

CAYMAN ISLANDS



Supplement No. 4 published with Gazette No. 26
dated 19th December, 2016.

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (AMENDMENT) (NO. 2) LAW, 2016**

(LAW 50 OF 2016)

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (AMENDMENT) (NO. 2) LAW, 2016**

ARRANGEMENT OF SECTIONS

1. Short title and commencement
2. Amendment of section 1 of the Information and Communications Technology Authority Law (2016 Revision) - short title and commencement
3. Amendment of section 2 - definitions
4. Amendment of Part II - Establishment, Capital and Administration of Authority
5. Amendment of section 9 - powers and functions of Authority
6. Amendment of section 25 - shares of licensee not to be issued or transferred without approval of the Authority
7. Insertion of section 25A - media enterprises
8. Amendment of section 28 - duration of licence
9. Amendment of section 31 - modification of licence
10. Repeal of Part IV - Anti-Competitive Practices
11. Repeal and substitution of Part V - Cease and Desist orders
12. Repeal of Part VI - administrative fines
13. Amendment of section 65 – interconnection
14. Amendment of section 66 - interconnection agreements
15. Amendment of section 67 - pre-contract disputes
16. Insertion of section 67A - power of the Office to consider disputes on its own initiative
17. Amendment of section 68 - cost of interconnection
18. Amendment of section 69 - infrastructure sharing
19. Amendment of section 72 - quality of service
20. Amendment of section 74 - equipment standards and technician certification
21. Repeal of Part IX - Review of Administrative Decisions and Appeals
22. Repeal of sections 85 to 87 - refusal to produce documents, etc.; giving false information; failure to attend to give evidence
23. Repeal of section 91 - offences by bodies corporate
24. Amendment of section 97 - power to make regulations
25. Repeal of section 98 - immunity
26. Insertion of Part XII - Dissolution of Authority
27. Amendment of section 101 - transitional arrangements
28. Insertion of section 102 - interpretation for the purposes of Part XII
29. Repeal of Schedule 1 - procedure of the Board
30. Amendment of miscellaneous provisions - substitution of the word “Office” for the word “Authority”

CAYMAN ISLANDS

Law 50 of 2016.

I Assent

Helen Kilpatrick

Governor.

16th November, 2016

**A LAW TO AMEND THE INFORMATION AND COMMUNICATIONS
TECHNOLOGY AUTHORITY LAW (2016 REVISION) AS A
CONSEQUENCE OF THE ESTABLISHMENT OF THE UTILITY
REGULATION AND COMPETITION OFFICE; TO DISSOLVE THE
INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY AND TRANSFER ITS POWERS AND RESPONSIBILITIES
TO THE UTILITY REGULATION AND COMPETITION OFFICE; AND
TO MAKE PROVISION FOR RELATED MATTERS**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Information and Communications
Technology Authority (Amendment) (No. 2) Law, 2016.

Short title and
commencement

(2) This Law comes into force immediately after the coming into force of
the Utility Regulation and Competition Law, 2016.

2. The Information and Communications Technology Authority Law (2016
Revision), in this Law referred to as the “principal Law”, is amended in section 1
by deleting the word “Authority”.

Amendment of section 1
of the Information and
Communications
Technology Authority
Law (2016 Revision) -
short title and
commencement

Amendment of section
2 - definitions

3. The principal Law is amended in section 2 as follows -

- (a) by deleting the respective definitions of the words “Authority”, “Board”, “director” and “managing director”; and
- (b) by inserting in the appropriate alphabetical sequence, the following definitions -

“administrative determinations” includes any orders, regulations, directions, decisions, or other written determinations by which the Office establishes the legal rights and obligations of one or more licensees, but does not include any advisory guidelines;

“critical ICT infrastructure” means ICT systems and assets, whether physical or virtual, that are so vital to the Islands that the incapacity or destruction of the systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters;

“infrastructure sharing” means the provision to licensees of access to tangibles used in connection with a public ICT network or intangibles facilitating the utilization of a public ICT network; and, for the purposes of this definition -

- (a) “tangibles” includes lines, cables or wires (whether fibre optic or other), equipment, apparatus, towers, masts, tunnels, ducts, risers, holes, pits, poles, landing stations, huts, lands, buildings or facilities; and
- (b) “intangibles” includes agreements, arrangements, licences, franchises, rights of way, easements and other such interests;

“local programming” means sound or television broadcasting content made available in the Islands, by a licensee, without subscription, and includes things such as advertisements and announcements;

“Office” means the Utility Regulation and Competition Office established under section 4 of the Utility Regulation and Competition Law, 2016;”.

