

COMMUNICATIONS ACT, 2023

(Act 3 of 2023)

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COMMUNICATIONS ACT, 2023

(Act 3 of 2023)



I assent

A handwritten signature in black ink, appearing to read 'Wavel'.

Wavel Ramkalawan
President

13th April, 2023

AN ACT TO CONSOLIDATE AND REVISE THE LAW RELATING TO BROADCASTING AND ELECTRONIC COMMUNICATIONS TO BE ON PAR WITH INTERNATIONAL BEST STANDARDS AND TO PROVIDE FOR OTHER CONNECTED OR INCIDENTAL MATTERS.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Communications Act, 2023 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“access” means the making available of facilities or services to another operator, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing an electronic communications service or broadcasting service; “administrative determination” includes a decision, direction, order or other written conclusion by which the Authority establishes any right or obligation of a person on any matter under this Act, but does not include guidelines;

“affiliate”,, means any person, directly or indirectly, controlled by or under direct or indirect common control of a specified person;

“annual gross revenue” means the audited annual gross revenue of the preceding year earned by an operator, before any deduction for costs, taxation, accounting or other purposes;

“assignment of radio frequencies” means the grant of radio frequency spectrum usage rights to a licensee;

“associated facilities” means active and passive infrastructure and other facilities or elements associated with electronic communications and broadcasting that enable or support the provision of services via an electronic communications network or have the potential to do so without limitation;

“Authority” means the Seychelles Communications Regulatory Authority established by section 5;

“Board” means the Board of the Authority as constituted in section 148;

“broadcasting” means any sound, text, still picture, moving picture or other audio-visual representation, tactile

representation or any combination of the preceding which is capable for being created, manipulated, stored, retrieved, relayed or delivered electronically by means of radio frequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means or any electronic communications network or any combination thereof, comprise of an electronic delivery or broadcasting programmes in any format whether or not encrypted, in coded or not coded form, intended for direct reception by the general public or the subscribers, with the aid of any equipment or apparatus, and “broadcast” is construed accordingly;

“broadcasting equipment” means any apparatus or equipment which is capable of being used for broadcasting services other than a private sound broadcasting receiver and a private television broadcasting receiver;

“broadcasting service” means any service rendered by a person who composes or packages or distributes or who delivers or enable the delivery of broadcasting programmes on a free or subscription, or other basis, for reception by the general public or sections of the general public or the subscribers to such a service irrespective of technology used;

“broadcasting service operator” means a person licensed under this Act, who composes or packages, or distributes, delivers or enables the delivery of broadcasting programmes for reception by the general public or sections of the general public or the subscribers to such a service irrespective of technology used;

“call-by-call carrier selection” means the process whereby a subscriber may access an operator other than its access operator, or an operator that it has selected under carrier pre-selection, on a call-by-call basis by adding a short access code to the front of a dialled number, irrespective of whether the short access code is added either manually by the subscriber during the dialing process or automatically by subscriber's terminal equipment;

“carrier pre-selection” means the process whereby a subscriber may designate its choices of selected operator, or operators as the case may be, to provide its calls with the choice being effected by the network of the access operator without having to dial a short access code or install subscriber's terminal equipment;

“class licence” means a licence granted to a person to conduct a specified activity and includes conditions appended thereto under this Act to which the conduct of that activity shall be subject;

“co-location” means the provision of physical space and electronic communications network facilities necessary to reasonably accommodate and connect the relevant equipment of an access seeker;

“consumer”, “customer”, or “subscriber” means a person who has a contractual relationship with an operator for the use by that person of an electronic communications service or broadcasting service provided by that operator, which includes a reseller of the said operator providing that service, but does not include affiliates of the operator;

“conditional access system” means any system, network element, arrangement or technical measure under or by means of which access to programme services requires —

- (a) a subscription to the service or to a service that includes that service; or
- (b) an authorisation to view it, or to listen to it, on a particular occasion;

“customer premises equipment” means electronic communications equipment, including cabling, hardware and software, located at a customer's premises and connected to an electronic communications system at the network termination point;

“content” means any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically, but excludes content contained in private communications between consumers;

“dealer” means a person who carries on a trade, business or industry in which radio communication equipment is assembled, manufactured, imported, bought, offered for sale, hired or exchanged and includes an employee, agent or distributor of the dealer;

“dealer licence” means any licence granted by the Authority to a person for performing the functions of a dealer under this Act;

“electronic communications” means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of a tangible conduit but does not include broadcasting;

“electronic communications equipment” means equipment used for radio communication or the communication of information in the form of speech or other sound, data, text or images, by means of guided or unguided electromagnetic energy;

“electronic communications network” means transmission systems and where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite network, fixed, circuits and packet switch, internet, mobile terrestrial networks, fibre optic cables, undersea and land-based to the extent that they are used for conveyance of

electronic communications and broadcasting, irrespective of the type of information conveyed;

“electronic communications service” means any service provided for remuneration to any person including licensed operators, which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services;

“electronic communications network facility” includes a physical component of electronic communications network, wires, lines, terrestrial and submarine cables, satellite earth stations, waves guides, optics or other equipment or object connected to post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit, duct and other underground facilities, or similar thing used to carry, suspend, support or protect the structure or which is used for the purpose of electronic communications but does not include customer premises equipment;

“electronic communications network service” means a service whereby a person makes available an electronic communications network, whether by sale, lease or otherwise —

- (a) for that person's own use for the provision of an electronic communications service or broadcasting service; or
- (b) to another person for that other person's use in the provision of an electronic communications service or broadcasting service;

“encrypted” means treated electronically or otherwise for the purpose of preventing intelligible reception

“end user” means a person who is the ultimate recipient of an electronic communications service or broadcasting service provided by an operator, but does not include an affiliate of the operator;

“essential facilities” means an electronic communications network facility or combination of an electronic communications network facility and other associated facilities that is exclusively or predominantly provided by a single or limited number of operators and cannot feasibly (whether economically, environmentally or technically) be substituted or duplicated in order to provide a service under this Act;

“facilities-based operator” means a licensee, licensed to construct, deploy, maintain, own and operate an electronic communications network, to provide or offer —

- (a) an electronic communications service to any person including licensed operators; or
- (b) an electronic communications network service to licensed operators;

“harmful interference” means an interference which endangers the functioning of a radio navigation service or other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communication service operating in accordance with the Radio Regulations, or in accordance with a licence or regulations;

“guidelines” means the guidelines issued by the Authority under section 171;

“individual licence” means a licence granted to a person or a body corporate incorporated by or under an Act to conduct a specified activity and includes conditions appended thereto under this Act to which the conduct of that activity shall be subject;

“interception” means listening, tapping, recording, storing, decrypting, intercepting, interfering with, or carrying out any other type of surveillance over voice and data communications without prior explicit consent of the user;

“interconnection” means the physical and logical linking of electronic communications networks used by the same or different operators in order to allow the users of one operator's network facility or service to communicate with users of the same or another operator's network facility or service or to access services provided by another operator;

“ITU” means International Telecommunications Union;

“ITU Constitution” means the Constitution of the ITU signed on 22 December, 1992, as amended by subsequent ITU Plenipotentiary Conferences;

“ITU Convention” means the Convention of the ITU signed on 22 December, 1992, as amended by subsequent ITU Plenipotentiary Conferences;

“licence” means a licence granted under this Act;

“licence fees” means the initial, annual or renewal fees, excluding the application processing fee, for a licence under this Act;

“licensee” means a person licensed under this Act;

“message” includes any communication whether in the form of speech, or other sound, data, text, visual image, signal or code, or in any other form or combination of forms;

“Minister” means the Minister responsible for broadcasting and electronic communications;

“national radio frequency band plan” means the national radio frequency band plan prepared and managed by the Authority for use with the supply of electronic communications services and broadcasting services;

“national numbering plan” means the national numbering plan

prepared and managed by the Authority for use in the supply of electronic communications services;

“network element” means a facility or equipment used in the provision of an electronic communications service and includes features, functions, and capabilities that are provided by means of the facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of electronic communications services;

“number” means a series of digits indicating an electronic communications network termination point;

“number portability” means the ability of subscribers of an electronic communications service to retain existing electronic communications numbers without any impairment of quality, reliability or convenience when changing from one operator to another;

“operator” means any person to whom a licence has been granted under this Act, to construct, deploy, maintain, own and operate an electronic communications network or electronic communications network facility, or to offer or provide or authorised to provide an electronic communications service or broadcasting service or electronic communications network service;

“operator having significant market power” or “dominant operator” means a licensee which, either individually or jointly with others, enjoys a position of economic strength, affording the licensee power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;

“person” includes an individual, a partnership, association, joint venture, trust, body corporate or public authority;

“price cap regime” means a price control regime within a services market in which an operator is required to reduce prices

for a notional basket of services by a pre-determined amount, or is allowed to raise prices for a notional basket of services by no more than a pre-determined amount, on an annual basis;

“private electronic communications network” means an 'electronic communications network used primarily for providing electronic communications and broadcasting for the owner's own use or for the use of a closed user group;

“political party” means a party registered as such under the Political Parties (Registration and Regulation) Act;

“programme” means sounds or visual images or a combination of sounds and visual images that are intended to inform or entertain for the purpose of ultimate broadcasting but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text;

“public authority” means a Ministry, department, division or agency of the Government or a statutory corporation or a company which is directly or indirectly under the control of the Government or any other body which is carrying out a governmental function or service or a body or person specified by an Act;

“quality of service” means characteristics of an electronic communications service and broadcasting service that bear on its ability to satisfy stated and implied needs of the indicators of end user performance (service indicators) and network performance (technical indicators) of the degree to which the end user and the network conforms to the stipulated norms;

“radio communication” means electronic communications or broadcasting by means of radio frequency spectrum;

“radio communication equipment” means any equipment which is used or intended to be used for emitting or receiving radio communication other than a domestic sound broadcasting receiver and a domestic television broadcasting receiver;

“radio communication service” means any service for radio communications as defined in the ITU Radio Regulations annexed to the ITU Constitution and ITU Convention;

“radio communication station” means a transmitter, a receiver (other than a domestic sound broadcasting receiver and or a domestic television broadcasting receiver), a combination of transmitters and receivers or any accessory thereto which is used or intended to be used for radio communication;

“radio frequency spectrum” means the portion of the electromagnetic spectrum used as a transmission medium for radio communications;

“Radio Regulations” means the Radio Regulations of the International Telecommunication Union, as revised from time to time;

“radio waves” means electromagnetic waves of radio frequencies arbitrarily lower than 3000 GHz propagated in space without an artificial wave guide;

“regulated service” means an electronic communications service or broadcasting service designated as such under section 82;

“regulations” means the regulations made by the Minister under this Act;

“reseller” means a person who acquires, through lease or other commercial arrangement, any broadcasting service or electronic communications service from an operator in Seychelles and makes the service available to the general public for a fee by re-offering that service;

“sanctions” means an act of imposing a penalty;

“.sc” domain name means the top level of the global domain name system assigned to Seychelles according to the two-letter

codes in the ISO 3166-1 standard, the unique alpha-numeric designation used for the representation of the Seychelles on Internet and its subdivisions, meaning all domain names located in the (.sc) name hierarchy;

“services-based operator” means a licensee intending to lease electronic communications network elements (such as transmission capacity and switching services) from any facilities-based operator licensed to provide its own electronic communications services, or to resell the electronic communications services of facilities-based operator, to any person;

“services market” means the products or services that are sufficiently interchangeable or substitutable, in term of their functional characteristics, their prices or their intended use and the conditions of competition or the structure of supply and demand;

“tariff” means the authorised and published wholesale or retail rates and the applicable terms and conditions on which the service is supplied or offered by an operator to consumer, end user or another operator;

“Tribunal” means the Communications Tribunal established by section 163;

“universal access” or 'universal service’ means the provision of electronic communications services or broadcasting services or electronic communications network services determined as universal access or universal service under Part XII;

“unregulated service” means an electronic communications service or broadcasting service designated as an unregulated service under section 83.

Application of the Act

3.(1) This Act applies to —

- (a) the electronic communications service, the broadcasting service and the radio communication service, including any service ancillary or connected thereto, whether in part or whole, within Seychelles or on a ship or aircraft registered in Seychelles;
- (b) a person, whether within or outside the geographical limits or territorial waters, of Seychelles, who —
 - (i) is a licensee under this Act; or
 - (ii) provides any service under this Act;

(2) Nothing in this Act shall be construed to exempt a person engaged in an activity, which is exempted from the requirement of a licence under this Act, from complying with this Act.

This Act to override other laws

4. The provisions of this Act shall, notwithstanding anything inconsistent in any other written law, for the time being in force, regulating the electronic communications or broadcasting in Seychelles, prevail.

PART II - POWERS AND FUNCTIONS OF THE AUTHORITY AND MINISTER

Establishment of the Authority

5. There is established for the purposes of this Act, an authority known as the Seychelles Communications Regulatory Authority, which shall be a body corporate.

Functions of the Authority

6. Subject to this Act, the functions of the Authority shall be to —
- (a) advise the Minister on the policy regulating the electronic communications service and broadcasting service and for the review of laws relating thereto;

- (b) implement and enforce the policy made by the Minister regulating the electronic communications service and broadcasting service, and the provisions of this Act and the regulations made under this Act;
- (c) recommend to the Minister for framing of regulations relating to any matter which is required or necessary to be prescribed under this Act;
- (d) lay down the procedures and guidelines to facilitate the implementation of this Act and the regulations made under this Act;
- (e) promote and maintain fair competition, fair and efficient market amongst persons engaged in electronic communications and broadcasting services and to take appropriate measures to prevent unfair or anti-competitive practices;
- (f) establish a tariff system providing for a just and fair tariff for electronic communications services and broadcasting services;
- (g) plan and design the implementation and monitoring of the universal access and service programme and policy made pursuant to this Act;
- (h) regulate matters relating to electronic communications services or broadcasting services and electronic communications networks including, interconnection of networks, access to networks, co-location and facility sharing, access to land and facilities, easements and public rights of way;
- (i) provide for any requirements that may be imposed on operators to adopt accounting systems as may be determined and to keep such operational, accounting, financial, statistical and technical records, including the

statements, returns and other information about any company in which an operator has a controlling interest as the Authority may require for the carrying out of its functions under this Act;

- (j) provide for licensing criteria and conditions applicable to any licence to ensure that operators continue to innovate and respond competitively to meet the needs of consumers;
- (k) impose restrictions or limitations upon dealers;
- (l) regulate the manner in which electronic communications and broadcasting infrastructure or radio communication equipment is to be installed, operated, maintained, protected or controlled and the technical standards or specifications to be observed with respect to such infrastructure or equipment;
- (m) promote technical standardisation, in collaboration with other organisations, in the electronic communications sector, broadcasting sector and related areas;
- (n) promote processes of public consultation and manifestation of interest, pertaining to issues which have a significant impact on a market for electronic communications service or broadcasting service or protect the interests of consumers;
- (o) determine quality of service standards and other performance indicators and technical standards relating to the provision of electronic communications services and broadcasting services, and to monitor compliance with those standards measured against the international best practices and enforce such standards for those services and for the connection of end user equipment to electronic communications networks;
- (p) monitor the complaint handling processes of operators;

- (q) regulate television and sound broadcasting services including “must carry” rules, and the obligation to make channel capacity for public, governmental or educational use;
- (r) regulate the procedure for the resolution of complaints and disputes under this Act;
- (s) lay down measures to be taken by any person for the purpose of ensuring the inviolability of electronic communications transmitted and their confidentiality and the protection of privacy in relation to any electronic communications services or networks including data protection measures in the electronic communications sector and measures related to the use of information obtainable in the electronic communications sector for the purpose of direct marketing;
- (t) represent Seychelles in international organisations, negotiate and sign bilateral and international agreements in the field of electronic communications and broadcasting;
- (u) regulate the provision of information relating to electronic communications and broadcasting between Seychelles and international entities;
- (v) appoint consultants and committees to advise on matters within the purview of this Act;
- (w) promote public awareness on the importance of the electronic communications and broadcasting to the overall economic and social development and advancement of Seychelles;
- (x) regulate and provide for any licence fees, application fees, and other charges under the provisions of this Act;
- (y) provide for any matters that may be required for the purpose of complying with any international obligations of

Seychelles related to electronic communications and broadcasting;

- (z) regulate any matter relating to the administration, management and authorisation of radio frequency spectrum and geostationary satellite orbital locations, including any fees and conditions that may be imposed in relation thereto, the allocation or use of radio frequency spectrum for electronic communications networks, electronic communications service or broadcasting service, the preparation of the national radio frequency band plan, the administration of radio frequency bands assigned for civil, public and private use, as well as for sound and television broadcasting; and, the transfer of rights to use radio frequency spectrum as well as the procedure to be followed;
- (aa) take into account applicable international standards, conventions, requirements and agreements including, the International Telecommunication Union and its Radio Regulations as agreed to and adopted by Seychelles;
- (bb) regulate any matter related to numbering resources, number portability and electronic addresses including any fees and conditions that may be imposed in relation thereto, and give directions in relation to electronic communications numbering and electronic addresses;
- (cc) formulate a General Consumer Code and prescribe measures to be adopted by operators for the purpose of ensuring consumer protection;
- (dd) regulate the management of the country code top level domain name for Seychelles (.sc);
- (ee) regulate operator assistance services, directory information services, the supply of telephone directories and emergency services in relation to telecommunications;

- (ff) regulate the conduct of examinations for, and the issue of, certificates of competency to persons wishing to operate any apparatus used for purposes of electronic communications services;
- (gg) regulate the obligations, including financial obligations of operators with regard to legal interception;
- (hh) monitor the compliance of the terms and conditions of the licences granted under this Act; and
- (ii) exercise such other functions as may be prescribed by regulations.

Powers and functions of the Minister

7.(1) Subject to this Act, and without prejudice to anything contained in section 6, the Minister shall —

- (a) formulate, monitor and review the policy regulating the electronic communications service and broadcasting service;
- (b) make regulations relating to any matter which is required or necessary to be prescribed under this Act;
- (c) formulate and review the universal access and universal services policy;
- (d) represent Seychelles in international organisations, negotiate and sign bilateral and international agreements in the field of electronic communications and broadcasting;
- (e) regulate, in consultation with the Authority, the provision of information relating to electronic communications and broadcasting between Seychelles and international entities;
- (f) appoint, in consultation with the Authority, consultants and

committees to advise on matters within the purview of this Act;

- (g) promote public awareness of the importance of the electronic communications and broadcasting to the overall economic and social development and advancement of Seychelles;
- (h) prohibit or regulate the use of electronic communications service, electronic communications network service and broadcasting service in dealing with public emergency, force majeure, national security, or natural disaster as may be deemed expedient;
- (i) prescribe anything that may be consistent with this Act.

(2) The Minister may, by order published in the *Gazette*, delegate powers and functions conferred on him under this Act, except power to make regulations, to be exercised or performed by an officer of the Ministry or a person, subject to such exceptions or modifications, as may be specified in the order.

(3) Without prejudice to subsection (2), the Minister may, at any time, exercise the powers or perform the functions delegated to an officer or a person under that subsection.

(4) The Minister may, in performance of the functions or exercise of the powers under this Act, adopt technological neutrality of policy and take suitable measures for the promotion of any specific service, where such measures are necessary or expedient in the public interest.

(5) The Minister may give directions in writing to the Authority on matters of policy and general administration and the Authority shall comply with such directions.

