

# **EASTERN CARIBBEAN TELECOMMUNICATIONS AUTHORITY**

## **Recommendation of the Eastern Caribbean Telecommunications Authority (ECTEL)**

### **To the National Telecommunications Regulatory Commission to consult on a Draft Interconnection Code**

#### **CONSULTATION DOCUMENT**

1. The National Telecommunications Regulatory Commission is in receipt of a submission from ECTEL containing ECTEL's Consultative Document for the Draft Interconnection Code.
2. The Consultative Document is attached.
3. The initial comments period will run from the 24<sup>th</sup> March 2009 to the 14<sup>th</sup> April 2009.
4. The comment on comments period will run from the 20<sup>th</sup> April 2009 to the 4th May 2009.
5. Following the Comment on comments period ECTEL will finalize and submit the draft Interconnection Code to the ECTEL Council of Ministers for its recommendation for adoption in the ECTEL Member States.
6. All responses to this Consultative Document should be written and sent by post, fax or email to:-  
**The Managing Director**  
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**P.O. Box 1886**  
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All comments should be clearly marked "Comments on Draft Interconnection Code."

#### **Disclaimer**

*This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL's duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.*

## RATIONALE

In the recently completed revision of the Interconnection Regulations, a section was inserted granting powers to the Commission to adopt, on ECTEL's recommendation, an Interconnection Code to provide guidance to both the Commission and Public Network Operators (hereinafter "operators") in interconnection matters. For ease of reference, the powers conferred on the Commission are as follows:

- 36.** *The Commission, acting on the recommendation of ECTEL -*
- (a) may issue an Interconnection Code to give purpose and effect to these Regulations, setting out such guidelines, procedures, standards and other requirements as the Commission may issue or specify;*
  - (b) shall publish the Code, or parts thereof, in the Gazette and on its website;*
  - (c) may amend, add to or replace the Code at any time.*

Pursuant to this section, ECTEL has taken a decision to recommend the adoption of a Code to provide guidance to NTRCs and operators. In making this recommendation, ECTEL hopes to help establish clear rules to encourage completion of interconnection negotiations within the shortest period reasonable and to avoid unnecessary disputes or conflicts, which would have the effect of delaying market entry.

The Code is a binding legal document, which attains its legal effect through the principle of incorporation by reference. Similar to the Universal Service Guidelines, the Code is specifically referred to in the Interconnection Regulations, and would be issued pursuant to the powers granted to the Commission by that legislation.

The Code is ***not a set of Regulations, or a Statutory Instrument***. Rather it is a document outlining a set of standards and guidelines of behavior for regulated companies which has binding legal effect due to its reference in a piece of legislation. The advantage of allowing the Commission to publish such a Code as opposed to including these rules in a statutory instrument is that it provides the necessary flexibility to the Commission to publish clear rules and standards to guide conduct in the market, and change those rules as it becomes necessary.

The Code is to be read as part of the Interconnection and the Access to Facilities Regulations respectively. Although the document can be read and understood on its own, all three documents are intended to create an integrated, seamless legal framework governing access and interconnection issues.

The basic aim of the draft Interconnection Code is to provide clear timelines for operators and the Commission for the conclusion of interconnection negotiations and disputes, where they arise.

### **Consultation Procedure and Timetable**

This ECTEL submission includes a request to the Commission to conduct a national consultation in [Member State] on the draft Interconnection Code in accordance with the timetable outlined on the cover page.

### **Council of Minister's Approval**

It is the intention of ECTEL to finalize this Code after taking into account all comments received in this consultation process. The Interconnection Code will then be recommended for adoption in the ECTEL Member States when approved by the Council of Ministers.

## **EXPLANATORY MEMORANDUM**

These explanatory notes relate to the Interconnection Code. These notes have been prepared to assist the reader and do not constitute part of the Code. Additionally, the notes are not nor are they meant to be a comprehensive description of the Code and where a clause does not appear to require comment none will be supplied.

### **Structure of the Code**

The code contains are fourteen (14) sections, the most important of which are discussed below.

### **Paragraph 2 – Effect of the Code**

A breach of the Code entitles ECTEL to recommend suspension or termination of an operator's licence.

