

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE WATER AUTHORITY LAW
(2011 REVISION) AS A CONSEQUENCE OF THE ESTABLISHMENT
OF THE UTILITY REGULATION AND COMPETITION OFFICE; TO
TRANSFER THE WATER AUTHORITY'S ECONOMIC REGULATORY
RESPONSIBILITIES TO THE UTILITY REGULATION AND
COMPETITION OFFICE; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

THE WATER AUTHORITY (AMENDMENT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Water Authority Law (2011 Revision), as a consequence of the establishment of the Utility Regulation and Competition Office. The Water Authority's economic regulatory responsibilities would be transferred that Office

Clause 1 of the Bill provides for the short title and commencement of the legislation.

Clause 2 renames the Water Authority Law as the 'Water and Wastewater Services Law'.

Clause 3 amends section 2 of the principal Law to define various terms for the purposes of the legislation.

Clause 4 of the Bill renames the heading of Part II of the principal Law to make it clear that Part II deals with the establishment, functions and duties of the Water Authority.

Clauses 5 and 6, respectively, amend sections 6 and 7 of the principal Law, to remove a number of the Authority's regulatory powers (for example, the power to monitor and regulate the tariffs, rate structures and terms and conditions for water supply and wastewater services charged to consumers).

Clause 7 inserts, into the principal Law, Parts IIA to IID. Part IIA confers a number of powers on the Utility Regulation and Competition Office established under section 4 of the Utility Regulation and Competition Law, 2016, including the power (formerly exercisable by the Authority) to monitor and regulate the tariffs, rate structures and terms and conditions for water and wastewater services charged to consumers.

Part IIB is comprised of sections 18B to 18K and deals with the provision of water supply or waste water services to third parties. Under this Part, the following provisions apply -

- (a) unlicensed persons are prohibited from providing water supply or wastewater services to third parties (section 18B);
- (b) it is mandatory for a person who has entered into a concession agreement with the Government, to apply for a licence (section 18C);
- (c) it is mandatory for a person who has entered into a concession agreement with the Government and has been granted a

- concession to supply potable water or waste water services to a defined geographic area, to apply for a “service provider licence” (section 18D);
- (d) a service provider licence is valid for the duration specified in the relevant concession agreement (section 18E);
 - (e) a licensee is prohibited from assigning a licence without the Office’s consent (section 18F);
 - (f) the renewal of a service provider licence is subject to the terms set out in the relevant concession agreement (section 18G);
 - (g) a service provider licence may be modified with the mutual consent of the Office and the relevant licensee (section 18H);
 - (h) a licensed service provider is required to pay regulatory fees to the Office (section 18 I);
 - (i) the Office is empowered to take possession of water or wastewater infrastructure in certain cases (for example, where there is a fundamental breach of a licence) (section 18J); and
 - (j) a register of concession agreements and licences is to be kept (section 18K).

Part IIC is comprised of section 18L and deals with the interconnection of water supply or wastewater systems.

Part IID deals with consumer protection. Under this Part, service providers are required to comply with set standards of performance (section 18M) and to maintain strict confidentiality in respect of consumer information (section 18N).

Clause 8 of the Bill repeals and replaces section 62 of the principal Law in order to expand the provisions dealing with malicious damage to property by including damage to apparatus relating to the collection and treatment of wastewater.

Clause 9 inserts into the principal Law section 65A which makes provision for a compensation order by a court in any case where a person is convicted of an offence under the principal Law.

Clause 10 repeals and replaces sections 67 and 68 of the principal Law. Provision is made with respect to consultation by the Central Planning Authority where the Authority is in receipt of plans for the construction, reconstruction or extension of a building (new section 67). In addition, service providers are required to deposit, with the Office, maps showing public water supply and public sewerage lines owned or operated by the service providers (new section 68).

Clause 11 of the Bill empowers the Cabinet to make regulations on the recommendation of the Office.

Clause 12 inserts into the principal Law a new schedule which sets out General Regulatory Principles. The Office is required to carry out its functions in a manner which is consistent with these Principles.

Clause 13 deletes references to the “Governor in Cabinet” and substitutes references to the “Cabinet” in order to comply with Constitutional requirements.

Clause 14 contains transitional provisions.

THE WATER AUTHORITY (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 1 of the Water Authority Law (2011 Revision) - short title
3. Amendment of section 2 - definitions and interpretation
4. Amendment of heading of Part II - Central Administration
5. Amendment of section 6 - duty of Authority in regard to water supply and sewerage
6. Amendment of section 7 - powers of Authority in regard to water supply and sewerage
7. Insertion of PARTS IIA, IIB, IIC and IID - Powers, Duties and Functions of the Office; Provision of Water Supply and Waste Water Services to Third Parties; Interconnection of Water Supply or Wastewater Systems; Consumer Protection
8. Repeal and substitution of section 62 - wilful damage
9. Insertion of section 65A - order for payment of compensation
10. Repeal and substitution of sections 67 and 68 - Central Planning Authority to consult with Authority; duty of Authority to keep maps showing their sewers and supply lines
11. Amendment of section 70 - power to make regulations
12. Insertion of Schedule 2 - General Regulatory Principles
13. Amendment of miscellaneous sections - substitution of the word "Cabinet" for the word "Governor"
14. Transitional provisions

