENT: IN THE FRENCH-SPEAKING COUNTRIES, THE DETAILS OF THESE ISSUES ARE GENERALLY DEALT WITH IN A SEPARATE DECREE OR OTHER REGULATORY TEXT.**
  - **RECOMMENDATION 2: THE PROCEDURAL ISSUES (points 11-13) CAN BE DETAILED IN A SCHEDULE OR IN A SEPARATE DECREE, AS REQUIRED.**



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### 3. Establishment and Functions of the NRA

**Issues:**

**1. Leadership Model**

- In theory, collegial bodies offer a broader perspective for decision making and allow for thorough consideration and debate of the issues. It should also allow the Regulator to be more independent, more objective, and less susceptible to regulatory capture.
- That being said, there are variations on the model chosen, with collegial bodies differing in terms of:
  - number of members (varying from 3 to 15),
  - authority of the collegial body,
  - dedication of members (part-time or full-time),
  - the background of members, and
  - the nomination and possible termination of the duties and contract of the members.
- These are all issues which must be considered in the drafting of an ICT Law.
- In the region, a variety of models are present. Burkina Faso, for example has a Director General. Cape Verde has a full time 3-person Board. Ivory Coast has a Director General and a Board consisting of 7 people, and Mali has a Director General with an Administrative Board. The Regulator of Niger has a 5 person Board, and Senegal has a Director General and a Regulatory Council. Togo has a 5 person Board.
- **Looking at practical examples and the economic background of the countries in question, it is logical that the Commission be composed of part-time members.**



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### 3. Establishment and Functions of the NRA

**Issues:**

**1. Leadership Model (continued)**

- The size of the Commission has an impact on its practical functionality. Although it is sometimes argued that members of the Commission must represent all the different stakeholders in the sector to take account of the different views (like in Zambia, where members are nominated by the Minister responsible for communications, one by the Minister of defense, one by the Minister of Home Affairs, one by the Farmers Union, one by the Zambian Consumer Protection Association, one by the Law Association of Zambia, one by the staff's Trade Union, and one having, in the opinion of the Minister, relevant qualifications or experience), we believe that international examples have shown that collegial bodies that are too large sometimes reduce cohesion and consistency and do not facilitate the decision-making process.
- **We would recommend that a 5-man Commission is the most appropriate structure.**



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## 3. Establishment and Functions of the NRA

Issues:

### 2. Appointment of Leadership

- International Best practice shows that, as regards the appointment of the Leadership of the Regulatory Authority, a number of principles are particularly relevant, namely:
  - Members should be appointed on the basis of their competence and integrity rather than on political considerations
  - A consultative process in the selection of the members and of the CEO of the Authority seems to ensure the appointment of the best people
  - The appointment of the Members by different branches of the government can help in guaranteeing independence
  - Members should have appropriate professional qualifications
  - Members should be free from disqualification relevant to appointments to high public office – as such, the office of Board Member or Director General of the NRA should be incompatible with offices in those organizations from which legal separation from the NRA is required



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## 3. Establishment and Functions of the NRA

Issues:

### 3. Competence of Leadership:

- Another issue which is of particularly importance is to ensure that only people with the requisite experience are appointed in the positions of Leadership of the NRA and that the appointment process ensures the competence, proper functioning, independence and accountability of the Commission.
- A good example of such requirements is Paragraph 122 of Austria's Telecommunications Act, which stipulates that of the three Commissioners, one member shall belong to the judiciary. Of the two other members, one member should have relevant technical knowledge and the other should have relevant legal and economic expertise.



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### 3. Establishment and Functions of the NRA

#### Issues:

#### 4. Term:

- As regards the term, it is clear that with a guaranteed and sufficiently long term of office, the head of the regulatory body can exercise regulatory power without considering political interests from outside his office.
- **An appropriate term based on international best practice is between 3 and 5 years. A difference in terms between the Chairman and the deputy Commissioners (stacking) also follows international best practice and is good since it will help ensure a balance between stability/continuity and new people/fresh ideas on the Commission.**



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### 3. Establishment and Functions of the NRA

#### Issues:

#### 5. Removal:

- Protection against arbitrary removal of any member of the Regulatory Authority is essential to ensuring the independence of the Authority.
- Some mechanism must be included to protect the integrity of the Authority. One possible solution is to enable removal of a member for a just cause (e.g. misconduct or incapacity) and this by providing for a mechanism similar to the case of the removal of ombudsmen, electoral officials, etc. whereby a recommendation by a judicial committee is sought.