### **Paragraph 3 – Contents of Interconnection Offers**

This section outlines the elements to be included in all Reference Interconnection Offers (RIO's). Additionally, the section makes special provision for RIO's of dominant interconnection providers and places particular emphasis on gaining access to local loops, which is an obligation not included in the Interconnection Regulations.

### **Paragraph 4 – Negotiating Interconnection Agreements**

The Act does not specify a time for the conclusion of interconnection negotiations and/or disputes. As a consequence, these matters have had to be provided for in the Interconnection or Dispute Settlement Regulations. Using the basic provisions of the revised Regulations as a guide, the Code prescribes timelines for acknowledging receipt of a request, asking for further information, and granting or refusing to interconnect. The Code envisions that interconnection negotiations should take no more than 60 days, unless there are exceptional circumstances.

### **Paragraph 6 – Disputes Regarding Interconnection**

The dispute settlement provisions create a system to resolve disputes where one arises in the course of negotiations. After a dispute is referred/notified to the Commission, the complainant has two weeks within which to make a case that a dispute exists and the respondent has two weeks to submit a response. Once both parties have made their case, the Commission has more or less thirty days maximum to make a decision.

Where the Commission, after receiving all arguments quickly discerns a resolution but requires additional time to outline its reasons, the Code permits the Commission to issue a

“Preliminary Order” or “PO.” This order enables the Commission to notify the parties of how it intends to decide the matter, and to give its reasons at a later date.

Further, the Commission can impose an interim interconnection agreement (IIA) requiring the parties to temporarily provide interconnection and direct them to go back to the negotiating table. In the alternative, the Commission can impose an IIA and still proceed to determine the main dispute. A party forced to provide interconnection under an IIA can apply to vary or modify it however, the Commission may vary the IIA in exceptional circumstances

### **Paragraph 7 – Disputes Regarding Approved Agreements**

Where an interconnection agreement exists, the Commission should avoid getting involved in conflicts between disputing parties. However, there may be circumstances where the Commission should intervene. The Code provides guidance on the relevant factors that should be taken into account in deciding whether to accept jurisdiction over the dispute.

### **Paragraph 11 – Disputes Regarding Access to Facilities**

The procedures outlined for negotiating interconnection agreements as well as for resolving related disputes apply identically to negotiating agreements over access or resolving disputes about the same.

### **Paragraph 12 – Requests for Information**

Currently, there are no guidelines or clear rules about timelines for requesting information and basic guidance on requests for information were believed useful.



# **Eastern Caribbean Telecommunications Authority (ECTEL)**

**DRAFT**

## **Telecommunications Interconnection Code**

**January 2009**

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**Gazette Date [-]**

## TELECOMMUNICATIONS (INTERCONNECTION CODE) 200[-]

Made by the National Telecommunications Regulatory Commission under section [ ] of the Telecommunications (Interconnection) Regulations 200[-]

### Interpretation

1. (a) In this Code unless the context otherwise requires:
  - (i) **"Act"** means The Telecommunications Act, [-].
  - (ii) **"Commission"** means The National Telecommunications Regulatory Commission.
  - (iii) **"Operator"** means public network operator.
  - (iv) **"Regulations"** means the Telecommunication (Interconnection) Regulations 200[-] and the Telecommunications (Access to Facilities) Regulations 200 [-] respectively.
- (b) Unless otherwise specified, terms used in this Code shall have the meanings assigned to them under the Act and the Regulations.

### Effect of Code

2. (a) This Code binds the Commission and all telecommunications providers;
- (b) Failure to observe the terms of this Code by a telecommunications provider renders it liable to sanctions under the Act, including but not limited to a recommendation to the Minister of suspension or revocation of its licence.
- (c) In the event of any conflict between the provisions of this Code and the Act or the Interconnection and the Access to Facilities Regulations, the terms of the Act and Regulations shall prevail.

