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**REGULATORY GOVERNANCE IN THE COMMONWEALTH CARIBBEAN –
BALANCING THE INDEPENDENCE AND ACCOUNTABILITY OF UTILITY REGULATORS**

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The views expressed in the following document are solely those of the authors and not the views of the Fair Trading Commission or any particular Commissioners.

REGULATORY GOVERNANCE IN THE COMMONWEALTH CARIBBEAN – BALANCING
THE INDEPENDENCE AND ACCOUNTABILITY OF UTILITY REGULATORS¹

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“Without good governance – without the rule of law, predictable administration, legitimate power and responsive regulation – no amount of funding, no short-term economic miracle will set the developing world on the path to prosperity. Without good governance, the foundations of society – both national and international – are built on sand.”

Kofi Annan, United Nations Secretary-General, 1997

1. INTRODUCTION

This paper seeks to examine whether the legal frameworks of Commonwealth Caribbean utility regulators successfully balance the dual dictates of independence and accountability. In doing so, the paper draws on examples from regulatory agencies in four Caribbean territories – the Fair Trading Commission in Barbados, the Office of Utilities Regulation in Jamaica, the Public Utilities Commission in Bahamas and the Regulated Industries Commission in Trinidad and Tobago.

Section 2 sets out the background for governance in the Commonwealth Caribbean. This is followed in section 3 of the paper by the benchmarks that can be used to measure effective regulatory governance. The concepts of independence and accountability in the existing regulatory frameworks are discussed in sections 4 and 5 respectively. The paper concludes by commenting on the manner in which regulatory agencies in the Caribbean should strive to find the appropriate balance between these two concepts to achieve legitimacy of the new regulatory regimes.

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2. FRAMEWORK FOR GOVERNANCE IN THE COMMONWEALTH CARIBBEAN

Formulaic analyses of good governance are often flawed as governance frameworks must reflect the political, economic, cultural, legal and institutional environment of each country. The regulatory regimes in the Commonwealth Caribbean are based on foundations of a shared colonial heritage, written constitutions, a common law system and long tradition of parliamentary democracy. This is the backdrop for governance in the region.

The countries of the Caribbean share a similar political system derived from the traditional Westminster model.³ This Westminster model generally encompasses three arms of State: Executive, Parliament and Judiciary; the notion of separation of powers; and a ceremonial Head of State with effective executive power vested in Cabinet⁴. Most Caribbean governments were Crown Colonies in the period before independence however Barbados and Bahamas had Parliaments continuing from the old representative systems conferring powers on a small minority of the people. Traditions of stable parliamentary democracy in the Commonwealth Caribbean have been well documented and have doubtlessly been a primary influence on the development of a sound regulatory order.

Similar constitutional frameworks were established during the time-frame over which Caribbean countries attained independence from the United Kingdom. These Caribbean Commonwealth constitutions which are “the basis of the envisaged or actual political order” are “simultaneously the basis of the legal order.”⁵

On independence Caribbean territories inherited a common law system. Instinctive in this has been heavy reliance on judicial decisions and the independence of the judiciary. Independence safeguards have been embedded in constitutions with the establishment of service commissions such as the Judicial and Legal Services Commission and Public Service Commission. These commissions which were established to diminish political interference in the operation and establishment of certain institutions of state should be seen as part of the linkage of the establishment of independent institutions in the region.

Utility regulators in Caribbean territories, whilst relatively homogenous as a result of this common heritage, also reflect differences that may be attributed to diverse political and economic experiences. Varied levels of political will and commitment has clearly been one of the major factors impacting on the creation of the regulatory regimes and the consequential changes in the frameworks.

³ See (1992) Demerieux. Fundamental Rights Commonwealth Caribbean institutions.

⁴ In the Caribbean context the major distinguishing features from the traditional model are written constitutions and the inclusion of fundamental rights in the constitution.

