



RWANDA UTILITIES REGULATORY AUTHORITY

COMPLIANCE AND ENFORCEMENT GUIDELINES

2023

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The Regulatory Board of Rwanda Utilities Regulatory Authority;

Pursuant to *Law N° 09/2013 of 01/03/2013 establishing Rwanda Utilities Regulatory Authority (RURA) and determining its mission, powers, organisation and functioning*, especially in articles 2, 4, 6, 20, 47 and 49;

Based on the recommendations made through the online consultations with all licenced operators;

After deliberation in its meeting of 19th June,2023;

HEREBY issues the following Guidelines:

I. GENERAL PROVISIONS

1.1. Purpose of these guidelines

The purpose of these Guidelines is to put in place compliance and enforcement procedures under which the Regulatory Authority carries out its regulatory functions.

1.2. Objectives of these guidelines

The general objective of these guidelines is to strengthen compliance with the relevant Laws and regulations in all regulated sectors while ensuring efficiency, fairness, consistency, transparency and professionalism in inspections, compliance and enforcement process.

The specific objectives of these guidelines intend to:

- i. act promptly and concisely;
- ii. set a clear standard inspection procedure;
- iii. take regulatory decisions in an open, transparent, and objective manner;
- iv. ensure that any action taken is evidence based, proportionate and transparent;
- v. ensure that operators are given the information on the nature of the administrative fault committed, the right of defence, the right to be heard and the right to legal representation.

1.3. Interpretation

For the purpose of these Guidelines the following terms mean:

- 1) Authorisation:** a legal document with a period of validity less than five (5) years, issued by the Regulatory Authority, authorizing the holder to carry out activities which are not construction and installation activities of infrastructure or the systems;
- 2) Cancellation:** the annulation of the license, permit or authorization and the applicant is no longer entitled to it due to the fact that he never collects it and yet, that license, permit or authorization which he has applied for was approved by the Regulatory Authority;
- 3) Compliance:** the state of conformity with regulatory requirements, legislative provisions, regulations, rules, standards, orders, directives and license obligations;
- 4) Director General:** Director General of RURA;
- 5) Enforcement:** includes all required acts for ensuring compliance or sanctioning the infringement of any of the provisions of the Law, Regulations or License obligations;
- 6) Inspection:** any type of visit or check conducted by authorized RURA staff on business sites, premises, documents or anywhere the regulated activity or service is being carrying out or provided;

- 7) **Inspection officer:** any authorised staff of RURA or any expert hired by RURA for his/her specific skills, designated for the purpose of inspection and whose duty is to carry out the task or activity of monitoring and evaluating the compliance of operators in relation to laws, regulations and license obligations;
- 8) **License:** a document issued by RURA allowing an operator to carry out certain activities and/or provide services in a specific regulated sector;
- 9) **Licensee:** any person to whom a license has been issued to carry out any activity or provide any service that is regulated by RURA;
- 10) **Permit:** is a legal document with a period of validity less than five (5) years, issued by the Regulatory Authority, authorizing the holder to carry out activities relating to construction and installation.
- 11) **Record:** is any means of memorializing an event, person, place, or thing;
- 12) **Regulated sector:** any sphere of activity or service falling under the scope of public utilities regulated by RURA;
- 13) **Regulatory Authority:** Rwanda Utilities Regulatory Authority;
- 14) **Relevant law:** refers to law governing one of the regulated sectors, regulations, directives, guidelines or instructions issued by the Regulatory Authority;
- 15) **Revocation:** is an order issued by the Regulatory Authority directing the licensee to definitely cease its activities in the country;
- 16) **Suspension:** is an order issued by the Regulatory Authority for a temporary suspension of its activities in the country until that licensee complies with the decision contained therein;

1.4. Scope

These guidelines apply to all sectors regulated by RURA, except nuclear and radiation activities.

In the event of any conflict between these guidelines and relevant Laws and Regulations, the later prevail.

II. PRINCIPLES OF MONITORING AND ENFORCEMENT PROCESS

The following are the key principles that guide the Regulatory Authority during the inspection and enforcement process:

1. Accountability;
2. Consistency;
3. Proportionality;
4. Targeting;
5. Transparency;
6. Collaboration;
7. Such other principles and considerations as the Regulatory Authority may from time to time consider necessary and in the national interest.

2.1. Accountability

The Regulatory Authority takes responsibility of all decisions and acts and should be able to demonstrate its compliance with laws, regulations and guidelines in force, and corporate governance processes.

2.2. Consistency

Laws, regulations, guidelines directives, procedures and processes will guide consistent decision making so the enforcement is equitable and fair. As far as possible, the Regulatory Authority determines appropriate actions in a similar manner across the regulated sectors, and over time.

2.3. Proportionality

Regulatory responses should be proportionate to the gravity of the fault by any non-compliance and any damage or injury that has been caused.

The Regulatory Authority takes into account the intent and conduct of operators and, including their compliance history.

2.4. Targeting

Targeted regulatory effort is directed towards activities or trends which generate significant risk, serious harm or result in significant breaches of laws and regulations, with action primarily focused on those directly responsible.

2.5. Transparency

Enforcement measures must be transparent so that all operators understand what is expected of them, and to create community confidence in the regulator's performance and actions by ensuring communities have a solid understanding of the Regulatory 's enforcement procedures.

2.6. Collaboration

The Regulatory Authority ensures the efficient use of government resources by collaborating with other institution(s), where required.

III. ASPECTS RELATING TO MONITORING AND REGULATORY COMPLIANCE

3.1. Important aspects of compliance monitoring

In the course of inspection and monitoring the compliance with the provisions of relevant laws and regulations, RURA focuses mainly on the following aspects:

- 1) Licensing compliance;
- 2) Quality of service;
- 3) Fair competition;
- 4) Regulatory and license obligations;
- 5) Financial obligations;
- 6) Any other service or activity that may be monitored in accordance with the relevant laws and regulations.

