



**Turks and Caicos Islands**  
**Draft Policy Paper**  
The Establishment of a  
**Multi-sector Public Utility Regulatory Agency**

An aerial photograph showing a boat's wake in clear, turquoise water. The wake consists of two parallel white lines of foam that trail behind the boat, which is visible as a small dark speck in the upper left quadrant. The water's color transitions from a deep blue-green to a lighter, sandy yellowish-green near the bottom right, suggesting a shallow reef or lagoon area.

## PART I-CONTEXT

### INTRODUCTION

Over the past decade or more, the TCI Government has commissioned or conducted more than half a dozen studies on how to improve TCI utility services and their regulation. The reason for the need for change and the resulting studies came largely from the need to improve the electricity sector and make a transition to more renewables. One report was commissioned to address regulatory oversight in the water and sewage sector. There is no known stand-alone report on regulation for telecommunications and broadcasting. In some of the studies though, the scope was widened to consider where energy and water fits within the other regulated sectors.

At the present time, the Government is committed to a broader regulatory reform through a new Multi-sector Utility Regulatory Commission to cover the regulation of telecommunications, energy, water and sewerage, and related designated services. In the design and implementation of that reform, previous studies have been examined to help understand past advice and how it relates to the present task.

### PURPOSE OF THE POLICY PAPER

The purpose of the Policy Paper is three-fold. First, it is intended for adoption by the Government of the Turks and Caicos Islands. Second, in its depth and detail, it will eventually serve as a guide to legal drafters in creating a new Multi-sector Regulatory Commission Ordinance. Third, it is intended to be the foundation for further discussion with stakeholders, including the regulated service providers, and regulated service customers. Following these consultations, a Cabinet Report will be created for adoption of final policy, and direction to create a new Multi-sector Regulatory Commission Ordinance.



## CURRENT REGULATORY FRAMEWORK

In the Turks and Caicos Islands oversight for public and private utilities and related services is currently managed through a mixture of regulatory models.

### TELECOMMUNICATIONS

- The Turks and Caicos Telecommunications Commission is an independent regulator responsible for the licensing of the country's telecommunications service providers and the users of the radio spectrum, including that part of the spectrum used by television and radio services. It also has authority to regulate rates for telecommunication services when there is a dominant supplier, but it does not have oversight of capital expenditures. Authority is exercised through the Telecommunications Ordinance. Further regulation of broadcasting matters has been under consideration for more than a decade.

### ELECTRICITY

- The Public Supplier (Electricity Utility) is partially regulated directly by the Government through the Ministry of Home Affairs' Energy and Utilities Department. It also has authority to regulate rates but its ability to do so is severely constrained by the current contract with the utility. Authority is exercised under the Electricity Ordinance and through a proposed Renewable Energy Ordinance.



### PETROLEUM PRODUCTS AND SERVICES

- The Energy and Utilities Department Fuels Officer has legislated responsibility for ensuring there is appropriate conduct and compliance with established safety codes, standards and other practices for imported petroleum products and private services providers. Fuel prices are not regulated. There is no established regulation for low or zero carbon fuels.

### WATER AND SEWERAGE

- The Water and Sewage Board acts as advisor to Minister but has no legislative authority or staff to act as a regulator for the private and public sector water utilities, although there are Ordinances that regulate some portions of the sector, and the price of water services is established in a Licence granted by Cabinet to a service provider.

## STUDIES CONSIDERED IN DRAFTING MULTI-SECTOR PUBLIC UTILITY REGULATOR

- 2011 – Castalia Report on energy policy and implementation made recommendations on facilitating development of renewables at a utility-scale and at a distributed-energy scale. It also recommended new policies on energy efficiency including changes to building codes.
- 2011 – Internal Report by 2011 by the TCI Ministry of Housing Works and Utilities on the formation of a Multi-Sector Utilities regulatory body. The Internal Report created an organizational design for an Agency but made no estimate on the cost of such a structure.
- April 2012 - Oxera was commissioned to review the Regulatory Framework for the Electricity Sector and recommended consideration of a Multi-sector regulator only if it could be established in skeletal form – i.e. a small staff supported by experts.
- August 2016 – Claudia Vargas Report on Water and Sewerage was commissioned by the TCIG to gain advice on how to improve the performance of the sector. The Report recommended a multi-

tor regulator to formalize the regulatory system for water/wastewater.

- November 2016 - Regulatory Assistance Project (RAP) was commissioned to conduct a review of electricity issues including consultation with stakeholders and the public in 2015/2016. RAP delivered an Interim Final Report recommending changes in the electricity sector including greater use of renewable electricity by the utility and building owners, new rate designs and independent reviews for rate hearings.
- February 2021 - Kairi Report on the Establishment of a Multi-sector Public Utility Regulator. Kairi is a consultancy based in Trinidad and Tobago.

Kairi Consultants Limited was contracted to review the existing structures providing regulatory oversight for the telecommunications, electricity, water and sewerage, and fuel sectors in Turks and Caicos, and to provide a roadmap for the establishment of a new multi-sector utility regulatory body for these sectors.

Kairi was the first consultant with a specific mandate to advise on the creation and implementation of a Multi-sector regulator. The Policy Paper follows their recommendations and designs in most respects. The major deviation from Kairi is on the scope and scale of staffing for the Regulatory Commission. In this instance the Multi-sector Utility Regulation Policy Paper is more consistent with earlier cautions against building extensive and likely underutilized internal staff.





## **STAKEHOLDER AND FURTHER EXPERT ENGAGEMENT**

The RAP Review included extensive stakeholder engagement – public and business interests were heard in 2015/2016. The scope of the discussion was on how to improve the performance and efficient operation of the electricity sector. Many of the comments and questions were about electricity prices, and the processes to set them. The more recent Kairi Report was made available to FortisTCI for their feedback, and this policy paper addresses their comments.

## **PROCESS TO DRAFT THE POLICY PAPER**

All the previous studies, the stakeholder feedback, and the expertise of the Government's EUD Commissioner, the Telecommunications Director-General, and the part-time work of a handful of utility regulatory consultants now form the basis of this draft Multi-sector Utility Regulator Policy.

# PART II-POLICY PAPER SUMMARY

## PURPOSE

The TCI Government wishes to improve public protection and public interests in the regulation of monopoly or quasi-monopoly services in the Turks and Caicos Islands in the energy (electricity and fuels), telecommunications, and water and sewerage sectors through the creation of a single regulator for all these services.

