

REGULATION

Ownership Regulation

OWNERSHIP REGULATION

A Regulation issued by the Telecommunications
Regulatory Authority

29 October 2003

Purpose: Defines certain parameters related to the ownership of telecommunications licensees.



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تنظيم
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1. Definitions and Interpretation

1.1. Any word, phrase or expression used in this regulation shall, unless the context requires otherwise or it is expressly defined herein have the same meaning as it has in the Legislative Decree No. 48 of 2002 Promulgating the Telecommunications Law (the "Telecommunications Law") and the terms below shall have the following meaning :

"**affiliate**" means:

(a) in relation to a juristic person:

- (i) any person who has a direct or indirect ownership interest or control interest in the juristic person;
- (ii) any person in whom the juristic person has a direct or indirect ownership interest or control interest; or
- (iii) any person in whom a person contemplated in subparagraph (i) has a direct or indirect ownership interest or control interest; and

(b) in relation to a natural person, a parent, spouse or child of the relevant natural person;

"**concentrated telecommunications service category**" means any telecommunications service category in which:

- (a) there are five (5) or less licensees; or
- (b) if there are five (5) or more licensees, the TRA determines that such telecommunications service category is concentrated after taking into consideration the intensity of competition among the licensed operators in such telecommunications service category;

"**control interest**" means, in relation to any person, in the absence of proof to the contrary to the TRA pursuant to Regulation 4, that such person directly or indirectly:

- (a) beneficially owns more than a total of twenty-five percent (25%) of the issued share capital of the licensee; or
- (b) is entitled to vote a majority of the votes that may be cast at a general meeting (or functional equivalent thereof) of the licensee or has the ability to control, either directly, indirectly or through an affiliate the casting of a majority of those votes of the licensee; or

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- (c) is able to appoint or veto the appointment of a majority of the directors of the licensee; or
- (d) is a holding company and the licensee is a subsidiary of that company; or
- (e) in the case where the licensee is a trust or a similar entity, has the ability to control a majority of the votes of the trustees (or functional equivalent thereof), to appoint the majority of the trustees, to appoint or change the majority of the beneficiaries of the trust; or
- (f) in the case where the licensee is a limited liability company or similar entity, owns more than a total of twenty-five percent (25%) of the members' interest (or functional equivalent thereof), or controls or has the right to control the member's votes in such company; or
- (g) has the ability to direct or cause the direction of the management or policies of the licensee (including, without limitation, major decisions related to the budget, business plan, significant investments or the appointment of senior management of the licensee) in a manner similar to any of paragraphs (a) to (f), whether through the direct or indirect ownership of issued share capital, by contract (including any management contract), by other securities, or otherwise, irrespective of whether or not such person holds any issued share capital in the licensee;

"issued share capital" means, with respect to any person, all shares, interests, participations or rights or other equivalents (however designated, whether voting or nonvoting, ordinary or preferred) in the equity or capital of such person, now or hereafter issued;

"juristic person" means any company, corporation, limited liability company, voluntary association, partnership, joint venture, trust, or other enterprise or incorporated or unincorporated organisation; or government (or any agency, instrumentality or political subdivision thereof);

"ownership interest" means, in relation to any person, any direct or indirect ownership of issued share capital of a total of more than five per cent (5%) in such a person;

"person" means both juristic persons and natural persons; provided that when two or more persons act in concert as a partnership, syndicate, joint venture or otherwise for the purpose of acquiring, holding, or disposing of the issued share capital of a licensee, such partnership, syndicate, joint venture or other combination shall be deemed a single "person" for the purpose of these regulations;

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"**telecommunications service category**" means a telecommunications service authorised by an individual license:

"**telecommunications service licence**" means a licence issued or deemed to have been issued in terms of the Telecommunications Law;

"**Telecommunications Law**" has the meaning ascribed to such term in sub-regulation 1.1;

"**TRA**" means the Authority, as defined in the Telecommunications Law;

"**transfer**" means sell, convey, assign dispose of, settle, alienate, or otherwise transfer, in whole or in part, whether or not for value, any interest in a licence or licensee from one person to a different person; and

"**transfer of a control interest**" shall have the same meaning as "transfer" except that such transfer of a control interest shall occur when a control interest in a licensee is transferred from one person to a different person, irrespective of whether such transfer is effected through a single transaction or a series of related transactions.

- 1.2. For purposes of these regulations an "indirect" ownership interest or control interest in a licensee shall be calculated by use of a multiplier whereby the ownership interest held at each level in the ownership chain is multiplied by the preceding percentage attributed to the indirect interest holder. Please refer to Annexure A for an illustration of this calculation.

