



# FS 2021 – 3 – Consultation Draft Final Determination Consumer Protection Regulations (Fuels Sector)

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**UTILITY REGULATION AND COMPETITION OFFICE  
THE CAYMAN ISLANDS**

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## 1. Background

1. The Utility Regulation and Competition Office ('OfReg' or the 'Office') is the independent regulator established by section 4 of the Utility Regulation and Competition Law (as revised) (the 'URC Law') for the electricity, information and communications technology, water, wastewater and fuel sectors in the Cayman Islands.
2. Under its enabling legislation, the Office has several functions, of which the principal one is to protect the short and long-term interests of consumers in relation to utility services.
3. On 30 July 2019, the Office published FS 2019 – 1 – Consultation, "*Proposed Consumer Protection Regulations*."<sup>1</sup> The Draft Consumer Protection Regulations for the fuel sector ('the Draft Regulations') were appended to the consultation document.
4. The Office published an Extension Notice<sup>2</sup> extending the closing date for submissions from 30 August 2019 to 13 September 2019.
5. As of 13 September 2019, Caribbean Utilities Company ("CUC"), Rubis Cayman Islands Limited ("Rubis"), Sol Petroleum Cayman Limited ("Sol"), and two private individuals submitted comments on the Draft Regulations.
6. In this document, the Office addresses the submissions to FS 2019 – 1 – Consultation and recommends to the Cabinet that the final Proposed Regulations (the "Proposed Regulations"), which are appended to this Determination, become legislation.

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<sup>1</sup> <https://www.ofreg.ky/upimages/commonfiles/1564557546FS2019-1-ConsultationontheProposedConsumerProtectionRegulationsFuelsSector.pdf>  
<http://www.ofreg.ky/upimages/commonfiles/1515517725ConsultationDocumentICT2017-4.pdf>

<sup>2</sup> <https://www.ofreg.ky/upimages/commonfiles/157427714820190823ExtensionNotice-ConsultationonCPRFuels1.pdf>

## 2. Legal Framework

7. In making the decision regarding the adoption and implementation of consumer protection regulations for the fuel sector in the Cayman Islands, the Office was guided by its statutory remit, in particular as set out in the URC Law and the Fuels Market Regulation Law, 2017 (the ‘FMR Law’).
8. The following provisions are of particular relevance.
9. Section 6 of the URC Law sets out the principal functions and powers of the Office, which states the following (in part):

6. (1) *The principal functions of the Office, in the markets and sectors for which it has responsibility, are -*

*[...]*

- (b) to promote appropriate effective and fair competition;*
- (c) to protect the short and long-term interests of consumers in relation to utility services and in so doing -*
  - (i) supervise, monitor, and regulate any sectoral provider, in accordance with this Law, the regulations and sectoral legislation and any general policies made by Cabinet in writing;*
  - (ii) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services;*

*[...]*

*(2) In performing its functions and exercising its powers under this or any other Law, the Office may -*

*[...]*

- (d) make administrative determinations, decisions, orders and regulations;*

*[...]*

- (t) establish technical standards for the provision of covered services;*

- (u) review and, as appropriate, approve, reject or modify tariffs filed by a sectoral provider governing the provision of covered services;*
- (v) establish and enforce quality of service standards applicable to covered services;*
- [...]*
- (hh) take any other action, not expressly prohibited by Law, that is necessary and proper to perform its duties under this Law and sectoral legislation.*

10. Section 5(1) of the FMR Law states, among other things, that:

*[...] the principal functions of the Office are -*

- (a) [...];*
- (b) to promote fair competition in the fuel sector;*
- (c) to provide consumer protection in the fuel sector;*
- (d) [...];*
- (i) to ensure that the fuel supplies of the Islands are adequate, reliable, efficient and economical for the islands and for consumers;*
- (j) to establish and keep under review procedures and processes determined by the Office to be necessary to assure public safety and a healthy and safe environment in all regulated premises;*
- (k) to prevent discrimination against, or preferential treatment of, any person in the fuel sector, and to prevent monopolistic control of any segment of the chain of supply of fuel; and*
- (l) [...].*

11. Section 10(1) and (2) of FMR Law states the following:

*10. (1) The Cabinet may make regulations for the better carrying out of this Law and for giving effect thereto, and in particular the Cabinet may make regulations –*

- (a) [...];*

- (b) [...];
- (c) *On the recommendation of the Office, prescribing –*
  - (i) [...];
  - (ii) [...];
  - (iii) [...];
  - (iv) [...]; and
  - (v) *measures for the protection of consumers or the general effectiveness of the fuel sector; and*
- (d) *on the recommendation of the office, prescribing matters for the better carrying out of the duties and powers of the Office.*

*(2) Regulations made under this section may provide that the contravention of any provision constitutes an offence and may prescribe penalties for any such offence not exceeding the maximum fine and term of imprisonment prescribed in this Law for any offence under this Law.*

12. Section 6(2)(d) states that the Office, in performing its functions and exercising its powers under the URC Law or any other Law, may “*make administrative determinations, decisions, orders and regulations.*”
13. Section 7(1) of the URC Law requires the Office, before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, “*... to allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination.*”
14. It is the position of the Office that it retains the right to propose amendments to the regulations when appropriate but not so frequent as to render the consumer protection framework arbitrary or capricious, but in any event only after consultation.

### 3. FS 2019 – 1 – Consultation

15. In FS 2019 – 1 – Consultation, the Office considered it was the interests of the public to regulate the terms and conditions under which services and products in relation to the fuel sector are provided to consumers by prescribing quality and other standards. Regulation will assist to ensure those services and products are provided in accordance with the standards reasonably expected of competent authorisation holders operating in the fuel sector.

16. The Draft Regulations were summarised and were attached to the Consultation Document. In the process, responses were received and considered. It is instructive to note that the summary of the Draft Regulations and the Proposed Regulations are for all intents and purposes the same. The Draft Regulations circulated with the Consultation were divided into seven main sections, including the Part 1 – Preliminary section, and consist of fifty-one (51) Regulations which address:
  - the requirements on sectoral providers in relation to the provision of information;
  - the requirements on how to address complaints;
  - contract terms;
  - billing; and,
  - calibration and safety.
17. The main objective of the Draft Regulations (and now the Proposed Regulations) is to outline the protocols and rules to which sectoral providers should adhere when interacting with and serving Consumers in the Cayman Islands in relation to fuel products and/or services.
18. Part 3 outlines the proposed requirements regarding the provision of information by a sectoral provider to a Consumer, before the Consumer enters into a contract with the provider. This information includes, but is not limited to, a complete description of the service and/or product to be provided under the contract; details of the length of time it will take for the Service and/or Product to be provided; details of any termination fees payable by the Consumer; details of the dispute resolutions procedures and methods; details regarding any other service and/or product that is required in order to effectively utilise the service and/or product which is the subject of the contract; as well as details of any applicable quality standards that will apply to the service and/or product to be provided under the contract.
19. In addition, the requirements regarding accurate, up to date and clear advertising of information provided to consumers as well as the forms in which consumers should be able to receive the information (e.g. electronic) is also outlined.
20. Part 4 addresses complaints; including the requirement for Sectoral Providers to implement a complaints handling procedure that makes provision for complaints to be made to the Service providers by various methods and free of cost to the Consumer when using any local telephone network, save as specifically provided for by the Regulations. Part 4 also