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Water Authority (Amendment) Law, 2017. Short title and commencement

- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. The Water Authority Law (2011 Revision), in this Law referred to as the “principal Law”, is amended in section 1 by deleting the words “Water Authority” and substituting the words “Water and Wastewater Services”. Amendment of section 1 of the Water Authority Law (2011 Revision) - short title

3. The principal Law is amended in section 2(1) as follows - Amendment of section 2 - definitions and interpretation
 - (a) by inserting, in the appropriate alphabetical sequence, the following definitions -

“administrative determination” has the meaning assigned to that expression by section 2(1) of the Utility Regulation and Competition Law, 2016;

“concession” means an instrument by which the Cabinet grants a right or privilege enabling a person -

- (a) to produce or supply water, or both, under the Water (Production and Supply) Law, 2011; or
- (b) to collect, convey and treat wastewater under the Wastewater Collection and Treatment Law, 2011;

“consumer information” means any data that relate to a customer’s (or any group of customers’) identity, billing address, service address, consumption of electricity, patterns of water consumption, credit history, payment history, references, applications or other service related forms completed by or on behalf of a consumer and information contained therein;

“critical national infrastructure” means systems and assets, whether physical or virtual, so vital to the Islands that the incapacity or destruction of the systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters;

“Government’s Policy” means the policy to be followed by the Office pursuant to directions given by the Cabinet under section 12(1) of the Utility Regulation and Competition Law, 2016;

“non-potable water” means water which may or may not be potable water but can be beneficially used, and does not include process water, wastewater or trade effluent;

“Office” means the Utility Regulation and Competition Office established under section 4 of the Utility Regulation and Competition Law, 2016;

“operator licence” means a licence granted by the Office under section 18C(2);

“potable water” means water which is intended for consumption by humans, that is, water which has no impurities present in

amounts sufficient to cause disease or harmful physiological effects, and the bacteriological and chemical and aesthetic quality parameters of which comply with values established under section 4 of the Public Health Law (2002 Revision) or, if none have been established, standards established by the Authority;

“sectoral utility” means a utility market or sector for which the Office has specific responsibility under this Law or the Water Laws;

“service provider” means the Authority or any concessionaire that has been issued with a licence by the Office to provide water or wastewater services;

“service provider licence” means a licence granted by the Office under section 18D(2);

“utility services” means networks operated or services provided by a service provider;

“wastewater” means any waste substance, liquid or solid, associated with human habitation, or which contains or may be contaminated with human or animal excrement or offal;

“water” means potable water and non-potable water; and

“Water Laws” means the Water (Production and Supply) Law, 2011 and the Wastewater Collection and Treatment Law, 2011;”;

- (b) by deleting the definition of the word “concessionaire” and substituting the following definition -

“ “concessionaire” means a person to whom a concession has been granted;”;

- (c) by deleting the definition of the word “Governor”; and

- (d) by deleting the definition of the words “rate cap and adjustment mechanism” and substituting the following definition -

“ “RCAM” means the mechanism for determining and modifying prices for services rendered by the Authority or a concessionaire to consumers, as approved by the Office and specified by the Office in administrative determinations issued by the Office in respect of the Authority or in a licence issued by the Office to a concessionaire;”.

Amendment of heading of Part II - Central Administration 4. The principal Law is amended by deleting the heading of Part II and substituting the following heading -

“PART II - Establishment, functions and duties of the Water Authority”.

Amendment of section 6 - duty of Authority in regard to water supply and sewerage 5. The principal Law is amended in section 6 as follows -
(a) in paragraphs (a) and (b) by deleting the words “on terms to be agreed by the Authority” and substituting the words “forms part of investment plans approved by the Office”; and
(b) by repealing paragraph (d).

Amendment of section 7 - powers of Authority in regard to water supply and sewerage 6. The principal Law is amended in section 7 as follows -
(a) in subsection (1) -
(i) by deleting the words “including the sole right” and substituting the words “including (subject to any other Law) the sole right”;
(ii) by inserting the word “and” at the end of paragraph (g);
(iii) in paragraph (h) by deleting “; and” and substituting a full stop; and
(iv) by repealing paragraph (i);
(b) in subsection (4) by inserting after the word “appropriate” the words “but rates and charges for the provision of water supply and wastewater services shall not be fixed or imposed without the prior written approval of the Office”; and
(c) by repealing subsections (5), (6), (8), (9) and (10).

Insertion of PARTS IIA, IIB, IIC and IID - Powers, Duties and Functions of the Office; Provision of Water Supply and Waste Water Services to Third Parties; Interconnection of Water Supply or Wastewater Systems; Consumer Protection 7. The principal Law is amended by inserting after Part II the following Parts -

“PART IIA - Powers, Duties and Functions of the Office

Functions of the Office 18A. (1) Subject to this Law and any other Law, the Office has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Law.

