

**EXTRAORDINARY  
GOVERNMENT OF FIJI GAZETTE SUPPLEMENT**

No. 39

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2019

[LEGAL NOTICE No. 91]

FIJIAN COMPETITION AND CONSUMER COMMISSION ACT 2010

**Fijian Competition and Consumer Commission  
(Fees) Regulations 2019**

IN exercise of the powers conferred on me by section 158 of the Fijian Competition and Consumer Commission Act 2010, I hereby make these Regulations—

*Short title and commencement*

1.—(1) These Regulations may be cited as the Fijian Competition and Consumer Commission (Fees) Regulations 2019.

(2) These Regulations come into force on the date of publication in the Gazette.

*Interpretation*

2. In these Regulations, unless the context otherwise requires—

“annual regulated revenue” means the total revenue of a regulated entity calculated in accordance with these Regulations;

“annual regulatory fee” means the fee charged to the regulated entity by the Commission in accordance with regulation 3(1);

“annual volume of import” means the total volume of import of petroleum and liquefied petroleum gas by a regulated entity calculated in accordance with these Regulations; and

“regulated entity” means any person or enterprise that provides goods or services in an industry in respect of which the Commission has functions under the Act.

*Annual regulatory fee*

3.—(1) The Commission may charge a regulated entity an annual regulatory fee calculated in accordance with Schedule 1.

(2) For the purpose of calculating the annual regulatory fee to be paid by a regulated entity—

(a) the Commission must ascertain the annual regulated revenue or annual volume of import of the regulated entity, as the case may be; and

(b) the financial year applicable to the calculation of the annual regulated revenue or annual volume of import of a regulated entity is the financial year ending within the 12 months immediately prior to the beginning of the period to which the annual regulatory fee relates.

(3) Notwithstanding subregulation (1), the Commission may charge a regulated entity an annual regulatory fee in accordance with Schedule 1 for the first year based on whichever is greater—

- (a) the regulated entity's estimate of its annual regulated revenue or annual volume of import for the first year; or
- (b) the Commission's estimate of the regulated entity's annual regulated revenue or annual volume of import under regulation 5(2), if the Commission has made such an estimate.

*Calculation of annual regulated revenue or annual volume of import*

4.—(1) A regulated entity must, within 3 months after the end of its financial year, lodge with the Commission—

- (a) a return on the annual regulated revenue or annual volume of import of the regulated entity for that financial year; and
- (b) a statement showing a calculation of the annual regulatory fee in respect of the annual regulated revenue or annual volume of import of the regulated entity as set out in the return.

(2) The return specified in subregulation (1)(a) must include a certificate signed—

- (a) in the case of a regulated entity that is not a company, by a person authorised by the regulated entity to do so on behalf of the regulated entity; or
- (b) in the case of a regulated entity that is a company, in accordance with section 53 of the Companies Act 2015,

stating that the return is accurate in all respects.

(3) If a regulated entity is unable to lodge a return within the 3-month period specified in subregulation (1), the regulated entity must lodge a provisional return within the same 3-month period provided the regulated entity—

- (a) clearly identifies the return as a provisional return; and
- (b) submits a final return within 6 months after the end of its financial year.

(4) Where 2 or more regulated entities are companies that are associated with each other in accordance with the Companies Act 2015, and the Commission is of the view that the companies should be treated as a single entity for the purpose of the assessment of the annual regulatory fee, the Commission may require the regulated entities to lodge a consolidated return and statement in accordance with subregulation (1), in addition to any requirement to lodge individual returns and statements.

(5) A regulated entity which, in a return, fails to report or makes a false representation of the annual regulated revenue or annual volume of import, commits an offence.

*Determination of annual regulated revenue or annual volume of import*

5.—(1) In determining the annual regulated revenue or annual volume of import of a regulated entity for the purpose of calculating the annual regulatory fee applicable to the regulated entity, the annual regulated revenue or annual volume of import reported by the regulated entity in a return lodged with the Commission under regulation 4(1) is to be taken by the Commission as the actual annual regulated revenue or annual volume of import of the regulated entity.

(2) Where—

- (a) a return required under regulation 4(1) to be lodged by a regulated entity has not been lodged by the regulated entity; or
- (b) the Commission does not accept as accurate or complete the annual regulated revenue or annual volume of import reported in a return lodged by a regulated entity,

the Commission may make an estimate of the annual regulated revenue or annual volume of import based on the provisional return, if applicable, and on such other matters or information as the Commission reasonably considers to be relevant, including previous returns lodged by the regulated entity, returns lodged by other regulated entities providing same or similar goods or services, or market information, and may issue an invoice on such an estimate.