3.2. Licensing compliance

The Regulatory Authority ensures that all operators in regulated sectors are licensed and are subsequently in compliance with their license obligations.

3.3. Quality of service

Quality of service is the expected result of any regulated operator as per provided by relevant regulations. The end user or the consumer must enjoy the service availability, quality and affordability.

3.4. Fair Competition

Free and fair competition is achieved by monitoring activities and practices that are revealed in the competition of regulated sectors, focusing on the following:

- 1) promoting effective competition within each public utility sector in the interest of potential users of public utility;
- 2) investigating and terminating any anticompetitive practices;
- 3) imposing sanctions in case of anticompetitive practices;
- 4) settle conflicts between operators.

3.5. Financial obligations

Financial regulatory compliance requires licensed operators to pay all fees provided under relevant laws and regulations and they must ensure that they meet their financial obligations within deadline stipulated by the relevant laws and regulation or regulatory Board decisions. Violations of financial obligations can lead to administrative sanctions.

The licensed operators should fulfil also its financial projections submitted to the Regulatory Authority, pay its debts, make a proper allocation of the profit made for the sustainability of the service.

The licensed operators should also submit their financial statements as required by the Regulatory Board decisions.

3.6. Other Provisions provided under relevant laws and regulations

Aside from the requirements provided in laws and regulations governing the regulated sectors, operators must comply with other relevant laws and regulations.

IV. INSPECTIONS

4.1. Aim of inspection

The objective of inspection is to raise awareness and assist operators in taking appropriate preventive measures to comply with the regulatory requirements or to prevent faults in advance.

Inspection involves checking something, examining, testing, gauging and assessing something it should be separate from education and awareness.

The objective of inspection is to ensure that nothing is faulty and that any operator is breaking any laws or regulation.

The Regulatory Authority, through its inspection officers mainly focus on the following aspects:

- 1) compliance with national and international standards;
- 2) compliance with regulations published by the Regulatory Authority;
- 3) compliance with Regulatory and license obligations and other Provisions provided under relevant laws and regulations;
- 4) quality of service delivery with respect to the regulated sectors;
- 5) challenges encountered by operators while complying with laws and regulations;
- 6) providing advices and recommendations with corrective measures where necessary.

4.2. Types of inspection

The Regulatory Authority may organise three (3) types of inspections:

- regular inspections;
- inspections for cause;
- Follow-up inspections.

4.2.1 Regular inspections

These are the mandatory inspections to monitor compliance with applicable laws, regulations and license obligations conducted by the Regulatory Authority on regular basis.

4.2.2. Inspections for cause

“For cause” inspections happen where there has been an issue reported to the Regulatory Authority or if there are facts that an operator or a licensee is out of compliance.

Depending on the nature of the suspected infringement and urgency of the Regulator’s intervention, the Regulatory Authority notifies the operator or a licensee of such inspection, within a reasonable time.

4.2.3. Follow-up inspections

Follow-up inspections are in response to a previous inspection and are to review the requested actions taken by the operator.

4.3. Time of inspection

Inspections are made during regular working hours of the establishment except when special circumstances or the nature of the regulated sector indicate otherwise.

4.4. Conduct of inspections

The Regulatory Authority, through its inspection officers, gathers facts and evidences and supporting documentation into a report for review against the regulatory requirements set forth in laws, regulations or license obligations.

The operator must provide any relevant information that may be required by the Regulatory Authority, through its inspection officers, during the inspection at the workplace or on the site.

4.5. Evaluation of the data collected

The Regulatory Authority, through its inspection officers evaluates as much factual data as is readily available to determine whether the operator complies or not with the license obligations, regulatory requirements and make a report.

Depending on the nature of the fault, the Regulatory Authority, through its inspection officers has the power to impose immediate administrative fine.

The imposition of immediate administrative fine is applicable in the sectors where fines issued by the authorised inspectors on the site and these fines are automatically generated through Converged Licensing Management System (CLMS).

In this particular instance, the operator has the right to make an appeal to the Director General of the Regulatory Authority against such fine within five (5) working days effective from the day of imposition of such sanction.

Failure to do so within this timeframe, the appeal is declared inadmissible.

4.6. Common methods of collecting evidence

The most common methods of collecting evidence in the field are observation, taking pictures, conducting interviews, collecting records and facility walk-throughs.

Digital Data Collection (camera, online tracking) methods are also useful tools for gathering information.

4.7. Digital data collection and evaluation

The Regulatory Authority may use technology and data analytics to enhance regulatory processes and improve its monitoring, compliance and enforcement capabilities.

Such monitoring activities may include the following methods:

- a) **Data Collection and Integration:** the Regulatory Authority can use technology such as IoT (Internet of Things) sensors, smart meters, and other data collection devices to gather data on the performance of the utilities under its jurisdiction.
- b) **Predictive Analytics:** the Regulatory Authority can use predictive analytics to identify potential problems before they occur and take preventive measures. Predictive analytics can also be used to monitor compliance with regulations, such as identifying patterns of non-compliance or unusual patterns of usage.
- c) **Real-time monitoring:** the Regulatory Authority can use technology to monitor the performance of the utilities in real-time. Real-time monitoring can help the Regulatory Authority to quickly identify and respond to issues as they occur, improving the performance and efficiency of the utilities sector.
- d) **Dashboards and Reports:** the Regulatory Authority can use data visualization tools such as dashboards and reports to communicate key performance indicators and other insights to relevant stakeholders. This can make it easier for the Regulatory Authority to identify patterns, trends, and areas for improvement in the utilities sector.

4.8. Criteria to decide who to inspect

The Regulatory Authority decides to inspect on the following criteria:

1. consistent faults committed by an operator in a given regulated sector;
2. magnitude of risk and its effects;
3. follow up inspections to a regulatory action; and
4. complaints from the public or the industry;
5. request of an operator.

4.9. Compliance follow-up inspections

This is an inspection conducted to verify adequate correction of previous violations or documented the continuing violations to support possible regulatory action. The Regulatory Authority notifies the licensee at least three (3) working days prior to conducting the follow up inspection.

