



**REPUBLIC OF DJIBOUTI**  
**Unity - Equality - Peace**

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**PRESIDENCY OF THE REPUBLIC**

**Presidential Decree No. 2022-047/PRE,**

Implementing Law No. 74/AN/20/8th L,  
establishing the Multisectoral Regulatory  
Authority of Djibouti (ARMD)

**THE PRESIDENT OF THE REPUBLIC, HEAD OF GOVERNMENT,**

**Having regard to** the Constitution of 15 September 1992;

**Having regard to** Constitutional Law No. 92/AN/10/6th L of 21 April 2010 revising the Constitution;

**Having regard to** Law No. 59/AN/94/3rd L of 5 January 1995 enacting the Penal Code;

**Having regard to** Law No. 001/AN/18/8th L of 12 April 2018 amending and supplementing the Commercial Code;

**Having regard to** Law No. 212/AN/17/7th L of 24 December 2017 reorganizing the Ministry of Communication in charge of Posts and Telecommunications;

**Having regard to** Law No. 134/AN/11/6th L of 1 August 2012 adopting the Commercial Code;

**Having regard to** Law No. 171/AN/91/2nd L of 10 October 1991 on the determination and organization of the public domain;

**Having regard to** Law No. 51/AN/09/6th L of 1 July 2009 enacting the Environmental Code;



**Having regard to** Law No. 222/AN/17/8th L of 25 June 2018 establishing the Code of Ethics for Public Officials;

**Having regard to** Law No. 186/AN/17/7th L of 29 May 2017 on Public-Private Partnerships;

**Having regard to** Law No. 14/AN/15/7th L of 21 March 2016 establishing the National Commission for Communication;

**Having regard to** Law No. 90/AN/15/7th L of 01 July 2015 establishing a legislative framework on energy efficiency;

**Having regard to** Law No. 88/AN/15/7th L of 01 July 2015 regulating the activities of independent electricity producers;

**Having regard to** Law No. 80/AN/14/7th L of 25 February 2015 approving the Integrated Strategic Framework (ISF) of the Information and Communication Technology (ICT) sector in the Republic of Djibouti;

**Having regard to** Law No. 42/AN/14/7th L of 25 June 2014 reorganizing the Ministry of Energy and Natural Resources;

**Having regard to** Law No. 187/AN/07/5th L of 16 May 2007 on the status of press and audiovisual personnel;

**Having regard to** Law No. 80/AN/04/5th L of 24 October 2004 on the Reform of the Information and Communication Technology Sector;

**Having regard to** Law No. 13/AN/98/4th L of 11 March 1998 on the reform of the postal and telecommunications sector;

**Having regard to** Decree No. 2001-0012/PR/MEFPCP of 15 January 2001 on the General Regulations of Public Accounting;

**Having regard to** Decree No. 2010-0041/PR/MEFPCP of 24 March 2010 establishing the legal framework applicable to accounting officers of public enterprises and establishments;

**Having regard to** Decree No. 2019-013/PR/MERN of 21 January 2019 implementing Law No. 88/AN/15/7th L regulating the activities of independent electricity producers;

**Having regard to** Decree No. 2018-175/PR/MEFI of 14 May 2018 implementing Law No. 186/AN/17/7th L on Public-Private Partnerships and establishing the PPP Regulatory Commission;



**Having regard to** Decree No. 2018-176/PR/MEFI of 14 May 2018 establishing the procedures for awarding a PPP;

**Having regard to** Decree No. 2018-178/PR/MEFI of 14 May 2018 implementing Law No. 186/AN/17/7th L on Public-Private Partnerships and establishing the organization and functioning of the Directorate of Public-Private Partnerships;

**Having regard to** Decree No. 2018-174/PR/MEFI of 14 May 2018 amending and supplementing Decree No. 2010-0083/PRE of 08 May 2010 establishing the powers, composition, organization and functioning of the National Public Procurement Commission;

**Having regard to** Decree No. 2011-029/PR/MHUEAT of 24 February 2011 revising the environmental impact assessment procedure;

**Having regard to** Decree No. 2011-030/PR/MCI of 24 February 2011 setting out the conditions for implementing Law No. 28/AN/08/6th L on competition, fraud prevention and consumer protection;

**Having regard to** Decree No. 2010-0083/PRE of 08 May 2010 establishing the powers, composition, organization and functioning of the National Public Procurement Commission;

**Having regard to** Decree No. 77-079/PR/MI of 20 December 1977 establishing the status of «Électricité de Djibouti»;

**Having regard to** Decree No. 2021-105/PRE of 24 May 2021 appointing the Prime Minister;

**Having regard to** Decree No. 2021-106/PRE of 24 May 2021 appointing members of the Government;

**Having regard to** Decree No. 2021-114/PRE defining the powers of the Ministries;

**Having regard to** Ministerial Order No. 84-1754/PR/MI of 23 December 1984 amending the status of «Électricité de Djibouti».

**The Council of Ministers having deliberated in its session of 15 February 2022,**



## **DECREES:**

### **FIRST TITLE – GENERAL PROVISIONS**

#### **First Article: Purpose**

The purpose of this Decree is to establish the responsibilities and functioning of the structures of the Multisectoral Regulatory Authority of Djibouti (hereinafter “ARMD”), to set forth the rules governing its organization, and to lay down transitional provisions for the implementation of Law No. 74/AN/20/8th L establishing the Multisectoral Regulatory Authority of Djibouti (ARMD).

#### **Article 2: Functions**

The Multi-Sectoral Regulatory Authority of Djibouti (ARMD) shall, in each of the sectors entrusted to its regulation, exercise the powers provided under the establishing law. To that end, it shall adopt all measures provided by law and regulation. Its mandate includes, inter alia, ensuring competition and the proper functioning of markets, implementing laws, decrees, and ministerial orders enacted by the legislature or regulatory authority, imposing obligations or granting rights to economic operators, and ensuring compliance with such laws and regulations.

#### **Article 3: Definitions**

For the purposes of this Decree, the definitions contained in the laws and regulations governing the sectors subject to ARMD’s regulation shall apply.

#### **Article 4: Applicability of Sectoral Regulations Definitions**

The terms used in this Decree shall not be construed as superseding the provisions of the laws and regulations referred to in Article 3 above or competition legislation, but as clarifying their meaning for the purposes of regulating the sectors governed by said laws and regulations.



## **TITLE 2 – STATUS AND ORGANIZATION OF THE REGULATORY AUTHORITY**

### **FIRST CHAPTER – STATUS OF THE REGULATORY COUNCIL**

#### ***SECTION 1 – MANDATE OF THE REGULATORY COUNCIL MEMBERS***

##### **Article 5: Appointment of Members of the Regulatory Council.**

The members of the Regulatory Council shall elect a Vice-President in accordance with the provisions of the law establishing the Multisectoral Regulatory Authority. The Vice-President shall enjoy the same statutory regime as the President of the Regulatory Council.

##### **Article 6: Revocation of Mandates members of the Regulatory Council.**

The mandate of members of the Regulatory Council may not be revoked except in the event of serious misconduct or an offense as defined by the law establishing the Multisectoral Regulatory Authority of Djibouti.

##### **Article 7: Independence**

In the exercise of their duties, the members of the Authority shall neither solicit nor receive instructions from any administrative or political authority. Members of the Regulatory Council may not, under any circumstances, be prosecuted, investigated, or arrested for opinions expressed within ARMD or for measures taken by the Regulatory Authority, unless such measures are declared unlawful by the competent court.

##### **Article 8: Duty of Restraint**

Members of the Regulatory Council shall not, in a personal capacity, take any public stance that may be prejudicial to the proper functioning of the Authority.

##### **Article 9: Incompatibilities**

Members of the Regulatory Council:

- Must not have been finally convicted to a term of imprisonment of six months or more, whether suspended or not;



- May not exercise professional activities as lawyer, notary, bailiff, court clerk, judicial administrator, or insolvency practitioner, nor work in the service of any such professionals;
- Except as final consumers or in the normal management of their personal assets, and under penalty of sanctions under the Penal Code, they may not hold statutory or contractual ties or financial/economic interests, direct or indirect, in any company holding an authorization, license, or concession, or acting as subcontractor or service provider in the regulated sectors.

#### **Article 10: Duration of Incompatibilities**

For a period of 2 years following the termination of their duties within the Regulatory Authority, the members of the Regulatory Council, the Director General, the Directors of Management and the management staff of the Multisectoral Regulatory Authority may not under any circumstances become employees, offer their services in any form whatsoever or receive remuneration in any form or for any reason whatsoever from a company belonging to or having activities in one of the regulated sectors. Similarly, they may not, during this period, take or hold any direct or indirect interests in a company belonging to one of the regulated sectors. A decree issued on the proposal of the Multisectoral Regulatory Authority of Djibouti sets out the conditions for compensating staff subject to the above incompatibilities for their direct loss.