Power to require information

8.(1) The Authority may by notice, require any person, to furnish

within the period specified in the notice, any information or document which the Authority has reason to believe that the person —

- (a) possesses, including information on accounts and records or any document; or
- (b) is capable of giving any evidence,

relevant to the exercise or performance of the powers and functions under this Act.

(2) A person referred to in subsection (1), may furnish the information or document subject to the condition that it shall be kept confidential if it contains —

- (a) any trade secret;
- (b) financial, commercial, scientific or technical information; or
- (c) any other business information.

(3) The confidential information or document referred to in subsection (2) shall not be disclosed to any other person without the written consent of the person whom such information or document relates, except —

- (a) where it is necessary so to do in the public interest;
- (b) in an investigation of a criminal offence;
- (c) in a civil or criminal proceedings upon the direction by a court; or
- (d) where the information or document is in the public domain.

(4) A person required to furnish information under subsection (1), shall ensure that the information provided is true, accurate and complete.

(5) A person who fails to furnish the information or document or furnishes any information or document which the person knows or has

reason to believe is false or misleading, shall be liable to a monetary penalty imposed in accordance with section 143.

Reporting requirements by operators

9.(1) The Authority may require an operator, by notice, to furnish within the period specified in the notice, a report, information or document specified in subsection (2).

(2) The report, information or document under subsection (1) shall include —

- (a) a description of the different services the operator provides under a particular licence;
- (b) a general description of the operator's network;
- (c) tariff charged for each service;
- (d) the data and statistics of each service the operator provides;
- (e) the operator's accounting separation disclosure requirements, in the event that operator provides more than one licensed service to the public;
- (f) the operator's annual financial statements, including any audited financial statements the operator prepares; and
- (g) other information as the Authority may specify in the notice.

(3) An operator may request in writing to the Authority that the information referred to in subsection (2) be kept confidential.

(4) A confidential information or document furnished under subsection (2) shall not be disclosed to any other person without the written consent of the operator to whom such information or document relates, except —

- (a) where it is necessary to do so in the public interest;
- (b) in an investigation of a criminal offence;
- (c) in a civil or criminal proceedings upon order by a court; or
- (d) where the information or document is in the public domain.

(5) An operator required to furnish information under subsection (1), shall ensure that the information provided is true, accurate and complete.

(6) An operator who refuses, without reasonable cause, or fails to furnish the report, information or document or furnishes any report, information or document which the operator knows or has reason to believe is false or misleading shall be liable to a monetary penalty imposed in accordance with section 143.

Keeping of records

10.(1) The Authority shall cause records to be kept and documents to be stored, including information or data on —

- (a) operators;
- (b) users of assigned radio frequencies;
- (c) assigned numbering resources;
- (d) reference access offers or reference interconnection offers;
- (e) interconnection or access agreements, co-location and facility sharing agreements and contracts established by operators within the respective services market on the basis of approved reference interconnection or access offers;
- (f) calculations of costs for universal service provision; and
- (g) other relevant data as may be required by the Authority.

(2) The record and data shall be retained under this section in a form of archives until the expiry of a period of 7 years after the date the operator ceases to provide electronic communications service or broadcasting service, or no longer has a right of use of the radio frequency spectrum or numbering resources, pursuant to this Act.

Right of entry for inspection

11.(1) If there is a reason to believe that any person has in the person's control, or is using any equipment contrary to this Act or any regulations made under this Act, the Authority or any person authorised by the Authority may, under a warrant issued by a Magistrate, with the assistance of the police —

- (a) search any premises vehicle ship or aircraft for the equipment
- (b) inspect take photographs or make sketches of the equipment
- c inspect any interference causing equipment and examine any radio communication equipment
- d inspect any book record document database or electronic file kept at the premises or
- (e) remove or make copies of any book, database, or electronic file, to the extent that it is reasonably necessary to ascertain whether there has been compliance with the provisions of this Act;
- (f) operate the equipment if necessary to ascertain its nature of høn anned f tsu seo r
- g alter seal or seize the equipment or any part thereof as the Authority or the officer authorised by it considers appropriate

No compensation shall be payable in respect of any search inspection or seizure under subsection 4 except for any loss or damage to any equipment caused by negligence

Powers to deal with public emergency, force majeure, national security, or natural disaster

In case of a public emergency force majeure or in the interest of national security or natural disaster the Minister in consultation with the President may order the following

- a direct or authorise operators to provide electronic communications service and broadcasting service on behalf of the Government and under the temporary control of the Government
- b prohibit or regulate the use of electronic communications service and broadcasting service in all cases or in such cases as may be deemed expedient
- c temporarily take over control of the transmission and reception of messages via radio communication stations or equipment through directions to licensees or the Minister may order the suspension of these activities as deemed necessary under the circumstances or
- d require an operator or radio spectrum licence holder to give priority to electronic communications service and broadcasting service such communications shall have priority over all other communications consistent with international treaties

If as a result of a failure under subsection 4 normal communication facilities are disrupted the operation of radio communication stations or equipment shall be used for providing priority communications and may be operated in a manner other than provided in the ITU Constitution ITU Convention the Radio Regulations or the terms and conditions of the licence until normal communication facilities are available

An operator may apply to the Authority for compensation or other assistance for a reasonable loss sustained or costs incurred in complying with this subsection or other provisions of this Act for revenue sustained during the period of suspension of service.

The Authority may consider any such application referred in subsection (1) in accordance with this Act and other applicable written laws and may make an order regarding the recovery of such costs.

Consultation and transparency mechanism

13.(1) Subject to subsection (2), the Authority may, if it considers it necessary so to do, subject any matter under this Act to administrative determination.

(2) Where the Authority intends to make an order under subsection (1) which would have a significant impact on a market for electronic communications service or broadcasting service or the interests of consumers, the Authority shall —

- (a) act transparently and fairly;
- (b) consult in good faith any person who is or is likely to be affected by any action or decision;
- (c) give all such persons or licensees the opportunity to make submissions;
- (d) give due consideration to the matters contained in such submissions; and
- (e) give reasons in writing for any administrative determination and substantiate such administrative determination.

(3) The public consultation processes and procedures under subsection (2) shall be such as prescribed by regulations and the Authority shall establish one information point where any information on consultations be accessed.

(4) The submissions and results of any consultation under this section shall, except in the case of any confidential information, be made available in public domain.

PART III - APPEAL

Appeal against any decision, direction or order of Authority

14.(1) A person aggrieved by a decision, direction or order of the Authority under this Act may, within 45 days of the decision, direction or order, make an appeal to the Tribunal.

(2) An appeal under subsection (1) shall state —

- (a) the circumstances under which the appeal arises, the issues and grounds for the appeal; and
- (b) the relevant facts, evidence and arguments in support of the appeal, being material errors of fact or law or both.

(3) The Tribunal may reject an appeal which does not comply with subsection (2).

(4) The Tribunal shall decide the appeal, within 45 days from the date of receipt of the appeal, and the appellant shall be informed in writing of the final decision and the reasons for that decision.

Appeal to Supreme Court

15.(1) A person aggrieved by a decision of the Tribunal under section 14, may make an appeal to the Supreme Court —

- (a) on any question of fact or law or both; and
- (b) with the leave of the Court.

(2) An application for leave to appeal shall be made within 30 days from the date of the decision of the Tribunal.

(3) Notwithstanding any other written law, on hearing an appeal under this section, the Supreme Court shall have the power to —

- (a) determine the applicable law;
- (b) declare the decision of the Tribunal appealed against, or part thereof, to be lawful or unlawful; or
- (c) remit the decision of the Tribunal appealed against for review in accordance with such direction as the Supreme Court may consider appropriate.

(4) No appeal to the Supreme Court shall have the effect of suspension of a decision of the Tribunal which shall continue to operate unless otherwise directed by the Supreme Court.

PART IV - LICENSING

Requirement of licence

16. Subject to section 38, a person shall not —

- (a) own, deploy, establish, operate, offer or provide an electronic communications service or broadcasting service or electronic communications network service or radio communication network or radio communication equipment or radio communication station;
- (b) use any part of radio frequency spectrum; or
- (c) undertake any activities as a dealer,

except under, and in accordance with, a licence issued in terms of section 17 of this Act.

Types of licences

17.(1) Subject to this Act and the regulations made under this Act, the Authority may grant a licence to any person for any of the activities specified in section 16.

- (2) The licence granted under subsection (1) may be a —
- (a) facilities-based operator licence;
 - (b) services-based operator licence;
 - (c) broadcasting service licence;
 - (d) radio frequency spectrum licence;
 - (e) dealer licence;
 - (f) private electronic communications networks licence;
 - (g) special licence;
 - (h) experimental licence; or
 - (i) any other licence as may be prescribed by regulations.

(3) Subject to subsection (4), the licences that may be issued under subsection (2) upon application are individual or class licences expressly authorising the ownership, operation, use or provision of the activity, facility or service as determined by the Authority, from time to time.

(4) A broadcasting service licence, a private electronic communications networks licence, a special licence or an experimental licence referred to in subsection (2) shall not be regarded as an individual licence or a class licence.

(5) Subject to section 16, the Authority may, by order in the *Gazette*, issue an authorisation or permit for any activity, facility or service, subject to such terms and conditions and requirements as may be specified therein.

Dealer licence

18. The Authority may grant a dealer licence to a person who fulfils the eligibility requirements prescribed by regulations and is capable of meeting the responsibilities and obligations of the dealer licence under this Act.

Private electronic communications network licence

19.(1) A person shall not connect a private electronic communications network, to a public electronic communications network, except with a valid licence authorising such connection.

(2) A person who intends to obtain a licence under subsection (1) shall make an application to the Authority in the form and manner prescribed by regulations.

(3) The Authority shall determine, on a case by case basis, the terms and conditions under which a private electronic communications network may be connected to a public electronic communications network.

(4) The exchange of communications under this section between persons or entities, other than those for whom the use of the private electronic communications network is reserved, is not permitted.

Special licence

20.(1) The Authority may, on being satisfied that an emergency or other exigent circumstance exists, grant a special licence.

(2) A person who intends to obtain a special licence shall make an application to the Authority in the form and manner prescribed by regulations.

(3) A special licence granted under this section shall be subject to the terms and conditions specified in the licence by the Authority.

(4) A special licence shall be granted for a term not exceeding 30 days and may be renewed from time to time, if the emergency or the exigent circumstance, as the case may be, continues to exist.

Experimental licence

21.(1) Where the purpose of an applicant for a licence under this Act is to conduct an experiment in an activity for which a licence is required under section 17 and the experiment is likely to be of public benefit, an

experimental licence may be granted, in accordance with the provisions of this Act, for the purposes of conduct of the experiment.

(2) An application for experimental licence under this section shall be in the prescribed form and manner accompanied with such fees and documents as may be prescribed by regulations.

(3) An experimental licence granted under this section shall be subject to the terms, conditions and restrictions as may be specified in the licence by the Authority.

Individual licence

22. An individual licence may be granted to a person who fulfills the eligibility criteria prescribed by regulations and who, in the opinion of the Authority, is financially and technically capable of meeting the statutory and regulatory requirements of the individual licence.

Class licence

23. The Authority may grant a class licence to a person who fulfills the eligibility requirements as may be prescribed by regulations and where the person is capable of meeting the regulatory obligations set forth in the class licence.

Application for licence

24.(1) A person who intends to carry out or engage in any activity referred to in section 16 shall make an application to the Authority, in such form and manner, and accompanied by the fee and information, as may be prescribed by regulations.

(2) Every applicant or its agent shall be required to have a physical address in Seychelles and provide the details thereof in the application.

(3) The applicant for a licence shall prepare and present its business and technical plan along with the application.

(4) On receipt of an application for licence, the Authority may —

- (a) require the applicant to furnish any additional information that the Authority considers relevant; and
- (b) cause any installation, apparatus or premises relating to the application to be inspected.

(5) Where an applicant fails to submit documents or additional information as required within the time frame indicated by the Authority, the application shall be rejected and the applicant shall be informed in writing.

Grant of licence

25.(1) Where the Authority, on evaluation of the application within a reasonable period, is satisfied that the applicant meets the eligibility criteria and is financially and technically capable of meeting the statutory and regulatory requirement of a licence and the facilities installed or to be installed are in accordance with the specifications and standards stipulated by or under this Act, the Authority shall grant the licence to the applicant or otherwise reject the application.

(2) Where the application is rejected, the applicant shall be informed of the reasons thereof in writing.

(3) A licence granted under this Act shall be valid for such period as may be prescribed by regulations.

Resubmission of application for licence

26. The rejection of an application for licence shall not prevent any person from making another application.

Terms and conditions of a licence

27. A licence shall, without prejudice to other provisions of this Act and the regulations made in this regard, be subject to the following terms and conditions, namely —

- (a) the provision of an electronic communications service or electronic communications network service to other

- operators in accordance with this Act depending upon whether the service is intended for the public generally or for a limited group;
- (b) protection of the interests of the subscribers and end users, which may include —
 - (i) the handling and resolution of complaints and disputes;
 - (ii) provision of appropriate remedies in respect of complaints and disputes;
 - (iii) provision of understandable and accurate bills, including itemised billing;
 - (iv) transparency of information about services, tariff schedules and the rights of subscribers;
 - (v) a requirement to publish any tariff with relevant terms and conditions and an obligation to charge no more than the approved tariff for the services operated under the licence; and
 - (vi) any other matter the Authority determines to be necessary in order to achieve the effective protection of subscribers and end users;
 - (c) maintenance of any installation, equipment or network element at the premises of the licensee in a condition to provide an adequate, safe and efficient service;
 - (d) provision of access to such officer as may be authorised by the Authority;
 - (e) preparation of a customer charter which sets out the minimum standard of service to the licensee's customers and gives guidance to the employees of the licensee in their relations and dealings with customers;

- (f) preparation of the licensee's own individual consumer code compatible with the General Consumer Code under section 58;
- (g) reference to the public interest in ensuring service interoperability, non-discrimination and open access, interconnection, co-location and facility sharing;
- (h) publication of adequate and up to date information on the quality of service standards in a format that may be used by consumers for industry comparison;
- (i) reference to the public interest in securing the efficient functioning of electronic communications networks including, but not limited to, prevention or restriction of harmful interference within the radio frequency spectrum;
- (j) any universal access and universal service provision obligations;
- (k) reference to the public interest in the provision, availability and use of electronic communications service or electronic communications network service in the event of a public emergency, force majeure, national security or natural disaster;
- (l) reference to the public interest in ensuring the protection of public health for the prevention or avoidance of the exposure of natural persons to electromagnetic fields created in connection with the provision of an electronic communications service or electronic communications network service;
- (m) the international obligations of Seychelles, including compliance with the international standards adopted by Seychelles;
- (n) standards and technical obligations for electronic communications networks and systems;

- (o) standardisation and specified interfaces or specifications published by international standards bodies for the provision of an electronic communications service or electronic communications network service;
- (p) reference to the public interest in facilitating and maintaining a competitive environment in the electronic communications industry and in preventing an abuse of a dominant position or of anti-competitive practices;
- (q) the efficient use of the radio frequency spectrum;
- (r) the efficient use of the numbering resources;
- (s) provision of such documents, reports and other information in a timely manner relating to the operations as may be required by the Authority, from time to time;
- (t) preparation and maintenance of accounting records in the prescribed form and manner;
- (u) provision of accounting separation information disclosure requirements within 6 months of the end of each financial year, where the operator provides more than one service to the public;
- (v) provision of audited financial statement of accounts to the Authority within 6 months of the end of the financial year;
- (w) notification to the Authority and to the public in a timely manner of any major interruptions in the provision of an electronic communications service or electronic communications network service;
- (x) supply of free telephone directories on a periodic basis as may determined by the Authority and provision of operator assistance services and directory enquiry services;

- (y) obligations to provide customer data base information for a universal directory;
- (z) provision of national emergency numbers free of charge;
- (aa) special arrangements for focusing on disadvantaged and vulnerable consumers; and
- (bb) such other conditions as may be prescribed by regulations.

Payment of licence fee

28.(1) Subject to such exemptions as may be prescribed by regulations, a licence shall be subject to a prescribed licence fee to be paid by the licensee on the prescribed date.

(2) If a licensee fails to pay the licence fee on the prescribed date, the licensee shall be liable to pay a surcharge of 10% of the licence fee for each month or part thereof during which the licence fee remain unpaid.

(3) If a licensee fails to pay the licence fee referred to in subsection (1), the licence shall be liable to be suspended or revoked.

Performance guarantee

29.(1) The Authority may require a new licensee to furnish a performance bank guarantee or a performance bond and when the Authority so determines, the licensee shall comply with the performance bank guarantee or a performance bond requirement.

(2) Where a performance bank guarantee or a performance bond is required under subsection (1), the licensee shall furnish the bank guarantee or performance bond in the form prescribed by regulations.

(3) The performance bank guarantee or performance bond shall be furnished within 14 days from the date of notification by the Authority of the requirement of the performance bank guarantee or a performance bond under subsection (1).

Renewal of licence

30.(1) A licence may be renewed, subject to such conditions as may be considered appropriate by the Authority, where the licensee —

- (a) has not during the period of licence contravened the provisions of this Act or regulations made under this Act;
- (b) has fulfilled the obligations contained in the licence; and
- (c) continues to be financially and technically capable of meeting the statutory and regulatory requirement.

(2) An application for renewal of a licence shall be made, within a period not later than 3 months prior to the expiry of the licence, in such form and manner as may be prescribed by regulations and shall be dealt with in the manner prescribed for applications under section 24.

Modification of terms and conditions of licence

31.(1) Subject to this Act, the Authority may, from time to time, review and modify any terms and conditions of a licence.

(2) The Authority shall, before making any modification of the terms and conditions of a licence under this section, give notice in writing to the licensee and such notice shall be made available to the public —

- (a) specifying the proposed modification and setting out the effects of such modification;
- (b) giving reasons for the modification; and
- (c) specifying the period, not being less than 30 days from the date of the notice, within which any written objection or representation may be made by the licensee or by any interested person with respect to the proposed modification.

(3) Upon receipt of any objection or representation pursuant to a notice under subsection (2), the Authority may —

- (a) reject the objection or representation of the licensee or any interested person; or
- (b) amend the proposed modification in accordance with the objection or representation made by the licensee or any interested person or otherwise; and

the Authority shall thereupon issue a direction in writing to such licensee requiring that effect be given to the proposed modification, specified in the notice or to the modification as subsequently amended by the Authority within a reasonable period.

Revocation or suspension of licence

32.(1) The Authority may, subject to subsection (2), revoke or suspend a licence on one or more of the grounds that the licensee has —

- (a) failed to provide the services within 12 months of the issue of the licence or within such additional period allowed in the licence;
- (b) failed to pay the licence fee;
- (c) ceased operations under the licence;
- (d) furnished information to the Authority which is false or misleading;
- (e) failed to comply with this Act or regulations made under this Act or a term or condition of the licence;
- (f) failed to comply with any decision, direction or order of the Authority; or
- (g) has failed to pay the contributions in respect of universal access and universal service fund.

(2) The Authority shall, before revoking or suspending the licence under subsection (1), give the licensee a reasonable opportunity to remedy

the failure within the specified period, except in the case of repeated breach by the licensee.

(3) If the breach is remedied within the specified period, the licence shall not be revoked or suspended.

(4) If the breach is not remedied within the specified period, the licence shall be revoked or suspended and the licensee be informed in writing within 14 days.

(5) Where a licence is revoked or suspended, it shall, as soon as practicable, be published in two daily newspapers.

(6) The licensee shall not be entitled to a refund of the licence fee or to any compensation by reason of the revocation or suspension of a licence.

