



Consultation on Revised Instruction on the Methodology and Timelines of Annual Fees Payment - Industry Fee and License Fee (16th June 2013 to 14th July 2013)

Summary of Comments Received and Response of the Regulatory Authority (ictQATAR-RA)

21 January 2014

Content

Comments received and ictQATAR-RA's responses.

Purpose of this document:

1. To summarize and review responses received in response to the Consultation regarding the Revised Instruction on the Methodology and Timelines of Annual Fees Payment (Fee Instruction).
2. To provide ictQATAR-RA's response to the key comments received.
3. To enable ictQATAR-RA to prepare the final version of the revised Fee Instruction.

Respondents:

Responses were received from:

1. Es'hailSat
 2. Vodafone
-

Comments received and ictQATAR-RA’s response

The table below presents the comments received and ictQATAR-RAs position on each comment.

Consolidated Major Comments from all Respondents			
No.	Responder	Comments	RA response with rationale
1	Es'hailSat	<ul style="list-style-type: none"> Es'hailSat expressed concerns that the wording of clause 4.2.3 would result in a 'double reduction' of expenses and thus unfairly result in higher annual fees. 	<ul style="list-style-type: none"> ictQATAR confirms that expenses are intended to be subject to the application of the scaling factor once and that the scaling factor shall be applied to the total direct and indirect expenses attributable to the provision activities under the Individual License (i.e. this shall include expenses that are not associated with serving Qatar). This clarifies that that expenses and income are calculated on a like for like basis. The text of the Fees Instruction has been updated to clarify this point.
2	Es'hailSat	<ul style="list-style-type: none"> Es'hailSat proposed a change to the wording of the fourth bullet point in Figure 3 in order to make the text clearer. 	<ul style="list-style-type: none"> The text has been revised, not only to remove the ambiguity identified by Es'hailSat, but also to ensure consistency with other text in the Fee Instruction.
3	Vodafone	<ul style="list-style-type: none"> Vodafone stated that its Auditor’s Statement is not currently in the format required by clause 3.3(c) of the Revised Instruction. Vodafone confirmed that it would request its auditors to prepare the Statement in accordance with ictQATAR’s requirement and would confirm the reporting standard. 	<ul style="list-style-type: none"> ictQATAR looks forward to receiving the proposed reporting template from Vodafone for confirmation.
4	Vodafone	<ul style="list-style-type: none"> Vodafone requested clarification as to whether separate audit statements are required for each Individual License held. 	<ul style="list-style-type: none"> If separate audit statements are not provided, then an additional document shall be provided which allocates the revenue and expenses data, to the best of the Licensee’s ability, to each license held. The text of the Fee Instruction has been revised to make this clearer.

Conclusion

The revised Instruction on the Methodology and Timelines of Annual Fees Payment (Industry Fee and License Fee) for Licensed Operators attached at Annexure A to this document includes updated text that responds to the above comments. In addition, ictQATAR-RA has refined the text to take account of lessons learned and discussions held with licensees during the processing of Fees for CY2012. This revised Instruction will be published by ictQATAR-RA and it will apply to License and Industry Fees payable for Calendar Year 2013 and future Calendar Years until revised by ictQATAR-RA.

Annexure A: Revised Methodology and Timelines of Annual Fees Payment (Industry Fee and License Fee) for Licensed Operators



**The Supreme Council of Information and
Communications Technology “ictQATAR”**

**Instructions on the
Methodology and Timelines of Annual Fees Payment
(License Fee and Industry Fee)
for Individually Licensed Operators**

ICTRA 2014/01/21

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Signed by:



Graeme Gordon
Assistant Secretary General
Regulatory Authority

For the Supreme Council of Information and Communications Technology (ictQATAR)

Dated: 21 January 2014

1 Introduction

1.1 Scope and Purpose

These Instructions set out the methodology and timelines for the payment, to ictQATAR, of annual License Fees and Industry Fees by telecommunications service providers operating under an Individual License.

The requirements for the payment of these fees are prescribed in the Annexure on Fees and Contributions of the Individual Licenses and this Instruction.

