

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

**GOVERNMENT**

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**DECREE-LAW No. 12/2003**

**Of 29 July**

**ESTABLISHING THE COMMUNICATIONS REGULATORY AUTHORITY AND  
APPROVING THE STATUTES THEREOF**

The 1<sup>st</sup> Constitutional Government of Timor-Leste has undertaken, among its goals, to organize and regulate the telecommunications and postal services sector.

From among the structuring measures for attaining this goal five are pointed out: the drafting of a Basic Law on Postal Services; the establishment of a Public Postal Company; the drafting of a Basic Law on Telecommunications; the concession of the public telecommunications service to a private operator for a limited period of time, under the BOT regime; and, in order to ensure an adequate regulation and supervision of this sector, the establishment of a Communications Regulatory Authority (ARCOM).

The present Decree-Law is specifically meant to materialise the last of the aforementioned actions.

In addition to intervening in the telecommunications sector, ARCOM is also the postal services regulatory entity.

Added to the above-mentioned responsibilities are, inter alia, those of guaranteeing the existence and availability of a universal communications service, of promoting consumer awareness, of ensuring the numbering management in the communications sector, involving resource allocation and monitoring, of granting titles for the exercise of postal and telecommunications activities, of monitoring compliance with the law and regulations applicable to the sector, of arbitrating and resolving disputes arising within the communications area, of assisting the Government, at the request of the latter, or on its own initiative, in defining strategic guidelines and general policies on communications, as well as of issuing opinions and drafting laws in the communications field.

It becomes imperative to consolidate those responsibilities into a single text, with a view to accomplishing such responsibilities and outlining the extent thereof, in order to contribute to a full and integrated understanding of ARCOM's role and to strengthen its cohesion, as the communications regulatory and supervisory authority.

The full accomplishment of the responsibilities entrusted to ARCOM makes it a true communications regulatory and supervisory entity, which requires, among other things, a rigorous identification of its powers and procedures as an authority. In addition to issuing

individual and concrete binding acts and making concrete recommendations, initiating and prosecuting cases and punishing offences that fall within its competency, monitoring compliance with the laws and regulations applicable to the communications sector, watching the activity by entities under its supervision and the operation of the telecommunications market, ARCOM shall issue such regulations as deemed indispensable to the fulfilment of its functions.

In reality, the technical specificity of the communications sector, compounded by the ongoing innovations taking place therein, demands the existence of a wide space for the regulatory authority to intervene in the ordering of this sector. This is a normative power that rests on the recognition that ARCOM alone, as a result of its technical specialisation and accumulated knowledge, is prepared to respond in an expeditious and flexible fashion to the ongoing needs and changes in the sector, especially in the telecommunications market.

The need to fit the sector in with the innovations brought about by the ongoing technical progress and globalisation also demand that the communications regulatory entity be supplied with tools that will give it greater flexibility, not only on the legal and material plane, but also at the level of the economic and financial regime and of contracts for the procurement of goods and services.

In this sense, the legal regime adequate to ARCOM's functions shall be a mixed regime combining public law prerogatives, indispensable to the exercise of its powers as an authority, with private law flexibility and efficiency, as ARCOM intervenes in an ever-changing sector.

Finally, without prejudice to a possible evolution of the regulatory framework applicable to the telecommunications and audiovisual sectors towards their convergence, the present Decree-Law also stipulates a modern and effective regulatory matrix, as well as a new flexible organisational model, consistent with the goals of the Government programme in terms of State reform.

Thus, pursuant to section 116(d) of the Constitution, the Government enacts the following:

### **Section 1 Establishment and nature**

1. The Communications Regulatory Authority, hereinafter referred to as ARCOM, a public institution vested with legal personality, administrative and financial autonomy, and property of its own, is hereby established.
2. ARCOM is governed by the present Decree-Law and by its statutes, attached hereto as an integral part of the present Decree-Law.

### **Section 2 Dissolution of the Directorate of Telecommunications, Ministry of Transport, Communications and Public Works**

The Directorate of Telecommunications, Ministry of Transport, Communications and Public Works, is hereby dissolved.