Amendment of Part II -
Establishment, Capital
and Administration of
Authority

4. The principal Law is amended in Part II as follows -

- (a) by deleting the heading and substituting the following heading -
“PART II - Powers and functions of Office”; and

- (b) by repealing all of the sections except section 9.
5. The principal Law is amended in section 9 as follows - Amendment of section 9
- powers and functions
of Authority
- (a) by deleting the marginal note and substituting the following marginal note -
“Powers and functions of Office”; and
- (b) in subsection (3) -
- (i) by inserting after paragraph (b) the following paragraphs -
- “(ba)to encourage the maintenance of a sufficient plurality of providers of different television and radio services;
 - (bb) to promote the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive or harmful material in such services;
 - (bc) to promote, through public education, research and development initiatives, ICT in the Islands;”;
- (ii) by inserting after paragraph (h) the following paragraphs -
- “(ha)to promote the proper functioning of the critical ICT infrastructure;
 - (hb) to set up, manage and control the Cayman Islands cyber incident response team whose role it is to promote and enhance the security and resilience of the critical ICT infrastructure, and maintain an effective, efficient and innovative Internet environment;
 - (hc) to develop and maintain cyber security strategies that enhance and support the security and resilience of national and critical ICT infrastructure towards increased economic prosperity, safe and secure business and innovation;
 - (hd) to facilitate collaboration between the Government, other governments and agencies in support of cyber security information sharing and cyber security strategies towards local and global efforts in combating cyber threats;”;
- (iii) in paragraph (j) by deleting the words “managing director” and substituting the words “Chief Executive Officer of the Office appointed under the Utility Regulation and Competition Law, 2016”.

Amendment of section 25 - shares of licensee not to be issued or transferred without approval of the Authority

6. The principal Law is amended in section 25 as follows -

(a) in subsection (1) by inserting after the word “withheld” the following words -

“; but the Office may refuse to give its consent where, among other things, it considers that the giving of the consent may result in a lessening of -

(a) competition in the operation of ICT networks or the provision of ICT services; or

(b) plurality of views in the print, radio or television media”; and

(b) in subsection (3) by deleting the word “seven” and substituting the word “thirty”.

Insertion of section 25A - media enterprises

7. The principal Law is amended by inserting after section 25 the following section -

“Media enterprises

25A. (1) For the purposes of this Part, a change of control shall be deemed to involve a media public interest if at least one of the persons involved in the transaction is a media enterprise.

(2) A media enterprise is an enterprise involving either or both of -

(a) broadcasting; and

(b) publishing newspapers.

(3) In determining whether a proposed change of control would be contrary to the public interest, the Office shall consider -

(a) the need for the accurate presentation of news and the free expression of opinion in media;

(b) the need, in relation to every different audience in the Islands, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;

(c) the need for the availability throughout the Islands of a wide range of content services, which (taken as a whole) are both of high quality and calculated to appeal to a wide variety of tastes and interests; and

(d) the need for persons carrying on media

enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment of the information and communications technologies policy objectives.”.

8. The principal Law is amended in section 28(a) by deleting the word “fifteen” and substituting the word “twenty”. Amendment of section 28 - duration of licence

9. The principal Law is amended in section 31 as follows - Amendment of section 31 - modification of licence

- (a) in subsection (3) by deleting the words “, on the recommendation of the Cabinet,” and the words “in the public interest”;
- (b) in subsection (3)(c) by deleting the words “seven days” and substituting the words “thirty days”;
- (c) in subsection (4) by deleting the words “seven days” and substituting the words “a period of not less than thirty days”; and
- (d) by repealing subsection (5) and substituting the following subsection -

“ (5) If the Office decides to modify the licence, the Office shall give to the licensee a written notice stating how the licence has been modified.”.

