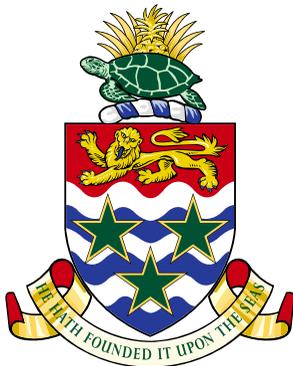


CAYMAN ISLANDS



INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW (2019 REVISION)

(2019 Revision)

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INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW (2019 REVISION)

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CAYMAN ISLANDS



INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW (2019 REVISION)

(2019 Revision)

PART I - Preliminary

Short title

1. This Law may be cited as the *Information and Communications Technology Law (2019 Revision)*.

Definitions

2. In this Law —

“**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;

“**Administrative Point of Contact**” means the person fulfilling the duties of manager of a specified Internet domain in accordance with rules and procedures published by the Internet Assigned Numbers Authority and the Internet Corporation for Assigned Names and Numbers or any other such entity being entities as are prescribed in regulations made under this Law;

“**authorised officer**” means a person authorised by the Office;

“**Court**”, other than in Schedule 2, means the Grand Court;

“**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;

“**document**” includes an electronic document;

“**electronic**” means relating to technology having electrical, magnetic, optical, electromagnetic or similar capabilities, whether digital, analogue or otherwise;

“**electronic agent**” means a programme, or other electronic or automated means, configured and enabled by a person, that is used to initiate or respond to an electronic message, record or event in whole or in part, without review by an individual;

“**emergency services**” means the police, fire, ambulance and such other emergency services as may be prescribed in regulations;

“**Governor**” means the person for the time being holding the office of Governor of the Islands, and includes any person for the time being lawfully performing the functions of that office under section 31 of Schedule 2 to the *Cayman Islands Constitution Order 2009 [UK.S.I. 2009 No. 1379]*, and to the extent to which a Deputy appointed under section 34 of Schedule 2 to the *Cayman Islands Constitution Order 2009 [UK.S.I. 2009 No. 1379]* is authorised to act, that Deputy;

“**ICT**” means information and communications technology;

“**ICT infrastructure**” includes dark fibre;

“**ICT service**” means any information technology service, telecommunications service, electronic media and broadcast service, Internet service, digital library and commercial information service, network-based information service and related specialised professional service provided by electronic means and any other similar service and includes a service that consists of or includes the provision of ICT infrastructure;

“**ICT network**” means any network used in connection with the provision of an ICT service;

“**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;



“**interconnection**” means the physical or logical connection of public ICT networks of different ICT network providers;

“**internet access**” means access to the Internet or to any similar global system for linking networks together using, as the basis for the communications, transmission protocols or internet protocols or any protocols amending or replacing them;

“**judge**” means a judge of the Grand Court;

“**intermediary**”, with respect to a message, means a person or electronic agent who in any way processes that message for another person;

“**licence**” means a licence granted under this Law;

“**licensee**” means a person to whom a licence is granted by the Authority under this Law;

“**licence fees**” means the initial, annual or renewal fees for a licence payable to the Authority by an applicant or a licensee;

“**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;

“**message**” means a communication sent, delivered to, received or transmitted, or intended to be sent, delivered, received or transmitted by telecommunication and includes any information that enables the identification of the origin and destination of the communication and the date and time it was transmitted or received;

“**Minister**” means the Minister responsible for information and communications technology (ICT);

“**Office**” means the Utility Regulation and Competition Office established under section 4 of the *Utility Regulation and Competition Law (2019 Revision)*;

“**originator**”, in relation to a message, means a person who —

- (a) originally sends a message;
- (b) instructs another to send a message that has originated from him on his behalf; or
- (c) configures and enables his electronic agent to initiate a message on his behalf,

but does not include —

- (i) a person who sends a message on the instructions of another; or
- (ii) a person acting as an intermediary with respect to that message;

“**person**” includes any corporation either aggregate or sole, any partnership or association, any undertaking, club, society or other body of one or more persons;

“**personal data**” means data which relate to a person who can be identified —

- (a) from that data; or
- (b) from that data or other information which is in the possession of, or is likely to come into the possession of, the ICT service provider or ICT network provider,

and includes any expression of opinion about that person and any indication of the intentions of the ICT service provider or ICT network provider or any other person in respect of that person;

