

Guideline for managing retailer default situations

18 June 2013

This document has been prepared for consultation with interested parties about the proposed process for managing a retailer default situation. This document has been prepared as if the proposed arrangements have been adopted (including the proposed changes to Part 14 as part of the settlement and prudential security review) but does not reflect the current Code and should not be used or relied on in any way if there is a retailer default event.

Version control

Version	Date amended	Comments
Discussion draft	23 April 2013	Discussion draft for 23 April 2013 workshop
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Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
Authority	Electricity Authority
Code	Electricity Industry Participation Code 2010
Minister	Minister of Energy and Resources

Draft

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1 An effective process for managing a retailer default situation is important

- 1.1 The electricity market comprises a series of financial transactions: generators sell electricity to the clearing manager; the clearing manager sells electricity to retailers; retailers sell electricity to consumers. Retailers also contract with electricity distribution businesses to transport electricity to consumers (or to allow use of a network in the case of a conveyance only agreement). Generators (through the clearing manager) and distributors are exposed to credit risk if a retailer does not, or cannot, meet its financial commitments (a retailer default situation).
- 1.2 Electricity is a somewhat unique product because supply cannot easily be ceased if a party in the contractual chain (other than the consumer) fails to meet financial commitments. This means that the on-going failure by a retailer to pay for electricity or distribution services can lead to increasing financial losses by generators and distributors. The remedies available under the Companies Act 1993 for managing the failure of a party to make payment are less effective in this situation, particularly because they do not provide a defined timeframe for resolving the situation.
- 1.3 Consequently, the Electricity Industry Participation Code 2010 (Code) specifies an electricity market specific process for managing a retailer default situation to:
- (a) maintain the confidence of consumers that an event of retailer default will not interrupt their electricity supply
 - (b) facilitate, where feasible, a commercial solution to an event of retailer default
 - (c) maintain the confidence of industry participants that an event of retailer default will be resolved in a finite time, thereby limiting potential financial losses without requiring arbitrary or ad-hoc responses by individual participants
 - (d) provide clarity as to whether and in what circumstances the customers of a retailer in default might be assigned to other retailers in the same network area.

2 Purpose of this guideline

- 2.1 The Code establishes a process for managing a retailer default situation. The process will apply where an event of default arises as a result of a retailer failing to pay an invoiced amount to the clearing manager, failing to meet the required level of security, becoming insolvent, or having its use-of-system agreement terminated for a serious financial breach.
- 2.2 This guideline explains the process the Authority will follow should there be such an event of default by an electricity retailer:
- (a) describes the events that constitute an event of default by a retailer under the Code
 - (b) describes how the retailer default process is initiated and the actions that the Authority will take on becoming aware of an event of default
 - (c) describes the process that will be followed in the event of a retailer default and the role of the Authority and the market participants.

3 When the retailer default process will start

- 3.1 The process for managing a retailer default situation will begin when a retailer commits certain events of default.
- 3.2 An event of default occurs when a retailer does not fulfil specific financial obligations, or when a third party has taken control of some of the retailer's assets. The relevant clause of the Code is clause 14.54 which defines the types of default as any of the following:¹

¹¹ Note. Amendments to Part 14 are being proposed as part of a review of settlement and prudential security arrangements. This provision reflects the 'weekly settlement' option. The equivalent provision for the 'monthly settlement' option is clause 14.41.

Types of default

14.54 Definition of an event of default

Each of the following events constitutes an **event of default**:

- (a) failure of a **participant** to provide security for the minimum amount required in accordance with clause [14A.6]:
- (b) a **settlement default**:
- (c) any action taken for, or with a view to, the declaration of a **participant** who is required to comply with Part 14A as a corporation at risk under the Corporations (Investigation and Management) Act 1989:
- (d) appointment of a statutory manager in respect of **participant** who is required to comply with Part 14A under the Corporations (Investigation and Management) Act 1989 (or a recommendation or submission is made by a person to the Financial Markets Authority supporting such an appointment):
- (e) appointment of a person under section 19 of the Corporations (Investigation and Management) Act 1989 to investigate the affairs or run the **business** of a **participant** who is required to comply with Part 14A:
- (f) if a **participant** who is required to comply with Part 14A is (or admits that it is or is deemed under any applicable law to be) unable to pay its debts as they fall due or is otherwise insolvent, or stops or suspends, or threatens to stop or suspend, or a moratorium is declared on, payment of its indebtedness, or makes or commences negotiations or takes any other steps with a view to making any assignment or composition with, or for the benefit of, its creditors, or any other arrangement for the rescheduling of its indebtedness or otherwise with a view to avoiding, or in expectation of its inability to pay, its debts:
- (g) a holder of a security interest or other encumbrancer taking possession of, or a receiver, manager, receiver and manager, liquidator, provisional liquidator, trustee, statutory or official manager or inspector, administrator or similar officer being appointed in respect of the whole or any part of the assets of a **participant** who is required to comply with Part 14A or if the **participant** requests that such an appointment be made.
- (h) termination of a **retailer's use-of-system agreement** with a **distributor** because of a serious financial breach as defined in the **use-of-system agreement** if—
 - (i) the **retailer** continues to have a **customer** or **customers** on the **distributor's local network**; and
 - (ii) there are no unresolved disputes between the **retailer** and the **distributor** in relation to the termination; and
 - (iii) the **distributor** has not been able to remedy the situation in a reasonable time; and
 - (iv) the **distributor** gives notice to the **Authority** that this clause applies.