⁵ See (1992) Demerieux

3 BENCHMARKS FOR EFFECTIVE REGULATORY GOVERNANCE

Commentators have written extensively on the essential attributes for effective regulatory governance. Baldwin and Cave⁶ pose the following five key tests for evaluation of regulatory effectiveness and legitimacy:-

- Legislative mandate - Is the action or regime supported by legislative authority?
- Accountability or control - Is there an appropriate scheme of accountability?
- Due process - Are procedures fair, accessible and open?
- Expertise - Is the regulator acting with sufficient expertise?
- Efficiency - Is the action or regime efficient?

These key tests can be effectively used to examine the efficacy of the regulatory regimes for Caribbean utility regulators. This paper focuses on an assessment on those aspects relating to independence i.e. a clear legislative mandate, financial independence and operational autonomy and those aspects addressing accountability or control such as the reporting frameworks, procedural fairness and provisions for reviews and appeals.

⁶Baldwin, R. and Cave, M. *Understanding Regulation – Theory, Strategy and Practice* (Oxford University Press 1999 see Chapter 6 What is Good Regulation at pg 77

4. INDEPENDENCE

In recent times there has been a notable increase in the creation of independent regulators for politically sensitive and technically demanding roles such as utility regulation where decisions should be objective and based on application of sound technical and economic expertise and professional judgment.

Independent public service commissions to regulate telephony, water, natural gas and electricity have been a feature of the American regulatory landscape from the nineteenth century. Commissions were established to ensure that everyone had access to reasonable service at reasonable prices. These commissions have been described as:-

“...merely an administrative board created by the state for carrying into effect the will of the state as expressed by its legislation.”⁷

It may be considered contradictory that the regulatory agencies that are established to execute the will of the state, are established within an independent legal framework that confers wide regulatory discretion in the public interest. A natural result of the establishment of agencies to effect the will of the State, is that this independence must be tempered with safeguards of accountability to ensure that discretion is properly exercised, that government policies are followed and that the regulator itself remains efficient.

What is independence? From whom and to what extent?

The fundamental requirement of the independence of economic regulators pervades the literature. However this nebulous notion of independence has been interpreted in varying ways. Whilst independence is often judged by institutional attributes stressing the requirement that the agency have a separate legal status, structural attributes whilst useful, are not in themselves essential to independence.

The WTO Regulation Reference Offer⁸, which sets out binding commitments for member states, mandates a form of independence for telecommunication regulators. Article 5 provides:

“The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by the regulators shall be impartial with respect to all market participants.”

⁷ see *Reagan v. Farmers' Loan & Trust Co.* 54 U.S. 362 – 393-4 (1894)

⁸World Trade Organisation – Telecommunications Services: Reference Paper 1997

This WTO definition places great emphasis on independence from the market players although there is no requirement that the regulator be a legally distinct entity or that it be separate from the Government or policy Ministry.

In recent times the independence debate has been led by Warrick Smith⁹ who in a highly influential article defined independence as consisting of three elements:-

- an arm's length relationship with regulated firms, consumers and other private interests;
- an arm's length relationship with political authorities; and
- the attributes of organisational autonomy necessary to foster the requisite expertise and to underpin those arm's length relationship.

The individual elements considered necessary to satisfy this independent regulation are:-

- Distinct legal mandate
- Prescribed professional criteria for appointment
- Appointment by executive and legislative branches
- Fixed term appointment and protection from arbitrary removal
- Staggered appointment terms
- Exemption from civil service rules
- Reliable source of funding such as earmarked levies

Underlying the debate on independence is recognition of the importance of the independence of decision-making of regulators and the need to ensure that this is facilitated by the regulatory frameworks. It is fundamental that the regulator be given the freedom to make decisions in the public interest.