(2) Without prejudice to subsection (1), the principal functions of the Office include -

- (a) to do all things necessary or convenient to be done for or in connection with regulating service providers, including -
 - (i) setting, monitoring and regulating the tariffs, rate structures, and terms and conditions for water and wastewater

- services charged to consumers by service providers in accordance with the respective RCAM or price control mechanism set out in administrative determinations or licences;
- (ii) reviewing and approving other rates offered by service providers outside of the respective RCAM or price control mechanism set out in administrative determinations or licences or available at the option of the consumer;
 - (iii) establishing, monitoring, reviewing or amending service standards provided for under this Law, any other Law, licences and concession agreements;
 - (iv) granting, modifying, renewing, suspending or revoking licences issued under this Law or the Water Laws;
 - (v) monitoring and regulating service providers in a manner that provides an opportunity for a fair and reasonable return to service providers, and protects the economic interests and wellbeing of consumers by facilitating an environment that mimics as far as is possible competitive behaviour;
 - (vi) carrying out the functions and duties prescribed having regard to the need to regulate and supervise service providers in such a manner as to ensure that all reasonable demands by consumers for water or wastewater service, or both, are satisfied;
 - (vii) reviewing and approving annual, medium and long term investment plans accordingly submitted by service providers;
 - (viii) recommending to the Minister charged with responsibility for water, the making of regulations under this Law and any Law for the time being in force relating to water and wastewater services;
 - (ix) establishing and enforcing administrative determinations; and

- (x) establishing and enforcing regulations, as well as the processes regarding the granting of licences under the Water Laws;
 - (b) to review, consult on and advise the Minister charged with responsibility for water on national development plans for water and wastewater services that are prepared by the Authority pursuant to its functions under this Law;
 - (c) promoting the development and deployment of new technologies in water and wastewater services where such technologies will in the long term bring economic benefits to the economy of the Islands and financial advantages to consumers;
 - (d) facilitating access to potable water supply for rural customers;
 - (e) protecting the disadvantaged and the elderly in the provision of water and wastewater services;
 - (f) promoting the use of renewable energy and energy efficiency in the provision of water and wastewater services including initiatives at the customer level;
 - (g) promoting, through public education, research, and other initiatives sustainable development of the natural resources; and
 - (h) promoting the proper functioning of the critical national infrastructure.
- (3) In respect of the grant of concessions pursuant to the Water Laws, the Office shall -
- (a) advise the Cabinet on the issuance of concessions for franchised operations;
 - (b) issue licences to concessionaires subject to the conclusion of concession agreements with the Cabinet; and
 - (c) in carrying out the functions and duties imposed, and exercising the powers conferred, by paragraphs (a) and (b), the Office shall have regard to -
 - (i) the need to ensure that applicants and concessionaires are capable of financing

the activities they are, or seek to be, licensed to undertake;

- (ii) whether concessionaires have promoted or will promote safety, sound environmental practices, technical proficiency and efficiency in the areas of water supply or wastewater services, or both;
- (iii) whether concessionaires have ensured or will ensure the continuity, security and qualities of water supply or wastewater services, or both, within the Islands;
- (iv) whether the persons directly associated with the application are fit and proper persons to be granted a licence;
- (v) whether concessionaires have promoted or will promote the efficient consumption or use of water by consumers; and
- (vi) the needs of rural customers, the disadvantaged and the elderly.

(4) The Office shall carry out the functions and exercise the powers conferred upon it under this Law in a manner which -

- (a) is reasonable;
- (b) does not discriminate unfairly between applicants for licences or service providers;
- (c) protects the interests of consumers;
- (d) protects the security and public interests of the Islands; and
- (e) is consistent with the General Regulatory Principles set out in Schedule 2.

PART IIB - Provision of Water Supply or Waste Water Services to Third Parties

Licence required for provision of water supply or wastewater services

18B.(1) A person shall not provide water supply or wastewater services to third parties unless that person has been issued with a licence by the Office.

(2) A person who performs an activity that requires a licence, without being in possession of a licence issued by the Office to do so, commits an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars; or
- (b) on conviction on indictment to a fine of twenty thousand dollars,

and, if the offence is a continuing one, to a fine of one thousand dollars for every day or part of a day during which the offence has continued.

Operator
licences

18C.(1) A person who has entered into a concession agreement with the Government or is the holder of a permit issued by the Authority to supply water or waste water services to a defined development, shall apply to the Office for the grant of an operator licence.

(2) Where the Office is satisfied that the applicant -

- (a) has received a grant of concession from the Government and has met all preconditions established in the concession agreement required for the grant of an operator licence; or
- (b) is the holder of a permit issued by the Authority to supply water or waste water services to a defined development,

the Office shall grant an operator licence to the applicant.

(3) An operator licence shall be valid for the duration specified in the grant of concession or the permit issued.

(4) An operator licence is not subject to assignment, modification or renewal unless triggered by a modification in the terms of the grant of concession or on the renewal of the permit issued.