## REGULATORY MODEL CHOICE

Each of the regulated sectors are currently partially or fully regulated under separate Ordinances. Consequential amendments to those Ordinances will transfer regulation and licensing to the new independent Regulatory Commission (the Commission).

Government will continue to have authority to shape and support Commission functions in areas where the legislation allows for regulation-making authority. When requested, the Commission may provide advice on proposed policy developments, but the Government is expected to directly retain its own policy development capacity, and policy matters for each sector will continue to be the subject of sector-specific Ordinances. The new Commission legislation will include consequential amendments to those Ordinances.

Building a multi-sector regulatory regime with consistent approaches, while providing flexibility to address the unique circumstances of the different sectors will be a key feature of the new Multi-sector Utility Regulator Policy.

## PRINCIPLES

To ensure such regulation is measured, effective, efficient, equitable, and meaningful, the Government of TCI has adopted the following Principles for the new Multi-Sector Regulatory Commission (the Regulatory Commission):

- The Government shall be responsible for establishing and changing policy, programs, and initiatives in the regulated sector, including policies related to their regulation.
- The Commission shall be independent of Government in the operation of its legally established duties and responsibilities.
- Those who fill the positions in the Commission shall be people of integrity and experience in public-interest regulation.
- The Commission shall have financial and human resources sufficient to manage their regulatory responsibilities and hire expertise on an as and when needed basis.
- The Commission shall make its decisions in a manner that is always founded in law, in the best interest of the public with due regard for both short- and long-term outcomes, and transparently achieved and delivered.





## OBJECTIVES AND ACCOUNTABILITIES

The expected outcomes of the Multi-sector Utility Regulator Policy are framed by the circumstances of the TCIs presented by its relatively small population inhabiting many islands in a region where Climate Change is delivering stronger and more powerful weather conditions. Accordingly, for each of the five objectives listed below, it is understood that they are measured by whether the Commission has advanced/achieved each to the greatest extent possible under the circumstances.

- Affordability which is measured by processes and outcomes during rate hearings.
- Reliability which is measured by regulatory decisions enabling minimal service interruptions and timely service deliveries such as interconnections.
- Economically Competitive which is measured by decisions on rates and service delivery compared to relevant jurisdictions.
- Innovation which is measured by regulatory decisions enabling access to new technologies and business models.
- Environmental Sustainability which is measured by regulatory decisions that advance/support regulatory service providers in meeting government goals on climate change and other aspects of sustainability.

In addition to the Objectives, the Commission will be accountable for how it carries out its responsibilities for regulatory oversight, licensing and per-

mitting, operational monitoring and compliance, research and development, market efficiency and stability, consumer protection and dispute resolution, and support for government policy development.

## COMMISSION AUTHORITY AND RESPONSIBILITIES

The scope of the Commission's powers will be detailed in legislation, but the primary focus will be on managing specified monopoly or quasi monopoly businesses with respect to rates and tariffs on a multi-year basis, the granting and renewing licences (with Cabinet approval of Commission recommendations for licenses with major economic importance), and the oversight of regulated service outcomes. The Commission will have all the necessary authorities to carry out its functions, including information-gathering and inspection powers, subject to court approvals when requests for information and assistance have failed, and seizure powers are required.

The Commission will need to ensure that their decisions advance the public interest. This includes protecting consumer interests on a short-term and long-term basis. Accordingly, the public interest includes reasonable and justifiable rates today as well as creating conditions for an appropriate level of investment and innovation in technologies and business models to ensure safe and reliable telecommunications, electricity, water, and fuels today and into the foreseeable future.

To ensure both customers and investors have confidence in the regulatory framework and decisions, its operations and processes must be transparent, reasoned, founded in law, and well communicated.

Due to the rapidly evolving nature of sectors such as energy and telecommunications, water production and new low or zero carbon fuels, the Regulatory Commission will need to stake a balance between building predictability and fostering innovation. Predictability will build over time as the Commission makes consistent decisions under similar sets of facts.

More specifically, the authorities include the following functions:

- **Licensing and Permitting:** The Regulatory Commission will manage the process of issuing licenses and permits for the installation, operation, and maintenance of renewable energy systems, water and sewerage facilities, telecommunications systems, and specified fuels installations. Their approval processes will include an evaluation of the proposed facilities and operations to ensure they follow all technical and safety standards specified in legislation or regulations.
- **Monitoring and Compliance:** The Regulatory Commission will be responsible for monitoring the

performance and compliance of regulated services specified in legislation. In the case of renewable energy systems, monitoring will include the establishment of measurement and verification protocols, the conduct of inspections, and enforcement of penalties if there are violations or non-compliance with operational standards.

- **Research and Development:** The Regulatory Commission shall support research and development initiatives to advance the development of new technologies and business models in all regulated sectors. The Regulatory Commission may collaborate with academic institutions, research organizations, and industry players to support innovation and the adoption of new technologies or business models.

## PROCESSES AND PROCEDURES

The Commission will develop its processes and procedures consistent with its principles. As a result, the Commission will conduct its operations in a transparent manner with open and timely communications and opportunities for public participation. It will facilitate dispute resolutions, and parties will have access to the courts if decisions are not consistent with the law. All decisions and processes will offer flexibility. The decisions will promote predictability and certainty.

## ROLE

## DEFINITIONS

## AND CLARITY

The legislation setting up the Commission will clearly define government's authority in developing policy and defining directions in law while the Commission will be responsible for carrying out its responsibilities independently as required in law.



**LICENSING**



## COMMISSION ORGANIZATION

The Commission will have a Governance Board with members who have experience and expertise in Telecommunications, Energy and Water and Sewerage. They will also be persons of integrity appointed by Government with proven capacity and capabilities in understanding complex matters associated with oversight and decision-making. The Government shall also appoint a Chair who will preside over meetings and vote in the case of a tie. The Commission will also have a Chief Executive Officer who will manage a small team of regulatory officers and staff. The team will be supported by experts on an as needed basis.

This form of organization is based upon the fact that TCI neither has the need nor the fiscal capacity, to staff a permanent body of experts. The limited fiscal capacity also means the Commission must focus on major issues rather than detailed oversight. Nevertheless, the Commission will also ensure stakeholders can present their views on regulatory issues as key inputs into the decision-making process.