A useful definition of independence which places independence of decision-making at its core is that posited by Professor William Melody who defines it as:-

*“independence to implement policy without undue interference from politicians or industry lobbyists. It implies independence to acquire specialised skills, to manage without interference and to be accountable for results according to specified performance criteria”.*¹⁰ (my emphasis)

Independence should mean that the legal framework provides all the formal elements of independence as discussed by Smith together with the freedom of the regulator to implement policy without undue

⁹ Smith, W. Public Policy Public Policy for the Private Sector: “*Utility Regulators - The Independence Debate*,” World Bank Group (1997).

¹⁰ Melody, W.H. Policy Objectives and Models of Regulation in *Telecom Reform: Principles, Policies and Regulatory Practices* Ed. by Melody, W.H. (Technical University of Denmark 1997)

interference from either the policy-makers or those being regulated. An examination of the demonstrated independence of the regulators with respect to decision-making is beyond the scope of this paper.

Do Caribbean regulators pass the independence threshold?

Commonwealth Caribbean territories have recently established new “independent” multi-sector regulators for economic and quality regulation of utilities as part of overall regulatory regimes.¹¹ These reforms were initiated by divergent requirements. In Jamaica, the reform initiatives were initially in response to the funding requirements of international lending agencies. Reform in Barbados was driven by the necessity to streamline the existing regulatory process and establish a modern regime for enforcement of consumer protection and fair competition laws.

However the creation of regulatory agencies for utilities was not a new phenomenon for the Caribbean. Barbados led the institution of independent regulatory control with the establishment of the Public Utilities Board (PUB) in 1955¹² as a quasi-judicial body with the authority to set rates for regulated public utilities. This Board, until its replacement in 2001 by the Fair Trading Commission (FTC), regulated electricity services, domestic telecommunications services and at varying points in its history set fares for public omnibus transport.

Likewise, a regulator was established for the Jamaican electricity sector in 1966 – the Jamaica Public Utility Commission (JPUC)¹³. In 1978 regulatory authority for electricity services was removed from the JPUC and placed with the Minister until authority was gradually ceded to an independent Office of Utilities Regulation (OUR) over the period 1995 to 2000.

In similar fashion to Jamaica, Trinidad and Tobago established a regulatory Commission, a Public Utilities Commission (TTPUC)¹⁴, in 1966. In addition to regulating electricity the TTPUC also regulated water and sewerage systems. This Commission was replaced by the Regulated Industries Commission (RIC) in 1999 whose Board was appointed in 2001.

¹¹ Several other regulatory functions have also been granted to these agencies e.g. regulators in Bahamas and Jamaica have licensing responsibilities in the telecommunications sector and the Barbados regulator also has responsibility for enforcing consumer protection and general fair competition laws.

¹² Public Utilities Act 1951; Public Utilities (Amendment) Act 1953

¹³ See Lodge & Stirton “Withering in the Heat? In search of the Regulatory State in the Commonwealth Caribbean” (2004) for a [useful] exposition of the regulatory history of institutions in Trinidad and Jamaica.

¹⁴ Public Utilities Commission Act 1966

The Bahamas Public Utilities Commission which was established for the economic regulation of electricity, telecommunications, and water and sewerage services in 1999 presently regulates telecommunications, including management of the radio frequency spectrum.

This section of the paper discusses the independence of these regulatory authorities by looking at

- (a) structural independence;
- (b) financial independence; and
- (c) operational autonomy.

Structural Independence

Legal Mandate

Primary legislation is the legal instrument establishing all of the authorities. All of the Acts grant structural independence through the creation of separate, stand-alone collegial bodies rather than by conferring regulatory powers on departments of government. This structure allows for independence from the players in the market particularly the incumbent as well as from government.

