

**THE POSTAL AND TELECOMMUNICATIONS REGULATORY
AUTHORITY OF ZIMBABWE (POTRAZ)**



'creating a level playing field'

**DRAFT
CONSULTATION PAPER**

**ON THE DRAFT AMENDMENT BILL TO THE POSTAL AND
TELECOMMUNICATIONS ACT [CHAPTER 12:05]**

MARCH 2018

1. INTRODUCTION

Pursuant to the Postal and Telecommunications Act Cap 12:05, (hereinafter referred to as 'the Act'), The Postal and Telecommunications Regulatory Authority of Zimbabwe (hereinafter referred to as 'POTRAZ' or 'the Authority') has a mandate to regulate the Postal and Telecommunications sector in Zimbabwe. In order to involve the public in the decision-making process in line with the Constitution of the Republic of Zimbabwe, POTRAZ has prepared this public consultative document to solicit opinions of the stakeholders on the proposed amendments to the Act.

This Consultative Paper outlines the key areas that POTRAZ has identified and proposed for amendment, the rationale for the proposed amendment, and the procedures and timeframe for players in the industry in particular, and the public in general, to submit their views and comments.

2. BACKGROUND

- 2.1. The regulatory framework empowers POTRAZ to grant licenses, issue directions, determinations and the standards of performance in connection with the operation and provision of telecommunication services, among other functions.
- 2.2. The current Act was promulgated in 2000 and has not been comprehensively amended to take into account technological and market developments since then, hence the need to re-vamp the Act. The main objective of this review process is to ensure that the legislative framework remains relevant and flexible enough to deal with the fast changing postal and telecommunications landscape.
- 2.3. POTRAZ seeks to minimize barriers to entry to enable consumers and businesses to fully reap the benefits of competition. Elaborate provisions are therefore being proposed to deal with competition issues.
- 2.4. Technological changes in the postal and telecommunications sector have posed challenges to the current licensing, regulation and enforcement provisions, resulting in some of the provisions becoming inadequate or obsolete in terms of

dealing with some aspects of licensing and regulation. The proposed amendments will enable the Authority to effectively regulate the sector in accordance with market and technological trends.

- 2.5. In this review, POTRAZ recognises that consumer and business' reliance on telecommunication services has increased significantly over the past few years. As a result, demands and expectations for reliable and better quality telecommunication services have gone up. The proposed amendments seek to put in place a suite of consumer protection measures to safeguard consumer interests through a dedicated platform.
- 2.6. More importantly, the proposed amendments are in line with the thrust of the National Information Communication Technology (ICT) Policy, which seeks to create an enabling policy and regulatory environment for the growth of the ICT sector in order to enable national socio-economic transformation. The review will align the Act with the objectives of the policy framework. The ICT policy also recognises the challenges brought about by technology and the need to develop effective frameworks for dealing with abuse of postal and telecommunication networks.
- 2.7. There are also several obsolete provisions and some which need alignment with the Constitution and other statutes, which this review process seeks to address.

3. CALL FOR SUBMISSIONS

- 3.1. Accordingly, this paper aims to generate discussion and encourage input from stakeholders. All stakeholders are therefore invited to express their views on the issues under consideration in this paper. In addition, observations on the questions and other issues raised or that should have been raised in the

document may be submitted electronically to Act@potraz.gov.zw and copy to the.regulator@potraz.gov.zw

3.2. Respondents should organise their submissions as follows:

3.2.1. Cover page with company/personal information and contact details

3.2.2. Summary of major points

3.2.3. Comments/views and justification

3.2.4. Conclusion

3.3. Supporting materials may be placed as an annexure to the submissions and comments must be submitted in Microsoft word format. POTRAZ reserves the right to make public all, or parts of any written submissions and disclose the identity of the source. However, respondents may request confidential treatment of any part of the submissions that the Respondent believes to be proprietary, confidential or commercially sensitive. Any such information should be clearly marked and placed in a separate annexure.

3.4. **All comments should be addressed to:**

The Director General

Postal and Telecommunications Regulatory Authority of Zimbabwe

1008 Performance Close

Mount Pleasant Business Park

Mount Pleasant

Harare

3.5. **The deadline for submissions is the 10th of April 2018.**

4. **SUMMARY OF AMENDMENTS**

4.1. The Act [*Chapter 12:05*] was promulgated in 2000 and since then technology and services have evolved at a rapid rate thereby creating gaps in the regulatory framework.