To enhance efficient operations, accountability and independence from Government, the Commission will develop a multi-year budget using advice from the public, key business, and public interest leaders and the utilities being regulated (stakeholders). The Government through the House of Assembly would be expected to approve a multi-year budget supported by consensus views, but may substitute its own views, particularly where no consensus was achieved. The Commission would then operate under annual budgets based upon the multi-year budget.

The multi-year budget revenue requirements would be funded by regulated service providers who would recover those costs from customers proportionate to their use of the services. Any deficits or surpluses would be recovered from and



returned to customers in subsequent years as directed in a Regulatory Commission decision-making process.

Operational management will be independent of Government as well, although subject to general government management processes and requirements. If the Commission has need of alternate compliance measures, approval may be granted by a designated senior government management committee.

## DISASTER RECOVERY TRUST FUND

The TCI Government (TCIG) intends to promote rapid recovery from major natural disasters and smooth the costs to ratepayers by establishing a Disaster Recovery Trust Fund (DRTF). The details of funding and management of the DRTF would be established after consultations with stakeholder. The model under consideration would give responsibility to the Commission. The DRTF would receive revenues from regulated service providers to build up reserves sufficient to cover uninsurable infrastructure damage during a disaster. The total amount required, and annual contribution amounts would be established by the Commission after consultations with regulated service providers and other stakeholders. The Commission would also have authority to hire engineering and accounting experts. The regulated service providers would recover their contributions from a levy on customer bills.



## PART III-POLICY PAPER DETAILS

### OVERVIEW AND CONTEXT

The Turks and Caicos Islands Government intends to establish a multi-sector independent regulatory body (the Regulatory Commission). The Regulatory Commission (the Commission) will deliver sound, long-term public interest regulation in the telecommunications, electricity, water, and designated fuels sectors.

An approved draft policy will become the foundation of stakeholder consultations, and those consultations will contribute to a new legislative framework that will be tabled in House of Assembly. The legislation will implement government's policy commitments for regulatory accountability, good governance, independence, and transparency while ensuring public and stakeholder consultation and participation in regulatory decisions.

An independent multi-sector Commission will enable effective and efficient oversight of monopoly and quasi-monopoly utilities and related services. Establishing this model will ensure government is responsible for setting policy while the Commission independently carries out its legislated responsibilities for regulated services.

### REGULATORY PURPOSE

The Government intends to have regulatory intervention only where there is demonstrable public interest, including market failure that cannot be removed by other means, and the economic and social benefits of intervention can reasonably be expected to exceed the likely economic, and environmental and social costs. Furthermore, it must be established that a natural monopoly is an important element of the sector where significant market power exists, and intervention is necessary for the benefit of consumer protection.

Intervention includes the setting of tariffs and approving the deployment of capital as well as supporting long-term investment, innovation, and consumer protection under monopoly conditions. Where competition exists, regulation would be used to promote it. Under all circumstances, regulation includes monitoring and requiring compliance with performance and quality standards. In the cases where regulatory actions are necessary, they should be well-targeted, proportionate to the problem being addressed, and measured against the alternatives. The legislation establishing the Commission will take into account this guidance.

## REGULATORY MODEL CHOICE

In many cases, the legislative authority for regulating utilities and their related services in these Islands has not been recently modernized and in the case of Fuels legislation, the Fuel Officer position was left vacant for many years until it was finally filled in February 2022. The Telecommunications Commission is the only agency in which legislation provides all the functions normally associated with a regulatory authority.

In the case of electricity, there is a need for change due to technologic innovation and climate change which requires an objective, non-political and sustainable approach.

There also is a need to broaden regulatory scope to cover matters such as energy storage. In the case of water, the utilities need new investments and a common approach to oversight that an independent regulator would bring. In the case of fuels and services regulation, it is expected that a properly resourced regulatory body would be able to implement the oversight responsibilities intended in the current legislation with the intention to broaden its scope to new lower-carbon fuels.

Furthermore, while the Telecommunications Commission regulatory framework has been well established, the convergence of many telecommunications sectors (internet, including high-speed fibre and low-orbit satellite, telephones, smart mobile telephones, television, radio, and the advent of these services becoming available directly to consumers through wireless or fixed networks) means they need to ensure they have full regulatory authorities.

A regulatory organizational review conducted by Kairi Consultants for these Islands suggests there

are four common regulatory models; Regulation by Government, Independent Regulation, Regulation by Contract, and Outsourcing of Regulatory Functions, including to expert panels. The Independent Regulator Model is one most often chosen by countries with a background in English common law. In some cases, the regulated sectors are large enough to warrant separate regulators.

However, in the Turks and Caicos Islands, it is thought that grouping regulatory responsibilities together in a multi-sector public utility model is the most appropriate as the expertise in assessing rate cases and evaluating performance is often the same regardless of the sector.

It is important to carefully consider how the new multi-sector public utility model will be implemented. Some regulatory matters such as rates and tariffs and capital expenditures as well as regulated service performance standards can be readily identified as candidates for consolidation and managed independently of Government. However, responsibility for major licensing decisions with great economic importance responsibility for final approvals should lie with the government.

Policy is another area where the Government retains authority. Defining which matters may be managed independently and which have such significance that the government must approve or initiate them and under what process, will be an important feature of the Multi-sector Regulator Policy.

Different sectors and their Ordinances take different approaches to regulatory oversight. Building a multi-sector Regulatory Commission with consistent approaches, while providing flexibility to address the unique circumstances of the different sectors will also be a key feature of the new Policy.

In managing this transition, Government intends to review all roles and responsibilities in each of the current Ordinances to ensure all appropriate functions and responsibilities are covered in the new Ordinance for the Commission, and the related consequential amendments to ensure regulatory and licensing matters in the existing laws are appropriately retained, or transferred under the new law. The result should be a more uniform approach for the regulation of designated monopolies or quasi-monopoly (dominant) entities and related services.

The foundation for regulated services for electricity, water and sewerage and telecommunication rates remains one of a cost-of-service model where regulation-making authority is used to establish a formula where rates are set at a level that will allow a utility to recover its prudently incurred costs plus a reasonable profit. This model is often applied elsewhere when services are mostly monopolistic in nature.

## REGULATORY OBJECTIVES

The following objectives are adopted to direct and guide the Regulatory Commission's activities. The Commission will report annually on how they have achieved or moved forward to meeting these objectives.