- outlines how service providers are to handle verbal complaints, as well as to keep a record of complaints and to report certain statistics regarding complaints to the Office at the end of each quarter.
21. The requirements regarding terms and conditions of a contract entered into by a sectoral provider with a Consumer, any amendments to those terms and conditions and contracts in relation to bundled service are outlined in Part 5.
  22. Part 6 addresses billing; including, but not limited to, contents of bills, methods by which a Consumer can make enquires about bills, as well as the production and availability of fully itemised bills. Part 6 also outlines the available remedies that the sectoral provider may utilise in response to the non-payment of an outstanding and undisputed balance on a Consumer's account.
  23. Part 7 outlines a sectoral provider's obligations in relation to the provision of services within agreed timeframes, as well as calibration, safety, inspections and provision of notices of any planned or anticipated disruptions to consumers. Void terms and limitation of liability is also addressed.
  24. In its public consultation, the Office posed eight (8) specific questions regarding the Draft Regulations. The Office now presents its comments on the respondents' submissions, the amendments determined to be necessary, and the resulting Proposed Regulations.

## 4. Comments Received and Office Responses

25. The Office received five (5) responses to **FS 2019 – 1 – Consultation**; from CUC, Rubis, Sol, Private Individual #1 and Private individual #2.<sup>3</sup> The Office has reviewed all comments received and its responses are set out below each substantive comment.
26. It is instructive to highlight the definition of two terms at this point, being "Sectoral Provider" and "Consumer". The definition of the latter term is fundamental to the scope and application of the regulatory regime.

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<sup>3</sup> <http://www.ofreg.ky/upimages/commonfiles/1518039521ICT2017-4-ConsultationontheProposedConsumerProtectionRegulationsResponses.pdf>

27. A “*Sectoral Provider*” is defined in Part 1 of the Draft and Proposed Regulations as having the same meaning as in the URC Law. It means “a person, whether or not an authorisation holder, who provides goods or services in a sectoral utility”. The definition was not changed.
28. A “*Consumer*” was first defined in the Draft Regulations as “*a person, a micro- business as defined in the Trade and Business Law (as revised) or a small business as defined in the Trade and Business Law (as revised), who enquires about, requests, receives, acquires, uses or subscribes to a Service or Product from a Sectoral Provider for the primary purposes of his personal, domestic, commercial or industrial consumption and not for further resale, resupplying or trade, excluding fuel retailers, as well as energy and water utility providers.*”
29. However, an alternative definition was presented as an option to be inserted into the Draft Regulations (i.e. “Consumer” means a person or entity who utilises a product or service from a Sectoral Provider for direct consumption). None of the two proposed definitions were fully supported (two (2) private individuals and CUC had no objections, Rubis gave inconsistent answers<sup>4</sup>, and Sol objected). <sup>5</sup>
30. Sol stated in their response at paragraph 3.2: “The ambit of the proposed Regulations, particularly in terms of the proposed definition of “Consumer” is too wide. The generally understood concept of a “consumer” in terms of consumer protection is something like: “the average person in the street”. As a matter of UK law, from which many Cayman Islands laws derive, businesses are usually not covered in consumer protection legislation on the basis that such consumers are generally considerably more sophisticated than the “average person on the street” and do not generally require protection, and because the imposition of consumer protection regulations inhibits the ability of sophisticated parties to contract on their terms. The imposition of those of the Regulations which have this affect is contrary to the free market principles which Cayman embraces.”

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<sup>4</sup> In response to question 1 Rubis supported the alternate definition. However, in response to question 8 Rubis stated that it understood “the purpose of the proposed regulation for the retail customers being a heteroclite population with supposed limited technical knowledge and in case of poor information about made available for them to forge their opinion about the product they buy. We are very skeptical about the need for regulating the B2B segment which is ruled by contracts established between discerning professional parties advised by lawyers when the importance of such contracts make it necessary.”

<sup>5</sup> Interpretation Law defines and states “person” includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons;

31. Also, the Draft Regulations were in circulation during the consultation regarding the adoption and implementation of consumer protection regulations for the Information and Communication Technology Sector<sup>6</sup> in the Cayman Islands. Another definition of consumer appeared in that consultation. In ICT 2019 – 3 – Consultation, “Consumer” was defined as a person who enquires about, requests, receives, acquires, uses or subscribes to a Service or Product from a Service Provider for the primary purpose of his personal or domestic use.
32. The ICT 2020 – 1 Determination adopted that definition and it appeared in the Proposed Regulations dispatched to the Minister for consultation in June 2020. As will be discussed below in the context of the responses from Rubis and Sol, the definition now suggested for the Proposed Regulations in the fuel sector is very similar to that presented to the Minister, being “a person who enquires about, requests, receives, acquires, uses or subscribes to a Service or Product from a *Sectoral* Provider for the primary purpose of his personal or domestic use”.<sup>7</sup>

#### 4.1 Private Individual #1

33. The Private Individual enquired, in response to question 8, “if there are any regulations regarding the calibration of equipment of all metered utilities such as Gas stations, Propane, Water meters. What measures are OfReg doing to ensure we are getting what is advertised? What would stop a company to simply tell you that you are getting 4 gallons and only give you 3.5 gallons for the same price? My suggestion would be regular checks of metered services.”

##### Office Response

34. Regulation 46 in the Draft Regulations addresses calibration. In addition, this is also addressed in the Dangerous Substances Regulations, 2017 and in the Office’s proposed Truth in Advertising Rules.

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<sup>6</sup> Consultation number ICT-2019-3 , <https://www.ofreg.ky/ict-2019-3-consultation-on-proposed-consumer-protection-regulations> ; determination number?

<sup>7</sup> The addition of the word ‘natural’ before the word ‘person’ could further narrow the definition and protection. For example, an entity person may own a jet and use it (and purchased fuel) only for family holidays, which may be argued as a domestic use in that context.

