

UNION OF THE COMOROS
Unity – Solidarity – Development

President of the Union

Moroni, 23 May 2009

DECREE No. 09-065/PR

On the creation, organization and
operation of the National Information
and Communications Technologies
Regulatory Authority

THE PRESIDENT OF THE UNION

HAVING REGARD to the Constitution of the Union of the Comoros of 23 December 2001;

HAVING REGARD to Decree No. 07-011/PR of 7 February 2007 enacting Law No. 06-001/AU of 2 January 2006 on general regulation of State-owned companies and public institutions;

HAVING REGARD to Decree No. 08-019/PR of 4 March 2008 enacting Law No. 08-007/AU of 15 January 2008 on the information and communications technology sector;

HAVING REGARD to Decree No. 08-137/PR of 11 December 2008 on the Government of the Union of the Comoros;

HEREBY DECREES:

**CHAPTER I:
GENERAL PROVISIONS**

Article 1: The following definitions apply to this Decree:

- **ANRTIC:** National Information and Communications Technologies Regulatory Authority;
- **ICT Law:** Law No. 08-007/AU of 15 January 2008 on the information and communications technology sector;
- **EPIC Law:** Law No. 06-001/AU of 7 February 2007 [*Translator's note: in the preamble the date of this law is 2 January 2006*] on general regulation of State-owned companies and public institutions;
- **ICT:** Information and communications technology.

Article 2: This Decree determines the rules for the creation, organization and functioning of the National Information and Communications Technologies Regulatory Authority (ANRTIC) in implementation of the provisions of the ICT Law.

Article 3: Pursuant to Article 25 of the ICT Law, a National Information and Communications Technologies Regulatory Authority (ANRTIC) is hereby created.

ANRTIC shall be responsible for monitoring application of the ICT Law in order to ensure that the sectoral policy on ICT defined by the Government of the Union of the Comoros is implemented.

ANRTIC is a public institution with special status and its own legal personality and financial autonomy. It has no registered capital or commercial or industrial activities and does not carry out any projects requiring large financial resources. It conducts ITC-related studies and financial, economic and technical analyses. Its activities require highly skilled personnel, but unlike EPIC, ANRTIC only requires modest spending on investment (some personal computers and some measuring instruments for controlling frequencies).

Consequently, ANRTIC is a public institution which must comply with Articles 13 to 25 of Section 4 of Title I of the EPIC Law.

The Ministry responsible for ICT may request ANRTIC to carry out various studies and contribute towards some of the Ministry's projects that fall within its competence. The supervisory Ministry shall exercise control of ANRTIC's activities *a posteriori* in order to ensure that its activities enable ANRTIC to fulfil the objectives set.

The Ministry of Finance shall exercise *a posteriori* control of the use of financial resources according to the terms laid down in Law No. 06-001/AU on EPIC, but shall not intervene in decisions concerning ANRTIC's activities.

CHAPTER II: TASKS OF THE NATIONAL INFORMATION AND COMMUNICATIONS TECHNOLOGIES REGULATORY AUTHORITY

Article 4: ANRTIC shall have the following tasks, determined in Article 26 of the ICT Law:

1. To grant licences and draw up specifications for them, to receive declarations and to approve terminals;
2. To study and put before the supervisory Ministry proposals intended to define, supplement or amend the legal or economic framework for ICT activities. In this connection, it shall prepare draft laws and decrees and ministerial or interministerial orders for submission to the supervisory Ministry;
3. To represent the supervisory Ministry for ICT at international meetings dealing with management of the frequency spectrum and other regulatory matters, the development and standardization of telecommunications and ICT;
4. To take part in or accede to national or foreign organizations whose objective is to study and improve the regulation and management of ICT, radio communications, encryption, IP addressing, the convergence of electronic services and corresponding standards in order to report and provide advice to the Government and the nation on progress, opportunities and good practice at the global level which may inform decisions to be taken at government level; in this connection, ANRTIC shall bear the State's contributions to ICT-related international organizations, notably, the ITU, PATU and COMESA;
5. To manage the radio frequency spectrum in such a way as to ensure its rational use by users, taking into account the State's own needs while at the same time ensuring non-discriminatory and transparent allocation of civil telecommunications frequencies among competitors so as to prevent certain operators from obtaining privileged access to such resources or possessing a licence that is not being worked simply for the purpose of a monopoly;
6. To allocate high points to the operators concerned while at the same time ensuring non-discriminatory and transparent treatment of competitors so as to prevent certain operators from obtaining privileged access to these resources;
7. To encourage experiments with new technology within a framework established by it and to decide on the advisability of undertaking action for its generalization in order to implement sectoral and government policy;
8. To draw up a numbering plan and to allocate numbers to operators while at the same time ensuring non-discriminatory and transparent treatment of competitors so as to prevent certain operators from obtaining privileged access to such resources;
9. To ensure fulfilment of the specifications and other rules laid down in accordance with this Law, where applicable, to inform operators of recommendations and warnings in order to guarantee observance of the corresponding commitments;

