



هيئة تنظيم الخدمات العامة
Authority for Public Services Regulation

Market Operator Separation Requirements

10 March 2021

1. Objective

Unless otherwise defined in this document, defined terms shall have the meanings ascribed to them in Oman Power and Water Procurement Company SAOC's (**PWP**) licence as issued by the Authority for Public Services Regulation (**Authority**) and amended from time to time (**Licence**).

Considering that PWP will be undertaking the Market Operator Functions as well as procuring power from the Pool (referred to as Power Procurer in the Market Rules Document), this document aims to ensure that any perceived or actual conflict of interest between PWP's two (2) roles under the Market Rules is avoided through implementation of Condition 14A of the Licence.

In accordance with Condition 14A (3) of the Licence, this document sets out the Market Operator Separation Requirements as issued by the Authority, and identifies the details of the administrative, managerial, operational, financial, system and/or other requirements for the proper separation of the Market Operator to ensure compliance with the Licence and the Market Rules Document and ensure that the Market Operator Functions are properly discharged by PWP (**Separation Requirements**).

This document must be read in line with OPWP's licence and the Market Rules, as amended from time to time and reviewed periodically to ensure that they remain consistent.

2. Separation Requirements

- 2.1. PWP shall take such steps as shall secure that the Market Operator shall be maintained financially, operationally and physically separate, to the extent agreed with or directed by the Authority from time to time, from all other businesses of the PWP and information and access barriers shall be applied between the Market Operator and all other businesses of PWP in accordance with these Separation Requirements.
- 2.2. PWP shall ensure that it has complied with Condition 14(A) and these Separation Requirements no later than **20 May 2021** and shall report to the Authority in relation to such compliance annually in accordance with Condition 14A (2).
- 2.3. In these Separation Requirements,

"**Market Operator Staff**" means the staff of the PWP engaged in the business of the Market Operator;

"**Non-Market Operator Staff**" means the staff of the PWP engaged in the business of the PWP other than the business of the Market Operator;

"**Power Procurer**" shall have the meaning set out in the Market Rules Document; and

"**PWP Management**" shall mean the Board of Directors (and any sub-committees) and Chief Executive Officer of PWP.

2.4. Except as provided in paragraph 2.5 below:

- 2.4.1.No member of the Market Operator Staff shall be engaged in any business of PWP other than that of the Market Operator.
- 2.4.2.No member of the Market Operator Staff shall have any interest or be engaged or involved in the business of any other Pool participant.
- 2.4.3.No member of the Non-Market Operator Staff shall directly or indirectly participate in the formulation or making of, or influence or attempt to influence, the commercial policy or commercial decisions of the Market Operator.
- 2.4.4.No member of the Non-Market Operator Staff shall directly or indirectly provide any service to, or enter into any contract with, the Market Operator except to the extent permitted by these Separation Requirements as set out below.
- 2.4.5.No member of the Non-Market Operator Staff shall have electronic access to the information technology (IT) system used by the Market Operator in discharging its Market Operator Functions except to the extent permitted under the Market Rules.
- 2.4.6.The Market Operator Staff shall not share any communication or electronic networks and/or systems with the Non-Market Operator Staff, unless restrictions are in place to prevent Non-Market Operator Staff having access to those electronic networks and/or systems (or parts of them, where relevant) used by Market Operator (and vice versa).

2.5. Nothing in these Separation Requirements:

- 2.5.1.shall preclude the operation of a PWP wide intranet system, communication or other electronic network provided that no Market Operator Sensitive Information shall be accessible by the Non-Market Operator Staff;
- 2.5.2.prohibits the application of general business policies to the whole of the PWP's business nor the provision of advice or guidance on the same (unless those policies relate specifically to the business of the Market Operator);
- 2.5.3.prohibits the shared provision to the business of the Market Operator and the Power Procurer of:
 - a) legal, regulatory, company secretarial, human resources, internal audit, taxation, finance and accounting, property and facilities management, insurance, corporate affairs, public relations and procurement services including use of internal tender committees, or services relating to health and safety and the environment provided directly or indirectly by the Non-Market Operator Staff;
 - b) IT system to the extent permitted in paragraph 7 of these Separation Requirements;

- c) planning and economics to the extent permitted in paragraph 3.6 of these Separation Requirements;
- d) such other services as may be approved from time to time by the Authority; and
- e) PWP Management;

2.5.4. prohibits the engagement of any external advisers by the Market Operator which is engaged or has been engaged by PWP provided that such advisor:

- a) was engaged by PWP in compliance with the Tender Law and the Sector Law;
- b) provides a declaration confirming that there exists no actual or potential conflict of interest for such advisor or any of its personnel, formal associates and affiliates to the Market Operator or Power Procurer (as may be applicable);
- c) to the extent any actual or potential conflict of interest exists, such circumstances must be disclosed in such declaration;
- d) provides details of the processes and policies put in place by the advisor to manage conflicts of interest. If applicable, details of the management of conflict of interest undertaken by any professional bodies to which the advisor is a member should also be provided;
- e) immediately informs PWP if any relationship should subsequently come into existence, which may impair the adviser's ability to perform the services in the best interests of the Market Operator or Power Procurer (as may be applicable); and
- f) implements any steps and actions requested by PWP to ensure that no actual conflict of interest exists including but not limited by ensuring separation of advisor personnel in performance of the services, implementing appropriate information barriers and restricted access; and

2.5.5. shall preclude the use by Market Operator of the PWP's appointed external auditors to review its financial accounts and consolidate its accounts.

2.6. PWP must ensure compliance with section C.3.2.2 of the Market Rules Documents.

3. Market Operator Sensitive Information

In implementing Condition 14A (6), PWP shall ensure and undertake the following:

- 3.1. all board members and staff must ensure not to seek or access Market Operator Sensitive Information except as per permitted in these Separation Requirements;
- 3.2. The Market Operator Sensitive Information shall only be disclosed *on a strictly need to know basis* in order to allow the Market Operator to discharge its Market Operator Functions and comply with the Market Rules.

- 3.3. PWP must ensure that its board members, staff and any advisor appointed by it, who become aware (on a strictly need to know basis) or have access to Market Operator Sensitive Information as permitted under the Separation Requirements, shall ensure maintaining confidentiality of such data.
- 3.4. All board members and staff shall be required to undergo annual awareness sessions on the importance of these Separation Requirements and must sign an annual declaration undertaking to comply with the confidentiality and other provisions of the Separation Requirements and retrospectively confirming such compliance for each preceding year.
- 3.5. Any communication or correspondence containing Market Operator Sensitive Information that is required to be sent to market participants under the Market Rules or otherwise shall only be prepared and finalised by a member of the Market Operator Staff provided always that such Market Operator Staff shall be entitled to seek review and incorporate the comments of the PWP Management concerning such communication or correspondence and such persons authorised to have access to such Market Operator Sensitive Information as permitted by these Separation Requirement.
- 3.6. The planning and economic function within PWP is permitted to provide services related to the calculation of certain parameters and modelling, as required by the Market Operator, which are set out below:
 - 3.6.1. annual process for determining scarcity parameters;
 - 3.6.2. other parameters required under the Market Rules;
 - 3.6.3. assistance in modelling for market behaviour, surveillance and monitoring;
 - 3.6.4. modelling for the purpose of assessing Market Rules modification proposals;
 - 3.6.5. any other modelling studies related to the development of the spot market; and
 - 3.6.6. any services or advices required to comply with directions from the Authority from time to time.
- 3.7. Market Operator Sensitive Information may be disclosed to other businesses of PWP, only to the extent necessary, for PWP to discharge its statutory duties and objectives as set out in the Sector Law and the Licence.

4. Personnel

- 4.1. The PWP Management shall be responsible for ensuring PWP's compliance with the Separation Requirements.
- 4.2. In the event of perceived, potential or actual conflict of interest between the Market Operator and Power Procurer, the Chief Executive Officer shall raise the issue to the Authority for guidance and notify the Authority of the measures and steps taken or intended to be taken to address such perceived or actual conflict.
- 4.3. The Chief Executive Officer is responsible to report annually to the Authority on the operation of the Separation Requirements as set out in paragraph 2.2, including the points listed in paragraph 2.4 above.

In undertaking this obligation, the Chief Executive Officer may appoint personnel externally or assign existing PWP personnel with the responsibility to monitor and report on:

- 4.3.1. the instances of actual or perceived conflict of interest which have taken place between the Market Operator and the Power Procurer;
- 4.3.2. the procurement of external advisors and any actual or perceived conflict of interest arising from the procurement of their services and any steps taken on the matter;
- 4.3.3. any failures to comply with Condition 14(A) or these Separation Requirement; and
- 4.3.4. any other matter requested from the Authority from time to time.

Such personnel shall be authorised to have access to all information including but not limited to Market Operator Sensitive Information to ensure proper discharge of PWP's obligations as set out in these Separation Requirements.