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# 3. Establishment and Functions of the NRA

Summary of Key Issues:

- **Commission and Board**
  - **Establishment of the Commission and of its Board**
    - establish timing
    - establish structure (DG/Commission/...)
  - **Composition of the Board**
    - number of members
    - appointment mechanism (who, how)
    - background and criteria for choice (e.g. experience, professional background)
  - **Duties of the Board**
    - enumerate duties of Board within context of duties of Regulator
  - **Meetings of the Board**
    - how often
    - how
    - agenda and powers
  - **Creation of Technical and Advisory Committees**
    - Foresee possibility
  - **Term of office of Board Members**
    - term
    - stacking, if appropriate
    - re-appointment
  - **Qualification for and termination of membership of the Board**
    - criteria for disqualification



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# 3. Establishment and Functions of the NRA

Summary of Key Issues:

- **Commission and Board**
  - **Remuneration of Board Members**
  - **Vacation of Office**
    - reasons for vacation
  - **Resignation**
    - Reasons and procedures for resignation
  - **Removal from Office**
    - procedures and reasons for removal
  - **Suspension**
    - procedures
  - **Filling Vacancies**
    - procedures
  - **Meetings of the Board**
    - who regulates
    - timetable for meetings
    - place and time of meetings
    - calling of meetings
    - quorum
    - procedures for vote (majority vs. unanimity and procedures for tie)
    - chairing of meeting
    - minutes of meetings
  - **Declaration of interest**
    - procedures



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## 4. Directorate and Staff

### PART IV— THE DIRECTORATE AND STAFF OF THE COMMISSION.

14. Nomination of the Directorate.
15. Powers and Tasks of the Executive Director/Director general
16. Provisions relating to other staff.
17. Protection of employees.

- The model which seems to be predominant in the Region is to have a Director general/Executive Director in charge of day-to-day running of NRA with a Commission as “Board.”
- This model has the benefit, if properly implemented, of providing the (Executive) Director with the necessary power to be able to get on with his work, but still with a Commission (collegial body) to provide the necessary checks and balances on key issues so as to help prevent biased or hasty decisions.



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## 4. Directorate and Staff

### Key issues:

- It is important to properly implement the model, amongst others by defining clearly who does what so that each of the organs and all other stakeholders understand clearly where each of the organs respective mandates begin and by ensuring that the mandate of the Executive Director in particular is as stable as possible and as protected against political capture as is humanly possible. Such provisions will provide a mechanism to avoid that the organization grinds to a halt because of political influences or personal conflict between the Commission and its Executive Director.
- It is also very important to ensure that there is a difference in the appointment mechanism of the Executive Director as opposed to the Commission.
- It is essential to ensure that the Executive Director cannot be shut out of the decision-making process except under very specific circumstances.
- What is also important is that the Executive Director participates in Board meetings – he does not necessarily have voting rights.
- It is also very important and especially in the early stages of its existence that the Executive Director/Director General have the necessary expertise and political clout at Commission level so as to be able to draft the Basic texts, put the organization in place, recruit the necessary staff, and lobby with government to get the necessary funding and additional resources, such as appropriate office space, etc.