- 4.2. The licensing framework under the current Act, which technology and services based no longer reflects changes in technology and services that has taken place over the past decade. The proposed amendments will also ensure regulatory flexibility.
- 4.3. In order to promote and maintain effective competition between persons engaged in the provision of postal and telecommunication services, there is a need to incorporate elaborate provisions that deal with competition issues.
- 4.4. The amendments are intended to provide elaborate provisions on the licensing of radio frequency spectrum in Zimbabwe, which have not been very clear under the current Act;
- 4.5. In order to adequately provide for the regulation of tariffs by the Authority; the sections that deal with tariff regulation are being revisited to address gaps in the current Act;
- 4.6. The amendments also seek to provide elaborate provisions relating to management of numbers domain names and internet exchange points; and
- 4.7. The current Act does not provide for a sector specific dispute resolution framework which is being proposed under this review process.

5. DETAILS OF PROPOSED AMENDMENTS

The amendments have been categorized into three (3) main aspects namely,

- (a) General amendments,
- (b) Amendments to give the Authority greater flexibility to deal with the fast pace of technological developments, and
- (c) Amendments to improve POTRAZ's oversight over the sector and provide greater clarity on some provisions.

5.1. General amendments

Since 2000, there have been changes to the Constitution and other pieces of legislation which requires alignment of the Act with these changes. In addition, new definitions have been proposed and existing definitions have been recast to clearly articulate the meaning of terms used under the Act. The following changes are being proposed for consideration under general amendments:

- 5.1.1. New definition of terms attached hereto in document marked **Annexure 'I'** are being proposed for inclusion and recasting in order to reflect the true meaning of the terms within the context.
- 5.1.2. A new section 3 outlining the objects of the Act is being proposed to give a broad overview of the underlying purpose of the Act and which can be useful to resolve certain ambiguity or uncertainty on provisions of the Act.
- 5.1.3. Broadening of functions of the Authority with additional functions outlined from 5(j) to (t). In addition, under functions, more clarity has been provided on the role of the Authority with regards to giving technical support and serve as a member of any international organization that the country is signatory to under the Postal and Telecommunications sectors.
- 5.1.4. Section 7(1) is being proposed to increase the composition of the Board from not less than five (5) but not more than seven (7) to not less than nine (9) and not more than eleven (11) for Efficiency purposes given that the Board has 5 Committees and it is important for each Board member to sit in no more than three committees.
- 5.1.5. A new subsection 7(3) to clearly state that half of the Board shall be made up of women. This is in line with Section 17 of the Constitution which calls for 50% representation of women in government institutions or bodies established by an Act of Parliament.
- 5.1.6. In line with the new Corporate Governance thrust the proposal is:

(1) To reduce meetings of the Board from six (6) to four (4) annually in terms of section 6(1) of the Second Schedule to the Act.

(2) to limit the term of office of Board Members to three (3) years and re-appointment for a further one (1) term.

5.1.7. Repeal of sections 105-111 which have become obsolete as these provisions have been overtaken by events.

Comment 1: Do you agree with the proposed general amendments including definitions in Annexure 'I'? What are the suggested alternatives to the proposals?

5.2. Amendments to give the Authority greater flexibility to deal with the fast pace of technological developments in the sector

5.2.1. The Act prescribes the technology specific classes of licenses to be issued by POTRAZ. The current approach does not provide the Authority with the flexibility to swiftly include new types of licenses, despite changes in technology, services and consumer demands. Such a scenario has affected not only innovation but has been a barrier to entry for new market players, thereby, stifling competition and consumer choice to services.

5.2.2. Furthermore, the Postal sector has also evolved over the years with new forms of postal services having emerged and calling for a review of the postal sector licensing framework.

5.2.3. POTRAZ proposes to move from a legislative approach of prescribing technology or service specific classes of licenses under the Principal Act and make provision for technology and service neutral classes of licensees to be made by the Minister from time to time. This approach will give greater flexibility to POTRAZ in dealing with technological developments within the sector. The Act will just provide for broad categories of public and private licences that may be issued under the Act namely; Postal, Telecommunications, Radio frequency/spectrum and Radio station licences. The proposed broad categorisation of licences is provided for under sections 23, 24, 25 and 26 of the proposed amendments.

These sections will empower the Minister to then make regulations outlining specific categories of licences for each broad category covered under the Act.