(7) A licensee aggrieved by a revocation or suspension of the licence under this section, may make an appeal to the Tribunal under section 14.

Surrender of licence

33. A licensee may, at any time, by written notice, surrender the licence in the manner prescribed by regulations.

Transfer of licence

34.(1) The grant of a licence shall be personal to the licensee and the licence shall not be assigned, pledged, transferred or otherwise disposed of without the prior written approval of the Authority.

(2) A licensee who intends to transfer a licence to a person, and the person to whom the licence is proposed to be transferred, shall submit jointly to the Authority an application in the form and manner accompanied with the fees and documents prescribed by regulations.

(3) The application for transfer of a licence under this section shall be dealt with in the same manner as if it is an application for a new licence made under section 24 and the provisions relating to grant of licence shall, *mutatis mutandis*, apply.

Change of control or transfer of shares

35. A licensee shall obtain the prior written approval of the Authority for —

- (a) any transfer of shares which would result in the direct or indirect ownership of more than 25% of the issued voting share capital of the licensee; or
- (b) any change in the ownership of the issued voting share capital of the licensee which results in a change in the composition of at least one quarter of the board of directors of the licensee.

Variation or revocation of terms and conditions of licence

36.(1) The Authority may, where the Authority considers it necessary —

- (a) in the national interest; or
- (b) as a result of ensuring compliance with an international treaty, commitment, recommendations or the standards binding on Seychelles,

vary or revoke or caused to be varied or revoked any terms and conditions of a licence.

(2) The Authority shall, before making any variation or revocation under subsection (1), give notice in writing to the licensee and such notice shall be made available to the public —

- (a) specifying the proposed variation or revocation and setting out the effects of such variation or revocation; and
- (b) giving reasons for the variation or revocation.

Maintenance of register of licence

37.(1) The Authority shall cause to maintain a register, in respect of

every type of licence granted under this Act, containing such particulars as may be prescribed by regulations.

(2) The register shall be made available to the public for inspection during business hours at the office of the Authority on payment of such fee as may be prescribed by regulations.

Exemption from requirement of licence

38.(1) The use of radio frequency spectrum or operation of radio communication equipment or station by the State or a local authority, including the Defence Forces, police service, intelligence service or traffic authority, while performing its duties, or in instances of force majeure, public emergency, national security, or natural disaster, shall be exempt from the requirement of a licence to install or operate radio communication equipment or station or use of radio frequency spectrum under this Act.

(2) The State or a local authority, including the Defence Forces, police service, intelligence service or traffic authority referred to in this section shall use the spectrum as assigned to it and subject to the conditions imposed by the Authority.

(3) No entity or authority, other than those referred to in this section, shall be construed as exempt from the requirement of a licence under this Act.

(4) Notwithstanding subsection (3), the Minister may, on being satisfied that it is necessary and expedient so to do, in public interest, by order in writing, exempt activities or person or classes of persons from the requirement of a licence under this Act.

(5) An order exempting the activities or person or classes of persons under subsection (4), shall be issued subject to such terms and conditions as the Minister may consider appropriate and are consistent with the Act.

(6) An order exempting the activities or person or classes of persons under subsection (4), may be issued in any or all of the following circumstances, namely —

- (a) installation and operation of radio communication equipment or station or use of radio frequency spectrum which is deemed as unlikely to result in harmful interference which jeopardises the efficient use of the radio frequency spectrum;
- (b) use of radio frequency spectrum or operation of radio communication equipment or station on any foreign ship or aircraft, or any transit service, not registered in Seychelles whilst it is within the jurisdiction of Seychelles, passing through the territory of Seychelles on condition that the person or class of persons responsible for the ship or aircraft or transit service holds the necessary international radio spectrum licences from any other country pursuant to the ITU Constitution and ITU Convention in respect of ships and aircrafts; and
- (c) use of radio frequency monitoring equipment and associated facilities by the Authority.

(7) The Minister may, at any time when it is considered necessary for the purposes of this Act, by order withdraw the exemption granted under subsection (4).

(8) The Minister shall, before issuing an order under subsection (7), give a reasonable opportunity of being heard to those who are affected by the order.

PART V - FAIR COMPETITION

Measures to encourage fair competition

39.(1) The Authority shall take measures to encourage fair competition in the development of electronic communications and broadcasting and to prevent the abuse of the dominant position in any services market or anti-competitive practice by operators.

(2) Subsection (1) shall have effect, without limiting the application of the Fair Trading Commission Act (*Cap 267*), the Fair Competition Act

(*Cap 266*), the Consumer Protection Act (*Cap 257*) and regulations made under those Acts.

Preliminary identification of services markets characterised by significant market power

40.(1) The Authority shall identify services market which in its opinion is not effectively competitive and require the imposition of specific regulatory obligation on operators having significant market power.

(2) The Authority shall, while identifying the relevant services market under subsection (1), take into account the following matters —

- (a) the relevant economic market in respect of electronic communications or broadcasting;
- (b) the global technology and commercial trends affecting market power;
- (c) the market share of the licensee;
- (d) the licensee's control of essential facilities for development of competition;
- (e) the degree of product or service differentiation and sales promotion in the market; and
- (f) any other matters which the Authority may consider relevant.

Market analysis

41.(1) The market analysis of the identified services market may be conducted by the Authority —

- (a) at the request of an operator;
- (b) at the request of public institutions; or
- (c) on its own initiative.

(2) The Authority may consult with the stakeholders, and hold consultations with interested parties, in carrying out a market analysis of such services market.

(3) The Authority may, for the purpose of conducting a market analysis under this section, order the submission of specified documents and information necessary and relevant for the market analysis from the operators within a reasonable period.

(4) The market analysis under this section shall be completed within such period as may be prescribed by regulations, except where the Authority considers appropriate, for reasons to be recorded in writing, that it is not feasible to complete the analysis within such period.

(5) On the completion of the market analysis, the results of such market analysis shall be published in the public domain.

(6) An operator who refuses, without reasonable cause, or fails to comply with or contravenes subsection (3) shall be liable to a monetary penalty imposed in accordance with section 143.

(7) The market analysis shall be reviewed when a new definition of the services market is established or when the Authority deems that there are grounds for such a review.

Determination of significant market power

42.(1) On completion of preliminary identification of services market, the Authority may carry out a market analysis, at such times as it may decide to —

- (a) determine, whether or not, a services market of an electronic communications service or broadcasting service is effectively competitive;
- (b) determine, whether any operator has significant market power in one or more of electronic communications or broadcasting services markets;

- (c) designate every electronic communications or broadcasting services markets as a regulated or unregulated service; and
- (d) determine any other matters which the Authority may consider relevant.

(2) The Authority shall frame guidelines necessary for determining the circumstances referred to in subsection (3), for laying down the significant market power conditions in the services market of an electronic communications or broadcasting service, in consultation with the Fair Trading Commission.

(3) The circumstances required for the laying down the significant market power conditions, include the following —

- (a) where an operator enjoys a position which amounts to or is equivalent to dominance of the market, the operator is deemed to have significant market power in relation to the market;
- (b) where one or more operators enjoy the position, referred to in paragraph (a), in combination with each other, each operator is deemed to enjoy a position of dominance of the market; and
- (c) where by reason wholly or partly of its position in a closely related market, if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to strengthen the position in the other market of that operator or combination of one or more operators, the operator or combination of operators thereof, is to be taken to enjoy a position of dominance of the market.

(4) More than one operator may be designated as dominant operator in the same electronic communications or broadcasting services market.

(5) The Authority shall, within such period as it may consider

appropriate, cause to be conducted a preliminary identification of services market under subsection (1).

(6) On completion of the market analysis, the Authority shall, through such means as it considers appropriate, make public the operator who has significant market power.

Imposition of specific regulatory obligations on operators having significant market power

43.(1) The Authority may impose obligations on operators having significant market power on a services market, taking into account their appropriateness in each case and specifying the period for the fulfillment of such obligations.

(2) The obligations imposed on operators shall be reasonable, based on the nature of the significant market power identified, and proportionate to the electronic communications or broadcasting services market.

(3) Where it is established on the basis of a market analysis that the market characteristics do not justify the imposition of obligations referred to in this section or there is no operator having significant market power in that market, the Authority shall not impose the obligations or shall withdraw the obligations, if any, imposed on the operator under this section.

(4) When withdrawing an obligation, the Authority may, by an order, set the final date from which the withdrawal shall take effect.

(5) After having conducted market analysis, from time to time, the Authority may amend the imposed obligations in accordance with this section.

(6) If, as part of the market analysis, the Authority concludes that the imposition of one or more specific obligation is necessary to prevent or deter anti-competitive effects which is, or is likely to be, caused by the presence of significant market power in a services market, the Authority may make a determination and impose one or more of the following obligations on an operator having significant market power —

- (a) the obligation to interconnect its electronic communications network with the network of another operator for the purpose of originating, transiting or terminating traffic, and to provide such interconnection pursuant to such terms and conditions as the Authority may specify;
- (b) the obligation to provide wholesale services to other operators and, where the Authority considers it necessary, to offer specified minimum features, functionality or other attributes;
- (c) the obligation to meet reasonable requests for access to, and the use of, specified network elements and associated facilities and services and to provide such access pursuant to specifications, terms and conditions as the Authority may specify, including —
 - (i) co-location or other forms of facility sharing with third parties;
 - (ii) unbundled access to specified network elements and associated databases;
 - (iii) information about technical interfaces, protocols or key technologies that are required for the interoperability of services and timely information with regard to any planned changes;
 - (iv) software systems necessary for provisioning electronic communications, including operational support systems; and
 - (v) up-to-date information systems or databases containing information relating to the location or availability of particular access components or for ordering, provisioning, maintenance and repair requests and billing;

- (d) the obligation to meet reasonable requests for access pursuant to the terms and conditions as the Authority may specify, including, the circumstances which warrant —
 - (i) physical infrastructure including buildings, ducts, masts and towers;
 - (ii) number translation or systems offering equivalent functionality;
 - (iii) fixed and mobile networks, in particular, access necessary to facilitate virtual network services; and
 - (iv) such other forms of access to wire-line or wireless network features and functionality as may be determined by the Authority to be necessary to promote or protect sustainable competition in a services market;
- (e) the obligation to provide access and interconnection subject to terms and conditions that are transparent, including the publication of reference interconnection and reference access offers, approved by the Authority;
- (f) the obligation of non-discrimination, including the requirements to apply equivalent conditions in equivalent circumstances to other operators which provide equivalent services, and to provide facilities, services and information to others under the same conditions and of the same quality as it provides for its own internal purposes or to those of its business units, subsidiaries, or partners;
- (g) the obligation to comply with requirements relating to cost recovery and the pricing of wholesale and retail services or facilities;
- (h) the obligation to provide certain types of wholesale access or interconnection prior to introducing associated downstream services that rely on such inputs;

- (i) the obligation to establish and maintain a cost accounting system in accordance with cost allocation and separation rules that are stipulated or approved by the Authority for the purpose of ensuring that a vertically integrated communications provider's costs and revenues are properly attributed or assigned to specific activities and facilitate the detection of anti-competitive cross-subsidies by an independent auditor;
- (j) the obligation to publish audit information in a format that contributes to an open and competitive market while preserving the confidentiality of accounting data which is considered commercially sensitive;
- (k) the obligation not to unreasonably bundle other services or products with a service or product that is contained in a services market characterised by significant market power, including a prohibition against anti-competitive tying arrangements or offering bundles at retail prices combined with customer contracts that cannot be replicated by an efficient competitor;
- (l) the obligation on transparency and accounting separation, necessary to preserve effective competition in cases where a closely related services market is characterised by significant market power;
- (m) the obligation to provide call-by-call carrier selection and, carrier pre-selection;
- (n) the obligation of obtaining prior approval of tariff plans for electronic communications service and broadcasting service;
- (o) the obligation of providing leased lines to other operators under the same conditions and of the same quality as the operator provide to its own business units, or to those of its subsidiaries or partners;

- (p) the obligations in respect of cost recovery and price controls, including obligations concerning cost accounting systems for the provision of specific types of access or interconnection;
- (q) the obligation to provide universal access and universal service and payment of annual contributions to the universal service fund;
- (r) such other obligations as the Authority may deem necessary to promote or preserve effective and sustainable competition in a services market.

(7) Where the Authority determines that other measures have not prevented or deterred anti-competitive effects, the Authority may impose on the operator —

- (a) the obligation to offer specified access and interconnection facilities and services through a functionally separate and independently operated business entity; and
- (b) to provide such services and facilities to other competitors and its own retail business affiliates on the same terms and conditions, including those relating to pricing, availability in a timely manner and service quality, and by means of the same systems and processes.

(8) An obligation imposed under this section shall be proportionate and justified in light of the circumstances for the purposes of this Act which shall, in the case of any access obligations, take account of —

- (a) the technical and economic feasibility of using or installing competing facilities, taking into account the type of interconnection or access involved;
- (b) the feasibility of providing access in relation to available capacity; and

- (c) the investment risks incurred by an operator designated as having significant market power.

Review of services market identifications and market power determinations

44.(1) The Authority shall, at such intervals as it considers appropriate, cause to be conducted a market analysis of the identified services market for any of the following purposes —

- (a) reviewing the services market made on the basis of an earlier market analysis;
- (b) reviewing the market power determination made on the basis of an earlier market analysis; or
- (c) proposing modification of specific obligations on operators having significant market power set by reference to a market power determination.

(2) Where on a review analysis under this section, the Authority determines that any specific obligations are no longer to apply to an operator with significant market power in that market, the Authority shall withdraw the specific obligation applied to an operator in that market by reference to a market power determination made on the basis of an earlier analysis.

Publication of notifications

45. Where it is necessary to give a public notice pursuant to this Act, the Authority shall give public notice having regard to —

- (a) preliminary identification of every electronic communications or broadcasting services market;
- (b) market analysis of identified services market;
- (c) designation of every electronic communications or broadcasting services market;

- (d) determination of market power in every electronic communications or broadcasting services market;
- (e) designation of which, if any, operator has significant market power in an identified electronic communications or broadcasting services market;
- (f) a review of market identifications and market power determinations; and
- (g) any other relevant process.

Abuses of dominant position

46.(1) A dominant operator shall be deemed to have abused its dominant position, if it distorts, prevents or restricts competition in the services market.

(2) A dominant operator shall not discriminate against competitors or customers in order to favour itself or its affiliates in the provision of products or services in which it is dominant.

(3) The specific behaviours and practices in an electronic communications or broadcasting services market may, by regulations, be prohibited as abuses of dominant position, which may include —

- (a) failure to supply access to essential facilities;
- (b) predatory pricing;
- (c) anti-competitive cross-subsidisation;
- (d) anti-competitive price discrimination;
- (e) margin squeezes;
- (f) anti-competitive long-term contracts;
- (g) anti-competitive bundling or tying;
- (h) exclusionary practices;

- (i) exclusive dealing; and
- (j) any other action or activity engaged in by a dominant operator or likely to have the effect, of materially restricting or distorting competition in an electronic communications or broadcasting services market.

Prohibition on anti-competitive conducts or practices

47.(1) The conduct or practices which substantially lessen competition in an electronic communications or broadcasting services market may be prohibited by regulations.

(2) An operator shall not engage in any conduct or practice which has the purpose or effect of substantially lessening competition in an electronic communications or broadcasting services market.

(3) An operator shall not enter into or give effect to any agreement, arrangement or understanding which has the purpose, or has, or is likely to have, the effect of substantially lessening competition in any services market for the supply of electronic communications service or broadcasting service or any product used in connection therewith.

(4) An operator shall not enter into or give effect to any agreement, arrangement or understanding with another operator which has the purpose, or has, or is likely to have, the effect of fixing, controlling or maintaining the price for or any discount allowance credit or rebate for any services market for the supply of electronic communications service or broadcasting service or any product used in connection therewith.

(5) The regulations may prescribe other conduct or practices which shall be deemed to result in substantial lessening of competition under this Act.

Determination of abuse of dominance and anti- competitive practices

48. The Authority may, on an application made by any person, or on its own motion, determine —

- (a) whether or not the actions or activities of a dominant operator constitute an abuse of dominant position within the meaning of section 46; and
- (b) whether or not the actions or activities of any operator amount to an anti-competitive practice within the meaning of section 47.

Remedies for abuse of dominance and anti-competitive practices

49.(1) Where the Authority determines after investigation, that the actions or activities of an operator constitute an abuse of dominant position or an anti-competitive practice within the meaning of this Act or to any other law regulating fair competition in Seychelles, the Authority may issue an order —

- (a) requiring one or more persons mentioned in the order to take one or more of the following actions —
 - (i) cease the actions or activities specified in the order immediately, or at such time and subject to such conditions specified in the order; or
 - (ii) modify the actions or activities specified in the order, as a means of eliminating the abusive or anti-competitive impact;
- (b) requiring the operator responsible for the abusive or anti-competitive action, activity or practice specified in the order to publish an acknowledgement and apology for such action, activity or practice in such a form and at such time as may be specified in the order;
- (c) requiring the operator to provide periodic reports to the Authority to assist in determining whether the action or activity is continuing and to determine its impact on electronic communications or broadcasting services markets, competitors and customers.

(2) A person who contravenes or fails to comply with an order issued under this section shall be liable to a monetary penalty imposed in accordance with section 143.

PART VI - CONSUMER PROTECTION

Power to take measures for protecting rights of consumers and end users

50.(1) The Authority shall take measures to protect the rights of consumers and end users in relation to matters of customer service, including the quality of service or the refusal or failure by an operator to comply with a General Consumer Code prepared under this Part.

(2) This Part shall have effect, without limiting the application of the Fair Trading Commission Act (*Cap 267*), the Fair Competition Act (*Cap 266*), the Consumer Protection Act (*Cap 257*) and regulations made under those Acts.

Fair dealing practices

51.(1) An operator shall not demand payment from a consumer or end user for any electronic communications service or broadcasting service not used or electronic communications equipment or apparatus not requested.

(2) Except in the case of pre-paid electronic communications services or broadcasting services, an operator shall provide consumers and end users with bills —

- (a) in writing, or in an electronic format if the consumer or end user consents or requests;
- (b) on a regular basis;
- (c) in a plain and simple format which is easy to understand;
- (d) providing accurate and understandable information on the services and equipment provided and the amounts due for each; and

- (e) indicating clearly the method of calculation of charges for any electronic communications service or broadcasting service for which bills are based on the actual usage.

(3) In relation to consumers and end users who subscribe to pre-paid services, an operator shall retain accurate call data records of consumers and end users for such period as may be determined by the Authority and make these records available to the Authority on request.

(4) Every operator shall retain accurate call data record of all bills of consumers and end users subscribed to post paid service, for such period as may be determined by the Authority and make available to the Authority on request.

(5) Where the Authority has a concern about billing systems or practices of an operator, the Authority may require the operator to provide information on billing systems or practices or to take such measures relating to billing systems or practices as the Authority may consider appropriate.

(6) An operator shall not, in relation to the supply or proposed supply of any electronic communications service or broadcasting service, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.

Unjustified discrimination

52.(1) Unless otherwise permitted under this Act, an operator shall offer all consumers the same terms and quality of service, including tariffs charged.

(2) An operator who fails to comply with subsection (1) shall justify any different terms and quality of service and reasons thereof to the satisfaction of the Authority.

(3) If the Authority is not satisfied that the reasons provided by the operator are objectively justified, the Authority shall issue an order to cease the different terms and quality of service.

Access to subscriber's premises

53.(1) An operator shall operate, maintain in good working order and repair all facilities belonging to it and located on a subscriber's property.