## 4.2 Private Individual #2

35. The Private Individual stated that they have “perused this and see nothing that causes us concern....”.

### Office Response

36. The Office noted the response.

## 4.3 CUC

### *A) Question 1*

**What are your views on Parts 1 and 2 of the draft Regulations? And specifically, please share your views on whether the Office should insert the alternative definition of “consumer” in the proposed draft Regulations (i.e. “Consumer” means a person or entity who utilises a product or service from a Sectoral Provider for direct consumption).**

37. No comments.

### Office Response

38. N/A.

### *B) Question 2*

**Please share your views on whether the current regime of random fuel testing conducted by OfReg is satisfactory to address fuel quality concerns until the FSC fully implement National Fuel Quality Standards by Q4 2019.**

39. No comments.

### Office Response

40. N/A.

### *C) Question 3*

**What are your views regarding the means by which the Sectoral Providers will be obliged to ensure the provision of information under Part 3 of the proposed draft regulations?**

41. No comments.

#### **Office Response**

42. N/A.

### *D) Question 4*

**What are your views on Part 4 of the draft Regulations? Will the proposed regulations, in your view, enable Sectoral Providers to address and resolve consumer complaints efficiently and expeditiously? If not, explain in detail the changes required to achieve this objective.**

43. No comments.

#### **Office Response**

44. N/A

### *E) Question 5*

**What are your views on Part 5 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and Sectoral Providers and participants will benefit from clear, simple and fair terms and conditions for the provision of service? If not, please explain in detail the changes required to achieve this objective.**

45. CUC stated that it believes “that Part 5 of the proposed regulations will benefit consumers, sectoral providers and participants. However, we would suggest an amendment to Section 25(1)(b) that would allow for a contract term in excess of 24 months for commercial or industrial consumption, if agreed to by the commercial or industrial consumer.”

**Office Response.**

46. The Office noted CUC's comments. As discussed above, the definition of consumer was narrowed. In consequence, proposed regulation 25 (1)(b) does not apply to commercial or industrial customers and would not impose a restriction of time in a contract to 24 months.

*F) Question 6*

**What are your views on Part 6 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and Sectoral Providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.**

47. No comments.

**Office Response**

48. N/A

*G) Question 7*

**What are your views on Part 7 of the draft Regulations? Do you think additional regulations relating to equipment ownership and maintenance, switching between suppliers price tiers, should be considered by the Office in relation to the Fuels Sector? if yes, please explain.**

49. No comments.

**Office Response**

50. N/A.

*H) Question 8*

**Please provide your views on any other matters you consider relevant to this Consultation.**

51. No comments.

## Office Response

52. N/A.

## 4.4 RUBIS

### *A) Question 1*

**What are your views on Parts 1 and 2 of the draft Regulations? And specifically, please share your views on whether the Office should insert the alternative definition of “consumer” in the proposed draft Regulations (i.e. “Consumer” means a person or entity who utilises a product or service from a Sectoral Provider for direct consumption).**

#### *Rubis – Comment 1*

53. Rubis wrote that it agreed with the alternate definition of “Consumer”, but later in its reply expressed an inconsistent view.
54. Rubis stated that “there are three main octane rating measurement methods used in the fuel industry: AKI, RON and MON. Failing to be precise in Part 2 [Sub-regulation] 6(1) on what method is required to be used could lead to customers receiving information which cannot be compared.”

#### **Office response**

55. The definition now appearing in the Proposed Regulations in the fuel sector is very similar to that presented to the Minister for use in the ICT Sector, being “a person who enquires about, requests, receives, acquires, uses or subscribes to a Service or Product from a Sectoral Provider for the primary purpose of his personal or domestic use”.
56. Office acknowledged the comment made by Rubis. The octane rating measurement method to be used will form part of the requirements under the fuel quality regime to be established by the Fuel Standards Committee. The methods outlined by Rubis are all interrelated, and the Fuel Quality Standards will define the relationship between these measures to educate consumers where their vehicle requirement may state either Octane Index (AKI), RON or MON.

#### *Rubis - Comment 2*

57. Rubis replied that the obligation made in Part 2 [Sub-Regulation] 6(1) for the vendor to display information on its webpage forces vendor to have a webpage.

### **Office response**

58. Prescribing the information to be made available to customers ensures at least a minimum of information is readily available. For example, Rubis stated “Taking the example of bio content in fuels, mechanics could argue that car engines are designed for running biofuels and at the same time no educated boat owner would consider biofuels for their engine.” This information should be widely available to Consumers.

However, the cost of having a website is acknowledged. The Draft Regulation should have provided an economical option for retail outlets, such as the option to place information on the webpage of the franchisor (for example, Rubis or Sol). The Proposed Regulation 6(1) is amended to add this proviso: “A Sectoral Provider which operates only as a retailer may satisfy the requirement of a website by use, under agreement, of the website of its primary Distributor”.

### *Rubis – Comment 3*

59. Rubis stated that the “color-coding scheme as described in Part 2 [Draft Sub-regulation] 6 (2) is questionable for the following reasons:
- A serious, long and costly education should take place for customers to acquire the reflex of identifying a product by its colour code.
  - A vast majority of customers leave the duty of picking-up the nozzle to trained pump attendants.
  - The grade tags in the car gas caps vary in colour from one manufacturer to another, and don’t always match with the proposed black and blue colour coding.
  - The nozzle colour coding will not help reducing the main source of wrong fuel being selected which is the driver not being aware of what grade is the car running, especially with rental cars.
  - A single colour for different products of the same grade is rather confusing than informative. The difference in colour between gasoline and diesel could be more distinct than black and blue, like yellow and green.
  - The nozzle colour coding is part of an overall retail visual identity which is different from one brand to another. Bringing unity as

the standard reduces the marketing capabilities. Choosing a colour scheme which already belongs to one brand gives this brand a competitive advantage. We strongly object with the requisitions of Part 2 [Draft Regulation] 7.”

### **Office Response**

60. Colour coding of dispensing nozzles enhances Consumer protection. While it cannot eliminate human error, it reduces the risk of error for the self-serve Customer and the pump attendant. Colour coding is used in other sectors. Electrical wires are colour coded and assist apprentice and journeyman electricals, and home do-it-yourself persons alike.<sup>8</sup> Further, even though electricity is not conducted through basic ethernet cables, the cables are colour coded and are attached by a unique clip to better ensure the desired result. (Manufactures of remote-control devices for televisions place marking +/- to direct the user in the placement of batteries even though battery cradle has a spring for the negative pole of the battery.) The slight restriction on branding by colour the dispensing nozzles is a reasonable regulation to assist consumers and it does not interfere with branding by colour in other signage. The colour code for diesel was reconsidered and it was changed from the colour black to the colour green.

### *Rubis – Comment 4*

61. Rubis stated that the provision of assistance as stated in Part 2 [Draft Regulation] 8 “is unlikely to be delivered unless dedicated response teams and infrastructure are put in place for that purpose. Emergency situations are placed under the control of the emergency services (mainly health and fire response for fuels) which can themselves call vendors for any kind of assistance they feel they may require and possibly find from vendors.”

### **Office Response**

62. The expectation of the Office arising from the provision is that reasonable efforts would be made to assist or mitigate in an emergency situation relating to fuels. It should become part of the training program for employees working with the product or the Consumer.

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<sup>8</sup> Electricity Regulations (2011 R), regulation 69 states “All conductors in any installation shall be colour coded in accordance with the following Colour-Code ...”.