5.2.4. In accordance with the consultation document published and consulted on with stakeholders in March 2016, POTRAZ intends to review the licensing framework. It is POTRAZ's belief that the development of new services should not be hindered by the existence of barriers, including regulatory barriers. For example, development of new products and services may be held back by regulatory uncertainty given that existing rules were defined based on traditional distinctions of technologies.

5.2.5. POTRAZ's proposal to streamline the existing licensing categories has been carefully considered taking into account technological changes locally and approaches adopted by various countries as well as challenges experienced with each model.

5.2.6. In proposing the new licensing framework, POTRAZ considered the following:

- (a) The need to promote competition in the application market segment and the need to facilitate infrastructure sharing at the infrastructure/ facility market segment.
- (b) The benchmarks conducted on other countries and the challenges experienced in those countries. e.g. Zambia and Botswana who adopted the Two-Tier Licence regime but have now moved or are moving towards Four-Tier Licence regime. One of the major challenge and consideration that has resulted in this shift is the need for a licensing framework that delinks the passive network infrastructure from the active network infrastructure.

5.2.7. The proposed classes of licences that will usher in the new licensing framework are outlined in document marked as **Annexure 'II'**.

5.2.8. From time to time technological developments in the sector call for the re-planning and re-assignment of spectrum. Sections 44 - 48 seek to create greater regulatory flexibility by empowering the Authority to develop a National Radio

Frequency Spectrum Plan to be used in planning, managing and controlling use of spectrum. It also provides for the processes to be followed in the preparation of such a Plan. In addition, the proposed amendments to section 33 (e) seek to empower the Authority to be able to amend licences for purposes of implementing changes in the National Radio Frequency Spectrum Plan.

5.2.9. Currently, the Authority was assigning radio frequency spectrum without necessarily issuing spectrum licences. The proposed amendment in section 25 will empower the Authority to issue spectrum licences from time to time.

5.2.10. In addition, the management of Numbering resources and Subscriber Information is not clearly articulated in the current Act and in order to provide regulatory certainty new sections 40, 41, 42 and 43 have been incorporated to articulate the regulatory role of POTRAZ in relation to these important issues.

Comment 2: The Authority invites comments on:

(a) Proposed amendments to sections 23-26 on removing the technology and service specific categorization of licences from the Act and make provision for a new licensing regime in regulations to be promulgated from time to time.

(b) The proposed classes of licences in in Annexure 'II'.

(c) The proposed amendments in sections 33 (1) (e) to empower POTRAZ to amend licences for purposes of implementing changes to the National Radio Frequency Plan.

(d) The proposed amendments in sections 44-48 in relation to National Radio Frequency Spectrum Planning, assignments, and exemptions.

(e) The proposed amendments in sections 25 to empower POTRAZ to issue Radio Frequency Spectrum licences.

(f) The proposed new sections 40-43 on management of numbering resources and subscriber information.

5.3 Amendments to improve POTRAZ's oversight of the sector

5.3.1. A new **Part IX** is being proposed to deal with postal sector issues only and improve the Authority's oversight on the sector by providing for:

(a) promulgation of new postal licensing regulations taking into account market developments (section 49).

(b) Power of the Authority to develop, regulate and manage post codes and addresses for postal services (section 50).

5.3.2. In addition, a new **Part X and XI** to deal specifically with telecommunication services and systems has been created to provide for:

(a) specific regulations on telecommunication licences (section 60).

(b) specific regulations on national and international roaming (section 62).

(c) management of cases of interference in the sector (section 72).

5.3.3. Furthermore, a new **Part XII** is being proposed to address new aspects of economic regulation within the sector which are not covered under the current Act. These new sections will provide for:

(a) Regulation of competition and prohibition of anti-competitive conduct, save where it is in the national interest to have such conduct (section 73).

(b) Determination of a dominant licensee in the market or a segment of the market and the procedure for such determination and the roles and responsibilities of dominant licensees (section 74, 75 and 76)

(c) Powers of the Authority to investigate any cases of conduct which is anti-competitive and the procedure to be followed thereto (section 78).

(d) Powers of the Minister to make regulations governing competition in the communications sector (section 79).

(e) Prohibition of discrimination in terms of access to telecommunication services (section 80).