#### **Article 11: Sanctions for Incompatibility**

Any member of the Regulatory Council who finds themselves in a situation of incompatibility must resolve it within a period of no less than one week and no more than one month.

Failing such action, the Chairman of the Council, or at least one-third of the members if the Chairman is concerned, shall declare the member's resignation in accordance with Article 12.



### **Article 12: End of the Term of Office of a Member of the Regulatory Council**

The term of office of a member of the Regulatory Council, which is four years and renewable once, may only be terminated in the event of voluntary resignation or compulsory resignation.

Members of the Regulatory Council who no longer meet the conditions set out in the law or this decree, or for serious misconduct punishable by imprisonment, or for any failure to comply with the obligations set out in this chapter or for any behavior that seriously impairs the achievement of the regulatory objectives assigned to the Regulatory Authority to become or remain a member of the Regulatory Council, shall be deemed to have resigned compulsorily. A member of the Regulatory Council who has not voluntarily resigned from the position incompatible with his or her membership shall also be deemed to have resigned compulsorily.

The compulsory resignation is recorded by the Regulatory Council, which deliberates at the request of the President or two-thirds of the members of the college, by a majority of three-quarters to two-thirds of the members of the college other than the person concerned, noting the occurrence of one of the cases mentioned in the preceding paragraph or a permanent incapacity preventing the continuation of his or her term of office.

This deliberation may only take place after the person concerned has been given the opportunity to submit his or her observations within a period that may not be less than one week nor more than one month.

The vote shall take place by secret ballot without the person concerned being present.

### **Article 13: Incapacity of a Member of the Regulatory Council**

If a member of the Regulatory Council is unable to perform their duties, their term of office may be suspended at the request of the member concerned, for a fixed period not exceeding six months. However, the Council, by a three-quarters to two-thirds majority of the other members, upon the proposal of one of them, may request the appointment of a new member in accordance with the procedure provided for by law.



**Article 14: Replacement of a Member of the Regulatory Council in the Event of a Vacancy**

In the event that one or more members of the Regulatory Council become vacant before the term expires, in the cases provided for by law, the replacement(s) shall be appointed within one month following the vacancy, in accordance with the conditions provided for by law for the appointment of Council members. The term of office(s) to be filled shall be the term of the remaining term of their predecessor.

**Article 15: Vacancies and Disability of the Chairman of the Regulatory Council**

In the event of the Chairman of the Regulatory Council being temporarily unavailable, the Vice- Chairman shall replace him and exercise his powers. In the latter's absence, the senior member of the Regulatory Council shall replace him.

In the event of a vacancy in the position of Chairman of the Regulatory Council and until the appointment of a new Chairman within the month following the vacancy, the Chairman of the Council shall be temporarily assumed by the Vice-Chairman, and in the latter's absence, by the senior member of the Council until the appointment of a new Chairman.

The Chairman of the Regulatory Council shall ensure the implementation of the decisions of the Regulatory Council.

**Article 16: Rules Applicable to Other Activities of Council Members**

In the event of a change in professional activity, members of the Regulatory Council shall inform the Chairman of the Council within one month of the vacancy.

When they are employed in the civil service or a public utility service, members of the Regulatory Council may not benefit from a professional promotion or appointment to another position during their term of office.

Members of the Regulatory Council who are employed in the civil service are automatically and upon request placed on secondment for the duration of their term of office.



When held full-time, the office of member of the ARMD Regulatory Council is incompatible with the exercise of a professional activity or public employment. Members of the ARMD Regulatory Council may, however, and in all cases, engage in scientific, literary, artistic, or teaching work.

## **SECTION 2: DECLARATION OF ASSETS AND DECLARATION OF INTERESTS**

### **Article 17: Obligation to Disclose Assets**

Members of the Regulatory Council are required to file an asset declaration and a declaration of interests within two months of taking office.

### **Article 18: Content and Mandatory Nature of the Asset Declaration and Declaration of Interests**

The asset declaration must be comprehensive, accurate, and truthful and cover all of the Regulatory Council member's personal assets, as well as, where applicable, community or undivided assets. It includes an inventory of movable and immovable property, both domestic and foreign, owned by the member, as well as those belonging to their spouse and minor children.

The declaration of interests reveals any situation of interference between a public interest and public or private interests which is likely to influence or appear to influence the independent, impartial and objective exercise of the function of member of the Regulatory Council of the Multisectoral Regulatory Authority. The model for the declaration of interests is defined by a decree issued on the proposal of the Multisectoral Regulatory Authority of Djibouti, published on its website and in the official journal.

During the term of office, any substantial change in the assets or interests held must give rise, within two months, to a new declaration of assets or interests, in the same form.



Two months at the earliest and one month at the latest before the end of these terms of office, or before the termination of their term for a reason other than death, any member of the Regulatory Council must submit a new declaration of assets.

The declaration of interests is submitted to the Director General of the Multisectoral Regulatory Authority, who ensures its publication in the Official Journal within two months of receipt.

Any person subject to the declaration of assets and interests who fails to submit a declaration or submits a declaration containing inaccurate, incomplete, or false information is punishable by the penalties provided for by the legislation in force relating to the prevention and fight against corruption.

## **SECTION 3: CONFLICT OF INTEREST**

### **Article 19: Conflict of Interest**

For the purposes of this decree, a conflict of interest is any situation involving conflicting interests within the meaning of Article 18 above.

The members of the Regulatory Council, the Director General, and the directors and executives of the Multisectoral Regulatory Authority shall perform their duties with dignity, probity, and integrity and shall ensure that any conflict of interest is prevented or immediately terminated. They shall resign from their positions in the event of conduct that is manifestly incompatible with their duties. They shall ensure that these same requirements are met by the persons whose services they employ in the performance of their duties. To this end, it is their responsibility to:

- Take the initiative to recuse themselves in the event of a conflict of interest, in accordance with the law, if one of the parties is a close relative, a close friend, an associate, a competitor, or if they have any direct or indirect interest in the matter.
  - If in doubt about a potential conflict of interest, such as membership in the same



- association or professional union, immediately refer the matter to the Chairman of the Regulatory Council before being implicated.
- Constantly ensure that their position does not allow for any form of favoritism, benefits, or advantages, and even do everything possible to ensure that it cannot be thought that their position has given rise to acts of favoritism, benefits, or advantages related to their position as a member of the Regulatory Council.
  - Keep the Chairman of the Regulatory Council informed of any attempt at direct or indirect influence, in any form whatsoever, by either party or parties in order to preserve the credibility of the Regulatory Council.

### **Article 20: Impartiality**

No member of the Regulatory Council may deliberate or take preparatory steps for a Regulatory Council decision if their presence at a meeting of the Council or their participation in preparatory steps could cast doubt on the impartiality of the Regulatory Council's decision.

### **Article 21: Sanctions**

Without prejudice to the provisions in the event of compulsory resignation of a member of the Regulatory Council, the Council, upon referral by the Chairman of the Regulatory Council, shall determine by a majority of its members whether one of its members has failed to comply with the obligations set out in Articles 18, 19, and 20 above. If so, the Council may, depending on the seriousness of the breach, issue a warning, suspend the member's duties, or terminate the member's duties early.

### **Article 22: Resolution of Conflicts of Interest**

When a member of the Regulatory Council considers themselves to be in such a situation, they shall refrain from sitting or, where applicable, from deliberating.

A member of the Regulatory Council who considers themselves to be in a conflict of interest shall refer the matter to the Chair. The latter, following the referral or on their own initiative, shall, where appropriate, entrust the preparation or drafting of the decision ruling on the conflict of interest to another person under their authority.



A Director General who considers themselves to be in a conflict of interest shall refer the matter to the Chair of the Regulatory Council; the latter, following the referral or on their own initiative, shall, where appropriate, entrust the preparation or drafting of the decision ruling on the conflict of interest to another member of the Multisectoral Regulatory Council.

Directors and executives of the Multisectoral Regulatory Authority who consider themselves to be in a conflict of interest shall refer the matter to the Director General. The latter, following the referral or on its own initiative, entrusts, where appropriate, the preparation or drafting of the decision ruling on the conflict of interest to another person under its hierarchical authority.

A regulation of the Multisectoral Regulatory Authority shall, as necessary, establish the terms of application of this article.

**Article 23: Publicity of Conflicts of Interest.**

A regulation of the Multisectoral Regulatory Authority determines the procedures for maintaining a publicly accessible register, listing cases in which a member of the Regulatory Council has deemed it inappropriate to exercise their powers due to a conflict of interest. This regulation is published in the Official Journal and on the Regulatory Authority's website. The register is made public electronically, in an open standard, easily reusable, and usable by an automated processing system.