The Regulatory Authority, through its inspection officers checks whether the licensee responded adequately and corrected, within a given time frame, any previous violations. In case of non-compliance, further regulatory actions are taken and the previous reports form a basis to determine future regulatory action.

4.10. Regular inspection Process

4.10.1. A Notification to the regulated operator

Prior the inspection and where applicable, a notification indicating the period of inspection is given to the regulated operator of the upcoming inspection to ensure that:

1. appropriate staff are available on the inspection date;
2. the operator is still located at the same address or the facility is in operation during a scheduled inspection;
3. specific processes, and facilities are available to be inspected on the date of inspection;
4. providing any other useful information on that date.

4.10.2. Collecting evidence from the field

Evidence is anything that provides verifiable information that can be used to establish, certify, prove, substantiate, or support an assertion. It can include physical samples, photographs, and copies of facility documents.

When the inspection requires the entering into a facility of the operator, the Regulatory Authority, through its authorised officials is accompanied by the Managing Director of the company or any other person duly authorised by the licensee.

The Regulatory Authority, through its inspection officers has the power to review relevant operator's records and reports to determine regulatory compliance.

4.10.3. Interviewing question in the course of an inspection

During the inspection, the Regulatory Authority may interview any employee of the licensee. The interviewee is expected to assume a friendly, cooperative, confident and professional attitude and must respond in a concise, factual and accurate manner when an authorised staff of the Regulatory Authority asks questions.

Such interviews are kept as brief as possible and are conducted during the walk around. If the interviewee decides that the question is outside his/her area of expertise or authority or outside the scope of the inspector's authority, he/she may consult with his/her superior.

4.10.4. Interview

A person may be interviewed in public or in privacy. If a person desires to be interviewed in privacy, the authorised staff of the Regulatory Authority makes a reasonable effort to honour that request. Interviews are reduced into writing, and the individuals are encouraged to sign and date the statement.

Any changes or corrections are initiated by the interviewee, otherwise the statement cannot be changed, added to or altered in any way.

The statement ends with wording such as: "I have read the above, and it is true to the best of my knowledge. The statement may also include the following: "I request that my statement be held confidential to the extent allowed by law."

The interviewee may however, waive the statement of confidentiality. The interviewee must sign and date the statement.

If the interviewee refuses to sign the statement, the inspection officer(s) of the Regulatory Authority take note of such refusal on the statement.

4.10.5. Taking Photographs, Recordings, video and Affidavits

Photographs, recordings, video and affidavits are taken as long as the inspection officer finds it necessary to do so.

Photographs that support inspection findings are properly taken and well labelled when required. The inspection officer ensures that any photographs relating to confidential or trade secret information are kept confidential.

4.10.6. Seizing and detaining of documents belonging to the licensee

The authorised staff of the Regulatory Authority has the power to seize and detain documents belonging to the licensee.

If during inspection, the inspection officer(s) reasonably believes that the document issued by the Regulatory Authority is false or a forged document, the inspection officer (s) can seize and detain that document to establish its authenticity.

In the event of seizure, the inspection officer provides to the owner or his agent a written inventory in evidence of the seized documents, book, record, or any other information are made in two (2) copies and one copy of evidence remains with the licensee/operator while another copy is kept by the Regulatory Authority.

4.11. Conduct of the Regulatory Authority's Inspection Authorized staff

The inspection officer of the Regulatory Authority is expected to remain respectful and professional.

More specifically, an inspection officer should:

- a) conduct the inspection in an unbiased and impartial manner;
- b) be polite, helpful and reasonably accessible in his or her dealings with the employees of the licensee;
- c) have regard for circumstances and concerns of the profession and the users of public utility in performing official duties and in making decisions affecting them;
- d) not abuse his or her position;
- e) respect and protect every person's dignity and his or her rights;
- f) behave lawfully and honestly in all dealings with any operator or its employees.

Any operator or licensed operator has the right to immediately report concerns of unethical or unlawful behaviour of the Regulatory Authority's inspection officer(s) to the Director General.

4.12. Forcible Interference with Conduct of Inspection

Whenever an inspection officer of the Regulatory Authority encounters forcible resistance, opposition, or interference, or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activities shall cease.

The Regulatory Authority takes all necessary measures to ensure that the operator or the licensee is held accountable of that misconduct and also complies with the inspection and regulatory requirements.

4.13. Situation requiring an immediate compliance order

An immediate compliance order may be issued by the inspection officer during the inspection directing the operator to stop specified activities which pose a threat to health or safety of the public.

The operator must comply with such temporally order and an inspection officer must immediately report to the Regulatory Authority about this decision.

The affected operator has the right to appeal in writing to Director General against that decision within thirty (30) calendar days and the Director General responds to the appeal within seven (7) working days.

4.14. Closing Inspection

Upon completing inspection and before leaving the premises or the sites, the inspection officer may provide the preliminary findings of the inspection to the highest management of the licensee available to the site.

The final findings are shared with the inspected operator or licensee to make the comment within a period of seven (7) working days.

4.15. Inspection report

The inspection report is a written statement or document prepared by the inspection officer of the Regulatory Authority that summarizes information about the compliance of the operator vis-a-vis to laws and regulations and license obligations.

The main purpose of writing an inspection report is to correctly communicate and document the findings of an inspection.

The inspection report includes at least the following:

1. the title of the report: summarizing date, subject, purpose, names of the inspection officer, name of the operators, description of activity, and other basic information.
2. the executive brief; summarizing the main issue(s) which are usually a few systematic flaws leading to numerous observations. Priorities are established in this executive summary section.
3. the contents: a chronological or systematic order of observations. Each observation should have a recommendation.
4. conclusion: highlighting key points, planned actions, and next steps.
5. signature of the report by the inspection officer.

The inspection report is used in the strictest confidence and is only transmitted to the concerned operator.

