

Decision No.26/2016 issuing the Accounting Separation Regulation

Pursuant to the Telecommunications Regulatory Act issued by the Royal Decree No. 30/2002; and

The Executive Regulation of the Telecommunications Regulatory Act issued by the Ministerial Decision No.144/2008; and

The Accounting Separation, Regulatory Accounting & Reporting Requirements Regulation issued by Decision No. 112/2009; and

The approval of TRA Board of Directors vide its Decision No. 27/2015 dated 2.11.2015; and

Based on the exigencies of the public interest;

It is decided:

Article 1: The provisions of the attached Regulation shall apply in respect of Accounting Separation.

Article 2: The Accounting Separation, Regulatory Accounting & Reporting Requirements Regulation issued by Decision No. 112/2009 referred to shall be revoked as well as all that is contravening with this Regulation or contrary to its provisions.

Article 3: This Decision shall be published in the Official Gazette and shall come into force from the day following the date of its publication.

Issued on: 5 Rajab 1437 H

Corresponding to: 13.04.2016

Mohammed Bin Hamad Al-Rumhi

Chairman of Board of Directors

Accounting Separation Regulation

Chapter One

Definitions and General Provisions

Article 1: In the application of the provisions of this Regulation, the words and expressions contained herein shall have the same meanings set out in the Telecommunications Regulatory Act and its Executive Regulation referred to. The following words and expressions shall have the meanings set opposite them unless the text requires otherwise:

1. **“Accounting Separation”** means the preparation of Separated Regulatory Accounts by the Dominant Licensee for different Relevant Markets and Individual Services as specified by the Authority, so that costs and revenues associated with each Relevant Market and Individual Service can be separately identified;
2. **“Accounting Separation Framework”** means this Regulation, the Guidelines, and all decisions, directions and instructions issued by the Authority related to Accounting Separation;
3. **“Guidelines”** means the Accounting Separation Guidelines issued by the Authority, and as amended from time to time, that provide detailed guidance on cost allocation stages and methodologies and formats to be used for preparation of Separated Regulatory Accounts;
4. **“Separated Regulatory Accounts”** means disaggregation of the Statutory Accounts for regulatory purposes in accordance with the Accounting Separation Framework;
5. **“Accounting Separation Methodology Document”** means the document that provides high-level principles and methodologies to be adopted for the preparation of Separated Regulatory Accounts in accordance with the provisions of this Regulation;
6. **“Accounting Policies”** means policies covering operational accounting issues, such as asset lives and treatment of intangible assets;
7. **“Accounting Documents”** means the documents that are prepared by the Dominant Licensee in accordance with the Accounting Separation Framework, which include methodologies used for the preparation of Separated Regulatory Accounts, Overview of Allocation Methodology, Assets Valuation Methodologies and Accounting Policies;
8. **“Relevant Market”** means a market defined in customer and geographic terms comprising products or services that are regarded as interchangeable or substitutable due to their characteristics, prices and intended uses and which is determined as such by the Authority;
9. **“Individual Services”** means services that are natural part of a Relevant Market;
10. **“Fully Allocated Costing (FAC)”** means a costing methodology to allocate all costs amongst various products and services;