- **AFFORDABILITY**

- o A multi-sector Regulatory Commission will offer more effective regulatory oversight for customers in the short-term while enabling a rate regime that encourages innovation and long-term investments.

- **RELIABILITY**

- o A multi-sector Regulatory Commission will ensure regulated services are operated under industry best practices to deliver reliable services.

- **ECONOMICALLY COMPETITIVE**

- o A multi-sector Regulatory Commission will ensure regulated services providers operate within international standards and best practices using technologies that are widely adopted elsewhere at a reasonable cost.

- **INNOVATION**

- o A multi-sector Regulatory Commission will ensure



regulated service providers offer technologies and business models widely adopted elsewhere adapted for TCI circumstances.

- **ENVIRONMENTAL SUSTAINABILITY**

- o A multi-sector Regulatory Commission will ensure regulated service providers plan projects and operate their services in a manner that advances the Government plans to address Climate Change and other aspects of environmental sustainability.

## ACCOUNTABILITIES

In addition to meeting the Objectives, the Regulatory Commission will be accountable for the conduct of its activities in an efficient and effective manner. Accordingly, it will also be required to report annually on how it has managed in its conduct in the following areas:

**REGULATORY OVERSIGHT:** The Commission will monitor and oversee the operations of regulated sectors to ensure compliance with laws, regulations, and industry standards. It will develop and enforce rules to maintain fair competition, prevent fraud, and protect public interests as required.

Accountability measured by reporting on compliance outcomes and the development of rules.

**LICENSING AND PERMITTING:** The Commission manage the process of issuing licenses and permits for the installation, operation, and maintenance of systems in an efficient and effective manner. It will ensure that all necessary regulatory requirements are met and evaluate project proposals to ensure compliance with safety, environmental, and technical standards.

Accountability measured by success in establishing and achieving timelines for the issuance of licences and permits with reports on how proposals will comply with standards.

**OPERATIONAL MONITORING AND COMPLIANCE:** The Commission will monitor how regulated service providers meet operational performance and technical standards. It will establish measurement and verification protocols, conduct inspections, and enforce penalties if there are violations or non-compliance with operational standards.

Accountability measured by reports on how the Commission has established and achieved compliance with Performance and Technical Standards.

**RESEARCH AND DEVELOPMENT:** The Regulatory Commission will promote research and development initiatives to advance renewable energy technologies. It may collaborate with academic institutions, research organizations, and industry players to support innovation and the adoption of new technologies.

Accountability measured by the establishment and achievement of initiatives to support research and development and their outcomes over time.

**MARKET EFFICIENCY AND STABILITY:** The Commission will strive to enhance market efficiency and stability by making decisions and establishing process to prevent market abuses, promote transparency, and encourage innovation. This responsibility will

include authority and resources to oversee mergers and acquisitions, manage anti-competitive behavior, and prevent market manipulation.

Accountability measured by the establishment and achievement of compliance through decisions and processes outcomes.

**CONSUMER PROTECTION AND DISPUTE RESOLUTION:** The Commission will protect consumer interests by establishing and enforce consumer protection measures, such as preventing monopolistic practices, ensuring fair pricing, and monitoring service quality.

It will act as mediators or arbitrators to resolve disputes between companies and consumers, as well as conflicts between industry players themselves. The Commission may facilitate negotiations, investigate complaints, and make decisions to foster resolution.

Accountability measured by establishment and achievement of consumer protection and dispute resolution measures and reports on complaints and disputes outcomes, including reports on success of resolving such matters.



**Supporting Policy Development:** The Commission will contribute to the Government’s development of new policies and regulations across sectors. The Commission will support the Government by evaluating market trends, conducting research, and at Government request, by engaging with stakeholders to identify areas that require regulatory intervention, assess and report on stakeholder proposals for policy changes, and identify emerging challenges in various industries.

Accountability measured by the timeliness and quality of the Regulatory Commission’s response to Government requests.

## THE PRINCIPLES FOR EFFECTIVE, INDEPENDENT REGULATION

The essential feature of an Independent Regulator Model is that the agency must be at arms-length of the state and of providers that may be tempted to exercise market power. Customers of the monopoly or quasi-monopoly services must have confidence that the Regulator will provide protection against the exercise of monopoly power and politically based interventions.

The Regulator also needs to offer balance between short-term and long-term interests. Therefore, it needs to ensure its decisions will enable an appropriate level of investment to ensure safe and reliable telecommunications, electricity, water, and fuels will be available today and into the foreseeable future. To ensure both customers and investors have confidence in the regulatory framework and decisions, its operations and processes must be transparent, reasoned, founded in law, and well communicated.

In general, several key characteristics have been identified as best practice principles for regulatory commissions around the world. In the Turks and Caicos Islands, it is intended that they be implemented in the new Commission as follows:

- **Clarity of Roles and Responsibilities** – There will be clear legislated separation between policy-making



ing and regulatory implementation. The Commission’s role, responsibilities and authorities will be well defined in legislation. Its actions will be taken within those authorities and be bound by law. The Government will retain capacity to lead and develop policy to underpin changes in regulated services and their offerings.

- **Accountability and Governance** – The Commission will be accountable to the House of Assembly, the Government, those it regulates, and the public.

It must act prudently in managing its affairs to not place an undue burden on costs that will ultimately be recovered from the customers of regulated services. To manage these responsibilities with the full confidence of all parties, a multi-year budget plan should be developed and approved with input from all stakeholders.

- **Collaboration and Co-ordination** – The Commission will be a knowledgeable body in the sectors it regulates and will share its experience and knowledge with others. More specifically when it does not have formal regulatory authority but is aware of matters that need attention by others, it has an obligation to share that information.

For example, if the Regulatory Commission receives information on emerging trends on business models or technology, this information could be included in an annual report to be shared with government and the public in a neutral, fact-based reporting format. Likewise, cases may emerge where the Regulatory Commission may become aware of breaches of environmental or safety matters. In this case there would be a duty to forward the information to the appropriate body responsible for such matters.

- **Communication** – Information will be made available to all stakeholders on a timely basis. The Commission should have full authority to require utilities to provide all information necessary to carry out its responsibilities. Failure to comply with an order for information could be filed with the courts for enforcement.

- **Consultation** – Stakeholders must be given the opportunity to present their views on regulatory issues as key inputs into the decision-making process.

- **Predictability** – A predictable regulatory regime facilitates planning by the operators, and thereby reduces investment risks. Therefore, decisions of the Commission must – over time – demonstrate regulatory certainty.