### **Section 3 Property**

1. ARCOM' property comprises the universality of movable and immovable assets and rights that, at the date of entry into force of the present Decree-Law, happen to be vested in the Directorate of Telecommunications, Ministry of Transport, Communications and Public Works.
2. A list of assets and rights which comprise ARCOM's initial property shall be included in an inventory to be submitted, within 90 days from the date of entry into force of the present Decree-Law, to the Minister of Planning and Finance and to the Minister of Transport, Communications and Public Works, for approval.
3. ARCOM shall promote, with the competent registry offices, the registration of the assets and rights it owns and that are legally subject to it.
4. For all legal purposes, including those of registration, the list referred to in subsection 3.2 shall, upon approval by a joint instruction under the terms established in the said subsection, be considered as a title of acquisition, in and of itself, of the assets held by ARCOM.

### **Section 4 Personnel**

1. Staffing table employees of the Directorate of Telecommunications on an administrative employment contract of unlimited duration shall be immediately integrated into ARCOM, retaining the same legal and professional status, notably as to the nature of their contractual link and retirement regime.
2. The employees of the Directorate of Telecommunications not covered by the preceding subsection shall be moved into ARCOM, retaining the same legal and professional status.

### **Section 5 Senior management and staff on temporary secondment**

1. Incumbents of leadership and managerial positions who are members of the Directorate of Telecommunications senior management shall remain in office until the appointment of the ARCOM Board of Directors.
2. The ARCOM Board of Directors shall be appointed within 90 days from the date of entry into force of the present Decree-Law.

## **Section 6 Equation with the State**

ARCOM shall, in the exercise of its responsibilities, assume the rights and obligations vested in the State by the applicable legal and regulatory provisions, notably in regard to:

- (a) Coercive levy of fees, service income and other dues;
- (b) Protection of its facilities and personnel;
- (c) Public utility of the communications services, their monitoring, definition of their respective offences and imposition of relevant penalties;
- (d) Electromagnetic monitoring and notifications, imposition of penalties, and all other acts resulting therefrom.

## **Section 7 Exemptions**

ARCOM is exempt from fees, charges or emoluments of any nature in court proceedings or notarial acts to which ARCOM is a party.

## **Section 8 Provisional norms**

1. The norms and rules of procedure in force within the Directorate of Telecommunications, insofar as they are not inconsistent with the present Decree-Law and the attached Statutes, shall remain valid;
2. In the budgetary year 2002/2003, the budget apportioned to the Directorate of Telecommunications, Ministry of Transport, Communications and Public Works, is considered, for all legal purposes, to have been allocated to ARCOM.
3. Pending the establishment of the High Administrative, Tax and Audit Court, the competencies vested in this Court by the attached Statutes shall be exercised by the Court of Appeal.

## **Section 9 Revocatory clause**

1. Laws and regulations, in the field covered by this Decree-Law, which have been brought into the domestic legal order under the terms as established by section 165 of the Constitution, are hereby repealed, except the provision of the following subsection:
2. UNTAET Regulation 2001/15 is hereby repealed insofar as it is inconsistent with any provision of the present Decree-Law.

## **Section 10**

## **Entry into force**

The present Decree-Law shall enter into force on the day subsequent to its publication date.

Approved by the Council of Ministers, on 12 March 2003, under the provision of section 116(d) of the Constitution.

The Prime Minister

**[Signed]**

(Mari Bim Amude Alkatiri)

The Minister of Planning and Finance

**[Signed]**

Maria Madalena Brites Boavida

The Minister of Transport, Communications and Public Works

**[Signed]**

(Ovídio de Jesus Amaral)

Promulgated on 22 May 2003. -

To be published.

The President of the Republic

**[Signed]**

(Kay Rala Xanana Gusmão)

ANNEX  
(as referred to in subsection 1.2)

**Statutes of the Communications Regulatory Authority**

**CHAPTER I  
General provisions**

**Section 1  
Legal nature and purpose**

1. The Communications Regulatory Authority, referred to in short as ARCOM, is a public corporate person, vested with administrative and financial autonomy, and property of its own.
2. The purpose of ARCOM is to regulate, supervise and represent the telecommunications sector, under the terms as established by the present Statutes and by law.

**Section 2  
Seat and branches**

1. Dili is the seat of ARCOM.
2. ARCOM may have branches, agencies or any other forms of representation within the national territory.