## *B) Question 2*

**Please share your views on whether the current regime of random fuel testing conducted by OfReg is satisfactory to address fuel quality concerns until the FSC fully implement National Fuel Quality Standards by Q4 2019.**

63. Rubis stated that “the current regime of random fuel testing is seen as a consistent approach and we cannot see any reason why the OfReg should consider introducing an alternative and interim regime before the National Fuel Quality Standards are introduced by year-end.”

### **Office Response**

64. The Office noted Rubis’ comment. However, in the light of the delays occasioned by the COVID-19 pandemic, the Office holds the position that an interim regime should remain in the Proposed Regulations.

## *C) Question 3*

**What are your views regarding the means by which the Sectoral Providers will be obliged to ensure the provision of information under Part 3 of the proposed draft regulations?**

### *Rubis – Comment 1*

65. Rubis stated in reference to Draft Regulation “10(1)(c), by prominently displaying the information on all websites through which the Consumer can enter into a contract with the Sectoral Provider i.e. displaying it on the home page of any such website or on a page that can be accessed by clicking on no more than two links, the first of which must be on the home page of the website”, that the cost of “restructuring a website to fit such design requirements is in the region of CI\$20,000”.

### **Office Response**

66. The Office acknowledged Rubis’ comment concerning the cost of restructuring of a website to provide information to a Consumer who may enter into a contract through the website. This is a reasonable measure to inform and protect consumers should the vendor seek to solicit the completion of sales contracts on-line. The Office considers that it is in the interests of the public to regulate the terms and conditions under which fuel services are provided in the Cayman Islands.

*Rubis – Comment 2*

67. Rubis stated with reference to Draft Sub-regulation 10(2)(b): “that to properly communicate fuel specifications and qualities, one must use technical terms”.

**Office Response**

68. The Office notes that the thrust of the regulation is to promote the transfer of information to the purchaser and the standard implied is that of reasonableness. If the use of a technical term cannot be avoided, the term should be explained in a concise manner.

*Rubis – Comment 3*

69. Rubis stated with reference to Draft Sub-regulation 10(3)(b): “we suspect we don’t have many drivers refuelling at our stations who can only read Braille. Although we strongly value the access of information to visually impaired customers, we would suggest for practicality reasons that any information can be made available upon request via an audio recording instead.

**Office Response**

70. The suggestion regarding audio recording is accepted and will be included as a substitute for Braille.

*Rubis – Comment 4*

71. Rubis stated with reference to Draft Sub-regulation 10(4) (a)(b)(c): “It is not our intention to implement and manage a price section in our webpage and the running cost would go against the goal of more affordable fuel prices. The OfReg webpage is already providing fuel prices on an agglomerated basis to the consumer.”

**Office Response**

72. The Office replies that the requirement in regulation 10(4) to inform consumers of the price of the fuels will assist consumers in the buying decisions. It is reasonable to require information to be placed on any

website through which the Sectoral Provider conducts its business. It would be open to the vendor to provide information by providing a link to OfReg webpage where all fuels prices are displayed.

*Rubis – Comment 5*

73. Rubis stated with reference to Draft Sub-regulation 11(2): “We can’t think of any other spoken communication than radio campaigns. In such context we would find it extremely difficult to implement the proposed elements in a radio message”.

**Office Response**

74. Proposed Regulation 11(2) will apply to situations such as an unsolicited mobile fuel sale proposal or an LPG representative inviting a customer to sign a contract in the Customer’s home or at a place other than the place of business of the vendor.

*D) Question 4*

**What are your views on Part 4 of the draft Regulations? Will the proposed regulations, in your view, enable Sectoral Providers to address and resolve consumer complaints efficiently and expeditiously? If not, explain in detail the changes required to achieve this objective.**

75. Rubis stated that it has “an existing customer complaint procedure in place. However, the proposed complaint handling procedure can come as a replacement with the only reserve of the cost associated with training a significant number of industry staff and numerous physical and digital publicity. We are not readily in position to assess how efficient and expeditious can the proposed complaint handling procedure be before we experience it. However, these two qualifiers are not the ones which we would use spontaneously given the procedural regime it introduces. We would like to highlight that in the interest of the customer, a complaint should be made in written in order for the parties to keep a record of the time when it was submitted and the description of the event leading to the claim. The time frame is also a critical element as investigation is barely impossible after a few days.”

**Office Response**

76. The Office noted the comment of Rubis.

### *E) Question 5*

**What are your views on Part 5 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and Sectoral Providers and participants will benefit from clear, simple and fair terms and conditions for the provision of service? If not, please explain in detail the changes required to achieve this objective.**

77. Rubis responded that it was *“difficult to understand why a commercial contract between a professional vendor and a professional buyer should be ruled by a regulation rather than mutual agreement formed after commercial discussions. The provision of services under our existing contracts is simple and clear, as it has to be for the benefit of both parties.”*

#### **Office Response**

78. The stated concern no longer applied in the light of the decision to proceed with the use of the narrower definition of ‘Consumer’ in the Proposed Regulations.

### *F) Question 6*

**What are your views on Part 6 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and Sectoral Providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.**

79. Rubis stated that it had “no record of experiencing any billing complaint from a customer and are therefore reserved about the benefit of such proposed billing regulation. A fuel sale bill is made of fuel quantity (recorded on a contradictory basis through a calibrated meter) times a unit price (communicated to the customer before the delivery). The date of the invoice is the transaction date. The other elements such as credit terms and late payment interest charges are those of our T&C’s or alternatively those agreed by contract with the customer. We strongly object to the 30-day minimum period of time before we can charge late payment penalties, as this would result in making the late payment a usual practice.”

## Office Response

80. The concern communicated will apply now only to a small group of persons who are granted credit by a vendor in the light of the decision to proceed with the narrower definition of 'Consumer'. As such it is not an onerous provision.

### *G) Question 7*

**What are your views on Part 7 of the draft Regulations? Do you think additional regulations relating to equipment ownership and maintenance, switching between suppliers price tiers, should be considered by the Office in relation to the Fuels Sector? if yes, please explain.**

81. Rubis submitted the following response: Same "as for Question 5, commercial contracts are formed between a professional vendor and a professional buyer within a competitive environment. The provision of services or equipment are part of the commercial negotiation between the parties before they agree to enter into a contract. We don't feel that any further regulation is necessary."

## Office Response

82. The concern is addressed and does not apply in the light of the decision to proceed with the narrower definition of 'Consumer'. As such it is not an onerous provision.

### *H) Question 8*

**Please provide your views on any other matters you consider relevant to this Consultation.**

83. Rubis stated it "fully understand the purpose of the proposed regulation for the retail customers being a heteroclite population with supposed limited technical knowledge and in case of poor information about made available for them to forge their opinion about the product they buy. We are very skeptical about the need for regulating the B2B segment which is ruled by contracts established between discerning professional parties advised by lawyers when the importance of such contracts make it necessary."