(2) An operator has the right to enter a subscriber's premises within business hours if the operator's facilities are located within such premises upon the condition that —

- (a) the operator has given the subscriber reasonable notice; and
- (b) the operator's personnel are properly identified and qualified.

Directory assistance services

54.(1) The Authority shall, by order, direct an operator to provide its consumers with directory assistance services in accordance with such conditions as may be prescribed by regulations.

(2) A consumer who is assigned numbers in an electronic communications network shall have a right to be included in the publicly available directories.

(3) Notwithstanding subsection (2), the approval of the consumer at the time of signing the contract or agreement shall be required either to publish or not publish personal information.

(4) An operator who assigns numbers to a consumer shall supply the reasonable demands of the consumer regarding directory assistance services in a cost oriented and non-discriminatory manner.

Operator assistance services

55.(1) The Authority may, by order, require an operator to provide its consumers with operator assistance services in accordance with the conditions prescribed by regulations.

(2) A consumer or end user connected to an electronic communications network has a right to access operator assistance services maintained by an operator to get customer service and technical support that are easily accessible at all times including accessing services, setting up calls and remedying of faults.

Requirement for complaints handling procedure

56.(1) Every operator shall establish a complaint handling procedure for dealing with complaints from consumers of its services which ensures that —

- (a) every such complaint is attended to within a reasonable time by the operator; and
- (b) the complainant is made aware of its right to complain to the Authority, if the complaint is not remedied by the operator.

(2) The complaint handling procedure referred to in subsection (1) shall be submitted to the Authority for approval.

(3) The Authority shall approve, or reject, or amend the complaint handling procedure submitted by the operator.

(4) On the approval of the complaint handling procedure submitted under this section, the operator shall make its complaint handling procedure publicly available.

(5) Where a person, is aggrieved with the handling of a complaint or not satisfied with the remedy offered or action taken by the operator, under the complaint handling procedure referred to in subsection (1), the person may submit the complaint to the Authority.

Resolution of consumer complaints by Authority

57.(1) The Authority may investigate and attempt to mediate any consumer complaint brought to its attention by a consumer in relation to a matter of customer service and consumer protection, provided that the

operator's own complaint handling procedure shall first have been exhausted by the consumer without resolution of the complaint.

(2) The Authority shall establish procedures and guidelines for mediating and investigating of complaints of consumers referred to in subsection (1).

General Consumer Code

58.(1) Subject to subsection (2), the Authority shall prepare a General Consumer Code for the purposes of this Act.

(2) The General Consumer Code shall include model procedures for —

- (a) reasonably meeting consumer requirements;
- (b) complaint handling processes and policies; and
- (c) the compensation to the consumers in case of a breach of the General Consumer Code.

(3) The other matters which the General Consumer Code may include are —

- (a) the monetary or non-monetary compensation available to consumers dissatisfied with the complaint handling procedures of the operator including refunds, rebates, waivers, and free connections to be provided by operators;
- (b) the provision of information to customers regarding services, rates and performance;
- (c) the provision and fault repair of services;
- (d) the advertising or representation of services;
- (e) the terms and conditions of service agreements or contracts;

- (f) the customer charging, and billing issues including call duration, itemised billing, collection and credit practices; and
- (g) any other matter which, in the opinion of the Authority, may be of concern to consumers.

(4) The Authority shall cause the General Consumer Code to be published in the *Gazette*, on the website of the Authority and give notice to this effect in two daily newspapers for three days.

(5) Every operator shall comply with the General Consumer Code.

(6) An operator who contravenes or fails to comply with subsection (5) shall be liable to a monetary penalty imposed in accordance with section 143.

Individual consumer codes

59.(1) Without prejudice to section 58, the Authority may require operators to prepare individual consumer code for specific category of customers and publish, with the prior approval of the Authority, in two newspapers for three days.

(2) The individual consumer codes shall include at least the procedures of the General Consumer Code consistent with section 58, or equivalent procedures that are no less favourable to consumers than the General Consumer Code.

(3) An individual consumer code under subsection (1) shall be subject to regular review by the operator and approval by the Authority of any material amendments made by the operator prior to its publication.

Quality of service

60.(1) Regulations may be made providing for any matter with respect to quality of service standards, which shall include

- (a) establishing procedures for measuring, monitoring and reporting compliance with quality of service standards;

- (b) imposing obligations on operators for pledging, measuring, monitoring and reporting quality of service standards which operators must comply with;
- (c) reporting requirement for the regular collection of market data; and
- (d) suspension of quality of service requirements during a state of emergency declared by law.

(2) Any consumer or end user may lodge a complaint with the Authority relating to the quality of service standards pledged or rendered by any operator.

(3) The Authority may require an operator to publish on a periodic basis, its quality of service standard reports, pledged and measured by an operator, on its website and notice of it shall be advertised in two daily newspapers for three days.

(4) Every operator shall comply with the quality of service standards prescribed by regulations.

(5) An operator who contravenes or fails to comply with subsection (4) shall be liable to a monetary penalty imposed in accordance with section 143.

PART VII - INTERCONNECTION

Interconnection by all operators

61.(1) Every operator has the right and, when requested by another operator in writing, the obligation to negotiate and endeavor to conclude an interconnection agreement with another operator where economically and technically reasonable.

(2) Every operator who provides or intends to provide electronic communications service to the public (in this Part referred to as “interconnect seeker”) may, by notice in writing, make a request for interconnection to any other operator that operates an electronic

communications network (in this Part referred to as “interconnect provider”) to enter into an interconnection agreement for the provision of interconnection to a network by the interconnect provider.

(3) The request for an interconnection made under subsection (2) shall not be refused if it is reasonable in terms of the requesting party's requirements and the operator's capacity to meet it.

(4) Any refusal to interconnect shall be substantiated and notified to the requesting party and to the Authority in the manner prescribed by regulations.

(5) The interconnect seeker shall submit a copy of the written notice referred to in subsection (2) to the Authority.

(6) The interconnect provider shall acknowledge the receipt of the request for interconnection referred in subsection (2) within 5 days.

(7) On receipt of a written notice under subsection (2), an interconnect provider shall enter into, and participate in good faith negotiations with the interconnect seeker to enter into an interconnection agreement.

(8) The following actions or practices shall be construed as a contravention of subsection (7) —

- (a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes; or
- (b) refusing to provide information about the interconnect provider's own electronic communications services, electronic communications network or electronic communications network facilities that are necessary for the interconnection agreement; or
- (c) misleading or coercing an interconnect seeker into reaching an agreement it would not otherwise have made; or

(d) interfering in any way with an interconnect seeker's ability to communicate with the Authority, including requiring an interconnect seeker not to disclose information requested by the Authority; or

(e) refusing to permit amendment of the interconnection agreement to take into account changes in circumstances, including changes to this Act.

(9) Every operator shall keep information received, transmitted or stored, confidential, and shall use that information solely for the purpose for which it was received, transmitted or stored.

(10) The information received under this section, shall not be divulged to any other person, in particular, any business unit, affiliate, subsidiary or partner, for whom such information could result in a competitive advantage.

(11) This section shall not prejudice the exercise of the powers of the Authority to require any person to furnish any information or document under this Act.

(12) Every operator is required to submit for the approval of the Authority, the charges for interconnection relating to any electronic communications network before implementation of the interconnection charges.

(13) Where the Authority disapproves the proposed interconnection charges submitted by an operator, the Authority shall determine the charges for interconnection in accordance with any charging principles in force.

(14) The Authority shall inform the decision made under subsection (13) along with the reasons for that decision to all operators.

(15) A decision made under subsection (13) shall be binding on all operators.

(16) A person who contravenes or fails to comply with the decision of the Authority under subsection (13) shall be liable to a monetary penalty imposed in accordance with section 143.

Reference interconnection offers

62.(1) For the purposes of this section, a “reference interconnection offer” is a model agreement, giving the description of the interconnection offers divided into components according to the market needs and the associated terms and conditions including interconnection charges.

- (2) The Authority may, by order, require an operator to —
- (a) prepare, periodically update and revise a reference interconnection offer for approval by the Authority, in such manner and within such period, as may be prescribed by regulations;
 - (b) include in its reference interconnection offer, such matters as the Authority considers necessary and expedient for the effective implementation of the reference interconnection offer; and
 - (c) publish the approved reference interconnection offer on the website of interconnect provider and send a copy to any interconnect seeker on request.

(3) The objective of requiring an interconnect provider to prepare a reference interconnection offer is to accelerate and assist in reaching a reasonable and fair agreement with an interconnect seeker for interconnection.

Requirements for interconnection agreements

63.(1) Interconnection agreements based on a reference interconnection offer approved by the Authority under section 61 shall —

- (a) be consistent with this Act and comply with the regulations made under this Act;
- (b) meet all reasonable requests for interconnection at any technically feasible point; and
- (c) in all other respects, incorporate reasonable terms and conditions for interconnection, including technical standards and specifications, principles of neutrality, transparency, non-discrimination, fair competition, universal coverage, access to the information and equality of access.

(2) Every interconnect provider shall —

- (a) apply similar conditions to all interconnect seekers seeking the same or similar interconnection services;
- (b) provide interconnection and the elements thereof in a manner that is at least equal in both quality and rates as it provides for its own electronic communications services, or those of its affiliates;
- (c) make available, upon request from an interconnect seeker, in a timely manner all necessary or reasonably required information and specifications to the interconnect seeker; and
- (d) only use information received from an interconnect seeker for the purposes for which it was supplied to the interconnect provider and shall not disclose the information or otherwise use the information to obtain a competitive advantage.

(3) All parties to an interconnection agreement shall, from time to time, negotiate and endeavor to conclude amendments to such agreement to make it compliant with this Act, regulations made under this Act and the terms and conditions of the licence or any decision of the Authority under this Act.

Filing of interconnection agreements

64.(1) Every operator shall, within reasonable period, prior to execution of an interconnection agreement or any amendment to an interconnection agreement, file a copy of the interconnection agreement or amendment with the Authority for approval.

(2) An operator may classify any information, contained in the interconnection agreement referred to in subsection (1), as confidential information which shall not to be disclosed to any person other than to the Authority.

(3) The Authority may approve or reject the interconnection agreements or amendments submitted by operators under this section and record the reasons thereof which shall be communicated to the operator.

Interconnection charges in case of dispute

65.(1) In case of any dispute on interconnection charges levied by an interconnect provider, if the parties to the dispute fail to reach an agreement on interconnection charges within a reasonable period, the Authority shall fix the interconnection charges binding on the parties for such period as may be determined by the Authority.

(2) A person who contravenes or fails to comply with the decision of the Authority under subsection (1) shall be liable to a monetary penalty imposed in accordance with section 143.

Resolution of interconnection disputes

66.(1) Where one or both the parties to the negotiation conclude that a dispute has arisen between them with respect to any matter of interconnection, either party may refer the dispute to the Authority for taking a decision.

(2) The parties shall, before referring any dispute under subsection (1), make an attempt to resolve the dispute between them through negotiations.

(3) If a dispute is referred to the Authority under subsection (1), the Authority may order interconnection to be provided on such terms and conditions as may be determined by the Authority.

(4) A person who contravenes or fails to comply with an order issued under subsection (3) shall be liable to a monetary penalty imposed in accordance with section 143.

Non-compliant interconnection agreements

67. The Authority may, where it is satisfied that an interconnection agreement or an amendment thereto is not in compliance with this Act, or regulations made under this Act, an order, or the terms and conditions of the licence, order the parties to amend the interconnection agreement or the amendment, as the case may be, in accordance with the order.

PART VIII - ACCESS

Access by all operators

68.(1) Every operator has the right and, when requested by another operator in writing, the obligation to negotiate and endeavor to conclude an agreement on access to essential facilities, in this Part referred to as “facilities”, with another operator where economically, environmentally and technically reasonable.

(2) Every operator who provides or intends to provide electronic communications services to the public, in this Part referred to as “access seeker” may, by notice in writing, make a request for access to any other operator that operates an electronic communications network, in this Part referred to as “access provider”, to enter into an access agreement on access to its facilities by the access provider.

(3) A request for access to facilities under subsection (2) shall not be refused if it is reasonable in terms of the requesting party's requirements and the operator's capacity to meet it, and any refusal of access to facilities shall be substantiated and notified to the requesting party and to the Authority.

(4) The access seeker shall submit a copy of the written notice referred to in subsection (2) to the Authority.

(5) The access provider shall acknowledge receipt of the request for access to the access seeker within 5 days.

(6) On receipt of a written notice under subsection (2), an access provider shall enter into, and participate in, good faith negotiations with the access seeker to enter into such an access agreement.

(7) The following actions or practices shall be construed as a contravention of subsection (6) by an access provider —

- (a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes;
- (b) refusing to provide information about the access provider's own electronic communications services, electronic communications network or electronic communications network facilities that is necessary for the accession agreement;
- (c) misleading or coercing an access seeker into reaching an agreement the access provider would not otherwise have made;
- (d) interfering in any way with an access seeker's ability to communicate with the Authority, including requiring an access seeker not to disclose information requested by the Authority; or
- (e) refusing to permit amendment of the access agreement to take into account changes in circumstances, including amendment to the Act.

(8) An operator shall —

- (a) respond to a request for negotiation for access to any of its facilities within a reasonable period;

- (b) incorporate in its access agreement reasonable conditions, including with respect to timing, quality, operational, technical and fault handling;
- (c) ensure that such conditions —
 - (i) do not unfairly discriminate among operators; and
 - (ii) are no less favourable to other operators than those it provides for its own electronic communications services or those of its affiliates;
- (d) make available to another operator on a timely basis, information including technical specifications and commercially relevant information that is reasonably required by the other operator to provide electronic communications services to its users;
- (e) not disclose or otherwise use information received from another operator in connection with access to facilities to obtain a competitive advantage or for any purpose other than for which it was supplied;
- (f) provide access to its facilities in a manner that is unbundled to enable another operator to access the facilities that it reasonably requires in order to provide its electronic communications services; and
- (g) take such other steps as may be required by a determination in order to ensure timely and effective access to facilities.

(9) The Authority may determine the list of facilities and services which may be included in the access list.

(10) The Authority shall cause to maintain a register of list of facilities and services and the register shall be made available to any person on request during business hours at the office of the Authority.

(11) Every operator is required to submit for the approval of the Authority, the charges for access to essential facilities before implementation of the access charges.

(12) Where the Authority disapproves the proposed access charges submitted by an operator, the Authority shall determine the charges for access to essential facilities in accordance with any charging principles in force.

(13) The Authority shall inform its decision made under subsection (12) along with the reasons thereof to all operators.

(14) A person who contravenes or fails to comply with the decision of the Authority under subsection (12) shall be liable to a monetary penalty imposed in accordance with section 143.

Reference access offers

69.(1) For the purposes of this section, a “reference access offer” is a model agreement, giving the description of the access offers divided into components according to the market needs and the associated terms and conditions including access charges.

- (2) The Authority may, by order, require any operator —
- (a) to prepare, periodically update and revise a reference access offer for prior approval of the Authority, in such manner and within such period as may be prescribed by regulations;
 - (b) to include in the reference access offer, such matters as the Authority considers necessary and expedient for the effective implementation of the reference access offer; and
 - (c) to publish the approved reference access offer on the website of access provider and send a copy to any access seeker on request.

(3) The reference access offer, shall include the information about access on —

- (a) network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means;
- (b) physical infrastructure including buildings, wires, lines, poles, cabinets, ducts, sites, masts, towers and satellite earth stations for provision of co-location and sharing of facilities;
- (c) submarine cables and other tangible resources used in the provision of a specified service;
- (d) software systems including operational support systems;
- (e) number translation or systems offering equivalent functionality;
- (f) fixed and mobile cellular networks, in particular for roaming;
- (g) conditional access systems for digital broadcasting services; and
- (h) virtual network services.

(4) The objective of requiring an access provider to prepare a reference access offer is to accelerate and assist in reaching a reasonable and fair agreement with an access seeker for access to facilities.

Requirements of access agreement

70.(1) Access agreements based on a reference access offer approved by the Authority under section 69 shall —

- (a) be consistent with this Act and the regulations made under this Act;
- (b) meet all reasonable requests for access at any technically feasible point; and
- (c) in all other respects, incorporate reasonable terms and conditions for access to facilities, including technical standards and specifications, principles of neutrality, transparency, non-discrimination, fair competition, universal coverage, access to information and equality of access.

(2) Every access provider shall —

- (a) apply similar conditions to all access seekers seeking the same or similar access services;
- (b) provide access to access seekers in a manner that is at least equal in both quality and rates as it provides for its own electronic communications services, or those of its affiliates;
- (c) make available, upon request from an access seeker, in a timely manner all necessary or reasonably required information and specifications to the access seeker; and
- (d) only use information received from an access seeker for the purposes for which it was supplied to the access provider and shall not disclose the information or otherwise use the information to obtain a competitive advantage.

(3) All parties to an access agreement shall, from time to time, negotiate and conclude amendment to such agreement if necessary to make it compliant with this Act, regulations made under this Act, terms and conditions of the licence or a decision under this Act.

Filing of access agreement

71.(1) Every operator shall, within reasonable period, prior to execution of an access agreement or any amendment to an access agreement, submit a copy of the access agreement or amendment to the Authority for approval.

(2) An operator may classify any information contained in an access agreement referred to in subsection (1), as confidential information which shall not to be disclosed other than to the Authority.

(3) The Authority may approve or reject the access agreement or amendment submitted by operators under this section and record the reasons thereof which shall be communicated to the operator.

Access charges in case of dispute

72.(1) In case of any dispute on access charges levied by an access provider, if the parties to the dispute fail to reach an agreement on access charges within a reasonable period, the Authority shall fix the access charges to be binding on the parties for such period as may be determined by the Authority.

(2) A person who contravenes or fails to comply with the decision of the Authority under subsection (1) shall be liable to a monetary penalty imposed in accordance with section 143.

Resolution of access disputes

73.(1) Where one or both the parties to the negotiation conclude that a dispute has arisen between them with respect to any matter of access, either party may refer the dispute to the Authority for taking a decision.

(2) The parties shall, before referring any dispute under subsection (1), make an attempt to resolve the dispute between them through negotiations.

(3) If a dispute is referred to the Authority under subsection (1), the Authority may order for access to facilities to be provided on such terms and conditions as may be determined by the Authority.

(4) A person who contravenes or fails to comply with the order issued under subsection (3) shall be liable to a monetary penalty imposed in accordance with section 143.

Non-complaint access agreement

74. The Authority may, if satisfied that an access agreement or an amendment is not in compliance with the Act or the regulations made under this Act or terms and conditions of the licence, by order in writing, require the parties to amend the access agreement or the amendment thereto in the manner specified in the order.

PART IX - CONSTRUCTION WORK AND ACCESS TO LAND AND FACILITIES

Access to public land or public facility

75.(1) Subject to subsection (2), in connection with the provision of an electronic communications service or an electronic communications network service or broadcasting service, an operator may construct, erect, place, maintain, alter or remove electronic communications network facilities in, on, over, under, along or across any public land, building, road, watercourse, harbor, shore or sea bed to carry out works.

(2) An operator shall obtain necessary permission or approval of the relevant public authority, under any written law, prior to performing any work referred to in subsection (1).

(3) An operator, who requires access to public land or a public facility to provide an electronic communications service, an electronic communications network service or broadcasting service to the public or to another licensed operator, shall seek the prior consent of the public authority stating the nature and extent of the work to be done upon any public land or public facility.