3.3 The conditions for initiating the process for managing a retailer default situation are described in this guideline and are specified in Schedule 11.5 of the Code. Specifically, the process will apply when:

- (a) a retailer fails to provide prudential security for the minimum amount required (clause 14.54(a))

- (b) a retailer fails to pay any amount payable when it becomes due under Part 14 (clause 14.54(b))
- (c) a retailer is unable to pay its debts when they are due or is otherwise insolvent, suspends payments, or takes measures in the expectation of a future inability to pay its debts (clause 14.54(f))
- (d) the retailer's use-of-system agreement with a distributor has been terminated because of a serious financial breach by the retailer, and the following conditions are satisfied (clause 14.54(h)):
 - (i) no unresolved disputes remain between the retailer and the distributor in relation to the termination
 - (ii) the distributor has been unable to remedy the situation
 - (iii) the distributor gives notice to the Authority that the conditions apply.

3.4 The relevant clause of the Code is clause 2(1) of Schedule 11.5:

2 Notice to retailer who has committed event of default

- (1) If a **retailer** ("defaulting **retailer**") commits an **event of default** under paragraph (a) or (b) or (f) or (h) of clause 14.54 the **Authority** must give notice to the defaulting **retailer** that—
 - (a) the defaulting **retailer** must—
 - (i) remedy the **event of default**; or
 - (ii) assign its rights and obligations under every contract under which a **customer** of the defaulting **retailer** purchases **electricity** from the defaulting **retailer** to another **retailer**, and switch to another **retailer** all **ICPs** for which the defaulting **retailer** is responsible; and
 - (b) if the defaulting **retailer** does not comply with the requirements set out in paragraph (a) within 7 days of the notice, clause 4 will apply.

4 How the process for managing a retailer default is initiated

- 4.1 A retailer in default must notify the Authority of the event of default. The relevant clause of the Code is clause 14.56(1) to (3):²

14.56 Procedure upon event of default

- (1) If a **participant** commits an **event of default**, the **participant** must immediately advise the **clearing manager** and the **Authority** of the **event of default**.
- (2) Despite subclause (1), a **participant** is not required to advise the **clearing manager** or the **Authority** if the **participant** would breach section 36 of the Corporations (Investigation and Management) Act 1989 by advising the **clearing manager** or the **Authority**.
- (3) If subclause (2) applies, the **participant** must seek the consent of the Registrar of Companies or the Financial Markets Authority (as applicable) to disclose the matter to the **clearing manager** and the **Authority**.

- 4.2 If the clearing manager becomes aware that a retailer has not complied with a requirement of Part 14 of the Code (such as meeting a payment or providing security for the minimum amount required) and the retailer has not advised the clearing manager that it is committed an event of default, the clearing manager must advise the retailer and the Authority of the event of default. The clearing manager must also advise the Authority if it has reasonable grounds to believe that an event of default is likely to occur. The relevant clauses of the Code are clause 14.55 and clause 14.56(4) and (5):³

Procedure for event of default

14.55 Clearing manager to advise Authority of anticipated event of default

If the **clearing manager** believes that an **event of default** is likely to occur, the **clearing manager** must advise the **Authority** so that the **Authority** can consider an appropriate course of action.

14.56 Procedure upon event of default

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- (4) If the **clearing manager** becomes aware that a **participant** has committed an **event of default** and the **participant** has not advised the **clearing manager** of the **event of default**, the **clearing manager** must advise the person in default that it has committed an **event of default**.
- (5) The **clearing manager** must advise the **Authority** of an **event of default**.

² Note. Amendments to Part 14 are being proposed as part of a review of settlement and prudential security arrangements. This provision reflects the 'weekly settlement' option. The equivalent provision for the 'monthly settlement' option is clause 14.43.

³ Note. Amendments to Part 14 are being proposed as part of a review of settlement and prudential security arrangements. This provision reflects the 'weekly settlement' option. The equivalent provision for the 'monthly settlement' option is clause 14.42 and 14.43.