This version of the Instructions has been issued to take account of the introduction of a license to enable the provision of public telecommunications services via satellite. Further, over the course of time, ictQATAR has identified some areas where the text of the previous Instructions was in need of improvement in order to be either more precise or more easily understood – such changes have also be introduced in this version of the Instructions. This document therefore supersedes all previous versions of the Instructions.

In view of the above, these Instructions set out:

- a) how to calculate the Industry Fee and the License Fee;
- b) the timelines for payments;
- c) the documentation required to be submitted in support of the relevant fee payment;
and
- d) the details of the existing provisions of the Applicable Regulatory Framework (“ARF”) on the calculation and payment of the Industry Fee and the License Fee.

These Instructions do not change the terms of any License. In the event of any conflict between these Instructions and any License, the License shall prevail.

1.2 Legal Basis

The following legal provisions provide the basis for these Instructions, but not exhaustively.

Article (3) of the Telecommunications Law of 2006 empowers ictQATAR to determine the fees or expenses that shall be paid by service providers.

Article 22 of the Executive By-Law 1 of 2009 for the Telecommunications Law prescribes the ictQATAR shall issue from time to time, regulations decisions and orders regulating license fees, any other fees, remuneration or charges.

Article 23 of the Executive By-Law 1 of 2009 for the Telecommunications Law states that any regulations, decisions and orders regulating license fees must contain among others, the entity which the fees are payable to and be based on a proportion of the revenues of the Licensees.

Clause 3 of the Individual Licenses authorizes the service providers to provide the specified telecommunications networks and services in accordance with the terms and conditions of the Licenses and its annexures, relevant legislation, international treaties, and any regulations, including instructions issued by ictQATAR. Accordingly, ictQATAR may from time to time issue additional requirements as part of the terms and conditions of the Licenses which are binding on the Licensed Operators.

Clause 13 of the Individual Licenses prescribes that ictQATAR shall determine the method and timing of payments of fees and contributions.

Under the provisions of Annexure "Fees and Contributions" of the Licenses, the Licensees are liable for the payment of the License Fee and the Industry Fee and ictQATAR shall determine the rules and procedures for the calculation of these fees.

Clause 15 of the Individual Licenses states that any breach of any term of the license, whether caused or carried out by a Licensee or its servants or agents acting on its behalf, is a breach by the Licensee.

1.3 Compliance with these Instructions and Administrative Fee

Holders of Individual Licenses are required to comply with these Instructions with immediate effect.

The Licensee is liable for an administrative fee for each day delay (**Administrative Fee**) as set out in the Licenses. The Administrative Fee shall be QAR 2'000 (two thousand Qatari Riyals) for each calendar day of delay associated with the Licensee's failure to comply fully with the requirements of these Instructions or the License and Industry Fee payment provisions of a License.

The Administrative Fee shall be payable separately for each License for which the Licensee has failed to comply fully with the requirements of these Instructions, therefore if a Licensee holding two licenses fails to comply fully with these Instructions, then the Licensee shall pay two lots of the Administrative Fee. For the avoidance of doubt, this shall include inter alia, delays in making the required payments, and in the event that the calculations do not differentiate between License and Industry Fees or separate Fees due for different Licenses, or Fees are paid into the incorrect bank account, or one or more of the required supporting elements of the payments or True-up Calculation are not received by ictQATAR before the deadline, then the submission will be deemed not to have been made by the deadline and the Licensee shall be liable for the payment of the Administrative Fee.

Pursuant to Article 70 of the Telecommunications Law, failure to comply with these Instructions may also result in penalties including imprisonment for up to 2 years and/or a fine of QAR 100,000.

Article 67 provides that violation of any term of a License is punishable by imprisonment of up to one year and fine QAR 1 million.

Article 72 provides that the penalty shall be doubled for repeated offences.

In addition to the penalties above, if Individual Licensees fail to comply with these Instructions, the non-complying Licensee will be subject to the penalties and sanctions permissible under the complete Applicable Regulatory Framework outlined in Clause 17 of its Individual License.