(4) An operator shall not have any right under subsection (1) other than of a user, subject to subsection (2), of the soil of any public land, building, road, watercourse, harbour, shore or sea bed for the purposes of that subsection.

Access to private land or a private facility

76. An operator shall not access or use private land or a private facility to provide an electronic communications service or an electronic communications network service or broadcasting service without the prior consent in writing of the owner of the private land or private facility.

Public rights of way

77. An operator shall give access to other licensed operators who request access to public rights of way or statutory wayleaves that the operator owns or controls.

Trees obstructing electronic communications network or electronic communications network facility

78.(1) If in the opinion of an operator, any tree or vegetation obstructs or interferes with or is likely to obstruct or interfere with the working or maintenance of any electronic communications network or electronic communications network facility whether or not such tree or vegetation is found on public or private land or a public or private road, the operator shall give a notice in accordance with subsection (2).

(2) The operator shall give a notice referred to in subsection (1), to the owner of the land or the public authority having control of such land to cut down, trim or remove the tree or vegetation as specified in the notice.

(3) On receipt of a notice under subsection (2), the owner of the land or the public authority having control of such land, may cut down, trim or remove such tree or vegetation as specified in the notice at the expense of the operator subject to subsection (5).

(4) If the owner or public authority fails to cut down, trim or remove the tree or vegetation within a reasonable period, the operator at its own expense may cut down, trim or remove that tree or vegetation if such tree or vegetation actually interferes with or endangers electronic communications and broadcasting subject to subsection (5).

(5) Any person, in taking any action under this section, shall be responsible to obtain permission required under the law relating to the Town and Country Planning Act (*Cap 237*), the Breadfruit and Other Trees (Protection) Act (*Cap 18*) or any other written law regulating the felling of trees, cutting or removal of any tree or branch thereof or to any other law regulating the control and development of land.

Height or depth of electronic communications network or electronic communications network facility

79.(1) An operator shall install any aerial electronic communications networks or electronic communications network facilities along any public or private road, footpath or land at the height above the surface of the ground prescribed, if any, by the relevant public authority.

(2) The operators shall place its underground electronic communications networks or electronic communications network facilities along any public or private road, footpath or land at the depth below the surface of the ground prescribed, if any, by the relevant public authority.

PART X - TARIFFS

Power to regulate tariff

80.(1) The Authority shall regulate the tariff chargeable by operators for the provision of electronic communications service or broadcasting service to safeguard the rights of consumers and end users under this Act.

(2) This Part shall have effect without limiting the operation of the Fair Trading Commission Act (*Cap 267*), the Fair Competition Act (*Cap 266*), the Consumer Protection Act (*Cap 257*) and regulations made under those Acts.

General principles for tariff regulation

81.(1) An operator shall not alter, vary or charge or make any claim or demand in respect of any tariff without obtaining a written prior approval of the Authority, except as otherwise provided in this section.

(2) An operator who contravenes or fails to comply with subsection (1) shall be liable to a monetary penalty imposed in accordance with section 143.

(3) Subject to subsection (4), every operator is required to submit for the approval of the Authority, a plan of the tariff relating to a regulated service and the tariff relating to an unregulated service for every electronic communications service or broadcasting service, containing the information specified in subsection (4), before the proposed date of implementation of the tariff or public announcement of the tariff.

(4) The plan of tariff referred to in subsection (3), shall include the information relating to —

- (a) the description of the service;
- (b) the term during which the tariff is to apply;
- (c) the amount of the charges payable for each service including the amount of any surcharge that may be imposed as a result of non-payment of fees or charges;
- (d) the detailed justification for the tariff to be charged;
- (e) the current and proposed tariff or tariff schedules for the service;
- (f) the date at which the tariff change is proposed to become effective;
- (g) the terms and conditions on which the service is supplied; and
- (h) any other information as the Authority may require.

(5) Subsection (3) shall not apply to a bulk discount scheme, offered to a customer by an operator, if such a scheme is fully transparent and non-discriminatory.

(6) The Authority may require a bulk discount scheme to be modified or withdrawn if it is prejudicial to this Act.

(7) The Authority may, from time to time, issue guidelines on promotions and special offers.

(8) The rates, terms and conditions for electronic communications service or broadcasting service shall be just and reasonable, non-discriminatory and not anti-competitive.

(9) The Authority may reject a plan of tariff where the plan of tariff distorts competition or is anti-competitive.

(10) Every plan of tariff under this section shall be accompanied by such accounting and costing information as the Authority may require.

(11) No operator shall demand or receive from any person payment of any fee or charge for the supply of an electronic communications service or broadcasting service which —

- (a) is different from the fee or charge payable under the plan of tariff;
- (b) is not computed in accordance with the plan of tariff; or
- (c) is computed in accordance with an unapproved plan of tariff.

(12) An operator shall give reasonable advance notice to the customers before the proposed date of implementation of the approved plan of tariff.

(13) Every operator shall display the plan of tariff for every electronic communications service or broadcasting service, by —

- (a) publishing an electronic copy on its official website;
- (b) maintaining a paper copy available to the public at its main and registered business offices;
- (c) quoting the terms and conditions on which the service is supplied;
- (d) declaring any discounts to the standard published tariffs that may be given to any customer or end user and set out the criteria used to determine the customer's or end user's ability to qualify to receive the discount; and
- (e) publishing a notice setting out the tariffs, and the details of any discounts and qualification criteria for such discounts in two daily newspapers for 3 days.

(14) The Authority may issue such guidelines regulating the plan of tariff consistent with this Act, including the measures to control a plan of tariffs of a regulated service with costbased models, including benchmarking against comparable markets or a price cap method.

(15) This section shall not apply to any charges payable in respect of any access, interconnection, co-location and facility sharing arrangements between operators.

(16) The Authority shall, prior to a market analysis under section 40, regulate all tariffs until that market analysis is completed.

(17) Without prejudice to this Part, regulations may be made providing for any matter regulating the tariffs in relation to the whole or any part of any of the following wholesale services, namely —

- (a) the access to international gateway facilities;
- (b) the access to bandwidth capacity on international submarine cables;

- (c) the access to bandwidth capacity on international communications satellite links; and
- (d) the access to bandwidth capacity on local and international leased lines.

Designation of regulated services

82.(1) Where the Authority determines under section 42 that a services market is not effectively competitive and an electronic communications service or broadcasting service provided by an operator is not subject to a degree of competition sufficient to protect the interests of customers, the Authority shall, by notice in the *Gazette*, designate the electronic communications service or broadcasting service as a regulated service.

(2) Where the Authority designates an electronic communications service or a broadcasting service as a regulated service under subsection (1), the Authority shall, as soon as practicable, cause to be published the notice in two daily newspapers for 3 consecutive days.

Designation of unregulated services

83.(1) Where the Authority determines under section 42, that a services market is effectively competitive and an electronic communications service or a broadcasting service provided by an operator is subject to a degree of competition that is sufficient to protect the interests of customers, the Authority shall, by notice in the *Gazette*, designate the electronic communications service or broadcasting service as an unregulated service.

(2) Where the Authority designates an electronic communications service or a broadcasting service as an unregulated service, the Authority shall, as soon as practicable, cause to be published the notice at least in two daily newspapers for 3 consecutive days.

Application for approval of tariffs under regulated services

84.(1) Where an electronic communications service or broadcasting service is identified and designated as a regulated service under section 82, the operator shall submit to the Authority for approval, a plan of tariff,

containing the information specified under section 81(4) for the electronic communications service or broadcasting service which it intends to supply, including any modification thereof.

(2) The Authority shall, within a reasonable period, approve with or without modification, or reject, the plan of tariff for the electronic communications service or broadcasting service.

(3) Where the Authority approves a plan of tariff under subsection (2), the operator shall display the approved plan of tariff in accordance with section 81(13).

(4) Where the Authority rejects the plan of tariff under subsection (2), the decision and the reasons for that decision shall be communicated in writing to the operator.

Filing of tariffs under unregulated services

85.(1) Where an electronic communications service or broadcasting service is designated as an unregulated service under section 83, the operator shall submit to the Authority, a plan of tariff containing the information specified in section 81(4), for the electronic communications service or broadcasting service which it intends to supply.

(2) The plan of tariff submitted by an operator shall be deemed to have been approved by the Authority within 14 days from the date of submission of a plan under subsection (1) or from the date of submission of any additional information requested under section 81(4) (h), where the operator does not receive any communication or further communication from the Authority.

(3) Where the plan of tariff is deemed approved under subsection (2), the operator shall display the plan of tariff in accordance with section 81(13).

(4) Where the Authority rejects a plan of tariff, the decision and the reasons for that decision shall be communicated in writing to the operator.

Cost studies

86.(1) Subject to subsection (4), the Authority may require an operator of a designated service under section 83 to prepare, file or otherwise participate in a cost study of the electronic communications service or broadcasting service, if the Authority is satisfied that the cost study shall be an effective and necessary means of preventing anti-competitive conduct or for implementing any scheme for regulating tariff.

(2) The purpose of the cost study shall be to determine the costs to the operator of providing different types of electronic communications service or broadcasting service.

(3) Where the Authority requires an operator to prepare or file or otherwise participate in the development of a cost study —

- (a) the Authority shall specify by an order, the categories of service, form, approach, procedures and period of the cost study ; and
- (b) the operator shall file with the Authority a study of the operator's costs of providing the different categories of service.

(4) Where in the opinion of the Authority it is deemed appropriate in the particular circumstances, the Authority may order any operator to file or otherwise participate in the development of a cost study of the electronic communications service or broadcasting service under subsection (1).

Price cap regime

87.(1) The Authority may establish a price cap regime to promote efficiency and sustainable competition and maximise consumer benefits, as specified in this section, for setting, reviewing and approving prices for regulated services of an operator.

(2) The Authority may issue guidelines for the development of a proposal for a method of a price cap regime.

(3) In establishing a price cap regime for regulated services, the Authority may —

- (a) direct an operator of regulated services to propose or otherwise participate in the development of a method of a price cap regime;
- (b) consult other operators on the method of a price cap regime proposed by the operator;
- (c) approve or reject the method of a price cap regime proposed by the operator; or
- (d) amend the method of a price cap regime proposed by the operator, where the provisions of the amendment is agreed by the operator.

(4) Where the Authority requires an operator of a regulated service to propose a method of a price cap regime —

- (a) the operator shall file with the Authority a proposal for implementation of a method of a price cap regime of its tariffs; and
- (b) the proposal shall identify the proposed starting tariffs for relevant services, proposed groupings, the application of price cap formulas and the specific proposed price cap formulas for a price cap regime.

(5) The Authority may propose a method of a price cap regime, where —

- (a) the operator of a regulated service fails to propose a method of a price cap regime within a reasonable period; or
- (b) the Authority rejects the method of a price cap regime proposed by the operator.

(6) The Authority shall give reasons in writing when rejecting the method of a price cap regime proposed by the operator.

(7) The Authority shall, prior to approving a method of a price cap regime, inform the operator in writing of the decision to impose a method of a price cap regime.

(8) Where the Authority approves a method of a price cap regime, it shall come into effect on the date specified in the method of the price cap regime, or such other date as the operator may agree, subject to compliance with such conditions as may be specified in the method of the price cap regime.

(9) The operator shall comply with the reporting, monitoring and other requirements specified in an approved method of price cap regime.

PART XI PROCESSING OF PERSONAL DATA AND PROTECTION OF PRIVACY

Principles relating to process of personal data of end users and subscribers

88.(1) Subject to the Data Protection Act (Cap 57), an operator may process the personal data of end users and subscribers —

- (a) to the extent required and necessary for identification for the purpose of drawing up contracts for electronic communications services or broadcasting services;
- (b) to define or amend the contents of contracts for electronic communications services or broadcasting services, to monitor contractual performance, billing charges and fees as contracted and for enforcing any related claims;
- (c) in connection with billing charges for electronic communications services or broadcasting services, to the extent required for calculating the billing charges, such as, the data relating to the date, the duration and place of the service to which it pertains; and

(d) which is technically essential for the provision of services.

(2) An operator shall use in its operations for providing electronic communications services or broadcasting services, only the type of electronic communications equipment which has sufficient facilities to ensure that personal data is processed only where it is necessary for the provision of services.

(3) When it comes to the knowledge of an operator that any personal data is used or processed for any purpose, other than specified in subsections (1) and (2), the operator shall delete such data forthwith.

(4) End users and subscribers have the right to access their personal data that an operator processes and the reasons for the processing, at any time, before or during the use of the electronic communications services or broadcasting services.

Measures to ensure privacy of communications

89.(1) An operator shall take appropriate technical and organisational measures, jointly with other operators if necessary, in order to block any unauthorised attempt to intercept, store or monitor communications transmitted and any related traffic data and to prevent any unauthorised or accidental access to communications transmitted and any related traffic data.

(2) An operator shall take appropriate technical and organisational measures in its operations for providing electronic communications services or broadcasting services, and use only the type of electronic communications equipment which has sufficient facilities and reasonable costs as compared to best practices, to afford a level of security appropriate to offer a reasonable level of privacy of communications.

(3) In the provision of services, an operator is authorised to obtain and store communications transmitted on its network only to the extent necessary for technical reasons.

(4) Information obtained through electronic communications networks may be stored on electronic communications terminal equipment, or accessed, only upon an end user's or subscriber's prior consent granted where

the end user's or subscriber's is in possession of clear and comprehensive information about the implications of this storage or access.

Interception of communications

90.(1) The Authority, when exercising powers conferred relating to radio frequency monitoring, may monitor, intercept or store communications.

- (2) When an end user or subscriber alleges receiving a threat of —
- (a) the use of violence against the end user or subscriber or any other person; or
 - (b) extortion of the end user or subscriber or any other person,

the end user or the subscriber may authorise, in writing, the relevant investigating authority or an operator to intercept telephone conversations, other electronic communications, traffic data and location data, electronic mail messages and any other form of communications to investigate and identify the person involved in such communications within the period mentioned in the authorisation by the end user or subscriber.

(3) An operator shall take measures and develop the capability as determined by the Authority to allow any interception of electronic communications for the purposes of this section.

Security of electronic communications services

91.(1) An operator shall take the technical and organisational measures, jointly with other operators, necessary for ensuring the safety and security of services.

(2) In case of a breach of the security of services, the operator shall inform the subscriber by giving a written notice about the breach of security and the risk involved and the measures the subscriber may take to enhance the protection and the estimated costs involved.

- (3) The notice under subsection (2) shall also indicate any software

and encryption technology available for use by the subscriber to safeguard the security of communications.

(4) The operator shall provide the information to the subscriber free of charge.

(5) The compliance with this section by the operator, does not discharge the operator from the responsibility of ensuring the security of the service.

(6) Where traffic or location data are required to be forwarded for the purpose of providing a value added service, the operator shall inform the end user about the type of data, the purpose and duration of data processing.

(7) The operator may process traffic data or location data under subsection (6) —

- (a) after obtaining the prior written consent of the end user; and
- (b) to the extent and for the duration it is necessary for providing value added services.

(8) The end user shall have the right to withdraw consent at any time under this section.

Storage of traffic data

92.(1) Traffic data relating to subscribers and end users processed and stored by the operator shall be erased or made anonymous when it is no longer required for the purpose of the transmission of a communication.

(2) The Authority shall by order specify end users' data which operators shall be authorised to process and the period for which such data may be kept.

(3) The operator may use the type of data referred to in subsection (2) for marketing purposes subject to the prior consent of the end user.

(4) The data referred to in subsection (2), to the extent required for the purpose of data processing, may be transferred to —

- (a) a person engaged in the billing operation, management of claims or sales, or client information on behalf of the operator;
- (b) a body authorised under a written law to settle disputes arising in connection with billing or sales;
- (c) national security agencies, bodies, investigating authorities authorised under a written law and a competent court of law for purposes of protection of national security, national defence or public safety or for the investigation or prosecution of a criminal act or an unauthorised use of the electronic communications services and broadcasting services; or
- (d) another operator referred to in section 93(1) subject to the grounds for lawful processing or forwarding of data.

(5) A person receiving any data transferred in accordance with subsection (4), shall be liable to maintain confidentiality and security of the data.

(6) An operator shall retain the data referred to in subsection (4) for at least 3 years or for such period as may be decided by the Authority, for the purposes of compliance with the disclosure requirement in subsection (4).

Data for the identification of subscribers

93.(1) In order to prevent the evasion of the obligation to pay charges or other obligation arising from a contract, an operator has the right to transfer to, or receive from, other operator, any data for the identification of a subscriber, from the data legally processed in accordance with this Act for the purposes specified in subsection (3), or establish a joint data bank with corresponding data content in order to refuse to contract with a subscriber.

(2) The operator may forward the data for the purposes specified in subsection (3) and shall promptly inform the subscriber about the data being transferred.

(3) The subscriber data may be forwarded or recorded in the data bank if —

- (a) a contract was terminated by the operator due to overdue charges, or because the availability of the service for use by a subscriber was fully or partially suspended;
- (b) subscriber's place of abode is unknown; or
- (c) an operator was misled or an attempt was made to mislead an operator by an applicant to be a subscriber or a subscriber with the intention of causing damage to the operator.

(4) Where the grounds for lawful processing or forwarding of data no longer exist, the operator shall take measures to have a subscriber's data erased from the joint data bank, and shall notify all previously notified operators and the subscriber of the erasure.

(5) The data included in the data bank may be requested by —

- (a) the operator only for the purpose specified in subsection (3); or
- (b) any subscriber so as to find out the data contained in the data bank pertaining to that subscriber.

(6) The operators concerned shall agree in writing as to the creation of a joint data bank, the commissioning of a data manager or data processor of the joint data bank, and the rights and obligations thereof.

Information to be provided to subscribers

94.(1) The applicant shall, prior to signing a contract, be expressly and clearly informed of —

- (a) the processing of end user data under this Part;
- (b) instances where data used may be transferred, and the operators to which such data transfer may take place;
- (c) the decisions that operators may make on the basis of that data;
- (d) the legal remedies to which the applicant may have recourse; and
- (e) the addresses of the data manager and data processor and of the place of data processing and management.

(2) The subscriber shall be informed without delay of any changes in the conditions pertaining to information mentioned in subsection (1) (b), (c), (d) and (e).

Maintenance of subscriber list

95.(1) An operator shall maintain lists for keeping data necessary for the identification of subscribers and services used and data that can be processed by the operator under this Act or any other written law.

(2) An operator may use or provide to a third party the data included in its subscriber directory and address register for publication of telephone directory or to provide telephone directory assistance service, from the data they contain.

(3) Subject to this section, no data exceeding the data contained in the subscriber directory or address register may be disclosed, unless the subscriber has consented to such disclosure.

(4) Security of any data disclosed from the subscriber directory or address register shall be maintained, and any misuse, in particular any unauthorised downloading of such data, shall be prevented by technical solutions.

(5) An operator shall not establish any interrelation between the data of electronic subscriber directories or address registers and other data or directories unless it is necessary for operational purposes on the part of the operator.

Use of communications for direct marketing

96.(1) Applying an automated calling system using telephone or any other means of electronic communications which is free of any human intervention for the purposes of direct marketing and information in respect of a subscriber shall be subject to the prior consent of the subscriber.

(2) No unsolicited communication serving the purposes of direct marketing or information shall be forwarded to a subscriber, through telephonic or other means of electronic communications, where a subscriber has not consented to receive such communication.

(3) A communication for direct marketing purposes shall not be forwarded, where the sender cannot be identified clearly, whether or not a subscriber has expressed consent to such communication.

