



Information & Communications Technology Authority

**Licence Fees for
Long-term ICT Licences
Guidelines for Licensees**

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1. Introduction

This document provides ICT Network operators and ICT Service providers licensed by the ICT Authority ("Authority") with guidelines on the procedures to be used for the calculation and collection of licence fees for Licensees of major public ICT Networks and ICT Services as listed in the Authority's recent Section 23(2) Notice. For the convenience of the reader, these are listed in Schedule 1.

These procedures are subject to amendment and updating and any changes will be notified to ICT Licensees and republished on the Authority's web site.

The information in this document should not be considered to represent legal or commercial advice and readers should seek appropriate professional advice appropriate to their own circumstances. This document is without prejudice to the legal position or the rights and duties of the Authority to regulate the market generally. Any views expressed are without prejudice to the final form and content of any decisions the Authority may issue.

Legislative Background

The Information and Communications Technology Authority Law, 2002 ("ICTA Law") empowers the Authority to license and regulate ICT Service providers and ICT Network operators and to collect all fees, including licence fees and other charges levied under the ICTA Law or the Electronic Transactions Law, 2000 or the regulations made thereunder.

The licence fees charged by the Authority are expected, among other things, to meet its needs for funding its activities in carrying out the statutory functions assigned by the law.

The Authority is required to publish its estimates of expenditure and revenue each year in the Gazette, in accordance with Section 14(4) of the ICTA Law.

The Authority is required to maintain proper accounts, to have the accounts independently audited and to submit the audited accounts along with its annual report to the Governor in Cabinet, no later than six months following the end of the financial year.

Pursuant to Section 75(1) of the ICTA Law and by virtue of a notice issued by the Governor in Cabinet and published in the Gazette, the Authority now has jurisdiction and responsibility for both the telecommunications and broadcasting sectors.

Other

On 10 July 2003, an agreement was reached between the Governor in Cabinet of the Cayman Islands, the Authority and Cable & Wireless (Cayman Islands)

Limited ("Cable & Wireless") to terminate Cable & Wireless' 1991 Agreement with the Cayman Islands Government ("Government") ("2003 Agreement"). In addition to the 2003 Agreement, the Authority issued a fifteen-year licence to Cable & Wireless reflecting, among other things, the licence fee calculation and collection procedures that are summarised in this Guidelines document. In this document, the Authority revises and expands the meaning of ICT Sector One as defined in Annex 2 to Cable & Wireless' licence.

Each ICT licence will include a condition that requires the Licensee to pay the licence fee in the manner directed by the Authority.

2. Who is liable to pay Licence Fees?

The licence fees are payable by all persons granted licences in accordance with Section 23(1) of the ICTA Law for the major public ICT Networks and ICT Services set out in the Section 23(2) Notice. These are, for the convenience of the reader, summarised in Schedule 1 to this document.

3. How will Licence Fees be calculated?

The licence fees will be calculated and paid in arrears on a quarterly basis with an annual true-up mechanism based on the Licensee's annual audited financial statements.

For each Licensee, licence fees will be comprised of a royalty fee and a regulatory fee. The only exceptions will be Licensees whose licences exempt them from the payment of the royalty fee. In such cases, the licence fee will be comprised of the regulatory fee only.

The royalty fee, which is set by the Government, will be 6% of each Licensee's revenues. The regulatory fee, which is based on the Authority's costs for the on-going cost of regulating the ICT Networks and ICT Services listed in Schedule 1, will be pro-rated across all Licensees based on each Licensee's quarterly revenues for the ICT Networks and ICT Services listed in Schedule 1 as a percentage of all Licensees' quarterly revenues for the same Networks and Services. Both components of the licence fee will be remitted by Licensees on a quarterly basis to the Authority.

Cable & Wireless' licence refers to the revenues to be used for the calculation of the regulatory fee as ICT Sector One which was defined as "... all those activities identified as Types 1, 2, 3, 4, 5, and 9 (limited to Internet Service Providers) ICT Services, as set out in the first Section 23(2) notice issued by the Authority, as a minimum, and such others as the Authority may prescribe from time to time."

By this Guidelines document, the Authority redefines ICT Sector One to mean all those activities identified as ICT Networks and ICT Services as set out in the recent Section 23(2) Notice.

The Authority will use Licensees' revenues for the quarter immediately preceding the quarter for which licence fees are due for purposes of calculating each Licensee's regulatory fee. In part, the reason for this is because of the time it will take for the Authority to calculate the regulatory fee payable by each Licensee which can only be done after all Licensees provide their revenues. Given that Licensees' revenues will only be available some time after the end of the last month of each quarter, the Authority is concerned that using revenues for the immediately preceding quarter would result in undue delays in calculating and collecting regulatory fees. Hence, the Authority has decided to use revenues for the quarter prior to the immediately preceding quarter to calculate each Licensee's regulatory fee.