(d) Consumer representations on any issues pertaining to provision of communication services, disputes and complaints and the obligations of the Authority with respect to preparing an annual report on issues brought to its attention by consumers and action taken to address the issues. (Section 81)

5.3.4. **A new PART XIV** to comprehensively deal with offences and penalties under the Act is being proposed. These sections provide greater clarity on unlawful use of telecommunication services and systems which is an improvement from the current section 88 which makes reference to unlawful use of a telephone. The Act does not provide for an offence on fraudulent use of telecommunication services or systems which is introduced by section 99 of the Act. Section 106 introduces a provision to deal with general offences. Therefore, some of the offences have been recast taking into account developments in technology as follows:

(a) Unlawful use of telecommunication services and systems (section 98).

(b) Fraudulent use of telecommunication services and systems (section 99).

(c) A general clause to cover general offences and penalties has also been incorporated to increase the Authority's oversight on the sector (section 106).

5.3.5. **A new Part XV** clarifying the role of the Authority in terms of settlement of disputes that may arise within the sector has also been introduced. The Act does not clearly provide for a mechanism or procedure for handling disputes between providers and any member of the public. The proposal is to have a dedicated dispute resolution framework for the Postal and Telecommunications sector to better serve and resolve consumer disputes with service providers systematically and effectively. The intention here is to give consumers access to alternative platform to resolve their disputes.

The dispute resolution framework will also provide the Authority with greater oversight on nature of disputes and how to address these as well as powers of the Authority to give directions. The following sections have been incorporated to deal with the dispute resolution framework:

(a) procedure for referring disputes to the Authority and time frame within which the Authority is to make a determination (section 110).

(b) establishment of a complaints tribunal for settling disputes referred to by the Authority (section 111 and 112).

(c) powers of the Authority to issue directions on any issue pertaining to the sector (section 118).

Comment 3: POTRAZ invites comments on:

(a) Proposal to include section 62 to empower POTRAZ and the Minister to make regulations on national and international roaming.

(b) The proposal to strengthen the Authority's oversight on competition issues in the sector.

(c) The proposal to provide for a Complaints Tribunal for the sector.

(d) The proposal to give greater clarity on directives to be issued by the Authority.

(e) The proposals pertaining to offences and penalties.

6. Conclusion

POTRAZ recognises the need to actively transform the regulatory framework in order to increase competition and innovation as well as improve oversight. Therefore, your comments and views on the proposed amendments will help POTRAZ to effectively regulate the sector.

ANNEXURE I: DEFINITION OF TERMS (New and Recast)

No.	Term	Definition
1	communication	means any communication by way of a telecommunication, radiocommunication or postal service and “communications” shall be construed accordingly.
2	Community centre	means any school, railway station, police station and other location providing a service to the community.

3	Community service centre	means any fixed-line, cellular or satellite telephone that is made available to the general public.
4	Designated licensee	means any entity designated as such by the Minister for the purposes of the provision of reserved services.
5	Directory information service	means a service consisting in the provision by means of a telecommunication service of directory information for the purpose of facilitating the use of a telecommunication service.
6	Disabled person (recast)	means a person who is substantially and permanently handicapped by any physical or mental disability.
7	Dominant licensee	means a licensee who the Authority has determined to be a licensee in terms of section 74 and “ dominant position ” shall be construed accordingly.
8	Emergency	means any event or circumstance resulting from a major accident or natural disaster.
9	Emergency Organisation	means, in respect of any locality, the police and any fire, ambulance or other emergency service.
10	Fund	means the Universal Service Fund established by section 83.
11	Interconnection	means the physical or logical connection of two or more telecommunication networks; (postal as well)
12	International standards	means the standards and recommendations from time

		<p>to time adopted by--</p> <p>(a) the International Telecommunication Union;</p> <p>(b) the International Organisation for Standardisation;</p> <p>or</p> <p>(c) the International Electrotechnical Committee.</p> <p>(d) Universal Postal Union.</p> <p>to which Zimbabwe subscribes by virtue of it being a party to or a member of any international treaty or organisation, as the case may be.</p>
13	Licence (recast)	means any licence issued in terms of this Act.
14	Licensee (recast)	means a person who holds a licence in terms of this Act.
15	Tariff (Recast)	means a tariff of prices, rates, subscriptions or charges levied by a licensee for the provision of communication services in terms of this Act.
16	Market	means a market for any telecommunication service connected with a network, application or postal service.
17	Reserved Service	in relation to an agency, postal or telecommunications service, means any prescribed agency, postal or telecommunications service the provision of which is reserved exclusively to any designated licensee in terms of this Act.
18	Numbering Plan	means a plan referred to in section 41 of numbering in compliance with the ITU standards for the purpose of routing calls between subscribers or between network elements.