11. **“Historic Cost Accounting (HCA)”** means an accounting convention whereby costs, revenues, assets and liabilities are generally recorded at the value when the transaction was incurred and where assets are valued according to their cost at the time of purchase;
12. **“Current Cost Accounting (CCA)”** means an accounting convention, where assets are valued according to their current replacement costs;
13. **“Long Run Incremental Costing (LRIC)”** means a costing methodology to measure the incremental economic costs that arise in the long run due to a specific increment in volume of production;
14. **“Audit Report”** means a report issued by the Regulatory Auditor in accordance with the provisions of this Regulation containing his opinion on the Separated Regulatory Accounts of a Dominant Licensee;
15. **“Statement of Responsibility”** means the statement required to be submitted by the Dominant Licensee to the Authority that the Separated Regulatory Accounts were prepared in accordance with the requirements of Accounting Separation Framework;
16. **“Transfer Charge”** means the charge or price that is applied, or deemed to be applied by the licensee to itself for the provision of service(s) by one of its Relevant Market or Individual Service to another Relevant Market or Individual Service, as the case may be;
17. **“ Weighted Average Cost of Capital (WACC)”** means the lowest return that a licensee is expected to earn on the capital employed;
18. **“Retail Market”** means a Relevant Market comprising of a service or services provided to the beneficiaries who are not themselves providers of that telecommunications service(s), and which was defined by the Authority as a relevant market;
19. **“Wholesale Market”** means a Relevant Market comprising of services provided to other service providers;
20. **“Statutory Accounts”** means the financial statements prepared by a licensee in accordance with the law. Where the licensee is required to prepare and file such Statutory Accounts in more than one country, one of which is the Sultanate, the Statutory Accounts shall be those prepared to comply with the Sultanate’s legal obligations;
21. **“Financial Year”** means a period of twelve months for which a licensee prepares its Statutory Accounts in compliance with the law;

Article 2: Scope and Application

- a. This Regulation shall be applicable on Dominant Licensees who are obliged by a decision from the Authority to prepare Separated Regulatory Accounts.

- b. The Authority may at its discretion, based on a justified written request from a Dominant Licensee obliged to prepare Separated Regulatory Accounts in accordance with Clause (a) of this Article, exempt that Dominant Licensee from any provisions of this Regulation. In all cases, the exemption shall be made by a written notice from the Authority on such terms and conditions as the Authority specifies.

Article 3: Compliance with Timeframes

The Dominant Licensee shall establish adequate accounting systems and reporting arrangements to comply with the obligations arising from this Regulation in a timely manner pursuant to the provisions of this Regulation.

Article 4: Provision of Information

The Authority may require the Dominant Licensee in writing to provide information and clarifications relating to all respective models, Accounting Documents and Separated Regulatory Accounts that are issued in accordance with the provisions of this Regulation within a given timeframe and in the manner as directed by the Authority.

Article 5: Order of Precedence

In case of any conflict in applying the provisions of Accounting Separation Framework, the following order of precedence shall be observed:

- (i) this Regulation;
- (ii) any decision, direction or instruction issued by the Authority pursuant to this Regulation;
- (iii) the Guidelines.

Article 6: Issuing Decisions and Guidelines

The Authority shall issue the necessary decisions, guidelines and instructions to implement the provisions of this Regulation within the timeframe and in the manner it deems appropriate.

Article 7: Costs Incurred

All costs incurred in applying the provisions of this Regulation, including Regulatory Auditor's costs whether appointed by the Dominant Licensee or the Authority, costs incurred for the Regulatory Auditor to respond to questions or meetings with the Authority, shall be borne by the Dominant Licensee.

Article 8: Retention of data

The Dominant Licensee shall ensure that it retains the accounts, information, records and documents upon which the Separated Regulatory Accounts have been prepared for a period of not less than five (5) years from the date of submission to the Authority.

Chapter Two Separated Regulatory Accounts

First: Regulatory Accounting Principles

Article 9: The Dominant Licensee shall prepare the Separated Regulatory Accounts on principles, given below and as explained in the Guidelines, which are to be applied in the following order of precedence:

- a. Priority and proportionality;
- b. Cost causality;
- c. Objectivity;
- d. Consistency;
- e. Materiality; and
- f. Transparency.

Second: Preparation of Separated Regulatory Accounts

Article 10: The Dominant Licensee shall prepare the Separated Regulatory Accounts in accordance with the Accounting Separation Framework, the Accounting Separation Methodology Document, the Accounting Documents and International Financial Reporting Standards.

Article 11: The Separated Regulatory Accounts shall be prepared, on an annual basis, for each of the Relevant Markets in which that Dominant Licensee has been declared by the Authority to have a dominant position and for each of the Individual Services within that Relevant Market in accordance with the requirements of the Guidelines.

Article 12: For the purpose of Article (11) above, the Dominant Licensee shall prepare and submit to the Authority for approval a complete list of Individual Services under each Relevant Market in accordance with the requirements of the Guidelines.