- 4.3 If a distributor has terminated its use-of-system agreement with a retailer because of a serious financial breach by the retailer, and the other conditions of clause 14.54(h) are met, the distributor may advise the Authority that an event of default has occurred. The Code does not prescribe that a distributor must or may advise the Authority: the distributor has the discretion as to whether or not to trigger the Authority process for managing an event of default (if the conditions establishing the event of default have been met). A distributor may try to resolve the matter under its commercial relationship with the retailer if preferable in the circumstances.
- 4.4 Other market participants that become aware of a breach of the Code must advise the Authority. Regulation 8 of the Electricity Industry (Enforcement) Regulations 2010 provides that an industry participant that believes, on reasonable grounds, that another industry participant has breached the Code must report the breach or possible breach to the Authority as soon as possible.
- 4.5 Any other person who becomes aware of a breach may advise the Authority, as provided for in regulation 9 of the Electricity Industry (Enforcement) Regulations 2010.
- 4.6 All notifications to the Authority of an event of default should be made to the [designated person].

5 The process of managing an event of default

5.1 The process for managing a retailer default situation involves three phases:

- (a) Phase 1. The defaulting retailer has a period of seven days to resolve the default by meeting its financial obligations or by transferring its customer base (including inactive ICPs) to a viable retailer
- (b) Phase 2. After seven days, if the default is not resolved, the defaulting retailer's customers will be notified by the Authority that they should switch to another retailer within seven days. The Authority will suspend the retailer and apply to the Rulings Panel for a termination order under the Electricity Industry Act 2010
- (c) Phase 3. The Authority has three days to ensure the registry has switched all customers who have transferred to another retailer and to assign the remaining customers by day 18 of the process. The terms and conditions of the assigned contract will be those specified by the new retailer.

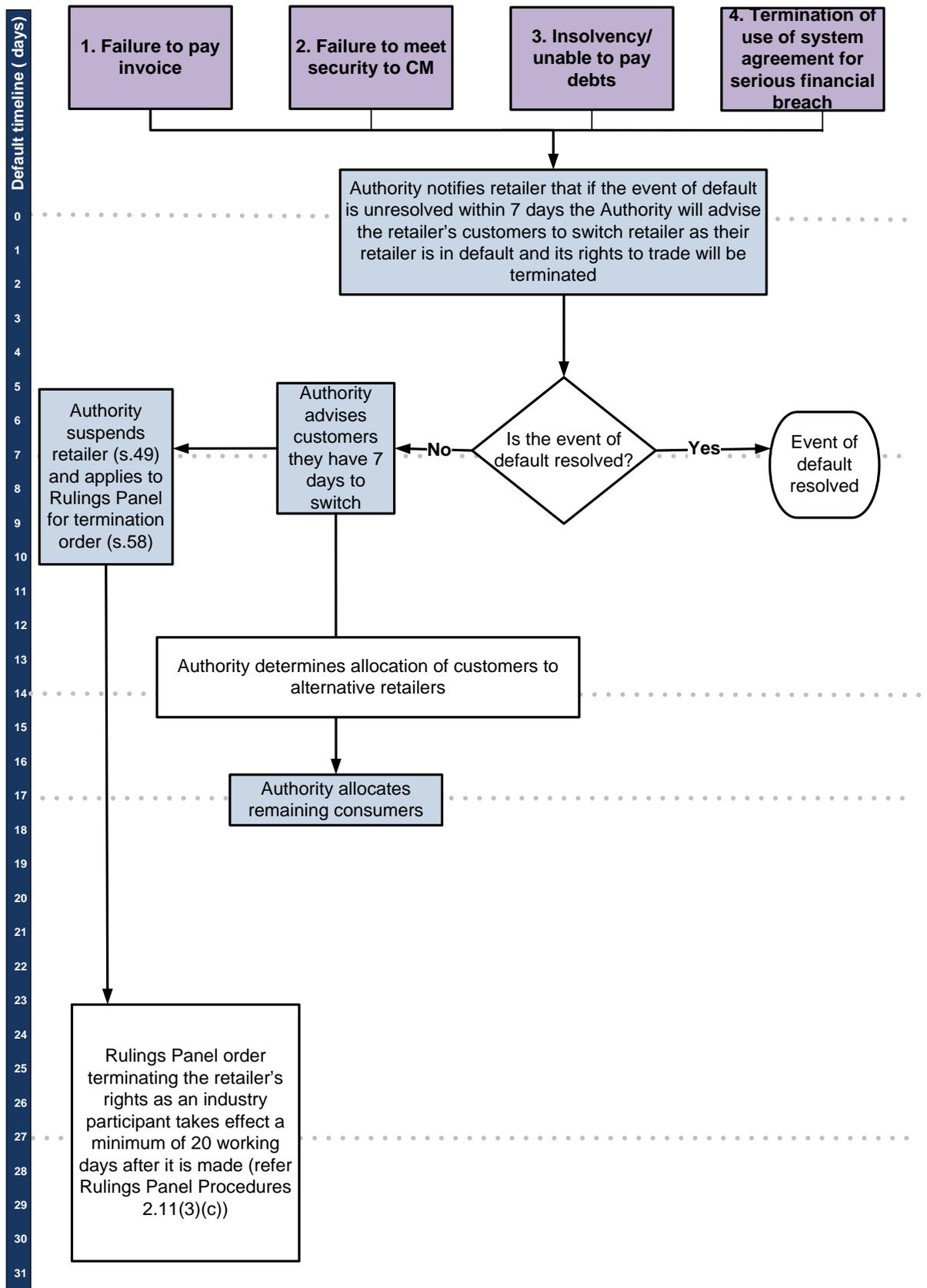
5.2 Phase 1, and the timeline for the subsequent phases, commence when the Authority gives notice to the retailer in default. The relevant clause of the Code is clause 2 of Schedule 11.5:

2 Notice to retailer who has committed event of default

- (1) If a **retailer** ("defaulting **retailer**") commits an **event of default** under paragraph (a) or (b) or (f) or (h) of clause 14.54 the **Authority** must give notice to the defaulting **retailer** that—
 - (a) the defaulting **retailer** must—
 - (i) remedy the **event of default**; or
 - (ii) assign its rights and obligations under every contract under which a **customer** of the defaulting **retailer** purchases **electricity** from the defaulting **retailer** to another **retailer**, and switch to another **retailer** all **ICPs** for which the defaulting **retailer** is responsible; and
 - (b) if the defaulting **retailer** does not comply with the requirements set out in paragraph (a) within 7 days of the notice, clause 4 will apply.
- (2) The **Authority** may require the defaulting **retailer** to provide to the **Authority**, within a time specified by the **Authority**, information about the defaulting **retailer's customers**.
- (3) The defaulting **retailer** must provide the information requested by the **Authority** under subclause (2) within the time specified by the **Authority**.

5.3 Figure 1 shows a flowchart of the process that will be followed by the Authority in managing a retailer default event. The left column of the chart marks the days provided for each phase in the process. The Code provides that these are elapsed days (and not working days).

Figure 1. Process for managing event of retailer default



Phase 1: Prompting a commercial solution – Day 0 to Day 7

- 5.4 If the Authority is satisfied that a retailer has committed an event of default under paragraph (a) or (b) or (f) or (h) of clause 14.54, the Authority and each participant must comply with the processes set out in Schedule 11.5 of the Code. The relevant clause of the Code is clause 11.15B:

11.15B Process for retailer events of default

- (1) This clause applies if the **Authority** is satisfied that a **retailer** has committed an **event of default** under paragraph (a) or (b) or (f) or (h) of clause 14.54.
- (2) The **Authority** and each **participant** must comply with Schedule 11.5.

- 5.5 The Authority will provide notice to the retailer in default:

- (a) informing the defaulting retailer that if the retailer has not either resolved the default or transferred its customers to another retailer within seven days, the Authority will publicly advise its customers that they should switch to a new retailer, will suspend the retailer's rights to trade, and will apply to the Rulings Panel for a termination order
- (b) request from the retailer in default the information from its customer database needed to communicate with the customers in phase two
- (c) request that the retailer report daily to the [designated person] on its progress in resolving the event of default and/or in transferring its customer base to another retailer.

- 5.6 The relevant clause of the Code is clause 2 of Schedule 11.5:

2 Notice to retailer who has committed event of default

- (1) If a **retailer** ("defaulting **retailer**") commits an **event of default** under paragraph (a) or (b) or (f) or (h) of clause 14.54, the **Authority** must give notice to the defaulting **retailer** that—
 - (a) the defaulting **retailer** must—
 - (i) remedy the **event of default**; or
 - (ii) assign its rights and obligations under every contract under which a **customer** of the defaulting **retailer** purchases **electricity** from the defaulting **retailer** to another **retailer**, and switch to another **retailer** all **ICPs** for which the defaulting **retailer** is responsible; and
 - (b) if the defaulting **retailer** does not comply with the requirements set out in paragraph (a) within 7 days of the notice, clause 4 will apply.
- (2) The **Authority** may require the defaulting **retailer** to provide to the **Authority**, within a time specified by the **Authority**, information about the defaulting **retailer's customers**.
- (3) The defaulting **retailer** must provide the information requested by the **Authority** under subclause (2) within the time specified by the **Authority**.