10. The principal Law is amended by repealing Part IV. Repeal of Part IV - Anti-Competitive Practices

11. The principal Law is amended by repealing Part V and substituting the following Part - Repeal and substitution of Part V - Cease and Desist orders

“PART V - Local Programming

Licensee’s duties
in respect of
local broadcasts

55. It shall be the duty of a licensee to ensure that local programming broadcast by the licensee -

- (a) protects persons under the age of eighteen;
- (b) includes nothing which -
 - (i) offends against good taste or decency;
 - (ii) is likely to encourage or incite to commit a crime or lead to disorder;
 - (iii) is likely to be offensive to public feelings; and
 - (iv) is an offensive representation of, or reference to, a person (living or deceased); and
- (c) presents with due accuracy and impartiality

any news broadcasted.

Standards for
local broadcasts

56. (1) It shall be the duty of the Office to set, review and revise, such standards for the content of such broadcasts as appear to it best calculated to secure the standards specified in section 55.

(2) The standards set by the Office shall be contained in one or more published codes and, in setting or revising the codes, the Office may consult with such persons as it sees fit.

(3) In setting or revising standards, the Office may consult with such persons as it sees fit and shall have regard to -

- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
- (b) the likely size and composition of the potential audience for programmes included in local programming generally, or in local programming of a particular description;
- (c) the likely expectation of the audience as to the nature of a local programme's content and the extent to which the nature of that content can be brought to the attention of potential members of the audience; and
- (d) the likelihood of persons who are unaware of the nature of a local programme's content being unintentionally exposed, by their own actions, to that content.

(4) The Office shall ensure that the standards in force under these regulations include -

- (a) minimum standards applicable to all local programmes; and
- (b) such other standards applicable to particular descriptions of local programmes as appear to the Office to be appropriate for securing the standards objectives.

Supervision of
local
broadcasting

57. (1) A licensee shall retain a recording of the local programming in a viewable and accessible form for a period

of twenty-eight days after its broadcast.

(2) For the purpose of maintaining supervision of local programming, the Office may make and use recordings of those programmes or any part of them and such use shall be deemed not to infringe any intellectual property rights in that programming.

(3) Nothing in this Law shall be construed as requiring the Office to view or listen to local programmes in advance of their being included in local programming services.

(4) The Office may issue guidelines as to the duties of licensees under sections 55, 56 and subsection (1) of this section.”.

12. The principal Law is amended by repealing Part VI.

Repeal of Part VI -
administrative fines

13. The principal Law is amended in section 65 as follows -

Amendment of section
65 - interconnection

- (a) in the marginal note by inserting after the word “Interconnection” the words “and infrastructure sharing”;
- (b) in subsection (1) by deleting the words “and shall, in accordance with this section, ensure that the interconnection” and substituting the words “or the sharing of any infrastructure and shall, in accordance with this section, ensure that the interconnection or infrastructure sharing”;
- (c) in subsection (2) by deleting the words “shall make his request for interconnection” and substituting the words “or share infrastructure shall make the request for interconnection or infrastructure sharing”;
- (d) in subsection (3) by inserting after the word “interconnection” the words “or infrastructure sharing”;
- (e) in subsection (4) by inserting after the word “interconnection” the words “or share infrastructure”;
- (f) in subsection (5) by inserting after the word “interconnection” the words “or infrastructure sharing”;
- (g) in subsection (6) by inserting after the word “interconnections” the words “or infrastructure sharing”;
- (h) in subsection (7) by inserting after the word “interconnection” wherever it appears, the words “or infrastructure sharing”.

14. The principal Law is amended in section 66 as follows -

Amendment of section
66 - interconnection
agreements

- (a) in the marginal note by inserting after the word “Interconnection” the words “and infrastructure sharing”;
- (b) in subsection (1) by inserting after the word “Interconnection” the words “or infrastructure sharing”; and
- (c) in subsections (2), (4) and (5) by inserting after the word “interconnection” wherever it appears, the words “or infrastructure sharing”.

Amendment of section 67 - pre-contract disputes

15. The principal Law is amended in section 67(1) by inserting after the word “interconnection” the words “and infrastructure sharing”.

Insertion of section 67A - power of the Office to consider disputes on its own initiative

16. The principal Law is amended by inserting after section 67 the following section -

“Power of the Office to consider disputes on its own initiative

67A. (1) The Office may decide, on its own initiative, to consider and determine what, in its view, is a dispute between any persons concerning the potential or actual operation of an ICT network or provision of an ICT service and in so doing shall notify all parties to the dispute that it is doing so.