Grant of
service
provider
licence

18D.(1) A person who has entered into a concession agreement with the Government and has been granted a concession to supply potable water or waste water services to a defined geographic area as a sectoral utility, shall apply to the Office for the grant of a service provider licence.

(2) Where the Office is satisfied that the Cabinet has granted the concession to the applicant and that the applicant -

- (a) has met all preconditions established in the agreement required for the grant of the service provider licence;
- (b) possesses the financial capacity, industry experience and technical qualifications necessary to perform fully the obligations attached to the licence; and
- (c) intends to commence performance of those obligations within a reasonable period of time or consistent with the concession agreement;

the Office shall grant a service provider licence to the applicant.

(3) The Office shall take into account the following matters, when considering an application under subsection (2) -

- (a) whether, during the term of any current or prior licence or authorization granted in respect of the Islands or any other jurisdiction, the applicant has complied with all terms, conditions, specifications and requirements of any licence or authorization, order, directive, rule or regulation pertaining to such licence or authorization;
- (b) the protection of the environment generally, including plans for the limitation of emissions and discharges into the atmosphere, water or land;
- (c) whether any site proposed for the water production and supply or wastewater collection and treatment system and any associated land use is appropriate in all the circumstances;
- (d) the efficiency of the proposed systems;
- (e) whether the best interests of consumers will be promoted or enhanced; and
- (f) whether the security and public interest of the Islands will be preserved and protected.

(4) The Office may attach such conditions to a service provider licence as the Office considers to be consistent with Government's Policy and best calculated to protect the interests of consumers.

Duration of
service
provider
licence

18E. Service provider licences shall be valid for the duration specified in the relevant concession agreement.

Assignment or
transfer of
service
provider
licence

18F. (1) A licensee shall not assign a licence granted under this Law, or any rights thereunder without the prior written consent of the Office.

(2) The Office may consent to an application for the assignment of a licence under subsection (1) where the Office is satisfied that any related conditions in the concession agreement have been met and the proposed assignee has met the criteria set out for the initial grant of a licence.

(3) A licensee who may wish to assign or transfer a licence as provided in subsection (1) shall request in writing the consent of the Office and the Office shall reply in writing within twenty-eight days of the receipt of such request.

(4) The Office shall, before consenting to the assignment of a licence, publish the particulars of the proposed assignment.

(5) Where the Office refuses to give its consent, it shall give reasons in writing for such refusal to the licensee that requested the consent.

Renewal of
service
provider
licence

18G. (1) A service provider licence shall be renewed by the Office subject to terms set out in concession agreements.

(2) Notwithstanding subsection (1), the Office may consent to an application for the renewal of a licence under subsection (1), on application made by the service provider licensee at any time up to five years prior to the expiration of the service provider licence, where the Office is satisfied that all related conditions in the concession agreement have been met.

(3) Where the service provider licensee applies for renewal of a service provider licence under subsection (2), the Office may, in writing, refuse to renew that service provider licence for reasonable cause including whether the service provider licensee is or has engaged in conduct that contravenes this Law or any other relevant Law, or is or has

been otherwise in fundamental or persistent breach of that service provider licence.

(4) The service provider licensee referred to under subsection (3) shall have three months, from the date of receipt of the said notice, to make written submissions to the Office in respect of the refusal and showing cause why it ought to have its service provider licence renewed.

(5) The Office shall consider any written submissions made under subsection (4), and shall inform the service provider licensee of its decision on the matter and provide written reasons for its decision within two months of the receipt of the said submissions.

(6) Where the Office refuses to give its consent, it shall give reasons in writing for such refusal to the service provider licensee that requested the consent.

(7) Unless provided for otherwise in concession agreements, before renewing a service provider licence, the Office shall be guided by -

- (a) any negotiated modifications;
- (b) whether the service provider licence has not been abandoned or surrendered by the service provider licensee; or
- (c) whether written notice of non-renewal for reasonable cause is given by the Office under subsection (3) at least four years prior to the expiry of the service provider licence and whether, within two years of service of the said notice given by the Office or the date provided in the service provider licence for the service provider licensee to give notice for renewal of the service provider licence, whichever is later, reasonable cause has not been shown to the Office's satisfaction that the licence should be renewed.

(8) The Cabinet, on the advice of the Office, shall compel compulsory divestiture of the assets of the service provider licensee upon expiry of the service provider licence at a value equal to the average of the values determined by a

valuation panel.

(9) The valuation panel shall be comprised of three qualified valuers with experience in valuing water and wastewater assets, of whom -

- (a) one member shall be chosen by the Office;
- (b) one member shall be chosen by the service provider licensee; and
- (c) one member (who shall be chairman of the panel) shall be chosen by the other two members.

(10) The valuation panel shall value the assets of the licensee at the fair market value.

(11) A service provider licence shall contain explicit provisions for the mechanisms for, and the associated terms where, compulsory divestment is to be instituted.