## **SECTION 4: PROFESSIONAL SECRECY**

**Article 24: Professional Secrecy**

Without prejudice to cases of disclosure authorized by law or regulation, the members of the Regulatory Council, the Directors, and the staff of the Multisectoral Regulatory Authority are bound by the strictest professional confidentiality regarding any information, facts, acts, or intelligence of which they may become aware in the course of their duties, during the term of their duties and thereafter, without any time limit.



## **Article 25: Penalties for Non-Compliance with the Obligation of Professional Secrecy**

Any failure to comply with the obligations set out in this section constitutes misconduct leading to penalties ranging from a simple warning to suspension for a period not exceeding one month, or to dismissal or termination.

Any serious failure by a member of the Regulatory Council to comply with the obligations set out in this section constitutes conduct manifestly incompatible with their duties, resulting in the termination of their duties. The duties of a member of the Regulatory Council shall be terminated in accordance with the compulsory resignation procedure provided for at the end of the term of office of a member of the Regulatory Council.

The disclosure of information obtained in the course of an appointment, secondment, internship, or employment contract, or any other position held within the Authority, shall be punishable by the imprisonment and fines provided for in the Criminal Code, except in cases where the law requires or authorizes the disclosure of secrecy.

## **CHAPTER 2: POWERS, ORGANIZATION AND OPERATION OF THE REGULATORY COUNCIL.**

### **Article 26: Powers of the Regulatory Council**

The Regulatory Council of the Multisectoral Regulatory Authority is vested with the broadest powers to carry out its missions as provided for by Law No. 74/AN/20/8th L, establishing the Multisectoral Regulatory Authority of Djibouti (ARMD), particularly in each of the sectors for which it is responsible for regulation, to take the necessary measures to:

- Define the Regulatory Authority's strategy to carry out its missions;
- Plan all projects and activities intended to promote the Regulatory Authority's development and achieve its mission, initiated by the Director General or on its own initiative;



- Ensure compliance with the provisions of the laws and regulations governing the sectors within its area of responsibility under objective, transparent, and non-discriminatory conditions;
- Ensure the continuity of public service and protect the general interest;
- Protect the interests of users and operators by taking all measures necessary to ensure effective, healthy, and fair competition in the relevant sector and within the framework of the laws and regulations in force;
- Promote the efficient development of the sector in accordance with the Government's objectives, in particular by ensuring economic and financial balance and the preservation of the economic conditions necessary for its viability;
- Implement the consultation mechanisms for users and operators provided for by laws and regulations;
- Grant the authorizations and licenses provided for in the relevant sectors and implement the procedures for awarding authorizations and licenses and supervise the procedures for awarding concessions under conditions of complete transparency and competition;
- Monitor compliance by stakeholders with their obligations under licenses, authorizations, and concessions;
- Plan and manage the radio frequency spectrum;
- Ensure compliance with fair competition in all regulated sectors; – Monitor the implementation of its decisions by the Director General;
- Set management and operating ratios on the proposal of the Director General;
- Appoint the accounting firm, whose expertise is internationally recognized, responsible for the annual audit of the accounts and management statements, following a call for tenders, requiring this firm to comply with prescribed international auditing standards;
- Approve the annual activity report and financial statements after reviewing the management audit report;
- Discharge the Director General from its management;
- Approve the accounting and management provisions and regulations;



- Approve the budget and investment program presented by the Director General;
- Define the Authority's contracting procedures and appoint from among the directors the members of the Special Commission responsible for reviewing contracts exceeding a set amount, in accordance with the Public Procurement Code;
- Approve the general staff regulations and ensure their compliance with the applicable labor code and the collective bargaining agreement governing Regulatory Authority staff;
- Authorize all acquisitions, exchanges, and transfers of movable property and rights;
- Authorize loans and accept donations and bequests;
- Ensure the proper fulfillment of the Director General's obligations, particularly with regard to financial management and its transparency towards operators and taxpayers.

**Article 27: Powers of the Chairman of the Regulatory Council and Council Meetings.**

The Chairman of the Regulatory Council convenes the members of the Regulatory Council once a month for a meeting that he or she chairs.

However, he or she may convene the Regulatory Council for additional meetings whenever necessary.

The Regulatory Council may only deliberate if at least four of its members are present. They deliberate by a majority of the members present. Absent members may be represented by other members of the Regulatory Council.

Decisions are recorded in minutes of the meeting signed by the Chairman and the other members of the Council present.

The Chairman ensures and guarantees the regularity of the discussions, as well as compliance with the internal regulations;

He or she signs all documents established or authorized by the Regulatory Council.



### **Article 28: Compensation of Regulatory Council Members**

The members of the Regulatory Council receive a duty allowance set by decree of the Council of Ministers, as well as, where applicable, a travel allowance. Their compensation is identical except for that of the Chairman of the Authority. It takes into account, in particular, the usual amount of compensation of general managers within private operators in regulated sectors.

Any reimbursement of expenses to members of the Regulatory Council may only be made upon presentation of written supporting documents, which will be included in the accounts of the Multisectoral Regulatory Authority.

### **Article 29: Delegation of Authority**

The Regulatory Council may delegate to its Chairman some of its powers relating to the adoption of authorization decisions. The Chairman, if circumstances require, may delegate his signature to the Vice-Chairman and, if the latter is unable to attend, to any member of the Regulatory Council.

Any delegation of authority may not exceed a period of one month. It may be renewed under the same conditions.

## **CHAPTER 3: DIRECTOR GENERAL AND STAFF OF THE REGULATORY AUTHORITY**

### **SECTION 1: STATUS AND TERM OF OFFICE OF THE DIRECTOR GENERAL.**

#### **Article 30: Competence of the Director General**

The Director General must be an individual of recognized administrative and managerial competence with at least ten years' experience at a senior level.



### **Article 31: Conditions of Appointment**

The Director General must enjoy full civil and political rights and must not have been definitively sentenced to imprisonment of six months or more, or to any degrading or infamous penalty.

### **Article 32: Duration of Mandate**

The Director General is appointed for a term of three years, renewable once. He or she may be removed before expiry in cases of physical or mental incapacity, conviction affecting honor, or enforced resignation under the same rules as Council members. Removal is effected by decree of the President of the Republic upon proposal of the Council of Ministers.

### **Article 33: Incompatibilities**

The Director General:

- Is subject to the same incompatibilities and conflict of interest rules as the members of the Regulatory Council;
- May not hold any other position or receive any compensation for work within the Regulatory Council or for any work outside his or her position.

A Director General who finds himself or herself in a situation of incompatibility shall notify the Regulatory Council within one month of becoming aware or ought to have become aware of the incompatibility and shall resolve the causes of the incompatibility within a further one-month period, or submit his or her resignation. If the Director General fails to act within the above-mentioned time-frames, the Regulatory Council, at the initiative of its Chair or any member of the Council, shall decide within one month and, in the event of proven incompatibilities, terminate the Director General's duties.

### **Article 34: Duties of the Director General**

In addition to the duties provided for by law, the Director General is responsible for:

- Preparing calls for tenders for the granting of licenses for the Regulatory Council to decide on;
- Monitoring and controlling the quality of licensees' services;
- Exercising authority over and managing all staff;



- Informing the Regulatory Council of any sanctions, dismissals, or terminations it may impose in accordance with laws, regulations, and the provisions of the internal regulations concerning non-management staff;
- Ensuring compliance with the Labor Code and the collective bargaining agreement applicable to directly recruited staff of the Multisectoral Regulatory Authority;
- Signing all deeds, agreements, and transactions for which it is empowered by law or delegated by the Regulatory Council, particularly with respect to leases, insurance contracts, commercial, and civil transactions;
- To enforce the rates relating to taxes collected by the Multisectoral Regulatory Authority, and to collect and enforce the corresponding amounts;
- To take all necessary precautionary measures in the event of an emergency requiring an excess of its normal responsibilities, and to report these measures in writing and without delay to the Regulatory Council;
- To sign contracts, for those whose amount is below the threshold set by the Regulatory Council;
- To represent the Multisectoral Regulatory Authority vis-à-vis third parties and in all corporate affairs, as well as in all legal proceedings;
- To participate in meetings of the Regulatory Council in an advisory capacity and provide secretarial services;
- To open and manage, under the supervision of the Regulatory Council, a current account in the name of the Multisectoral Regulatory Authority with a local banking institution;
- He is the authorising officer for the Regulatory Authority's budget.

**Article 35: Files Preparation and Presentation to the Council.**

To carry out his mission of initiating and submitting to the Regulatory Council all planning and activities intended to promote the development of the Multisectoral Regulatory Authority and achieve its mission, the Director General prepares and presents to the Regulatory Council for review a work program, including a staff recruitment and



training program, as well as a technical and financial cooperation program with the technical and financial partners of the Republic of Djibouti.

