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# **República de Moçambique**

**Ministério dos Transportes e Comunicações**

**Instituto Nacional das Comunicações de Moçambique (INCM)**

**Regulation on Infrastructure Sharing**

**Regulation No. [ ] of 2010**

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## [FORMAL OPENING LANGUAGE]

### 1. Introduction

- 1.1. This Regulation establishes the legal regime for the sharing of certain telecommunications infrastructure owned or operated by public telecommunications operators in the Republic of Mozambique.
- 1.2. This Regulation is issued under Paragraph B of Article 9 of the Law on Telecommunications 2004.
- 1.3. Under Article 35 of the Law on Telecommunications 2004, it is provided that operators with significant market power in a market must permit access to their towers and other infrastructure including support structures, cables antennae and buildings pursuant to the provisions of Articles 44 and 45 of the Law.
- 1.4. Under Article 44 of the Law on Telecommunications 2004, operators of public telecommunications networks are given a right:
  - 1.4.1. to request, under the general law of expropriation, the provision of easements necessary for the installation, protection and conservation of their telecommunications infrastructure;
  - 1.4.2. of access to public [land], on equal terms for the installation and maintenance of their telecommunications infrastructure.
- 1.5. Article 44 provides that where, for reasons relating to environmental protection, cultural heritage, spatial planning and protection of urban and rural landscape, it is not permitted in a particular case, to install new telecommunications infrastructure, operators of public telecommunications networks are guaranteed access to existing ducts, poles and other telecommunications facilities of other operators on terms and payment conditions to be agreed between the parties.
- 1.6. Also under Article 44, INCM must ensure that the conditions and the cost of access to infrastructure are reasonable, non-discriminatory and equitably distributed by network operators and providers of telecommunications services using poles, roads, pipelines, facilities, easements and rights of way.
- 1.7. Under Article 45 of the Law on Telecommunications 2004, when the installation of telecommunications infrastructure for the provision of public telecommunications services interferes with private property, the operator of a public telecommunications network must offer to repair or purchase the relevant property. If negotiations do not succeed, the operator must apply to a competent institution for an easement or right of expropriation in relation to the property under applicable law, and shall pay their compensation.
- 1.8. Under Article 55 of the Law on Telecommunications 2004, it is provided that an operator of a public telecommunications network has significant market power if:
  - 1.8.1. it is a legal monopoly; or
  - 1.8.2. it holds a market share equal to or greater than 25% in a telecommunications or geographical market.
- 1.9. The objectives in issuing this Regulation are to:

- 1.9.1. reduce the inefficient and unnecessary duplication of telecommunications infrastructure in Mozambique;
- 1.9.2. reduce up-front and operating costs of all public telecommunications network operators;
- 1.9.3. promote fair competition through the sharing of certain telecommunications infrastructure which are not easily replicable, particularly where construction raises environmental and general public concerns;
- 1.9.4. encourage socially efficient investment in infrastructure and avoid wasteful replication of infrastructure; and
- 1.9.5. ultimately, to provide benefits to consumers in terms of price, quality and availability of services and attempt to alleviate their concerns regarding the safety of the environment.

## **2. Definitions**

- 2.1. The words and expressions set out below shall have the following meanings:

“Negotiating Licensee” means one or more Requesting Licensee and an Owing Licensee who are negotiating a Sharing Agreement;

“Owing Licensee” means a Qualifying Licensee who owns, manages or leases Telecommunications Infrastructure and has been designated as having significant market power;

“Referring Party” means the Negotiating Licensee who refers a dispute to INCM, in accordance with Article 14 of this Regulation;

“Requesting Licensee” means a Licensee who submits a Sharing Request to an Owing Licensee.

“Sharing Agreement” means an agreement between an Owing Licensee and a Sharing Licensee for sharing some of the Owing Licensee’s Telecommunications Infrastructure;

“Sharing Licensee” means a Qualifying Licensee who shares Telecommunications Infrastructure of an Owing Licensee subject to a Sharing Agreement;

“Sharing Request” means a written request from the Sharing Licensee to the Owing Licensee to share any Telecommunications Infrastructure;

“Site” means a place where any Telecommunications Infrastructure is located;

“Telecommunications Infrastructure” means any premises, physical structure or equipment of a type described in Article 4 of this Regulation required by a Requesting Licensee in connection with the operation of a telecommunications network; and

“Qualifying Licensee” means a person for the time being holding a licence to operate a national public fixed or mobile telecommunications network in Mozambique.