Modification of
service
provider
licence

18H.(1) A service provider licence may be modified where the Office and the service provider licensee each consent in writing to modify the service provider licence subject to any special conditions concerning modification in the relevant licence.

(2) Notwithstanding subsection (1), the Office shall immediately, on the direction of the Cabinet, modify a service provider licence for reasons of the security or public interest or health of the general population of the Islands with or without the agreement of the licensee.

(3) Where the Office considers on its own volition or after consultation with the Cabinet that a service provider licence should be modified, the Office shall give to the service provider licensee a written notice that -

- (a) sets out the proposed modification;
- (b) states the reasons for the proposed modification; and
- (c) invites the service provider licensee to file submissions within a minimum period of thirty days to show cause why the service provider licence should not be so modified.

(4) The Office may modify the service provider licence if, after considering and having regard to all representations made within the period of not less than thirty days, the Office considers the service provider licence should be modified -

- (a) in the manner set out in the notice; or
- (b) in some other manner consistent with the said representations.

(5) If the Office decides to modify the service provider licence, the Office shall give to the service provider licensee a written notice stating how the service provider licence has been modified and its reasons, following the consultation, for doing so.

Regulatory fees
and financial
reporting

18 I. (1) A service provider shall pay to the Office all such licence and regulatory fees in the amount, time and manner prescribed by regulations made under this Law or set out in licences, and the obligation to pay the said licence and regulatory fees is a financial commitment of a licensee and shall be recoverable as a debt due to the Office.

(2) A service provider shall submit to the Office -

- (a) on an annual basis within four months of its financial year end, audited financial statements prepared in accordance with appropriate generally accepted accounting principles or otherwise as prescribed by regulations made under this Law; and
- (b) within thirty days of each quarter end, unaudited detailed management financial accounts and operating statistics as may be prescribed by the Office.

(3) An operator licensee shall pay an annual licence fee to the Office in the amount, time and manner prescribed by regulations made under this Law or set out in licences, and the obligation to pay the said licence fees is a financial commitment of a licensee and shall be recoverable as a debt due to the Office.

(4) An operator licensee shall, on a quarterly basis or such shorter intervals as the Office may direct, provide the

Office with reports on -

- (a) in the case of potable water delivered, the water quality as evidenced by laboratory analysis done by an accredited laboratory; and
- (b) in the case of wastewater, the quality of effluent discharged, as evidenced by laboratory analysis done by an accredited laboratory.

Power to take possession of water or wastewater infrastructure in certain cases

18J. (1) Unless provided for otherwise in concession agreements, the Office may in circumstances where any operator licensee or service provider licensee -

- (a) is in fundamental breach of the licence;
- (b) persistently breaches any condition attached to the licence or repeatedly contravenes this Law;
- (c) is dissolved;
- (d) is wound up or declared bankrupt;
- (e) is convicted of an offence under this Law and punished by a fine in excess of one hundred thousand dollars;
- (f) fails to pay any licence fee, regulatory fee or financial commitment under this Law for a continuous period in excess of three months;
- (g) is to be struck or is struck from the register of companies;
- (h) compounds with its creditors to the detriment of the public interest; or
- (i) obtained the licence by a fraudulent, false or misleading representation or in some other illegal manner;

after consultation with the Cabinet, initiate proceedings to retain a competent operator to take possession of and operate the concession.

(2) The Office shall, before acting under subsection (1), give twenty-one days' written notice to the operator licensee or service provider licensee, in which notice the Office shall -

- (a) draw to the attention of the licensee the grounds on which the Office intends to take over the operations of the concession; and

(b) give an opportunity to the licensee, to submit before the expiration of the twenty-one day period of notice, a time bound plan to remedy the breach for the Office's consideration.

(3) If, in the opinion of the Office the public interest or security of the Islands is not harmed in so doing, the Office may approve the plan.

(4) If the Office does not approve the plan under subsection (2)(b), the Office shall take steps to engage the competent operator to take possession of and operate the concession.

(5) During the period of transition to the competent operator, the licensee shall operate the facilities in accordance with prudent practice and shall cooperate fully with the competent operator until the takeover is completed.

(6) Upon the takeover of the operations of a concession under this section, the Office may compel compulsory divestiture of the licensee's assets, and section 18G shall, with the necessary changes being made, apply to the valuation of such assets.

(7) Where efforts to secure a successful compulsory divestment of the assets of the concessionaire fail, the Cabinet acting in consultation with the Office, may designate the Authority to operate the concession on terms to be agreed having regard to the public interest.

Register of applications and licences

18K. (1) The Office shall cause to be kept a register of all concession agreements and licences granted and the register may be kept in electronic form.

(2) The Office -

- (a) shall make available for public inspection during its business hours, the licences granted; and
- (b) may permit any person to make copies of any entry in the said register and may charge such fees as it considers reasonable for such copies.

PART IIC - Interconnection of Water Supply or Wastewater Systems

Interconnection agreements

18L. (1) Subject to this Part, service providers may on their own initiative, enter into interconnection agreements to facilitate continuity of supply or services as they may determine to be best suited for their operations and the Office may of its own volition direct the parties to enter into interconnection agreements on terms which the Office may determine.