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## 4. Directorate and Staff

Regarding the Directorate and Staff of the Regulator, which will, "de facto" be the body of the organization and carry out the work, the Law should foresee (generally in the Common Law countries – Francophone countries will deal with this through decree – the principles remain the same though wherever they go) a number of issues, namely

### Director General

- Nomination of the Director General
  - qualifications
  - mandate (timing and possibility of renewal)
- Duties and Responsibilities of the Director General
  - e.g.: be the chief executive of the Commission, implement the policies and programs agreed upon by the Board ; manage the funds and property of the Commission
  - administer, organize, supervise and generally control the staff of the Directorate
  - keep the Commission Board informed on the activities of the Directorate
  - keep records of all the transactions of the Commission
- Other possible clauses:
  - The Director General shall participate, in an advisory role, in the meetings of the Board of Directors during which he shall assume the sole role of reporter
  - The Director General shall represent the Regulator in relation to the State, the public administration and third parties
  - The Director General may delegate, for specific questions, part of his powers and prerogative to staff holding administrative posts



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## 4. Directorate and Staff

- Along the lines of international best practice, we would also suggest that issues relating to the protection of employees are also dealt with in the Basic Law such as:
  - The Commission may establish pension or superannuation schemes and such other financial schemes as it may determine for the benefit of its officers and employees.
  - No act or omission by any officer or employee of the Commission done in good faith in the execution of that officer or employee's duties shall render that officer or employee personally liable to any civil action or other civil proceedings in respect thereof.



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## 5. Financial and Related Provisions

### PART V—FINANCIAL AND RELATED PROVISIONS

18. Funds of the Commission.
19. Annual accounts.
20. Audit and Control.
21. Financial year.

### Key issues to be included in the Law:

- Accountability
- Funding



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## 5. Financial and Related Provisions

- Accountability:
  - The independence of the Regulatory Authority does not mean independence from the laws and politics of the country. As such, the Regulatory Authority should be accountable to legislatures or other government bodies. Reporting is useful in the sense that it summarizes results of regulatory activity and the associated costs and this should be provided for in the Law.
  - In order to promote the independence of the Regulatory Authority, though, it must be guaranteed that these reporting obligations do not re-enforce influences which the institutional separation intended to exclude.



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## 5. Financial and Related Provisions

- Funding:
  - It is also essential to provide adequate funding for the regulatory process- funding is required to create the necessary infrastructure and hire good staff to implement regulatory objectives.
  - There are basically two ways to finance the regulators budget:
    - Through the provision of general government budget appropriations – this is the mechanism which was used in the past, particularly when the functions were carried out within Ministries or by the PTT Administrations. Some countries still use government appropriations - examples are Australia, the Czech Republic, France, Japan, Korea, Mexico, New Zealand, Poland and Turkey. Of these examples, it is interesting to note that the Regulatory Authority in Australia and France are financed directly from the national budget, with the Australian Regulator's cost of operation being provided by the budget and all its revenue being returned to the budget.
    - Through the levying of license and spectrum fees – in this case, the cost of regulation is divided amongst the sector. A typical case is through a levy where licensed telecommunications operators will pay a levy in proportion to their gross telecommunications revenue.
  - In order to promote independence, a number of principles are important:
    - In case of financing by levies or fees paid by market operators, the obligation to pay must be such that it is guaranteed that the NRA actions and judgments will not be affected by the financing method
    - Where financing occurs through the State budget, it must be guaranteed that there is no influence by the government department responsible for holding government shares in the incumbent and other market operators



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## 6. Regulatory Issues in Basic Law

### PART VI - LICENCES AND FREQUENCY AUTHORISATIONS

22. Requirement for a licence
23. Obligations with respect to licences
24. Conditions of licences
25. Obligations of licensees
26. Obligations of all operators of telecommunications networks and providers of telecommunications services
27. Requirement for a frequency authorisation
28. Obligations with respect to frequency authorisation
29. Conditions of frequency authorisation
30. Authorisation to operate in territorial waters or airspace
31. Suspension and termination of licences and frequency authorisation
32. Amendment of licences and frequency authorisation
33. Renewal of licences and frequency authorisation
34. Special licences



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## 6. Regulatory Issues in Basic Law

### PART VII - INTERCONNECTION AND ACCESS TO FACILITIES –

- 35. Interconnection
- 36. Access to facilities

### PART VIII - UNIVERSAL SERVICE/ACCESS AND PRICES –

- 37. Universal service
- 38. Prices

### PART IX - SPECTRUM MANAGEMENT, NUMBERING AND DOMAIN NAME MANAGEMENT

- 39. Spectrum
- 40. Allocation of frequency bands
- 41. Exercise of functions
- 42. Monitoring
- 43. Harmful interference
- 44. Space segment
- 45. Numbering plan
- 46. Domain name management