Unless otherwise defined in this Regulation any other word or expression used as a defined term, shall have the meaning as defined in the Law on Telecommunications 2004.

## **3. Negotiating a Sharing Agreement**

- 3.1. Pursuant to Article 35 of the Law of Telecommunications 2004, any Owing Licensee which owns, leases or manages any of the following types of passive Telecommunications

Infrastructure must negotiate and enter into a Sharing Agreement with a Requesting Licensee on request:

- 3.1.1. wireless telecommunications sites of every kind, including but not limited to land, space and access and rights of way to these sites;
- 3.1.2. masts, towers and poles and other similar structures used at wireless telecommunications sites;
- 3.1.3. buildings, shelters and rooms on such sites, including access to the same;
- 3.1.4. utilities required for the operation of such sites, including but not limited to power, cooling, fire protection and earthing; and
- 3.1.5. poles, duct networks, trenches, manholes, pipes, distribution boxes and other civil engineering facilities and accessories used in fixed or mobile networks and intended for the containment, storage and maintenance of electronic communications cables, and connecting devices, joints or other equipment used in connection with electronic communications.

#### **4. Obligation to Maintain a Register and Provide Information**

- 4.1. Every Owing Licensee which owns, leases or manages any of the types of Telecommunications Infrastructure described in Article 3.1 shall maintain an updated register of all Telecommunications Infrastructure assets which it owns or controls.
- 4.2. Every Owing Licensee shall make available to a Requesting Licensee from time to time at least the following information:
  - 4.2.1. the location of any Telecommunications Infrastructure of the type identified by a Requesting Licensee in any region or place specified by that Requesting Licensee;
  - 4.2.2. the relevant technical features (including dimensions) of such Telecommunications Infrastructure and any applicable conditions of use; and
  - 4.2.3. the existence or otherwise of available capacity on or in their Telecommunications Infrastructure.
- 4.3. Every Owing Licensee shall implement a procedure to respond to information requests submitted by a Requesting Licensee, and shall supply all relevant information within 45 days of receiving a request.
- 4.4. Information sharing between entities under this Article may be made subject to the terms of a reasonable confidentiality agreement.

#### **5. Rights and Obligations**

- 5.1. Every Qualifying Licensee wishing to share Telecommunications Infrastructure shall have the right to negotiate and come to agreement on the terms of a Sharing Agreement with an Owing Licensee and the procedures specified in Article 7 shall apply. The terms and conditions of

Sharing Agreements shall be in accordance with the principles and conditions stipulated in this Regulation.

- 5.2. The Owing Licensee shall be obliged to share Telecommunications Infrastructure with Requesting Licensees on a first-come, first-served basis, determined by the chronological order in which it receives requests for sharing the Telecommunications Infrastructure concerned.
- 5.3. Telecommunications Infrastructure sharing shall be provided based on the principles of impartiality and non-discrimination.
- 5.4. All negotiations for Sharing Agreements must be conducted by the Negotiating Licensees in utmost good faith. The Owing Licensee of the facility must not:
  - a) obstruct or delay negotiations; or
  - b) refuse to provide information relevant to an agreement, including information necessary to identify the Telecommunications Infrastructure that might be available and terms relevant to access and use.
- 5.5. Negotiating Licensees must provide sufficient information to each other during the negotiation process on issues related to Telecommunications Infrastructure sharing. Such information shall be treated as confidential by the negotiating parties at all times.
- 5.6. Every Sharing Agreement shall be in writing and shall specify the contractual terms agreed on by the parties.
- 5.7. To facilitate improved co-ordination and compatibility of the provisions of sharing facilities, and to ensure greater efficiency, Owing Licensees must publish a Reference Sharing Offer containing the terms on which, and formulae for calculating the prices at which, it will enter into a Sharing Agreement, including appropriate provisions dealing with each the matters listed in Annex 2.
- 5.8. Each Owing Licensee shall submit its Reference Sharing Offer to INCM within 2 months from the date of issue of this Regulation. The parties to the Sharing Agreement must also submit to INCM an original executed final Sharing Agreement within 3 working days of execution of the Sharing Agreement. The submitted Sharing Agreement must be accompanied by a written declaration signed by both parties that the Sharing Agreement complies with the Law and the Regulation.
- 5.9. INCM shall examine each Reference Sharing Offer and each negotiated Sharing Agreement to ensure compliance with the Telecommunications Law, Licenses, this Regulation, any other Regulation issued under the Telecommunications law and any Decisions issued by INCM under Article 18, and also to ensure that:
  - a) the agreement is efficient; and
  - b) each party substantively retains its own network identity from both a commercial and technical perspective.
- 5.10. INCM may require that any Reference Sharing Offer or Sharing Agreement is amended to rectify any failure to comply with this Regulation or any Decisions issued by INCM under Article 18. INCM must provide written reasons for its decision to require amendments to the Reference Sharing Offer or the Sharing Agreement. Any decision of INCM that a Reference Sharing Offer or Sharing Agreement should be amended, shall be implemented by the parties concerned within the time specified in INCM's Decision.