In addition to his mission of preparing draft annual operating and investment budgets and ensuring their implementation after approval by the Regulatory Council, the Director General presents to the Regulatory Council a three-year rolling income statement and a budget consisting of an annual cash flow statement, an annual income and expenditure statement, and an investment program.

## **SECTION 2: STAFF STATUS**

### **Subsection 1: Common Regime for Both Categories of Staff**

#### **Article 36: Employer**

The Multisectoral Regulatory Authority, represented by its Director General of Regulation, is the employer of the Regulatory Authority's staff, within the meaning of labor law. The Regulatory Council, represented by its Director General, is the hierarchical superior of all members of the Regulatory Authority's management staff, whether or not they have civil service status.

Notwithstanding the provisions of the preceding paragraph, the Regulatory Council approves the employment contracts of all Authority directors, which are signed by the Director General, sets their remuneration and benefits, as well as other conditions of employment and retirement, in accordance with the applicable laws and the salary scales established by the Regulatory Council. It is vested with disciplinary authority over them.

#### **Article 37: Incompatibilities**

Staff members of the Regulatory Authority are subject to the same incompatibilities as members of the Regulatory Council.

Staff members with managerial status:



- May not hold any other position or receive any remuneration for work within the Regulatory Council or for any work outside their duties;
- Are subject to the same time-related incompatibilities and the same rules regarding conflicts of interest as members of the Regulatory Council.

Any staff member who finds themselves in a situation of incompatibility must notify the Regulatory Council within one month of becoming aware or should have become aware of the incompatibility and must resolve the causes of the incompatibility within a further one-month period or submit their resignation.

### **Article 38: Compensation of Civil Servants**

The salaries and other allowances of all civil servants employed by the Multisectoral Regulatory Authority are the responsibility of the Authority, according to the salary scale established for the staff of the Multisectoral Regulatory Authority.

Their pensions are the responsibility of the State if they are covered by the State civil servant pension scheme.

### **Article 39: External Expertise**

The Authority may, in specific and ad hoc cases, call upon external experts whose services are defined and remunerated on a contractual basis.

## **Subsection 2: Directors and Executives**

### **Article 40: Appointment of Directors**

The Directors of the Authority are chosen for their qualifications in technical, legal, or economic fields, as well as their impartiality and moral integrity.

The Directors must have:

- Extensive experience in one or more of the regulated sectors **or**:



- High-level experience in business or public service, as an engineer, economist, financier, lawyer, or accountant.

The Directors of the Authority are selected through a call for applications issued by the Regulatory Council. The terms of the call for applications, the content of candidates' offers, and the selection process made by the Regulatory Council are public. The appointment of the Directors of the Authority by the Regulatory Council is published in the Official Journal and on the Authority's website.

#### **Article 41: Dismissal**

The Directors of the Authority may not be dismissed, except in the event of duly documented incapacity, serious misconduct, or actions incompatible with the role of Director. The decision to dismiss a Director is taken by the Regulatory Council, acting by a majority vote, and must be justified in writing.

#### **Article 42: Directors' Compensation**

Directors receive compensation, the amount of which is set by the Regulatory Council, taking into account, in particular, the compensation of directors within private operators in regulated sectors.

Any reimbursement of expenses to a Director may only be made upon presentation of written supporting documents, which will be included in the Regulatory Authority's accounts.

### **CHAPTER 4: PROCEDURES IN THE EVENT OF VIOLATION OF THE INTEGRITY RULES OF MEMBERS OF THE AUTHORITY**

#### **Article 43: Legal Remedies for Corruption**

In the event of legal recourse against an act of the Regulatory Authority, or against any contract, transaction, license, concession, or authorization issued by, or validated by, the Regulatory Authority, obtained through the commission of one of the offenses provided



for in the Criminal Code or legislation relating to the prevention and fight against corruption, the contested act may be declared null and void by the court seized of the matter, subject to the rights of bona fide third parties, without prejudice to the provisions of the Criminal Code relating to active corruption and influence peddling committed by individuals.

The President of the Regulatory Council or the Director General of the Multisectoral Regulatory Authority shall inform the Independent National Commission for the Prevention and Combating of Corruption of any act of bribery, passive or active corruption, influence peddling, illegal taking of interests, destruction or theft of public documents or objects, misappropriation of public funds, or obstruction of the law committed within the Authority or in the sectors it regulates, of which he or she becomes aware.

**Article 44: Referral to the Public Prosecutor in cases of passive corruption.**

The Chairman of the Regulatory Council or the Director General of the Multisectoral Regulatory Authority shall refer to the Public Prosecutor any act of bribery, passive corruption, influence peddling, illegal taking of interests, destruction or theft of public documents or objects, misappropriation of public funds, or obstruction of the law committed within the Authority, of which they become aware.

The Chairman and the Director General of the Multisectoral Regulatory Authority are required to refer the matter to the Public Prosecutor within 15 days of becoming aware of the acts referred to in the preceding paragraph.

Any person with a proven interest may refer to the Public Prosecutor any acts referred to in this article of which they are aware.

**Article 45: Referral to the Public Prosecutor in cases of active corruption.**

The Chairman of the Multisector Regulatory Council or any person with a proven interest shall notify the Public Prosecutor of any act committed by a member of the Multisectoral Regulatory Authority or any third party to obtain from members of the Regulatory Council, directors, and staff of the Multisectoral Regulatory Authority the performance or



abstention of an act carried out in their capacity, or facilitated by their capacity, or to use their influence to obtain favorable decisions of any kind from the Multisectoral Regulatory Authority, whether through the use of force, threats, promises, offers, gifts, or presents, or to give in to the solicitations of such persons, complicity by private individuals, or failure to comply with the obligations set out in this chapter.

### **TITLE III: EXERCISE OF THE POWERS OF THE REGULATORY AUTHORITY.**

#### **CHAPTER ONE: ESTABLISHMENT, EXECUTION AND CONTROL OF THE AUTHORITY'S BUDGET.**

##### **Article 46: Resources**

The first budget of the Multisectoral Regulatory Authority shall be financed exclusively by a budgetary allocation of the State and/or contributions from concerned enterprises. In the event of financing of the Authority by international organizations on the basis of international conventions or agreements, the funds are managed in accordance with the procedures provided for by these duly ratified conventions and agreements.

##### **Article 47: Establishment of Fees and Levies**

On the proposal of the Multisectoral Regulatory Authority, and without prejudice to contributions to the financing of universal access/service, the Government establishes, where necessary, fees and charges intended to cover the costs inherent in carrying out regulatory activities.

The calculation methods, rates, and amounts of fees and charges, and other remuneration, as well as their allocation methods, constituting the ordinary resources of the Multisectoral Regulatory Authority, are set by decree issued on the joint proposal of the Multisectoral Regulatory Authority and the Minister responsible for the budget.



The fees and charges thus created are published each year in the Official Journal and by any means of legal notices.

#### **Article 48: Nature of Resources**

The Multisectoral Regulatory Authority has both ordinary and extraordinary resources.

The ordinary resources of the Multisectoral Regulatory Authority consist of:

- Annual fees paid by operators holding a license, agreement, or authorization, as determined by the Sectoral Laws and the text of the agreement, license, or authorization;
- Costs for processing applications, inspections, and monitoring of facilities, and procedural fees paid by sector operators under the sectoral laws, as well as any revenue from works and services.
- The total annual amount of regulatory taxes may not exceed 2% of the cumulative and audited turnover of the regulated sectors.
- The extraordinary resources of the Multisectoral Regulatory Authority consist of:
  - Proceeds from borrowings;
  - Grants from the State and public or private, national and international organizations;
  - Donations and bequests.

#### **Article 49: Financial Report**

At the end of each financial year, the Chairman of the Regulatory Council shall have an inventory of the Regulatory Authority's assets and liabilities drawn up, prepare the accounting documents and supporting documents for the financial year, and prepare a financial report on the Multisectoral Regulatory Authority's activities during the financial year.

#### **Article 50: Audit of Accounts**

These documents shall be submitted within three months of the end of the financial year to an audit firm with internationally recognized expertise and in accordance with prescribed standards. This firm shall audit them annually.



The accounts of the Multisectoral Regulatory Authority and the audit report shall be sent by the Chairman of the Council to the President of the Republic, the Prime Minister, the President of the National Assembly, as well as to the supervisory bodies. It is made public by the Regulatory Council through its full publication in the Official Journal and on the Authority's website.

The audit firm's mission is to verify the documents, books, and assets of the Multisectoral Regulatory Authority and to monitor the regularity and fairness of the company accounts and the information contained in the financial reports. It certifies the regularity and fairness of the inventory of accounting documents and supporting documents prepared at the end of the financial year.

The Multisectoral Regulatory Authority's departments must provide the public accountant with all requested assistance, within the required time-frames, without restriction.