## Office Response

84. The concern is addressed and does not apply in the light of the decision to proceed with the narrower definition of 'Consumer'.

## 4.5 SOL

### *A) Question 1*

**What are your views on Parts 1 and 2 of the draft Regulations? And specifically, please share your views on whether the Office should insert the alternative definition of "consumer" in the proposed draft Regulations (i.e. "Consumer" means a person or entity who utilises a product or service from a Sectoral Provider for direct consumption).**

85. Sol provided a comprehensive submission. As an overarching observation it states (at paragraph 3.1) that "The Office is not a legislative body and should not be creating new law (in the sense of introducing significant legal concepts hitherto not part of the Cayman Islands law) but should be building on existing law". The rest of Sol's comments are quoted below.
86. "We refer to the specific comments we have made concerning various Regulations in Parts 1 and 2 at paragraphs 4.1 to 4.10. In terms of the definition of "consumer", please see our observation at paragraph 3.2 and our specific comment at paragraph 4.1 [of our submission]."

"3.2 The ambit of the proposed Regulations, particularly in terms of the proposed definition of "Consumer" is too wide. The generally understood concept of a "consumer" in terms of consumer protection is something like: "the average person in the street". As a matter of UK law, from which many Cayman Islands laws derive, businesses are usually not covered in consumer protection legislation on the basis that such consumers are generally considerably more sophisticated than the "average person on the street" and do not generally require protection, and because the imposition of consumer protection regulations inhibits the ability of sophisticated parties to contract on their terms. The imposition of those of the Regulations which have this affect is contrary to the free market principles which Cayman embraces."

"4.1 Definition of "consumer": The definition of "consumer" in the Regulations needs to be narrowed for the reasons set out in paragraph 3.2 above. The alternative definition of "consumer" which has been proposed is

even more unsuitable than the definition which is in the text of the Regulations. Specifically, certain of Sol's customers, namely:- industrial and wholesale customers, aviation customers, US Coast Guard, Cayman Islands Port Authority, Royal Navy and other military customers should not be covered by the Regulations. Sol suggests that the definition of consumer should be related to the quantity of fuel purchased per transaction. Any party consuming more than two hundred and fifty Imperial gallons will not be a normal consumer in the sense in which consumer protection is usually regarded. Sol suggests that the following definition is used:-

""Consumer" means a person who enquires about, requests, receives, acquires, uses or subscribes to a Service or a Product from a Sectoral Provider primarily for personal, domestic or other non-commercial consumption and not for further resale, resupplying or trade. For the avoidance of doubt, any person contracting for Products in quantity in any single transaction in excess of two hundred and fifty Imperial gallons or in value above five thousand dollars and any person contracting for Services in value in any single transaction in excess of ten thousand dollars, fuel retailers, energy and water utility providers shall not be a Consumer under these Regulations."

## Office Response

87. Consumer protection is one of the principal functions of the Office,<sup>9</sup> and it has the powers under the URC Law and the FSM Law to consult on and propose the creation of regulations. The laws place power in Cabinet to make regulations which promote the purposes expressed in decision of the Legislative Assembly. The Proposed Regulations (taking into account the proposed narrowing of the definition of the concept of 'Consumer') build on the laws, and assist with the intended protections for Consumers. The concepts appearing in the Proposed Regulations are within the traditional boundaries of consumer protection seen in the United Kingdom. Consumer protection regimes always include some restrictions on the freedom to contract on any terms, as a method by which protection is clearly afforded to people who do not have the experience in or acumen for making agreements which contain sufficient protections for their own interests or the interests of their household. Just as a Consumer might be pressured into accepting a contract for a service or product, they could be pressured into waiving the cooling-off period. Contractual provision designed to exclude the protection afforded in law and regulations must not be allowed

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<sup>9</sup> Hansard, 2<sup>nd</sup> Meeting of 16-17 Session of LA, URC Bill 19 October 2016, 2<sup>nd</sup> Reading.

- to apply against Consumers. Such action is within the remit of the Cabinet, in the light of the provision in the URC Law s 6(1)(c) and Section 10 (1)(c)(v) of the FMR Law.
88. The Office notes the comments of Sol and references the discussion above recording the decision to amend the definition of ‘Consumer’.
  89. Sol stated at paragraph 4.2 “The definition of ‘Force Majeure’ is not wide enough” in the Draft Regulation. It does not include many commercial situations that can be found in some versions of a Force Majeure clause.
  90. In response to Sol’s comment that the “definition of ‘Force Majeure’ is not wide enough”, the Office recalls the variations of the clause discussed by the World Bank Group: ‘Force majeure is often treated as a standard clause that cannot be changed’. However, as the clause excuses a party from carrying out its obligations, it needs to be carefully considered and written for the purpose in question.<sup>10</sup> The definition proposed is same definition used in the Proposed ICT Regulations, now \*[July 2020] before the Minister for consultation prior to implementation.
  91. Sol suggested, at paragraph 4.3 that the definition of “Restrict” needs to be modified to accommodate situations where the supplies of the Sectoral Provider are limited, and it must ration supplies. A suggested approach was to use wording to the effect that an action by the Sectoral Provider which limits temporarily a Customer’s access to a Product or Service caused by reasons beyond the control of the relevant Sectoral Provider shall not be considered to be a Restriction for the purposes of these Regulations. In response to Sol’s comment the definition of “Restrict” needs to be modified, the Office agreed and a change is proposed as suggested.
  92. Sol asserted at paragraph 4.4 that the definition of “Sectoral Provider” is unclear. The definition of “Sectoral Provider” is found in the URC Law and the Office maintains the position that is acceptable.
  93. Sol stated at paragraph 4.4 that the last sentence in Regulation 4 “does not make sense”. Regarding Sol’s comment that the last sentence of Regulation 4 “does not make sense”, the Office disagrees, and takes the opportunity to restate the sentence as ‘The Chief Fuels Inspector will present and

<sup>10</sup> <https://ppp.worldbank.org/public-private-partnership/ppp-overview/practical-tools/checklists-and-risk-matrices/force-majeure-checklist>.

enforce the standards prescribed by the Fuels Standards Committee upon “their” completion’.