19	Private telecommunication service/system	means a telecommunication service or system which is not offered to or provided for members of the public, serving only an entity or entities in the same group of companies and is not connected to or with any telecommunication system established, maintained or worked by a telecommunication licensee.
20	Radio frequency spectrum	means the continuous range of electromagnetic wave frequencies up to and including the frequency of 3000 GHz.
21	Telecommunication	means any communication by way of the transmission, emission or reception of signs, signals, messages, writings, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems.
22	Underserved area	means any area that is not, in the opinion of the Minister formed in consultation with the Authority, adequately provided with communications services.
23	Universal service	means the availability of accessible and affordable to every person of information and communication services, including telecommunication services determined by the Authority as being a service to be provided by a licensee to an area or sector not served or adequately served by the service.
24	SIM	means Subscriber Identity Module for the identification and authentication of a subscriber.
25	SIM CARD	means an electronic communication device that enables a user to transmit and receive communications through the connectivity of such device to a telecommunications network and stores user identity, location, phone number and network

		authorisation date.
26	Vessel	means and includes a ship, boat, air-cushioned vehicle or floating rig, vehicle or container which moves on water or platform used in navigation.

ANNEX II: PROPOSED CLASSES OF LICENCES

The Authority proposes to issue the following classes of licences which form part of the new licensing framework to be promulgated under new licensing regulations:

(a) Unified Telecommunications Licence

The Unified Telecommunication Licence authorises the licensee to provide telecommunication network facilities, network services and application services under one licence. The licence includes, but is not limited to the following licence sub-categories which can also be licenced separately:

- (i) Network Facilities Licence (NFL);
- (ii) Network Services Licence (NSL); and
- (iii) International Gateway Service Licence
- (iv) Spectrum Licence
- (v) Application Services Licence (ASL)

(b) *Network Facilities Licence (NFL)*

A Network Facilities Licence (NFL) authorises a licensee to build, own, manage passive infrastructure that facilitates provision of electronic communications and lease or resale it to other telecommunications operators but specifically prohibits the licensee from providing services directly to end users. The passive telecommunications infrastructure includes:

- (i) Dark optical fibre cables
- (ii) Copper cables
- (iii) Coaxial cables
- (iv) Towers and associated site equipment
- (v) Ducting and associated civil works
- (vi) Radio Communications Stations including Satellite Stations
- (vii) equipment housing
- (viii) commercial power and
- (ix) access roads

(c) *Network Services Licence (NSL)*

A Network Services Licence allows the licensee to operate and maintain public active electronic communication networks infrastructure such as:

- (i) Base stations;
- (ii) Transmission equipment (Microwave, satellite, fibre and copper);
- (iii) Switching equipment; and
- (iv) Access network infrastructure.

in order to offer wholesale services, including but not limited to Public Switched Telecommunication Network (PSTN) services, Public cellular telecommunications services, Public Data Network services, Internet bandwidth Access provision, space segment services, payphone services and Internet Protocol (IP) telephony.

The licensees shall facilitate interoperability and compatibility with other networks including interconnection.

(d) International Gateway Service Licence

International Gateway Services Licence allows the licensee to operate and maintain telecommunications facilities that allows international voice and data traffic to be interchanged between Zimbabwe and other countries. Such facilities include the international switches and or international links.

(e) Spectrum Licence

The Spectrum licence shall authorise the licensee to access and use radio spectrum in the licensed band.

(f) Application Services licence (ASL)

The Application Services Licence authorises the licensee to provide retail end user electronic communication services such as Voice, Video, Data, Messaging services, Mobile Money services among others, using facilities from Network Service Licensees. The Application Service Licence shall also include value added services such as:

- (i) Fixed/mobile Services
- (ii) Fixed Virtual Network (FVN) Service (Mobile, broadband)
- (iii) Mobile Virtual Network (MVN) Services (Mobile, broadband);
- (iv) Value added Service Provisions (e.g. SMS Aggregation, SMS Gateway Operation, and Mobile Banking).

Application Service Licensees shall provide essential and emergency services such as emergency telecommunications services, operator assistance, customer assistance, crime stoppers, child helpline, health help line, fire services, ambulance, anti-corruption; human safety & life among others free of charge.

(g) Special Licence

A Special Licence authorises the licensee to offer specified telecommunication services as the Minister may prescribe from time to time.