Article 13: The list of Individual Services, under Article (12) above, shall be submitted for the first time, within fifteen (15) working days from the designation of dominance or issuance of this Regulation, whichever is later. After the first submission, an updated list of Individual Services shall be prepared and submitted every year not later than fifteen (15) working days after end of each Financial Year.

Article 14: If the Authority takes no action within 15 working days following the submission of list of Individual Services under Article (13) above, the list of Individual Services submitted shall be automatically deemed to have been approved by the Authority.

Article 15: If the Authority decides not to approve the list of Individual Services, the Authority may request the Dominant Licensee to make specific amendments to the list of Individual Services within a given timeframe as directed by the Authority.

Article 16: The Authority may require the Dominant Licensee, in order to investigate any possible anti-competitive conduct by that Dominant Licensee or for any other valid reason, to submit in the given timeframe:

- a. any accounting information for any Individual Service or Relevant Market in which that Dominant Licensee is operational but has not been declared by the Authority to have a dominant position; or
- b. any accounting information, in addition to the annual submission of the Separated Regulatory Accounts.

Article 17: While issuing requirements under Article (16) above, the Authority may allow the Dominant Licensee to provide aggregated or less detailed information with regard to any Relevant Market in which it has not been declared to have a dominant position, if this does not, based on the view of the Authority, affect the Dominant Licensee's compliance with all its regulatory obligations.

Article 18: The Dominant Licensee shall take all necessary measures to ensure timely response to the requirements of the Authority stipulated under Article (16) above.

Third: Accounting Separation Methodology Document

Article 19: The Dominant Licensee shall prepare, prior to submission of the Separated Regulatory Accounts for the first period in application of this Regulation, the Accounting Separation Methodology Document and submit the same to the Authority for approval within three (3) months of the obligation to prepare Separated Regulatory Accounts or issuance of this Regulation, whichever is later.

Article 20: The Accounting Separation Methodology Document shall contain, at a minimum, the following information:

- a. Regulatory Accounting Principles
- b. Accounting Policies, to be in line with the policies used in the preparation of the Statutory Accounts of the Dominant Licensee
- c. Overview of Cost Allocation Process
- d. Allocation Methodologies
- e. Transfer Charges Methodology
- f. Assets Valuation Methodologies
- g. LRIC Methodology
- h. Cost of Capital Methodology

Article 21: The Authority shall review the Accounting Separation Methodology Document within three (3) months of its receipt and it may:

- a. Approve it without change; or
- b. Conditionally approve it subject to changes specified by the Authority; or

- c. Reject it with reasons and require a Dominant Licensee to re-submit the Accounting Separation Methodology Document within the time period given by the Authority after taking into account the Authority's reasons for rejection; or
- d. Defer the approval till the time when Accounting Documents and Separated Regulatory Accounts are submitted by the Dominant Licensee.

Article 22: The Authority may require any relevant information or clarification from the Dominant Licensee which it deems necessary for the purpose of review of Accounting Separation Methodology Document and the Dominant Licensee shall provide such information within the time period given by the Authority.

Article 23: Where the Dominant Licensee fails to provide the requested information or clarification within the given time period, this period may be extended by the Authority. Any such extension shall not affect the deadline for submission of Separated Regulatory Accounts as provided in this Regulation.

Article 24: Subsequent to its first submission, the Accounting Separation Methodology Document shall be submitted to the Authority by the Dominant Licensee on an annual basis not later than two (2) months after the end of each Financial Year.

Article 25: The annual submission of the Accounting Separation Methodology Document shall be accompanied by an additional documentation that provides details of changes, if any, made to the previously approved version of the Accounting Separation Methodology Document and the reasons for, and impact of, such changes on Separated Regulatory Accounts.

Article 26: Within thirty (30) working days of acknowledging the receipt of the annual submission of the Accounting Separation Methodology Document, the Authority shall notify the Dominant Licensee if it approves the changes the Dominant Licensee has made to the Accounting Separation Methodology Document.