### Contents of Reference Interconnection Offers

3. (a) Each reference interconnection offer published or otherwise made available by the interconnection provider shall contain the following information:
  - (i) The technically feasible points at which interconnection is permitted at no additional charge and the means by which interconnection will be achieved. Every operator will have to permit interconnection at the host switch as part of its basic interconnection service offering;
  - (ii) The additional charges to the requesting party for interconnection at points other than those set out in (i);

- (iii) The elements of the interconnection service and its constituent elements, including signaling, transport, and the transfer of calling line identification information and switching between the point of interconnection and end users;
  - (iv) Rates or pricing formulae for each feature, function or facility that the interconnection provider is required to offer pursuant to the Act, the Interconnection and the Access to Facilities Regulations, its licence or this Code;
  - (v) Other commercial terms and conditions applicable to the offering of the elements of the interconnection service.
- (b) The reference interconnection offer of a dominant interconnection provider must:
- (i) list and describe the unbundled network elements and services that will be provided to interconnecting parties;
  - (ii) without limiting sub-paragraph (i), unless the Commission, on application of such dominant interconnection provider, determines to the contrary, offer access to local loops and to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;
  - (iii) include information concerning the locations of physical and logical access sites in specific parts of the network;
  - (iv) as determined by the Commission, provide technical conditions relating to access and use of local loops, including the technical characteristics of the twisted metallic pair in any local loop;
  - (v) describe any operational and technical requirements with which an interconnecting party must comply in order to avoid harm to the interconnection provider's network;
  - (vi) as determined by the Commission, set out the ordering and provisioning procedures and any usage restrictions with respect to local loops and any other elements of the interconnection service;
  - (vii) set out the conditions for access to operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, unless the Commission, on application of such dominant interconnection provider, shall determine that such access is not required;
  - (viii) describe how information will be provided (such as call type, duration and points of origination and termination) to allow the interconnecting party to bill for telecommunications services; and
  - (ix) provide (a) the lead time for responding to requests for supply of services and facilities; (b) service level agreements, including with

respect to fault resolution, procedures to return to a normal level of service and quality of service parameters; and (c) terms with respect to foregoing.

#### **Negotiating Interconnection Agreements**

4. (a) A public network operator requesting interconnection shall notify ECTEL and the Commission simultaneously with sending its request to the interconnection provider with which it is seeking such interconnection.
- (b) Such notification shall include, except where any provision of law exempts it, (i) reference to the requesting operator's licence; (ii) a technical description of the requested services; (iii) the intended point of interconnection; (iv) the date on which interconnection is intended to commence; (v) the projected quantity or volume of services required, based on a forecast of three (3) years or of some other period if the operator is unable to provide such three (3) year forecast, except that such other period shall not be less than six (6) months, and (vi) a declaration that it accepts the rights and obligations of public network operators.
- (c) Upon receipt of a request for interconnection, an interconnection provider shall promptly consider and analyze each such request and shall acknowledge receipt within seven (7) days. Within fifteen (15) days of the date of receipt of the initial request, the interconnection provider shall notify the requesting party whether any additional information is required to facilitate interconnection. In exceptional circumstances, and on application to the Commission, the interconnection provider may notify the requesting party of such additional information as it requires within twenty (20) days of receipt of the initial request for interconnection.
- (d) The interconnection provider shall grant or refuse the request for interconnection within thirty (30) days of the receipt of the later of the date of the initial request or such additional information as the interconnection provider may have requested. In exceptional circumstances, this period may be extended for another thirty (30) days, provided that the parties agree and shall so notify ECTEL and the Commission. If the interconnection provider is unable to respond to the request for interconnection by the end of a sixty (60) day period, or any extension thereof, it shall provide, on the date on which such period expires, a written statement as to the reasons therefore to ECTEL, the Commission and to the party requesting interconnection.
- (e) In very exceptional cases, for example as a result of the death or sudden termination of employment of negotiation personnel, or the occurrence of natural disasters, the periods indicated above for completing interconnection negotiations may be extended by the Commission, on joint application by both parties. The Commission is not restricted from considering other circumstances whenever necessary.
- (f) Both parties to interconnection negotiations shall ensure that ECTEL and the

Commission are simultaneously notified when requests and information are sent and received respectively.

- (g) The Commission shall have broad discretionary powers to vary the requirements of the foregoing sections where it deems appropriate.