- 5.7 The Authority may publicise information about the event of default if the Authority considers it desirable to do so. The Authority must publicise information, including the identity of the participant in default, if the event of default results in a reduction in payments to participants under Part 14.
- 5.8 Depending upon the significance of the event of default, the Authority may consider:
- (a) advising the Rulings Panel of the event of default and that the Authority may be seeking suspension and termination of a market participant
 - (b) advising the Office of the Minister of Energy of the event of default and the steps that the Authority will take to maintain the confidence of consumers that the event of default will not interrupt their electricity supply
 - (c) advising the Ministry of Business, Innovation and Employment that an event of default exists and that the Authority has alerted the Office of the Minister of Energy
 - (d) making information available on its website and to the media.
- 5.9 The relevant clause of the Code is clause 14.66:⁴

Publication of information about event of default

14.66 Authority may publicise information about event of default

- (1) The **Authority** may **publicise** information about an **event of default** if the **Authority** considers it is appropriate.
- (2) If an **event of default** results in a reduction in payments under subpart 11, the **Authority** must **publicise** information about the following:
 - (a) the nature of the **event of default**:
 - (b) the extent of the **event of default**:
 - (c) the identity of the defaulting **participant**.

- 5.10 On being advised of the event of default, the Authority will:
- (a) contact the registry and request its assistance in identifying the ICPs of each of the retailer's customers and contact details for that customer, if that information is not immediately provided by the retailer in default
 - (b) contact the distribution lines businesses over which the retailer trades, advising them of the event of default, the ICPs of each customer, and requesting the distributor's assistance in establishing the contact details for each of the retailer's customers on that network
 - (c) start preparing the communication strategy to the customers of the defaulting retailer
 - (d) start compiling a database of customer contact details for each of the customers of the retailer in default.

⁴ Note. Amendments to Part 14 are being proposed as part of a review of settlement and prudential security arrangements. This provision reflects the 'weekly settlement' option. The equivalent provision for the 'monthly settlement' option is clause 14.53.

- 5.11 The Authority will determine how frequently updates are provided to external parties.
- 5.12 Within [three] days of being advised of the event of default, the Authority will consider a strategy to communicate with the retailer's customers if the default is not resolved or the customers are not transferred to another retailer by day seven. This strategy will take into account the degree to which a complete database of customer contact details is likely to be established by day seven.

Phase 2 – Customers urged to switch retailer – Day 8 to Day 14

- 5.13 If, after seven days have elapsed, the Authority considers that the event of default has not been resolved or not all of the retailer's customers have been transferred to another retailer, the Authority will commence the second phase of the process for managing the event of retailer default. In concluding that the event of default is not resolved, or not all of the retailer's customers have been transferred, the Authority may, as it considers appropriate, seek updated information from the:
- (a) defaulting retailer
 - (b) clearing manager
 - (c) registry
 - (d) distribution lines businesses
 - (e) any statutory manager, investigator or receiver appointed to the retailer
 - (f) any other person the Authority considers may have information relevant to determining whether the default continues or whether all of the customers have transferred to another retailer.
- 5.14 The process for managing an event of default recognises that there is a potential for a 'default' to be triggered due to technical reasons that may not be reversed immediately for system or process reasons. Consequently, the process allows for circumstances in which an acceptable resolution to an event of default has been agreed – for example, where a 'default' arises because of an error in an invoice that cannot be corrected until the invoice is re-issued but the retailer has paid the amount that is in fact due. The relevant clause of the Code is clause 4(1)(b) of Schedule 11.5:⁵

4 Failure to remedy event of default

- (1) This clause applies if—
- (a) 7 days have elapsed since the defaulting **retailer** was given notice under clause 2(1); and
 - (b) the **Authority** considers that—
 - (i) the defaulting **retailer** has not remedied the **event of default** or, in the case of an **event of default** under clause 14.54(b) in respect of which there is an unresolved dispute about an amount under clause 14.18 or 14.40, has not reached an agreement with the **Authority** to

⁵ Note. Amendments to Part 14 are being proposed as part of a review of settlement and prudential security arrangements. The cross-references in this provision reflect the 'weekly settlement' option. The equivalent provision for the 'monthly settlement' option is clause 14.25.

- (ii) resolve the **event of default**; and the defaulting **retailer** still has 1 or more contracts under which a **customer** of the defaulting **retailer** purchases **electricity** from the defaulting **retailer**.

- 5.15 If the Authority determines that an event of default remains and that not all of the customers have been transferred to another retailer, the Authority will provide notice to the defaulting retailer that it is commencing the second phase of the process.
- 5.16 The Authority will attempt to contact all customers remaining with the retailer in default to:
- (a) explain that the customer's retailer is in default, and that the Authority will suspend the defaulting retailer's right to trade and apply to the Rulings Panel for a termination of its rights to trade
 - (b) urge the customer to switch to another retailer and provide practical information on how to switch retailers, including contact details for competing retailers
 - (c) explain that the customer has a period of seven days to switch retailers
 - (d) explain that if the customer has not switched retailers within seven days, his or her contract with the retailer in default will be assigned to another retailer selected by the Authority and that the terms and conditions of the assigned contract will be those of the new retailer and not those of the retailer in default.
- 5.17 The relevant clause of the Code is clause 4(2) of Schedule 11.5:

4 Failure to remedy event of default

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- (2) The **Authority** must—
- (a) give notice to the defaulting **retailer** that the **Authority** considers that this clause applies; and
 - (b) attempt to advise **customers** of the defaulting **retailer** that—
 - (i) the defaulting **retailer** has committed an **event of default**; and
 - (ii) the **customer** should enter into a contract for the purchase of **electricity** with another **retailer** within 7 days; and
 - (iii) if the **customer** fails to enter into a contract with another **retailer**, the **Authority** may assign the defaulting **retailer's** rights and obligations under the **customer's** contract with the defaulting **retailer** to another **retailer** under clause 5.