## **6. Rights under Article 44 and 45 of the Law**

- 6.1. Where an Owing Licensee enjoys or acquires rights of way or rights of use of land, buildings or other property of a third party connected with the telecommunications network of the Owing Licensee, it shall, where legally possible, allow any Qualified Licensee to share such rights and shall not impede or undermine any negotiations between Qualified Licensees and third party owners for a variation or extension of right granted to the Owing Licensee in relation to the assets concerned.
- 6.2. An Owing Licensee shall, at the request of a Qualified Licensee, surrender, without compensation, any exclusivity granted to it in relation to rights of way or rights of use of land, buildings or other property of a third party, if that Qualified Licensee requires access to the property in question.

## **7. Negotiation Procedure for Sharing Infrastructure**

- 7.1. The Requesting Licensee must ensure that its Reference Sharing Offer, and a form setting out all the information reasonably required by the Owing Licensee in order to process an application to share Telecommunications infrastructure, is available to Qualifying Licensees on demand and shall post copies on its website.
- 7.2. Within 21 working days from the date of submission of the form by the Requesting Licensee, the Owing Licensee must complete the feasibility study (if one is necessary) and provide a decision to the Requesting Licensee in writing. The decision may be to:
  - a) confirm the availability of the relevant Telecommunications Infrastructure and commence the procedure to complete a Sharing Agreement;
  - b) confirm the availability of the relevant Telecommunications Infrastructure subject to suggested, reasonable modifications to the proposal and/or the date on which the infrastructure will be made available, and start the procedure to complete a Sharing Agreement; or
  - c) reject a Sharing Request, but only for one or more of the reasons set out in Article 9.
- 7.3. Once the feasibility study has been completed and availability of the Telecommunications Infrastructure is confirmed, the time period for completing and signing a Sharing Agreement shall not exceed 21 working days from:
  - a) in case of decision issued under Article 7.2(a) of this Regulation, the date of the acceptance letter of the Owing Licensee; or
  - b) in case of decision issued under Article 7.2(b) of this Regulation, the date the Owing Licensee receives the letter from the Requesting Licensee accepting the suggested amendments.
- 7.4. The commencement date for sharing the requested Telecommunications Infrastructure must be within a reasonable time from the date of signing the Sharing Agreement by both parties, taking into account the reasonable time to develop or alter the requested Telecommunications Infrastructure, if such work is required.

- 7.5. The costs incurred by the Owing Licensee to develop or alter the requested Telecommunications Infrastructure shall be settled in accordance with this Regulation.
- 7.6. Upon execution of a negotiated Sharing Agreement the Owing Licensee shall forward the agreement to INCM.

## **8. Refusal of a Sharing Request**

- 8.1. An Owing Licensee shall have the right to refuse a Sharing Request only in the following cases:
  - a) where there is no capacity available because all the available space is either fully occupied (taking into account the obligation to remove the unnecessary equipment in Article 10.3 of this Regulation) or the remaining space is reserved for the Owing Licensee's or another Requesting Licensee's use, as permitted under this Regulation;
  - b) where sharing the infrastructure concerned is not technically or economically feasible; or
  - c) where the Sharing Request, if granted, will constitute a threat to safety or adversely affect the reliability of the Owing Licensee's network or services.
- 8.2. The Owing Licensee must provide detailed written reasons and justifications to the Requesting Licensee in case of sharing refusal. If possible, the Owing Licensee shall at the same time propose changes to the sharing request in order to overcome the reasons why the Sharing Request was rejected. A copy of the response must be sent to INCM.