The quarterly licence fee will comprise of:

- 1) a royalty fee to be calculated as 6% of the Licensee's quarterly revenues; and
- 2) a regulatory fee to be calculated based on the Authority's quarterly on-going expenditures for the regulation of ICT Networks and ICT Services listed in Schedule 1, multiplied by the Licensee's revenues for the ICT Networks or ICT Services listed in Schedule 1, for the quarter immediately preceding the quarter for which licence fees are due, divided by all Licensees' revenues for the ICT Networks or ICT Services listed in Schedule 1, for the same quarter.

The regulatory fee to be paid by each Licensee during the Authority's financial year (i.e., 1 July to 30 June) shall not exceed six hundred thousand dollars.

When the results for a Licensee's financial year are finalised and it transpires that the audited revenues are higher than the sum of the unaudited quarterly revenues, which were used to calculate licence fees during the year, the Licensee will be liable for an additional royalty fee equal to 6% of the difference between the audited revenues and the sum of its unaudited quarterly revenues. This will be payable forthwith upon submission of the Licensee's annual audited financial statements, which are due no later than three months after the end of its financial year. If, on the other hand, the Licensee's audited revenues are lower than the sum of its unaudited revenues, the Authority will calculate and apply an equivalent credit to the Licensee's royalty fee for the current year. In either case, the Authority does not anticipate collecting additional regulatory fees.

4. What constitutes Revenues for Licence Fee purposes?

In determining what constitutes turnover and revenue for licence fee purposes, the Authority has sought, for reasons of administrative simplicity, to set out as broad a base as possible with few deductions. As turnover generated from ICT Networks and ICT Services is expected to form the bulk of the revenue generated by most Licensees, the Authority expects that revenues for most Licensees will not differ significantly from turnover. Deductions will include payments made to domestic ICT Licensees, outpayments made to international carriers and, on an exceptional basis, non-recurring extraordinary items of receipt.

Regarding the revenue base for purposes of calculating the royalty fee, a Licensee's revenues are defined as the Licensee's turnover less payments made to domestic ICT Licensees for wholesale, interconnection and infrastructure services and payments made to international carriers for international traffic and non-recurring extraordinary items of receipt that are not made in the ordinary course of business.

Payments made by an ICT Licensee to another domestic ICT Licensee for wholesale, interconnection and access to and sharing of infrastructure services may be deducted by the Licensee making such payments from its turnover in order to avoid the issue of double payment of licence fees on the same revenues. The ICT Licensee providing wholesale, interconnection and access to or sharing of infrastructure services will report such payments as part of its revenues. Licensees may deduct payments made to international carriers for international traffic since these represent revenues collected from customers of the Licensee that are due to, and passed on by the Licensee to providers of telecommunications services abroad. A deduction is allowed for non-recurring extraordinary items of receipt, such as that from real estate sales, that are not made in the ordinary course of business.

Revenues for purposes of calculating the royalty fee are defined as:

The total amount of receipts in money or money's worth received by the Licensee from all sources arising out of or in connection with the Licensee's business in or from the Cayman Islands for a defined period of time (e.g., monthly, quarterly or annually, as the case may be)

Less

Payments made to other ICT Licensees for interconnection, infrastructure or wholesale services for that same period; and

Settlement payments made to international carriers for international traffic, including adjustments to payments for such traffic for that same period. If any of the payments are made to a Licensee's affiliate, the amount deducted for purposes of calculating revenues will be only to the extent that those payments are made at open market value on an arm's-length basis; and

Non-recurring extra-ordinary items of receipt (including real estate) that are not made in the ordinary course of business.

Regarding the revenue base for purposes of calculating the regulatory fee, the Authority will allocate its on-going costs of regulation to Licensees engaged in operating and providing ICT Networks and ICT Services in Schedule 1 and will therefore require each Licensee to provide quarterly turnover arising from the operation or provision of all ICT Networks and ICT Services listed in Schedule 1. Deductions to turnover will include payments made to domestic ICT Licensees, out payments made to international carriers and, on an exceptional basis, non-recurring extraordinary items of receipt.

Revenues for purposes of calculating the regulatory fee are defined as:

The total amount of receipts in money or money's worth received by the Licensee from all sources arising out of or in connection with the Licensee's business in or from the Cayman Islands for the operation of ICT Networks or the provision of ICT Services listed in Schedule 1 for a defined period of time (e.g., monthly or quarterly, as the case may be)

Less

Payments made to other ICT Licensees for interconnection, infrastructure or wholesale services for that same period; and

Settlement payments made to international carriers for international traffic, including adjustments to payments for such traffic for that same period. If any of the payments are made to a Licensee's affiliate, the amount deducted for purposes of calculating revenues will be only to the extent that those payments are made at open market value on an arm's-length basis; and

Non-recurring extra-ordinary items of receipt (including real estate) that are not made in the ordinary course of business.