These laws also contain comprehensive provisions governing the conduct of the agency and granting a clear legal mandate with respect to the specific duties and powers to be exercised by the regulator providing a clear framework within which powers can be exercised. For example section 6 of the Regulated Industries Commission Act provides that the Commission shall:-

- (a) *“advise the Minister on matters relating to the operation of this Act including the granting of licences;*
- (b) *administer such matters as are required consequent upon the granting of licences;*
- (c) *ensure, as far as is reasonably practicable, that the service provided by a service provider operating under prudent and efficient management will be on terms that will allow the service provider to earn sufficient return to finance necessary investment;*
- (d) *carry out of efficiency and economy of operation and of performance by service providers and publish the results thereof;*
- (e) *prescribe and publish in the Gazette and in at least one daily newspaper circulating in Trinidad and Tobago, standards for services;*
- (f) *monitor service providers and conduct checks to determine their compliance with the standards referred to in paragraph (e);*
- (g) *impose such sanctions as it may prescribe for non-compliance with the standards referred to in paragraph (e) and any conditions attaching to a licence;*
- (h) *establish the principles and methodologies by which service providers determine rates for services;*

- (i) monitor rates charged by service providers to ensure compliance with the principles established under paragraph (h);*
- (j) carry out periodic reviews of the rating regimes of service providers;*
- (k) facilitate competition between service providers where competition is possible and desirable;*
- (l) investigate complaints by consumers, of their failure to obtain redress from service providers in respect of rates, billings and unsatisfactory service and facilitate relief where necessary;*
- (m) impose and collect fees for licences”*

The general legislation establishing the regulator is also complemented by sector specific legislation. In Jamaica, new legislation is being prepared to augment the role of the Office of Utilities Regulation in the water and electricity sectors and to replace the existing legislation in this area. It is expected that the draft bills will be laid in Parliament in 2005.

Appointment criteria and process

Appointment of decision-makers is vested in the Executive with appointments made by the Governor-General and the President. In Barbados provision is made for members of the Commission to be appointed by the Minister. However the convention is that such appointments are determined by Cabinet.

Emphasis is placed on ensuring that there is a mix of expertise on the commissions through prescribed statutory criteria mandating that persons be appointed from amongst persons with expertise and experience in areas such as industry, finance, economics, engineering, commerce and law. In Barbados there are statutory criteria only with respect to the appointment of the Chairman who must be legally qualified. The existence of these objective criteria arguably constrain the discretion in the appointment process.

Removal criteria and procedure

Grounds for removal by the Executive are set out clearly in the laws so that persons cannot be removed on arbitrary whims and fancies. These grounds, which include neglect of duty, misconduct and bankruptcy should provide protection to regulators from arbitrary removal. However conventions in some islands such as the practice of placing appointments at the disposal of the new Minister, on a change of Minister or Government, may undermine the formal protections from removal enshrined in statute.

Fixed terms of tenure

Appointments are made for fixed terms ranging from three to seven years. It is interesting to note that only the RIC in Trinidad has appointments on staggered terms built into the legislation. This may serve to reduce the influence of one Government in the overall composition of the Commission and ensure continuity of expertise within the agency which raises credibility among the stakeholders.

Financial Independence

The ability of regulators to obtain sufficient funding facilitates independence of decision-making as it can prevent regulatory capture by regulated entities and the political directorate. There are marked differences in the financing mechanisms of Caribbean regulators which range from funding through Government appropriations to earmarked funding from licence fees and cess. The additional ability of the regulator to create reserves and invest in purchases of land/buildings can also provide the regulator with a level of financial stability and independence.

In Jamaica the authority to levy fees is divided between the regulator and the Ministry. Under the Telecommunications Act 1999 the regulator has the power to determine the amount of annual regulatory fees which must be based on a “reasonable estimate of the costs” that the regulator will incur in regulating those licensed services. The OUR legal framework is remarkable in that the agency has the ability to prepare its own budget and collect on this basis. The ministry meanwhile grants spectrum licences and thus have the power to levy spectrum fees including an annual spectrum regulatory fee. All of the other legal frameworks balance the financing mechanisms with scrutiny and approval of the same by the Minister.

