



Licensing Regime for using territorial waters or airspace of Vanuatu.

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Introduction.

As part of the Telecommunications Radiocommunications and Broadcasting Regulator (TRBR) 2021 and Onwards Annual Work Plan (TRBR, 2021), the TRBR is to do a research and consult the Regulator through a report on the potential of introducing a Licensing Regime for using telecommunications services within the territorial waters or airspace of Vanuatu. The administration of Vanuatu already has in place specific laws addressing the airspace, that is the Civil Aviation Act and likewise the territorial waters, namely the Maritime Act. However, a satellite services/technology that travels at higher flight level of more than 167 KM's are not catered for in these Acts and can be considered as a new substance that should be investigated further. Although, the TRBR act requires that operating a telecommunications device within Vanuatu requires a license, both a telecommunications and a radio apparatus license, introducing licensing requirements for a satellite within the airspace of Vanuatu requires a lot of research. Therefore, this report aims to share some insight on the topic for future considerations.

Scope.

This document outlines the possibility of introducing permits and licenses in accordance with section 12(20) of the TRBR Act, for space activities specifically satellite services in Vanuatu. It also aims to study the potential of introducing licensing fees for such services/activities for which the country can consider. This report will also investigate other potential regulatory aspect of satellite services in Vanuatu.

Regulatory Aspects of Territorial Waters and Airspace Licensing in Vanuatu.

Vanuatu is an archipelagic state located in the South Pacific Ocean directly west of Fiji, Northeast of New Caledonia (France) and southeast of Solomon Islands. By international law, a state has complete and exclusive sovereignty over the airspace above its territory which corresponds with the maritime definition of territorial waters as being 12 nautical miles (22.2km) out from a nation's coastline (government, 2021). The Maritime Zone act 2010 for the republic Vanuatu, Part (3) states that *"the sovereignty of Vanuatu extends beyond the land and the internal waters of the islands to the archipelagic waters and the territorial sea and to the airspace, thereover as well as the seabed and subsoil thereunder."*

Any operator, company or individual or persons who wishes to operate or install an equipment and used within the territorial waters of Vanuatu must have a valid license or certificated issued by the Office of the Maritime Regulator (OMR) and which the Commissioner or a Deputy Commissioner to whom application is made recognized (Maritime, 1981).

Further, any operator, company or individual who wishes to operate, install an equipment within the airspace of Vanuatu must acquire a Civil Aviation Safety Order (CASO) from the director of Civil Aviation, which provides orders relating to the operation, flight, and maneuver of aircraft; to the use of any aerodrome or navigational facility; in respect of air traffic control and requirements for persons holding or applying for licenses, certificates, ratings or other authorities (CAA, 1984).

The airspace and territorial water are resources for a country which contains and include everything under and above the airspace and water. These resources are managed by the government of Vanuatu through respective Organizations. Any persons or company who wishes to utilize these resources for the purpose of business activities must seek approval from authorized Institution (Government) within Vanuatu.

In addition to the Civil Aviation regulations (CAA, 1984), any Service provider, operator, or person who wishes to or is in the process of operating, installing a telecommunication, radiocommunication or broadcasting device in Vanuatu must comply with the Telecommunications Radiocommunications and Broadcasting Regulation Act of 2009 as Amended by Amendment 22 of 2018. The Act under Part 3, Licenses and Exceptions, sections 12 (2) states that:

"a person must not install or operate a radiocommunications device in Vanuatu or its territorial waters or airspace, or in any ship or aircraft registered in or under the law of Vanuatu, except

- (i) Under and in accordance with a license or exception or*
- (ii) When such radiocommunications devices is registered for use by a foreign registered ship or aircraft for the appropriate class of operation in the country of registration of the ship or aircraft."*

After having obtained certified licenses from the authority responsible for the Airspace, a company, operators, individual or persons can apply to TRBR for a license to grant them permission to be able to use/provide telecommunications/radiocommunication/broadcasting devices/services in Vanuatu. The license issued to a telecommunications/radiocommunications/broadcasting operator is either a telecommunication license or a broadcasting license and a radio apparatus License. When applying for a license from TRBR, a person(s) has to clearly state the purpose, so TRBR can accurately categorize to specific license as specify in the TRBR Act.

The satellite licensing regime that we currently have in Vanuatu specifically for satellite services captures all the required aspect as indicated in section 12 of the TRBR Act. In addition to the TRBR Act, the airspace and the territorial waters are also gathered in the Maritime & CAA Act's. The other aspects to be considered are the satellite licensing rights, whether this is required for Vanuatu, and also, the potential for the administration of Vanuatu to consider satellite filing in the future.