## **9. Capacity Issues**

- 9.1. Capacity or space shall be considered available where the existing facility or site is technically and physically capable of accommodating additional Telecommunications Infrastructure and equipment (taking into account the obligation to remove the unnecessary equipment in Articles 9.3 and 10.2 of this Regulation).
- 9.2. The Owing Licensee shall have the right to reserve reasonable capacity or space for future use, provided the Owing Licensee has a clearly demonstrable and reasonable development plan to use such capacity or space within a reasonable period.
- 9.3. Owing Licensees must remove from any space or facility that can be shared any unnecessary, abandoned or obsolete equipment or facilities which is or will be no longer necessary for the business of the Owing Licensee and/or any Sharing Licensee.

## **10. Redevelopment and Alteration of Infrastructure**

- 10.1. Qualifying Licensees are required, when developing new or upgrading existing Telecommunications infrastructure, to plan their work so as to allow for adequate capacity and space to be available to other Qualifying Licensees who have indicated, at the time when plans are being drawn up, that they will, or are likely to want to, share use of the new or developed Telecommunications Infrastructure.

- 10.2. Owing Licensees and Sharing Licensees shall ensure that existing facilities are used efficiently and shall expediently free up the space at or in the facilities by removing any equipment, which is no longer necessary for the business of the respective Licensee.
- 10.3. Where the Requesting Licensee requests facility sharing on or in Telecommunications Infrastructure and the existing capacity is fully utilized (taking into account the obligation to remove unnecessary equipment in Articles 9.3 and 10.2 of this Regulation), the Owing Licensee shall offer to extend or modify the facility to allow for sharing, provided the facility is technically capable of withstanding the additional loads and that there are no other unavoidable engineering barriers to extension.
- 10.4. Where the Telecommunications Infrastructure concerned is a mast or tower any extension or other modification work shall be carried out in such a way that ensures clearance angles and minimum separation distances between antenna systems of different operators are respected and kept clear of obstacles. Each Qualified Licensee may decide on the antenna configuration and positioning within its allocated space in or on the Telecommunications Infrastructure, as long as clearances and distances from other Qualified Licensees are not violated.
- 10.5. In addition to any payment due under Article 12, the Requesting Licensee shall be obliged to pay to the Owing Licensee a one-off payment to compensate for the proportion of non-recurring planning and engineering costs efficiently incurred by the Owing Licensee in carrying out the upgrade and alteration works to the Telecommunications Infrastructure requested to be shared.
- 10.6. The scope of the development or modification required, and the related costs shall be jointly assessed by the parties or, where the parties cannot agree or consider it to be most practical, then by an independent third party expert appointed by agreement of the parties or, failing agreement, by INCM; and such costs shall be shared in the proportions agreed by all parties or, in the case of failure to agree, set by the independent third party expert.
- 10.7. The Owing Licensee shall give adequate written notice to Sharing Licensees of its intention to develop and/or alter Telecommunications Infrastructure facilities. The notice period shall not be less than six (6) months.
- 10.8. A Requesting Licensee may request a site inspection to assist it to reach an informed decision on any of these matters.

## **11. Safety and Protection Arrangements**

- 11.1. Without prejudice to any other provision of this Regulation, the Owing Licensee shall keep the shared Telecommunications Infrastructure safe and in a good state of repair and condition throughout the term of sharing and, where the shared infrastructure is a mast or tower, shall comply with:
  - a) recommendations and requirements on Non-Ionising Radiation Protection as published from time to time; and
  - b) any other requirements and recommendations issued by the INCM and other Government agencies or public bodies of the Republic of Mozambique related to the emissions of radio frequency radiation from the use of radio-communications equipment or otherwise.