94. Sol stated at paragraph 4.6 regarding Draft Regulation 6(1) and the display of information which previously had not been displayed, including the properties of fuels on sale. “Sol suggests that the Office should stick to present conventions in the terms of the provision of information to consumers.” Sol also said, “however any change should also apply to all mobile refueller trucks used to serve consumers.”
95. The Office reminds the public that mobile refuellers trucks are not permitted to dispense fuels to standard road vehicles.
96. Sol stated at paragraph 4.7 regarding Draft Regulation 6(2), “the Regulations refer to certain types of fuel marketed for sale in the Islands but not all of them.” Biofuels should be clearly distinguished.
97. The Office accepted the comment that Biofuels should be clearly distinguished, and it holds the view that the current wording of Regulation 6(2) which provide for ‘additional markers or labels’ will achieve that purpose.
98. Sol stated at paragraph 4.8 concerning Draft Regulation 7: “the requirement to ensure that all grades of fuels typically marketed for sale in the Cayman Islands are always available is impractical”. It may lead to unwelcome increased prices charged for the fuel. Provision should be made for exceptional circumstances.
99. Referencing the requirement to ensure that all grades of fuels typically marketed for sale in the Cayman Islands are always available is impractical, an exception is found in the proposed regulation: “unless an exception is granted by the Office for a specified period of time”. The Office notes the stated cost concern and it intends to judiciously consider applications for exceptions.

## *B) Question 2*

**Please share your views on whether the current regime of random fuel testing conducted by OfReg is satisfactory to address fuel quality concerns until the FSC fully implement National Fuel Quality Standards by Q4 2019.**

100. Sol submitted that “Sol is not aware of any market concerns insofar as the quality of the fuels it supplies. Sol does not have any record in the recent past of any complaints having been received concerning the quality of its fuels. Every time a Sol ship berths in Cayman to discharge fuels, those fuels are tested prior to and during discharge and verified to meet Sol's fuel specifications and the refinery Certificates of Quality which are delivered to OfReg. Therefore, OfReg is made aware of the quality and specifications of the fuel to be sold by Sol long before it is dispensed to the Consumer. Obviously, all fuel industry sectoral providers should be subject to the same quality assurance regime both as a matter of fairness to industry participants and to afford protection to consumers. Sol suggests that testing of fuel quality should be conducted principally at the dispensing point of supply to the Consumer (petrol service stations being the most obvious location at the nozzle of the dispenser/pump) and on a truly random basis as this will provide the most effective enforcement of quality standards, and therefore the greatest degree of protection for the Consumer.

### **Office Response**

101. The Office noted Sol's comments.

## *C) Question 3*

**What are your views regarding the means by which the Sectoral Providers will be obliged to ensure the provision of information under Part 3 of the proposed draft regulations?**

102. Sol referred to its observation at paragraph 3.3 and comment at paragraph 4.11.

"3.3 The imposition of regulation inevitably creates extra work for participants of the industry affected and therefore costs can arise in terms of complying with new regulation. The more extra work to be created by new regulations, the more likely that extra costs will arise. The cost of performing significant extra work will have to be passed on to the customer. Another cost which will arise in connection with the Regulations should they be

enacted in their current proposed form, is to operate a free telephone service in the Cayman Islands, which cost will also have to be passed onto customers. Sol does however have a programme which offers customers \$15 for comments of their experience and therefore sees no need for this to be regulated."

"4.11 Regulation 10: Sol does not have the capacity to print its materials in Braille. If Sol is required to transcribe its documentation into Braille, that cost will have to be passed on to consumers. Similarly, and particularly given how few actual "Consumers" that Sol sells to, it is uneconomic for Sol to fund a free complaints hotline. It should be public facing businesses only, if any, which are required to maintain a free complaints hotline. It should be noted that funding a free complaints hotline will be a significant expense for service station operators and the cost will almost certainly be passed on to the consumer."

### **Office Response**

103. The Office acknowledged Sol's response in paragraph 3.3 and paragraph 4.11 concerning the cost of a telephone service dedicated to customer complaints. Further the Office notes the reply of Sol in relation to Question 4 below stating that it does not have a problem with receiving and handling complaints from consumers and that it rarely, if ever, receives a complaint at all. The Office would not object to Sol terminating its reward programme for customer comments, and the budgeted funds could be used by Sol to arrange the telephone service. The Consumer protection scheme benefits from consistency throughout the sector.
104. In reference to the provision of information in Braille, the Office has agreed that any information can be made available upon request via an audio recording. An amendment is found in the Proposed Regulation.

### *D) Question 4*

**What are your views on Part 4 of the draft Regulations? Will the proposed regulations, in your view, enable Sectoral Providers to address and resolve**

**consumer complaints efficiently and expeditiously? If not, explain in detail the changes required to achieve this objective.**

105. In its response to Question 4, Sol reported that “it does not have a problem with receiving and handling complaints from consumers. Sol rarely, if ever, receives a complaint at all. Sol considers that this issue must be addressed in the proper context. How many complaints does the Office receive in connection with fuel industry sectoral providers? How many of these complaints require the Office to contact the retail business owners or Sol? The draft proposals which the Office makes will increase the administrative burdens associated with operating Sol's and the retail station operators' businesses and will lead to increased costs, but seemingly with little or no additional benefit being created for consumers. The cost of implementing new requirements must be weighed against the value which these new requirements are to bring to the Consumer and Sol suggests that a lot of extra regulation is being imposed on fuel industry sectoral providers by the Regulations, without any real anticipated benefit to the Consumer. Sol refers to its observation at paragraph 3.3 and specific comments at paragraphs 4.12 to 4.14.

3.3 The imposition of regulation inevitably creates extra work for participants of the industry affected and therefore costs can arise in terms of complying with new regulation. The more extra work to be created by new regulations, the more likely that extra costs will arise. The cost of performing significant extra work will have to be passed on to the customer. Another cost which will arise in connection with the Regulations should they be enacted in their current proposed form, is to operate a free telephone service in the Cayman Islands, which cost will also have to be passed onto customers. Sol does however have a programme which offers customers \$15 for comments of their experience and therefore sees no need for this to be regulated."

**Office Response**

106. In reference to the suggestion that the increase in regulation on fuel industry sectoral providers is without any real anticipated benefit to the consumer, the Office disagrees. Consumer protection must be present throughout the sector to ensure compliance sectoral providers. The Legislative Assembly identified the need for bespoke protection (for example in section 6(1)(c) of the URC Law), and the other respondents to this consultation did not object to regulation.

107. Sol replied at paragraph 4.12 that Draft Sub-regulation 13(l)(a) “will require service station operators to create a website and generally conform to the various administrative requirements. Complying with these requirements will create additional costs which are likely to be passed on to consumers”.

OfReg accepted the point in part. The proposed regulation is changed to allow the information to be placed on the webpage of the franchisor (for example, Rubis or Sol). The following sentence is added to Proposed Sub-regulation 13(1)(a) as the final sentence: “A Sectoral Provider which operates only as a retailer may satisfy the requirement of a website by use, under agreement, of the website of its primary Distributor”. Regarding cost, prescribing the information to be made available to customers ensures at least a minimum of information is readily available to assist in the making of informed choices.