(2) The Office shall include in any notification under subsection (1), a timetable for considering and determining the dispute and may give directions with which the relevant persons to the dispute are to comply in order to enable the Office to carry out its functions, responsibilities and duties.

(3) The Office's determination shall be one which it considers will enable the dispute to be resolved in a way which best contributes to the fulfilment of its functions, responsibilities and duties, and may include any one or more of the following -

- (a) the making of a declaration setting out the rights and obligations of the parties to the dispute;
- (b) the giving of a direction fixing the terms or conditions of transactions between the parties to the dispute;
- (c) the giving of a direction imposing an obligation, enforceable by the parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by the Office;

- (d) for the purpose of giving effect to a determination by the Office of the proper amount of a charge in respect of which amounts have been paid by one of the parties of the dispute to the other, the giving of a direction, enforceable by the party to whom the sums are to be paid, requiring the payment of sums by way of adjustment of an underpayment or overpayment; and
- (e) such other course of action as the Office considers necessary to resolve the dispute.

(4) The procedure for considering the dispute and making a determination is the procedure that the Office is required, by Law, to follow.

(5) Where the Office makes a determination under this section, the Office shall publish the determination.”

17. The principal Law is amended in section 68 as follows -

Amendment of section
68 - cost of
interconnection

- (a) in the marginal note by inserting after the word “interconnection” the words “and infrastructure sharing”;
- (b) in subsection (1) by inserting after the word “interconnection” the words “or infrastructure sharing”;
- (c) in subsection (2) -
 - (i) in the definition of the word “accommodation” by inserting after the word “interconnection” the words “or infrastructure sharing”; and
 - (ii) by deleting the definition of the word “costs” and substituting the following definition -

“costs” means the fully allocated cost of accommodation, mechanical and electrical connection, electronic programming and infrastructure sharing and shall not include compensation for the loss of business which the party providing the interconnection or infrastructure sharing may incur by virtue of providing the interconnection or infrastructure sharing to the requesting party.”; and
- (d) in subsection (3) by inserting after the word “interconnection” wherever it appears, the words “or infrastructure sharing”.

18. The principal Law is amended by repealing section 69(1).

Amendment of section
69 - infrastructure
sharing

- Amendment of section 72 - quality of service
19. The principal Law is amended in section 72(1) as follows -
- (a) by deleting the word “reasonable” and substituting the word “best”; and
 - (b) by inserting after paragraph (a) the following paragraph -
“(aa) where practicable, directly interconnected with each of the other ICT network providers’ networks;”.
- Amendment of section 74 - equipment standards and technician certification
20. The principal Law is amended in section 74 by repealing subsection (2) and substituting the following subsection -
- “(2) Licensees shall, as a condition of licensing -
- (a) connect only equipment meeting such standards to public ICT networks; and
 - (b) employ ICT technicians, who have been certified in accordance with this Law or any other Law, to set-up, maintain and upgrade that equipment.”.
- Repeal of Part IX - Review of Administrative Decisions and Appeals
21. The principal Law is amended by repealing Part IX.
- Repeal of sections 85 to 87 - refusal to produce documents, etc.; giving false information; failure to attend to give evidence
22. The principal Law is amended by repealing sections 85, 86 and 87.
- Repeal of section 91 - offences by bodies corporate
23. The principal Law is amended by repealing section 91.
- Amendment of section 97 - power to make regulations
24. The principal Law is amended in section 97 by repealing subsection (3) and substituting the following subsection -
- “(3) The Office -
- (a) after consultation with the Minister, may make regulations relating to -
 - (i) licence fees;
 - (ii) critical ICT infrastructure; and
 - (iii) radio and television content obligations; and
 - (b) may make regulations relating to -
 - (i) infrastructure sharing;
 - (ii) the numbering system;

- (iii) quality standards; and
- (iv) such other measures as the Office considers necessary for the carrying out of its duties under this Law.”.

25. The principal Law is amended by repealing section 98.

Repeal of section 98 - immunity

26. The principal Law is amended by inserting after section 100 the following -

Insertion of Part XII - Dissolution of Authority

“PART XII - Dissolution of Authority

Dissolution of Authority

100A.(1) On the operative date, the Authority is dissolved and the assets, liabilities, property and contracts of the Authority, together with all functions and powers required to ensure the effectiveness and continuity of regulation, are transferred to the Office.