- 11.2. All parties to a Sharing Agreement shall make every effort to ensure the efficient and safe use of the Telecommunications Infrastructure concerned, and all telecommunications equipment within it, in the course of their use of the shared infrastructure.
- 11.3. Qualified Licensees working on or within any Telecommunications Infrastructure shall be responsible protecting their employees and contractors from any possible danger as a result of their work.
- 11.4. Negotiating Licensees may request some form of physical separation of their telecommunications equipment within shared Telecommunications Infrastructure to ensure internal and external security, reduce interference and limit damage to each other's telecommunications equipment.
- 11.5. The degree to which separation of telecommunications equipment will be necessary will be determined, among other things, by:
  - a) prevailing local circumstances;
  - b) available space;
  - c) special requirements of the Requesting Licensee;
  - d) level of standardization of telecommunications equipment; and
  - e) risk of damage to telecommunications equipment.

## 12. Pricing

- 12.1. Prices for sharing Telecommunications Infrastructure shall be fair and reasonable and calculated by reference to the costing principles set out in Annex 1
- 12.2. INCM may require any Licensee to provide justification for the pricing of use of Telecommunications Infrastructure and may, where appropriate, require that any or all prices be adjusted so that they are in accordance with the provisions of the Law and conditions stipulated by this Regulation.

## 13. Dispute Resolution

- 13.1. INCM may resolve the following disputes arising between the parties in accordance with the provisions of this Article if such a dispute is referred to INCM within the deadlines stipulated in each respective subparagraph of this Article below:
  - a) the Owing Licensee does not reply to a Sharing Request within the timeframe prescribed by Article 7.2 of this Regulation; in this case, submission of the dispute to INCM must be made within 15 working days of the deadline for the reply;
  - b) the Requesting Licensee wishes to dispute:
    - (i) the Owing Licensee's letter proposing modifications, issued under Articles 7.2(b) and Article 10 of this Regulation; in this case, submission of the dispute to INCM must be made within 15 working days from the date of the Requesting Licensee receiving that letter; or

- (ii) a rejected Sharing Request issued under Articles 7.2(c) of this regulation; in this case, submission of the dispute to INCM must be made within 15 working days from the date of receiving that letter; or
    - (iii) a refusal to extend or modify Telecommunications Infrastructure under Article 10.3, or rejection of the price quoted under Article 10.5 of this Regulation; in either case, submission of the dispute to INCM must be made within 15 working days from the date of receipt of the relevant notification;
  - c) the Owing Licensee fails to enter into a Sharing Agreement in accordance with Article 7.3; in this case, submission of the dispute to INCM must occur within 15 working days of the deadline for finalizing the Sharing Agreement in accordance with Article 7.3 of this Regulation; or
  - d) after the Requesting Licensee has accepted the Owing Licensee's proposed changes in accordance with Article 7.2 but the parties still fail to enter into a Sharing Agreement in accordance with that Article; in this case, submission of the dispute to INCM must take place within 15 working days of the deadline for finalizing the Sharing Agreement in accordance with Article 7.3 of this Regulation.
- 13.2. The Referring Party must submit its complaint in writing to INCM with all supporting documentation and evidence, including correspondence between the parties and statements from any witnesses it wishes to rely upon.
- 13.3. INCM must acknowledge receipt of the submission within 2 working days of receipt of the submission.
- 13.4. Within 7 working days of receipt of the submission, INCM must determine if the Referring Party has a valid complaint or not. If INCM determines that the Referring Party does not have a valid complaint it must write to the Referring Party within 15 working days of receipt of the submission explaining in detail its reasons for considering the Referring Party's submission and case to be invalid.
- 13.5. If INCM determines that the Referring Party has a valid complaint, INCM will forward the dispute to the Owing Licensee and request a response within 15 working days, unless INCM specifies a longer period.
- 13.6. The Owing Licensee must respond to INCM within 15 working days from the date on which INCM forwarded the dispute to it, or any longer period specified by INCM.
- 13.7. The Owing Licensee's response must respond to each point raised by the Referring Party and must provide full supporting documentation and evidence, including correspondence between the parties that may not have been relied upon by the Referring Party and statements from any witnesses it wishes to rely upon.
- 13.8. On receipt of the Owing Licensee's response, INCM will consider whether further documentary evidence is required and make written requests for same from either or both parties.
- 13.9. On receipt of all required documentary evidence, INCM will notify the parties of the expected date of its decision on the resolution of the dispute. Decisions of INCM, whether preliminary or final, shall be in writing and shall state the reasons upon which they are based. INCM shall make its written Decisions available to the public. A decision of INCM shall be binding upon the parties concerned.