**Section 3  
Legal regime**

ARCOM is governed by the provisions of the present Statutes, by legal provisions that are specifically applicable to it and, subsidiarily, by the legal regime of public corporate entities, with the exception of the specificities provided in the present Statutes, as well as rules inconsistent with the non-business nature of the former.

**Section 4  
Independence**

ARCOM is independent in the exercise of its functions, in accordance with the law, without prejudice to the guiding principles of the communications policy set by the Government, under the terms established by the Constitution and by law, and of the acts subject to ministerial supervision, under the terms as established by law and in the present Statutes.

**Section 5  
Principle of speciality**

1. ARCOM's legal capacity covers the rights and obligations necessary for the fulfilment of its purpose.
2. ARCOM may not carry on activities or use its powers outside the remit of responsibilities or devote its resources to purposes other than the ones that have been entrusted to it.

## **CHPATER II**

### **Responsibilities and powers**

#### **Section 6 Responsibilities**

1. ARCOM's responsibilities are:

- (a) To assist the Government, at the request of the latter or on its own initiative, in defining strategic guidelines and general policies for the communications sector and the activity by communications operators, as well as in issuing opinions and drafting legislation in the field of communications;
- (b) To ensure the regulation and supervision of the communications sector;
- (c) To ensure the management of the electromagnetic spectrum, involving the planning and apportionment of spectral resources and the supervision thereof, as well as to ensure co-ordination between civilian and military communications;
- (d) To ensure the fulfilment of obligations inherent in the universal communications service;
- (e) To grant communications operators access to the networks, in conditions of transparency and equality, under the terms as established by law;
- (f) To promote competitiveness and development in the communications market, notably within the context of the convergence of communications, of the media and of the information technologies;
- (g) To co-ordinate the application of the competition law in the communications sector with the competent entity;
- (h) To protect consumer interests, especially those of users of the universal service, in conjunction with the relevant entities, promoting, namely, consumer awareness, ensuring the dissemination of information regarding the public use of communications;
- (i) Grant titles for the exercise of the postal and telecommunications activity;
- (j) To conduct compliance evaluation of equipment and materials, as well as to define their trading requirements;
- (k) To promote technical normalisation within the communications sector and related areas, in consultation with other organisations;
- (l) To promote public consultation and expression of interest procedures, notably in the area of introduction of new services or technologies;

- (m) To ensure the application of and compliance with the applicable laws, regulations and technical requirements within the remit of its responsibilities, as well as compliance, on the part of the communications operators, with the provisions of their respective licensing titles for the exercise of the activity or concession contracts;
- (n) To participate in the overall development strategy for the communications sector, namely within the context of convergence of telecommunications, of the media and of the information technologies;
- (o) To collaborate in the definition of a civil emergency planning policy for the communications sector;
- (p) To arbitrate and settle disputes arising in the area of communications, under the terms as established by law;
- (q) To ensure the technical representation of the Timorese State in similar international organisations, unless otherwise determined;
- (r) To ensure the conduction of studies in the area of postal communications and telecommunications, as well as the execution of projects aimed to expand public access to information and knowledge, namely where these involve introducing advanced networks and services, reducing regional asymmetries, adopting measures applicable to citizens with special needs, either directly or in the form of support to public or private entities;
- (s) To perform such other functions as may be entrusted to it by law.

2. It also incumbent upon ARCOM:

- (a) To collaborate with other public or private entities in promoting scientific research applied to communications, as well as in publicising the sector nationally and internationally;
- (b) To keep abreast of the activity by related regulatory entities and foreign experience in communications regulation and to establish relations with other regulatory entities, as well as with international organisations, at the technical level;
- (c) To publicise the applicable regulatory framework and its competencies and initiatives, as well as the rights and obligations of communications operators and users;
- (d) To provide technical assistance to bodies and services entrusted with monitoring the process of establishing and managing the integrated emergency communications network.

## **Section 7**

### **Advisory competency**

1. ARCOM shall opine on such matters falling within the remit of responsibilities as may be submitted to it by the National Parliament or by the Government and may, on its own initiative, suggest or propose measures of a political or legislative nature on matters relating to its responsibilities.

2. ARCOM shall respond not later than 60 days to inquiries addressed to it by concessionaires or licensed entities on matters falling within its competency.



## **Section 8**

### **Collaboration with other authorities**

ARCOM shall co-operate with the competent authorities and services in all that is necessary for the fulfilment of its functions.