### **Article 51: Financial Control**

The Regulatory Authority is subject to ex post financial control by the Court of Auditors and state audit bodies. As such, the annual financial statements certified by the Public Accountant are submitted no later than six months after the end of the financial year. The Court of Auditors' observations are published on the Authority's website.

All supporting documents for revenue and expenditure are archived by the Multisectoral Regulatory Authority and made available to the Court of Auditors for 10 years following the end of the financial year.

## **CHAPTER 2: SUPERVISION OF THE PROCESSES FOR LAUNCHING AND EVALUATING CALLS FOR COMPETITIONS, AND AWARDING LICENSES AND AUTHORIZATIONS**

### **SECTION 1: IMPLEMENTATION OF PROCEDURES FOR AWARDING AND MONITORING AUTHORIZATIONS**



### **Article 52: Granting of Authorizations**

The Regulatory Authority implements the conditions and procedures for granting authorizations in accordance with the laws and regulations governing the regulated sectors, international standards applicable in Djibouti, and competition and consumer protection legislation.

Applications for authorizations are submitted to the Director General of the Multisectoral Regulatory Authority, who will review them.

The Authority's Regulatory Council grants authorizations to any natural or legal person who requests them and meets the conditions required by the sectoral regulations. Authorization or reasoned refusal shall be notified in writing within a maximum of two months from the date the application was submitted. If the Regulatory Council fails to respond, and after this period, a new authorization request may be submitted to the Director General of the Multisectoral Regulatory Authority. Failure to respond to this second request within a maximum of one month shall constitute acceptance of the application. This second request shall not incur any of the costs provided for the establishment of fees and charges, in accordance with the provisions of this decree.

### **Article 53: Monitoring the Execution of Authorizations**

The Director General of the Multisectoral Regulatory Authority shall monitor the authorizations granted and ensure proper execution of the authorization conditions and specifications, as well as compliance with sector-specific regulations. He or she shall ensure compliance with access conditions and pricing conditions in accordance with sector-specific laws and regulations. It reports to the Regulatory Council on the conditions for the implementation of authorizations and proposes measures required in the event of non-compliance with the conditions for the execution of authorizations.

The Authority cancels, suspends, modifies, or revokes authorizations in accordance with the laws and regulations governing the regulated sectors.



The Authority draws up regulations specifying the procedures for granting and monitoring authorizations. These regulations are published on the Authority's website and, failing that, on the website of the Presidency of the Republic.

## **SECTION 2: IMPLEMENTATION OF LICENSE AWARDING AND MONITORING PROCEDURES**

### **Article 54: Granting of Licenses**

In the event of a competitive bidding process for the granting of licenses, licenses are granted based on a public call for applications accompanied by specifications also established on the basis of standard specifications developed by the Regulatory Authority, in accordance with sector-specific laws and regulations. Each specification is applied in a strictly identical manner to all operators and service providers holding a license belonging to the same category, so as to ensure strict equality between operators or providers. These standard specifications are published on the Regulatory Authority's website and in the Official Journal.

Regardless of the licensing conditions and procedures, the Regulatory Authority implements the conditions and procedures for awarding licenses in accordance with the laws and regulations governing the regulated sectors, international standards applicable in Djibouti, and competition and consumer protection legislation under conditions of complete transparency and competition.

License applications are submitted to the Director General of the Regulatory Authority, who reviews them and prepares the license grant plan.

The Regulatory Council of the Authority issues a favorable opinion on the granting of a license to any natural or legal person who has applied and meets the requirements of the sectoral regulations. This opinion is sent to the relevant sectoral ministry, which forwards it without delay to the President of the Republic, who approves the granting of the license by decree.



The favorable opinion of the grant or the reasoned refusal is notified in writing within a maximum of two months from the date the application was submitted.

If the Regulatory Council fails to respond, and after this period, a new license application may be submitted to the Director General of the Multisectoral Regulatory Authority. Failure to respond within a maximum of one month constitutes acceptance of the application.

Failure to respond within the specified time frame constitutes acceptance of the application and granting of the license.

The complete file of the selection procedure, including a comprehensive report on the license granting procedure, is forwarded by the Regulatory Authority to the sectoral Minister for information.

#### **Article 55: License Monitoring**

The Director General of the Regulatory Authority monitors the licenses granted by the Authority and ensures the proper execution of the license conditions and specifications, as well as compliance with sector-specific laws and regulations. He or she ensures compliance with access conditions, in particular through inspections and technical and pricing offers in accordance with the law. He or she reports to the Regulatory Council on the application of licenses and proposes measures to sanction non-compliance with their execution conditions.

The Regulatory Authority cancels, suspends, modifies, or revokes licenses in accordance with the laws and regulations governing the regulated sectors. The Authority's Regulatory Council draws up regulations specifying the procedures for awarding and monitoring licenses. These regulations are published on the Authority's website and, failing that, on the website of the Presidency of the Republic.

### **SECTION 3: IMPLEMENTATION OF PROCEDURES FOR AWARDING AND MONITORING CONCESSIONS**



### **Article 56: Granting of Concessions**

The Regulatory Authority oversees the concession award procedures in accordance with the laws and regulations governing the regulated sectors, the provisions of the laws and regulations on public-private partnerships, and international standards applicable in Djibouti, and under conditions of transparency and competition as provided for by competition and consumer protection legislation.

All concession applications must be submitted to the ministry designated by the laws and regulations governing the regulated sectors. The Regulatory Authority oversees the concession award procedure. To this end, the sectoral ministry involves the Multisectoral Regulatory Authority in all stages of the concession award process, invites it to all meetings and sessions related to the concession award procedure, and shares all documents related to this procedure, including the complete file on the concession award procedure, including a comprehensive report on the procedure followed, so as to enable the Multisectoral Regulatory Authority to exercise its powers. The file is forwarded by the sectoral ministry to the Chairman of the Regulatory Council within fifteen days of the concession award becoming final.

### **Article 57: Monitoring of Concessions**

The Director General of the Regulatory Authority monitors the concessions granted by the competent authority and ensures the proper execution of the concession conditions and their specifications, compliance with access conditions and technical and pricing offers in accordance with the law, as well as compliance with sectoral regulations. It reports to the Regulatory Council and proposes measures to sanction non-compliance with the commitments made and their conditions of execution.

The Regulatory Authority may propose to the Authority that granted the concessions to cancel, suspend, modify, or revoke the concessions in accordance with the laws and regulations governing the regulated sectors.



The Regulatory Authority draws up regulations specifying the terms of the concession monitoring procedure. These regulations are published on the Regulatory Authority's website and in the Official Journal.

The President of the Regulatory Authority submits an annual report on the monitoring of each concession to the sectoral Minister for information.

## **SECTION 4: OPERATORS MONITORING**

### **Article 58: Role of the Multisectoral Regulatory Authority**

Within the scope of its powers, the Multisectoral Regulatory Authority contributes to the achievement of sectoral policy objectives for the benefit of end consumers.

In this regard, it ensures that suppliers of products and services in regulated sectors, as well as their staff, comply with the obligations prescribed by the regulations in force, subject to administrative sanctions provided for by the sectoral laws and regulations it implements and criminal prosecutions provided for by law.

The Multisectoral Regulatory Authority ensures compliance by all operators with laws and regulations, including:

- The obligation to maintain independent financial and analytical accounts for each network and/or service operated;
- The standards and specifications of networks and services;
- The requirements required for the protection of health and the environment and for land use and urban planning objectives, including, where applicable, the conditions for occupation of public land, the financial or technical guarantees necessary for the proper execution of infrastructure works and the arrangements for sharing infrastructure;
- The requirements required for public order, national defense and public safety, as provided for by general and sectoral regulations;
- The methods of contributing to the general missions of the State, in particular, the financing of access and universal service and, where applicable, the provision of



- access and universal service and mandatory services as well as pricing obligations, as well as the conditions under which universal service rates and its quality are controlled;
- The provision of information necessary for the exercise of its functions;
  - The Multisectoral Regulatory Authority may formulate opinions and propose to the Minister in charge of the sector any measure promoting the proper functioning and transparency in the sector.

## **CHAPTER 3: PRICING**

### **SECTION 1: POWERS OF THE REGULATORY AGENCY IN MATTER OF PRICING**

#### **Article 59: Setting of rules by the Multisectoral Regulatory Authority**

The Multisectoral Regulatory Authority, in compliance with the principles established by law:

- Develops and, if necessary, revises the accounting requirements and pricing guidelines in accordance with the sectoral laws and regulations to be used by operators and service providers;
- Sets service rates if necessary, after analyzing the competitive situation;
- Monitors the application of service rates and takes the sanctions provided for by law and this decree.