(2) Where interconnection is agreed, the parties shall be subject to section 44 of the Utility Regulation and Competition Law, 2016 and the Office may impose specific conditions on the parties pursuant to section 45 of that Law.

(3) Where a service provider receives confidential information from another service provider for the purpose of interconnection of their respective water supply or wastewater systems and the information is declared by the latter service provider to be confidential in that the information relates to matters including -

- (a) consumer information or statistics;
- (b) market forecasts;
- (c) plans for the development of new services or capacity;
- (d) requests for proposals, or bids of a commercial nature; or
- (e) current or proposed business plans,

the recipient service provider shall treat such information in confidence and may only share it among such of its employees who need the information in order to provide services to the service provider providing the information.”.

PART IID - Consumer Protection

Required standards of performance

18M.(1) Service providers shall use their best endeavours to ensure that their services are -

- (a) reliable and safe;
- (b) efficient,
- (c) provided with due care and skill; and
- (d) rendered in accordance with this or any

other Law, concession agreements and licences and to the standards reasonably expected of a competent provider of those services.

(2) The Office may prescribe standards of performance in connection with the provision of water supply and sewerage services to customers, after consultation with service providers and persons who are likely to be affected, which may include incentive based performance mechanisms.

(3) The Office may, having regard to Government's social policy objectives, require service providers to make special provisions to meet the needs of the disadvantaged and elderly.

(4) An appeal may be made to the Office by any person who is dissatisfied with the service provided to that person or who claims to be adversely affected by the actions or omissions of a service provider and the decision of the Office in these appeals shall be binding on both parties.

(5) The Office may prescribe technical and equipment standards for the provision of service for and by service providers.

(6) The Office shall review and may approve codes and procedures to be established by service providers relating to the provision, refusal, disconnection or interruption of service.

(7) Service providers may, subject to the rules and procedures established under subsection (5) -

- (a) refuse to provide service to a consumer; or
- (b) discontinue or interrupt the provision of such service to a consumer,

pursuant to an agreement with that consumer, or where the consumer has illegally connected itself to the service provider's system, or the legitimate connection to the consumer creates a hazard to health or property, only on grounds which are reasonable and non-discriminatory; and where any such action is taken, the service provider shall have the right to immediately disconnect the service or, in the

service providers discretion, to give reasonable notice prior to the intended service interruption and in such cases to provide the said notice in writing to the consumer specifying the reasons therefor and permit the consumer to remedy or cure any defect on the consumer's part insofar as the defect may be capable of remedy.

Confidentiality

18N.(1) Subject to subsection (2), a service provider who intentionally discloses any customer information commits an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars; or
- (b) on conviction on indictment to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(2) Subsection (1) does not apply to a disclosure -

- (a) which is made to a constable for the prevention or detection of crime or for the purposes of criminal proceedings;
- (b) under any Law which requires the disclosure;
- (c) which is made with the written consent of the consumer;
- (d) which is made under a court order;
- (e) which is made in obedience to a warrant or order issued by the Cabinet; or
- (f) which is made to the Office for purposes connected with the execution of its functions under this Law.

(3) A service provider is not liable for any action or suit for any injury, loss or damage resulting from disclosure of consumer information made under subsection (2).”

Repeal and substitution of section 62 - wilful damage

8. The principal Law is amended by repealing section 62 and substituting the following section -

“Malicious damage to property

62. (1) No person shall with intent -

- (a) perform an act;
- (b) fail or omit to perform an act; or
- (c) cause malicious damage to apparatus,

in relation to the production or supply of water or the

collection and treatment of wastewater, where such performance or failure of performance or damage is dangerous to the security or health and wellbeing of the population of the Islands or contrary to the public interest or public order.

(2) A person who contravenes subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of one hundred thousand dollars; or
- (b) on conviction on indictment to a fine of two hundred thousand dollars or to imprisonment for a term of ten years, or to both.

(3) In addition to any other penalty provided by this section, equipment used to commit an offence under this section may by order of the court be forfeited to the Government on conviction of the owner or other person having control of the equipment or apparatus.

(4) A person who interferes with a water supply or wastewater collection system with a view to illegally obtaining or utilizing the services of a service provider commits an offence and is liable -

- (a) on summary conviction to a fine of five thousand dollars; or
- (b) on conviction on indictment to a fine of twenty thousand dollars or imprisonment for a term of one year, or to both;

and the Court may, on the representation of the service provider, order that the offender pays compensation or makes restitution for any damage to the service provider's installation or for loss of revenue incurred by the service provider.".

9. The principal Law is amended by inserting after section 65 the following section -

Insertion of section 65A
- order for payment of
compensation

“Order for payment of compensation 65A.(1) Where a person is convicted of an offence under this Law, the court may make an order for the payment of compensation to any person for damage caused by the offence.