## **Section 9**

### **Regulatory and supervisory procedures**

Within the remit of its regulatory and supervisory competencies, ARCOM may adopt, under the terms as established by law, the following procedures:

- (a) To draft legislation;
- (b) To draft regulations where provided by law and where these are deemed indispensable for the exercise of its responsibilities;
- (c) To monitor the activity by entities subject to its supervision and the functioning of the communications markets;
- (d) To monitor compliance with the law and regulations applicable to the communications sector;
- (e) To approve acts provided by law;
- (f) To make registrations provided by law;
- (g) To institute and prosecute condemnatory proceedings and punish offences that fall within its competency;
- (h) To give orders and make concrete recommendations;
- (i) To disseminate information;
- (j) Such other acts as provided by law.

## **Section 10**

### **Condemnatory proceedings**

1. It is incumbent upon ARCOM to prosecute and punish administrative offences against the law and regulations the implementation or supervision of which falls within its competency, as well as those resulting from failure to comply with its own determinations.

2. Condemnatory proceedings respect the principle of hearing the parties concerned, of adversary system and other fundamental principles of Administrative Law and, where this is the case, of the regime of offences.

3. It is also incumbent upon ARCOM to notify the competent authorities of offences that may come to its knowledge in the exercise of its functions.

## **Section 11**

### **Regulatory procedure**

1. ARCOM regulations shall observe the principle of legality, of necessity, of clarity, of participation and of publicity.

2. Prior to approving or altering any regulation the issue of which falls within its competency, ARCOM shall notify the relevant Minister, concessionaires or licensed entities, operators, and other registered service providers, as well as consumer associations of a generic or specific interest in the area of communications, granting them access to the respective texts and making these available on its website.
3. For the purposes of the preceding subsection, persons concerned may make comments and put forward suggestions within 30 days.
4. The entities contemplated in subsection 11.2 above may have access to every suggestion that may have been put forward under the terms as established by this section.
5. The preamble to a regulation shall substantiate the decisions made, with the necessary reference to criticisms or suggestions that may have been made in connection with its draft.
6. ARCOM regulations containing external effectiveness norms are published in the Official Gazette and made available on the respective website, without prejudice to their publication by other means deemed more adequate to a given situation.
7. ARCOM regulations, which simply aim to regulate procedures of an in-house nature of one or more categories of service operators or providers, are referred to as Instructions, the respective addressees, where identifiable, are given notice thereof and such regulations enter into force five days after the notice has been served or on the date mentioned therein.

## **Section 12**

### **Exercising supervision**

1. Under the terms as established by law, ARCOM may, in the fulfilment of its functions, conduct inquiries and investigations in any entity or facilities.
2. For the purposes of the preceding subsection, ARCOM may credential especially qualified and competent persons or entities.

## **Section 13**

### **Obligations of operators**

1. Concessionaires or licensed entities, operators and all other registered service providers shall extend to ARCOM all such co-operation as the latter may request them in order to fully perform its functions, notably requested information and documents, which shall be provided not later than 10 days, except where a shorter deadline is set on grounds of urgency.
2. ARCOM may publicise information so obtained, whenever relevant to the regulation of the sector, except where such information is of a sensitive nature to the entities concerned.

3. ARCOM may disclose the identity of operators subject to an investigation process, as well as the matter to be investigated, namely where initiated as a result of a complaint.

#### **Section 14**

##### **Secrecy**

1. Incumbents of ARCOM organs, their respective agents, qualified persons or entities duly credentialed, as well as occasional or permanent employees, are especially obligated to keep secrecy of facts that may come to their knowledge exclusively while performing their duties.

2. Breach of the duty of professional secrecy contemplated in the preceding subsection is, in addition to the inherent disciplinary and civil liability, punishable under criminal law.

#### **Section 15**

##### **Co-operation with other entities**

ARCOM may establish co-operation or partnership relations, within the scope of its responsibilities, with other public or private entities, whether national or foreign, provided such relations do not imply either delegating or sharing its regulatory competencies.

#### **Section 16**

##### **Consumer and user complaints**

1. ARCOM may inspect, on a regular basis, registers of complaints and claims filed by consumers and other users to concessionaires or licensed entities, which shall keep an appropriate register thereof

2. ARCOM may order an investigation into consumer and user complaints or claims filed to concessionaires or licensed entities or directly to the regulatory entity, provided these fall within the scope of its competencies.