However, the information contained therein may be disclosed to any third party upon request by the Court of law or any other competent organ.

The preliminary report is present to the operator's management who is requested to give feedback on findings contained in the report within a period of seven (7) working days. If inspectors find the operator's management arguments founded, the latter do not appear in the final report.

4.16. Referral to the prosecution authority

If, during or at the end of an investigation, inspection or audit, the Regulatory Authority discovers that a criminal offence was committed or has reason to believe that a criminal offence is about to or being committed, then the Regulatory Authority must report the matter to the Rwanda Investigation Bureau.

V. FINANCIAL AND ECONOMIC REGULATORY COMPLIANCE

5.1. Assessment of financial obligation compliance

The aim of assessing the compliance of financial obligation of the licensees is to evaluate whether the financial obligations related to the payment of relevant fees are met in compliance with the relevant laws, regulations and license obligations.

The Regulatory Authority examines whether all revenues provided under different regulatory tool were received in a lawful and regular manner. In doing so, it reports in particular on any cases of irregularity to the concerned licensee and in case of non-compliance, other regulatory measures apply.

5.2. The appointment of a compliance officer

Where possible, the licensee is advised to mandate a Regulatory Compliance Officer who must monitor the regulatory financial obligation of the concerned operator and evaluate on regular basis whether the licensee complies with relevant legislation.

5.3. Tools used for Financial compliance

To assess the financial obligation of the licensee, the Regulatory Authority has the power to:

1. collect information on Financial Status of the licensee;
2. make an assessment with regard to the license obligations and business plan implementation;
3. make assessment of the corporate governance of the licensee;
4. analyse external audit reports and carry out a financial analysis in order to be able to ascertain the health of the licensee and the protection of all Stakeholders (Shareholders, Employees, Company Creditors, Government and Consumers);
5. collect and assess any other financial report for regulatory compliance purposes.

5.4. Acts considered as failure to meet financial obligations

A licensee or an operator fails to comply with financial obligations if:

1. the licensee fee is not paid and yet the license applied for was approved;
2. the due fees are not declared on time or not declared at all;
3. the due fees are declared on time but not paid;
4. the deadline for payment of an imposed fine or penalty has elapsed;
5. there are false declarations concerning the amount of payment due to the Regulatory Authority;
6. there are serious indications that there is an intention to evade regulatory fees.

5.5. Financial records and other documentation

When the Regulatory Authority decides to make a financial audit, it notifies the licensee the scope of the audit, the date and time that audit will start.

The licensee must make available any records, documents or other information that may be required to perform the audit.

Those documents include, but are not limited to:

1. Audited Financial statements and Management Letters from Auditors where applicable as provided by the relevant Board Decision in force;
2. Purchase contract and Loan agreement if there's any;
3. Employment Contracts for the personnel;
4. Internal rules and regulations and Financial Manual of the licensed operator where applicable;
5. Organisation Structure of the licensee;
6. Minutes of the Board Meeting in relation to a specific regulatory concerns;
7. Any other relevant document that the Regulatory Authority may find useful to ensure the compliance with financial obligations of the licensed operator and assess the implementation status of its investment plan.

5.6. Closing the financial regulatory audit

At the end of the financial regulatory audit, findings are presented in sufficient detail and clarity for the licensee to prepare a corrective action plan and take corrective action.

If the Licensee does not agree with the regulatory audit findings or believes that corrective action is not required, the licensee provides written explanation and specific reasons to the Regulatory authority, through an official email or any other means of communication of the Regulatory authority.

5.7. Compliance with Business plan implementation

Where applicable, the Regulatory Authority conducts an audit to ensure that the licensee complies with the investment quoted in the business plan.

In case of deviation of business plan by the licensed operators, the Regulatory Authority may take appropriate measures to ensure sustainability and continuity of the service.

5.8. Process of enforcement action for financial obligation

If any operator fails to comply with any of the financial obligations despite a reminding letter to do so, the Regulatory Authority opens an enforcement proceeding, which consists of the following actions:

- 1) Issuance of an enforcement notice;
- 2) Suspension of the license;
- 3) Revocation of the license; or
- 4) Closure of the business.

VI. ENFORCEMENT ACTIONS

6.1. Initiating an enforcement action

Any enforcement action or proceeding is initiated by the Regulatory Authority, on its own initiative, or upon the information from any of the following stakeholders:

1. licensed operator;
2. association of consumers;
3. governmental or non-governmental Organizations including the civil society;
4. any affected consumer.

6.2. Grounds for initiating an enforcement action

An enforcement action is initiated if there is a reasonable ground to believe that the licensee/operator has contravened or failed to comply with:

1. terms and conditions of the license, authorization or permit;
2. relevant applicable provision of the Laws and Regulations;
3. any directive, decision or guideline issued by the Regulatory Authority; or
4. other provisions provided under relevant laws and regulations.

6.3. Initiating an enforcement action upon request

Any person who wishes that the Regulatory Authority takes any of the enforcement action, must contact the Regulatory Authority via a call, an email or through another written communication by indicating the fault committed, date, time, place and the defaulting licensee.

If it is a written communication, the requestor submits a signed copy.

In the event the request is considered or rejected, the Regulatory Authority notifies the requestor through a written communication.

In exercising the process of taking its decision, the Regulatory Authority considers if:

1. the alleged fault is provided under the relevant laws and regulations and the seriousness of the misconduct;
2. there is any evidence supporting the claim; or
3. any other relevant information that may be useful to take appropriate action.

6.4. Imposing sanctions

Sanctions should be a meaningful deterrent and reflect the seriousness of the misconduct at issue.

An important objective of the sanction is to deter and prevent future misconduct of the operator by imposing progressively escalating sanctions on potential recidivists.

The imposition of more severe sanctions emphasizes the need for corrective action after a violation has occurred, discourages future misconduct by the same respondent, and deters others from engaging in similar misconduct.