### **Interconnection Agreements**

5. (a) Unless the parties to an interconnection agreement otherwise agree, such an agreement shall address the following matters:
- (i) technical characteristics and location of the point(s) of interconnection;
  - (ii) capacity levels;
  - (iii) service levels;
  - (iv) forecasting;
  - (v) ordering and provisioning;
  - (vi) provision of network information;
  - (vii) information handling and confidentiality;
  - (viii) rates;
  - (ix) payment procedures;
  - (x) fault detection and repair;
  - (xi) provision for breaches;
  - (xii) amendments; and
  - (xiii) suspension, termination and duration.
- (b) The Commission will review and approve, or decline to approve, an interconnection agreement or any modification or amendment thereof that is submitted to it pursuant to the Regulations, within thirty (30) days of such submission, which period may be extended for good cause.
- (c) The Commission, acting on the recommendation of ECTEL, shall issue a Preliminary Order within fifteen (15) days of submission to it of a notice with respect to one party's unilateral suspension or termination of an interconnection agreement, pursuant to the Regulations relating to suspension or termination, authorising or declining to authorise such suspension or termination, which period may be extended for good cause.
- (d) Where the Commission determines that an extension is required in either case as indicated above, it shall so notify both parties promptly.

### **Disputes Regarding Interconnection**

6. (a) Where, after having negotiated for a period of at least sixty (60) days, and in the absence of an extension of time by the Commission, one or both of the parties to a negotiation regarding interconnection determine to submit a dispute to the Commission in accordance with the Act and the Regulations, then the party intending to submit such a dispute shall notify the other party of its intention to do so simultaneously on the date on which it issues a formal notice to the Commission.
- (b) Within fifteen (15) days of submission of the notice, the submitting party shall lodge a petition with the Commission to resolve such dispute, with a

copy of the petition delivered to the other party to the dispute. Such petition shall include a statement of facts, a summary of the issues in dispute, each party's position as to such issues in dispute, evidence that the parties have attempted to commercially resolve the dispute between them (including summaries of correspondence, minutes of meetings and other information) and a summary of issues that were previously in dispute but have been resolved, including the resolutions thereto.

- (c) Within fifteen (15) days of receiving one party's written petition and all accompanying evidence in support thereof (which period may be extended by the Commission for good cause shown upon application by the other party), the other party may lodge with the Commission a counter-petition containing arguments in its defense, including its views, if any, on why the Commission should not intervene to resolve the dispute, along with evidence in support thereof.
- (d) The Commission, acting on the recommendation of ECTEL, will determine whether and to what extent it is appropriate to resolve the dispute. The Commission will notify the parties whether it will or will not resolve the dispute.
- (e) To facilitate investigation and resolution of the dispute by the Commission, either party may be asked by the Commission to provide additional information or explanations beyond the initial petition and counter-petition. Any report or information required from one party by the Commission shall be provided to the other party.
- (f) Information in a petition, counter-petition or otherwise submitted to the Commission shall be marked as confidential if the submitting party desires that such information not be disclosed to the other party. If the Commission determines that the disclosure of such information is necessary to facilitate fair resolution of the dispute, the Commission may release such information to the other party for comment or response, provided that the party requesting confidentiality shall be so notified not less than three (3) working days in advance.
- (g) By no later than thirty (30) days after the receipt of the counter petition, the Commission shall employ its best efforts to complete its deliberations and render a Final Order. Such period may be extended in exceptional circumstances, however, due for example to the complexity of the matter or where additional information is required. Where in the interests of time, it appears convenient to do so and where ECTEL has so recommended, the Commission may issue a Preliminary Order, indicating its decision on how matters in dispute shall be resolved, with reasons to follow by a time to be determined by the Commission. A Preliminary Order shall become Final on submission of the Commission's reasons for the same.
- (h) Notwithstanding paragraph (g), and based on a recommendation from ECTEL, the Commission may issue an interim decision setting out the terms on which the parties shall be required to provide interconnection

pending agreement or a Final Order, whichever is the earlier. The interim decision shall require the parties to comply with an Interim Interconnection Agreement (or “IIA”). Where the Commission so orders, it may also direct the parties to continue negotiations or it may proceed to deliberate on the dispute and issue a Final Order.