(3) The annual regulated revenue or annual volume of import estimated in accordance with subregulation (2) is subject to adjustments in invoices for annual regulatory fees for subsequent periods based on the actual annual regulated revenue or annual volume of import as these are made available by the regulated entity.

(4) The Commission must, as soon as practicable, refund or recover the difference in annual regulatory fee in the regulated entity's next financial year.

*Invoice for annual regulatory fees*

6.—(1) A regulated entity must pay an annual regulatory fee not later than 30 days after the Commission issues an invoice to the regulated entity specifying the amount payable in accordance with Schedule 1.

(2) Where the invoice referred to in subregulation (1) is received after the date of issue, the annual regulatory fee must be paid not later than 30 days after the receipt of the invoice from the Commission.

(3) The onus of proving that the receipt of the invoice occurred after the date of issue of the invoice, and the actual date of receipt in those circumstances, is on the regulated entity.

*Fee payable for specified regulatory activities*

7.—(1) The fee payable for a merger or an acquisition assessment is \$14,000 (VEP).

(2) The fee payable for mediation services, regulatory or compliance audits, inquiries, investigations, research and reviews are based on the rates set out in Schedule 2.

(3) The fee payable for arbitration services is based on 5% of the settlement amount and as set out in Schedule 3.

(4) The fee payable for negotiation services for an access agreement or for the variation of an access agreement are set out in Schedule 3.

*Supply of material*

8. The Commission may charge a fee as set out in Schedule 3 for the supply of material which do not include—

- (a) documents in the Commission's public register that are available for inspection; or
- (b) documents that are declared confidential by the Commission.

*Penalties*

9. Any person who fails to comply with these Regulations or commits an offence under these Regulations is liable on conviction to—

- (a) in the case of an individual—
  - (i) a fine not exceeding \$50,000 or imprisonment for a term not exceeding 3 years for a first offence or both; or
  - (ii) a fine not exceeding \$100,000 or imprisonment for a term not exceeding 3 years for a second or subsequent offence or both; and
- (b) in the case of a body corporate, a fine not exceeding \$250,000, and for a director, manager or officer in charge for the time being, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 3 years or both.

*Revocation*

10. The Commerce (Fees) Regulations 2006 is revoked.

Made this 26th day of October 2019.

P. D. KUMAR  
Minister for Industry and Trade

SCHEDULE 1  
(Regulation 3)

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ANNUAL REGULATORY FEES

	<i>Regulated industry</i>	<i>Calculation of annual regulatory fee</i>
1.	Telecommunications	0.10 % of annual regulated revenue
2.	Ports	0.10 % of annual regulated revenue
3.	Electricity	0.10 % of annual regulated revenue
4.	Cement	0.05 % of annual regulated revenue
5.	Steel	0.05 % of annual regulated revenue
6.	Postal services	0.05 % of annual regulated revenue
7.	Petroleum	\$0.005 per litre of annual volume of import
8.	Liquefied petroleum gas	\$0.005 per kilogram of annual volume of import
9.	Water and sewerage	0.10% of annual regulated revenue
10.	Any other regulated industry	0.10% of annual regulated revenue

SCHEDULE 2  
(Regulation 7(2))

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FEE PAYABLE FOR SPECIFIED REGULATORY ACTIVITIES

	<i>Particulars</i>	<i>Fee (VEP)</i>	<i>Application for mediation services, regulatory or compliance audits, inquiries, investigations, research, studies and reviews</i>
1.	Board commissioners	\$300/hour	Based on hours worked
2.	Chief executive officer	\$250/hour	Based on hours worked
3.	General manager	\$200/hour	Based on hours worked
4.	Manager	\$120/hour	Based on hours worked
5.	Senior analyst/officer	\$90/hour	Based on hours worked
6.	Analyst/officer	\$70/hour	Based on hours worked
7.	Assistant analyst/officer	\$50/hour	Based on hours worked
8.	Out of pocket expenses	5% of total expenses	Based on percentage of fee payable

SCHEDULE 3  
(Regulations 7 and 8)

FEE PAYABLE FOR REGULATORY ACTIVITIES

	<i>Particulars</i>	<i>Fee (VEP)</i>
1.	Negotiation of an access agreement	\$300 per day payable by each party
2.	Variation of an access agreement	\$300 per day payable by the party making the application
3.	Costs for notification of dispute— (a) Party relating to an access agreement (b) Party that does not have access to an access agreement or access regime	(a) \$100 (b) \$350
4.	Arbitration hearing costs	\$1,000 per day payable by each party
5.	Arbitration witness fees	\$50 per day
6.	Arbitration filing fees	\$22.50
7.	Fees payable for the supply of material	\$1 per page