
Office of Utilities Regulation

**Application for the Grant and Renewal of
Licences**

&

**Application for Approval of Assignment or
Transfer of Licences or Transfer of Control of
Operations**

Due Diligence Policy



OFFICE OF UTILITIES REGULATION

2019 October 07

DOCUMENT TITLE AND APPROVAL PAGE

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DOCUMENT TITLE: Due Diligence Policy - Application for the Grant and Renewal of Licences & Application for Approval of Assignment or Transfer of Licences or Transfer of Control of Operations

PURPOSE OF DOCUMENT:

This document sets out the due diligence process that the Office of Utilities Regulation will undertake when considering applications with a view (a) to making a recommendation to the relevant portfolio Minister for the grant or renewal of licences regarding the provision of telecommunications, water and sewerage services, and in certain cases, electricity; and (b) to giving advice to the relevant portfolio Minister regarding an application for approval for the assignment of licences or the transfer of control of operations of a licensee in the telecommunications, water and sewerage and electricity sectors.

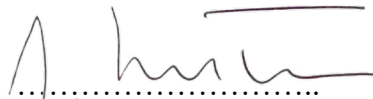
ANTECEDENT DOCUMENTS:

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2017/GEN/007/GEN.001	Due Diligence Policy – Application for the Grant and Renewal of Licences	2017 July 04

APPROVAL:

This document is approved by the Office of Utilities Regulation and the provisions herein become effective as of **2019 October 07**.

On behalf of the Office:



Joseph Matalon
Chairman

2019 October 07

DUE DILIGENCE POLICY

PART I

APPLICATION FOR THE GRANT AND RENEWAL OF LICENCES

1. INTRODUCTION

- 1.1 The Office of Utilities Regulation (Office/OUR) in carrying out its functions must ensure that due diligence procedures are applied when processing licence applications relative to the provision of prescribed utility services. Prescribed utility services refer to the provision of telecommunications, water, sewerage and electricity services (hereinafter referred to as “utility services”).¹
- 1.2 For the purpose of this policy, a due diligence review is a systematic process of enquiry, investigation and assessment conducted by the Office to satisfy itself that an applicant can be recommended for the grant or renewal of a licence to provide utility services. For the purpose of this policy a reference to the grant of licence includes a renewal of licence.
- 1.3 The due diligence process outlined in this policy is designed to ensure that the Office adheres to the legislative requirements prior to making a recommendation for the grant of licence. The policy seeks to ensure that there are adequate controls and procedures in place to ensure that a successful applicant for the grant of a licence fulfils the legal criteria, including being a fit and proper person for whom a recommendation for the grant of a licence can be made by the OUR to the responsible Minister.

2. LEGISLATIVE REQUIREMENTS

- 2.1 Pursuant to the Office of Utilities Regulation Act (OUR Act) and the Telecommunications Act (Telecoms Act), the Office is mandated to accept and process licence applications for the provision of utility services and make such recommendations to the responsible Minister for the grant of licences.

¹ With the passage of the Electricity Act, 2015 promulgated on 2015 August 27, the Office is no longer responsible for the acceptance and processing of applications for electricity licences and to make recommendations to the portfolio Minister. The Office however retains some responsibilities in the case of renewal of electricity licences issued prior to the passage of the Electricity Act, 2015, as specified in those licences, in which case, this policy will be applicable.

- 2.2 Section 4(1)(b) of the OUR Act provides that the Office shall “*receive and process applications for a licence to provide a prescribed utility service and make such recommendations to the Minister in relation to the application as the Office considers necessary or desirable.*”
- 2.3 The Telecoms Act, inter alia, requires a declaration from the applicant that it is not disqualified from being granted a licence by reason of any legal impediment; it possesses the technical qualifications and that it is able to satisfy the financial requirements relative to the provision of the service.
- 2.4 The Telecoms Act further imposes on the Office an obligation to consider the following factors prior to making a recommendation for a grant of licence to the responsible Minister:
- 2.4.1 whether the applicant is a fit and proper person to be granted a licence;
 - 2.4.2 whether the applicant is an undischarged bankrupt;
 - 2.4.3 whether the applicant has previously been granted a licence which was revoked;
 - 2.4.4 whether any connected person has previously been granted a licence which was revoked²;
 - 2.4.5 Any other matter as the Office considers fit.
- 2.5 The OUR has adapted and applied the licence application criteria outlined and information required under the Telecoms Act to applications for licences for other utility services.
- 2.6 The following persons, for the purpose of this policy, are considered to be connected persons:
- 2.6.1 A holding company or subsidiary of the applicant;
 - 2.6.2 Any company of which the applicant has control
 - 2.6.3 Any company of which the applicant and persons connected with the applicant together have control;
 - 2.6.4 Any company which together with the applicant constitute a group.