- **Flexibility and Innovation** – As technology and cost-effective business models emerge, the regulatory system must be able to adapt. The Commission should have flexibility in its choice of regulatory tools that are appropriate to changing economic and environmental conditions. The suite of tools used by the Commission must be specified in the legislation's regulation-making authority.

Examples of tools to be specified include exempting certain areas of activities or a certain quantum of investment or spending from oversight.

There should be specific author-

ity to develop criteria for innovation to promote new business models and technologies. There should also be specific authority to engage with stakeholders on improvements to the regulatory system including issues such as rate designs and incentives for improved performance with the scope of such explorations set in regulations, and outcomes from such engagements reported to the Government for regulation or legislative action, when required.

To promote flexibility, the Regulatory Commission should be given general authority to develop and amend its own processes and procedures in an open and transparent process. However, in some areas the government should have regulation-making authority to specify the processes and procedures when it believes it necessary to do so.

- **Non-discrimination** – Regulatory decisions should be fair, reasoned, and grounded in law. The Commission should not arbitrarily discriminate based on customer categories or other peculiarities.

- **Transparency** – Transparency is critical for engendering legitimacy. The procedures for undertaking regulatory activities must be developed in an open consultative manner and disseminated to all stakeholders. The Commission will explain how they reach decisions, and decisions must be accessible.





## SERVICES TO BE REGULATED

The Commission will be established as a Multi-sector Utility Regulator for the regulation of:

- Telecommunication services and Broadcasting when established.
- The production, supply and distribution of water and sewer services.
- The generation, storage, transmission, distribution, and supply of electricity.
- Designated Fuels.
- Designated Services, business models, and emerging technologies related to any or all the above.

## REGULATORY POWERS

In general, the regulatory powers for the Commission fall into three categories:

- Licensing and Permitting
- Monitoring, Approvals, and Compliance
- Research and Development

### LICENSING, PERMITTING

In general, the Regulatory Commission will be responsible for managing regulated service licensing processes, including initiating calls for license applications, establishing criteria for the award of licenses, awarding licenses, monitoring compliance with license conditions and renewing licenses.

However, decisions on licensing including criteria and process for awarding licenses and franchises

for major monopoly or quasi-monopoly service providers are a critical element of government economic and social policy considerations.

Accordingly, the final decision with respect to the award of a license with major economic importance shall be made by the Minister responsible for the Regulatory Commission, upon recommendation by the Regulatory Commission.

Furthermore, should the Minister reject the recommendation of the Commission, he/she shall be required to publicly communicate such reason(s) to the Commission and require a review. He/she may not substitute his/her opinion. The Government shall also have regulation-making authority to determine the length of award, and the determination of which licenses are to be considered as major for the purposes of this Ordinance.

All licencing functions of the current Ordinances shall be merged into the authority of the new Commission. The function would include the acts of granting and renewing licenses, the establishment of license conditions, administration of licenses, including the keeping of a registry of licences, collecting revenues due under licenses, franchises, and taxation, and remitting them to the Treasury monthly and any other administrative matters required by government through regulation. For regulatory efficiency and effectiveness, operational management for the licensing of individuals may be delegated to other regulatory authorities.



License conditions shall include adherence to requirements in legislation and regulation for matters such as reliability, and sustainability, including efficiency and conservation.

Efficiency and conservation are significant components of the Government's Climate Change Objectives. They are also important elements of the Government's Green and Gender Budgeting policies.

Given that the production of water in the TCI is an energy intensive process, the production and distribution and use of energy and water should both be carried out in an efficient manner, conserving as much water as is reasonably possible. This is also a key part of the Government's Potable Water for All Policy.

Therefore, it is intended that all energy and water regulated services undertake initiatives and/or programs to support objectives for efficiency and conservation. The requirement will be implemented as part of an energy, water and sewerage regulated service provider's license conditions. Authority to require such programs as a license condition will be included in legislation.

## **MONITORING, APPROVALS, AND COMPLIANCE**

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The role of the Commission shall include a mandate to act in the long-term interests of customers and protect them from unfair or abusive business practices, monitor the performance of regulated entities, the functioning of the market, the maintenance of services in each regulated sector including the provision of an investment climate sufficient to attract the capital necessary for maintenance of good quality services and a transition to a lower carbon energy sector.

The Commission will be given authority to approve defined projects, developments and the capital required, set or approve tariffs, set standards for matters such as performance, universal service, quality of service, tariffs, management of monopoly resources and any other matter specified in related legislation or regulations.

Regulation-making authority in the legislation will enable thresholds to be set for approvals of capital expenditures in specified sectors. Regardless of approvals in advance of capital and operational expenditures, regulated services in specified sectors will be required to be prudent in all their investments and spending which is subject to review and inquiries.

The Commission will also have authority to review license conditions for efficiency and conservation programs and initiatives and assess their effectiveness. Regulation-making authority will be included to give the Government the authority to prescribe program activities and outcomes if such prescription is necessary.

## **RESEARCH AND DEVELOPMENT**

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The mandate of the Commission will include support for the introduction of the innovative technological advancements needed to drive improvements in the water, telecommunications, electricity, and fuels sectors including a shift to energy management technologies and resources that help the T&CI meet its obligations to reduce the Greenhouse Gas emissions that cause climate change, the convergence of services in the telecommunications sectors, and the changes in technologies that can be used to desalinate potable water or recycle water for non-potable uses.



The Commission’s mandate to support the use of innovative technologies and business models will come through processes of research, enquiries, studies, and consultation and collaboration among stakeholders as new ideas, technologies and business models emerge. It will be able to join or participate in relevant professional, research, and educational groups, as well as in regional or international cooperative regulatory organizations and bodies.

## **REGULATORY PROCESSES AND PROCEDURES**

The Commission shall have regulatory powers to set rules and processes, and policies on how they carry out their legislated responsibilities. It will have authority to recover their costs to enable a stable and reliable source of revenue for their operations. Within their budget plan it will have the ability to make all relevant personnel decisions, including the ability to retain the services of such independent experts as may be required to carry out their obligations.

It will be given an appropriate range of remedies to enforce its operational policies, decisions, standards, and rules. It will have defined authority to compel the production and provision of the information and adjudicate designated disputes between regulated entities and between regulated entities and customers.