Difference between Revenue Definitions

The primary difference between the two revenue bases for the royalty fee and the regulatory fee calculations, is the inclusion of revenues for activities other than those related to the operation or provision of ICT Networks and ICT Services in Schedule 1, in the definition of revenues used for calculating the royalty fee.

A Licensee must report its quarterly turnover and quarterly revenues in a licence fee report, the format of which is attached as Schedule 2 to this Guidelines document.

5. When are Licence Fees payable?

Licence fees are payable no later than 15 days following the end of each quarter. The payment dates are:

<u>Due on or before</u>	<u>For the Quarter Beginning</u>
15 October	1 July
15 January	1 October

15 April

1 January

15 July

1 April

In addition, no later than three months following the end of a Licensee's financial year-end, the Licensee is required to provide audited financial statements with any additional royalty fee payment arising from the year-end adjustment.

Where a payment date falls on a weekend or a holiday, licence fees are due on the first business day immediately following the weekend or holiday.

6. Procedures for the Payment of Licence Fees

The following procedures will be used for the payment of licence fees.

Annually

Each year, no later than 1 September, the Authority will publish, in the Gazette, its annual estimates of expenditure and revenue for the current financial year.

Quarterly

Thirty days prior to the beginning of each quarter, the Authority will issue, to each Licensee, an invoice for the regulatory fee.

No later than fifteen days following the end of each quarter, each Licensee will provide:

- A licence fee report, the format of which is attached as Schedule 2 to this Guidelines document;
- Unaudited financial statements; and
- A cheque for the licence fee payable (both royalty and regulatory fees), as calculated per the Licensee's licence fee report.

The licence fee report must be signed by an officer of the Licensee attesting to the veracity and completeness of the information provided and that the Licensee has reported all turnover. If a Licensee's turnover, revenues or licence fee payment differs from the precise details contained in the licence fee report, the Authority may require the Licensee to provide further information in respect of the licence fees calculated.

Additionally, the Authority may request further information at any time and in any format deemed advisable.

Within twenty-eight days of receiving a Licensee's licence fee report and unaudited financial statements (or audited financial statements, as the case may be), if the Authority disputes the exclusion of any item from the Licensee's turnover or the inclusion of any item deducted from the Licensee's turnover for the purpose of calculating its revenues, the Authority may serve the Licensee with a dispute notice. The procedures for resolving such a dispute are set out in Schedule 3 to this Guidelines document.

Annually

No later than three months following the end of the Licensee's financial year, each Licensee must provide a full set of audited financial statements to the Authority.

If the audited financial statements, as accepted by the Authority, show that the Licensee has underpaid the licence fee, a further royalty fee payment in the amount of the 6% of the difference between the audited statements and the unaudited statements shall be paid to the Authority.

In the event the audited financial statements show that the Licensee has overpaid licence fees, a credit in the amount of 6% of the difference shall be applied to the Licensee's royalty fee for the current year.

The Licensee's audited financial statements are to include the following audited statements: balance sheet, profit and loss statement (i.e., operating statement), statement of retained earnings, and cash flow statement. The Authority requires detailed annual turnover and annual revenue statements and such other statements as it may reasonably prescribe, all of the financial information in respect of the Licensee's business in the Cayman Islands for its financial year.

With respect to Licensees' audited financial statements,

- Only auditors from the Cayman Islands Monetary Authority's Current List of Approved Local Auditors or any other locally certified public accounting firm that is approved by the Authority in advance of the Licensee's financial year end, will be accepted by the Authority as the auditors of record for Licensee's audited financial statements; and
- Consistent with the Cayman Islands Monetary Authority's Policy for Local Auditor Sign Off, the Authority will not require that all of the audit work is carried out locally or carried out solely by the approved auditor of record.

Licensees are responsible for ensuring that they make payment of the quarterly amount of the licence fees calculated on the basis of revenues on or before the due date. The Authority will issue an acknowledgement for fees received.

Where a date falls on a weekend or holiday, the due date will automatically be the first business day immediately after the weekend or holiday.

The Authority will post a Licence Fee Calendar on its web site, indicating the dates for the payment of licence fees.

7. Automated Payments

Payments should be made to the Authority's bank account, details of which will be provided directly to each Licensee. The name of the Licensee as it appears on the relevant licence should be quoted in the payment.

8. Penalties

The requirement to pay licence fees will be included in all licences issued by the Authority. Therefore, failure to pay a fee will constitute a breach of licence. There are various remedies available to the Authority where there is a breach of licence and without prejudice to those remedies, or any other remedies available under the ICTA Law, if the Licensee fails to pay any amount due by the due date, any unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the published Cayman Islands Dollar Prime Rate published from time to time by the Authority's bankers, the Bank of Butterfield International (Cayman) Limited.