Operational autonomy

Regulators need to be granted the autonomy to recruit staff with the requisite skills and expertise necessary for decisions and to have the freedom to offer attractive remuneration in order to keep these skills within the agencies. Failure to provide operational autonomy may lead to regulators being staffed by under qualified and underpaid staff. A common feature of the frameworks reviewed is the limited autonomy given to regulators in this respect. Remuneration levels are generally determined by Government and follow civil service rules. It is notable that in the OUR framework no express provision is made for the hiring of staff by the Office.

5. ACCOUNTABILITY

It is axiomatic that independent regulation, by its very nature, requires accountability and transparency. The divestiture of authority to an independent body must be coupled with accountability for its actions and decisions through good information flows and full disclosure.

Smith¹⁵ referring to striking the balance between independence and accountability as “notoriously difficult”, sets out some of the specific safeguards that can be used to achieve accountability of regulators:

- transparency – open decision-making, publication of decisions and reasons for those decisions;
- prohibiting conflicts of interests;
- arrangements for effective appeals;
- scrutiny of budget by legislature;
- external auditors; and
- removal for proven misconduct or incapacity.

Who are Caribbean regulators accountable to and for what?

The starting point and principal question that must be asked is : accountable to who and for what?

Regulators must be accountable to and be able to adequately inform:-

- those originating regulation – the Legislature and the Executive;
- those charged with reviewing and evaluating – the Judiciary or Appeal Tribunal; and
- those whose interests are being safeguarded or affected– consumers and regulated entities

Accountability demands that regulators be able to explain their actions and decisions. This incorporates financial accountability for funds expended, accountability for the proper execution of the legal mandate and accountability for all decisions made.

Accountability to Parliament - Legislative Arm

Accountability to the legislature is important to ensure that there is democratic accountability. The Caribbean regulatory frameworks enshrine a traditional reporting mechanism with a universal requirement

¹⁵See (1997) Smith, W.

for annual reports and audited financial statements of the agency to be laid in Parliament¹⁶ In practice, whilst providing for a level of accountability to the legislature, regulatory agencies rarely receive a great deal of scrutiny through this process which may provide focus for debates on the issues that the regulator is grappling with and comments on its role and effectiveness. Financial accountability to the Legislature is further buttressed by the provisions requiring external audits by an approved auditor or the Auditor – General. These statutory reporting obligations are coupled with the requirements for budgets and work plans to be laid in Parliament and discussed as part of the budgetary process. Transparency in this process facilitates scrutiny which ensures that funds are used in the public interest.

Accountability to Government – Executive Arm

Accountability to policy makers is important as Government is accountable through the electoral process for the performance of government institutions. The level of accountability to the Executive is one of the most difficult to be achieved in practice as allowing wide ministerial intervention undermines the independence of the institution. Regulators do not operate in a political vacuum but exercise a role divested to them by statute, from policy makers who have been entrusted by the public to execute policy and govern in the interests of the people. Accordingly, concomitant with the divestiture of power is the need to ensure that full account/report is made.

This is reflected in statutory requirements re

- Compliance with overall policy framework set by the Minister;
- Adherence to express policy directives;
- Consultation with the Minister on the development of rules and regulations;
- Submission of work plan and accounts to Minister; and
- Submission of reports on strategy and periodic reports on work.

Effective implementation of Government reform measures depends in no short measure on the regulatory authorities that were designed and established by them. The appropriate mechanisms must be devised for accountability to political directorate. Whilst recognising that regulatory agencies execute policy, policy directions should be communicated in a transparent manner and formally communicated in writing. The publication of ministerial directives in official journals contributes to the credibility of the process.

Regulators must recognise that submission of regular reports is important and need to take steps to ensure that they cultivate mutual respect without succumbing to opportunities for political pressure.

¹⁶ Institutions in Barbados such as the Fair Trading Commission that are funded from Consolidated Fund may also be subject to audit/account to Public Accounts Committee.