- (i) Either party to the dispute may, within fifteen (15) days, request that the Commission reconsider one or more elements of the IIA. Such party shall set forth its reasons as to why the Commission should modify its IIA. The Commission shall give the other party ten (10) days to respond to such reasons and provide reasons as to why modification of the Interim IIA is not required. No extensions of time shall be granted for petitions against an IIA. The Commission will only modify the Interim IIA if there are compelling reasons to do so. Where the Commission has issued an IIA, it shall endeavour to reconsider, if requested to do so, and confirm or vary the decision by no later than fifteen (15) days after its submission of the reply to the request to vary or modify the IIA.
- (j) In making the IIA, the Commission may require a party to provide or continue to provide the relevant service(s) under a reference interconnection offer, or a relevant interconnection agreement, as the case may be, pending agreement between the parties or the issuance of a Final Order.
- (k) In issuing an IIA and a Final Order, the Commission shall consider the information and arguments submitted by the parties, as well as any other matter that the Commission deems relevant, including but not limited to any matters of policy or practice.
- (l) In any case involving an interconnection dispute, the Commission shall publish a notice in the Gazette that it has issued an interim decision or a Final Order and publish such documents on its website and make them available for download or public inspection, free of charge, at the offices of the Commission. The Commission will not disclose information for which disclosure is proscribed by the Act or other relevant sections of the Regulations.
- (m) Parties to an interconnection dispute shall forward to ECTEL, copies of all notices, petitions, counter-petitions and replies to requests for information, simultaneously with submission of the same to the Commission.

### **Disputes Regarding Approved Interconnection Agreements**

- 7. (a) Where an interconnection agreement has been concluded between the parties and approved, the general rule is that the Commission will not involve itself in the manner of its implementation.
- (b) Where a dispute between the parties to an interconnection agreement arises after an agreement has been approved, the dispute resolution procedures set forth in the agreement shall apply.
- (c) Notwithstanding the foregoing, if the parties to the agreement agree to refer

the dispute to the Commission, the Commission may, at its discretion, accept jurisdiction over the dispute and issue a decision, direction or order with respect to the dispute in accordance with such procedures as the Commission, acting on ECTEL's recommendation, may establish for that purpose, including the procedures set forth in paragraph 6 above, and any such decision, direction or order shall bind the parties with respect to that dispute.

- (d) In making a determination whether the Commission should accept jurisdiction over the dispute, the Commission shall have regard, to:
  - (i) the complexity of the issues involved;
  - (ii) the need to encourage the parties to comply with their commercial obligations, including those relating to dispute settlement contained in the agreement;
  - (iii) the likelihood of resolving the dispute expeditiously if referred to the Commission;
  - (iv) the potential cost, inconvenience and delay involved in following the dispute resolution procedures contained in the agreement versus the potential cost, inconvenience and delay of a referral to the Commission;
  - (v) the willingness of both parties to submit equally to the jurisdiction of the Commission;
  - (vi) the interests of the market, including consumers and any other parties which may be affected by outcome of the dispute;
  - (vii) the urgency of the need to resolve the dispute;
  - (viii) the need to resolve the dispute fairly and permanently;
  - (ix) the resources required by the Commission to resolve the dispute;
  - (x) the other pressing regulatory obligations of the Commission; and
  - (xi) any other matters it deems relevant.
- (e) The Commission is not obligated to give any greater or less weight to any of the matters contained in the list by virtue of the order of their placement. Generally, the Commission should not normally agree to accept jurisdiction over the dispute where the issues involved are complex; require considerable expert or technical expertise, and where the time and costs involved would be considerable. Where the issues involved are not overly complex, or have been reviewed by ECTEL or the Commission in the past, or where potential disruption to the market is imminent, the Commission may consider the request. Overall, the Commission should only agree to intervene where; having regard to the matters which are the subject of the dispute, the complexity of the procedures contained in the agreement, the potential for delay occasioned thereby, and the resources available to the Commission, accepting jurisdiction might facilitate a more flexible and

expeditious resolution of the dispute than the procedures set out in the agreement.