### **SECTION 2: GENERAL PRICING PRINCIPLES IN ACTIVITIES SUBJECT TO COMPETITION**

#### **Article 60: General pricing principles**

Rates are set freely by operators and service providers, in compliance with the principles of transparency, objectivity and non-discrimination, subject to their control by the



Multisectoral Regulatory Authority in the cases and conditions provided for in this chapter and by the regulations.

### **Article 61: Geographical non-discrimination**

Except for exceptions motivated by the significance of the additional costs of implementing and/or operating certain services, the tariffs are applicable without geographical discrimination throughout the national territory.

The exceptions referred to in the preceding paragraph are made by decree of the President of the Republic. The Multisectoral Regulatory Authority establishes by regulation an equalization mechanism compensating for the additional costs thus incurred.

### **Article 62: Publication of tariffs**

Operators and service providers shall make their tariffs available to the public before their implementation and publish them on their website. They are also required to inform the Multisectoral Regulatory Authority of their detailed tariffs at least thirty working days before their implementation and at the beginning of each year, as well as of subsequent modifications, within the same time limits. The Multisectoral Regulatory Authority shall inform the public of these tariffs and the general conditions for the provision of services, which it shall publish on its website and have published in the Official Journal of the Republic of Djibouti. It may specify by regulation the form and content that this information and documents must follow.

## **SECTION 3: PRICING IN THE ENERGY SECTOR**

### **Subsection 1: Pricing principles and rules**

### **Article 63: Principle of pricing freedom**

In activities subject to competition, in accordance with the law and subject to the transitional provisions provided for in this decree, the Multisectoral Regulatory Authority



shall set out in a regulation the general conditions, the applicable pricing principles and the terms of application of this section. The Multisectoral Regulatory Authority shall develop, monitor and, if necessary, revise the pricing rules to be used by operators and service providers.

It shall ensure that the methodology for determining tariffs is properly applied by the operators who provide it with all the data on which the tariff proposal is based and shall respond to any request from the Multisectoral Regulatory Authority on its proposal.

**Article 64: Pricing in non-competitive activities**

The Multisectoral Regulatory Authority sets the tariffs for Djibouti Electricity in activities not subject to the competition regime.

**Article 65: Monitoring compliance with tariff rules and rates**

The Multisectoral Regulatory Authority regularly ensures compliance with the regulations it issues and the decisions it makes. In the event of non-compliance, it sends a formal notice to the operator concerned, accompanied by the results of its observations. The operator has fifteen days to comply with the requirements of the formal notice. In the event of default by the operator, the Multisectoral Regulatory Authority implements the procedures and administrative sanctions provided for by law and this decree, in accordance with the terms provided for in a regulation it issues.

**Article 66: Revision of tariff rules and rates**

Operators may at any time, as required, and in accordance with the terms and conditions defined in the Regulation on tariffs and conditions of service, submit a request to the Multisectoral Regulatory Authority for a tariff review in the event of a significant change in the general economic environment, the level of competition or the structure of their costs. In this case, the Multisectoral Regulatory Authority shall decide, after examining the situation, within a period not exceeding two (2) months, whether it is appropriate to modify the tariffs.

The Multisectoral Regulatory Authority shall provide, by regulation, the cases, conditions and terms leading to the application of automatic upward or downward adjustments to



tariffs.

## **Subsection 2: Transitional provisions**

### **Article 67: Delegation of competence in matters of electricity pricing**

Notwithstanding the provisions of subsection 1 above, in the cases and conditions provided for in this article and from January 1, 2022 to December 31, 2022.

The Multisectoral Regulatory Authority delegates to Électricité de Djibouti (EDD), the competence to set the tariffs it is entrusted with, in activities that are not subject to competition. As part of this delegation, Électricité de Djibouti (EDD) submits to the Regulatory Authority, one month before their entry into force, the proposals for the amount and tariff schedule that the Multisectoral Regulatory Authority reviews and comments on. Therefore, Électricité de Djibouti (EDD) is required to publish the tariffs on its website.

The Multisectoral Regulatory Authority sets the tariff rules by regulation, and ensures that the tariff determination methodology is properly applied by Electricité de Djibouti.

### **Article 68: Delegation of competence in matters of hydrocarbon pricing**

Notwithstanding the provisions of subsection 1 above, in the cases and conditions provided for in this article and from February 1, 2022 to December 31, 2022.

The Multisectoral Regulatory Authority delegates to the Ministry of Energy, responsible for natural resources, the competence to set the tariffs it is responsible for, in activities that are not subject to competition. Within the framework of this delegation, the Ministry of Energy, responsible for natural resources, submits to the Regulatory Authority, one month before their entry into force, the proposals for the amount and tariff schedule that the Multisectoral Regulatory Authority reviews and comments on. The Ministry of Energy, responsible for natural resources is required to publish the tariffs on its website.



The Multisectoral Regulatory Authority sets the tariff rules by regulation, and ensures that the tariff determination methodology is properly applied by the Ministry of Energy, responsible for natural resources.

**Article 69: Principle of delegation of pricing authority.**

The authority delegated pursuant to the preceding article is exercised in the name and on behalf of the Multisectoral Regulatory Authority. The delegation of authority referred to in this article shall end no later than December 31, 2022.

**SECTION IV: PRICING IN THE TELECOMMUNICATIONS SECTOR**

**Article 70: Identification of relevant markets**

The Regulatory Authority shall adopt a regulation to implement the principles and rules laid down by sectoral legislation and regulations, such as to determine whether a market is relevant. It shall determine the relevant telecommunications sector markets subject to ex-ante regulation.

**Article 71: Designation of dominant operators.**

After having analyzed the state and foreseeable evolution of competition on the different markets, the Regulatory Authority establishes the list of dominant operators on each of these markets under the conditions specified by decree on the proposal of the minister responsible for telecommunications.

**Article 72: Determination of obligations applicable to dominant operators**

The Regulatory Authority, by regulatory act, determines the methods of application of the principles and rules set out by sectoral legislation and regulations. It specifies the types of obligations applicable or which may be imposed on dominant operators.

**CHAPTER 4: PREROGATIVES OF THE REGULATORY AUTHORITY**



### **Article 73: Prerogatives**

To carry out the missions assigned to it by law, the Multisectoral Regulatory Authority may collect all information necessary to exercise its supervisory powers from sectoral Ministries, the Ministry of Economy and Finance, the Ministry of the Environment, as well as from network monopoly holders, other operators in the sector in question, and any other company operating in the market in question. It may also hear any person whose hearing it considers likely to contribute to its information.

To this end, operators in regulated sectors are required to provide it, at least annually and at any time upon request, with information or documents that enable it to ensure compliance by said operators with legislative and regulatory texts and with the obligations arising from the licenses, concessions, or authorizations issued to them.

Professional secrecy is not enforceable against the Multisectoral Regulatory Authority by operators in the regulated sector.

### **Article 74: Authorized Personnel**

Without prejudice to the prerogatives granted to the Public Prosecutor and to judicial police officers with general jurisdiction, the sworn agents specially appointed by the Multisectoral Regulatory Authority are responsible for investigating and recording violations of sectoral legislation or regulations.

If an offense is proven, the sworn agents of the Multisectoral Regulatory Authority shall refer the matter to the Public Prosecutor for prosecution of this offense, in accordance with the provisions of the Criminal Code and the Code of Criminal Procedure.

They shall take an oath before the competent court, at the request of the Regulatory Authority.

The list of these sworn or authorized officials and agents of the Multisectoral Regulatory Authority shall be published in the Official Journal of the Republic of Djibouti.

### **Article 75: Appointment of expert**



The Multisectoral Regulatory Authority appoints any competent person to carry out, where appropriate, an expert appraisal.

**Article 76: Powers of sworn agents.**

Sworn agents shall, at their request, receive assistance from law enforcement in the performance of their duties, particularly in the identification and arrest of suspects.

Sworn officials and agents of the Multisectoral Regulatory Authority and other officials and agents of the Regulatory Authority, authorized by the President of the Regulatory Council, on the proposal of the Director General of the Regulatory Authority, shall carry out the investigations necessary for the application of the provisions of the sectoral regulations, the law establishing the Multisectoral Regulatory Authority and this decree.

Sworn agents of the ARMD shall also have access to establishments, land, premises and professional vehicles, excluding homes and parts of premises used as homes, which belong to companies carrying out production, supply, transport and distribution activities in the sector in question. They may enter these premises between 8 a.m. and 8 p.m. and outside these hours when an activity mentioned in this paragraph is in progress, in accordance with the provisions of the Code of Criminal Procedure.

Sworn agents of the ARMD receive, at their request, communication of accounting documents and invoices, of any useful item or document, take copies thereof, and collect, upon summons or on site, the information and justifications necessary for the accomplishment of their mission.