Regulation-making authority will be included to enable the Commission to delegate or coordinate regulatory functions where another regulatory body could perform the function more efficiently, or where jurisdiction is concurrent or shared. For example, the delegation of authority could most obviously be applied in areas such as safety, environment, and planning, but other areas may emerge as well.

### **REGULATORY FLEXIBILITY, PREDICTABILITY AND CERTAINTY**

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The Commission shall adopt processes and procedures based on industry best practices that allow the regulatory framework to operate in a transpar-

ent, efficient, and effective manner. Those processes will be consistent with requirements for communication and participation. They will be developed with an opportunity for input by the public and stakeholders. They may be varied from time-to-time based upon experience and opportunities for technological improvement, but only after further opportunities for input by the public and stakeholders.

To enable flexibility as technology and business models change, the legislation establishing the Commission will include regulation-making authority for the Government to designate specific related services including fuel types for regulation by the Commission.

The Government would expect the Commission to adopt its own rules, processes, and standards. However, the Government will also retain authority which it may or may not use to develop regulations in certain specific matters including confidentiality of information, the areas to be subject to technical or performance standards, the design of tariff regimes, and public consultation procedures.

As a matter of transparency and certainty, the Government is committed to publishing all regulations in this legislation for stakeholder comment prior to putting them into effect.



The Commission's processes will include timelines for decisions after a hearing ends. The Commission will report on any variances from its timelines in its Annual Report to Parliament and may be called upon to explain the reasons for the variances by the Assembly.

The Commission shall also have authority to set performance standards for specified regulated services. All performance standards must follow internationally accepted regulatory standards as may be specified after consultation with industry and other stakeholders.

The government may identify which regulated services will be required to meet performance standards. The Commission would have responsibility to develop such standards, measurement methodologies and reporting requirements.

The Government would have regulation-making authority to establish any penalties or to specific which activities and sectors are to be included or exempt. By consequential amendment to the TCI Consumer Protection Ordinance (17.14), the Commission Ordinance should ensure that any complaints about services regulated under the Commission Ordinance will come to the Commission.

The Commission should also establish a Consumer Statement of Rights with provisions consistent with

the Consumer Protection Ordinance.

The Commission shall also strive to establish a record of decision-making that is consistent and predictable. To accomplish this, it should research the decisions of similar utility regulators in the Caribbean and other common-law jurisdictions. Where appropriate, its decisions should reference similar decisions elsewhere.

### **ASSEMBLY**

The Commission will establish a Code of Conduct for all employees during their term of employment and for a reasonable period after they leave. The Code will include items such as potential and real conflicts of interest, the receipt of gifts and gratuities. The Commission itself will also be prohibited from receiving gifts and bequests from non-governmental sources. The Code will be subordinate to any rules established by the TCI's Integrity Commission.

### **REQUIREMENTS FOR COMMUNICATION, TRANSPARENCY, AND PUBLIC PARTICIPATION**

The Commission will provide an on-line registry of notices for hearings and other regulatory matters as well as documents filed by the regulated services, stakeholders, and any decisions by the Commission. It will proactively reach out to media outlets (traditional and social media) to communicate the availability of key matters such as hearing notices and decisions.

The Commission shall provide an opportunity for the public and other stakeholders to provide information and comment on matters requiring a decision by the Regulatory Commission.

It will have authority to determine whether to hold a Public (in person or virtual) or Paper Hearing. A Public Hearing would include in-person presentations and testing of evidence. A Paper Hearing would only receive written submissions and questions while still allowing for follow-up written questions to written responses. In either case, the Commission will have authority to provide opportunities for consensus building by customers and regulated services.





In general, documents should be treated as open to the public unless the Commission, or the government through regulation-making authority establishes criteria by which some or all confidential information should be redacted. Confidential matters will generally include information that if disclosed, would be detrimental to the interests of the customers.

For example, if a regulated services was required to disclose information on expected prices in bids for goods and services, competitive offers may be impacted and the cost of service to customers would increase.

All regulated service providers must respond to Information Requests and Information Requirements by the Commission. The requests may come during hearing processes where the Regulatory Commission determines the information is necessary for the matters before it. Information Requirements may be specified for reporting purposes in regular or special reports. In the case of a refusal to comply with an Information Request, the Commission will have the authority to seek a court order compelling compliance.

Regulated service providers may be subject to a Commission order for an external management performance audit. The cost of such an audit should be recovered by the service provider through its rates. The government should also have regulation-making authority to establish criteria for such management performance audits.

The Commission shall provide an Annual Report to the House of Assembly on matters that have arisen during the year and the outcomes. The Report shall include such matters as the Commission believes

are in the public interest, but at a minimum, it shall include an audited financial report, a summary of regulatory decisions and investigations, a report on its accountabilities, including its own performance standards and any established standards set for the regulated service providers.

The Commission shall also be subject to the authority of the TCI Auditor General who will report from time to time on the Commission's record on transparency, effectiveness, and timeliness of regulatory procedures, the clarity, coherence, consistency, and timeliness of agency decisions, the efficiency of the agency's use of its resources, the degree of independence, integrity, and credibility in agency processes and actions, and management effectiveness and efficiency.

## **DISPUTE RESOLUTION AND APPEALS OF DECISIONS**

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The policy intent of establishing an independent Commission with competent, experienced persons of integrity is to make that body the final arbiter of decisions on matters within its competence, unless specified otherwise. Licensing decisions on matters of significant economic importance to the TCI would be an example to be specified where the Commission is not the final arbiter.

A regulation-making authority shall be established to specify which matters under the Ordinance that may be referred to the government or another independent body for review. Individual hearing decisions may only be appealed to the courts on grounds that the Commission failed to act within its legislative authorities and its own processes and procedures.

The Public Supplier (electricity utility) has access to an arbitration process to settle disputes. This process will be reviewed in consultation with the Public Supplier and formalized through consequential amendments to the Electricity Ordinance.

## **ORGANIZATION AND ADMINISTRATION OF THE REGULATORY COMMISSION**

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Each of the principles, authorities, mandates, and responsibilities will be considered in drafting the legislation to establish a Multi-sector Utility Regulator (Commission). The legislation will give the Commission the tools to ensure the public interest is protected on both a short and long-term basis. The legislation will establish the Multi-Sector Utility Regulator as an Independent Regulatory Commission. The Commissioners will be people of integrity with proven capacity and capabilities in understanding complex matters associated with oversight and decision-making.