Accountability to Judiciary and Appeal Bodies

Effective appeal mechanisms promote accountability by agencies. Review and appeal procedures are necessary to ensure that regulatory decisions are made in accordance with regulatory commitments expressed in law. Accordingly, the legal frameworks of Caribbean regulators provide for procedural fairness and transparency in decision-making through reviews by the regulator, judicial review, and appeals. The right to appeal must be weighed against certainty and increased delays in the process as reviews and appeals may increase delays in regulatory system, weaken capacity to make sustainable decisions and reduce overall legitimacy.

The common law judicial review provisions which are applicable to all territories are supplemented in Barbados by the Administration of Justice Act. In addition to this the Fair Trading Commission and the Office of Utilities Regulation have powers to review and vary its own decisions. Generally, provision is made for appeals to the judiciary as in Barbados, Jamaica and Bahamas. Arguments have been made as to the desirability of generalist judges scrutinising these types of decisions with a call for appeals to be made to an expert body or to specialist judges. In our small jurisdictions, it is often difficult to justify the creation and funding of so many specialist appeal institutions however Trinidad and Tobago has sought to provide this type of mechanism. The Fair Trading Appeal Tribunal in Trinidad which is to be a specialist appeal tribunal for appeals from the competition agency (Fair Trading Commission) as well as the Regulated Industries Commission has not yet been established negating the potential benefits in this arrangement.

Accountability to the Public- Transparency of process

The legal frameworks enshrine accountability to consumers by:-

- (a) statutory duties mandating that the consumer interest is taken into account; and
- (b) specific mechanisms that enshrine consumer participation in processes and provide innovative mechanisms for receiving their input such as the use of representative Consumers Councils/Committees in Trinidad and Jamaica and the statutory role of the Office of Public Counsel in Barbados.

Regulated entities and consumers have a central stake in regulatory processes and must be given an opportunity to state their views as well as certainty as to how the views will feed into the process. This is achieved through transparency of decision-making. This transparency is pivotal in ensuring that regulators are accountable to the public.

Diverse mechanisms are employed in the legal frameworks to increase the transparency of the regulatory process:-

- Public hearings;
- Consultative processes ; and
- Publication of decisions with reasons

The increased scrutiny and input by public as a result of these processes is likely to lead more reasoned and effective decision-making. It is notable that the Barbados Fair Trading Commission focuses on public hearings for execution of its statutory mandate for rate-setting. It has been argued that this process increases accountability. Public participation is high, with the assistance of several intervenors in process and continuing levels of media coverage on the proceedings. In contrast the use of consultations for other determinations has generally resulted in reduced public participation in the process. The approach in Barbados may be contrasted with the largely written consultative approach utilised by Bahamas PUC and Jamaica OUR.

Transparency of the process extends to provisions enshrining the transparency of any interests of the decision-makers. Declaration of interests and conflicts of interest provisions are important to avoid allegations of bias. Jamaica and Bahamas have express disqualifying provisions which ensure that persons with interests in regulated companies or their competitors are not appointed to an adjudicative position.

Recognising that the Barbados Fair Trading Commission is an economy wide regulator¹⁷ with jurisdiction over all business enterprises there are no disqualifying criteria set out in the legislation but there is a comprehensive provision governing the declaration of interests. Commissioners sign declaration of interests forms prior to adjudicating on panels, any significant interests must be made public. Adjudicating commissioners appear to have avoided financial or other interests in regulated entities and there have to date been no public declarations.

The Trinidad framework goes further than the other territories by prohibiting employment with regulated entities for up to two years after membership of the Commission. This is a useful statutory safeguard which avoids revolving door between industry and the regulator which can lend itself to capture of the agency by the industry as it has been argued that decisions may be influenced by the prospect of future employment with a regulated entity.