- 5.18 The Authority will determine the strategy that it will adopt to communicate with the customers of the retailer in default, taking account of the circumstances. This strategy might involve some combination of various means of communication, including some mix of: letter, website, call centre for outgoing and incoming calls,

SMS-messages and national or local mass media such as television, newspaper, or radio.

- 5.19 The Authority will advise other retailers that the event of default remains, that not all of the customers of the defaulting retailer have been transferred to another retailer, and that the Authority will contact the remaining customers of the retailer and urge them to switch retailers. This will allow other retailers to brief their call centres to respond to inquiries from customers of the failed retailer and their own customers. The Authority may also brief other parties, including the Office of the Minister of Energy, and the Ministry of Business, Innovation and Employment, as it considers appropriate.
- 5.20 The Chief Executive will also initiate the process of terminating the rights of the defaulting retailer to trade under the Code by:
- (a) recommending to the Board that it suspend the retailer's right to trade under section 49(3) of the Act, effective immediately. The effect of this suspension is that the retailer is no longer allowed to make bids and offers, but is still obliged to pay the invoices of the clearing manager for the electricity used by its customers.
 - (b) applying to the Rulings Panel to terminate the rights of the retailer as an industry participant under 58 of the Act. The procedures of the Rulings Panel are prescribed under the Act, the Code and the Electricity Industry (Enforcement) Regulations 2010. This procedure is likely to take at least 40 days..
- 5.21 After it provides notice to the customers of the retailer in default that they should transfer to another retailer (that is, after day seven of the process), the Authority may also instruct the registry not to process any switches of customers to the retailer in default. That is, the retailer in default would not be permitted to expand its customer base while it remains in default. The relevant clause of the Code is clause 4(3) and (4) of Schedule 11.5:

4 Failure to remedy event of default

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- (3) The **Authority** may, by notice to the **registry**, direct the **registry** not to complete the switch of any **ICP** to the defaulting **retailer**.
- (4) If the **Authority** gives notice under subclause (3), the **registry** must not complete the switch of any **ICP** to the defaulting **retailer**.

Phase 3: transfer of any remaining customers – Day 14 to Day 17

- 5.22 After advising the retailer's customers to switch to another retailer, the Authority will prepare to assign the contracts of any customers who do not switch to another retailer. These preparations will include:
- (a) identifying the retailers that may be required to take on customers
 - (b) requesting that the registry provide daily reports on the number of customers remaining with the retailer in default

- (c) notifying retailers supplying customers over the same distribution networks as the retailer in default that they may be assigned customers by the Authority, if the customers of the retailer in default do not voluntarily switch or the Authority is unsuccessful in tendering the remaining customer base
- (d) preparing the tender documents that the Authority will use if any customers remain with the retailer at day 14. The documents will be provided to potential recipient retailers so that they may proceed with their own preparations.

5.23 The Authority may need to obtain information about the customers of the defaulting retailer from other participants. The relevant clause of the Code is clause 3 of Schedule 11.5:

- 3 Authority may require distributor and registry to provide information**
- (1) The **Authority** may, by notice in writing to a **distributor** on whose **network** a defaulting **retailer** trades **electricity**, require the **distributor** to provide to the **Authority** the information about the defaulting **retailer's customers** specified in the notice (if the **distributor** holds the information), within the period specified in the notice.
 - (2) If the **distributor** holds the information, the **distributor** must provide the information requested by the **Authority** under subclause (1) within the time specified by the **Authority**.
 - (3) The **Authority** may, by notice in writing to the **registry**, require the **registry** to provide to the **Authority** information about **ICPs** for which the defaulting **retailer** is responsible, within the period specified in the notice.
 - (4) The **registry** must provide the information requested by the **Authority** under subclause (3) within the time specified by the **Authority**.