In determining the appropriate type and measure of sanction to be applied, the Regulatory Authority takes into account the following factors:

1. Nature of the alleged violation, whether inadvertent or deliberate;
2. to follow the order of administrative sanctions as provided in laws and regulations;
3. the previous history of violations;
4. the impact of the proposed sanction that will act as a deterrent to others;

6.5. Types of regulatory sanctions

Depending on the kind and the seriousness of the operator's misconduct, the Regulatory Authority may impose the following administrative sanctions:

1. Notice of Non-Compliance or Warning Notice;

2. Enforcement notice;
3. Administrative fine;
4. Suspension of a permit, an authorization or a license;
5. Revocation of the Permit, Authorization or a license;
6. Closure of the business;
7. Modification of the license;

6.5.1. Notice of Non-Compliance

A notice of non-compliance, alternatively referred to as Warning notice is the first action advising the licensee to voluntarily and promptly comply with the legal and regulatory requirements.

A notice of non-compliance or Warning notice is issued based on the available information or facts when the alleged violator's action or inaction appears to be contrary to the laws, regulations or license obligations, but does not warrant legal enforcement action. But in case of non-compliance with the notice, further regulatory actions shall apply.

Depending on the seriousness and the nature of the misconduct, the Regulatory Authority may take another enforcement action without necessarily issuing any prior Notice of Non-Compliance.

6.5.2. Enforcement notice

i. The purpose of an enforcement notice

An enforcement Notice is a letter issued by the Regulatory Authority directing a non-compliant operator to correct any misconduct within a specific given time frame and informing him/her that failure to comply with that notice may lead to further regulatory measures including fines, suspension or revocation of the license.

However, depending on the seriousness and the nature of the misconduct, the Regulatory Authority may take another enforcement action without necessarily issuing any prior enforcement notice.

ii. Content of the enforcement notice

The enforcement notice indicates at least the following information:

1. name of the operator and its full address;
2. States the facts and circumstances of the incident which constitute the misconduct;
3. Evidence of such misconduct;
4. legal provision that serves as a basis of non-compliance;
5. Time period for compliance;
6. The date on which the notice takes effect;
7. Inform the operator that failure to comply with the notice may lead to further regulatory measures including fines, suspension or revocation of the license.

iii. Timeframe to complete the corrective measures

While determining the timeframe to complete any corrective measure, the Regulatory takes into consideration the following factors:

1. The severity of the impact of the non-compliance;
2. Resources required to address the root cause of the misconduct;
3. Required workload to address the matter;
4. Availability of the equipment required;
5. Any other factor deemed necessary for determining a reasonable timeframe.

iv. Follow up inspection of an enforcement notice

At the expiry of the enforcement notice period, the regulatory authority conducts an inspection to confirm whether the license complied with the enforcement notice orders.

If the Regulatory Authority is satisfied with the corrective measures taken by the Licensee, the enforcement notice is lifted and the licensee is notified of that decision.

6.5.3. Administrative Fine

An administrative penalty is a sanction issued to a non-compliant licensee or an operator engaged in misconduct contravening license obligations, relevant laws and regulations.

The notification of monetary sanction must:

1. be in writing;
2. mention the date, name, identification number and address of the licensee/operator or the defaulting operator;
3. outline the facts and circumstances forming the basis of the misconduct;
4. indicate the exact administrative fine to be paid;
5. specify time limit for payment of the administrative fine;
6. indicate the next action in case of non-payment.

Where it is not provided otherwise in relevant regulations or laws, the administrative fine is paid within thirty (30) calendar days.

When determining monetary sanctions in the relevant regulations, the Regulatory Authority is guided, but not limited, by the following principles:

- i. the impact of the breach;
- ii. degree of misconduct
- iii. Aggravating and mitigating circumstances (delays or a reluctance to cooperate with the Regulator's exercise of its functions or vice versa)
- iv. Multiple breaches derived from the same set of facts
- v. Legal maximum

The final amount must not exceed 10% of the total annual turnover of the Licensed operator concerned in the preceding financial year;

vi. Final considerations

- a. as part of its assessment of proportionality, look at the appropriateness of the penalty in the light of the financial situation of the concerned operators and the potential impact on that financial situation, in order to ensure that the penalty does not cause the operator to become insolvent, cause it serious financial distress or represent a disproportionate percentage of its total annual turnover.
- b. In addition, RURA may, in certain cases, impose a symbolic administrative pecuniary penalty. The justification for imposing such a penalty will be indicated in its decision.

6.5.4. Suspension of a permit, authorization or license

i. Grounds of suspension

The Regulatory Authority has the power to suspend, the permit, authorization or license while performing its regulatory functions.

The Regulatory Authority decides to suspend the permit, authorization or license if it determines that:

1. there is a failure to comply with an enforcement notice;
2. there is a serious misconduct that may distort fair competition or affects consumer interest;
3. there is a serious misconduct that put into jeopardy the public interest;
4. there is a repeated failure to provide the Regulatory Authority with monitoring and reporting data required;
5. there is a repeated failure to cooperate with the Regulatory Authority inspection and audits;
6. there is a repeated failure, in the same financial year, to pay the contribution levied on annual turnover of the regulated services or any other required fees;
7. the misconduct threatens the national values and culture;
8. any other ground that may be provided for in the relevant laws and regulations.

ii. Notification of the Suspension permit, authorization and license

Prior to the suspension of a permit, an authorization or a license, the Regulatory Authority must notify the concerned operator of such decision and give an opportunity to the affected operator to present evidences and make representations in relation to the alleged violation

If the Operator does not respond to the invitation within the specified period set forth in the invitation letter, the Regulatory Authority immediately issues a suspension order.

iii. Content of the suspension order

A suspension order must at least indicate the following information:

1. name of the operator and its full address;
2. statement relating to the misconduct on which the suspension is based;

3. period of suspension;
4. state the corrective measures to be carried out by the operator during the suspension period;
5. time limit to comply with the regulatory measures;
6. legal provision that serves as a basis of that suspension;
7. Order to suspend the provision of services or carrying out activities;
8. The date on which the suspension order takes effect;
9. Inform the operator that failure to comply with the suspension order shall lead to the revocation of the permit, authorisation or license.