2 Payment Requirements

2.1 Overview

Licensed Operators are required to pay a License Fee and an Industry Fee on an annual basis for each License granted to them. The amounts to be paid are as follows:

License Fee: 1.0% of Net Revenue

Industry Fee: 12.5% of Net Profit

Each fee is to be paid in accordance with two fee payment milestones as shown in Figure 1 below:

Milestone	Purpose	Deadline
Payment of Provisional Fee	Initial payment of each fee based on financial information available at the time.	By 1 st March following Calendar Year end
Submission of True-Up Calculation to ictQATAR	Final calculation of each fee based on audited financial data. Provides the basis for settlement payments either to or from ictQATAR.	Within 30 days of formal approval of Licensee's audited financial statements

Figure 1: Milestones

A full description of the milestones, including the timing, supporting documentation requirements and how the fee amounts shall be calculated are provided in the remaining sections of this document.

2.2 Provisional Fee Payment

Licensees shall calculate the Provisional Fee Payments for each fee using the best information available to the Licensee at the time the fees are calculated. Such information may include its un-audited accounts in respect of the applicable Revenues, Interconnection and Access Charges, and Allowable Operating Expenses for the Calendar Year in question.

The Licensee shall remit the Provisional Fee Payments for the License and Industry Fees into the respective bank accounts held by ictQATAR as identified in this document (or alternative bank accounts as may be notified by ictQATAR from time to time), no later than the 1st March of the following Calendar Year, e.g. the Provisional Fee Payment for Calendar Year 2013 shall be remitted no later than 1 March 2014 and so on for subsequent years.

The Licensee shall notify ictQATAR in writing when the Provisional Fee Payments have been made. This notification shall include:

- a) the bank remittance form for the License Fee payment;
- b) the bank remittance form for the Industry Fee payment; and
- c) A statement which identifies the composition of the License Fee payment and Industry Fee payment per License held by Licensee (if applicable).

Provisional Fee Payment		
Licensee Name:		
License	Industry Fee	License Fee
Name of License	QAR	QAR
Name of License	QAR	QAR

If the Licensee claims that no Provisional Fee Payment is due, the Licensee shall inform ictQATAR in writing stating the reasons why no Fee is due. Any such written justification shall be signed by a duly authorized representative of the Licensee and be received by ictQATAR no later than the 1st March.

If requested to do so, ictQATAR will issue a receipt to the Licensee after the Provisional Fee Payment has been received by ictQATAR.

2.3 True-Up Calculation

The Licensee shall notify ictQATAR of the difference, if any, between the Provisional Fee Payment made and the amount due based on the Licensee's approved audited financial statements (the "True-Up Calculation"). The True-Up Calculation shall be received by ictQATAR within thirty (30) days of the formal approval of the audited financial statements by the duly authorized corporate body.

The True-Up Calculation, shall consist of original hard copies of the following:

- a) A detailed calculation of the amounts due for License Fee and Industry Fee based on the approved and audited financial statements. In the event that the licensee holds more than one Individual License, then separate True-Up Calculations shall be provided for each license. If the audited financial statements do not list income and expenses etc. for each license separately, the Licensee shall provide a separate document which, to the best of its ability, splits the audited figures between Individual Licenses held. The separate document should be proved in sufficient detail to support the True-Up Calculations.;
- b) A calculation of the difference between the amounts due based on the approved and audited financial statements and the respective payments made for License Fee and Industry Fee with the Provisional Fee Payment;
- c) An auditor's statement confirming that the License Fee and Industry Fee calculations comply fully with the provisions set out in the Licenses granted to the Operator and these Instructions. The auditor making the statement is to be chosen by the Licensee and shall be an internationally recognized auditing firm;
For the avoidance of doubt, the audit statement must include the following phrase "We hereby confirm that the True-Up Calculation complies fully with the provisions set out in the Applicable Regulatory Framework, the Licenses and the Instruction on the payment of the License Fee and Industry Fee."
- d) The Licensee's approved and audited financial statements. Audited financial statements shall be provided for the individual (group) company to whom a license was granted by ictQATAR and not for the group.

If requested, the Licensee shall cooperate fully with ictQATAR and with ictQATAR's appointed advisors to substantiate its calculations and shall clarify, correct or revise its calculations as necessary.

The Licensees shall be informed once the review has been completed by ictQATAR. The Licensee shall then make or receive payment of the difference, as the case may be.