Satellite Landing Rights

In addition to satelliting licensing regime, there is also the Landing rights requirements. The landing rights are permissions that operators must obtain for their satellite to be used in a particular country. In the past, some governments have developed policies to protect their countries satellite systems called "Closed Skies". These "Closed Skies" policies required service providers to use only locally owned satellite capacity when providing satellite services. Also, originally satellite operators such as Intelsat, Eutelsat and Inmarsat were inter-governmental organizations and owned by the (Post, Telegraph and Telephone) PTT(s) and telcos around the world. Consequently, space segment could only be bought via the incumbent PTT or telco. But in the long run, governments are realizing that tremendous demand for Internet, data, voice, video and other essential services is best addressed by policies that permit open and direct access to all satellite communications resources assuming that they have been properly coordinated through the International Telecommunication Union (ITU).

The footprint of a satellite does not match national borders, making it necessary to regulate this matter through the international agreements developed by ITU-R. The ITU-D Satellite Regulatory Survey (ITU-D, 2004) shows that this approach, which is referred to as "Open Skies", is now being adopted by some Administrations. While the policies being implemented today are not completely open, they all involve permitting increased access to orbital resources, regardless of the satellite operators' country of origin. The "Open Skies" policy will require satellite operators to compete for customers interested in obtaining capacity in the 4-6 GHz -band, 10-20 GHz-band and 20-30 GHz-band. It is expected that this competition can result in more options for local customers with a significant boost in quality and lower prices.

Satellite Filing.

Any country/administration that is a member of ITU can do satellite filing according to (Riaz, 2021) from ITU. A regulatory aspect of satellite for which Vanuatu could consider is the process of satellite filing. Before a satellite can use the spectrum and orbital resources it needs to fulfil its mission, it requires an associated 'satellite filing'. A filing is a tool to obtain through the ITU, a specialized agency of the United Nations international recognition of these resources. Vanuatu is a Member State of the ITU, and the Government is the notifying administration. When carrying out the relevant processes and procedures, the roles of the applicant, the Government and the ITU in this satellite filing and coordination processes can be seen in diagram below.