**Article 77: Recording of breaches**

Breaches are recorded by sworn officials and agents. These breaches are the subject of reports which, along with the penalties incurred, are notified to the person(s) concerned within five days and a copy is sent within the same timeframe to the Minister of the sector in question, as well as to the Minister of the Environment when these breaches or penalties relate to activities likely to harm the environment. The person(s) concerned are invited to submit their written or oral observations within one month of this notification.



## **CHAPTER 5: IMPLEMENTATION OF COMPETITION AND CONSUMER PROTECTION RULES**

### **SECTION 1: IMPLEMENTATION OF COMPETITION RULES**

#### **Article 78: Implementation by the Authority of competition laws and regulations**

The Multisectoral Regulatory Authority implements the State's obligations, guaranteeing healthy and fair competition in regulated sectors, in accordance with sectoral legislation and regulations.

In order to guarantee fair competition between operators and avoid abuses of dominant positions, the Multisectoral Regulatory Authority ensures compliance with competition rules and equal treatment between operators.

The Multisectoral Regulatory Authority is the competent administration in regulated sectors, within the meaning of the laws and regulations on competition, the repression of fraud and consumer protection. It investigates, records and prosecutes violations of market transparency rules, for cartels, abuses of dominant positions, and practices that restrict competition. The Authority may establish any partnership agreement with the Ministry of Commerce, with a view to facilitating the exchange of information and saving investigative resources.

#### **Article 79: Respect for the fundamental principles of competition**

In any event, access to networks open to the public and their operation and provision of services must be carried out in compliance with the three fundamental principles which are:

- The principle of equal treatment of users and universal access to services in regulated sectors and the use of these which are ensured under objective, transparent and non-discriminatory conditions;



- The continuity of the provision of services in regulated sectors;
- The adaptability of services according to the technology and needs of users;

To this end, it ensures that operators in regulated sectors;

- Do not abuse a dominant position on the internal market or a substantial part of it;
- May not use this position to limit access to the market or the free exercise of competition by other operators by refusing them access to networks or services in an unjustified or discriminatory manner or by causing unjustified or discriminatory terminations of established commercial relations;
- In particular, that the conditions of access to the networks do not hinder the development of competition.

### **Article 80: Monitoring of transactions**

The Regulatory Authority monitors transactions between sector operators, between sector operators and third parties, transactions with network monopoly holders on the national territory, and cross-border exchanges. These transactions are notified to the Multisectoral Regulatory Authority by sector operators and by the transmission network monopoly operator if the latter is a party to one of these transactions.

A transaction within the meaning of this article means any act, including operations on the capital of a party, which has or is likely to have an impact on competition.

The agreements recording these transactions are forwarded to the Regulatory Authority for information.

## **SECTION 2: CONSUMER PROTECTION**

### **Article 81: Universal Access**



The Multisectoral Regulatory Authority, in compliance with the principles established by law, ensures that the service provided by operators and service providers is open to all those who request it.

**Article 82: Consumers' referral to the Multisectoral Regulatory Authority**

In the event of a dispute with an operator or service provider, particularly concerning service interruptions, billing problems, or failure to comply with repair deadlines, the user must first contact the operator or service provider.

The user may apply to the Multisectoral Regulatory Authority by way of a request if they do not receive a satisfactory response within one month of the referral from the operator or service provider.

The Multisectoral Regulatory Authority has the power to require the modification of unfair clauses in service contracts.

**Article 83: Interruption of the provision of service**

Subject to contrary sectoral regulations, referral to the Multisectoral Regulatory Authority does not prevent the interruption of the provision of the service which is the subject of a dispute. The consumer continues to benefit from the other non-disputed services to which he has subscribed in his contract.

## **CHAPTER 6: SETTLEMENT OF DISPUTES AND SANCTIONS**

### **SECTION 1: CONCILIATION**

**Article 84: Request for conciliation**

In the event of breaches of the legislative and regulatory provisions governing the sectors regulated by the Authority, any operator in one of these sectors, any member of the



government, any professional organization, any user association or any user justifying an interest may request that conciliation be carried out on the basis of the request.

A regulation of the Regulatory Authority specifies the formal conditions of the request, the processing and response deadlines, and the need to provide reasons in the event of refusal. A model request for conciliation is attached to this regulation.

#### **Article 85: Conciliation procedure**

The Chairman of the Regulatory Council, assisted by the director of the sector concerned, shall be notified of the documents relating to the request, hear the parties concerned and any witness whose hearing he deems useful. He may also appoint another member of the Regulatory Council to carry out the conciliation attempt.

#### **Article 86: Conciliation report**

When the parties reach a total or partial reconciliation, a report of the points of agreement is drawn up, which is signed by the chairman of the Regulatory Council and the parties or their respective Council, if any.

If signed by all parties, the conciliation report is not subject to any appeal.

It is enforceable. Failure to comply with the provisions of the conciliation report may result in sanctions being imposed by the Regulatory Authority.

## **SECTION 2: PROCEDURES FOR THE IMPLEMENTATION OF SANCTIONS BY THE REGULATORY AUTHORITY**

#### **Article 87: Referral to the Multisectoral Regulatory Authority.**

The Multisectoral Regulatory Authority, ex officio or at the request of a Minister concerned, a professional organization or a user association, shall take up and sanction any breaches observed in the legislative and regulatory provisions governing the sectors it regulates.



Reports of breaches of the legislative and regulatory provisions of the regulated sectors shall be sent to the Regulatory Authority by any means, ensuring proper receipt. It shall contain the information necessary for examining the breach, including a precise description of the facts, the name of the perpetrators and their position, and possibly a mention of the legislative or regulatory provisions that have not been complied with, as well as any documents available to the person reporting the breach.

The Regulatory Authority shall acknowledge receipt of the report of breach and shall indicate a reasonable timeframe within which a response will be provided.

**Article 88: Preliminary investigation prior to formal notice**

When the Authority takes action *ex officio* or when it considers that it is appropriate to follow up on the request for a sanction referred to it pursuant to Article 87 above, it notifies the person in question of the decision to open a preliminary investigation prior to formal notice and appoints a rapporteur from among the staff of the Regulatory Authority.

The rapporteur carries out the preliminary investigation prior to formal notice with the assistance of the staff of the Regulatory Authority. He may, if he deems it necessary, hear the person in question who may be assisted or represented by any person of his choice, as well as any other person likely to contribute to his information. The hearings give rise to the establishment of a report signed by the persons heard and the rapporteur. In the event of refusal to designate, this is mentioned in the report. A copy of the report is given to the interested parties.

The rapporteur sets the deadlines and conditions under which the documents or information he requests are produced. They are sent to him by registered letter with acknowledgment of receipt or by any means allowing the date of receipt and the identity of the recipient to be certified, including electronically.

The rapporteur draws up an investigation report prior to the formal notice. He transmits the investigation file, including the report mentioned in the previous



paragraph, to the Chairman of the Regulatory Council of the Multisector Regulatory Authority.

### **Article 89: Formal notice**

In view of the investigation file and:

- In the event of a breach of the legislative or regulatory provisions or the authorization, permit, license, agreement of which the person in question is the beneficiary, holder, or party within a period which may not be less than one month, except in the event of a serious and repeated breach or,
- In the event of a breach of the regulations and decisions of the Multisectoral Regulatory Authority taken in application of these provisions.

The Regulatory Council, after deliberation, shall give formal notice to the person in question to remedy these breaches and to comply with the rules applicable to their field of activity within a specified period, in accordance with the relevant sectoral texts or, failing a period specified in the sectoral texts, under the conditions specified in the formal notice.

The formal notice shall set out, under penalty of nullity, the facts and recall the rules applicable to the person in question. It shall mention the avenues and time limits for appeal.

### **Article 90: Notification of grievances**

When the person in question does not comply within the time limits set with the formal notice or the intermediate obligations attached to it, the Regulatory Council may, in particular in view of an investigation carried out by the Rapporteur, notify him of the grievances and the sanctions incurred.

### **Article 91: Decision to classify**

When the Regulatory Council, in view of the investigation, determines that there is no need to send a formal notice or notify complaints, it notifies its decision to classify without further action to the person in question and to the author of the request.



### **Article 92: Instruction of the file for the hearing**

The Regulatory Council sets the time limits and conditions under which the person concerned, who may be assisted or represented by the person of their choice, may consult the investigation file and take copies of the documents. It also sets the time limit within which the person concerned must submit their written observations. The time limits mentioned in this paragraph may not be less than ten working days.

The person concerned shall submit their written observations by registered letter with acknowledgment of receipt or by any means enabling the date of receipt to be certified, including electronically. These observations shall be communicated to the Regulatory Council.

The Regulatory Council may, at any time, request the person concerned to provide it with the information necessary to calculate any penalty.

### **Article 93: Summons for hearing**

The Regulatory Council shall summon the person concerned to a hearing at least twenty working days before the scheduled date. The summons to the hearing shall mention the right to be heard and to be assisted or represented by the person of one's choice. It shall also summon the author of the request, when the referral to the Authority comes from an authorized person.