If the Licensee is required to make an additional payment, the payment shall be made within thirty (30) days of the date on which the True-Up Calculation is approved in writing by ictQATAR. The Licensee shall notify ictQATAR in writing when the additional payment has been made. This notification shall include, in original hardcopies:

- a) the bank remittance form for the License Fee payment;
- b) the bank remittance form for the Industry Fee payment;
- c) A statement which identifies the composition of the License Fee payment and the Industry Fee payment per License held by the Licensee (if applicable).

True-Up Calculation		
Licensee name		
License	Industry Fee	License Fee
Name of License	QAR	QAR
Name of License	QAR	QAR

If requested by the Licensee, ictQATAR will issue a receipt to the Licensee.

If a refund is due to the Licensee, then the Licensee shall submit an invoice to ictQATAR for the amount due. ictQATAR shall pay the amount due within 30 days of receiving the invoice.

2.4 Bank Account Details

Unless otherwise informed, payments shall be made into the following bank accounts:

License Fee	Account Name	Supreme Council of Information & Communication Technology – ictQATAR
	Bank Name	Qatar National Bank
	Bank Account Number	0786-099939-001
	Bank Swift Code	QNBAQQA
	ABA Code (Routing Code)	021000021
Industry Fee	Account Name	Supreme Council of Information & Communication Technology – ictQATAR
	Bank Name	Qatar National Bank
	Bank Account Number	0013-023930-052
	Bank Swift Code	QNBAQQA
	ABA Code (Routing Code)	021000021

Figure 2: Bank Account Details

3 Calculation Rules

3.1 General Provisions and Definitions

The basic principle in relation to the calculation of revenue and Allowable Expenses for this purpose is that it shall only contain revenues and expenses relating to Authorized Telecommunication Services as specified on Annexure B of the Licenses while rendering "Authorized Facilities, Networks, Services and Activities" in the State of Qatar.

The terms and expressions listed below shall be defined as follows unless the specific context requires otherwise, in line with the Applicable Regulatory Framework. All other terms used in the document shall have the meaning defined in the Applicable Regulatory Framework.

Allowable Expenses: any allowable operating expenses the Licensee incurs in the same Calendar Year related to the activities under the telecommunications license issued in the State of Qatar.

Applicable Regulatory Framework: the Telecommunications Law No. (34) of 2006 of the State of Qatar and its Executive By-Law of 2009 and any other rules and regulations, decisions, orders, policies, guidelines, instructions or notices issued by ictQATAR as well as the terms and conditions of relevant licenses and relevant laws of the State of Qatar and international treaties that the State of Qatar has subscribed to.

Basis of Calculation: All calculations shall be based on the accrual basis of accounting, rather than "actually paid" in net cash terms. This applies to revenues and costs.

Calendar Year: Fees will be calculated based on each calendar year, which means the period from 1st January to 31st December.

Gross Revenue: those revenues generated by the Licensee from the provision of the Authorized Telecommunications Services as specified in Annexure B of the relevant License during a Calendar Year, or part thereof.

Individual License: a License granted by ictQATAR in accordance with Chapter Three of the Telecommunications Law.

Interconnection: the physical and logical linking of telecommunications networks used by the same service provider or by a number of service providers in order to allow the customers of one service provider to communicate with customers of the same or another service provider or to enable them to access services provided by another service provider.

Licensed Operator/Licensee: this includes, but is not limited to, the holder of (a) an Individual Public Telecommunications License; (b) a VSAT License; (c) a License for the provision of wholesale fixed telecommunications license; or (d) the authorization to develop and deliver wholesale fixed telecommunications infrastructure and related services for the Qatar National Broadband Network initiative.

Provisional Fee Payment: the payments due for the License Fee and Industry Fee calculated by the Licensee based on the best information available to the Licensee, including its un-audited accounts, in respect of the applicable Revenues, Interconnection and Access Charges, and Allowable Operating Expenses for the Calendar Year in question.

Revenues and Costs to be Included: Only revenues and costs that are related to the “Authorized Facilities, Networks, Services and Activities” in the State of Qatar as specified in Annexure B of the Licenses shall be included in the calculation of the License Fee and Industry Fee.