2. Limitation of ownership and control of licensees in concentrated telecommunications service categories

- 2.1. No person who holds an ownership interest or control interest in a licensee in any concentrated telecommunications service category, or an affiliate of such person, shall hold an ownership interest or control interest in another licensee in the same concentrated telecommunications service category, unless an exemption is granted by the TRA in response to a submission by a person to the TRA. The criteria the TRA shall use in assessing whether to grant such an exemption are, that such exemption:
 - (a) does not diminish the promotion of effective and fair competition among new and existing licensed operators; and
 - (b) promotes the interests of subscribers and users of the relevant telecommunications services in respect of the matters referred to in Section 3(b)(1) of the Telecommunications Law.

- 2.2. Sub-regulation 2.1 shall not apply to:

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- (a) the Government of the Kingdom of Bahrain (or any agency, instrumentality or political subdivision thereof) acting in its capacity as a shareholder holding an ownership interest in the issued share capital of a licensee. For avoidance of doubt, licensees (regardless of the amount of ownership interest held by the Government of the Kingdom of Bahrain in such licensees) are subject to the limitation on ownership prescribed by sub-regulation 2.1; and
- (b) passive institutional investments where such investments are held by a fund, bank, insurance company or similar person as part of its ordinary course of business or an affiliate thereof; provided that such person or affiliate, as the case may be, does not participate in the management of the licensee.

3. Maintenance and submission of ownership interest records

3.1. A licensee must maintain accurate and detailed records indicating the:

- (a) owner of record holding any direct ownership interest, including the name(s), address, telephone numbers, e-mail address and any other contact details;
- (b) direct ownership interest held as of the date the records were last updated;
- (c) class of direct ownership interests held;
- (d) number of shares or other direct ownership interests owned of record in the issued share capital by each holder of an ownership interest;
- (e) identity of the person or persons entitled to vote such issued share capital; and
- (f) the percentage of the relevant class of issued share capital.

3.2. If applicable, the records contemplated in 3.1 above must also reflect the total number of issued share capital trading on the Bahrain Stock Exchange or any other internationally recognised securities exchange.

3.3. A licensee must annually file with the TRA, no later than 31 January of each year, an ownership report for the preceding calendar year containing the information referred to in sub-regulation 3.1 above. The TRA may, at the request of a licensee, waive such licensee's obligation with respect to some of the information required to be kept as part of the record keeping prescribed in sub-regulation 3.1 where such licensee's issued share capital is listed on the Bahrain Stock Exchange or any other internationally recognised securities exchange and the exempted information is not kept in the ordinary course with respect to such listed issued share capital and not otherwise required by such exchange.

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- 3.4. In addition to the annual filing in regulation 3.3, a licensee must file with the TRA, whenever required to do so by the TRA, any records or other information or extracts there from required to be maintained in sub-regulation 3.1.
- 3.5. A licensee is responsible for updating the records required to be maintained pursuant to sub-regulation 3.1 within thirty (30) days of any transfer of an ownership interest. Within ten (10) days of updating such records, the licensee shall file an updated ownership report with the TRA.
- 3.6. Where a transfer requires prior approval by the TRA under sub-regulation 4.1, the licensee shall include with its report the date of such approval and a copy of the authorization approving the transfer.

4. Transfers of control interests

- 4.1. A licensee shall obtain prior written approval from the TRA in accordance with the procedure prescribed by regulation 5 in any case where the transfer would result in the transfer of a control interest in the licensee.
- 4.2. Sub-regulation 4.1 shall not apply to:
 - (a) the issued share capital of a licensee that is trading on the Bahrain Stock Exchange or other internationally recognised securities exchange where the trading of such issued share capital would not result in the transfer of a control interest in the licensee; or
 - (b) the transfer of any ownership interest or control interest in a licensee where the telecommunications service category is not a concentrated telecommunications service category; or
 - (c) the transfer of any ownership interest held by the Government of the Kingdom of Bahrain (or any agency, instrumentality or political subdivision thereof) acting in its capacity as a shareholder holding an ownership interest in the issued share capital of a licensee (regardless of whether such transfer results in a transfer of a control interest in the licensee), but would apply to such licensee in cases where such licensee holds ownership interests in another licensee.