## **HUMAN RESOURCES**

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The Commission will be supported by a Chief Executive Officer to manage a small team of regulatory officers and staff. The team will be supported by experts in each of the services being regulated on an as needed basis.

## **FINANCIAL RESOURCES**

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A multi-year budget for the Commission will be developed with advice from the public, customer groups and the regulated service providers (Stakeholders). A Preliminary Budget Report will outline the expected resources required, the reasons for their deployment, and the impact on the utilities and their customers who will pay for the cost of regulation through their rates.

Following feedback from the regulated service providers, and stakeholders, the Commission will prepare a Final Budget Report, including the feedback received, and any rationale for acceptance or rejection of advice. The length of the multi-year budget will be proposed by the Regulatory Commission but may also be fixed by the Government in regulations.

The Government through the House of Assembly would be expected to accept any consensus views on the Multi-year Budget, but may substitute its own views, particularly where no consensus was achieved.

Annual budgets will be prepared by the Commission consistent with the multi-year budget. There may be variances due to postponement of rate-cases, vacancies, and the like.

Any surplus or deficit in an Annual Budget will not immediately impact rates, but rather will be applied to subsequent years with a view to achieving the planned multi-year budget balance. No legislative approval will be required.

During the multi-year budget process, any residual or anticipated recurring surplus will be returned to customers through an adjustment in rates. Any residual or anticipated recurring deficit will also be covered through an adjustment in rates. In either case, adjustments may be smoothed by taking effect over a number of years, and stakeholders will be asked to comment on any required adjustments and the House of Assembly will be required to approve the new budget. The Commission shall prepare a new multi-year budget plan no later than a year before the expiry of the previous one.





## **BUDGET MANAGEMENT, HIRING, AND PROCUREMENT**

The Commission's management of its budget including procurement and hiring will also be independent of Government while being subject to government general rules of administration.

Due to the unique human resources needs of the Commission including variable workloads for hearings, the need to secure specialized expertise, equipment and other services, the Commission may propose alternate processes for the procurement of goods and services including human resources, and IT to a Government Management Committee.

The members of the Committee who would have authority to approve alternatives to Government processes in specified areas shall include the Permanent Secretary of Finance, the Permanent Secretary responsible for human resources and the Chief Executive of the Commission. Regulation-making authority will allow for the specification of areas for alternative compliance, additional appointments to the management committee, or in the case of vacancies, the appointment of alternatives. The Auditor-General will report on the use of any alternate compliance processes developed on a regular specified basis.

## **CLARITY OF ROLES BETWEEN GOVERNMENT AND THE REGULATORY COMMISSION**

The Government will develop and direct policy through legal instruments such as legislation and

the specified regulation-making authority. The Government intends to maintain the capacity to manage the development of policy for the utility sector.

Through its Annual Report, the Commission may identify areas where Government Policy could be developed to assist the Commission in carrying out its mandate. The Commission may also provide technical advice on policy options and implications when requested by Government. It would be intended that consultation with the Commission will normally take place before policy measures affecting the regulated services are put into law. But once policy has been established and implemented in law, the Commission will be able to act independently from government when carrying out those legislated responsibilities.

## **AUTHORITIES FOR SAFETY**

Safety regulation is a combination of ensuring entities abide of any specified requirements in codes, standards and licensing processes, and a more general requirement to support a safety culture through internal practices and accountabilitys.

In the case of the regulated service providers in the regulated sectors, they will continue to be regulated under the laws of general application in the TCI. However, there are some sector-specific safety matters where it is important to have safety regimes established and approved under the expertise provided by Commission Legislation and regulations.

The issue is primarily the safety aspects of electrical connections and approvals by a qualified inspector (electrical technician/engineer) for electricity and telecommunications. The current Electricity and Telecommunications Ordinances have authority over the licencing of electricians. However, in practice there is delegation to another body (the Planning Department).

From a policy perspective, the issue is whether there is a volume of activity sufficient to warrant the creation of a Compliance Division within the Commission to hire qualified inspectors (electrical technician/engineer) who have knowledge of the National Electrical Code NFPA 70, and Occupational Health and Safety Standards. For efficiency and effectiveness, there will be regulation-making authority, to delegate operational oversight and compliance inspections and enforcement to others, where such delegation is recommended by the Commission.

## DISASTER RECOVERY TRUST FUND

Climate Change is raising the potential for more extreme weather conditions more frequently. In the TCI this means increased risks from severe storms such as hurricanes resulting in more frequent damage to vulnerable infrastructure, particularly in the case of energy and telecommunications. It is the policy of the TCIG that recovery from such natural disasters be as rapid as possible, and that the resulting costs should not be a series of one-off shocks, but rather smoothed out over time by establishing a reserve to be known as the Disaster Recovery Trust Fund (DRTF).

The DRTF would be a supplement to the general obligations of Regulated Service Providers to insure their assets in a cost-effective manner. However, it is recognized that insurance coverage may not be available for some assets/parts of their infrastructure or when available, may be cost prohibitive. In addition, there may be deductible amounts that would need

to be covered in case of a major loss. Under these conditions, the DRTF would step in.

This mechanism would be new to the TCI and it is the Government's intention to set the terms for funding and management only after consultation with the Regulated Service Providers and other stakeholders. The model currently under consideration would be to give the Commission authority to establish the DRTF. The DRTF would receive most of its revenues from customers of regulated services, and the assets will be held in Trust for them. The Fund may have different, segregated accounts related to differing requirements for each regulated service sector. The Objectives of the Fund will be to pay the costs related to a natural disaster or other catastrophic event as required for each regulated sector.

The amount required to be built up in reserve, how quickly it would be replenished after paying for a natural disaster and what costs would be covered would all be subject to consultation with regulated service providers and stakeholders. It may be useful to consult with experts in Engineering and Accounting, particularly if there is no consensus by the Providers or stakeholders. Under this model, the Government may also contribute to the cost in the form of regular payments into the Fund, or through an agreed contribution after a disaster occurs.



Draws on the fund during the restoration process would be made in a manner determined by the Regulatory Commission. If an event occurs and the recovery cost exceeds the amount in the fund, then the Commission would be able to adjust the Disaster Recovery Fund contributions to enable it to be replenished.