Scaling Factor A ratio calculated by dividing the land area of Qatar by the land area covered by the footprint of all satellites operated by the Licensee during the Calendar Year (or part thereof). The Scaling Factor shall be confirmed annually by Licensee’s auditors for the purposes of calculating License Fee and Industry Fee payments.

State of Qatar: Revenues and or expenses of foreign subsidiaries will not be taken into account for the purpose of the calculation of the Licensee Fee except where related to in/out-payments for interconnection/access and roaming.

Telecommunications Law: is the Telecommunications Law No. (34) of 2006 of the State of Qatar.

True-Up Calculation: the difference, if any, between the Provisional Fee Payment and the amounts due for the License Fee and Industry Fee based on the Licensee’s audited financial statements.

3.2 Calculation of the Industry Fee and the License Fee

As a general principle, Licensees shall follow the accrual basis of accounting and revenue recognition principles prescribed by Generally Accepted Accounting Principles (e.g. International Financial Reporting Standards - IFRS).

Licensees shall ensure that expenses incurred and deemed allowable have associated revenues included in net revenue calculations.

The subsections below set out the requirements for parameters included in the calculation of the License Fee and Industry Fee.

Elements	Components (non-exhaustive)
Reported Revenue	<ul style="list-style-type: none"> As stated in the approved financial statements
- Non-regulated revenues	<ul style="list-style-type: none"> For example revenues from the sale of content such as TV or ring tones.
= Gross Revenue	<ul style="list-style-type: none"> Income received while rendering Authorized Telecommunication Services as per Annexure B of the License (i.e. all income from retail and wholesale services). Interconnection revenues and access charges received from network interconnection/access in the State of Qatar with other domestic and international operators, such as termination rates. In-payments such as e.g. roaming revenues and termination of international calls from outside the State of Qatar. Any other revenues in connection with offering Authorized Facilities, Networks, Services and Activities in accordance with the Individual License .
- Interconnection and Access Charges	<ul style="list-style-type: none"> Roaming payments to other operators abroad. Termination, origination and transit fees to other operators inside or outside Qatar. Any access fees for the use of other operator's network elements (e.g., for masts, ILS, in-house antennas, ...).
= Net revenue	*1% = License Fee
- Allowable Expenses	<ul style="list-style-type: none"> Expenses directly or indirectly attributable to the provision of Authorized Facilities, Networks, Services and Activities as per Annexure B of the License. Annual License Fee Depreciation and amortization of Authorized Facilities and Networks in Qatar (as per Annexure B of the License.
= Net Profit	*12.5% = Industry Fee

Figure 3: IF/LF calculation schematic

3.2.1 Calculation of Gross Revenue

Gross Revenue¹ comprises all the income² received while rendering Authorized Facilities, Networks, Services and Activities under an Individual License, including payments received from other operators as a result of their operation under an Individual License.

In addition to the non-exhaustive list of services described in Annexure B of Licenses, it is clarified that the following income, *inter alia*, but not limited to, is counted towards the Gross Revenue:

- All income from retail and wholesale services;
- Interconnection revenues and access charges received from network interconnection/access in the State of Qatar with other domestic and international operators, such as termination rates;
- In-payments such as e.g. roaming revenues and termination of international calls from outside the State of Qatar;

¹ income, sales, turnover

² for the purpose of this instruction income, revenue and earnings have the same meaning as income

- Any other revenues in connection with offering Authorized Facilities, Networks, Services and Activities in accordance with the Individual License.

In the case of Public Satellite Telecommunications Networks and Services, the total income from the provision of Authorized Facilities, Networks, Services and Activities (i.e. all income arising from the footprint of all satellites operated by the Licensee, including the footprint outside Qatar) shall be multiplied by the Scaling Factor in order to determine the Gross Revenue.

3.2.2 Calculation of Interconnection and Access Charges

The calculation of Interconnection and Access Charges shall comprise all interconnection, access charges and other out-payments associated with network interconnection, access rights and transit fees for the provision of Authorized Facilities, Networks, Services and Activities as set out in Individual Licenses.

These Interconnection and Access Charges include the following non-exhaustive list of payments:

- Roaming payments to other operators abroad;
- Termination, origination and transit fees to other operators inside or outside Qatar; and
- Any access fees for the use of other operator's network elements (e.g., for masts, ILS, in-house antennas, ...).