5. Procedures for transfers of control interest

- 5.1. A licensee who must obtain approval under sub-regulation 4.1 must in the application to the TRA:
 - (a) indicate that the application is submitted in terms of these regulations;
 - (b) explain in detail, the transfer that is the subject of the application;

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- (c) set out in detail all of the ownership interests (as required by sub-regulation 3.1) and the control interests held in the licensee on the date of the applications;
- (d) set out in detail after completion of the proposed transfer the ownership interests and the control interests as required by sub-regulation 3.1; and
- (e) undertake that if the transfer is approved by the TRA, the licensee will continue to satisfy its obligations under the relevant licence(s), the Telecommunications Law and regulations.

5.2. Unless good cause is shown to the TRA, the application must be signed by:

- (a) the licensee; and
- (b) the proposed transferee.

5.3. The application must be accompanied by the application fee, if any, as may be required by the TRA; provided, however, that such fee shall be calculated only to cover the reasonable direct cost of the TRA to evaluate the application, taking into account the additional resources required by the TRA to consider the application.

6. Confidentiality of applications

6.1. The TRA may at the request of a licensee or, if applicable, an interested person who submitted representations pursuant to sub-regulation 7.1, determine that any document or information relating to the financial capacity or business plan of any person or to any matter reasonably justifying confidentiality, shall not be open to public inspection, if such document can be separated from the application, representations or other documents in question.

6.2. If the TRA refuses a request contemplated in sub-regulation 6.1, the applicant or person concerned may withdraw the document or information in question, in which event, the TRA shall consider the document or information so withdrawn.

7. Application Review

7.1. If an application is made under sub-regulation 5.1, the TRA may (but shall not be obliged to):

- (a) invite written representations by interested parties with regard thereto, to be submitted within the period specified in the invitation or within such additional period as the TRA may determine; and
- (b) hold hearings in respect of the application at such time and place as the TRA may determine after the period for submitting representations under paragraph (a), if applicable, has passed.

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- 7.2. A hearing contemplated in sub-regulation 7.1(b) may be open to the public or confidential, as determined by the TRA. Where such hearing is open to the public, before considering any document or information which the TRA has determined shall not be open for public inspection in terms of sub-regulations 6.1 and 6.2, the TRA may direct that the public or any member or category thereof shall not be present at the hearing.
- 7.3. The TRA may require a licensee or an interested party who has made written representations under sub-regulation 7.1 to furnish the TRA, within the period specified by it, with such further information as the TRA may request in order to consider the application.
- 7.4. The criteria the TRA will use in evaluating an application for the transfer of a control interest in a licensee will be whether the licensee will be able to satisfy its obligations under the relevant licence(s) and comply with the Telecommunications Law and regulations promulgated there under after the transaction(s) proposed in the application have been finalised
- 7.5. The TRA shall, after having considered the application and the written representations, if any, and any other information considered relevant by the TRA and applying the relevant criteria set out in sub-regulation 7.4, notify the licensee of its decision together with the reasons therefore within thirty (30) days of receipt of the application unless otherwise extended for good cause by the TRA, failing which the application shall be deemed to be approved by the TRA.
- 7.6. The parties to an application made to the TRA under sub-regulation 7.1 shall have ninety (90) days from the date a decision approving the transfer is granted under sub-regulation 7.5 within which to finalise the transfer, or such approval shall lapse unless extended by the TRA in writing.
- 7.7. The licensee shall notify the TRA in writing within thirty (30) days after finalisation of any transfer granted under sub-regulation 7.5.
- 7.8. The TRA may combine related applications. When multiple transfers are contemplated as part of a single transaction, licensees may file a single application explaining each step of the transaction and include relevant charts showing the ownership structure prior to and post finalisation along with any other materials the licensee considers helpful in assisting the TRA in rendering its decision.
- 7.9. The TRA may grant its approval in relation to one or more transfers of the issued share capital that forms the subject matter of an application.

8. Non-Compliance

- 8.1. Without limiting any other power of the TRA to enforce these regulations or other consequence of applicable law not being complied with:

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- (a) Any transfers in violation of sub-regulation 2.1 without written approval from the TRA shall be void, and may constitute a breach of the Telecommunications Law, in particular section 65; and
- (b) Any transfer required by sub-regulation 4.1 without written approval from the TRA shall be void, and may constitute a breach of the Telecommunications Law, in particular section 65.

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ANNEXURE A

SHAREHOLDING CALCULATIONS

The following examples illustrate the method of calculating ownership and control interests held indirectly in a licensee through one or more intermediate juristic persons as prescribed by sub-regulation 1.2.