3. ARCOM may also recommend or determine to concessionaires or licensed entities measures required for redressing fair user complaints.

#### **Section 17**

##### **Fulfilment of legal and contractual obligations**

1. In the event of failure to fulfil the obligations inherent in the provision of the universal service, or legal and contractual obligations in general, or failure to meet quality standards as set by regulation, ARCOM may either recommend or determine to concessionaires or licensed entities the adoption of the relevant corrective measures.

2. In the event of failure to execute defined actions or to meet the timeframe set for their execution, ARCOM may, as the case may be, take or propose that the Government should take condemnatory measures contemplated in connection with breach of law or failure to fulfil a concession contract or the conditions of a licence.

## **Section 18 Arbitration**

1. ARCOM shall foster voluntary arbitration for the resolution of disputes of a commercial or contractual nature between concessionaires and entities licensed for the production, transmission or distribution and between the latter and users.
2. For the purposes of applying the provision of subsection 18.1 above, ARCOM may cooperate in setting up institutionalised arbitration centres and enter into agreements with already existing institutionalised arbitration centres.

## **CHAPTER III**

### **ARCOM organisational structure**

#### **Section 19 Organs**

ARCOM is comprised of the following organs:

- (a) Board of Directors;
- (b) President of the Board of Directors;
- (c) Monitoring Committee.

#### **PART I Board of Directors**

##### **Section 20 Functions**

The Board of Directors is the collegial organ responsible for defining and implementing ARCOM's regulatory activity, as well as for managing its respective services.

##### **Section 21 Composition and appointment**

1. ARCOM Boards of Directors is composed of a President and two voting members, appointed by instruction of the Prime Minister, on the basis of a proposal from the Minister of Transport, Communications and Public Works;
2. Board of Directors members are appointed from among people with recognised reputation, independence, and technical and professional competence.

3. A person who has been a member of the managerial body of a company in the communications sector in the two previous years, or is or has been an employee of, or a permanent contributor to, such a company, in a leadership or managerial position during that same period of time, may not be appointed.
4. Board of Directors members may not have interests of a financial nature or stakes in regulated companies of the communications sector.
5. The term of office of Board of Directors members shall be three (3) years renewable for an equal period.
6. In his or her absences or inability to act, the President of the Board of Directors shall be replaced by the voting member as designated by the Board.

## **Section 22**

### **Status**

1. Board of Directors members are subject to the status of a public manager in all that does not result from the present Statutes, their remuneration being established by joint instruction of the Minister of Planning and Finance and of the Minister of Transport, Communications and Public Works.
2. The general regime of social security is applicable to Board of Directors members, except where these belong to civil service staffing tables, in which case the regime of their own place of origin shall be applicable.
3. Board of Directors members may not, in the course of their term of office, hold any other public office or carry out a professional activity, except in cases relating to the exercise of part-time teaching functions.
4. Board of Directors members are subject to the same incompatibilities and disqualification as incumbents of senior public offices.

## **Section 23**

### **Cessation of functions**

1. Board of Directors members shall cease the exercise of their functions:
  - (a) At the expiry of the their term of office;
  - (b) Due to permanent disability or due to supervening incompatibility of the incumbent;
  - (c) By resignation;
  - (d) By dismissal decided by the Prime Minister, on the basis of a proposal from the Minister of Transport, Communications and Public Works, in case of a serious fault, proved to have been committed by the incumbent in the exercise of his or her functions or while fulfilling any obligation attached to his or her office;
  - (e) On grounds of conviction for felony

2. The term of office of Board of Directors members shall lapse if that organ is dissolved or if ARCOM is legally liquidated or merged with another regulatory entity.
3. In the event of individual cessation of office, the replacing member shall always be appointed for a 3-year term of office.
4. Upon completion of their respective terms of office, Board of Directors members shall be disqualified, for a 2-year period, to hold any office in or provide any service to companies of the regulated sectors.
5. During the disqualification period as established in the preceding subsection, the regulatory entity shall continue to pay to a former Board of Directors member two-thirds of the remuneration that corresponds to the position he or she held, and that allowance shall cease from the moment such former member is either hired or appointed to hold any remunerated public or private position or office, with the exception of the functions contemplated in subsection 22.3.