¹⁷ FTC is the regulator of utility services, consumer protection enforcement agency and fair competition agency

6. WEIGHING THE SCALES - FINDING THE CARIBBEAN BALANCE

The examination of the legal frameworks of Caribbean utility regulators demonstrates that appropriate mechanisms are in place to secure the formal independence as well as the accountability of regulators. The laws appear to bestow a high level of formal independence on regulators who also have a moderate level of autonomy for day to day management of their agencies. This is weighed against those provisions that seek to ensure accountability of the regulatory agencies to all stakeholders. The regulatory systems in the Caribbean have for the large part avoided some of the perceived documented¹⁸ crises in accountability in the development of new regulatory environment such as personalisation of regulation, extent of discretion vested in regulators, lack of transparency in the form of open hearings or reasons for decisions and the unclear division or allocation of responsibilities among the regulators themselves.

It is important that agencies find an accommodation between the fundamental principles of independence and accountability. Successfully balancing these principles strengthens the regulator and generates confidence in the system. Achieving regulatory legitimacy [i.e. credibility] is the litmus test that Caribbean regulators must face in the determination as to whether they have successfully balanced accountability and independence. This balancing act mandates effective management of an interdependent relationship with all stakeholders and development of transparent processes.

The legal frameworks are not expected to and cannot provide legitimacy. Regulators will need to build on the solid foundation provided by the express legal provisions and the political and cultural environment which support the rule of law. Focusing on communication of the regulatory mission and actions and decisions taken is essential. Websites containing up to date information on the activities of the agency coupled with utilisation of the media through regular updates and press releases, community outreach educational initiatives and general accessibility and availability to the public.

Regulators must seek to win their regulatory legitimacy, achieved through results not through formal provisions in a statute, by continuing to focus on:-

- Transparency;
- Demonstrated commitment to public interest; and
- Effectiveness by demonstrated results.

The end goal must be the establishment and maintenance of the legitimacy and credibility of the agency and its decisions i.e. acceptance in the eyes of others.

¹⁸ See (1997) Prosser at page 52 for a discussion on these issues

**APPENDIX - COMPARATIVE TABLE OF PROVISIONS GUARANTEEING REGULATORY INDEPENDENCE AND ACCOUNTABILITY IN
SELECTED COMMONWEALTH CARIBBEAN UTILITY REGULATORY AGENCIES**

	FTC BARBADOS	OUR JAMAICA	PUC BAHAMAS	RIC TRINIDAD
<i>STRUCTURAL INDEPENDENCE</i>				
Decision-Making Structure	Commission of up to 11 members	Office of Director-General and Deputy Directors General	Commission of 3 to 5 members	Commission of 5 to 7 members
Appointment Process	Appointment by Minister	Appointment of Director General by Governor General Appointment of Deputy Directors General by Prime Minister on recommendation of Minister	Appointment by Governor-General on advice of Prime Minister after consultation with Leader of the Opposition	Appointment by President
Appointment criteria	Chairman must be an attorney at law of at least 10 years standing or have held high judicial office	Director General must have experience in industry, finance, economics, engineering, commerce or law	Members must have experience in industry, finance, economics, engineering, commerce, law, management or development and planning	Members must have expertise/experience in economics, finance, engineering, law, business, human resources management or public administration
Grounds for removal	Failure to disclose interest; fails to attend 3 consecutive meetings; bankruptcy; incapacitated by physical/mental illness; fraud; unfit to discharge duties	Neglect of duty, Inefficiency, Incompetence, Misconduct or malfeasance	Neglect of duty , Misconduct or malfeasance	Unsound mind, incapable of carrying out duties, bankrupt, convicted of offence which brings office into disrepute, absence from meetings, neglect of duties
Removal Procedure	Removal by Minister	Revocation of DG by Governor – General on recommendation of Prime Minister; Revocation of DDG by Prime Minister after consultation with Minister and DG	Revocation by Governor – General	Termination by President
Tenure	Up to 5 years, may be re-appointed	3 to 7 years; may be re-appointed	Up to 5 years, may be re-appointed	Up to 5 years Staggered appointments