9. Rebate of Excess Fees and Collection of Shortfalls

The Authority is required by its legislation to maintain a reserve fund. In the event that the Authority collects regulatory fees that are greater than its estimated operating budget, including maintenance of a reserve fund, any excess will be paid into the general revenue of the Cayman Islands in accordance with Section 14(5) of the ICTA Law.

Should there be any shortfall, the Authority may make up this shortfall using one or more of a number of options including.

- imposing an additional regulatory fee or levy on Licensees within the calendar year in which the shortfall arises; or
- obtaining short term funding (such as by seeking loans in accordance with Section 15(1) of the ICTA Law) and increasing the regulatory fee in the following calendar year; or

- seeking grants from the Government in accordance with Section 16(1) of the ICTA Law.

The mechanism to be used will depend on the nature and size of any shortfall and will be decided by the Authority on a case by case basis.

10. Other

Following the conclusion of the Authority's 2003/2004 financial year, the Authority will review the effectiveness of the procedures outlined in this Guidelines document and make adjustments as appropriate. That review will be undertaken when a full year of data is available, i.e., after 30 June 2004.

Schedule 1

ICT Networks and ICT Services

<i>Type</i>	<i>Major Public ICT Networks</i>
A	Fixed wireline
B	Fixed wireless
C1	Mobile (cellular) 2G
C2	Mobile (cellular) 2.5G
C3	Mobile (cellular) 3G
D1	Fibre optic cable – Domestic
D2	Fibre optic cable – International
E1	Satellite (incl VSAT) – Domestic
E2	Satellite (incl VSAT) – International
F	Broadcast network

<i>Type</i>	<i>ICT Services</i>
1	Fixed Telephony
2	Reserved for future use
3	Mobile Telephony
4	Resale of Telephony
5	Internet Telephony
6	Public Service Television broadcasting
7	Subscription Television broadcasting
8	Sound broadcasting
9	Internet Service Provider
10	Information Security Service provision
11	The provision, by lease or otherwise, of ICT infrastructure by one Licensee to a third party
12	Retail sale of ICT equipment
13	The publication of directories derived from ICT subscriber records
14	Applications Service Provider

* There is no requirement to pay licence fees for entities licensed by the Cayman Islands Trade and Business Licensing Board for provision of Type 12 services.

Schedule 2

LICENCE FEE REPORT						
1	Date Submitted:					
2						
3	Licensee Name:					
4	Licensee No.:					
5						
6	Contact Person:					
7	Telephone:					
8	E-mail:					
9						
10		Note	Month 1	Month 2	Month 3	Quarter
						YTD
11	Turnover					
12	[Unless otherwise prescribed by the Authority, the licensee should provide a breakdown of revenues, at a minimum, for each individual licence category.]					
13	Interconnection					
14	Wholesale					
15	Access to and Sharing of Infrastructure					
16	Other	1				
17	Gross Turnover	2				
18						
19	Less:					
20	Outpayments to international carriers					
21	Interconnection services from other licensees					
22	Wholesale services from other licensees					
23	Access to and sharing of Infrastructure from other licensees					
24	Total Regular Deductions	3				
25						
26	Non-recurring extraordinary items of receipt	4				
27						
28	Revenues for Royalty Fee Calculation	5				
29	Royalty Fee Payable					
30	6% x Line 28					
31						
32	Revenues for Next Regulatory Fee Calculation	6				
33	Regulatory Fee Per Authority Invoice					
34						
35	Total Licence Fee Remitted					
36						
37						
38	I verify the above to be accurate and complete to the best of my knowledge.					
39						
40						
41						
42						

[Signed by an Officer of the Licensee]

Schedule 3

Dispute Resolution Procedures

In the event a Licensee receives a dispute notice from the Authority, the Licensee and the Authority will use their reasonable endeavours to reach a settlement in writing.

If the dispute is not resolved to the satisfaction of the Authority within twenty-eight days of the receipt by the Licensee of the dispute notice, then within fourteen days thereafter, the dispute will be referred to an independent accountant to be agreed between the Licensee and the Authority.

In the event the Authority and the Licensee are unable to agree upon the identity of an independent accountant, the Licensee and the Authority shall refer the choice of the accountant to the current President of the Cayman Islands Chamber of Commerce whose decision shall be final and binding.

The decision of the independent accountant in respect of the dispute notice shall be final and binding and the costs of the referral of the dispute notice including the fees charged by the independent accountant for adjudicating on the dispute notice shall be awarded by the independent accountant to the party in whose favour the dispute is resolved.