10. To ensure observance of the technical regulations in force in the ICT and radio communications sector, including broadcasting;
11. To protect the interests of consumers and citizens as individual, professional, associative or residential users of ICT services and E-governance;
12. To mediate in disputes between operators according to the procedures defined by decree; the parties affected by ANRTIC's decisions may subsequently bring the dispute before the competent courts. ANRTIC shall also receive users' complaints, deal with them within a maximum period of two months and, where applicable, impose on the operators at fault the penalties provided by the rules in force;
13. To undertake investigations following receipt of a formal complaint from an operator concerning any possible unfair competition;
14. To undertake any public enquiry into matters concerning decisions taken by ANRTIC;
15. To ensure that competition among operators is fair, *inter alia*, to prevent and remedy abuse of a dominant position, tariff rates that discourage competition and agreements whose effect is to restrict the functioning of the market, including understandings between two or more operators;
16. To ensure harmonization of the various spheres involved in ICT and E-governance such as IP addressing, encryption, domain names, intellectual or industrial property rights and personal rights;
17. To carry out additional and special tasks or missions requested by the supervisory Ministry that may exceed its competence;
18. To ensure that the financial, administrative or technical interconnection conditions among operators do not constitute an obstacle to supply of services;
19. To exercise ongoing control over earth stations for private use and to authorize any changes thereto;
20. To verify conformity of installations and the issue of prior technical notification of the granting of licences by the regulatory body responsible for media communications.

Article 5: In carrying out the tasks specified in Article 4 of this Decree, ANRTIC may if necessary call on the services of offices, firms and persons-resources qualified in the areas in question.

CHAPTER III: ORGANIZATION OF ANRTIC

Article 6: ANRTIC shall comprise the following structures:

- the Board of Directors;
- the Directorate-General.

FIRST SECTION: THE BOARD OF DIRECTORS

Article 7: The Board of Directors shall constitute the supervisory body for ANRTIC's activities in implementation of the ICT sectoral policy approaches defined by the Government of the Union of the Comoros. It shall be assisted by advice and recommendations from the Director-General of ANRTIC in the exercise of his statutory functions and responsibilities.

It shall discuss the general approaches of ANRTIC'S plan of action, decide on the annual programme of activities and draft budget, and give its views and recommendations on the activities submitted to it by the Director-General.

Each year, it shall discuss ANRTIC's reports on its activities and management submitted by the Director-General and shall issue an opinion.

Article 8: Pursuant to Article 15 of the EPIC Law, the Board of Directors shall be composed of Directors with competence and experience in ANRTIC-related responsibilities.

Pursuant to Article 16 of the EPIC Law, the Board shall comprise seven directors appointed as follows:

- two directors nominated by the President of the Union of the Comoros;
- one director nominated by the Minister responsible for ICT;
- one director nominated by the Minister of Finance;
- one director nominated by each island's Executive.

The Chair of the Board of Directors shall be elected by fellow members for a three-year term.

The appointment of directors and of the Chair of the Board shall be published in an order of the Ministry responsible for ICT.

Pursuant to Article 15 of the EPIC Law, Directors shall be appointed for a three-year term. Their appointment may be renewed for two further terms at most, giving a maximum of nine years.

Article 9: ANRTIC's Directors shall not receive a salary. They shall, however, receive an allowance in the form of fees whose amount shall be determined by a joint order of the Minister responsible for ICT and the Minister of Finance.

Directors are individually and jointly liable to ANRTIC or third parties for acts performed in violation of the legislative or regulatory provisions applicable to ANRTIC.

Directors belonging to the Board of Directors shall be Comorian citizens and resident in the Union of the Comoros, enjoy civil and political rights and not have been subject to any penalty of imprisonment or loss of civil rights.