6.5.5. Revocation of the permit, authorisation or license

i. Grounds of revocation

The Regulatory Authority has the power to revoke, the permit, authorization or license.

The Regulatory Authority decides to revoke the permit, authorization or license if it determines that:

1. there is a failure to comply with the suspension order;
2. an operator is engaged in any activity compromising National security;
3. an operator has provided false or inaccurate information that has impacted in the decision making of the Regulatory Authority to approve its permit, authorization or license;
4. a licensee has abandoned the licensed activities;
5. a licensee is declared bankrupt by the Court of law;
6. any other ground that may be provided for in the relevant laws and regulations.

ii. Notification of the revocation of permit, authorization and license

Prior to revocation of a permit, an authorization or a license, the Regulatory Authority must notify the concerned operator of such decision of revocation and give an opportunity to the affected operator to present evidences and make representations in relation to the alleged violation

If the Operator does not respond to the invitation within the specified period set forth in the invitation letter, the Regulatory Authority immediately issues a revocation order.

iii. Content of the revocation order

A revocation order must at least indicate the following information:

1. name of the operator and its full address;
2. the statement relating to the misconduct on which the revocation is based;
3. legal provision that serves as a basis of that revocation;
4. The date on which the revocation order takes effect;
5. Clear all arrears where applicable;
6. Order to close the business;
7. Any other information where deemed necessary.

iv. Consequence of a license revocation

When a license is revoked, the licensee is allowed to apply for a new license on the condition that he first pays all its arrears that he owes to the Regulatory Authority and ensures that the reasons justifying that revocation no longer prevail.

6.5.6. Closure of the business

Any person who is operating without a permit, an authorization or a license, the Regulatory Authority directs that operator to immediately cease all operations and apply for the relevant permit, authorization or license.

Without prejudice to the paragraph one of this provision, the non-compliant operator must pay the applicable fines for operating without a permit, authorization or license.

6.5.7. License Modification

Ground of license modification

The Regulatory Authority may modify a license when it determines that a modification of the license is needed in order

- to respond to the inability of the licensee to carry out all activities he has been licensed for in order to ensure that the operator's resources match the provisions of his/her permit, authorization or license;
- to overcome events beyond licensee's control (e.g., force majeure, major facility failures);
- to harmonize the provisions of the permit, authorization or license provision with the change in ownership or organizational structure of the licensee.
- to respond to a significant non-compliance by the licensee with relevant laws and regulations and current permit, authorization or license provisions or other Regulatory Authority rules, decisions or orders;

6.6. Urgent regulatory action

Without prejudice to procedures described in these guidelines, the Regulatory Authority has the power to take immediate actions for the interest of the regulated sectors and the public.

The Regulatory Authority has the power to take urgent regulatory action if there is a reasonable ground that the activity being carried out by the operator has resulted in, or constitutes an immediate risk of a serious threat to the safety of the public or the environment, to public health or to national security;

The Regulatory Authority may exercise these powers following a request to do so by an applicant, or on its own initiative.

6.7. Right to be heard

The right to be heard applies to all operators as to give them an opportunity to make representations, either orally or/and in written form.

In this respect, the operator presents evidences and arguments and can even challenge the evidence brought against him/her.

The operator has the right to be assisted by counsel.

6.8. Request for review of a decision

If a licensee is not satisfied with a decision taken about him/her, he/she may request in writing for review to the Director General in a period not exceeding thirty (30) calendar days from the date he/she was notified of the decision.

The request to review the Director General's decision puts on hold the execution of such decision until his/her final decision is made and notified to the licensee.

6.9. Decision on the request for review

The Director General decides on the request to reconsider his/her decision in a period not exceeding thirty (30) calendar days from the date of receipt of the request.

The Director General may extend this period for other thirty (30) calendar days and inform the licensee.

VII. APPOINTING AN ADMINISTRATOR

7.1. Power of appointing an administrator

The Regulatory Board has the power to take a decision of appointing an administrator for any licensed company, when it is deemed necessary, to ensure that the Company is able to continue as a going concern.

This power is exercised in exceptional circumstances where the Regulatory Authority finds that the services provided cannot be discontinued without jeopardising the interests of consumers of that particular service.

7.2. Grounds of appointing an administrator

Depending on the nature of the regulated sector and the kind of service the licensed company provides, in exceptional circumstances, the Regulatory Authority may appoint an administrator when it has been established that:

1. the licensee has violated the conditions of its license, the provisions of statutory and regulatory requirement to the extent of putting into jeopardy the continuity of service provision;
2. the licensed company engages in risky and dangerous financial practices;
3. there is a reason to believe that the company is or will be unable to pay its debts in such way that it affects the continuity of service in a sudden way;
4. the licensed company obstructs supervision efforts of RURA;
5. the situation of the licensed company endangers the interests of the public;
6. it is necessary to ensure the stability of the overall regulated sector;
7. the licensee is suspected of engaging in money laundering;
8. the licensee is hindering the work of the external auditors;
9. Any other ground for public interest.

7.3. Proposal for appointment of an administrator

The Regulatory Board, upon request of the following persons, may appoint an administrator:

- 1° The Director General of the Regulatory Authority;
- 3° Directors of a company;
- 5° Company's secured creditors.

7.4. Modalities for appointment of an administrator

The request to appoint an administrator should be accompanied by Material facts relating to the cause of action and Documentary evidence in support of that request.

The Regulatory Board has the power to approve or to reject the request. But in case of rejection, it gives reasons for that decision.

The Regulatory Board appoints the administrator from the list of professional administrators practicing in Rwanda.

If the majority shareholders don't agree with the Board on the appointed administrator, the Regulatory Board requests them to submit three (3) names of professional administrators approved in Rwanda, among which the Regulatory Board is free to choose the administrator to be appointed from those names.