#### **Section 24** **Dissolution of the Board of Directors**

The Board of Directors may only be dissolved by instruction of the Prime Minister, on the basis of a proposal by the Minister of Transport, Communications and Public Works, preceded by opinion issued by ARCOM advisory board, in the following cases:

- (a) Serious irregularities in the functioning of the Board of Directors;
- (b) Considerable budgetary overspending, without any cogent justification;

#### **Section 25** **Independence of Board of Directors members**

Without prejudice to the provision of section 4 and of the preceding sections, Board of Directors members are independent in the exercise of their functions, and are not subject to any specific instructions or directives.

#### **Section 26** **Competencies of the Board of Directors**

The competencies of the Board of Directors are:

- (a) To define ARCOM's general guidelines and monitor the execution thereof;
- (b) To approve regulations and make such decisions as contemplated in the present Decree-Law or required for the exercise of its functions;
- (c) To prepare such opinions as contemplated in the present Statutes;
- (d) To prepare an annual report on the status of the communications sector and on its regulatory and supervisory activity and publicise it, by the most appropriate means, submitting it to the Minister responsible for communications not later than the date established for the preparation of the accounts report;

- (e) To approve ARCOM's organisational structure and operating rules;
- (f) To designate ARCOM agents and representatives with other entities;
- (g) To collect revenues and authorise the realisation of expenditures;
- (h) To manage ARCOM's property, with power to acquire, dispose of or encumber movable and immovable property and accept donations, inheritances or legacies;
- (i) To submit ARCOM's multi-annual work and financial plans, budgets and accounts reports to the Minister responsible for communications, for approval;
- (j) To submit to the Minister responsible for communications proposals for closing ARCOM branches or agencies;
- (k) To perform all other acts required to fulfil ARCOM's responsibilities where no other organ is competent to do so;

### **Section 27** **Delegation of powers**

1. The Board of Directors may delegate, in accordance with meeting minutes, powers to one or more of its members or ARCOM employees and authorise the sub-delegation of such powers, establishing in each case the respective limits and conditions.
2. Without prejudice to the inclusion of other powers, the assignment of a portfolio implies the delegation of the competencies required for managing and monitoring the respective services and for performing the routine management functions of the organisational units involved.
3. Decisions involving delegation of powers shall be subject to publication in the Official Gazette of Timor-Leste.

### **Section 28** **Operation**

1. The Board of Directors meets ordinarily once a week and extraordinarily when convened by its President, on his or her own initiative or at the request of the other members;
2. The Board of Directors may designate a staff member to assist it in, among other tasks, preparing meeting notices and write the minutes thereof;

### **Section 29** **President of the Board of Directors**

1. It is incumbent upon the President of the Board of Directors:
  - (a) To preside over the Board of Directors and convene and chair its meetings;
  - (b) To co-ordinate the activity by the Board of Directors;
  - (c) To represent ARCOM in court or elsewhere, except where the law or its statutes require another form of representation;
  - (d) To ensure ARCOM's relations with the Government and other authorities.

2. The President of the Board of Directors shall, where there is no a Vice-President, designate a voting member to substitute him or her in his or her absences or inability to act; and in the absence of such designation, the President of the Board of Directors shall be substituted by the most senior voting member or, in case of equal seniority, by the oldest voting member.

3. On duly substantiated grounds of urgency, the President of the Board of Directors or the person substituting him or her in his or her absences or inability to act, may perform any acts falling with the competence of the Board of Directors, which shall, however, be subject to ratification at the first ordinary meeting of the Board.

4. The President of the Board of Directors may delegate the exercise of part of his or her competencies to any of the other Board members.

### **Section 30** **ARCOM's binding commitment**

1. ARCOM is bound by the signature:

- (a) of the President of the Board of Directors or of the two other members, unless otherwise decided by the same board;
- (b) of a competent person, under the terms of his or her respective mandate, and within the scope thereof.

2. Mere paperwork acts may be signed by any of the Board of Directors members or by ARCOM employees upon whom power to do so has been expressly conferred.

3. Without prejudice to the provisions of the preceding subsections, ARCOM is also bound by the signature of its agents, within the strict scope of such powers as may have been conferred upon such agents.