Directors belonging to the Board of Directors may not have any employment contract with ANRTIC.

The status of Director is not compatible with any economic or financial interest in any firm holding an operating licence or with the possession of any interest in such a firm. The acquisition of such an interest shall automatically lead to termination of the status of Director.

Directors may only be removed from office if a serious offence liable to imprisonment has been committed or in the case of any conduct prejudicial to achieving the management and regulatory objectives assigned to ANRTIC and the objectives defined in the policy on the ICT sector.

Any removal of a Director from office is decided by an order of the Ministry responsible for ICT.

If a Director's post becomes vacant, a replacement shall be appointed within one month in accordance with the criteria defined above. Replacements shall be appointed for the remainder of the four-year term.

Article 10: The Board of Directors shall be responsible for:

- determining the Board's rules of procedure;
- monitoring proper fulfilment of the obligations laid upon the Director-General, particularly as regards financial management and transparency *vis-à-vis* operators and taxpayers;
- endorsing proposals on recruitment and appointment of all ANRTIC's staff;
- approving the Director-General's management.

Article 11: The Chair of the Board of Directors shall be responsible for:

- ensuring that the decisions of the Board of Directors are implemented;

- convening Directors, ensuring respect for and guaranteeing the good order of debates, and of the rules of procedure;
- Verifying the minutes of meetings and signing any deeds drawn up or authorized by the Board of Directors;

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The Director-General shall be a Comorian citizen, enjoy civil and political rights and not have been subject to any penalty of imprisonment or loss of civil rights.

The functions of Director-General are not compatible with any other private or public post, any legislative mandate or government responsibilities. The office of Director-General is not compatible with any direct or indirect economic or financial interest in any firm holding a network or data transmission licence, supplying an audiovisual service or any service subject to the declaration regime provided in this Law.

The Director-General's remuneration and in-kind benefits shall be determined in accordance with ANRTIC's staff rules and be approved by the Board of Directors.

Article 15: The Director-General shall make a proposal to the Board of Directors on ANRTIC's internal organization in such a way as best to fulfil the tasks assigned to ANRTIC pursuant to Article 26 of the ICT Law.

Article 16: Pursuant to the provisions of Article 26 of the ICT Law, the Director-General shall have the power and authority to enable him to fulfil ANRTIC's tasks set out in Article 4 of this Decree. The Director-General shall in particular:

- be responsible for carrying out the decisions of the Board of Directors, to which he shall report on his management and achievement of the objectives set;
- participate in meetings of the Board of Directors in an advisory capacity;
- submit the strategic plans to the Board of Directors for approval;
- submit action plans and budget programmes to the Board of Directors for discussion and be responsible for carrying them out;
- ensure observance of the principle of equal treatment of ICT service operators and suppliers and compliance with competition rules by all operators;
- ensure observance of the terms set out in licences and associated specifications, authorizations and approvals issued in application of the law on ICT sectors, by ICT service operators and suppliers, and impose penalties or ensure penalties are imposed on those violating such provisions;
- approve the interconnection catalogue for operators with a significant market share;
- undertake regulatory action against those who fail to observe the obligations specified in the ICT Law, in particular, anti-competitive practices, abuse of a dominant position and failure to comply with obligations on the use of frequencies;
- be responsible for ANRTIC's operating and investment expenditure and its financial and asset management;
- sign any agreement, contract, authorization or convention consistent with ANRTIC's responsibilities; the Director-General shall seek the views of the Board of Directors for any non-budgeted spending exceeding KMF 5,000,000 (five million);
- be responsible for ensuring strict compliance with official internal procedures for procurement, contracts and agreements;
- represent ANRTIC before the courts and initiate any legal proceedings for the purpose of defending ANRTIC's interests; he shall, however, notify the Chair of the Board of Directors immediately or in advance, depending on the situation;

- ensure that the rates for ANRTIC's fees are applied and levied and collect the corresponding sums;
- ensure technological monitoring of infrastructure, frequencies, services and applications.

Article 17: The Director-General shall have full administrative and managerial authority over all ANRTIC's staff. He shall have the status of employer within the meaning of the Labour Code. In this connection, he shall:

- propose recruitment and appointment of members of ANRTIC's staff to the Board of Directors, in strict compliance with the legislative and regulatory provisions in force;
- Chair the Management Board, composed of representatives of all departments, which is responsible for drawing up ANRTIC's decisions;
- have authority over all the staff and be responsible for its management;
- impose penalties and removal and dismissal in accordance with the general staff rules.