Salary and other related costs of the administrator are paid by the licensed company which is put under administration.

7.5. Duration of the Administration

The time of the administration period is determined by the Regulatory Board decision appointing the administrator.

7.6. Duties of an administrator

The fundamental duties of a provisional administrator are the following:

- 1° to inspect the company's business, property and financial situation;
- 2° to exercise his or her powers in a manner that is likely to achieve outcomes and is in the best interests of consumers and the company as a whole.

Upon appointment, an administrator takes all control of the company's property to ensure the continuity of the service provision of the licensed company.

7.7. Powers of an administrator

An administrator has the power of entire management of the affairs, business and property of the company and act as the company's legal representative.

An administrator shall inspect the company's business, property and financial situation; and shall perform his functions as efficiently as is reasonably practicable to achieve outcomes and is in the best interests of the licensed company to continue providing services to their customers.

7.8. Persons bound by an administration Board Decision

An administration Board Decision binds the following persons:

- 1° the licensed company;
- 2° Company's shareholders;
- 3° the company's directors; Secretary and Managing Director;
- 4° Debtors and creditors of the licensed company;
- 5° the administrator;
- 6° all persons in relation to claims arising on or before the day specified in the administration notice.

7.9. Notice of administration Board Decision

After the commencement of an administration, the administrator:

- 1 ° sends to each key stakeholder of the licensed company a written notice of the execution of the administration notice;
- 2 ° gives public notice of such administration;
- 3 ° give notice of the administration on every invoice, order for goods or business letter issued by or on behalf of the company on which the company's name appears, by ensuring there is stated after the company's name "in administration";
- 4 ° give notice of the administration in every other case, in entering into any transaction or issuing any document by or on behalf of the company.

7.10. Role of company's officers during administration

During an administration of the licensed company, its shareholders managing directors and secretary shall not exercise their functions, powers or duties relating to administration of the licensed company unless the administrator approves such powers.

A managing director or a secretary of a licensed company which is under administration must provide all documents and information to the administrator relating to the company.

If required by the administrator, the managing director and/or secretary must make a statutory declaration that the material and information made available is complete and correct.

If the company's incorporation document provides that it has a seal, the managing director and secretary must make the seal available for use by the administrator.

7.11. Liabilities the administrator

An appointed administrator exercises his or her functions in a manner that he or she is personally liable and responsible all his or her acts.

7.12. Disposal property during provisional administration or administration

An administrator must not dispose off the property under his/her charge, unless:

- 1° the disposal is in the ordinary course of the licensed company's business;
- 2° the administrator has the written consent of the secured creditors and shareholders;
- 3° the court is satisfied that sufficient steps have been made to protect the interests of the secured creditors.

7.13. Administrator's report to Regulatory Board

An administrator makes a report of his findings to the Regulatory Board to take an appropriate decision.

7.14. Enforcement of an administrator's duties

If an administrator fails to comply with his or her duties, any person who has direct or indirect interest in the licensed company may apply for a Regulatory order seeking the enforcement of an administrator's duties.

In respect of any failure to comply, the Regulatory Board may:

- 1° relieve the administrator of the duty to comply in whole or in part;
- 2° order the administrator to comply with his or her duties to the extent specified in the order;
- 3° remove the administrator from office and appoint another administrator.

Where an administrator is removed from office, the Regulatory Board may make an appropriate order for the preservation of the licensed company's property, including an order requiring the removed administrator to make available any accounts, records or other information necessary for that purpose.

7.15. Termination of an administration

An administration is terminated upon the Regulatory Board's Decision or the court's order or circumstances specified in the termination of an administration Board Decision.

When the administration comes to an end, the administrator is required to submit to the Regulatory Board the final report on how the administration was executed and the way forward for the future of the licensed company including resolution for the winding up of the licensed company if deemed necessary.

7.16. Notice of termination of an administration

Where the administration is terminated, the administrator must, within five (5) working days from the date of termination:

- 1° submit to the Regulatory Board a final report of the administration provision;
- 2° send a written notice of termination to each of the shareholders of licensed company and company's key creditors.

VIII. APPEAL

Under these guidelines, an appeal is a legal process to request a higher organ of the Regulatory Authority to review a decision made by the lower organ when the Appellant contests a decision made by the lower organ.

The Regulatory Authority has the following management organs:

1. the General Directorate;
2. the Regulatory Board.

Any licensee or an operator who intends to challenge the decision of the Director General files an appeal with the Regulatory Board of the Regulatory Authority within a period not exceeding thirty (30) calendar days from the day of receipt of the notification of the decision.

8.1. Scope of appeals before the Regulatory Board

The Regulatory Board hears appeals initiated by an appellant in any of the following circumstances:

1. Appeals against a determination or a decision made by Director General;
2. appeals against a decision of Director General relating to the refusal to grant a license, permit or Authorization;
3. appeals against regulatory sanction imposed by Director General;

8.2. Content of a Notice of Appeal

A Notice of Appeal is addressed to the Chairperson of the Regulatory Board and is submitted in one of the official languages of Rwanda.

A Notice of Appeal must contain the following information:

1. the name and full address of the appellant;
2. the appellant's authorised legal representative, if any;
3. a concise statement of the facts;
4. a summary of the grounds for appealing against or with respect to the contested decision of the Director General, identifying, in particular:
 - a. the statutory provision under which the appeal is brought;
 - b. the extent to which the appellant contends that the decision was based on an error of fact or was wrong in law; and
 - c. the extent to which the appellant is appealing against the Director General's exercise his power in making the contested decision;
5. a succinct presentation of the arguments of fact or law supporting each ground of appeal;
6. any other relevant information to build his/her case against the decision.

A Notice of Appeal must be signed and dated by the appellant or the appellant's duly authorized legal representative.