(2) Every matter commenced under the former Law and partly dealt with by the former Board when the new Law comes into force, is to be continued and dealt with in all respects under the new Law and the provisions of the new Law are to apply accordingly.

(3) Every matter commenced under the former Law and not wholly or partly dealt with by the former Board when the new Law comes into force, is to be taken to be a matter commenced under the new Law and the provisions of the new Law are to apply accordingly.

(4) Any subordinate legislation or instructions that relates to the functions or powers of the Authority shall continue to apply to the Office, with all necessary changes being made, until such time as the Office issues administrative determinations for similar purposes under the Utility Regulation and Competition Law, 2016 that are inconsistent with that subordinate legislation or those instructions; and, where the Office issues such administrative determinations that are inconsistent with that subordinate legislation or those instructions, then, to the extent of the inconsistency, the subordinate legislation or instructions shall cease to apply.

Transfer of employees to the Authority

100B.(1) A person employed in the Authority on the day preceding the operative date, may be offered employment by the Office and, if the person accepts the offer, the person

shall become an employee of the Office on terms and conditions of employment no less favourable than those that applied to the person's office in the person's employment in the Authority, except -

- (a) to the extent other terms and conditions are agreed between the employee and the Office; and
- (b) that disciplinary matters shall be dealt with in accordance with the Labour Law (2011 Revision) and the disciplinary rules and procedures of the Office.

(2) Pension arrangements and medical benefits relating to any employee specified under subsection (1) shall be subject to sections 100C and 100D, respectively.

Pensions transferred employees

of 100C.(1) The Office shall ensure the payment of pensions to all of its employees and shall, for that purpose -

- (a) with respect to employees transferred from the Authority in accordance with this Law, continue maintaining or subscribing to a fund in accordance with the National Pensions Law, 2016; and
- (b) with respect to employees employed by the Office after the operative date and who have not been transferred in accordance with this Law, create and maintain or subscribe to a fund in accordance with the provisions of the National Pensions Law, 2016;

but the Office shall not subscribe to any fund in respect of those employees who are employed under contracts which are six months or less in duration.

Medical care for employees of the Office and applicability of Health Insurance Law (2016 Revision)

100D. The Health Insurance Law (2016 Revision) shall apply to the Office except that -

- (a) the Office may elect to provide free or subsidized medical benefits in lieu of, or in addition to, insurance coverage under the Health Insurance Law (2016 Revision); and
- (b) a person described in section 100B shall, unless otherwise notified by the Office, be entitled to receive from the Office the

medical benefits provided to that person on the day preceding that person's transfer to the Office.”.

27. The principal Law is amended in section 101(1) as follows -

Amendment of section 101 - transitional arrangements

- (a) by deleting the words “the 17th May, 2002” and substituting the words “the operative date”; and
- (b) by deleting the words “the 31st December, 2002 or such later date” and substituting the words “such date”.

28. The principal Law is amended by inserting after section 101 the following section -

Insertion of section 102 - interpretation for the purposes of Part XII

“Interpretation for the purposes of Part XII

102. In this Part -

“Authority” means the Information and Communications Technology Authority established under the former Law;

“former Board” means the Board of directors of the Authority;

“former Law” means the principal Law in force immediately before the date of commencement of the Information and Communications Technology Authority (Amendment) (No. 2) Law, 2016;

“new Law” means the principal Law as amended by the Information and Communications Technology Authority (Amendment) (No. 2) Law, 2016;

“Office” means the Office of Competition and Regulation established under the Utility Regulation and Competition Law, 2016; and

“operative date” means the date of commencement of section 21 of the Information and Communications Technology Authority (Amendment) (No. 2) Law, 2016.”.

29. The principal Law is amended by repealing Schedule 1.

Repeal of Schedule 1 - procedure of the Board

30. The principal Law is amended by deleting the word “Authority” wherever it appears and substituting the word “Office”, except -

Amendment of miscellaneous provisions - substitution of the word “Office” for the word “Authority”

- (a) in section 2, in the definitions of the words “Administrative Point of Contact” and “Technical Point of Contact”, respectively;

- (b) in section 25(5), in the reference to the “Cayman Islands Monetary Authority”;
- (c) in section 92(2)(b), in the reference to the “the Internet Assigned Numbers Authority”; and
- (d) in Part XII.

Passed by the Legislative Assembly the 24th day of October, 2016.

Juliana Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.