## **PART III** **Monitoring Committee**

### **Section 31** **Function**

The Monitoring Committee is the organ responsible for controlling the legality and const-effectiveness of ARCOM's financial and property management and is the advisory body to the Board of Directors in this respect.

### **Section 32** **Monitoring Committee**

1. The Monitoring Committee is composed of one president and two voting members, one of whom being an official auditor or accountant, to be appointed by joint instruction of the



Minister of Planning and Finance and of the Minister of Transport, Communications and Public Works.

2. The term of office of the members of the Monitoring Committee shall be 3 years, renewable for equal periods.

### **Section 33 Competencies**

It is incumbent upon the Monitoring Committee, namely:

- (a) To monitor and control ARCOM's financial and property management;
- (b) To examine ARCOM's financial and economic situation, on a regular basis, and verify its compliance with the regulatory norms of its activity;
- (c) To express its opinion on the acquisition, encumbrance, lease or disposal of immovable property;
- (d) To express its opinion on ARCOM's budget and accounts report;
- (e) To express its opinion on any matter submitted to it by any of the ARCOM organs;
- (f) To report to the competent authorities any regularities it might detect;

### **Section 34 Functioning**

1. The Monitoring Committee shall meet ordinarily once a month and extraordinarily whenever convened by its President, on his or her own initiative or at the request of any other of its members, or at the request of the President of the Board of Directors.

2. The members of the Monitoring Committee shall not be entitled to a monthly allowance, and shall serve their term of office within the framework of their ordinary functions as civil servants.

## **PART III Provisions common to the organs**

### **Section 35 Procedure**

1. The regime contemplated in the law that regulates Administrative Proceeding, with the exceptions provided in the subsections below, shall apply to the decisions made by ARCOM collegial organs:

2. Abstention from voting is not allowed.

3. Meeting minutes shall be signed by all members present at the meeting.

**Section 36**  
**Convening of meetings**

1. Meetings of ARCOM organs shall be convened by their respective President by addressing a convening notice to each of its members, without prejudice to the provision of the subsection below.
2. Meetings taking place at a pre-set venue, date and time, including meetings the holding of which has been decided at a previous meeting, in the presence or with the knowledge of all members of the convened organ and with the indication of its venue, date and time, shall be deemed to have been validly convened.

**CHAPTER IV**  
**Financial and property management**

**Section 37**  
**Financial management tools**

ARCOM's financial management is disciplined by the forward management tools, reports and financial statements provided for in the general law applicable to public bodies vested with financial and administrative autonomy.

**Section 38**  
**Financial control and accountability**

1. ARCOM's financial activity is subject to control exercised by the Monitoring Committee, directly or through the conduction of audits commissioned from independent entities, as well as through all other control systems as provided by law.
2. ARCOM's accounts shall be submitted to the High Administrative, Tax and Audit Court, for judgement.

**Section 39**  
**Property**

ARCOM's property is comprised of the universality of assets, rights and guarantees acquired in the fulfilment of its responsibilities and of those conferred by law.

**Section 40**  
**Revenues**

ARCOM's revenues comprise:

- (a) Fees and other revenues levied within the scope of the management of the electromagnetic spectrum and of the national numbering plan;

- (b) Fees and other revenues levied within the scope of the granting of titles for the exercise of activity and monitoring of operators and providers of communications services;
- (c) Proceeds derived from contractual fines, as well as from penalties imposed under the terms established by law;
- (d) Revenues derived from the provision of services, notably from its laboratories;
- (e) Any other revenues, income or amounts derived from its activity or that may belong or be allocated to it by law or contract, as well as any grants, subsidies or other forms of financial assistance;
- (f) Proceeds derived from the disposal of its own assets or from the establishment of rights over such assets;
- (g) Interest resulting from financial applications.

### **Section 41 Expenditures**

ARCOM's expenditures are those that, having been realised within the scope of the exercise of the responsibilities and competencies vested in ARCOM, pertain to charges arising from its activity and the acquisition of fixed assets.

## **CHAPTER Services and staff**

### **Section 42 Services**

ARCOM has administrative and technical support services, as approved by the Board of Directors, depending on the approval of the work plan and budget.