## **CONSEQUENTIAL AMENDMENTS TO OTHER LEGISLATION/ORDINANCES**

In the process of writing a new Ordinance for the Regulatory Commission, there may be parts of existing Ordinances that may need to be modified. Once the policy has been adopted, a more thorough review of the implications for other legislation will need to be conducted. The following Section is simply intended to highlight areas where modifications should be considered.

The Electricity Ordinance has many sections which would likely remain as is (modified as required by the new Renewable Energy Ordinance). Further detailed analysis is required.

### **INTEGRATING TELECOMMUNICATIONS**

Although many of the functions of Telecommunications Commission would likely be folded into the Regulatory Commission, certain sections of the current Telecommunications Ordinance will likely need to be replaced.

### **INTEGRATING WATER AND SEWERAGE LEGISLATION**

Like Electricity and Telecommunications, further review is required for determining the organizational design for the integration of water and sewerage.

### **INTEGRATING AND MODERNIZING FUELS LEGISLATION**

In addition to the review of current legislation, it will be important to capture the policy intent to include emerging lower-carbon fuels such as natural

gas, compressed natural gas, liquid natural gas and hydrogen and ammonia that is not produced from fully renewable electricity sources as well as carbon free biofuels, green hydrogen, and green ammonia.

## **PRELIMINARY REGULATION MAKING AUTHORITY LANGUAGE**

As is the case for Consequential Amendments, further review will be required on which specific areas of regulation-making authority would be required. Therefore, the matters listed below are intended to be only preliminary in nature, to be finalized after consultation and confirmation of government policy decisions.

- To prescribe any matter under this Bill relating to the quality of regulated services;
- To establish technical standards;
- To protect customers and or the public generally against personal injury or damage to property arising from the operations of a service license;
- To provide for enquiries in connection with any accident which is or may be attributed to a utility supply service;
- To establish tariff schemes and tariffs;
- To appoint members of the senior government management committee.
- The form of annual reports;
- The setting of fees payable pursuant to this Bill;
- The staggering of the terms of appointments of the members of the Regulatory Commission
- Creating offences for breach of any provision of the Regulations and for a penalty [not exceeding an amount set in regulations for any such an offence;
- The circumstances in which, and the methods by which, a utility apparatus is to be stored and treated on any premises;
- Governing installation, operation and maintenance of a utility supply system within a private development.

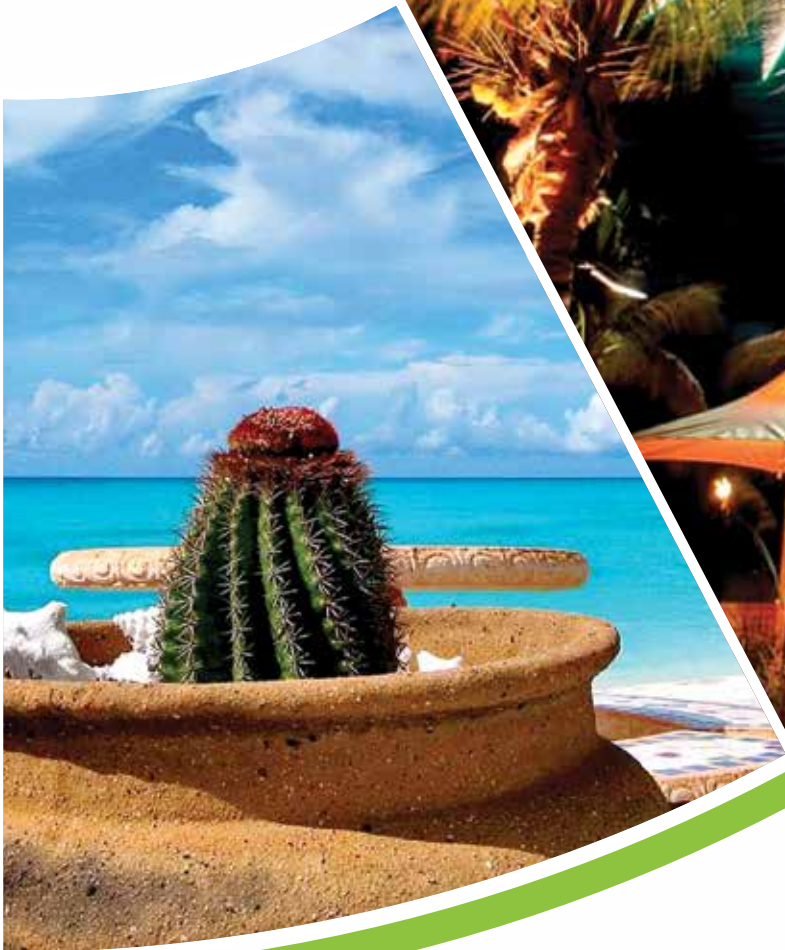




- Standards regarding-
- The facilitation of access and interconnection of service licensees, and fees associated with interconnection by those who provide regulated services.
- Dispute resolution mechanisms
- Procedures for the conduct of public consultations.
- Procedures for dispute resolution.
- Designated Fuels
- Designated Services and technologies related to telecommunications, water and sewer, and energy including electricity and designated fuels
- Thresholds to be set for approvals of capital expenditures in specified sectors.
- Determining the length of the Regulatory Commission's multi-year budget
- Establishing criteria by which some or all confidential information should be redacted.
- Establishing criteria for management performance audits of regulated entities
- Establishing rules, processes, and standards respecting the definitions and processes for han-

dling confidentiality of information, the areas to be subject to technical or performance standards, the design of tariff regimes, public consultation procedures.

- Requiring adherence to public policy decisions
- Respecting the administration of licensing matters including authority to delegate such administrative matters to the Regulatory Commission, and the establishment of processes and procedures including the establishment of records in a registry of licences, authority for the Regulatory Commission to collect revenues due under licences, franchises and taxation and remit them to the Treasury monthly and (any other administrative matters required by government)
- The choice of regulatory tools that are appropriate to changing economic and environmental conditions. The tools to include:
  - o Exempting certain areas of activities or a certain quantum of investment or spending from oversight.
  - o Developing criteria for innovative and improved regulatory designs, and rates to promote new business models and technologies including requirements for engagement with stakeholders



## SUBMISSION OF FEEDBACK:

Feedback and comments on the draft policy can be submitted via email to [regulatoryconsultation@gov.tc](mailto:regulatoryconsultation@gov.tc). This channel is established to ensure that the consultation process is accessible and that contributions from all stakeholders are considered.

Additional Contacts:  
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