Article 18: Pursuant to Article 29 of the ICT Law, ANRTIC's accounts shall be audited annually by an approved firm of chartered accountants, whose report shall be transmitted to the Board of Directors before being forwarded to the supervisory Minister responsible for ICT. ANRTIC's accounts shall be made available to the public. The provisions of this Article shall not prevent any control over ANRTIC's management deemed necessary by the Board of Directors at any time.

Article 19: By 31 March each year at the latest, the Director-General shall draw up a report on ANRTIC's activities during the preceding year, which shall be submitted to the Board of Directors, the supervisory Minister and the President of the Union. The report shall also contain an analysis of the situation in the ICT sector.

The Director-General shall also be responsible for undertaking any other ICT-related task that may be assigned by the Government on behalf of the State.

Article 20: ANRTIC shall create and maintain a website containing all ICT-related regulatory texts, annual reports on ANRTIC's activities, decisions taken by ANRTIC, a survey of the ICT market and an analysis of indicators appropriate to the ICT sector.

Article 21: The Director-General of ANRTIC may, under his own responsibility, delegate his signature or some of his powers and responsibilities to senior officials at managerial level. An order from the Director-General shall determine the conditions and terms for delegation of signature or powers.

CHAPTER IV: HUMAN RESOURCES

Article 22: ANRTIC's staff shall have their own status, approved by the Board of Directors, which shall be the subject of a collective establishment agreement negotiated and signed by authorized representatives of the staff and the Director-General of ANRTIC, in accordance with the provisions of the Labour Code.

The staff shall comprise:

- civil servants and non-civil servants made available to ANRTIC;
- persons belonging to semi-public or joint venture companies made available to ANRTIC through a change in employer under agreements duly negotiated and signed between ANRTIC's Director-General and the directors or those in charge of such autonomous structures;
- persons recruited directly by ANRTIC according to its own relevant procedures.

Article 23: The salaries and financial and material benefits of ANRTIC's staff shall be determined by the Director-General in accordance with ANRTIC's staff rules.

CHAPTER V: FINANCIAL AND ACCOUNTS MANAGEMENT

Article 24: Pursuant to the provisions of Article 28 of the ICT Law, ANRTIC's financial resources shall comprise:

- a. the proceeds of charges and fees for the use of radio frequencies;
- b. part of the proceeds of charges and fees for the regulation, management and control of operators, the other part being paid into a fund whose creation or extension and management principles shall be specified in a decree;
- c. the regulation fee is set at three per cent (3%) of the turnover for licence holders and one per cent (1%) for service suppliers, operators of private networks which make part of their networks available to other operators, as well as suppliers of terminal equipment and ancillary ICT services;
- d. fees for approval of radio communications and telecommunications equipment;
- e. charges for examining radio operators with a view to issuing an operating licence;
- f. income earned from its work and services;
- g. parafiscal taxes authorized by the Finance Law;
- h. loans;
- i. subsidies from the State, decentralized territorial authorities, public or private national or international organizations;
- j. donations and bequests;
- k. other special resources and those which may be assigned to it or be earned from its activities.

Article 25: REGULATION FEE

A tax entitled "Regulation fee" is hereby established, payable by any telecommunications operator, licence holder, service supplier, operator of a private network, supplier of terminal equipment and ancillary telecommunications services. The tax shall be calculated according to the turnover before tax for ICT-related activities posted for any particular tax year. This tax is levied for the benefit of ANRTIC's budget.

- 3% of turnover for licence holders;
- 1% of turnover for service suppliers, operators of private networks which make part of their networks available to other operators, as well as suppliers of terminal equipment and ancillary ICT services.

All operators shall declare to ANRTIC their turnover posted before tax and audited during the latest tax year, at the latest three (3) months after the close of the year concerned.

Article 26: Budgetary surpluses arising in any financial year shall be reallocated to the universal service fund. Annual budgetary surpluses shall be paid into the appropriate reserve account. The same shall apply to any annual budget deficits at the close of the financial year.

Article 27: ANRTIC's resources are totally and exclusively allocated to carrying out its organic and statutory responsibilities.

Article 28: ANRTIC's budget is drawn up by the Director-General, who puts the draft budget before the Board of Directors for approval at least two months prior to the close of the budgetary year.