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## 7. Other Issues

### PART X TERMINAL EQUIPMENT AND TECHNICAL STANDARDS

- 47. Terminal equipment
- 48. Standards

### PART XI TESTING AND INSPECTION

- 49. Power to request information
- 50. Pre-installation testing
- 51. Standards for testing
- 52. Entry, search and inspection
- 53. Magistrate may issue warrant



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## 7. Other Issues

### PART XII—ENFORCEMENT OF THE LAW, INVESTIGATION AND INSPECTION

54. Annual report on operations of licensee.
55. Investigation of complaints.
56. Power to institute inquiries.
57. Report on investigations.
58. Directions to remedy breach of licence conditions.
59. Appointment of inspectors.
60. Powers of an inspector.
61. Search warrant.

- **RECOMMENDATIONS:**

- ENSURE THAT THE TELECOM LAW PROVIDES SUFFICIENT POWER, INDEPENDENCE AND AUTHORITY TO THE NRA FOR IT TO GATHER INFORMATION AND ACQUIRE THE HUMAN AND FINANCIAL RESOURCES (WHETHER THROUGH STATE BUDGET, OR NRA SELF FUNDING) FOR IT TO IMPARTIALLY, SWIFTLY, AND TRANSPARENTLY CARRY OUT THE WILL OF THE LEGISLATURE;
- ENSURE THAT THE LAW CONTAINS CLEAR AND UNAMBIGUOUS LANGUAGE DESCRIBING THE JURISDICTION OF THE NRA AND, WHERE APPROPRIATE, OTHER INTERESTED STATE AGENCIES;
- TO THE EXTENT POSSIBLE, PROMULGATE LAWS THAT CAN ADDRESS NEW TECHNOLOGY;
- GIVE BROAD POWERS TO THE NRA TO ADJUST TO CHANGES IN THE INDUSTRY;
- ENSURE JURISDICTION OVER SERVICE PROVIDERS WHO MAY NOT BE LICENSED (E.G., ISPs)



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## 7. Other Issues

### PART XIII—FAIR COMPETITION AND EQUALITY OF TREATMENT

62. Commission to encourage fair competition.
63. Prohibition of acts exhibiting unfair competition.
64. Exceptions to fair competition.
65. Breach of fair competition.
66. Non-denial of service.
67. Equality of treatment.
68. Interconnection of network facilities

- **RECOMMENDATION –THIS IS ONE OF THE KEY ELEMENTS FOR REGULATION AND SHOULD BE DEFINED CLEARLY SO THAT THE REGULATOR HAS THE APPROPRIATE MANDATE AND INSTRUMENTS TO IMPOSE AND ACCOMPANY SUCH A FRAMEWORK.**



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## 7. Other Issues

### PART XIV—OFFENCES

69. Offences and penalties for unlicensed persons.
70. Interception and disclosure of messages.
71. Interception of Government communication.
72. Sending false distress signals, etc.
73. Offences in respect of radio communications.
74. Protection of telecommunication installations.
75. False advertisement.
76. Prosecution under other laws.
77. Action for damages.
78. General penalties.

- **RECOMMENDATION: ENSURE THAT THE ENABLING LAW PROVIDES THE NRA WITH A WIDE RANGE OF PENALTIES TO INCLUDE THOSE APPROPRIATE FOR MINOR, MID RANGE, AND MAXIMUM OFFENCES**



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## 7. Other Issues

### PART XV - ROAD WORKS AND ACCESS TO LAND

79. Road works
80. Repair and restoration
81. Access to lands for inspection and maintenance
82. Installation of facilities on private land or buildings

### PART XVI—MISCELLANEOUS.

- e.g.
- transitional provisions
  - emergency

### SCHEDULES:

- e.g.:
- Meetings of the Commission



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Merci de votre attention!!

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