For the avoidance of doubt, this also applies for interconnection/access and roaming out-payment to related companies (under joint or common or group ownership), in connection with the provision of Authorized Telecommunication Services as set out in Individual Licenses.

Interconnection and Access Charges associated with the provision of licensed Public Satellite Telecommunications Networks and Services shall be multiplied by the Scaling Factor in order to determine the allowable Interconnection and Access Charges for the purposes of calculating Net Revenue.

3.2.3 Calculation of Allowable Expenses

As a governing principle, only those expenses that are directly or indirectly attributable to the provision of "Authorized Facilities, Networks, Services and Activities as specified in an Individual License, are deemed as Allowable Expenses.

The License Fee is part of the Allowable Expenses for the calculation of the Industry Fee.

Any other expenses incurred, which are not directly or indirectly attributable to the provision of "Authorized Facilities, Networks, Services and Activities" in the State of Qatar, shall be considered Non-allowable expenses.

The following examples list, for illustrative purposes, certain Non-Allowable Expenses and are not a comprehensive list of all Non-Allowable Expenses:

- Any Taxes;
- Any expenses incurred by foreign subsidiaries or affiliates;

- Any other royalties, other than those in relation to ongoing use of intellectual property (e.g., software, brand licensing, audio visual content, etc.);
- Any costs or losses incurred in connection with speculative transactions, e.g. derivatives and similar financial instruments, in foreign exchange or investment;
- Loss on sale of real estate or other equity investment, when such real estate or other equity investment cannot be directly or indirectly attributed to the provision of "Authorized Facilities, Networks, Services and Activities" in the State of Qatar;
- Losses incurred not directly or indirectly attributable to the provision of "Authorized Facilities, Networks, Services and Activities" in the State of Qatar including loss on sale or impairment of assets;
- Losses booked from revaluation or sale or impairment of subsidiaries not directly or indirectly attributable to the provision of "Authorized Facilities, Networks, Services and Activities" in the State of Qatar;
- Any goodwill impairment and subsequent write-downs on acquisitions;
- Expenses incurred on behalf of subsidiaries or affiliates not directly or indirectly attributable to the provision of "Authorized Facilities, Networks, Services and Activities" in the State of Qatar;
- Any fines, sanctions, or penalties; and
- Charitable donations outside the State of Qatar.

For the avoidance of doubt, events which constitute a Force Majeure and which impact directly on the provision of "Authorized Facilities, Networks, Services and Activities" are regarded as falling within the normal course of business.

For the avoidance of doubt, payments of dividends to shareholders shall not be regarded as an Allowable Expense.

Depreciation and amortization of Authorized Facilities and Networks in Qatar (as specified in Annexure B of the Licenses) can be included in the Allowable Expenses.

In the case of Public Satellite Telecommunications Networks and Services licenses, the Allowable Expenses shall be calculated by multiplying the total direct or indirect expenses attributable to the provision of the Authorized Facilities, Networks, Services and Activities by the Scaling Factor in order to determine the allowable expenses for the purposes of calculating Net Profit.

3.2.4 Calculating the Net Revenue

Net Revenue, as the basis for the calculation of the License Fee, shall be the difference between

- (i) Gross Revenues (cf. section 3.2.1) generated by the Licensee during a Calendar Year (or part thereof) from the provision of the Authorized Facilities, Networks, Services and Activities as specified in Annexure B of the relevant License; and
- (ii) the total amount of any Interconnection or Access Charges (cf. section 3.2.2) arising out of or associated with the provision of Authorized Telecommunications

Services in each respective Calendar Year (or part thereof), as set forth in the Licensee's audited financial statements.

3.2.5 Calculating the Net Profit

Net Profit, as the basis for the calculation of the Industry Fee, shall be the difference between

- (i) the Net Revenue (cf. section 3.2.4) and
- (ii) Allowable Expenses (cf. section 4.2.3) arising out of or associated with the provision of Authorized Authorized Facilities, Networks, Services and Activities in each respective Calendar Year (or part thereof), as set forth in the Licensee's audited financial statements.

4 Final Provisions

The Supreme Council may amend this Instruction as and when it deems appropriate in order to take account of market developments and improvements identified.