### **Section 43 Staffing Regime**

1. ARCOM staff is subject to the legal regime of individual employment contract.
2. ARCOM staff is covered by the general regime of social security;
3. ARCOM may be a party to collective employment regulation instruments.
4. Staff recruitment shall be preceded by a public notice and shall be conducted on the basis of objective selection criteria, to be established by ARCOM regulation.
5. Conditions for work performance and discipline shall be defined by ARCOM regulation, in compliance with the imperative legal provisions of the regime of individual employment contract.

## **Section 44**

### **Mobility**

1. ARCOM staff may, whatever the nature of their contractual link, hold positions in other entities, under the regime of temporary secondment, reassignment or requisition, under the terms as established by law.
2. Public Administration servants and agents, as well as employees from public or private enterprises and from public stock companies, may hold positions in ARCOM, under the regime of reassignment, requisition or temporary secondment.
3. A staff member holding a position under the terms as established in the preceding subsections shall have his or her place of origin guaranteed, without prejudice to any rights, and such position shall namely be taken into account for the purpose of counting time toward seniority, as if such staff member had served in his or her place of origin.

## **Section 45**

### **Incompatibilities**

ARCOM staff shall not work for or provide services, whether remunerated or not, to enterprises subject to ARCOM's supervision or others whose activity is at variance with ARCOM's responsibilities and competencies.

## **Section 46**

### **Monitoring functions**

1. ARCOM employees and agents, as well as competent persons or entities, duly credentialed to perform monitoring functions, are equated with law-enforcement agents and shall enjoy the following prerogatives while fulfilling their duties:
  - (a) To have access to premises, equipment and services of the entities subject to ARCOM's inspection and control;
  - (b) To requisition documents for consideration, as well as equipment and materials for conducting tests;
  - (c) To identify, for subsequent action, all individuals who breach laws or regulations that they are required to abide by;
  - (d) To require, when deemed necessary, the collaboration of the competent authorities for the performance of their functions.
2. ARCOM employees and agents, as well as competent persons or entities, duly credentialed to perform such functions as referred to in the preceding subsection, shall be issued ID cards, whose format and conditions of issue shall be set by ministerial regulation of the Cabinet member responsible for communications.

## **CHAPTER VI**

### **Supervision, responsibility and judicial control**

## **Section 47 Supervision**

1. Without prejudice to its organic and functional independence, ARCOM is subject, under the terms as established by the present Statutes, to supervision by the Minister of Transport, Communications and Public Works and, where this is the case, by the Minister of Planning and Finance, under the terms as established by the present Statutes and other applicable legislation.

2. The following require ministerial approval:

- (a) Work plan and budget;
- (b) Progress and accounts report;
- (c) Other acts as provided by law.

3. Approval is deemed to have been tacitly granted after 60 days.

## **Section 48 Report to the Government and to the National Parliament, and parliamentary hearings**

1. ARCOM shall submit to the Government and to the National Parliament an annual report on its regulation activities.

2. The President of the Board of Directors shall comply, whenever asked to do so, with hearing requests made by the competent Committee of the National Parliament for him or her to provide information or clarifications on his or her activities.

## **Section 49 Legal liability**

Incumbents of ARCOM organs and its employees and agents shall be civilly, criminally, disciplinarily and financially liable for acts or omissions committed while conducting business, under the terms of the Constitution and all other applicable laws.

## **Section 50 Judicial control**

1. The activity of an administrative nature by ARCOM organs and agents shall be subject to administrative jurisdiction, under the terms of the relevant legislation.

2. Penalties for offences may be challenged in a court of law, under the general terms.

3. Decisions handed down within the scope of dispute settlement may be appealed against to a court of law or court of arbitration, under the terms as established by law.

**Section 51**  
**Monitoring by the High Administrative, Tax and Audit Court**

1. ARCOM is subject to the jurisdiction of the High Administrative, Tax and Audit Court, under the terms as established by the relevant legislation.
2. Acts performed or contracts entered into by ARCOM are not subject to endorsement by the High Administrative, Tax and Audit Court, and the submission of annual accounts for the purpose of judgement shall, however, be compulsory.

**Section 52**  
**Web page**

1. ARCOM shall make a website available, with all relevant data, namely its founding instrument, statutes and regulations, as well as the composition of its organs, including plans, budgets, and reports concerning the two previous years of its activities, and also general regulations, decisions and instructions issued.
2. The web page shall be used to support the dissemination of templates and forms for the submission of applications on-line, with a view to attending to such applications and getting information on-line, under legally acceptable terms.