² For definition of connected persons see section 11(6) of the Telecommunications Act

3. DUE DILIGENCE PROCESS

- 3.1 The due diligence process shall commence after all the relevant information or documents as indicated in the relevant application form are submitted and accepted for assessment.
- 3.2 Prior to the OUR undertaking the due diligence process, the applicant shall authorize the access and release of information related to the due diligence process, including relevant financial/banking information, from third parties to the OUR.
- 3.3 During the due diligence process, the OUR reserves the right to request additional information from the applicant where the application form and accompanying documents prove unsatisfactory or where the investigation by the Office reveals details, relevant to the processing of the application, but which were not addressed by the applicant.
- 3.4 Where during the due diligence process the OUR finds that the information submitted is incomplete, and the applicant has failed within a reasonable time to satisfactorily address the concerns highlighted during the evaluation process, the Office shall suspend the due diligence process and advise the applicant accordingly.

4. EVALUATION PROCESS & RECOMMENDATION

4.1 General Information

- 4.1.1 The information contained in each application shall be subject to independent verification. Applications shall be evaluated and a financial review, legal review, technical review and a fit and proper enquiry carried out prior to the Office making a recommendation to the relevant Ministry for the grant or refusal of a licence.
- 4.1.2 Applicants must pass all reviews and satisfy the fit and proper enquiry, failing which the Office shall recommend to the Minister that the application be refused.

4.2 Financial Review

- 4.2.1 An applicant who has been incorporated for less than eighteen (18) months at the time of application shall submit either an audited opening balance sheet or provide evidence of its financial capability to carry on the proposed licensed business e.g. capital commitments, debt/equity ratio etc.

- 4.2.2 An applicant who has been incorporated for more than eighteen (18) months shall submit an audited financial statement for a period ending no more than one (1) year prior to the date of the application.
- 4.2.3 The audited financial statement shall be reviewed to determine the financial viability of the applicant and whether the applicant would be able to carry out the proposed licensed business.
- 4.2.4 Where the Office, based on the financial review, is not satisfied that the applicant has the financial capacity or access thereto to carry out the proposed licensed business, the applicant shall fail the financial review.

4.3 Technical Review

- 4.3.1 The OUR shall examine the schematic diagram of the proposed system/network, where applicable and supporting information submitted by the applicant to determine if the information and schematic diagram presented is consistent with and is able to provide the type of service in respect of which the applicant is applying for a licence.
- 4.3.2 The OUR shall also ensure that the relevant permits, licences and approvals required by all governmental and local agencies, and authorities in order to enable the applicant to perform its obligations under the licence are present and valid.
- 4.3.2 Where the OUR, based on the technical review, is not satisfied that the applicant has demonstrated the technical capability to carry out the proposed licensed business, the applicant shall fail the technical review.

4.4 Legal Review

- 4.4.1 The OUR will evaluate the application to determine whether the documentation submitted by the applicant is in order, the accuracy of the information and whether there is any legal impediment to a recommendation being made for a grant of licence.
- 4.4.2 All information regarding ownership of the applicant and any other connected person in relation to the applicant submitted in the application and specifically, the Applicant Licence Verification Form, shall be independently verified by the relevant governmental, regulatory agencies and authorities with jurisdiction over the applicant. As such, the OUR shall conduct its own investigation to confirm that the information submitted by the applicant is accurate and whether there are any noted changes after the submission of the application.

- 4.4.3 If the applicant, shareholders and directors are locally based, the information submitted to the OUR shall be verified by the Companies Office of Jamaica. If the applicant, or its shareholders, directors or connected persons are not locally based, the procedure outlined in section 5 below will apply in respect of such person(s).
- 4.4.4 The application shall fail the legal evaluation if the investigation by the OUR reveals that:
- 4.4.4.1 The applicant is legally restricted from carrying on the proposed licensed business;
 - 4.4.4.2 The information submitted is not consistent with the findings of the OUR's independent investigations.

5. OVERSEAS APPLICANT AND/OR OVERSEAS CONNECTED PERSONS

- 5.1 Where the applicant is an overseas-based person, the applicant shall submit to the Office, documentary evidence regarding its shareholding and directors and the shareholdings and directors of any connected person incorporated in another jurisdiction. The Office shall, as first option, accept documentation authenticated by the overseas agency responsible for the registration of companies (which term shall include other bodies corporate) in the relevant jurisdiction(s) of incorporation.
- 5.2 Where the registration of the shareholdings and directors of the company is not a legal requirement of the overseas jurisdiction of incorporation, the applicant shall produce current documentation, authenticated by any other state agency in such jurisdiction, in which ownership and directors of the connected person is declared.
- 5.3 Where the registration of shareholdings and directors of an overseas company is an option that such overseas company is legally entitled to exercise, the applicant shall be expected to exercise (or procure the exercise of) that option and submit authenticated documentation from the agency for the registration of companies demonstrating the shareholdings and directors of the applicant or connected person as the case may be.
- 5.4 The Office shall not accept unauthenticated documentation from the applicant as satisfactory evidence of its ownership and management, or the ownership and management of a connected person incorporated in another jurisdiction. The Office is entitled to require the applicant to take such steps as the Office deems

reasonable to enable the Office to be satisfied as to the accuracy of the information provided.