PART XII - UNIVERSAL ACCESS AND UNIVERSAL SERVICE PROVISION

Universal access and universal service policy

97.(1) The Minister shall take measures to develop a universal access and universal service policy to promote availability and usage of electronic communications services or broadcasting services or electronic communications network services in underserved areas or for underserved groups within the community taking into account the needs of the general public, affordability of the service and advances in technology.

(2) Without prejudice to subsection (1), the Minister —

- (a) may conduct periodic public consultations with stakeholders to identify needs and accordingly modify the universal access and universal service policy;

- (b) shall ensure the effective implementation of the universal access and universal service policy, in a transparent, non-discriminatory and proportionate manner; and
- (c) shall, while protecting the public interest, keep market distortion to a minimum, particularly, where the conditions of the universal access and universal service policy differ from commercial operation.

(3) The Minister shall, in developing a universal access and universal service policy under subsection (1), have regards to —

- (a) the competition;
- (b) the availability of electronic communications services or broadcasting services; and
- (c) the commercial viability of installing electronic communications network facilities or providing electronic communications services or broadcasting services,

in particular areas or places.

(4) Every operator shall provide universal access and universal service in accordance with the universal access and universal service policy under this Part.

Designating universal access and universal service operators

98. The Authority may designate one or more operators as universal access and universal service operator, in such manner as may be prescribed by regulations.

Universal access and universal service fund

99.(1) For the purposes of this Part, there shall be a fund to be known as the Universal Access and Universal Service Fund, in this Part referred to as “the Fund”, which shall be managed by the Authority as prescribed by regulations.

(2) The Fund shall consist of contributions received from operators or other persons.

(3) The Fund shall be utilised for compensating an operator required to provide universal access and universal service or to promote universal access and universal service.

(4) The amount of compensation payable under subsection (3) shall be determined in accordance with the regulations, taking into account the actual cost incurred in providing the universal access and universal service.

(5) The accounts of the Fund shall be audited by the Auditor General in accordance with article 158 of the Constitution.

Universal access and universal service contributions

100.(1) A contribution to the Fund shall be made by an operator or other person in such manner as may be prescribed by regulations.

(2) Subject to subsection (3), every operator shall, in addition to the annual licence fee payable under this Act, pay into the Fund, such annual contributions as may be prescribed by regulations.

(3) The Authority may, by order in writing, exempt any operator from the payment of contributions referred to in subsection (2) if its annual gross revenue is below a designated threshold prescribed by regulations.

(4) Where an operator fails to make a contribution to the Fund within the prescribed period, the operator shall be liable to pay a surcharge of 1% for each month or part thereof the contributions remains unpaid.

(5) If a licensee fails to pay the contributions specified in subsection (2), the licence shall be liable to be suspended or revoked.

(6) A licensee who fails to pay the contribution specified under subsection (2) shall be liable to a monetary penalty in accordance with section 143.

Universal access and universal obligations

101.(1) An operator may fulfill its obligation of universal access and universal service by —

- (a) making provision for universal access and universal service in accordance with the universal access and universal service policy;
- (b) making provision of electronic communications services or electronic communications network services at lower than normal rates; or
- (c) any other form which the Minister may prescribe by regulations.

(2) Without prejudice to subsection (1), the Authority, may set performance objectives of obligations for different universal access and universal services.

(3) A universal access and universal service obligation of an operator shall not be regarded as an anti-competitive practice under Part V.

(4) An operator shall not be liable for breach of the universal access and universal service obligation, if the service is prevented by force majeure, public emergency, national security, or natural disaster.

Reporting on universal access and universal service obligations

102.(1) The operator shall furnish to the Authority an annual report containing the information on the provision of the universal access and universal service, its performance and the quality of service standards, and the report shall be made available to the subscribers in such manner as may be determined by the Authority.

(2) The Minister may, by regulations provide for an independent audit of the performance of universal access and universal services by operators and on the expenses of the operator, to ensure the accuracy and comparability of information furnished by the operator.

PART XIII RADIO FREQUENCY SPECTRUM MANAGEMENT

Management and control of radio frequency spectrum

103.(1) The Authority shall be responsible for —

- (a) management and control of use of the radio frequency spectrum, including matters relating to the geostationary satellite orbit and in that regard grant licences for, and regulate the use of, the radio frequency spectrum in an efficient and rational manner;
- (b) monitoring the use of the radio frequency spectrum for purposes of eliminating harmful interference, and for radio frequency planning, allocation and assignment; and
- (c) liaison with the International Telecommunication Union on all matters referred to in paragraph (a) and paragraph (b).

(2) In regulating the radio frequency spectrum, the Authority shall take into consideration —

- (a) the demand for use of radio frequency spectrum;
- (b) the demand that is likely to arise in future for the use of the radio frequency spectrum; and
- (c) the international, regional and bilateral agreements to which Seychelles is a party.

(3) When assigning the radio frequency spectrum, the Authority shall give due regard to the requirements of the Defence Forces.

(4) In performing any function under subsection (1), the Authority shall have regard, in particular, to the promotion of —

- (a) the economic and other benefits that may arise from the use of the radio frequency spectrum;

- (b) the development of innovative services; and
 - (c) the competition in the provision of electronic communications services and broadcasting services.
- (5) For the purposes of this Part, regulations may be made providing for —
- (a) any aspect of radio frequency planning, assigning and allocating;
 - (b) any aspect of the national radio frequency band plan;
 - (c) the eligibility criteria of persons who may be assigned rights to use the radio spectrum;
 - (d) setting the detail process and procedures for the application, rejection, re-submission, grant, renewal, transfer, surrender, amendment, variance, modification, withdrawal, suspension, revocation and resumption of radio frequency spectrum licences;
 - (e) application fee and payment of licence fees;
 - (f) duration of the licence;
 - (g) terms and conditions of radio spectrum licences;
 - (h) monitoring of radio frequency spectrum;
 - (i) conducting of examinations for persons who wish to operate radio communication equipment, including the issuing, revocation or suspension of certificates of competency;
 - (j) improper communications and privacy of radio communications;
 - (k) aspects of radiation of electromagnetic energy;

- (l) procedures for settling harmful interference; and
- (m) the manner of monitoring compliance with, or enforcing or giving directions in relation to, keeping of records or compliance with any international standards.

National radio frequency band plan

104.(1) Subject to subsection (2), the Authority shall formulate, review and publish the national radio frequency band plan from time to time.

(2) The Authority shall, in formulating the national radio frequency band plan, consult the different users of the radio frequency spectrum in Seychelles including the Defence Forces, law enforcement and security agencies, and maritime and civil aviation authorities.

(3) The national radio frequency band plan is the allocation of radio frequency bands of the radio frequency spectrum for different radio communication services.

(4) The Authority, in formulating the national radio frequency band plan, shall take into account —

- (a) the impact of the national radio frequency band plan on existing radio frequency spectrum users;
- (b) future usage of the radio frequency spectrum; and
- (c) any applicable international standards, conventions and agreements including but not limited to the ITU Constitution and ITU Convention and the Radio Regulations.

(5) The Authority may, where the national radio frequency band plan identifies a radio frequency band that is occupied and requires the migration of users of radio frequency spectrum within that band to another radio frequency band, migrate the users to such other radio frequency band in accordance with the national radio frequency band plan.

(6) The Authority shall make the national radio frequency band plan available to the members of the general public.

Assignment of radio frequencies

105.(1) The Authority shall assign radio frequencies on an exclusive or shared basis in accordance with the national radio frequency band plan.

(2) Any assignment of radio frequencies to a licensee shall confer, on the licensee —

- (a) a right to use such radio frequencies; and
- (b) no property right in such radio frequencies;

(3) A licensee to whom radio frequency spectrum is assigned shall not transfer the licensee's rights to use such radio frequency spectrum to any third party, without the written authorisation from the Authority.

(4) The procedure for assigning radio frequency spectrum shall be determined by the Authority which may include one or a combination of the following methods —

- (a) by auction;
- (b) by tender;
- (c) at a fixed price; or
- (d) based on stated criteria.

Requirement for a radio frequency spectrum licence

106.(1) Subject to section 38, a person shall not —

- (a) use the radio frequency spectrum to operate an electronic communications network;
- (b) install or operate a radio communication equipment or station at one or more specified radio frequencies or radio frequency bands, including on board any ship or aircraft registered in Seychelles; or

- (c) possess or have under the person's control, a radio communication equipment or station,

except under, and in accordance with, a radio frequency spectrum licence granted under this Part.

(2) A person who intends to obtain a radio frequency spectrum licence under subsection (1) and fulfils the eligibility requirements prescribed by regulations and is capable of meeting the responsibilities and obligations of the radio frequency spectrum licence shall make an application to the Authority under section 24.

Vacation of radio frequency spectrum

107.(1) The Authority may, on its own motion or on the request of any person, by order, direct any person assigned with radio frequency spectrum, on any ground under subsection (2), to vacate any radio frequency spectrum, and may assign such spectrum to another person.

- (2) The grounds referred to in subsection (1) are —
 - (a) the vacation or reassignment of radio frequency spectrum is necessary to comply with or conform to the laws of Seychelles or international treaties, commitments, recommendations or standards legally binding Seychelles;
 - (b) the vacation or reassignment of radio frequency spectrum is consistent with the national radio frequency band plan;
 - (c) it is necessary or expedient to promote the public benefit;
 - (d) the person assigned with the radio frequency spectrum has failed to comply with this Act or the regulations made under this Act or the terms and conditions of the licence or a determination, order, or direction under this Act;
 - (e) the licensee has failed to pay any prescribed fees required by or under this Act; or

(f) the radio frequency spectrum licence is not renewed.

(3) The Authority shall allow any person required to vacate any radio spectrum assigned to that person a reasonable period to vacate such spectrum taking into account existing usage and technical requirements.

(4) No compensation shall be paid to a person for the vacation of radio frequency spectrum assigned under subsection (1).

Radio frequency spectrum sharing

108.(1) Subject to such conditions as the Authority may consider appropriate, a radio frequency spectrum licensee may authorise another person to use the assigned radio spectrum, in accordance with the terms and conditions of the licence, for the purpose of operating a radio communication station or radio communication equipment or electronic communications network facility subject to that person obtaining an appropriate radio frequency spectrum licence.

(2) A person authorised by a radio frequency spectrum licence to use the assigned radio spectrum under subsection (1) shall comply with the Act, the regulations made under this Act and the terms and conditions of the licence.

Radio frequency spectrum trading

109.(1) Subject to such condition as the Authority may consider appropriate, a radio frequency spectrum licensee may trade or otherwise deal with, the whole or any parts of the rights and obligations granted under the radio frequency spectrum licence.

(2) No trading or otherwise dealing, with the whole or any part of the rights and obligations granted under a radio frequency spectrum licence under subsection (1) shall take effect until the Authority gives approval in writing.

(3) The parties to a trade or other dealing, with the whole or any part of the rights and obligations granted under a radio frequency spectrum licence under subsection (1), shall give to the Authority such information on the trade or dealing as the Authority requires for the purpose of giving approval under subsection (2).

Prohibition of harmful interference

110.(1) No person shall use any customer premises equipment, electronic communications network or radio communication equipment to willfully and unlawfully cause harmful interference to radio communication service.

(2) Where the Authority is of the opinion that the use of any customer premises equipment, electronic communications network or radio communication equipment is likely to cause or has caused or is causing harmful interference to radio communication service, the Authority may —

- (a) serve notice on the person, in possession of the customer premises equipment, electronic communications network or radio communication equipment, requiring the person to remedy the problem, at the person's own cost, within 7 days from the date of issue of the written notice;
- (b) impose such limits for use of the customer premises equipment, electronic communications network or radio communication equipment, as the Authority may consider appropriate; or
- (c) require, by order, the person to cease the action or activity specified in the order forthwith, or at such time specified in the order, and subject to the conditions specified in the order.

(3) A person who contravenes subsection (1) or fails to comply with subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding SCR700,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment and shall also be liable to an additional fine of SCR10,000 for every day or part thereof during which the contravention or failure to comply continues.

(4) Where any person is convicted of an offence for contravening or failing to comply with this section, the court, where it is proved that the contravention or non-compliance includes the illegal operation or possession of any equipment, may order the confiscation of the equipment and accessories causing the interference.

(5) Where it is proved that harmful interference to radio communication service has been caused, whether willfully or not, the Court may direct that the person to bear the costs of any technical investigation made in order to establish the existence and cause of such harmful interference.

Radio frequency monitoring

111. The Authority may operate radio frequency monitoring stations to —

- (a) ensure that the national radio frequency usage conforms to the terms and conditions laid down in the Licence and Radio Regulations;
- (b) survey the radio spectrum for application of new radio frequency assignments and to identify infringements in order to take necessary steps;
- (c) monitor the use of the radio frequency spectrum and participate in any regional monitoring; and
- (d) establish the radio frequency spectrum occupancy, identification of radio emissions and resolution of interference problems.

Forfeiture of radio frequency spectrum assignments

112.(1) The Authority may cause forfeiture of the radio frequency spectrum assignment, if the licensee fails to —

- (a) utilise the assigned radio frequency spectrum, within such period as the Authority may specify, in accordance with radio frequency spectrum licence; or
- (b) renew the radio frequency spectrum licence when it is due,

and on such forfeiture, the radio frequency spectrum assignment shall become vacant and available for re-assignment.

(2) No compensation shall be paid to a licensee for the forfeiture of the radio frequency spectrum assignment under subsection (1).

Control of possession of radio communication equipment

113.(1) Subject to section 38, a person shall not possess any radio communication equipment, except with a current radio frequency spectrum licence authorising such possession.

(2) Where a person is found in possession of any radio communication equipment in contravention of subsection (1), the Authority or an officer authorised by it may, without prejudice to section 11 —

- (a) seal or alter such radio communication equipment or any part thereof in order to —
 - (i) prevent the use of that radio communication equipment for the purpose of transmission or reception;
 - (ii) grant a permit for such period, the Authority considers appropriate, authorising the possession of that radio communication equipment on condition that it is not, during the period, used for the purpose considered to be an infringement; and
- (b) seize such radio communication equipment, whether or not it is sealed or altered under paragraph (a).

(3) Any radio communication equipment seized under subsection (2) shall be kept in possession of the Authority at the cost, if any, of the person from whom it was seized until its possession is otherwise directed by the court under this Act.

(4) The manner for seizure, possession and disposal of radio communication equipment under this section shall be such as may be prescribed by regulations.

PART XIV - MANAGEMENT OF NUMBERS, DOMAIN NAMES AND ELECTRONIC ADDRESSES

Electronic communications numbering and electronic addresses, etc.

114. The Authority shall regulate any matter related to electronic communications numbering and electronic addresses, including applicable fees, and ensure efficient use by —

- (a) overseeing the overall management and administration of electronic communications numbering resources;
- (b) maintaining a national numbering plan;
- (c) performing an oversight role of the management of the country code top level domain for Seychelles, (.sc);
- (d) maintaining an electronic address register of electronic numbers assigned to operators; and
- (e) issuing an authorisation or permit to delegate the responsibility to manage, control or maintain names and electronic addresses to an authorised person.

National numbering plan

115. (1) The Authority shall formulate, review and publish the national numbering plan from time to time.

- (2) The national numbering plan shall include —
 - (a) the use of different numbers for different kinds of services;
 - (b) the assignment of numbers;
 - (c) the use of assigned numbers; and
 - (d) numbers, identifiers, codes, prefixes and special numbers, such as emergency numbers.

(3) The national numbering plan shall be updated from time to time as the Authority considers appropriate.

(4) The Authority shall make the national numbering plan available to the members of the public.

Assignment of numbers

116. (1) The Authority shall assign numbers to the operators of electronic communications services on a non-discriminatory and equitable basis.

(2) Any numbers shall not be assigned unless they are consistent with the national numbering plan developed under this Part.

(3) The Authority may assign particular blocks or series of numbers, having regard to the role that numbers can play in conveying useful information to customers, including information about the type of service being used.

(4) The assignment of numbers to an operator under this section confers on the operator —

(a) the right to use the numbers; and

(b) no property right in the numbers.

(5) The conditions on the right to use numbering resources, including the payment of fees, and to ensure effective management of all numbering resources shall be such as may be prescribed by regulations.

Revocation of the right to use of numbers

117.(1) The Authority may, by order, revoke the right to use a numbering resource if —

(a) the holder of the right to use the numbering resource fails to pay the applicable fee;

- (b) the person assigned the relevant numbering resource fails to comply with an administrative determination, or any provision of this Act or regulations made under this Act or the terms and conditions of the licence; or
- (c) the numbering resource is not taken into use within a reasonable period after assignment or its use has been discontinued.

(2) The Authority shall, before revoking the right to use a numbering resource under this section, give the holder of the right to use the numbering resource a written notice giving the holder 30 days to respond in writing to the notice demonstrating that the holder is utilising the numbering resource in compliance with this Act, the regulations made under this Act and the terms and conditions of use of the numbering resource.

(3) The Authority may, after taking into consideration any response received under subsection (2), revoke the right to use the numbering resource or decide otherwise and notify the holder of the right to use the numbering resource of the Authority decision and the reasons for that decision.

Access to national emergency number

118.(1) An operator of an electronic communications network or service shall ensure that end users are able to access the national emergency numbers free of charge.

(2) The Authority may, from time to time, issue guidelines for the purposes of subsection (1).

Number portability

119.(1) Every subscriber of a electronic communications service shall have right to number portability of his or her mobile number and fixed number in accordance with such scheme as may prescribed by regulations.

(2) Every operator shall inform the subscriber of his or her right to number portability and implement the scheme of number portability of mobile

number and fixed number in an efficient manner in accordance with the scheme made under subsection (1).

(3) Any person who contravenes or fails to implement scheme of number portability in accordance with the regulations made under subsection (1) shall be liable to a monetary penalty imposed in accordance with section 143.

Information of any changes in numbering

120. An operator shall, in an efficient manner and not less than 6 months before any change to an end user's telephone number, provide information on changes in numbering affecting the electronic communications network or service, to an end user.

Prohibition to transfer numbers

121. A person to whom a number is assigned shall not transfer the person's rights to use that number to any third party, whether for remuneration or otherwise.

Call-by-call carrier selection and carrier pre-selection

122.(1) The Authority may, after consultation with the operators and other interested parties, issue an order —

- (a) defining the electronic communications services subject to call-by-call carrier selection and carrier pre-selection; and
- (b) establishing a framework in which subscribers to an electronic communications service may access the electronic communications services of another operator.

(2) The operator shall implement, operate and maintain the necessary electronic communications network facilities to successfully implement call-by-call carrier selection and carrier pre-selection —

- (a) in an efficient manner;

- (b) without undue delay; and
- (c) without discrimination.

(3) In considering whether to implement call-by-call carrier selection and carrier pre-selection, the Authority shall have regard to the costs of such capabilities and the availability of technology which permits the intended capabilities on a cost-effective basis.

Telephone directories for information of the use of numbers

123.(1) The operator shall, publish and supply a telephone directory, within the period specified by the Authority, in printed form, free of charge, capable of being used in connection with the use of an electronic communications service for the convenience of subscribers.

(2) For the purpose of supplying a telephone directory pursuant to subsection (1), the operator shall maintain its own directory databases in which all subscriber information shall be stored and secured.

(3) The operator shall, co-ordinate among other operators and exchange directory information on a shared and non-discriminatory basis.

(4) Every operator who operates an electronic communications service shall furnish directory information in respect of its subscribers to the Authority, or to such other person, and in such manner as the Authority may direct.

Use of databases

124.(1) The Authority may issue guidelines on the use of databases to be utilised in connection with electronic communications.