- 13.10. Should INCM determine that the Owing Licensee should share the Telecommunications Infrastructure concerned, the parties must enter into a Sharing Agreement following the procedures outlined in Article 7 of these Regulations.

## 14. Procedural Rules

- 14.1. Subject to the express provisions of this Regulation, INCM may regulate its procedure in such manner as it thinks fit but shall observe the rules of natural justice.
- 14.2. INCM in its discretion may extend or, in urgent situations shorten, the time period for doing any act or taking any step in the process for resolving a dispute on such terms (if any) as INCM thinks just.
- 14.3. INCM may order an extension of time, even where the application for the extension is not made until after the expiration of the time appointed or fixed.
- 14.4. In determining a Dispute, INCM shall act expeditiously, and in doing so may have regard to:
  - 14.4.1. the subject matter of the dispute;
  - 14.4.2. the need to inquire into and investigate the dispute;
  - 14.4.3. the objectives and functions of INCM;
  - 14.4.4. all matters affecting the merits and a fair resolution of the dispute.
- 14.5. Decisions of INCM, whether preliminary or final, shall be in writing and shall state the reasons upon which they are based. INCM shall make its written Decisions available to the public. A decision of INCM shall be binding upon the parties concerned.
- 14.6. INCM may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not it would be admissible in a court of law. Facts relating to the request or response may be established by any reliable means, including admissions
- 14.7. INCM shall accept as a proven fact any fact of which a court of law may take judicial notice pursuant to the Law.
- 14.8. INCM may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not it would be admissible in a court of law. Facts relating to the request or response may be established by any reliable means, including admissions
- 14.9. INCM shall accept as a proven fact any fact of which a court of law may take judicial notice pursuant to the Law.
- 14.10. A request for dispute resolution shall usually be determined by INCM by reference only to the documents filed, without hearing oral submissions or evidence on oath from the parties or others in person. However, if INCM deems it necessary, it may stipulate a venue, set a date and time limits for the parties, either in person or through a representative, to attend in person and make oral submissions to INCM or a designated officer of INCM in respect of those matters or issues identified by INCM in writing as requiring oral submissions. The public shall not be admitted to the hearing.

- 14.11. The parties may be represented or assisted in the dispute by a person of their choice, including a legal representative. The name, address, telephone and facsimile numbers and e-mail address of the person representing a party shall be communicated to INCM within five (5) business days of the appointment of the representative.
- 14.12. In the absence of any direction to the contrary issued by INCM, the following provisions shall apply:
  - 14.12.1. the applicant shall have the burden of establishing that a breach or contravention has occurred to the satisfaction of INCM; and
  - 14.12.2. the standard of proof to be applied to establish whether the Applicant has met this burden of proof is on a balance of probabilities and shall take into account the seriousness of the allegation made. The burden of establishing exceptional circumstances or other mitigating factors shall be on the respondent.
- 14.13. Within thirty (30) business days after considering the documents filed by both parties in respect of the request for dispute resolution, or after any hearing, INCM shall make such Decision and issue such Instructions as INCM may lawfully determine.
- 14.14. If INCM decides that it should not make a Decision or issue any Instruction, INCM shall dismiss the application.
- 14.15. INCM may summarily dispose of all or part of a request for dispute resolution at any time if and when INCM determines that there is no genuine issue to be determined.
- 14.16. INCM may at any time, in respect of any dispute, either of its own motion or on the application of any party, appoint a person who is independent from the parties to the dispute with expertise in the subject matter of the Dispute, to assist and advise INCM. Such person may:
  - 14.16.1. be present at any hearing involving the dispute;
  - 14.16.2. inquire into and report on any question of fact or opinion not involving questions of law or legal construction; and
  - 14.16.3. at the request of INCM, give evidence to INCM and/or advise or assist INCM.
- 14.17. If the person appointed under Paragraph 13.16 provides a report and/or gives evidence in any dispute, all parties shall have the right to a copy of the Report and to provide written responses to the expert's Report.
- 14.18. INCM shall be responsible for discharging any fees and expenses incurred by such expert, but INCM, in its discretion, may order that any party shall meet or contribute to such fees and expenses as part of its Decision on the Dispute.
- 14.19. An applicant may withdraw a Dispute before INCM makes any formal determination, provided that, if so required by INCM, the applicant agrees to and settles any costs incurred by the respondent who participated in the proceedings and were occasioned by the filing of the Dispute and any expert costs incurred by INCM.
- 14.20. INCM may elect to receive submissions as to costs in any Dispute filed pursuant to these Regulations and, having regard to the circumstances of the Dispute, INCM may award costs to be paid by any party to a Dispute.
- 14.21. An award of costs may include any or all of the costs of:

- 14.21.1. INCM;
  - 14.21.2. the applicant; or
  - 14.21.3. the Respondent.
- 14.22. An award of costs may also include the cost of any expert retained by INCM under Paragraph 14.16 or of any expert retained by any other party for assistance on a specific issue.
- 14.23. In determining costs, INCM may request relevant information from each of the parties, including their legal, consulting and other professional fees, and INCM may take into account prevailing market rates for professional services, the reasonableness of any costs incurred and any other relevant matter.
- 14.24. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Board, officer or employee or agent of INCM in respect of any act done or omitted to be done, or in respect of words spoken or written, bona fide in pursuance or execution or intended execution:
- 14.24.1. at or for the purposes of any dispute under these Regulations; or
  - 14.24.2. the publication of any decision relating to any dispute before INCM.
- 14.25. Every board member, officer or employee or agent of INCM shall be indemnified in full by INCM for any damages or costs awarded against them as a result of any act done, or omitted to be done, in the course of the exercise or intended exercise of any of their functions, duties or powers under these Regulations, together with all costs of defending any allegation, complaint or claim against any board member, officer or employee of INCM, unless such act or omission is done or omitted in bad faith.
- 14.26. Every aspect of a dispute, including written and verbal communications, shall be in Portuguese.

## 15. Adherence to Other Rules and Regulations

- 15.1. Without prejudice to the provisions of this Regulation, the Licensees shall adhere to all other Laws of Mozambique and Regulations issued by INCM, Governmental agencies and other public bodies of the Republic of Mozambique with regard to health and safety at work and the deployment of infrastructure in the Republic of Mozambique.

## 16. Enforcement and Penalties

- 16.1. An Owning Licensee commits a breach of the provisions of this Regulation, where the following situations occur<sup>1</sup>:
- 16.1.1. failure to establish and maintain a sufficient register under Article 4.1 or to implement an appropriate procedure under Article 4.3;
  - 16.1.2. failure to supply relevant information within the time period provided for in Article 4.3;
  - 16.1.3. unreasonably obstructing or delaying negotiations under Article 5.4;

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<sup>1</sup> All cross-references to be checked

- 16.1.4. failure to publish a Reference Sharing Offer under Article 5.7;
  - 16.1.5. failure to complete a feasibility study or to provide a decision in writing within the time period provided for in Article 7.3;
  - 16.1.6. failure to complete and sign a Sharing Agreement within the time period provided for in Article 7.4;
  - 16.1.7. failure to offer to extend or modify an item of Telecommunications Infrastructure under Article 10.3 when an extension was feasible;
  - 16.1.8. Refusal to submit data requested by INCM;
  - 16.1.9. submission of false data to INCM; or
  - 16.1.10. obstructing an enquiry made by INCM.
- 16.2. Notwithstanding the provisions of Articles 59 and 65 of Law No. 8 / 2004 of 21 July, the offenses described in Article 16 of this Regulation are punishable by fines as follows:
- 16.2.1. for failure to establish and maintain a sufficient register under Article 3.1 or to implement an appropriate procedure under Article 4.3: 300,000 MT
  - 16.2.2. for failure to supply relevant information within the time period provided for in Article 4.3: 1,500,000 MT
  - 16.2.3. for unreasonably obstructing or delaying negotiations under Article 5.4: 1,500,000 MT
  - 16.2.4. for failure to provide publish a Reference Sharing Offer under Article 5.7: 1,500,000 MT
  - 16.2.5. for failure to complete a feasibility study or to provide a decision in writing within the time period provided for in Article 7.2: 1,500,000 MT
  - 16.2.6. for failure to complete and sign a Sharing Agreement within the time period provided for in Article 7.3: 2,500,000 MT
  - 16.2.7. for failure to offer to extend or modify an item of Telecommunications Infrastructure under Article 10.3 when an extension was feasible: 1,500,000 MT
  - 16.2.8. for refusal to submit data requested by INCM: 1,500,000 MT
  - 16.2.9. for submission of false data to INCM: 1,500,000 MT
  - 16.2.10. for obstructing an enquiry made by INCM: 2,500,000 MT
- 16.3. [The fines provided for in Paragraph 1 of this Article are readjusted by ministerial group of ministers who oversee the areas of Finance and Communications<sup>2</sup>.]
- 16.4. It is for INCM to impose the fines provided for in this Regulation by serving notice on the Licensee who offends.