6. FIT AND PROPER ENQUIRY

- 6.1 The Office has an ongoing duty to be satisfied that applicants are fit and proper. By definition, a “fit and proper” test is the statutory basis for evaluating the probity, integrity, diligence and sound judgment of the applicant, management and major shareholders to effectively discharge the licence obligations. In considering whether an applicant is fit and proper, the Office will take into account the character and any relevant misconduct of applicant and those who manage and control the applicant which are of such significance that it raises doubt as to their ability to carry out the licence obligations. The Office also reserves the right to satisfy itself as to the probity of persons who are closely associated with those who manage and control the applicant, and to require the applicant to provide such information as the Office may require in order to be so satisfied. Additionally, in the case of renewal, the fit and proper enquiry will also include any serious and repeated breaches of licences which may have occurred in the past and which demonstrated a disregard for licence obligations and for the regulatory regime as a whole.
- 6.2 The purpose of the fit and proper enquiry is to:
- (a) Ensure compliance with statutory and regulatory requirements;
 - (b) Protect the interest of the public by deterring inappropriate individuals from entering or continuing in the relevant utility sector;
 - (c) Protect the systems in each utility sector from being used as a vehicle to facilitate unlawful activities;
 - (d) Facilitate ongoing review of a licensee’s ownership and management; and
 - (e) Encourage high standards of market conduct.
- 6.3 The Office shall, with the assistance of the national security agencies, conduct security checks on the applicant, its shareholders, its directors and all connected persons and their shareholders and directors regarding their suitability in relation to the grant of a licence, prior to a recommendation for a grant being made. The Office may in its sole discretion, similarly conduct security checks on persons who are closely associated with shareholders and directors of either the applicant or its connected persons.

- 6.4 Where the security checks indicate that there are adverse findings which in the Office's opinion makes the applicant ineligible to be granted a licence, the applicant shall fail the fit and proper enquiry.

7. SUBSEQUENT TO THE GRANT OF LICENCE

- 7.1 During the term of a licence, the Office may in its own discretion, carry out such due diligence as it deems necessary to ensure that a licensee maintains the basis of the grant of licence.

PART II

ASSIGNMENT OR TRANSFER OF LICENCES AND TRANSFER OF CONTROL OF OPERATIONS

- 8.1 As part of its functions pursuant to section 4(1)(d) of the OUR Act, the OUR is required to advise the responsible Minister on matters relating to utility services as it thinks fit or as may be requested by that Minister.
- 8.2 Further, some sector-specific licences³ provide that an assignment or transfer of licence or any rights thereunder, or control of operations is subject to the prior approval of the relevant portfolio Minister, on the recommendation of the Office.
- 8.3 Section 17(2) of the Telecoms Act states that a licensee may, with the prior approval of the Minister assign its licence or any rights thereunder or transfer control of its operations. Section 17(3) of the Telecoms Act provides that the Minister shall grant his approval if he is satisfied that the prospective person to whom the licence or control of a licensee's operation is being transferred satisfies the requirements of section 11(1) (a) to (b) of the Telecoms Act, that is, matters pertaining to the grant of licences.
- 8.4 Where a licensee has applied in writing to the relevant portfolio Minister for the approval of the assignment or transfer of licence or any rights thereunder, or the transfer of control of its operations, and the Minister requests the advice or recommendation of the Office regarding the application, the Office shall undertake, so far as is possible, the due diligence process set forth in Part I herein.

³ Electricity sector licences and more recently the water sector licences.

- 8.5 In conducting its due diligence exercise, the Office will request that the assignee or transferee makes a declaration that:
- 8.5.1 The assignee or transferee undertakes to comply with the provisions of all relevant laws; and
 - 8.5.2 The assignee or transferee is not disqualified from being granted a licence by reason of any legal impediment.
- 8.6 Paragraphs 8.4 and 8.5 do not apply to a pro forma transaction as defined in the relevant licence or legislation.

PART III

REVIEW OF POLICY

- 9.1 The policy will be reviewed annually (extraordinary circumstances excepted) to ensure its continued suitability, adequacy, and overall effectiveness.