8.3. Proceedings of the Regulatory Board for the hearing of appeals

8.3.1. Hearing

If the Regulatory Board considers it necessary, it may hold a hearing to offer the appellant the opportunity to present evidence and make representations in relation to the alleged violation

As soon as practicable, the Regulatory Board fixes the date for the hearing and notifies the applicant in writing of the date and place for that hearing.

8.3.2. Timeframe for the Regulatory Board to make a decision

The Regulatory Board decides on the appeal in a period not exceeding thirty (30) calendar days from the date of receipt of the appeal and communicates it to the appellant in writing.

The Regulatory Board may extend this period for other thirty calendar (30) days and informs the appellant. In case no decision is made by the Regulatory Board, the Appellant has the right to file a case to the Rwandan Competent Court of law.

8.3.3. Defective notices of appeal

If the Board considers that a notice of appeal is not lodged in accordance with these guidelines, is materially incomplete, unduly prolix or lacking in clarity, the Board may give such directions to the appellant as may be necessary to remedy the notice.

8.3.4. Power to reject

The Board may consider or reject an appeal in whole or in part at any stage in the appeal proceedings if:

1. it considers that the notice of appeal discloses no valid ground of appeal;
2. it considers that the appellant is not a party or person affected by the decision;
3. it is satisfied that the appellant has habitually and persistently, and without any reasonable ground:
 - a. instituted vexatious proceedings before the Board;
 - b. made vexatious applications in any proceedings before the Board; or
4. the appellant fails to comply with any provision of these guidelines, or any direction, order of the Board.

Where the Board rejects an appeal, it notifies its determination to the appellant and all concerned parties.

8.3.5. Amendment of notice of appeal

The appellant may amend his notice of appeal. If the Regulatory Board approves that amendment, it may do so on such terms or conditions as it may consider necessary.

The Regulatory Board shall not allow the amendment of a notice of appeal in order to add a new ground of appeal unless it considers that:

1. such ground is based on any matter of fact or law which came to light after the notice of appeal was lodged;
2. it was not practicable to include such ground in the notice of appeal before lodging the appeal; or
3. there are exceptional circumstances to do so.

8.3.6. Withdrawal of appeal

The appellant has the right to withdraw his/her appeal. The withdrawal of an appeal may take place and be approved at any stage of the proceedings by a simple written declaration signed by the appellant.

8.4. Procedure of conducting hearing of appeals

The Regulatory Board conducts the hearing of an appeal in such manner as it considers to be appropriate for the clarification of the issues.

Unless the Board otherwise directs, no expert or witness of fact is heard unless the relevant expert report or witness statement has been submitted before the hearing of an appeal and in accordance with any direction of the Board.

If, at the time scheduled for the hearing of an appeal, the appellant does not appear, the Regulatory Board may, if it is satisfied that the appellant has been notified of the hearing, proceed with the scheduled session and make such order as it thinks fit.

The record of the proceedings of any appeal is signed by the present members of the Regulatory Board.

8.5. Adjournment

The Board may, in its discretion, adjourn any hearing on any ground.

The Board may, on the conclusion of a hearing, adjourn for any period of time for the purpose of considering its decision. If the adjourned period is beyond the time limit of issuing the decision, the Board notifies the appellant.

8.6. Decisions of the Regulatory Board

After determining all questions of fact and law that arise in appeal, the Regulatory Board delivers the decision of the Board reached by majority verdict and signed by the Chairperson of the Regulatory Board.

In rendering its decision, the Regulatory Board shall consider the provisions of relevant laws and regulations, license obligations, Board Decisions and Directives.

8.7. Notification of Decision of Board

The Regulatory Board may direct that its decision in any appeal be notified to the parties concerned in the following manner:

1. the Chairperson of the Regulatory Board gives a copy of the written decision to the parties which is duly signed by all the members of the Regulatory Board who heard the appeal; and
2. the office of the Regulatory Board enters the decision of the Board in the register for record purposes.

The Chairperson of the Regulatory Board may direct for the decision of the Board to be published in such manner as he/she considers appropriate.

8.8. Appealing a Board Decision

If the appellant is dissatisfied by the decision made by the Regulatory Board, he/she has the right to appeal against that decision to the competent Court of Law.

IX. PUBLISHING ENFORCEMENT ACTIONS

The Regulatory Authority may publish on its website specific enforcement actions, such as the suspension, revocation, or cancellation of a licence, or the administration notice issued by the Regulatory Board.

9.1. Rationale of publication of enforcement actions

Publication of enforcement actions assists the Regulatory Authority in carrying out of its functions to the extent that publication serves to inform the public, who are potential consumers or other stakeholders that a licensee is not carrying on business in a fit and proper manner or in compliance with the laws and regulations.

9.2. Criteria to determine publication of enforcement actions

In exercising its powers of enforcement, the Regulatory Authority considers the following criteria to determine if it should publish any enforcement action that has been taken:

1. the severity of the apparent breach of any law or regulation by the licensee;
2. the compliance record of the licensee with the Regulatory Authority;
3. the severity of the enforcement action that has been taken by the Regulatory Authority;
4. the extent to which the information has been published elsewhere or is otherwise publicly available;
5. the Regulatory Authority's approach in any similar cases;
6. any other criteria and circumstance deemed necessary by the Regulatory Authority.

9.3. Content of a published information

If the Regulatory Authority decides to publish any enforcement action, it states the following information:

1. full name(s) and address of the licensee to which the enforcement action applies;
2. relevant dates;
3. a description of enforcement action that was taken;
4. Any other information that the Regulatory authority finds relevant to the public.

9.4. Date and place of publication of an enforcement action

The Regulatory Authority publishes the necessary particulars on its website.

Regulatory Authority may also publish the necessary particulars of an enforcement action in local or international radio and television or other newspapers.

X. COMMENCEMENT

These compliance and enforcement guidelines come into force on the date of its signature by the Chairperson of the Regulatory Board of Rwanda Utilities Regulatory Authority.

Kigali on 21st /July /2023

(Sé)

Dr GATERA Omar

Chairperson of the Board