Example 1: If Company A (the indirect owner) were to own forty percent (40%) of the share capital of Company B (the intermediate company) and Company B were to own seventy percent (70%) of the share capital in a licensee, then, for purposes of this regulation, Company A would be deemed to hold twenty eight percent (28%) of the issued share capital in that licensee. Company A's interest in the licensee is calculated by multiplying Company A's interest in Company B by the percentage interest Company B holds in the licensee. ($40\% \times 70\% = 28\%$) Under the regulations, Company A would be deemed to hold a control interest in the licensee.

Example 2: Company A holds a forty percent (40%) interest in Company B and Company B holds a forty percent (40%) interest in Company C. Company C holds a seventy percent (70%) direct interest in the licensee. Company A's interest in the licensee would be eleven point two percent (11.2%). Company A's interest in the licensee is calculated by multiplying Company A's interest in Company B by the percentage Company B holds in Company C. The resulting percentage interest is then multiplied by the percentage interest Company C holds in the licensee. ($40\% \times 40\% = 16\%$; $16\% \times 70\% = 11.2\%$). Under the regulations Company A would be deemed to hold a ownership interest in the licensee but because such ownership interest falls below twenty five percent (25%), the indirect interest would be deemed non-controlling; provided, however, the indirect owner did not exercise control in fact over the licensee as prescribed in paragraph (g) of the definition of control interest.

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EXAMPLE 1

Company A

| 40%

Company B

| 70%

Licensee

$$40\% \times 70\% = 28\%$$

Company A would be deemed to hold
a 28% interest in the licensee

EXAMPLE 2

Company A

| 40%

Company B

| 40%

Company C

| 70%

Licensee

$$40\% \times 40\% = 16\%$$

Company A would be deemed to hold
a 16% interest in Company C

$$16\% \times 70\% = 11.2\%$$

Company A would be deemed to hold
a 11.2% interest in Licensee

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ANNEXURE B

Overview of responses to the Consultation

The TRA received two responses to its consultation document of 2nd May 2003: from Batelco and MTC Vodafone. This brief overview highlights some of the more pertinent responses.

Both respondents commented on the 25% threshold for a 'control interest'. The TRA considers 25% to be reasonable.

In relation to regulation 2, the TRA received certain comments that do not appear to appreciate that regulation 2 only applies to ownership and control interests held in licensees in concentrated telecommunications service categories. The wording of this regulation has been amended to further clarify this. One respondent commented that the provisions of regulation 2 lacked flexibility for consolidation in a concentrated telecommunications service category. One respondent sought for a case-by-case review of all ownership transfers in concentrated telecommunications service categories, which the TRA does not consider desirable. However, the TRA has amended regulation 2 to allow for consolidation in a concentrated telecommunications service category, subject to an exemption being granted by the TRA according to the criteria set out in regulation 2.

In relation to regulation 3, the TRA received comments from both respondents on the difficulty of meeting the requirements set out at 3.1 for indirectly-held ownership interests. The TRA has amended regulation 3, to now only apply to directly-held 'ownership interests'. The word 'title' in the reference to 'title and class of ownership interests held' has been removed from sub-regulation 3.1(c) in response to comments received. The TRA has retained the discretionary waiver at sub-regulation 3.3. The TRA considers that the 30 day time-limit at sub-regulation 3.5 to be reasonable.

In relation to regulation 4, the TRA received comments on the difficulty for licensees to obtain approval of transfers which may be beyond the control of the licensee (i.e. certain indirect transfers). The TRA has retained the obligation in regulation 4, as it is primarily via the licensee (as opposed to a potentially infinite number of indirect shareholders, both inside and outside of the Kingdom of Bahrain) that the TRA regulates this sector. Exceptions to this obligation are retained at sub-regulation 4.2. However, the TRA has simplified the procedure for such approval of transfers (sub-regulation 5.2).

In response to a comment from one respondent, the TRA has reduced both the 60 day time-limit at sub-regulation 7.4 (deadline for the TRA to make a decision on an application for a transfer) to 30 days and the 120 day time-limit at sub-regulation 7.6 (duration for approval of an application for a transfer) has been reduced to 90 days.

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One respondent provided detailed comments, with examples, on tracing requirements for calculation of shareholdings (as set out at Annexure A1). These comments do not appear to appreciate that the definition of “person” includes persons acting in concert and that sub-regulation 7.8 allows the TRA to combine related applications. The method of calculating shareholding applies to all shareholdings (ownership interests and control interests) and the wording of Annexure A1 has been amended to clarify this. Furthermore, the definitions of ‘ownership interest’ and ‘control interest’ have been clarified to expressly cover aggregation of shareholdings. Finally, the TRA notes that the definition of ‘person’ covers various structures, such as a partnership, syndicate, joint venture or other combination, this wording has been further clarified.