(2) A claim by a person for damages sustained by reason of the offence shall be deemed to have been satisfied to the extent of any amount which has been paid to that person under an order for compensation, but the order shall not prejudice any right to a civil remedy for the recovery of damages from the person convicted of the offence beyond the amount of compensation paid under the order.”.

Repeal and substitution of sections 67 and 68 - Central Planning Authority to consult with Authority; duty of Authority to keep maps showing their sewers and supply lines

10. The principal Law is amended by repealing sections 67 and 68 and substituting the following sections -

“Central Planning Authority to consult with Water Authority (2011 Revision)

67. (1) Where plans for the construction, reconstruction or extension of a building are deposited with the Central Planning Authority in accordance with the Development and Planning Law (2011 Revision), four copies of the plans shall be submitted to -

- (a) the service provider in whose service area the proposed construction, reconstruction or extension of the building is proposed;
- (b) the Water Authority in respect of all proposals for sewage disposal; and
- (c) the Water Authority where planned developments are likely to affect ground water resources,

for their recommendations, and the Central Planning Authority shall adopt the recommendations of the service provider or the Authority, as the case may be.

(2) Before making any recommendations pursuant to subsection (1)(a) or (b), the service provider or the Water Authority shall consult with the Chief Environmental Health Officer appointed under the Public Health Law (2002 Revision).

Duty of service providers to keep maps showing their sewers and supply lines

68. Service providers shall keep deposited at their offices, for inspection by any person at any reasonable hours free of charge, maps showing and distinguishing all public water supply and public sewerage lines owned or operated by the service providers and shall deposit the maps at the Office in a format agreed with the Office.”.

11. The principal Law is amended in section 70 as follows -

Amendment of section
70 - power to make
regulations

(a) in subsection (1) by repealing paragraphs (j), (k), (l), (m) and (n);
and

(b) by inserting after subsection (1) the following subsections -

“ (2) The Cabinet may, on the recommendation of the
Office, make regulations -

(a) facilitating -

(i) the investigation of; or

(ii) the bringing of criminal proceedings in
respect of,

the operation of any part of the water supply or
wastewater infrastructure of the Islands that may
be, or is, an offence under this or any other Law;

(b) regulating service providers' rights to
installations on the land or property of other
persons or authorities and ancillary rights;

(c) prescribing matters for the better carrying out of
the duties and powers of the Office; and

(d) prescribing regulatory licence fees and any other
fees duly payable to the Office.

(3) Regulations made under this section may provide that
the contravention of any provision constitutes an offence and
may prescribe penalties for any such offence not exceeding the
maximum fine and term of imprisonment prescribed in this Law
for any offence under this Law.

(4) The Office may, in accordance with this Law, make
rules -

(a) relating to penalties payable under this Law;

(b) relating to the operation of critical national
infrastructure;

(c) relating to service standards; and

(d) prescribing criteria for charging for the
collection, treatment and disposal of wastewater
via a system other than the public wastewater
system.”.

12. The principal Law is amended by numbering the Schedule as Schedule 1
and inserting after Schedule 1 as re-numbered, the following Schedule -

Insertion of Schedule 2 -
General Regulatory
Principles

“SCHEDULE 2

(Section 18A(4)(e))

GENERAL REGULATORY PRINCIPLES

- Definitions
1. In this Schedule -
- “performance standards” means standards established by the Office under paragraph 3(3);
- “regulatory framework” means this Law and any administrative determinations, rules or regulations issued pursuant to this Law; and
- “stakeholders”, in relation to the water and wastewater services industry, means the Government, consumers, service providers and the general public.
- Use of regulatory framework
2. In regulating the provision of water or wastewater services, the regulatory framework shall be utilized in a way that can be characterised as sustainable, stable, transparent, predictable and cost-effective.
- Promotion of sustainability
3. (1) In return for efficiently providing services to an acceptable quality and at a fair price to customers, service providers shall receive the opportunity to recover appropriate costs and earn a fair and reasonable return for their investors.
- (2) The application of the regulatory framework shall promote sustainability, consistency and, as far as possible, certainty for all stakeholders, and shall ensure that service providers do not take unfair advantage of positions of monopoly or market dominance.
- (3) In consultation with the respective service providers, the Office shall establish performance standards, which may have incentives attached, in the water supply and wastewater services industry.
- (4) The performance standards shall be used to identify the Office’s expectations and provide a benchmark against which customers of the service providers can gauge their own expectations and, if actual performance is not within the range established, shall be a basis for

consultation with the Office.

(5) After consultation, the Office may establish a mechanism, specific to each service provider, of rewards and penalties for performance against the performance standards.

(6) The level of service existing as at the date of the grant of the respective licence issued under this Law shall be used as the initial standard for service.

(7) A service provider shall be entitled to recover all reasonable increases in costs that arise due to changes in the standard for service.

(8) Service providers shall be financially sound and capable of financing their operations and any necessary capital expenditure, so that there is a reasonable expectation that they can continue to operate while meeting the needs of customers, the general public, the Government and other stakeholders.

Promotion of stability

4. (1) To achieve stability, the Office shall balance the interests of all stakeholders in the water and wastewater industry in the Islands in discharging its functions under the Law.