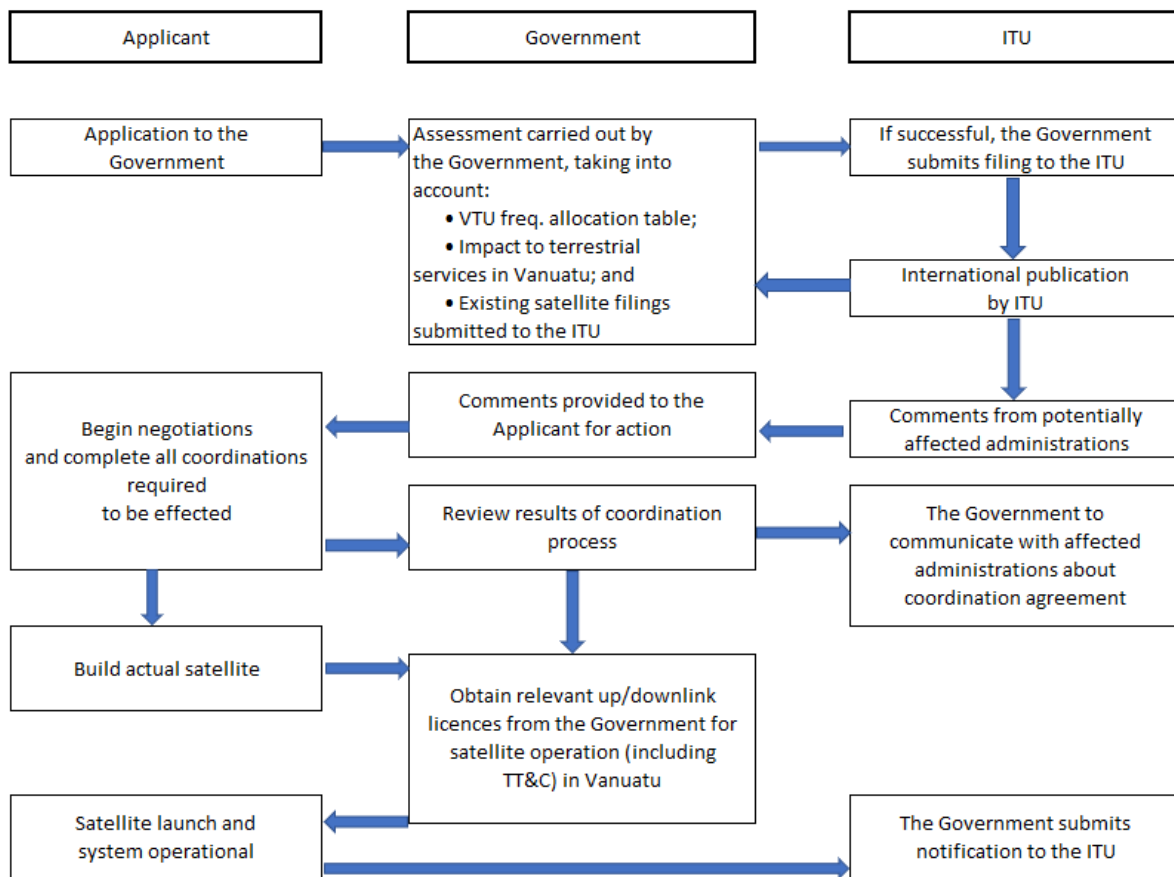


Figure 1: Propose Filling process for Vanuatu

An important role for the applicant is the carriage of the detailed coordination discussions which are required from the result obtained from the examination of coordination requests (satellite network filings) submitted by member state administrations to the Radiocommunications Bureau (BR). The BR publishes the International Frequency Information Circular (IFIC) on a fortnightly basis for all satellite network filings and coordination requests. The publication of BR IFIC is distributed to all administrations through DVDs. It contains Parts I-S, II-S, III-S and Special Section publications with information on the frequency assignments to space stations, earth stations or radioastronomy stations submitted by administrations to the BR for coordination, as necessary, and eventual recording in the Master International Frequency Register (MIFR). The Process take a maximum of 7 - 8 years for frequency bands subject to coordination and 9 months for not coordinate frequency bands (RSM, 2018).

Satellite filing is an opportunity for revenue generation for an administration/country, for which Vanuatu should consider.

Conclusions

In the case of a satellite service or operation, there are three things that can be considered;

1. Outer space satellite licensing;
2. Satellite base station receive/transmit licensing; and
3. Satellite Filling.

For the outer space satellite licensing, a country cannot stop a satellite landing rights unless they have a landing right regime. Landing rights is a national decision, and an administration can chose to have a scheme or not. According to several countries like New Zealand they use to have a landing right scheme but decided to no longer have one, because historically it was seen as a burden to administers. If an administration for instance has an incumbent monopoly telecommunications provider or security concerns, landing rights provide a method of enforcement, so they would outright not to allow any satellite provider in that band within their country, or place restrictions on the use of the receive signal. Administrations may also use it as a tax opportunity or just a controlling option. Although, Vanuatu may not have landing rights and cannot control the outer space and cannot stop the received signal in the country, Vanuatu can still control terrestrial services within the country by categorizing terrestrial services as primary and thus protecting them for secondary satellite services such as those coming from satellite received only.

Currently in Vanuatu there is no need to adapt the landing right regime because Part 3, Licenses and Exceptions, sections 12 (3) of the TRBR Act, states that *“A person must not provide a telecommunications service except under and in accordance with a licence or exception”*.

Therefore, any satellite operator who wishes to provide wholesale or retail telecommunications services within Vanuatu must have a telecommunications license.

Secondly, as stated under Part 3, Licenses and Exceptions, sections 12 (2) of the TRBR Act, it captures the licensing of satellite base station receive/transmit in Vanuatu. As stated in the Act

“a person must not install or operate a radiocommunications device in Vanuatu or its territorial waters or airspace, or in any ship or aircraft registered in or under the law of Vanuatu, except

- (iii) Under and in accordance with a license or exception or*
- (iv) When such radiocommunications devices is registered for use by a foreign registered ship or aircraft for the appropriate class of operation in the country of registration of the ship or aircraft.”*

Satellite filing is an opportunity for Vanuatu to consider in the future, although filing does not give a country the right to licensing. Unless the satellite provider provides telecommunication services within Vanuatu then a telecommunications license is required under the TRBR Act. However, satellite filing is a revenue generating avenue for the government or organization authorize by the government to do the filing.

Although licensing of satellites operating within the airspace of Vanuatu is a new topic, it clearly indicates in the Civil Aviation Act and the TRBR Act that a service provider who operates any type of services/technologies mentioned under these Acts within the airspace of Vanuatu must comply with the legal requirements stated in these Acts. Therefore, the TRBR or the Government does not require any additional legal framework to capture the licensing of satellite services operating within the airspace of Vanuatu. If Vanuatu wishes to introduce satellite filing in the future, then its regulatory framework has to be developed.

Recommendations

TRBR should do an in-depth research on the Landing rights regime to consider the following;

- Is the Landing Rights regime going to solve the space licensing regime, by protecting and allowing only those that are provided with a space license the right to operate in country?
- Will the Landing Rights regime duplicate the TRBR Act, as it already captures licensing of those who provide satellite services in country?
- Will the Landing Rights Regime provide an avenue for revenue generating for Vanuatu?
- Is the market going to be affected.?
- Will political interference influence the decision making and therefore affect the market, by limiting players in the satellite market to those providers who satisfy one's personal interest?
- Will the Landing rights regime affect existing and future coverage?

TRBR should also do a in depth research on the satellite filing which is believed to be a great opportunity to consider as it is a revenue generating avenue for Vanuatu, and also to consider the following;

- Is Vanuatu a member of the ITU?
- Does Vanuatu have the capacity to be engaged in this activity?
- Will there be any related cost in the process of satellite filing?
- Will satellite filing generate revenue for the government?
- What organisation or Ministry will be responsible to do filing on behave of the Government?

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