Authority will attempt to tender remaining customer base

5.24 If, after 14 days have elapsed, the Authority considers that the retailer has not remedied the event of default or has not transferred responsibility for all of its customers to another retailer, the Authority will invite other retailers to tender for the remaining customer base. The tender would be on the following terms:

- (a) the customers would be assigned on the terms and conditions established through the tender (including price), not the terms and conditions of the retailer in default (that is, after the Authority had exercised the assignment rights outlined below)
- (b) all retailers would be invited to submit a bid for all or some of the customers of the retailer in default; the terms offered by the recipient retailer to the customer must be that retailer's standard tariff at the date the Authority was notified of the default (day 1) or a lower price
- (c) the Authority would allocate customers/volumes (including both active and inactive ICPs) randomly to the retailer bidding the lowest price, according to the quantity they bid; and then to the retailer with the next lowest price, and so forth
- (d) the recipient retailers would retain the option to notify changes to their terms and conditions (including price) according to their standard process;

similarly, customers would retain the option of switching to a different retailer at any time

- (e) bids would be due on day 15 of the process, that is, the day after the 7 day period for voluntary switches lapsed
 - (f) The retailer must have entered into arrangements for use of the distribution network and for metering.
- 5.25 The onus is on the recipient retailer to ensure that it continues to comply with the regulations in relation to vulnerable and medically dependent consumers, and all other consumer protection regulations, relating to the services that will be supplied by the recipient retailer.
- 5.26 If not all customers are assigned to another retailer from the first auction, the Authority would invite all retailers to submit a bid on the basis of a fixed term offer:
- (a) the price would be either the retailer's standard tariff at Day 1 of the process or a lower price, but would be for a fixed term; the fixed term is intended to provide the retailer with certainty about recovering the economic costs of the customer
 - (b) customers/volumes would be randomly allocated to the retailer bidding the lowest price weighted by the length of the fixed term,⁶ and so on
 - (c) customers would have a two week grace period to change retailers, but after that period has lapsed they may be required to pay the economic costs of exiting if they terminate the fixed term contract early.⁷

If tender fails, Authority will assign customers based on market share

- 5.27 If the tender is unsuccessful, the Authority will assign the responsibility for the remaining customers of the retailer in default to retailers servicing customers in the same network area (or areas) as follows:
- (a) each retailer serving non-half hour (NHH) customers will be allocated NHH customers of the retailer in default in proportion to its market share in that network area, with market share measured by the number of customers
 - (b) each retailer serving half-hour (HHR) customers will be allocated HHR customers of the retailer in default in proportion to its market share in that network area, with market share measured by MWh
 - (c) NHH and HHR customers will be allocated randomly between each retailer until all customers have been allocated to a new retailer in proportion to that retailer's market share of the customer segment.
- 5.28 In determining the allocation of customers to other retailers, the Authority will consider any expert opinion and information provided by any retailer that an assignment of customers to it would pose a serious threat to its financial viability. If the Authority considers that the assignment of customers to a retailer would

⁶ That is, price multiplied by the length of the fixed term measured in days.

⁷ As with any other payment for breaking a fixed term contract (such as a fixed term mortgage contract), any penalty must be a genuine pre-estimate of the loss to the supplier from the early end of the contract.

seriously threaten the retailer's financial viability, the Authority may adjust the allocation of customers as it considers appropriate.

5.29 The relevant clause of the Code is clause 5 of Schedule 11.5:⁸

5 Authority may assign contracts

- (1) This clause applies if, by the end of the 17th day after the defaulting **retailer** was given notice under clause 2(1),—
 - (a) the defaulting **retailer** has not remedied the **event of default** or, in the case of an **event of default** under clause 14.54(b) in respect of which there is an unresolved dispute about an amount under clause 14.18 or 14.40, has not reached an agreement with the **Authority** to resolve the **event of default**; and
 - (b) the defaulting **retailer** continues to have 1 or more contracts under which a **customer** of the defaulting **retailer** purchases **electricity** from the defaulting **retailer**.
- (2) The **Authority** may—
 - (a) exercise its right under a contract under which a **customer** purchases **electricity** from the defaulting **retailer** to assign the rights and obligations of the defaulting **retailer** under the contract to a recipient **retailer** in accordance with the contract; and
 - (b) specify the recipient **retailer** to whom the rights and obligations under the contract will be assigned.
- (3) The **Authority** must, by notice in writing to each recipient **retailer**, direct the recipient **retailer** to accept an assignment under subclause (2).
- (4) Before the Authority gives notice to a recipient **retailer** under subclause (3), the **Authority** may decide not to assign rights and obligations of the defaulting **retailer** under a contract to a recipient **retailer** if the recipient **retailer** satisfies the **Authority** that the assignment would pose a serious threat to the financial viability of the recipient **retailer**.
- (5) A recipient **retailer** must comply with a direction given to it under subclause (3).
- (6) Before the **Authority** gives notice under subclause (2), the **Authority** must, if the **Authority** considers it is practicable, consult with the defaulting **retailer** as to the need for the notice.
- (7) Nothing in this clause prevents the **Authority** from deciding to give a notice under subclause (3) to 1 or more recipient **retailers** by undertaking a tender or other competitive process.

5.30 As soon as possible after the Chief Executive approves the list of customers (if any) to be allocated to each retailer, the Authority will inform each retailer of the number of customers transferred to it and provide as much information as is held by the Authority in relation to that customer – contact details, ICP, consumption data, etc.