Article 29: ANRTIC's accounts shall be kept according to private accounting rules and principles, observing the provisions in OHADA's Uniform Act of 24 March 2000 on organization and harmonization of the accounts of enterprises.

Accounting operations shall be effected according to the provisions defined in Articles 20 and 21 of the EPIC Law.

Article 30: At the close of each accounting year, the Director-General shall submit the financial accounts and the results of the latest financial year to the Board of Directors for adoption, together with attachments consisting of all commitments made or received. Within three (3) months following the close of the financial year, these documents shall be forwarded to the auditors, the Minister responsible for ICT, the Minister of Finance and the President of the Union.

CHAPTER VI: CONTROL AND AUDIT OF THE ACCOUNTS

Article 31: Pursuant to Article 29 of the ICT Law, ANRTIC's accounts shall be the subject of an annual audit by an approved firm of independent chartered accountants recruited according to ANRTIC's procedural handbook. The report shall be transmitted to the Board of Directors for approval before being forwarded to the supervisory Ministry responsible for ICT. ANRTIC's accounts shall be made available to the public. The provisions of this Article shall not prevent any control over ANRTIC's management deemed necessary by the Board of Directors at any time.

CHAPTER VII: ANRTIC'S CONTROL RESPONSIBILITIES

Article 32: ANRTIC is a structure for investigation, verification and analysis of information it has itself collected or which has reached it through other means or channels. Accordingly, if it deems necessary, it may *ex officio* initiate action to investigate, verify and obtain information on the spot or from documents from operators and suppliers of ICT services and customers in order to gain a precise and correct understanding of any malfunctioning notified to it or occurring and then apply the necessary remedies on the basis of the laws and regulations in force.

Article 33: Pursuant to the provisions of Article 34 of the ICT Law, members of ANRTIC's staff responsible for control, verification, investigation and information shall be sworn in.

They may, therefore, control equipment, confiscate material and close premises under the control of the Public Prosecutor of the Republic and may call on the police force in exercising their responsibilities.

Members of staff responsible for control shall be sworn in before the regional court using the following wording: "I swear to exercise my responsibilities faithfully in strict observance of the laws and regulations".

They shall carry out their activities on the basis of instructions issued by ANRTIC's Director-General and the handbooks of control procedures duly prepared.

CHAPTER VIII: MISCELLANEOUS PROVISIONS

Article 34: Failure to comply with the obligations determined in the ICT Law shall be judged by the lower court of the Union of the Comoros.

Article 35: Dissolution of ANRTIC shall comply with the conditions for dissolution of public institutions, State-owned companies and joint venture companies.

CHAPTER IX: TRANSITIONAL AND FINAL PROVISIONS

Article 36: Pursuant to Article 37 of the ICT Law, the Ministry responsible for ICT shall assume the responsibilities of ANRTIC until it has actually been set up. ANRTIC shall be considered actually to have been set up when all the directors of the Board of Directors, the Chair of the Board and the Director-General have been appointed.

The Minister responsible for ICT may in advance recruit some local experts to be responsible for carrying out urgent tasks that cannot wait until ANRTIC has actually been set up.

Article 37: The following are the urgent activities to be carried out during this transitional period under the responsibility of the Ministry:

- preparation of specifications for the construction and operation of licence holders' networks;
- preparation of a frequency plan, taking into account the absence of such a plan at the time the ICT law is enacted and the problem this represents in complying with the State's commitment in the licence granted to a second operator;
- drawing up a new numbering plan for the same reason as the preceding subparagraph;
- management of .km domain;
- approval of an interconnection catalogue drawn up by the traditional operator;
- control of fees for all the services provided by operators with a dominant share of the market.

Pursuant to the commitment made in the second national operator's licence, no new licences for operators corresponding to Article 8 of the ICT Law shall be granted. There may, however, be notifications of service suppliers corresponding to Article 13 of the ICT Law. It is determined that it is in the interest of network operators to see the emergence of a wide variety of service suppliers resulting in more access to the networks and thus to more profitability for network operators.

When ANRTIC has actually been set up, the activities undertaken under the responsibility of the Ministry shall be transferred to ANRTIC.

Article 38: This Decree shall be registered, published in the Official Journal of the Union of the Comoros and circulated as required.

AHMED ABDALLAH MOHAMED SAMBI