108. Sol responded paragraph 4.13 in reference to Regulation 22(3)(i): “The reference to “licence” in this Regulation is erroneous. Sol operates under a permit issued under the Dangerous Substances Law and this Regulation needs to be amended accordingly.”
109. OfReg noted that the Fuel Market Regulation Law, 2017 section 6 (3) states<sup>11</sup> : An importer shall be considered to be a sectoral provider and an “authorisation holder”. Authorisation holder is defined in the URC Law. Nonetheless the suggestion is accepted. The proposed regulations are amended with the addition of the definitions as stated here:  
“Authorisation” means a licence, permit or other form of authority granted in accordance with the Utility Regulation and Competition Law, or sectoral legislation.  
“Authorisation Holder” has the same meaning as in Utility Regulation and Competition Law;
110. Sol replied at paragraph 4.14 with reference to Quarterly reporting of complaints: “the requirement to submit quarterly reports of complaints appears to be unnecessarily burdensome in light of the obligation in [Draft]

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<sup>11</sup> 6. (1) The Office shall cause to be compiled and maintained a register of importers to whom import permits have been issued under the Dangerous Substances Handling and Storage Law, 2003.

(2) The Office shall register an importer after an import permit has been issued and the importer shall pay the prescribed registration fee.

(3) An importer shall be considered to be a sectoral provider and an authorization holder and shall be subject to the Utility Regulation and Competition Law, 2016.

Regulation 17 to report all significant complaints within 5 Business Days of arising.”

The Office noted that Sol stated that it rarely received a complaint, and thus the provision does not appear onerous. It is likely to be an important regulatory tool in certain circumstances.

### *E) Question 5*

**What are your views on Part 5 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and Sectoral Providers and participants will benefit from clear, simple and fair terms and conditions for the provision of service? If not, please explain in detail the changes required to achieve this objective.**

111. Sol submitted that "It is not clear why the question relates to a service only as the provisions of Part 5 relate equally to products as to services. Sol assumes that this is a typo. Sol refers to its observation at paragraph 3.3<sup>12</sup> and Sol's specific comments at paragraphs 4.15 to 4.20."

#### **Office Response**

112. The omission was an oversight.
113. Sol commented at paragraph 4.15 on Draft Sub-regulation 24(2)(p): "As a matter of Cayman Islands law, penalties are unlawful and will not be enforced by the Cayman Islands Courts. Sol suggests that the word "penalty" was used in error in the drafting of the Draft Regulations and the draftsman actually intended to use the words "agreed damages" or "agreed compensation" instead, as a provision for agreed damages or agreed compensation is lawful."

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<sup>12</sup> 3.3 The imposition of regulation inevitably creates extra work for participants of the industry affected and therefore costs can arise in terms of complying with new regulation. The more extra work to be created by new regulations, the more likely that extra costs will arise. The cost of performing significant extra work will have to be passed on to the customer. Another cost which will arise in connection with the Regulations should they be enacted in their current proposed form, is to operate a free telephone service in the Cayman Islands, which cost will also have to be passed onto customers. Sol does however have a programme which offers customers \$15 for comments of their experience and therefore sees no need for this to be regulated.

114. The Office accepted the suggestion. The proposed regulation has been amended, to add the words 'or agreed damages' after the word 'penalty' where it first appears. The second time the word 'penalty' appears, it is deleted, and replaced with the word 'item'.
115. Sol stated at paragraph 4.16 on Draft Regulation 25: "Sol objects in the strongest possible terms to Regulation 25 which seeks to create new law. ...This Regulation significantly interferes with the freedom of sophisticated parties to contract on such terms as they choose which is contrary to the way in which sophisticated parties are usually treated under Cayman law. The Office should expect that sectoral providers will not be willing to make significant investments unless a sufficient period of return is granted in exchange. Limiting the term of contracts to one or two years is likely to stifle the making of significant investments by sectoral providers. In such circumstances, a sectoral provider would likely be forced to significantly increase prices in order to assure a return and these additional costs would inevitably have to be passed on to the Consumer. It should also be noted that turning over service station operators every 1-2 years is time consuming, will create additional legal consultancy fees for both parties, will be expensive and may lead to service station closures if suitably qualified personnel cannot be found in a timely manner. Importer, wholesale/ retailers like Refuel do not have these regulatory constraints as owner operators."

The decision to propose a narrower definition of Consumer addressed the concern stated by Sol on the length of contracts.

116. Sol recorded at paragraph 4.17, that "Sol objects to [Draft] Regulation 26. The imposition of a mandatory "cooling off" period is highly unusual for the fuels sector and is typically only imposed where (a) there is a wide disparity in the sophistication of the parties to a contract, (b) the contract is for a long duration and (c) the amounts involved are significant. The only sectors of which Sol is aware where a cooling off period is typical is in connection with the sale of pension plans and in hire purchase contracts. The goods and services supplied by Sol do not practically lend themselves to a cooling off period.
117. OfReg agreed that Draft Regulation 26 contained the provision that the Consumer may cancel the contract without a penalty or any other charge for up to five (5) Business Days from the date of the contract, unless the Service and/or Product has been consumed by the Consumer by that time.

- Sol's suggested edit was accepted. An amendment is made to better balance the provision. The words "mixed or moved to another container" are added after the word "consumed". The Proposed Regulation 26 now reads in part, "the Consumer may cancel the contract without a penalty or any other charge for up to five (5) Business Days from the date of the contract, unless the Service and/or Product has been consumed, mixed or moved to another container by the Consumer by that time". It is anticipated that this proposed change will, in many situations of small purchases, make the provision inapplicable.
118. Sol raised objections to Draft Regulations 27-29, at paragraphs 4.18, 4.19 and 4.20 as quoted below. One response is made to the objections thereafter.
  119. Sol objected to Draft Regulation 27, which addressed a modification, amendment or variation to a term of a contract with a Consumer. "This Regulation seeks to impose new law".
  120. Draft Regulation 28 addressed a contract with a Consumer for more than one Product and/or Service one or more of which is provided by or through a third party. It provided that the Sectoral Provider shall be fully responsible for the effective performance of the product and/or service. "Again, Sol objects to the creation of new law by the Office. Cayman Islands law is sufficiently developed to deal with a situation where the performance of an obligation under a contract is delegated to a third party. The Office should not be interfering with settled principles of Cayman law as this is more likely to inhibit economic activity than protect consumers."
  121. "Sol objects to [Draft] Regulation 29 [security deposits] which again imposes new law and restricts the ability of parties to contract on terms of their choosing and the ability of a party to determine the criteria upon which it is willing to enter into a contract with a counterparty. This is contrary to the free market that Cayman has sought to create."
  122. The Office acknowledged the practical concerns of Sol concerning the Draft Regulations 27-29, that in the context of the revised definition of 'Consumer' that the impact on vendors is greatly reduced. In that context, consumer protection regimes always include some restrictions on the freedom to contract on any terms, as a method by which protection is clearly afforded to people who do not have the experience in or acumen for making agreements which contain sufficient protections for their own interests or

the interests of their household. Often the Consumer is given no options on which third party service providers is to be used. Liability for poor performance by a third party should follow by operation of the regulations. Reference is made to the provisions in the URC Law s 6(1)(c) and Section 10 (1)(c)(v) of the FMR Law.

