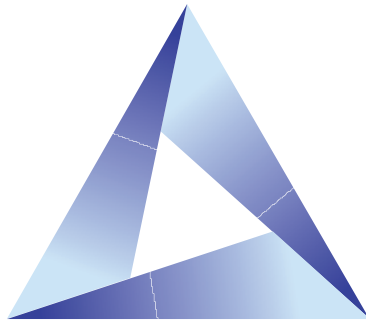




هيئة تنظيم الكهرباء - عمان
AUTHORITY FOR ELECTRICITY REGULATION, OMAN



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APPROPRIATE PERSON CRITERIA

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INTRODUCTION

The Authority for Electricity Regulation, Oman ("the Authority") is the authority established pursuant to Article (19) of the law for the regulation and privatisation of the electricity and related water sector ("the Sector Law"). This document sets out the Appropriate Person Criteria ("the criteria") which the Authority will apply when assessing whether or not to grant a Licence or Exemption to a Person seeking to undertake one or more of the Regulated Activities stipulated in Article (3) of the Sector Law..

The criteria set out in this document have been prepared, are published, will be implemented complied with and kept under review by the Authority pursuant to relevant provisions of the Sector Law, including:

- (a) Article (22) paragraph 18 (regarding the preparation of Appropriate Person criteria);
- (b) Article (88) paragraph 3 (c) (ii) (regarding competitions for rural systems);
- (c) Article (100) (regarding the grant of Licences and Exemptions);
- (d) Article (122) (a) (b) and (c) (concerning matters relating to the revocation of a Transmission Licence or Distribution Licence); and
- (e) Condition 6 of the Power and Water Procurement Licence.

In summary, the Sector Law requires the Authority to ensure that Licences and Exemptions are only granted to persons who have appropriate technical abilities, are solvent and financially sound, and are otherwise qualified to undertake the functions for which they are to be authorised. The criteria established in this document will be applied for the purposes of determining Appropriate Persons.

These criteria should be read in conjunction with guidance for applicants issued by the Authority from time to time that will clarify how the criteria will be applied in particular circumstances. The Authority will be pleased to provide guidance to applicants on a one to one basis.

The criteria should also be read in conjunction with the Authority's published Licence and Exemption application forms which set out the principal sources of information the Authority will use to determine whether an applicant satisfies the Appropriate Person criteria. The criteria will be applied differently in relation to Licences and Exemptions depending upon the extent to which the Regulated Activities exempted might impact the system of a Licensee, or have implications for the health and safety of the public.

In most cases the Authority will seek to issue a decision on whether an applicant satisfies the Appropriate Person criteria within 10 weeks of receiving a full and complete application

form. A longer time period may apply in cases where additional information is required by the Authority to assess the materiality of issues.

The grant (or refusal) of a Licence or Exemption by the Authority may not be taken to imply that assurance is given which may be relied upon by any Person as to the technical or any financial competence or good standing or legal probity of the applicant.

Article (125) of the Sector Law provides a right of appeal against any decision of the Authority relating to the grant or refusal to grant a Licence or Exemption.

Terms defined in the Sector Law shall have the same meanings in this document as they are given in the Sector Law.

THE ASSESSMENT CRITERIA

The Authority will consider all relevant circumstances and act in accordance with its statutory duties

In considering any application for a Licence or Exemption, the Authority will consider all relevant circumstances. Accordingly, whilst the following are criteria which the Authority expects to apply in most circumstances, these may need to be adjusted or supplemented by new criteria to fit the particular circumstances of any given application.

In addition to applying the criteria, and in making an assessment as to whether or not to grant a Licence or Exemption and in determining the conditions to be contained in any Licence or Exemption to be granted, the Authority will consider any representations and objections made to it in response to any notice published by the Authority pursuant to Article (102) of the Sector Law.

The Authority is obliged under Article (22) of the Sector Law to discharge its functions in accordance with the duties specified in that Article. These duties will necessarily inform every decision made in relation to the grant of a Licence or Exemption.

Establishment, good standing and legal power

The Authority will refuse to grant a Licence or Exemption to any applicant which (1) is not properly established (2) does not have full legal power to engage in the Regulated Activities in the Sultanate of Oman or (3) which is not generally of good standing and a fit and proper person to hold a Licence or Exemption.

Accordingly, the Authority will need to be satisfied in respect of these matters before granting a Licence or Exemption. The Authority will look at all relevant circumstances and will rely in particular on the information provided to it by the applicant in the Licence or Exemption application form.

Applicants must, before the grant of any Licence or Exemption, be established in Oman in accordance with the requirements of the Commercial Companies Law and other relevant requirements. Information to be supplied by applicants will include: the Memorandum of Association, Articles of Association, company registration certificates, and other documents relating to the corporate governance of the proposed Licence or Exemption Holder. Please refer to Part 11 of the application form.

Applicants must satisfy the Authority that they have full legal power to undertake the Regulated Activities and generally operate the business with which the application is concerned, in the Sultanate of Oman and in accordance with Oman Law. If the applicant is a new venture, the applicant's sponsor or shareholders must demonstrate both that the applicant has full legal power and that its sponsors or shareholders all have full legal power to invest in the applicant. If the sponsors or shareholders in the applicant are, or are to be, entities established outside Oman, the opinion of an independent firm of

lawyers of international repute (approved by the Authority) confirming this will be required.