	FTC BARBADOS	OUR JAMAICA	PUC BAHAMAS	RIC TRINIDAD
<i>FINANCIAL INDEPENDENCE</i>				
Source of funds	Government grant and loan; levies on regulated utilities; fees for mergers and authorisations	Licence fees Cess on rates of utility services	Levy on regulated utilities, Government appropriations Licence fees	Grant funds, cess, licence fees
<i>OPERATIONAL AUTONOMY</i>				
Staff Appointments	Commission appoints staff, determines terms and conditions	No express provision	Executive Director after consultation with Minister however Commission appoints staff	Appointment of Executive Director on terms and conditions determined by Minister
Staff Salary Rules	Act grants power to Commission to determine remuneration. In practice decided by Govt and linked to public sector salary scales	No express provision	Remuneration above \$5,000 per annum to be approved by Governor-General	Appointment of staff on terms and conditions determined by RIC subject to maximum remuneration limit set by Minister
<i>ACCOUNTABILITY</i>				
Conflicts of interests provisions	Required to disclose interests in service provider or business enterprise under investigation/deliberation	See disqualifying criteria	See disqualifying criteria	Required to disclose interests Restrictions on employment for up to two years
Scrutiny of Budget	Annual Work Plan and Estimates to be submitted to Minister	No express provision	Annual Budget submitted to Minister for approval	Annual Budget and planned activities to be submitted and laid in Parliament
External Audit provisions	Requirement for external auditors; Auditor General may carry out investigation/audit	Requirement for audit; Auditor General may carry out examination	Requirement for external auditors; Auditor General may carry out investigation/audit	Requirement for external auditors; Auditor-General may carry out audit

	FTC BARBADOS	OUR JAMAICA	PUC BAHAMAS	RIC TRINIDAD
Accountability Cont'd				
Policy Directions	Minister may give policy directions of a general nature after consultation with Chairman	Minister may give Office such directions of a general nature as Minister considers necessary in the public interest and the Office shall give effect to those directions (telecom)	Minister may give directions relating to public security and the investigation of criminal activities and enforcement of public policy and such to be laid in Parliament (telecom)	No express provision
Reporting framework	Annual Report & Financial Statements to be submitted to Minister and laid in Parliament	Annual Report & Financial Statements to be submitted to Minister and laid in House of Representatives and Senate	Annual Report & Financial Statements to be submitted to Governor-General and Minister and laid in House of Assembly and Senate	Annual Report & Financial Statements to be submitted to Minister and laid in Parliament
Decision Making Power/Process	Public Hearing Consultative	Consultative	Consultative Public Hearing ¹⁹	Public Hearing Consultative
Publication of decisions	Decision to be published in writing with reasons within 1 month of decision being given	Reasons to be given in writing –telecommunications	No express provision in general legislation	No express provision in general legislation

¹⁹ Not applicable to telecommunications sector

	FTC BARBADOS	OUR JAMAICA	PUC BAHAMAS	RIC TRINIDAD
Accountability Cont'd				
Review Procedure	Commission may review own decision Provision for judicial review under Administration of Justice Act	Reconsideration of decision of Office in respect of material errors of fact or law/new facts and circumstances Minister may review refusal to grant licences Provision for judicial review	Provision for judicial review	Provision for judicial review
Appeal Procedure / Appellate Body	Appeal on a point of law	Appeal on fact or law to an Appeal Tribunal	Appeal on points of law; refusal to grant licence, determination of dominance, modification of licence, revocation of licence, imposition of fine to Supreme Court	Appeal to Fair Trading Tribunal

Comparison based on review of (2004) OOCUR Legal Survey results and following legislation FTC – Fair Trading Commission Act CAP326B as amended 2004, Telecommunications Act 282B; OUR – Office of Utilities Regulation Act 1995 No. 13 of 1995 as amended 2000, Telecommunications Act 2000; PUC – Public Utilities Commission Act 1993, SI No. 147 of 2001, Telecommunications Act 1999; RIC - Regulated Industries Commission Act No. 26 of 1998,

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