A member of the Regulatory Council who assumes in his person a cause for recusal or considers in conscience that he must abstain shall waive his right to sit.

### **Article 94: Conduct of the hearing.**

At the request of the Chairman of the Regulatory Council, a secretary for the hearing is appointed from among the Authority's staff who did not participate in the preparation of the prosecution and investigation documents, to assist the Regulatory Council. The staff who assist the Regulatory Council during both the investigation and the hearing are under the sole authority of the Chairman of the Regulatory Council.



The hearing is public. The Chairman of the Regulatory Council may, ex officio or at the request of the person concerned, restrict the publicity of the hearing when the protection of secrets protected by law so requires. Any third party with an interest in acting, whether a professional body, a ministry, or a user association, may bring an action before the administrative court and challenge the decision to restrict publicity taken by the Chairman of the Regulatory Council.

At the hearing, the person concerned and, where applicable, the person assisting or representing them, are invited to present oral observations in support of their written observations and to answer questions from the members of the Regulatory Board.

If necessary, they may provide additional written observations within a reasonable time limit, set during the hearing by the Regulatory Board.

The Chairman of the Regulatory Council invites the Rapporteur or, if the latter is unable to attend, a member of the Regulatory Council, to present oral observations. The Regulatory Council may also hear any person whose hearing it considers useful.

#### **Article 95: Deliberations of the Regulatory Council.**

The Regulatory Council deliberates and decides in the sole presence of its members, one of whom is the secretary of the meeting.

#### **Article 96: Nature of sanctions**

The Regulatory Authority represented by the Regulatory Council, the decision-making body of the Multisectoral Regulatory Authority, may impose the sanctions provided for in the cases and conditions provided for by the law establishing it, as well as one of the administrative sanctions provided for by the relevant sectoral text when the perpetrator of the breaches has not complied within the time limit with the formal notice from the Regulatory Authority.

#### **Article 97: Notification and publication of the decision of the Regulatory Authority**

The decisions of the Authority, reasoned and notified to the person concerned, are published in the Official Journal and on the website of the Regulatory Authority. They



may also be made public in any publications by electronic means, chosen by the Regulatory Authority, in a format and for a duration proportionate to the sanction imposed.

### **Article 98: Appeal against the decision of the Regulatory Authority**

The decision of the Regulatory Council may be subject to an appeal for annulment or reformation and a request for suspension of the execution of this decision, or of certain of its effects, when the urgency justifies it and a means is provided which is likely to create, in the state of the investigation, a serious doubt as to the legality of the decision presented before the administrative court or if it is likely to lead to manifestly excessive consequences or if new facts of exceptional gravity have arisen after its notification.

## **CHAPTER 7: COMMUNICATION AND TRANSPARENCY**

### **SECTION 1: AUTHORITY ACTIVITY REPORT**

#### **Article 99: Purpose of the activity report**

The Authority's activity report, drawn up annually, provides an account of the exercise of its missions and its resources to the public authorities as well as to all Djiboutian citizens and to the representatives of the interests they are responsible for controlling.

The report:

- Reports on the activities of the Multisectoral Regulatory Authority and the application of the legislative and regulatory provisions relating to the sectors it regulates, including statistics on the quality and availability of services and networks. This report also reports on all complaints received and decisions taken;
- Informs professionals in the sector about the activity, objectives and priorities of the Authority. The report indicates the conditions under which it intervenes and specifies the content of the rules in force, and where applicable the jurisprudential interpretation given to them and the doctrine it intends to apply;



- Explicitly, with the greatest transparency, the instruments and criteria that the Regulatory Authority uses in the daily exercise of its functions;
- Includes a strategic presentation with the definition of objectives and performance indicators, a presentation of expenditure and jobs, as well as for the objectives, the expected and achieved results, the indicators and the associated costs.

#### **Article 100: Preparation and adoption of the report**

The report prepared by the Director General in conjunction with the Chairman of the Regulatory Council shall be deliberated by the Regulatory Council, which alone is empowered to adopt it. The draft report shall be submitted to all members of the Regulatory Council at least thirty calendar days before the meeting of the Regulatory Council whose purpose is to adopt it.

The report shall be published on the website of the Presidency of the Republic and on that of the Multisectoral Regulatory Authority.

#### **Article 101: Role of public consultation of the annual report**

The Multisectoral Regulatory Authority may suggest in the report provided for in the article above, all legislative or regulatory modifications required by developments in the regulated sector, developments in competition or which result from its practice. It may also issue and make public, at any time, a reasoned opinion on any issue relating to the regulated sectors that it deems relevant.

The Multisectoral Regulatory Authority may submit to a public consultation via the Internet the solutions that it plans to promote or may launch public consultations and calls for comments.

The report may propose a plan for optimizing its expenditure, assessing the forecast impact on each category of expenditure, of measures for pooling its services with the services of other Authorities or with those of a ministry.



### **Article 102: Other information and communication obligations of the Multisectoral Regulatory Authority**

The annual audit report prepared in accordance with Djiboutian legislation and generally accepted international standards, under the conditions provided for by law, is published in the Official Journal and on the website of the Multisectoral Regulatory Authority within one month.

The observations of the Court of Auditors are also published under the same conditions as the report.

### **Article 103: Website of the Multisectoral Regulatory Authority**

Within six months of the publication of this decree, the Multisectoral Regulatory Authority shall set up a website where opinions, recommendations, decisions, formal notices, notices of calls for tender and specifications relating to the regulated sectors are published, as well as all other acts emanating from it, except those relating to business confidentiality, as well as legislative and regulatory texts, acts and all other information relating to the regulated sectors.

The Regulatory Authority shall also publish these documents in the Official Journal.

## **CHAPTER 8: ADVISORY POWERS OF THE MULTI-SECTOR REGULATORY AUTHORITY**

### **Article 104: Advisory powers of the Multisectoral Regulatory Authority**

The Regulatory Authority monitors any draft law or regulation relating to regulated sectors, with a view to ensuring that these projects comply with the conventions and treaties relating to these sectors and with the projects currently being negotiated. To this end, it sends any necessary notes enabling the relevant ministries to ensure compliance with Djibouti's international commitments, with draft laws or regulations relating to regulated sectors.

It is involved, at the request of the Minister concerned, in the preparation of any decision relating to its sector or likely to have an impact on it, and in particular in the design of the



sectoral policy. The regulatory authority informs the relevant sectoral ministry of any act or action of which it may become aware, which could have an impact on the design of the sectoral policy.

## **CHAPTER 9: TRANSITIONAL MEASURES, DECLARATION AND MODIFICATION OF CURRENT AGREEMENTS, LICENCES AND AUTHORIZATIONS**

### **Article 105: Organizational Chart**

1. As a transitional measure, the Djibouti Multisectoral Regulatory Authority is composed of the following internal structures:
  - A telecommunications department;
  - An energy department;
  - An administrative and financial department;
  - A communications and consumer relations department and a legal department attached to the general management. An accounting agency is set up with the general management.
2. As soon as the Regulatory Council is established, the Director General submits a draft organizational chart for its adoption. The responsibilities and operation of each department and department are set by decree issued by the Council of Ministers on the proposal of the Djibouti Multisectoral Regulatory Authority.

### **Article 106: Declaration procedures**

Holders of agreements, licenses or authorizations in the sectors regulated by the ARMD have a period of one year from the date of promulgation of this decree to comply with the provisions of Law No. 74/AN/20/8<sup>th</sup> L, establishing the Multisectoral Regulatory Authority of Djibouti (ARMD) and this implementing decree, subject to the effective establishment of the Authority.

For the purposes of the application of the preceding paragraph, holders of agreements, licenses and authorizations are required to register with the Multisectoral Regulatory Authority within six months from the date of promulgation of this decree.



Failing this, they will be deemed to have waived the benefits of their agreement, license or authorization and will not be able to invoke the application of the above provisions in their favor.

**Article 107: Scope and limits of amendments to agreements, licenses and authorizations**

Agreements, licenses and authorizations issued to an operator carrying out a regulated activity for a specified period before the date of publication of this decree shall remain valid until their expiry.

However, for the purposes of implementing the law establishing the Multisectoral Regulatory Authority and this decree, the Multisectoral Regulatory Authority may make any amendments to these agreements, licenses or authorizations that are strictly necessary for the application of the law establishing it and this decree. These amendments shall be duly justified, based exclusively on institutional changes and shall in no case alter the economic balance and acquired rights of the agreements, licenses or authorizations.

**TITLE IV: FINAL PROVISIONS**

**Article 108: Entry into force**

This Decree shall enter into force upon its signature by the President of the Republic and shall be registered.

**The President of the Republic,  
Head of Government  
ISMAÏL OMAR GUELLEH**