The Authority will consider a number of specific matters in relation to the general good standing of the applicant and its sponsors or shareholders and the applicant's fitness to hold a Licence or Exemption. These include:

1. Whether the applicant or its sponsors or shareholders, have previously applied for and been refused a Licence or Exemption, in the Sultanate of Oman or in any other legal jurisdiction;
2. Whether the directors of the applicant, or the directors of its sponsors or shareholders, are subject to criminal proceedings, have been convicted of any criminal offence, or are or have been disqualified from standing as directors in any company or generally in any legal jurisdiction;
3. Whether any key personnel proposed by the applicant to be involved in its business are subject to criminal proceedings, have been convicted of any criminal offence, or are or have been disqualified from standing as directors in any company or generally in any legal jurisdiction;
4. Whether the applicant, or its sponsors or shareholders, have ever been the holder of a Licence or Exemption or analogous legal instrument in any legal jurisdiction which has been revoked;
5. Whether the applicant, or any sponsors or shareholders, in the applicant or any of their respective directors, or any key personnel proposed by the applicant to be involved in its business, have ever been the subject of any insolvency or bankruptcy or analogous proceedings in any legal jurisdiction;
6. Whether the applicant, or any sponsors or shareholders in the applicant, are the subject of any current or pending litigation against them of a material nature; and
7. Whether the applicant, or any of its sponsors or shareholders, have been the subject of any material prosecutions or enforcement orders made by any environmental agencies, local authorities, safety authorities, economic or technical regulator or any analogous body in any legal jurisdiction.

Full and proper application

The Authority will not grant a Licence or Exemption in respect of which (1) any applicable fees have not been paid by the applicant or (2) the Authority is not satisfied a full and proper application has been made or (3) the Authority believes that information with which it has been supplied is false or calculated to be misleading or if in any way full disclosure has *not been made to it*. Article (132) of the Sector Law makes it an offence to submit information when applying for a Licence or Exemption that the applicant knows to be inaccurate and that is intended to mislead the Authority.

Compliance with Sector Law and Licences

The Authority will not grant a Licence or Exemption to a person if to do so (or if the undertaking by that person of the Regulated Activity concerned) would necessarily cause an infringement or contravention of the Sector law or a relevant Licence or Exemption.

The capabilities of the applicant to comply with its duties as a holder of a Licence or Exemption, should the application be successful

The Authority will not grant a Licence or Exemption unless it is satisfied that the applicant is fully capable of complying with obligations arising from the Sector Law and a relevant Licence or Exemption, if the application should be successful.

The Authority will, as a first step need to be satisfied that the applicant fully understands the functions powers and duties which it would have upon grant of the Licence or Exemption.

The Authority will also expect to be satisfied that the applicant has put in place, or will before the grant of the Licence or Exemption have put in place, policies and procedures sufficient to comply fully with those requirements.

The Authority will not grant a Licence or Exemption unless it is satisfied that the applicant will have entered into or acceded to all relevant industry agreements, codes and other arrangements which will be the subject of Conditions of a Licence or Exemption.

The Authority will not grant a Licence or Exemption until it is satisfied that those codes and arrangements have been established in a manner which will comply with the Licence or Exemption upon its grant.

Finally, the Authority will not grant a Licence or Exemption until it is satisfied that the applicant will, before the commencement of the Licence or Exemption, have sufficient appropriately qualified personnel working within its business or otherwise available to it to meet the requirements of the Sector Law and the Licence or Exemption to be granted.

Financial competence

The Authority will not grant a Licence or Exemption unless it is satisfied *that the applicant has, or* will before the commencement of the Licence or Exemption have sufficient financial

competence and be of sufficient financial standing to undertake the Regulated Activities and otherwise operate the business which will be the subject of the Licence or Exemption.

Where the applicant is a new venture, this will depend in large part on (1) the Authority's assessment of the financial standing of the applicant's shareholders and (2) the robustness of the applicant's business plan. The applicant and, where relevant, its sponsors or shareholders must be solvent.

There is no absolute standard for what constitutes appropriate financial standing and different circumstances may require different thresholds. Similarly, different thresholds may be appropriate for different Regulated Activities.

Before the grant of a Licence the Authority will when assessing the 5-year Business Plan provided pursuant to Part 11, para 4 of the application form consider whether or not the applicant has:

- Sufficient financial resources to carry out the Regulated Activities proposed in its business plan; and

- Sufficient financial resources and standing to enable it to raise funds in the future to make any investments in its business or systems which are known to be required at the time of the commencement of the Licence or Exemption or which might reasonably be expected to be required in either case to meet the obligations under the Sector Law or the proposed Licence or Exemption; and

- Any known exposure to any circumstances outside the business of undertaking the relevant Regulated Activities which might prevent it from meeting its obligations under the Sector Law or its Licence or Exemption.

Technical competence

The Authority will not grant a Licence or Exemption unless it is satisfied that the Applicant has, or will by the commencement of the Licence or Exemption have, sufficient technical competence to discharge its functions.

The Authority will wish to be satisfied that the applicant fully understands the technical requirements it will need to meet in order to satisfy its obligations as the holder of a Licence or Exemption and that it has within its business or available to it sufficient technical resources and personnel, of suitable qualification, to enable it to do so. In considering this issue the Authority shall have particular regard to the information provided pursuant to Part 11 of the Licence and Exemption application forms.

Laws of Oman

Pursuant to Article 80 of the Basic Law of the Sultanate of Oman (promulgated by Royal Decree 101/90), the Authority will not grant a Licence if to do so would result in a contravention

of the provisions of any laws and decrees, or any agreements which constitute part of the laws of the Sultanate of Oman.

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