Article 27: If any changes are not approved, the Authority shall set out the amendments that are required to be made to the Accounting Separation Methodology Document, which the Dominant Licensee shall comply with within seven (7) working days of receiving such requirement.

Article 28: The Authority at its own and in consultation with the Dominant Licensee may also require the Dominant Licensee to make required changes in its Accounting Separation Methodology Document.

Article 29: If the Authority takes no action within the period set out in Article (26) above, the Accounting Separation Methodology Document shall be deemed to have been approved by the Authority.

Fourth: Submission of Separated Regulatory Accounts

Article 30: The Dominant Licensee shall prepare and submit to the Authority on an annual basis the Separated Regulatory Accounts and Accounting Documents.

Article 31: The Separated Regulatory Accounts shall include, at a minimum:

- a. Profit and Loss Statement.
- b. Statement of Mean Capital Employed.
- c. Reconciliation Statements.
- d. Statement of Transfer Charges.
- e. Statement of Average Unit Revenue.
- f. Statement of Network Component Unit Cost.
- g. Statement of Routing Factors and Network Unit Cost of Services.
- h. Notes to the Separated Regulatory Accounts.

Article 32: The first set of Separated Regulatory Accounts shall be submitted by the Dominant Licensee, who was previously not subject to such an obligation, to the Authority, based on FAC using HCA, not later than twelve (12) months from the date of placing the obligation to prepare Separated Regulatory Accounts or notification of this Regulation whichever is later.

Article 33: When submitting the second set and the subsequent sets thereafter, the Dominant Licensee shall submit its Separated Regulatory Accounts to the Authority based on FAC using HCA, FAC using CCA and LRIC not later than six (6) months after the end of Dominant Licensee's Financial Year to which they relate.

Article 34: The Dominant Licensee, who was previously subject to such an obligation, shall submit its Separated Regulatory Accounts to the Authority based on FAC using HCA, FAC using CCA and LRIC not later than six (6) months after the end of Dominant Licensee's Financial Year to which they relate, in accordance with this Regulation.

Article 35: The Separated Regulatory Accounts shall be accompanied with the Accounting Separation Methodology Document, Accounting Documents, respective models, Audit Report, the Statement of Responsibility which shall be in the form prescribed in the Guidelines and shall be signed by the Chief Executive Officer, or equivalent, of the Dominant Licensee and any other information as required by the Accounting Separation Framework.

Fifth: Transfer Charge

Article 36: The Transfer Charge shall adhere to the following principles and Guidelines:

- a. Transfer Charge shall be attributed to Relevant Markets and Individual Services in accordance with the activities, which cause the revenues to be earned, or costs to be incurred provided that it is objective and not intended to benefit any Relevant Market or Individual Service;
- b. There shall be consistency of treatment of Transfer Charge from year to year, unless the change is justified and approved;

- c. The transfer charging methods used shall be transparent. There shall be a clear rationale for the Transfer Charge used and each charge shall be supportable;
- d. The Transfer Charge for internal usage between the internal units of the Dominant Licensee shall be determined as the product of usage and reference unit price. The unit price for internal usage shall be equivalent to the price that would be levied if the product or service was sold externally rather than internally;
- e. The Separated Regulatory Accounts shall disclose the Transfer Charges between Relevant Markets and between Individual Services. The Dominant Licensee shall document, in a clear manner, how each of the Transfer Charge is generated between various Relevant Markets and Individual Services within the Accounting Documents.

Sixth: Accounting Documents

Article 37: The Dominant Licensee shall submit the Accounting Documents along with the Separated Regulatory Accounts to the Authority.

Article 38: The Accounting Documents shall contain, at minimum, the information and documents prescribed in the Guidelines.

Seventh: Publication of Accounting Separation Methodology Document and Separated Regulatory Accounts

Article 39: The Authority may, at its discretion, publish or require the Dominant Licensee to publish Accounting Separation Methodology Document, Separated Regulatory Accounts and Accounting Documents that have been submitted to the Authority in compliance with this Regulation.