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<sup>2</sup> This language is not understood, but is a translation of language in Portuguese in the QoS Regulations

- 16.5. A Licensee has a period of fifteen days from the date of receipt of the notice to pay a fine.
- 16.6. Non-compliance with the previous paragraph results in the increase in the amount of the fine by 10% for the first day and 1% for each further day of delay up to thirty days.
- 16.7. INCM shall initiate the procedures for revoking the license or registration of any Licensee or registrant who fails to make voluntary payment the fine imposed or any further penalty imposed under Paragraph 16.6 of this Article.
- 16.8. Fines collected pursuant to this Regulation shall form part of INCM revenue.
- 16.9. INCM may impose an additional fine of 1,500,000 MT for each breach which is not remedied within three months of the imposition of the original fine for that breach.
- 16.10. Licensees may, within five days after receipt of notice to pay a fine, apply to INCM for a review, and in that event no additional penalties shall be payable under Paragraph 13.6 of this Article unless the penalty is upheld and the Licensee still fails to pay the fine concerned.

## **17. Significant Market Power**

- 17.1. Given the current structure of the telecommunications market in Mozambique, TDM has in excess of 25% of the market for access to the fixed public telephone market and each of mCel and Vodacom has in excess of 25% of the market for access to public mobile telephone services. Accordingly, TDM, mCel and Vodacom are each deemed, under Article 55 of the Telecommunications Law, to have significant market power in Mozambique for the purpose of these Regulations.

## **18. Directions**

- 18.1. INCM is authorised to issue directions under these Regulations concerning the terms and conditions (including pricing) on which Owing Licensees shall offer to share Telecommunications Infrastructure.

## **19. Entry into Force**

- 19.1. This Regulation shall enter into force from the day following publication in the Official Gazette.

**[Ministry Formal Closing Language]**

## ANNEX 1

### Costing Principles

- The Owing Licensee should recover all the one-off costs it incurs as a result of a request for, and fulfilment of, facility sharing, including feasibility studies and planning, supervision and inspection of engineering work, including of physical mounting space, radio interference potential from inter-modulation products, radiation exposure limits, structure rigidity under wind loading, structure safety and survival and engineering solutions for the foundation and structure.
- The Owing Licensee should also be paid a fair proportion of the facility's original construction costs plus an appropriate return on capital having regard to the nature of the Telecommunications Infrastructure concerned. The Requesting Licensee should pay for these costs in proportion to the space it occupies within or on or at the Telecommunications Infrastructure concerned.
- The Owing Licensee should recover a fair proportion of all efficient on-going costs of power consumption, maintenance, depreciation or other operating costs (including common and joint costs) allocated to the shared facility.
- These costs should be verifiable, and based on sound accounting practices.
- The Owing Licensee should not be rewarded for any scarcity benefits it gains from its market power or first-mover advantages (for example, by occupying the only mast site permitted by virtue of having been the first operator in existence)
- Infrastructure elements should be unbundled; the Requesting Licensee should not be obliged to use any facilities other than the ones he has specifically requested.
- If other Qualifying Licensees subsequently share the same Telecommunications Infrastructure, they should contribute to these costs in proportion to the space they occupy.

## ANNEX 2

### Contents of a Reference Sharing Offer

#### **General Sharing Issues**

##### (i) Contents of a Reference Sharing Offer

#### **Provisioning**

- (i) Time schedules
- (ii) Information requirements
- (iii) Constructional specifications
- (iv) Technical Specifications
- (v) Delivery of Access
- (vi) Testing

#### **Operation**

- (i) Requirements on equipment
- (ii) Installation of equipment
- (iii) Maintenance
- (iv) Fault clearance
- (v) Access conditions of persons

#### **Pricing**

- (i) Standard prices
- (ii) Price components