



# **Bankruptcy Review Process**

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# 1 Introduction

- 1.1 These Guidelines supplement the relevant articles of Communications and Information Technology Commission (CITC) statutes relating to the continuity of service in case of bankruptcy.
- 1.2 These Guidelines may in due course be amended, updated, supplemented, replaced or revoked.
- 1.3 These Guidelines do not replace or override the Act, the Bylaws or other regulations issued or overseen by the CITC or any other relevant legal statutes.
- 1.4 Whilst the CITC will have regard to these Guidelines in dealing with service continuity issues arising from bankruptcy in the ICT sector, the CITC may apply them flexibly and may depart from the approach described in the Guidelines where there is an appropriate and reasonable justification for doing so.

## 2 Definitions

2.1 The words and expressions defined in CITC Statutes shall have the same meaning when used in this document. The following words and expressions shall have the meaning assigned to them below, unless the context requires otherwise:

**“Bankruptcy”** means insolvency, liquidation, or any accommodation with creditors as provided for under applicable law.

**“Remedy”** means any requirement imposed by the CITC to address a concern relating to ensuring continuity of service in the event of bankruptcy.

## **3 Bankruptcy Review**

### **3.1 The Role of the CITC**

- 3.1.1 In the event of the Bankruptcy of a Service Provider, there is a risk that users of its services will suffer a loss of service on a short or longer term basis. The CITC is obliged under relevant Articles of the Bylaws to ensure continuity of service to users on revocation or non-renewal of certain types of individual licence and on revocation of a registration under a class licence.
- 3.1.2 Under Article 60 of the Bylaws, unless the CITC is satisfied that demand for the same or substantially the same telecommunications services can otherwise be reasonably accommodated, the CITC is further obliged, in the event of non-renewal, suspension or termination of a licence (including by reason of Bankruptcy), to make arrangements to ensure continuity of that service to users.
- 3.1.3 Declarations of Bankruptcies are decided by agencies other than the CITC. However, the CITC has an obligation to ensure continuity of service in the case of the Bankruptcy of a Service provider once such a declaration is made or in anticipation of such a declaration.

### **3.2 Notification**

- 3.2.1 Any Service Provider is obliged to give written notice to the CITC if it:
- (i) has reason to believe that it will become unable to continue to provide services as result of an actual or anticipated declaration of Bankruptcy; or
  - (ii) takes any step, or receives any notice from a third party threatening or instigating any procedure that will or may result in Bankruptcy in the Kingdom.

### **3.3 Review Process**

- 3.3.1 Upon receiving notice from a Service Provider under Paragraph 3.2, or otherwise becoming aware of an actual or potential Bankruptcy of a Service Provider the CITC will assess whether the Service Provider may be unable to continue to provide a ICT service.
- 3.3.2 The CITC may invite the Service Provider concerned to a meeting at the offices of the CITC for an informal discussion of the issues involved. The purpose of the meeting is for the CITC to satisfy itself that it has the information it requires to consider the issues and then assess whether regulatory intervention is required.
- 3.3.3 The Service Provider concerned must provide detailed information on:
- (i) the reasons for which it may discontinue the provision of any ICT service;
  - (ii) the ICT services it currently provides, the number of customers it has, its revenues and average revenues per customer, its market share, the names of principal competitors, details of its network and of frequencies and numbers used, details of how customer

records are maintained and any arrangements whereby customers pre-pay for services or submit deposits; and

(iii) an action plan to ensure continuity of service, including arrangements with a third party.

3.3.4 The information must be accompanied by a declaration that the information provided is true, accurate and not misleading.

3.3.5 In determining whether intervention is the required, the CITC will generally consider the following factors:

- (i) the relevant market;
- (ii) the market share of the Service Provider concerned;
- (iii) the impact of a cessation of services on customers and users;
- (iv) whether, in its opinion, the needs of customers and users will be accommodated by other Service Providers;
- (v) the timescale required for an orderly transfer of customers and users to a new Service Provider;
- (vi) the use made of scarce resources, including radio-frequency and numbers, and how these might be transferred to a new Service Provider if necessary;
- (vii) the need to protect customer pre-payments and deposits;
- (viii) whether any replacement Service Provider will require access to customer or traffic data, including databases and location registers if applicable, or other assets of the Service Provider in question; and
- (ix) other relevant factors determined by the CITC.

3.3.6 The CITC will generally assume, in the absence of evidence to the contrary, that demand for the relevant ICT services is likely to be accommodated by another Service Provider where the relevant market for such services is competitive.

3.3.7 In case the market for the relevant ICT services is not competitive, the CITC will generally assume, in the absence of evidence to the contrary, that demand for the relevant services is unlikely to be accommodated by another Service Provider.

3.3.8 In considering matters under Paragraphs 3.3.6 and 3.3.7, the CITC shall consult with other parties concerned on whether or not demand is likely to be so accommodated and on possible remedies.

## **3.4 Remedies**

3.4.1 If the CITC determines that the demand for any ICT service provided by the Service Provider is unlikely to be accommodated by another Service Provider and its intervention is required, it will consider remedies by which service continuity may be ensured. These remedies may include:

- (i) the transfer of the Licence of the relevant Service Provider to a qualified third party;
- (ii) facilitating the transfer of users and assets of the relevant Service Provider to a qualified third party willing and able to undertake service provision;
- (iii) forbearing from revocation of a Licence for an agreed period of time on such conditions as the CITC may determine, including conditions set out in 60.4 of the Bylaw; and
- (iv) other remedies.

3.4.2 In considering remedies, the CITC shall have regard to any laws conferring legal protection on creditors of the Service Provider.

3.4.3 The CITC will publish decisions on its assessments and remedies on its website at the same time as it notifies affected parties.

3.4.4 The flow chart below provides an illustration of the process to be followed in order to ensure continuity of service in the event of Bankruptcy.

**Process Flow Chart**