(2) The Authority may nominate an independent organisation based on transparent procedures for the administration of such databases.

Electronic addressing

125. The Minister may make regulations in relation to electronic

addressing of electronic communications services and related services, including the assignment and use of electronic addresses.

Administration of domain names

126.(1) The Authority may regulate the registration, administration and management of domain names in Seychelles.

(2) The Authority may authorise and regulate the registration, administration and management of “.sc” domain names.

(3) The Authority may, on an application in the form and manner as may be prescribed by regulations, authorise a person to register, administer and manage the “.sc” country code domain, subject to such conditions as may be prescribed by regulations.

(4) The Authority or any authorised person under subsection (3) —

- (a) may make guidelines and procedures for the registration and allocation of domain names under their responsibility, including matters relating to application, transfer, and complaint and dispute resolution;
- (b) shall ensure that the guidelines and procedures are transparent and non-discriminatory; and
- (c) may charge reasonable fees to recover the costs for provision of services.

(5) The Authority shall monitor compliance by an authorised person under subsection (3) with the provisions of this section.

PART XV - TECHNICAL STANDARDS

Technical standards

127.(1) The Minister shall prescribe by regulations, the technical standards for the performance and operation of customer premises equipment, broadcasting equipment, electronic communications network and radio communication equipment.

- (2) A technical standard referred to in subsection (1) shall assist in —
- (a) protecting the integrity of the electronic communications network;
 - (b) ensuring the proper functioning of connected customer premises equipment, broadcasting equipment or radio communication equipment;
 - (c) ensuring interoperability, interconnectivity and harmonisation; and
 - (d) avoiding harmful interference to and from radio communication and non-radio communication devices.
- (3) The technical standards under subsection (1) may include —
- (a) the provisions relating to customer premises equipment, radio communication equipment, broadcasting equipment, electronic communications network or to any specific network to verify that such equipment or network complies with relevant technical standards;
 - (b) the prohibition of sale, supply or use of any customer premises equipment, radio communication equipment, broadcasting equipment or electronic communications network which does not comply with the requirements of any such standard or specifications;
 - (c) certain types of customer premises equipment or radio communication equipment or broadcasting equipment to be attached to an electronic communications network to be used to provide electronic communications services or broadcasting services to the general public, which require approval for such attachment;
 - (d) the type approval criteria for certification of customer premises equipment or radio communication equipment or

broadcasting equipment for use in connection with an electronic communications service or broadcasting service;

- (e) adoption of global applicable standards or recommendations of foreign certifying agencies which are internationally recognised and registered for the purposes of certifying compliance with codes or standards under this section;
- (f) maintenance of a register of certified or approved types of customer premises equipment, broadcasting equipment and radio communication equipment, criteria for certification and the technical standards; and
- (g) determination of fees for the administrative and operational expenses incurred in processing the requests for type approval of customer premises equipment, broadcasting equipment and radio communication equipment.

PART XVI - BROADCASTING SERVICES

Functions of Authority in relation to broadcasting services

- 128.** The Authority shall, in relation to broadcasting services —
- (a) promote and facilitate the development, in keeping with the public interest, of a diverse range of broadcasting services;
 - (b) facilitate and encourage the development of programmes;
 - (c) promote the observance at all times, of public interest obligations in all broadcasting services;
 - (d) promote diversity and plurality of views for a competitive market place of ideas;
 - (e) ensure the provision by broadcasters of appropriate internal mechanisms for handling complaints in relation to broadcasting services;

- (f) prohibit a broadcasting service or broadcasting service operator from broadcasting any unlawful content or any matter which prejudices the public interest or order, national harmony or offends against good taste or decency; and
- (g) carry out such other functions as are necessary or expedient for the discharge of all or any of the functions conferred on the Authority under this Act.

Requirement for a broadcasting service licence

129.(1) A person shall not, except under a broadcasting service licence under this Act —

- (a) broadcast or otherwise provide or offer a broadcasting service; or
- (b) distribute, deliver or enable the delivery of any foreign broadcasting service transmitted from outside Seychelles, which is capable of reception in Seychelles, to another person in Seychelles for whom it is intended.

(2) Any person who provides or promotes or supplies or supports or offers or delivers or enables the delivery of any broadcasting service in Seychelles or who receives payment as consideration for access to such broadcasting service is deemed to be providing or offering the broadcasting service.

(3) Where a radio frequency spectrum licence is necessary for or in relation to providing a broadcasting service, the person shall not provide the broadcasting service without obtaining a radio frequency spectrum licence.

(4) Regulations may be made providing for any matter with respect to broadcasting services, which may include —

- (a) the classification and categories of licences;

- (b) the application processing fee and licence fees to be paid for different categories of licences;
- (c) duration of the licence for each category of licence;
- (d) the eligibility criteria for the grant of a licence in each category of licence;
- (e) the obligations of the broadcasting service operators;
- (f) the process and procedures for the application, grant, rejection, re-submission, renewal, transfer, surrender, amendment, variance, modification, withdrawal, suspension and revocation of licences;
- (g) terms and conditions of the broadcasting service licence for each category under paragraph (a);
- (h) the mandate of content and its carriage, in keeping with public interest obligations, of broadcasting services;
- (i) the extent to which broadcasting service operators are required to fulfill obligations on commercially negotiable terms; and
- (j) publication of tariff and standard contract terms relating to broadcasting services.

Prohibition on granting of broadcasting service licence

130. A person shall be eligible for a licence to provide or offer a broadcasting service, if the person is a body corporate, incorporated or established by or under a written law of Seychelles, and shall not be granted if the person —

- (a) already holds a licence or controls or is controlled by, directly or indirectly, a body corporate which holds a licence;

- (b) is a religious organisation or a body corporate which is affiliated to a religious organisation;
- (c) is a political party or a body corporate which is affiliated to a political party; or
- (d) has been adjudged bankrupt or declared insolvent or has been convicted of sedition or any offence involving fraud or dishonesty.

Compliance by broadcasting service operators

131.(1) Every broadcasting service operator shall comply with the provisions of the Seychelles Media Commission Act (*Cap 318*) and the regulations made and orders issued under the Act.

(2) The Authority shall monitor compliance with the terms and conditions of broadcasting service licences, and with other material provisions of this Act relevant to broadcasting services.

(3) Where it comes to the knowledge of the Authority that a broadcasting service operator has failed to comply with the provisions of this Act, regulations made under this Act or terms and conditions of the licence, the Authority shall notify the broadcasting service operator in writing.

(4) If, after hearing any representations made by the broadcasting service operator notified under subsection (3), the Authority finds that the operator failed to comply with the provisions of this Act, regulations made under this Act or terms and conditions of the licence, the Authority shall make the findings publicly available and, after taking into account the nature, gravity and consequences of the non-compliance, the Authority may make one or more of the following orders —

- (a) requiring the broadcasting service operator to broadcast —
 - (i) a correction; or
 - (ii) an alternative version; or
 - (iii) a balancing opinion;

- (b) directing the broadcasting service operator to desist from such non-compliance; or
- (c) directing the broadcasting service operator to take appropriate remedial steps.

(5) A broadcasting service operator who contravenes or fails to comply with an order made under this section shall be liable to a monetary penalty imposed in accordance with section 143.

Code of conduct for broadcasting service operators

132. Every broadcasting service operator shall comply with the Code of Conduct prescribed by the Seychelles Media Commission.

Programme code for broadcasting service operators

133. Every broadcasting service operator shall establish its own programme code for dealing with practices relating to the standards of broadcast programmes and shall submit such a code to the Seychelles Media Commission for approval.

Requirement for complaints handling procedure

134.(1) Every broadcasting service operator shall establish its own complaint handling procedure for dealing with complaints from consumers of its services which ensures that —

- (a) every such complaint is attended to within a reasonable period by the broadcasting service operator; and
- (b) the complainant is made aware of his or her right to complain to the Authority or to the Seychelles Media Commission, as the case may be, if the complaint is not remedied by the broadcasting service operator.

(2) The complaint handling procedure under subsection (1) shall be submitted to the Authority for approval.

(3) On receipt of a complaint handling procedure under subsection (2), the Authority shall, after consultation of the Seychelles Media Commission, approve, or reject, or amend the complaint handling procedure submitted by the broadcasting service operator.

(4) On the approval of the complaint handling procedure under subsection (3), the broadcasting service operator shall make its complaint handling procedure publicly available.

(5) Where a person is aggrieved by the complaint handling procedure or not satisfied with the remedy offered or action taken by the broadcasting service operator, under the complaint handling procedure, the person may submit the complaint to the Authority or to the Seychelles Media Commission, as the case may be.

Complaints concerning broadcasting services

135.(1) Any person who has reason to believe that a broadcasting service operator has failed to comply with this Act or the regulations made thereunder or the terms and conditions of a licence, may lodge a complaint with the Authority or the Seychelles Media Commission within 30 days of the occurrence of the alleged non-compliance.

(2) A complaint referred to in subsection (1) shall be in writing and, on receipt of the complaint, the Authority or the Seychelles Media Commission, as the case may be, shall notify the broadcasting service operator in writing.

(3) Where the complaint is made to the Authority, the Authority shall cause the complaint to be investigated and the provisions of section 131(3), (4) and (5) shall apply.

(4) Where the complaint is made to the Seychelles Media Commission, it shall investigate the complaints in accordance with the procedure for inquiry prescribed by or under the Seychelles Media Commission Act (*Cap 318*).

Political advertising on broadcasting services

136.(1) The broadcasting service operator is not bound to broadcast a

political advertisement, but if the broadcasting service operator elects to do so, it shall afford to all registered political parties, an equal opportunity.

(2) The broadcasting service operator may broadcast a political advertisement, during an election period specified by the Electoral Commission, if the advertisement is submitted to such broadcasting service operator on behalf of a political party by its authorised representative.

(3) In making advertising time available to political parties, no broadcasting service operator shall discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.

(4) A political advertisement shall not contain any material which reasonably be anticipated to expose the broadcasting service operator to legal liability if such material is subjected to broadcast.

(5) A political advertisements on broadcasting services shall conform to the provisions of the Elections Act (*Cap 262*) and any regulations made by the Electoral Commission.

PART XVII - RESOLUTION OF DISPUTES

Powers to resolve disputes

The Authority shall resolve a dispute between persons who are subject to this Act

(2) Without prejudice to other provisions of this Act, the provisions of this Part shall have effect relating to resolution of disputes.

Alternative dispute resolution methods

138.(1) Subject to subsections (2) and (3), nothing in this Act shall prevent any party from using alternative dispute resolution methods for negotiation and resolution of disputes, at the cost of the parties, including compromise in accordance with the Civil Code of Seychelles Act (*Cap 33*).

(2) Any party submitting a dispute to an alternative dispute resolution person or panel shall notify to the Authority by filing a copy of the agreement at the time the agreement is entered into by the parties.

(3) No agreement referred to in subsection (2) may exclude the application of this Act, regulations made under this Act or the terms and conditions of the licence under this Act.

Resolution of disputes by parties

139. An attempt shall first be made by the parties to resolve any dispute between them through negotiations before applying for resolution of a dispute under this Part.

Notification of disputes to Authority

140.(1) A party to a dispute may, in writing, notify the Authority of the dispute for resolution in such manner as may be prescribed by regulations.

(2) The Authority shall, on receipt of the notification of a dispute under subsection (1), as soon as practicable, decide whether or not to investigate the dispute.

(3) The Authority shall cause the dispute to be investigated if satisfied that —

- (a) the dispute is within the jurisdiction of the Authority;
- (b) an agreement may not be reached within a reasonable period;
- (c) the notification of the dispute is not trivial, frivolous or vexatious; and
- (d) the dispute is not a subject of current court litigation between the parties.

Disputes between operators

141.(1) In case of a dispute between operators, where the parties are unable to resolve the dispute among themselves, the Authority shall, subject to subsection (2), at the request of any party to the dispute —

- (a) initiate an investigation of the dispute, as soon as possible; and
- (b) make a determination to resolve the dispute, if the Authority considers it necessary taking into consideration the circumstances of the dispute.

(2) The Authority may decide not to initiate an investigation referred to in subsection (1) where the Authority is satisfied that the parties have not made reasonable efforts in good faith to resolve the dispute between them through negotiations.

(3) Where the Authority decides not to initiate an investigation under subsection (2), the Authority shall inform the parties of the decision and direct the parties to continue negotiations.

(4) If the dispute is not resolved within a reasonable period from the date of decision under subsection (3), the Authority shall, at the request of any party to the dispute, initiate an investigation and give a decision in accordance with this Part.

(5) An operator to which a decision under this section applies shall forthwith comply with the decision.

(6) An operator who fails to comply with a decision under this Part shall be liable to a monetary penalty imposed in accordance with section 143.

(7) The period of non-compliance shall be deemed to have commenced from the date of notification of the decision or from such other date as may be specified in the decision.

(8) The Authority shall give reasons on which decision under this section is based, and shall, subject to requirements of commercial confidentiality, notify the parties to the dispute of the decision and those reasons.

(9) The Authority shall make a notice of the decision and any relevant information publicly available.

Disputes between operators and consumers

142.(1) Where a dispute arises between an operator and a consumer, any party to the dispute may refer the dispute to the Authority subject to the condition that the consumer shall, *prima facie*, show that the consumer has been affected by the act or omission of the operator giving rise to the complaint.

(2) On receipt of any dispute under subsection (1), or upon otherwise becoming aware of any such dispute which the Authority considers it necessary to be investigated, the Authority shall notify all the parties to the dispute that the matter is being investigated.

(3) A dispute under this section shall as soon as practicable be investigated in a prompt and fair manner following such procedure as may be prescribed by regulations.

(4) The Authority may decide not to initiate an investigation referred to in subsection (1) where the Authority is satisfied that parties have not made reasonable efforts in good faith to resolve the dispute between them through negotiations.

(5) The Authority may, in resolving any disputes under this section, require the operator to comply with any measure the Authority may specify for the resolution of the dispute, including order for reimbursement of payments received or cost incurred or compensation thereof.

(6) An order under this section shall state the grounds on which it is based, and subject to requirements of commercial confidentiality, the Authority shall notify the parties to the dispute of the decision in writing.

(7) The Authority shall make publicly available the notice of the Authority's decision and any relevant information.

(8) An operator to which a decision under this section applies shall forthwith comply with the decision.

(9) An operator who fails to comply with a decision under this Part shall be liable to a monetary penalty imposed in accordance with section 143.

PART XVIII - IMPOSITION OF MONETARY PENALTY

Imposition of monetary penalty by Tribunal

143.(1) The Tribunal shall, on a complaint made to it by the Authority or an officer authorised by the Authority, adjudicate the complaint and impose the monetary penalty on the licensee or operator under this Act.

(2) No penalty shall be imposed by the Tribunal under this Act, except after an inquiry made in such manner as may be prescribed by regulations, and the licensee or operator has been given a reasonable opportunity of being heard.

(3) While holding an inquiry, the Tribunal shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Tribunal, may be useful for or relevant to the subject matter of the inquiry.

(4) If, on the conclusion of such inquiry, the Tribunal is satisfied that the licensee or operator has failed to comply with the provisions of this Act or the regulations made under this Act or the terms and conditions of the licence, the Tribunal may impose a monetary penalty of such sums not exceeding SCR4,000,000 for each contravention, as it may consider fit and the licensee or operator shall also be liable to an additional monetary penalty equivalent to 2 percent of the penalty imposed by the Tribunal for each day during which the contravention continues or the monetary penalty remains unpaid.

(5) The Tribunal shall forward a copy of the order imposing monetary penalty under subsection (4) to the licensee or operator within 21 days of such order and the licensee or operator shall pay the monetary penalty within 60 days from the date of receipt of the order.

(6) While deciding whether to impose a penalty under subsection (4) and in determining the quantum of penalty, the Tribunal shall have due regard to the following factors, namely —

- (a) nature, gravity and duration of violation taking into account the nature, scope and purpose of processing concerned;
- (b) intentional or negligent character of the violation;
- (c) repetitive nature of the default;
- (d) action taken by the licensee or operator to mitigate the harm suffered by any person; and
- (e) any other aggravating or mitigating factors relevant to the circumstances of the case, such as, the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.

(7) Any person aggrieved by an order made by the Tribunal under this section may appeal to the Supreme Court.

(8) All sums realised by way of monetary penalty under this section shall be credited to the Consolidated Fund.

PART XIX - SANCTIONS AND ENFORCEMENT

Sanctions

144.(1) The Authority may apply sanctions under this section in case of an infringement, which includes —

- (a) the non-compliance with a provision of this Act, regulations made under this Act or terms and conditions of a licence under this Act; or
- (b) the unlawful use of radio frequency spectrum or numbering resources.

Where it comes to the attention of the Authority of any infringement specified to under subsection the Authority shall give notice to the licensee stating the nature of the infringement directing the

licensee to investigate and take corrective measures within the period specified in the notice to remedy the infringement

(3) If the licensee fails to remedy the infringement within the period specified in the notice, the licensee shall be liable to —

- (a) a monetary penalty in accordance with section 143; or
- (b) the revocation or suspension of the licence.

(4) The Authority shall record in writing the reasons for the decision and make the decision with reasons available in the public domain.

(5) A licensee aggrieved by a decision of revocation or suspension of the licence under this section may make an appeal against the decision to the Tribunal under section 14.

Enforcement measures

145.(1) Where the Authority is satisfied, on its own motion or on a complaint made by a person, that a licensee has contravened or is contravening any provisions of this Act, regulations made under this Act or any terms and conditions of the licence, the Authority shall —

- (a) notify the licensee in writing, specifying the acts or omissions which, in its opinion, constitute the contravention of the provisions of this Act, regulations made under this Act or any terms and conditions of the licence; and
- (b) take enforcement measures against the licensee who contravenes provisions of this Act, regulations made under this Act or any terms and conditions of the licence.

(2) The Authority may carry out an investigation or inspection for the purposes of this Act.

(3) The Authority may carry out an inspection of any document, associated facilities, equipment or premises used by any person.

(4) Where the Authority is of the opinion that a licensee has contravened or is contravening any provisions of this Act, regulations made under this Act or any terms and conditions of the licence, for which no specific penalty has been provided, the Authority may issue an enforcement order instructing the licensee to perform any action or refrain from any action stated in that order within the period specified in that order.

(5) In the event that the licensee has failed to comply with the enforcement order under subsection (4) within the period specified in that order, the licensee shall be liable to —

- (a) a monetary penalty in accordance with section 143; or
- (b) the revocation or suspension of the licence.

(6) A licensee aggrieved by an order of revocation or suspension of the licence under this section may make an appeal against the order to the Tribunal under section 14.

Powers of entry and inspection

146.(1) For the purposes of section 145, an officer authorized in writing by the Authority may, at any reasonable time —

- (a) enter any building or place or go on board any ship or aircraft;
- (b) inspect any broadcasting apparatus or electronic communications apparatus installed or used in any building, place, ship or aircraft;
- (c) call for and inspect any licence granted under this Act.

(2) Any person for the time being in charge of any building, place, ship or aircraft in respect of which any powers are exercised under subsection (1) shall afford all reasonable facilities for entry and inspection under that subsection.

(3) The officer authorized under subsection (1) shall, if so requested, produce his or her authority to exercise the powers under this section.

PART XX - OFFENCES AND PENALTIES

Offences and penalties

147.(1) A person who contravenes section 16 commits an offence and shall, on conviction, be liable to a fine not exceeding SCR1,000,000 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment and also be liable to an additional fine of SCR15,000 for every day or part of a day during which the contravention continues.