- (f) Once the Commission accepts jurisdiction over a dispute, the parties shall be bound by its decisions, but such decisions are not intended to replace, vary or otherwise amend the provisions relating to dispute resolution that are set out in the interconnection agreement. Nothing in this section prohibits the parties from referring to the dispute resolution provisions of the agreement to resolve an unrelated dispute at a later date.
- (g) Where the Commission agrees to accept jurisdiction over the dispute, it shall refer the matter to ECTEL for its review and recommendation.

### **Minimum Interconnection Duties**

- 8. In addition to the legal requirements applicable to interconnection specified by the Act, the Regulations, its licence and any other Code:
  - (a) each operator that directly interconnects with another operator shall take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other operator's telecommunications network;
  - (b) each operator must provide to another operator with which it interconnects information within its possession that is necessary to allow such other operator to provide accurate and timely billing services to itself, its affiliates or other operators;
  - (c) each operator must make publicly available any protocols, key technologies or physical and logical interfaces of its network necessary to allow the development and interoperability of telecommunications services and, not less than six (6) months prior to deployment, any changes in logical or physical interfaces that could materially affect existing interconnection arrangements, unless otherwise exempted by the Commission;
  - (d) each operator must provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;
  - (e) each operator must, as determined by the Commission, provide access to operational support systems or similar software systems that are required to ensure interoperability of and fair competition in the provision of telecommunications services; and
  - (f) parties to interconnection agreements shall have a duty to co-operate in good faith and in a commercially reasonable manner in implementing the terms thereof.

### **Determination of Dominance**

- 9. (a) The Commission may, in accordance with section 10 of the Interconnection Regulations, determine when, to what extent and in which markets an operator or service provider is dominant.

- (b) Without limiting the generality of (a) above, the Commission, when and as it deems appropriate, and subject to section 10 of the Interconnection Regulations, may conclude that an operator is dominant in the relevant termination services market and, accordingly:
  - (i) require an amendment to the operator's licence to reflect the designation;
  - (ii) periodically review the rates charged for interconnection services by the operator to ensure compliance with the Act, the Regulations, its licence, this Code or any determinations by the Commission on the matter;
  - (iii) impose different rates to those contained in an agreement at any time pursuant to its powers and in accordance with the provisions of section 12 of the Interconnection Regulations; and
  - (iv) request the provision of information from the operator periodically.

### **Charges for Interconnection**

- 10. (a) An operator may take into account, in establishing charges to an end user, costs of paying other operators for interconnection services, including the termination services charges of such other operators.
- (b) Subject to the requirements of the Act, which prohibits pricing that is unfair and unreasonable and prohibits undue discrimination among similarly situated users and the power of the Commission to review such rates, an operator may vary its charges to an end user to the extent that there are, and in proportion to, differences in the terminating charges that such operator pays to other operators for interconnection.

### **Disputes Regarding Access to Facilities and Utility Installations**

- 11. (a) The procedures described in paragraph 4 above relating to negotiation of interconnection agreements shall apply mutatis mutandis to negotiations of agreements regarding access to facilities and utility installations.
- b) The Commission may adopt such procedures as it deems appropriate for mediating and resolving disputes regarding rates, terms and conditions of access to facilities and utility installations. Such procedures may be modeled on the procedures set out in paragraph 6 above.

### **General Requests for Interconnection Information Unrelated to a Dispute**

- 12. (a) Unless otherwise directed by the Commission, each operator shall provide, upon receipt of a request for information relating to interconnection, such information within fifteen (15) days of receipt of such request.
- (b) Where the operator is unable for some reason to provide the requested information within the stipulated time, it shall apply to the Commission for

an extension of time at least three (3) working days prior to the expiration of the initial period. In exceptional circumstances, such as those referred to in 4(e) above, the Commission may extend the time for submission by not more than a further fifteen (15) days.

- (c) In making a request for information, or in considering an application to extend time, the Commission shall have regard to the complexity of the information involved and its own obligations with respect to fulfilling its mandate under the Act, the Regulations, or this Code. The general rule is that no operator shall be granted more than thirty (30) days to submit information requested by the Commission.

**Calculation of Time-Periods.**

- 13. Unless otherwise specified, references to any time-periods in this Code are to calendar days.

**Commencement**

- 14. This Code takes effect on the date of its publication in the Gazette.