5.31 Each retailer assigned customers by the Authority have an obligation to advise each customer assigned to it of the terms of the assigned contract. The Authority expects that the retailer will advise each customer assigned to it:

⁸ Note. Amendments to Part 14 are being proposed as part of a review of settlement and prudential security arrangements. The cross-references in this provision reflect the 'weekly settlement' option. The equivalent provision for the 'monthly settlement' option is clause 14.25.

- (a) that the Authority has assigned responsibility for the customer to the recipient retailer
- (b) that a contract is in effect between that customer and the recipient retailer and this will ensure that there is no disruption of supply
- (c) the terms and conditions of the new contract, which must be the standard terms that the recipient retailer would normally have offered to the customer immediately before the event of default occurred, or such other terms that are more advantageous to the customer, as agreed between the Authority and the recipient retailer
- (d) contact details for the recipient retailer and how any questions or queries the customer might have will be answered
- (e) that the customer may switch at any time to an alternative retailer.

5.32 The retailer will advise the customers transferred to it of their new terms and conditions within [7] days of being provided with the customer list by the Authority, or such other time as agreed between the retailer and the Authority reflecting the completeness or otherwise of the customer information provided by the Authority to recipient retailer.

6 Role of market participants in the process of managing an event of default

6.1 An active contribution is expected of market participants to manage an event of default by a retailer. This contribution consists of three actions. These actions are:

- (a) retailers will be obliged to make specified changes to their contracts with their customers
- (b) market participants need to notify the Authority when they become aware of an event of retailer default
- (c) retailers may have to take on the customers allocated to them should the retailer in default not allocate its customers or the customers not switch of their own accord.

Retailers have to make changes to contracts with their customers

6.2 The Code requires that specific terms and conditions are included in contracts between retailers and customers to provide the Authority with the means to manage an event of retailer default. The relevant clause of the Code is clause 11.15A:

11.15A Retailer contracts with customers must permit assignment by Authority

- (1) Each **retailer** must at all times ensure that the terms of each contract under which a **customer** of the **retailer** purchases **electricity** from the **retailer** permit—
 - (a) the **Authority** to assign the rights and obligations of the **retailer** under the contract to another **retailer** if the **retailer** commits an **event of default**; and
 - (b) the terms of the assigned contract to be amended on such an assignment to—
 - (i) the standard terms that the recipient **retailer** would normally have offered to the **customer** immediately before the **event of default** occurred; or
 - (ii) such other terms that are more advantageous to the **customer** than the standard terms, as the recipient **retailer** and the **Authority** agree; and
 - (c) the terms of the assigned contract to be amended on such an assignment to include a minimum term in respect of which the **customer** must pay an amount for cancelling the contract before the expiry of the minimum term; and
 - (d) the **retailer** to provide information about the **customer** to the **Authority** and for the **Authority** to provide the information to another **retailer** if required under Schedule 11.5; and
 - (e) the **retailer** to assign the rights and obligations of the **retailer** to another **retailer**.
- (2) The terms specified in subclause (1) must—
 - (a) be expressed to be for the benefit of the **Authority** for the purposes of the Contracts (Privity) Act 1982; and
 - (b) not be able to be amended without the consent of the **Authority**.
- (3) This clause applies—
 - (a) from [insert date one month after commencement date] to every **customer** contract entered into after this clause comes into force; and
 - (b) from [insert date 6 months after commencement] to every **customer** contract entered into before this clause comes into force.

- 6.3 These stipulations would be required in new contracts between retailers and customers and retailers will be required to negotiate or post amendments to existing contracts within six months of the commencement of the Code change.

Allow the retailer to provide information details to the Authority

- 6.4 Contracts between retailers and customers must provide for the retailer to hand over the contact details of the customers to the Authority in the event of a default by the retailer. The Authority needs this information to contact customers and inform them of the event of default and to urge those customers to switch retailers. The Code provides for the Authority to pass this customer information to any retailer to which the customer is assigned by the Authority.

Allow for assignment of the contract by the Authority

- 6.5 Retail contracts need to stipulate that the Authority is able to assign the contract when the retailer is in default. The retailer to which the customer is allocated is obliged to enter into a contract with the customer under terms specified by the recipient retailer. The Code requires that the terms specified by the recipient retailer must be the standard terms that the recipient retailer would normally have offered to the customer immediately before the event of default occurred, or such other terms that are more advantageous to the customer than the standard terms, as the recipient retailer and the Authority agree.

Allow for a commercial sale of customers' contracts between retailers

- 6.6 Contracts between retailers and their customers should provide for the contract to be assigned by the retailer to another retailer. An assignment provision provides for a retailer in distress to negotiate a transfer of its customer base to another retailer under agreed commercial terms, reducing the prospect of the Authority having to assign the contracts to another retailer.

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