#### *F) Question 6*

**What are your views on Part 6 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and Sectoral Providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.**

123. Sol submitted that "Sol's existing billing arrangements have worked very well for a number of years and continue to work well. Sol does not receive complaints about its billing practices. Nearly all of Sol's customers are repeat customers and therefore have a prior course of dealings to rely upon as much as anything else." Sol wrote at para 4.21 "Sol objects to Draft Regulation 42 in the strongest possible terms as wholly unworkable. The implications of providing such a long period of credit have clearly not been properly considered", especially in the case of a sale of fuel to a service station.

#### **Office Response**

124. The Office noted Sol's response, and understands that a wide definition of 'Consumer' would result in this regulation applying to sales from distributors to retailers. However, the proposed revised definition of 'Consumer', which is much narrower in scope, addresses the concern expressed by Sol.

#### *G) Question 7*

**What are your views on Part 7 of the draft Regulations? Do you think additional regulations relating to equipment ownership and maintenance, switching between suppliers price tiers, should be considered by the Office in relation to the Fuels Sector? if yes, please explain.**

125. Sol stated that the Draft "Regulations amount to interference in the internal decision-making processes of a private business and also operate to

significantly interfere with parties' freedom to contract on terms of their choosing and are therefore antithetical to the free market which Cayman seeks to maintain. Sol refers to its observation at paragraph 3.1 and Sol's specific comments at paragraphs 4.22 and 4.23."

"3.1 The Office is not a legislative body and should not be creating new law (in the sense of introducing significant legal concepts hitherto not part of Cayman Islands law) but instead should be building on existing law. The Office cites section 6(2)(d) URC Law and it should be noted that this provision empowers the Office to make administrative determinations, decisions, orders and regulations. In drafting the proposed Regulations, the Office has gone well beyond administrative matters and seeks to create new law. The proposed new law created will have consequences which it appears the Office has not considered. For example, it is highly unlikely that any wholesaler of fuels will be willing to make significant investments in service stations owned by Caymanians if the wholesaler's power to enter into contracts with such Caymanian owned businesses is limited to one or two years, as the Regulations presently provide. It seems to Sol that the purpose of a lot of the Regulations appears to be aimed at seeking to increase competition rather than protecting consumers and therefore out of step with the stated purpose of the Regulations."

"4.22 [Draft] Regulation 49(2): This Regulation does not make sense and needs to be reviewed again.

4.23 ...Sol objects to [draft] Regulation 51 which involves the creation of new law and which appears to single out the sectors regulated by the Office."

### **Office Response**

126. In response to the comment on Draft Regulation 49(2), the sub-regulation reads "(2) A Sectoral Provider shall repair any issues with a Service it provides in accordance with the relevant Code or Standards as determined by the Office from time to time." The provision are designed assist, among others, customers who store a supply of fuel (say LPG) on site for domestic use and bring the fuel into their premises through pipes, regulators and meters into appliances.
127. In response to the comment on Draft Regulation 51, and the statement that it is beyond the scope of regulations to invalid contractual provisions that have the effect of reducing the protection provided by the regulation, the

Office disagrees in the light of the provision in Section 10(1)(c)(v) of the FMR Law.

#### *H) Question 8*

**Please provide your views on any other matters you consider relevant to this Consultation.**

128. Sol's submission contained 23 enumerated comments. The comments were addressed above, apart from paragraph 4.9 wherein Sol suggested a definition of "Vendor" be provided in the proposed regulations.

#### **Office Response**

129. The Office noted Sol's comment that a definition of "Vendor" be provided in the proposed regulations, given that the use of the upper case often signals that the word is defined. The Office understands the point and will remove the uppercase "V". The term will have its ordinary meaning in proposed Regulations 6 and 8.

## **5. Determinations**

130. Having considered all the submissions made by the respondents, the Office determines that it will recommend the Consumer Protection Regulations as drafted and circulated in **FS 2019 – 1- Consultation Proposed Consumer Protection Regulations**, and then amended herein. The Proposed Regulations contain changes to the Draft Regulations, for the reasons set out above, with the following changes:
- a. The definition of "Authorisation" is added, and states "Authorisation" means a licence, permit or other form of authority granted in accordance with the Utility Regulation and Competition Law, or sectoral legislation;
  - b. The definition of "Authorisation Holder" is added, and states "has the same meaning as in Utility Regulation and Competition Law";
  - c. The definition of "Consumer" is amended to state "Consumer means a person who enquires about, requests, receives, acquires, uses or subscribes to a Service or Product from a Service Provider for the primary purpose of his personal or domestic use";

- d. The term “Vendor” is changed to remove the uppercase “V”. The term will have its ordinary meaning when it appears in proposed Regulations 6 and 8;
  - e. For Part 3 Section 10(3)(b), the reference to Braille is removed and ‘audio message’ is included as an alternative medium of providing information to the public, especially for visually impaired consumers;
  - f. The following sentence is added to Sub-regulations 6(1) and 13(1)(a) as the final sentence: “A Sectoral Provider which operates only as a retailer may satisfy the requirement of a website by use, under agreement, of the website of its primary Distributor”;
  - g. The proposed Sub-regulation 24(2) (p) is amended, to add the words ‘or agreed damages’ after the word ‘penalty’ where it first appears. The second time the word ‘penalty’ appears, it is deleted, and replaced with the word ‘item’; and
  - h. An amendment is made in Regulation 26 to better balance the provision. The words “mixed or moved to another container” are added after the word “consumed”. The proposed Regulation 26 now reads in part, “ the Consumer may cancel the contract without a penalty or any other charge for up to five (5) Business Days from the date of the contract, unless the Service and/or Product has been consumed, mixed or moved to another container by the Consumer by that time”.
131. In addition to the changes identified in the preceding paragraph, the Office is making the following other, minor changes to the Proposed Regulations subsequent to the closing of FS 2019 – 1- Consultation Proposed Consumer Protection (now the Proposed Regulations):
- a. Proposed Regulation 3(b) to read “Any Dangerous Substances may be exempted by the Fuels Standards Committee through a notice published from time to time by the Office”.
  - b. Proposed Regulation 4 add the word “their” in the final sentence before the word “completion’.
132. The Office considers that the aforementioned changes are either typographical or clarificatory in nature and have no material impact on the outcome of FS 2019 – 1- Consultation Proposed Consumer Protection or this Determination, and therefore would not change the position of any party

if they were to have been included in the consultation. They are now included in the Proposed Regulations.

133. A copy of the Proposed Regulations is attached as Annex 1 to this Determination. Pursuant to section 10(1) of the FMR Law, the Office will send a copy of this determination and the Proposed Regulations to the Cabinet and recommend that they become legislation in the jurisdiction.



## Annex 1

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### Draft Final Proposed Consumer Protection Regulations