Article 40: The Authority may specify the manner and such other issues as it considers appropriate relating to the publication of Accounting Separation Methodology Document, Separated Regulatory Accounts and Accounting Documents.

Article 41: The Authority may ask the Dominant Licensee to prepare separate versions of Accounting Separation Methodology Document, Separated Regulatory Accounts and Accounting Documents, or any information contained therein, for publication purposes.

Article 42: The Dominant Licensee may submit a written request to the Authority for not publishing particular information along with properly reasoned justifications for such request. The Authority may determine that the publication of such information is in the public interest if the advantages of such publication outweigh any harm to the Dominant Licensee.

Article 43: In its determination on the merits of such disclosure pursuant to Article (42) of this Regulation, the Authority may consider, among other factors, the extent to which:

- a. this confidential information is important for the purposes of transparency and verification of the Dominant Licensee's compliance with this Regulation; and

- b. the publication of a summary or redacted version of the information concerned, prepared by the Authority or proposed as an alternative by the Dominant Licensee, would be sufficient under the circumstances.

Chapter Three Audit of Separated Regulatory Accounts

First: Appointment of Regulatory Auditor

Article 44: The Dominant Licensee shall appoint an Independent Regulatory Auditor to audit the Separated Regulatory Accounts in accordance with this Regulation.

Article 45: The Regulatory Auditor shall be appointed based on a tri-partite agreement between the Dominant Licensee, the Regulatory Auditor and the Authority.

Article 46: The Regulatory Auditor to be appointed shall be licensed to conduct audits in the Sultanate and shall be an auditor of good standing.

Article 47: The Regulatory Auditor to be appointed shall be independent from any firm that supports or advises in any way, the Dominant Licensee in the preparation of its Separated Regulatory Accounts, Accounting Separation Methodology Document, Accounting Documents or related models and shall meet the requirements as set out in the Guidelines.

Article 48: The Dominant Licensee shall, at least six (6) months before the Separated Regulatory Accounts are required to be submitted, provide the Authority, in writing, with the following:

- a. The name of the proposed Regulatory Auditor together with its business address;
- b. A confirmation of the Regulatory Auditor's independence;
- c. The proposed audit scope and detailed audit plan; and
- d. The draft tri-partite agreement with the Regulatory Auditor including its obligations and responsibilities towards the Authority.

Article 49: The Authority may organize meetings with the proposed Regulatory Auditor, the Dominant Licensee or both and it may ask for additional clarifications.

Article 50: The Authority may convey to the Dominant Licensee its objections and reasons for such objections, in writing, with regards:

- a. to the appointment of the Dominant Licensee's Regulatory Auditor, and may request that an alternative appointment be made if in its opinion the Regulatory Auditor does not meet the requirements of this Regulation or the Guidelines;
- b. to the audit scope and detailed audit plan; and
- c. to the draft tri-partite agreement and may direct the Dominant Licensee to implement necessary changes in the agreement.

Article 51: The Authority may request meetings with the Regulatory Auditor, after its appointment, to discuss the Regulatory Auditor's work and such information and clarifications as it may consider appropriate.

Article 52: The Authority may require the audit to be performed by another Regulatory Auditor at Dominant Licensee's expense, if the Regulatory Auditor, initially appointed by the Dominant Licensee, fails to satisfy the requirements of the Accounting Separation Framework.

Article 53: The responsibility for appointment of Regulatory Auditor by the Dominant Licensee and the timely completion of audit shall be on the Dominant Licensee.

Second: Audit of Separated Regulatory Accounts

Article 54: The Separated Regulatory Accounts based on FAC HCA, FAC CCA and LRIC shall be subject to an independent audit carried out in accordance with International Standards on Auditing.

Third: Regulatory Auditor's Opinion

Article 55: The Regulatory Auditor shall give an audit opinion that:

- a. the Separated Regulatory Accounts fairly present in accordance with the Accounting Separation Methodology Document the results, mean capital employed and costs incurred by the Company; and
- b. the Separated Regulatory Accounts were prepared in accordance with the requirements of Accounting Separation Framework.