- (2) A person who —
- (a) wilfully obstructs, prevents or hinders the Authority or an officer authorised by the Authority to carry out an investigation or inspection in the exercise of its functions under this Act;
 - (b) uses any equipment or systems which hinder network interoperability;
 - (c) uses any equipment or systems which compromise public safety;
 - (d) illegally facilitates the acquisition or obtains a service provided by other person authorised under this Act to provide electronic communications services with intent to avoid payment of any charge applicable to the provision of that service;
 - (e) illegally transmits or allows to be transmitted any communication provided by a licensed operator or broadcasting service licensee;
 - (f) illegally receives a broadcasting service from a place within Seychelles not intended for general reception, with intent to avoid payment of any rate or fee applicable to the provision of that service;

- (g) possesses, obtains or creates a system designed to use or obtain any electronic communications network facilities or service or broadcasting service fraudulently;
- (h) initiates a communication using any electronic communications network or electronic communications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his or her identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address;
- (i) intentionally and without right, uses, makes, creates or solicits and initiates a transmission, using any electronic communications network or electronic communications service, of any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person;
- (j) communicates any obscene material for any purpose to any other party utilising any electronic communications network or electronic communications service, under the person's control;
- (k) without lawful authority under this Act or any other written law —
 - (i) intercepts, attempts to intercept, or request any other person to intercept or attempt to intercept, any communication; or
 - (ii) discloses or attempts to disclose, to any other person the contents of any communication, knowing or having reason to believe that the information was obtained through the interception of any communication; or
 - (iii) uses or attempts to use, the contents of any communication, knowing or having reason to believe

that the information was obtained through the interception of any communication.

- (l) intentionally tampers with, adjusts, alters, removes, destroys or damages any electronic communications equipment, electronic communications network or electronic communications network facility;
- (m) wilfully and unlawfully interferes with a broadcasting service, electronic communications service, electronic communications network service or radio communication service;
- (n) sells, supplies or uses any customer premises equipment, radio communication equipment and electronic communications network which does not comply with the required standards specified by the Authority;
- (o) knowingly engages in business and marketing conduct that is misleading or deceptive, or is likely to mislead or deceive;
- (p) knowingly engages in conduct directly or indirectly amounting to a contravention of a provision of this Act;
- (q) wilfully publishes or discloses content of any document, communication or information;

commits an offence and shall be liable, on conviction, to a fine not exceeding SCR700,000 or to an imprisonment not exceeding 2 years or both such fine and imprisonment and shall also be liable to an additional fine of SCR10,000 for every day during which the offence continues.

(3) A licensee or operator who refuses or fails to pay the monetary penalty imposed under section 143, within the period specified therein, commits an offence and shall be liable on conviction to a fine not exceeding SCR4, 000,000 or to an imprisonment not exceeding 2 years or both such fine and imprisonment and shall be liable to an additional fine of SCR10,000 for every day during which the offence continued.

(4) A person who contravenes or fails to comply with any provision of this Act, regulations made under this Act or any terms and conditions of the licence, for which no specific penalty has been provided under this Act, commits an offence and is liable, on conviction, for each of such offence, to a fine not exceeding SCR700,000 or to a imprisonment not exceeding 2 years or both such fine and imprisonment and shall also be liable to an additional fine of SCR10,000 for each day during which the offence continues.

(5) Where any person is convicted of an offence under this Act, the court, if it is satisfied that the contravention includes the unlawful operation or possession of any equipment, may order the confiscation of the equipment.

(6) The conviction of an offence under subsection (3) shall not dissolve the liability of the licensee or operator from the payment of the monetary penalty imposed by the Tribunal under section 143(4).

PART XXI - BOARD OF AUTHORITY

Board of Authority

148.(1) The affairs of the Authority shall be administered by a Board comprising 7 members, other than *ex officio* member, to be appointed by the President.

(2) The President may appoint a person as a member of the Board, if the person —

- (a) is a citizen of, and a permanent resident in, Seychelles; and
- (b) has the qualifications and professional experience in broadcasting and electronic communications services, economics, finance and business, law, public administration, competition and consumer affairs, or Information Technology.

(3) A person shall not be appointed or remain as a member of the Board, if the person —

- (a) has been adjudged or declared insolvent or bankrupt and has not been discharged; or
- (b) is mentally or physically incapable to carry out the functions under this Act; or
- (c) has been convicted, within a period of last 3 years, of an offence punishable with imprisonment without an option to pay a fine; or
- (d) is an officer of a District Administrative Council; or
- (e) is an office-bearer or employee of a political party; or
- (f) is a shareholder or director or employee of a licensed operator; or
- (g) is providing a service or supplying goods to a licensed operator under a contract; or
- (h) has any financial or other interest likely to prejudicially affect his or her functions and duties as a member of the Board.

(4) In appointing members of the Board, the President shall have regard to gender equality and a balance in representation in terms of qualifications and experience referred to in subsection (2).

(5) The President shall, from amongst members of the Board, appoint one chairperson and one vice-chairperson.

(6) The vice-chairperson shall, in the absence of the chairperson, assume all responsibility of the chairperson.

(7) The names of members of the Board appointed under this section shall be published in the *Gazette*.

Resignation, vacation and removal, from office of a member of Board

149.(1) A member of the Board may resign from office by letter addressed to the President and the resignation shall take effect from the date on which the President accepts the resignation.

(2) The office of a member of the Board shall become vacant —

- (a) if the member resigns; or
- (b) if the member is removed under subsection (3).

(3) A member of the Board shall be removed, if the member —

- (a) knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority under section 154;
- (b) has been absent from three consecutive meetings of the Board without a reasonable cause;
- (c) becomes disqualified by reason of section 148(3); or
- (d) is guilty of improper conduct as a member of the Board or guilty of conduct that is prejudicial to the interest or reputation of the Authority.

(4) A member of the Board shall not be removed from office on grounds under subsection (3)(a), (b) or (d), except after an inquiry made by an independent panel.

(5) A member of the Board who has been removed under this section shall not be eligible for re-appointment.

Filling of casual vacancies of a member of Board

150. A casual vacancy in the office of a member of the Board shall be filled by the appointment of a new member in accordance with section 2, and

the member so appointed shall hold office for the unexpired period of his or her predecessor's term of office, but the vacancy shall not be filled if the unexpired period is less than six months.

Meetings of Board

151.(1) The Board shall meet not less than six times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

(2) The chairperson of the Board —

- (a) may convene a special meeting of the Board at any time;
- (b) shall, on the written request of the Minister or not less than 2 members of the Board, convene a special meeting, not later than 30 days from the receipt of the request,

for the transaction of any urgent business of the Board and where the chairperson notifies the members in writing that the urgency of the matter to be discussed requires a shorter period of notice.

(3) The quorum for any meeting of the Board shall be twothirds of all members, other than *ex officio* member, of the Board.

(4) The chairperson of the Board, or in the absence of the chairperson, the vicechairperson, shall preside at every meeting of the Board, or in the absence of the chairperson and vicechairperson, a member elected from amongst the members present, shall preside a meeting of the Board.

(5) Any question arising at a meeting of the Board shall be decided by a majority of votes of the members, other than *ex officio* member, present and voting, and in the case of an equality of votes, the person presiding at the meeting shall have a casting vote.

(6) The chairperson of the Board may, with the approval of the Board, invite any person to attend a meeting of the Board, where the chairperson considers that the person has special knowledge or experience in any matter to be considered by the Board in that meeting.

(7) Subject to this section, the Board shall regulate its own procedure and the procedure for any committee of the Board and for the attendance of any other persons or observers at its meetings.

Terms and conditions of office of members of Board

152.(1) Subject to this Act, a member of the Board, other than *ex officio* member, shall hold office for a term not exceeding 5 years and shall be eligible for re-appointment for not more than two terms, whether consecutive or otherwise.

(2) A member of the Board, other than *ex officio* member, shall be paid such remuneration or allowances as the President may, after consultation with the Minister responsible for finance, determine.

Delegation of powers

153.(1) The Authority may delegate any of its functions under this Act to any member of the Board, the chief executive officer, or any committee of the Board or to any member of staff of the Authority.

(2) Without prejudice to subsection (1), the Authority may, at any time, exercise the powers or perform the functions delegated to a person under that subsection.

Disclosure of interest

154.(1) If a member of the Board has direct or indirect interest in any contract, proposed contract or other matter before the Board, the member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and the member shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during the consideration of the matter:

(2) Without prejudice to subsection (1), if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it

may impose, but such member shall not have the right to vote on the matter in question.

(3) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

Confidentiality

155.(1) A person shall not publish or disclose to any person or entity, other than in the course of the duties as a member of the Board, the contents of any document, communication or information which has come to the person's knowledge in the performance of any function under this Act.

(2) A member shall not disclose any confidential information relating to the affairs of the Board, which is acquired during the performance of any function under this Act.

(3) Notwithstanding subsection (2), a member may disclose information relating to the affairs of the Board acquired during the performance of any function under this Act —

(a) within the scope of such functions under this Act; or

(b) when required to disclose —

(i) by an order of a court; or

(ii) under any written law, or

(iii) in the investigation of an offence under this Act.

Oath of secrecy

156. A member of the Board, an employee, consultant, an adviser and a contractor of the Authority, shall sign an oath of secrecy upon being appointed as such member, employee, consultant or contractor, as the case may be.

Committees of Authority

157.(1) The Board may, for the efficient performance of the function of the Authority, constitute such committees as it thinks fit to advise the Board on such matters within the purview of this Act.

(2) The vesting of any function in a committee under subsection (1) shall not divest the Board of that function and the Board may amend or rescind any decision of the Committee in the exercise of that function.

Chief executive officer, other officers and employees, etc.

158.(1) The President shall appoint a suitably qualified and experienced person to be the chief executive officer of the Authority, on terms and conditions approved by the President.

(2) The chief executive officer —

- (a) shall be *ex officio* member of the Board and be responsible for the administration and management of the functions of the Authority under the supervision, control and directions of the Board;
- (b) may sign documents on behalf of the Authority on the direction of the Board;
- (c) perform such other functions as the Board may, from time to time, assign.

(3) The Authority may appoint such other officers and employees, and consultants and experts in various disciplines, which may be reasonably necessary for the effective performance of the functions of the Authority, on such terms and conditions as the Authority may, from time to time, determine.

(4) The chief executive officer, other officers and employees and consultants and experts appointed under this section shall be paid such salaries and allowances as the Authority may, from time to time, determine.

PART XXII - FINANCE, ACCOUNTS AND REPORTS

Fund of Authority

159.(1) The Fund of the Authority shall consist of —

- (a) moneys allocated by an Appropriation Act and paid to the Authority;
- (b) moneys received by the Authority by way of grants, donation, gifts from any legal source; and
- (c) moneys lawfully received by the Authority for the purpose of the Authority.

(2) The Fund of the Authority may be applied, for —

- (a) the discharge of expenses and other obligations of the Authority;
- (b) the payment of salaries and allowances payable to the members of the Board and officer and other employees of the Authority; and
- (c) any other expenses as may be authorised by the Board.

Account and audit

160.(1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in the form and in the manner as approved by the AuditorGeneral.

(2) The accounts of the Authority shall be audited by the Auditor General in accordance with Article 158 of the Constitution.

(3) The Authority shall prepare, in each financial year, an annual financial statement for the next financial year showing separately —

- (a) the expenditure which is proposed to be met from the internal sources of the Authority; and
- (b) the sum required from the government to meet other expenses distinguishing the money received from other sources.

(4) Where the accounts and statement of accounts of the Authority in respect of any financial year have been audited, the Authority shall furnish to the Minister a copy of the statement of accounts together with a copy of any report by the AuditorGeneral on the statement of accounts of the Authority

Annual plan of activities of Authority

161.(1) Subject to subsection (2), the Authority shall prepare an annual plan of activities and submit it to the Minister for the Minister's approval at least ninety days before the beginning each financial year.

(2) On the commencement of this Act, the first annual plan of activities shall be submitted within the period specified by the Minister.

- (3) The annual plan of activities under this section shall —
 - (a) include a statement of the short and medium term operational objectives;
 - (b) outline the strategies that the Authority intends to employ in order to achieve its objectives; and
 - (c) include an operational plan, a financial plan, a human resources plan and performance indicators.

(4) The financial plan referred to in subsection (3)(c) shall include estimates of expenditure and revenue for the following financial year.

(5) The Authority may amend the annual plan of activities with the approval of the Minister.

Annual report of Authority

162. The Authority shall, as soon as possible but not later than six months after the end of each financial year, prepare an annual report giving full account of its activities during the previous year and submit copies together with the statement of account audited under section 160 to the Minister and the Minister shall cause the report to be tabled before the National Assembly.

PART XXIII - COMMUNICATIONS TRIBUNAL

Establishment of the Tribunal

163.(1) There is established a Tribunal known as the Communications Tribunal for the purposes of this Act.

(2) The Tribunal shall, in the performance of its functions under this Act, be independent and shall not be subject to the direction or control of any person or authority.

(3) The Tribunal shall consist of —

- (a) a chairperson who is an attorney-at-law, with a minimum experience of 8 years;
- (b) a vice-chairperson who is an attorney-at-law, with a minimum experience of 5 years;
- (c) a member of the Fair Trading Commission established by section 3 of the Fair Trading Commission Act (*Cap 267*); and
- (d) 4 other members who have the qualification and experience in the field of law, telecommunications, engineering, media, finance or economics.

(4) The President shall appoint the members of the Tribunal on such terms and conditions as may be prescribed by regulations, and cause their names to be published in the *Gazette*.

(5) A member of the Tribunal shall hold office for a period of 5 years and shall be eligible for re-appointment.

(6) A member of the Tribunal shall be paid such remuneration or allowances as may be determined by the President.

Resignation or removal of a member of Tribunal

164.(1) A member of the Tribunal may resign from office by giving not less than 2 months notice in writing to the President.

(2) A member of the Tribunal shall be removed from office if he or she —

- (a) is mentally or physically incapable of performing the functions as such member;
- (b) has been convicted of an offence;
- (c) has been adjudged or declared insolvent or bankrupt and has not been discharge; or
- (d) has any financial or other interest likely to prejudicially affect the functions as a member of the Tribunal.

(3) A member of the Tribunal shall not be removed from office under subsection (2) (d) without giving him or her an opportunity of hearing in the matter.

Sittings, quorum and procedure of Tribunal

165.(1) The chairperson, or in his or her absence the vice-chairperson, of the Tribunal shall preside at a sitting of the Tribunal at which he or she is present.

(2) The chairperson or the vice-chairperson of the Tribunal and 2 other members constitute a quorum at any sitting of the Tribunal.

(3) The Tribunal shall sit at such times and in such places as the chairperson of the Tribunal may direct.

(4) Subject to this Act, the Tribunal shall regulate its own procedures, except in so far as the procedures are prescribed by regulations.

(5) The Tribunal is to conduct its proceedings without procedural formality but shall observe the rules of natural justice.

(6) At any sitting of the Tribunal, the chairperson may co-opt any person who, in the opinion of the chairperson possesses such technical knowledge or expertise as the Tribunal may require during its deliberations.

Jurisdiction and powers of Tribunal

166.(1) The Tribunal shall have exclusive jurisdiction to hear and determine appeals against any decision, direction or order of the Authority under this Act and adjudicate the monetary penalty under section 143.

(2) The Tribunal shall have powers to —

- (a) summon any person to appear before it;
- (b) examine a witness or any person appearing before on oath;
- (c) require any person to produce any document which the Tribunal considers relevant.

(3) Each member of the Tribunal shall have equal vote and the decisions shall be reached by a majority vote.

(4) A party before the Tribunal may be represented by a legal practitioner or by any other person authorised by the party.

(5) The Tribunal shall before making any decision afford the parties the opportunity to be heard.

(6) In disposing of an appeal the Tribunal may —

- (a) reject the appeal and confirm the decision, direction or order of the Authority;

- (b) allow the appeal in whole or in part and vary the decision, direction or order of the Authority;
- (c) set aside the decision, direction or order of the Authority and make a decision in substitution for it; or
- (d) give such directions to the Authority as the Tribunal may consider necessary.

(7) At the conclusion of the proceedings, the Tribunal may in addition to any remedies under this Act, award cost or make any other orders as it thinks fit.

(8) A decision of the Tribunal shall be enforceable as if it were a decision of the court.

Tribunal may refer any question of law to Supreme Court

167.(1) The Tribunal may, on its own or on an application of a party, refer a question of law arising in a proceeding before it for determination by the Supreme Court.

(2) If a question of law arising in a proceeding is referred to the Supreme Court under subsection (1), the Tribunal shall not —

- (a) make a decision to which the question is relevant until the question is determined by the Supreme Court; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the determination of the question by the Supreme Court.

Staff of the Tribunal

168.(1) The President shall appoint a secretary to the Tribunal and such other employees as the President may consider necessary for the efficient discharge of the functions of the Tribunal on such terms and conditions as may be determined by the President.

(2) The secretary and other employees of the Tribunal shall be paid such remuneration and allowances as the President may determine.

PART XXIV - MISCELLANEOUS

Protection of action in good faith

169. Any suit or other legal proceedings, for any loss or damage caused, shall not lie against the Minister or the Authority or Tribunal, or a member of the Tribunal or an officer and employee of the Authority or Tribunal in respect of an act done or intended to be done in good faith in pursuance of this Act.

Application of Penal Code

170. All members of the Board and Tribunal and officers and employees of the Authority and Tribunal shall be deemed to be employed in the public service for the purpose of sections 91 to 96 of the penal Code.

Guidance

171. The Authority may make such guidelines on any matter for which this Act provides for or which are necessary for giving effect to the provisions of this Act.

Regulations

172. The Minister may make regulations consistent with this Act, for all matters which by or under this Act are required or necessary to be provided for in giving effect to the provisions of this Act.

Repeal and savings

173.(1) The Broadcasting and Telecommunication Act (*Cap 19*) is repealed.

(2) Notwithstanding the repeal under subsection (1) —

- (a) any regulations, decision or order made under the repealed Act, before the coming into operation of this Act, shall be deemed to have been made under this Act and shall

- continue to be in force, so far as it is not inconsistent with the provisions of this Act, until altered, amended or revoked under this Act;
- (b) any licence relating to broadcasting or telecommunication or radio communications granted or issued under the Licences Act (*Cap 113*) before the coming into operation of this Act, shall be deemed to have been granted under this Act and shall continue to be in force, so far as it is not inconsistent with the provisions of this Act, until suspended or revoked under this Act or until the date of the expiry, whichever comes first;
 - (c) any act of authority or authorisation of use of radio spectrum made or given under the repealed Act, before the coming into operation of this Act, shall be deemed to have been made under this Act and shall continue to be in force, so far as it is not inconsistent with the provisions of this Act, until altered, amended or revoked, as the case be, under this Act or until the date of its expiry, whichever comes first;
 - (d) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, before the coming into operation of this Act, shall continue to be in force, so far as it is not inconsistent with the provisions of this Act, until altered, amended or revoked under this Act;
 - (e) any investigation, legal proceedings or penalty, forfeiture or punishment instituted or incurred in respect of an offence committed under the repealed Act may be instituted or continued under the repealed Act, as if this Act had not been enacted; and
 - (f) any contract or agreement executed by the Government under the repealed Act shall continue to have effect in accordance with its terms and conditions as if it has been

executed under this Act until the validity of such contract or agreement or until altered, amended or revoked under this Act.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 22nd March, 2023.



Mrs. Tania Isaac
Clerk to the National Assembly