- 4.4. No member of the PWP Management or the Non-Market Operator Staff shall be eligible to chair or act as a secretary to the Market Advisory Committee to be established under the Market Rules as specified in section C.5 of the Market Rules Document. Notwithstanding this and to the extent permitted by the Separation Requirements, the Market Advisory Committee may create working groups pursuant to section G.4.3.5 of the Market Rules Document which may consist of the Non-Market Operator Staff.
- 4.5. The Authority acknowledges that PWP has established an internal technical committee consisting of employees with various expertise that reviews legal, technical and commercial matters and provides its view to PWP Management or the relevant procurement body as part of the Power Procurer procurement process. If PWP wishes to establish such committee to assist the Market Operator in undertaking its Market Operator Functions, then a wholly separate committee shall be established. However, the committees may have common members among them provided that such members are permitted to provide services to both Power Procurer and Market Operator under these Business Separation Requirements, specifically as set out in paragraph 2.5.3 above.

5. Accounts

The Market Operator is considered a Separate Business. To ensure compliance with accounting and reporting separation, PWP shall comply with Condition 14 of the Licence.

6. Physical Separation

- 6.1. The Market Operator department shall be physically separated from the Non-Market Operator staff within PWP and PWP shall ensure that access is limited to those authorised only.
- 6.2. Any hard or electronic documentation of the Market Operator is filed and stored separately, with strict access to those authorised only.

7. IT systems

- 7.1. The IT system used by the Market Operator to discharge its Market Operator Functions shall be stored and maintained separately from the rest of the information systems and networks used by PWP with strict access to those authorised only. Such IT system shall only be accessible by the Market Operator network and a special certificate will be installed in each hardware machine to enable connection to the IT system using a designated username and password. The Power Procurer (and other market participants) shall have access to the Market Operator IT system to the extent permitted in the Market Rules Documents.
- 7.2. PWP must ensure that only the Market Operator Staff (or any third party appointed on its behalf) is responsible for operating and maintaining the IT system used by the Market Operator to discharge its Market Operator Functions, which must be separate from those operating and maintaining the IT system used by PWP in undertaking its other businesses.
- 7.3. General systems such as office PCs, laptops, HR systems, Oracle, any other IT system which is not a market system, may continue to be provided (including support and maintenance) by Non-Market Operator Staff, Nama Group or any appointed third party.

8. Legal Separation

- 8.1. At the date of issuance of the Separation Requirements and considering the requirements set out above, a full legal separation between the Market Operator and the Power Procurer is not required.
- 8.2. Notwithstanding this, Condition 14A (4) of the Licence allows PWP with the prior approval of the Authority, to establish such separation by vesting the business of the Market Operator in a wholly owned subsidiary company of the PWP.

9. Breaches

- 9.1. Any breaches, or suspected breaches, to these Separation Requirements and Condition 14(A) by any personnel shall immediately be reported to the Chief Executive Officer of PWP.
- 9.2. The Chief Executive Officer shall immediately investigate, through establishment of an investigation committee of competent personnel (if required), such breach, take such steps necessary to remedy the breach to the best possible extent, mitigate any adverse consequences resulting from such breach and implement the steps necessary to limit the occurrence of any subsequent breaches of similar nature. An investigation report for each incident shall be prepared setting out all the details referred to in this paragraph 9.2.
- 9.3. Any breaches to these Separation Requirements and Condition 14(A) shall immediately, and in any event no later than three (3) days from the date of becoming aware of the incident, be reported to the Authority.

The investigation report referred to in paragraph 9.2 above shall be provided to the Authority once it has been completed and finalised, in addition to any other relevant information requested by the Authority.

- 9.4. Any person that negligently or willfully breaches these Separation Requirements and Condition 14(A) shall be subject to disciplinary action as set out in the Labour Law including but not limited to termination of employment in accordance with Article 40 of the Labour Law.

10. Miscellaneous

- 10.1. PWP shall have the right to propose any amendments to the Separation Requirements for the Authority's approval. Notwithstanding this, the Authority, following consultations with PWP, reserves the right to amend the Separation Requirements as may be necessary from time to time.

- 10.2. In the event of contravention or inconsistency between the provisions, or interpretation, of the Separation Requirements with the Licence and/or the Market Rules Document, then the order of prevalence shall be:

10.2.1. The Licence

10.2.2. Separation Requirements

10.2.3. Market Rules Document

- 10.3. Nothing in these Separation Requirement shall prevent PWP from complying with the Market Rules Document.

- 10.4. The Separation Requirements shall be publicly published on, and made available, on the Market Operator website, including any revisions or amendments to this document, in accordance with Condition 6B (3) of the Licence.

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