Article 56: The audit opinion on Separated Regulatory Accounts, prepared on LRIC, may be provided on “properly prepared in accordance with” (PPIAW) basis unless the Authority requires such audit opinion on ‘fairly present’ basis.

Fourth: The Audit Report

Article 57: The Regulatory Auditor shall address the Audit Report to the Dominant Licensee and the Authority. This Audit Report will be attached to, but will not form part of, the Separated Regulatory Accounts.

Article 58: The Audit Report shall clearly set out the respective responsibilities of the Regulatory Auditor and the Dominant Licensee and the basis on which the audit has been carried out and the opinion arrived at.

Article 59: The Audit Report shall be accompanied with a Compliance Statement by the Regulatory Auditor, which shall at least include:

- a. the work done by the Regulatory Auditor;
- b. the scope and limitations of the audit;
- c. the existence of any relationship, other than that of Regulatory Auditor, which the Regulatory Auditor has with, or any interests which the Regulatory Auditor has in, the Dominant Licensee or any of its affiliates or subsidiaries;
- d. the conclusions of the Regulatory Auditor;
- e. all identified irregularities;
- f. whether the Regulatory Auditor has obtained all information and explanations that he has required;
- g. whether, in the Regulatory Auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the Dominant Licensee so as to enable the complete and accurate compilation of required information;

- h. whether, in the Regulatory Auditor's opinion, the Separated Regulatory Accounts are prepared, in all material respects, in accordance with the Accounting Separation Methodology Document;
- i. whether the Regulatory Auditor has audited, on a sample basis, the information and processes required to complete the Separated Regulatory Accounts, to the extent such information and processes are not audited as part of the Dominant Licensee's statutory reporting processes;
- j. whether the Regulatory Auditor has reviewed the WACC methodology and its calculations and found them appropriate; and
- k. whether the Regulatory Auditor has audited the accounting system and models, to the extent they are relevant to the Separated Regulatory Accounts, and found them compliant with the requirements.

Article 60: The Dominant Licensee shall keep the Authority, based on its request, informed regarding the progress of the audit and shall arrange meetings of Regulatory Auditor with the Authority.

Article 61: If any requirement is unclear, the Dominant Licensee or the Regulatory Auditor, as the case may be, shall seek clarifications from the Authority on a timely basis, to enable it to comply with the deadline and comply with the requirements of this Regulation.

Article 62: The Authority reserves the right to contact the Regulatory Auditor to discuss the procedures to be applied in performing the audit or to discuss the auditors' findings. In case of ambiguities, the Authority shall require from the Dominant Licensee, the Regulatory Auditor or both additional clarifications.

Article 63: The Authority reserves the right to require from the Dominant Licensee to instruct the Regulatory Auditor to perform additional work and to submit to the Authority a report on the performed additional work.

Article 64: The Dominant Licensee shall be deemed to have complied with its obligations in relation to the preparation of the Separated Regulatory Accounts only if the Regulatory Auditor issues an unqualified Audit Report in relation to Separated Regulatory Accounts as a whole.

Article 65: If the Regulatory Auditor issues a qualified Audit Report on the Separated Regulatory Accounts as a whole or on any Relevant Market or Individual Service, and in the Authority's opinion, the Separated Regulatory Accounts appear unsuitable for regulatory purposes, the Authority may require the Dominant Licensee to prepare a second set of Separated Regulatory Accounts which address the Regulatory Auditor's identified reasons for qualifying the Separated Regulatory Accounts. The second set of Separated Regulatory Accounts shall also be audited.

Chapter Five Penalties

Article 66: The Authority may apply the provisions of Article (51) Repeated of the Telecommunications Regulatory Act in the event of violating the provisions of this Regulation by the Dominant Licensee.

Article 67: In the event of violating any of the provisions of this Regulation, the Authority may direct a written notification to the violator containing the following:

- a. a description of the committed violation.
- b. the timeframe during which the Dominant Licensee is required to respond to the notification.

If the said timeframe elapses without any response or if the response submitted was not acceptable to the Authority, the Authority may apply the prescribed penalties.