(2) The procedures and principles applied by the Office shall be sufficiently clear so as to lead to a high degree of confidence and encourage long-term investment and planning in the water and wastewater industry.

(3) The Office shall employ or retain competent staff or consultants who are qualified and knowledgeable with respect to the functions they are required to perform.

Promotion of transparency

5. (1) The actions of the Office shall be transparent and the Office shall both give to and receive from service providers and other stakeholders, all relevant and necessary information which is needed in order to perform its statutory functions.

(2) The Office shall give adequate reasons for specific regulatory decisions and actions affecting stakeholders,

which shall be published by the Office subject to the requirements of any other Law and to necessary confidentiality of Governmental, commercial or personal information of a sensitive nature.

(3) The Office shall strive to make all procedures, notifications and relevant information made or given by the Office clear to the water and wastewater services industry and to provide them well in advance of any formal consideration of any issue on which a decision is required to be made.

(4) The management and operations of service providers shall be subjected to financial and operational audit from time to time to ensure that the general public and the Office shall have confidence that service providers are complying with the performance standards, their respective licences and the regulatory framework.

(5) Service providers shall be entitled to recover all regulatory fees and licence fees to consumers but shall not be entitled to pass on any fines or penalties imposed pursuant to this or any other Law, or any costs awarded against them by any court.

(6) Subject to any provision in licences, the Office may determine that fees form part of the revenue requirements of service providers.

(7) The decisions of the Office shall apply the principles of administrative law relevant to all administrative decision-makers, such as legality, adherence to the principles of due process and natural justice, fairness, proportionality and rationality; and such decisions shall be the subject of fair and speedy dispute resolution procedures and ultimately be reviewable by the Grand Court in the last resort.

Promotion of
predictability

6. (1) The Office shall strive to make rules, decisions and orders which are clear and unambiguous and predictable in the way they are applied in order to provide certainty and consistency for customers, the service providers and their shareholders as well as the public generally.

(2) The formula for rate modifications shall be reviewed in accordance with the respective licence, and shall not be changed without the consent of the respective service provider.

(3) The actions and decisions of the Office shall be even-handed and shall not unfairly discriminate among service providers and applicants for licences.

(4) There shall be a legitimate expectation that a licence will be renewed at the expiry of its term, if the service provider has operated in accordance with the provisions of the regulatory framework and has not breached any term or condition of its licence or relevant Laws.

(5) The Office may change its view on issues, or recommend changes to the regulatory framework as necessary and in response to unforeseen developments, if this is consistent with this Schedule; but the Office shall -

- (a) seek to avoid changes which apply retroactively;
- (b) take decisions following a due process of consultation and consideration of the relevant issues; and
- (c) provide adequate reasons for its decisions.

Promotion of
cost
effectiveness

7. (1) The costs of monitoring (including the costs of data collection and analysis) and enforcing compliance with licences and codes shall be reasonable and sufficient to enable the Office to discharge its functions under this Law.

(2) The Office shall discharge its responsibilities in an economically efficient manner.”.

13. The principal Law is amended by deleting the word “Governor” wherever it appears and substituting the word “Cabinet”.

Amendment of
miscellaneous sections -
substitution of the word
“Cabinet” for the word
“Governor”

14. (1) A licence or other enabling instrument issued to a person to provide any aspect of water supply or wastewater services, pursuant to the Water (Production and Supply) Law, 2011 or the Wastewater Collection and Treatment Law, 2011, in the Islands and valid and in force immediately prior to the coming into force of this Law, shall continue valid and in force for the remainder of the

Transitional provisions

term as if it were a licence granted under this Law and the licence shall continue to be subject to each and every one of the terms, conditions and exemptions attaching to the licence as if the terms, conditions and exemptions had been imposed or granted under this Law but shall otherwise be subject to the provisions of this Law.

(2) Where a person who possesses a licence or enabling instrument as described in subsection (1) has entered into an agreement with the Water Authority, being an agreement to surrender and terminate the licence or enabling instrument and to replace the same with a new licence or licences, immediately upon the surrender and termination of the licence or enabling instrument, the Office shall grant to that person the new licences on such terms, conditions and exemptions as have been so agreed, but the licences shall otherwise be subject to this Law.

(3) A licence or other enabling instrument issued to a person to provide any aspect of water supply or wastewater services, pursuant to the Water (Production and Supply) Law, 2011 or Wastewater Collection and Treatment Law, 2011, in the Islands and valid and in force immediately prior to the coming into force of this Law shall be subject to the provisions of this Law and the authority of the Office, as though the licence were issued by the Office under this Law.

(4) All rates and charges, standards or any rules or regulatory policies that are in effect on the date of commencement of this Law shall remain in effect as though they were determined by the Office until otherwise modified, replaced or repealed by the Office.

(5) The applicable standards (to be referred to as the 'Interim Cayman Islands Standards') for potable water shall be the standards set out in the applicable WHO Guidelines which shall remain in effect until replaced by Cayman Islands Standards.

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.