“**public officer**” has the meaning assigned to it by section 124(1) of the Constitution;

“**regulations**” mean regulations made under this Law;

“**subscriber**”, unless otherwise specified in this Law, means a person who is provided with an ICT service by an ICT service provider and includes the end user of that ICT service;

“**Technical Point of Contact**” means the person fulfilling the duties of the technical manager of a specified Internet Domain in accordance with rules and procedures published by the Internet Assigned Numbers Authority, the Internet Corporation for Assigned Names and Numbers or any other such entity being entities as are prescribed in regulations;

“**telecommunications**” means any form of transmission, emission or reception of signs, text, images and sounds or other intelligence of any nature by wire, radio, optical or other electromagnetic means; and

“**universal service**” means any of the categories of service specified by regulations made under section 61.

PART II - Powers and Functions of Office

Repealed

3. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

4. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

5. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*



Repealed

6. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

7. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

8. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Powers and functions of Office

9. (1) Subject to this Law, the Office has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Law.
- (2) For the purposes of this section, the Office shall —
- (a) allocate the electromagnetic spectrum for facilities and specified services within the Islands, or between the Islands and elsewhere;
 - (b) determine methods for assigning the electromagnetic spectrum;
 - (c) issue licences authorising the use of specified portions of the electromagnetic spectrum, including those used on any ship, aircraft, vessel or other floating or airborne contrivance or spacecraft registered in the Islands; and
 - (d) institute procedures for ensuring the compliance by licensees with any obligations regarding the use of the electromagnetic spectrum, imposed by or under the licence, this Law or any regulations made hereunder.
- (3) Without prejudice to subsections (1) and (2), the principal functions of the Office are —
- (a) to promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so;
 - (b) to advise the Minister on ICT matters, including compliance with Government's international obligations, market liberalisation and competitive pricing;
 - (ba) to encourage the maintenance of a sufficient plurality of providers of different television and radio services;
 - (bb) to promote the application, in 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;
- (c) to investigate and resolve complaints from consumers and service providers concerning the provision of ICT services and ICT networks;
- (d) to determine the categories of licences to be issued under this Law and the *Electronic Transactions Law (2003 Revision)*;
- (e) to license and regulate ICT services and ICT networks as specified in this Law and the *Electronic Transactions Law (2003 Revision)*;
- (f) to collect all fees, including licence fees, and any other charges levied under this Law or the *Electronic Transactions Law (2003 Revision)* or regulations made thereunder;
- (g) to resolve disputes concerning the interconnection or sharing of infrastructure between or among ICT service providers or ICT network providers;
- (h) to promote and maintain an efficient, economic and harmonised utilisation of ICT infrastructure;
- (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;
- (i) to be the sole person appointed under this Law to be the Administrative Point of Contact and the only person responsible for the management and control of the top level of the global Internet Domain Name System held in trust for the Internet and the Islands;
- (j) to act on any matter referred to it by the Minister or the Chief Executive Officer at the Office appointed under the *Utility Regulation and Competition Law (2019 Revision)*; and
- (k) to carry out such other functions as are conferred on the Office by or under this Law or any other law.



- (4) The Office may regulate the rate, prices, terms and conditions of any ICT service or ICT network that is required to be licensed where the Office is of the opinion that it is in the interests of the public to do so.

Repealed

10. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

11. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Accounts and statements

Repealed

12. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

13. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

14. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

15. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

16. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

17. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

18. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

19. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

20. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

21. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

22. *Repealed by section 4 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

PART III - Licensing

Licences

23. (1) The Office may grant licences in accordance with this Law.
- (2) Subject to subsections (3) and (3A), the Office, by notice published in the Gazette, shall specify the ICT services and ICT networks that are required to be licensed.
- (3) In relation to ICT networks or ICT services in either Little Cayman or Cayman Brac, the Cabinet may license such ICT networks and ICT services as it sees fit and on such terms and conditions as it sees fit.
- (3A) The Cabinet may, after consultation with the Office, by notice published in the Gazette, exempt a company from the requirement to obtain an ICT licence if the sole ICT network or ICT service that the company provides is the provision of ICT infrastructure to a wholly-owned subsidiary that is subject to this Law, and the exemption shall be subject to such terms and conditions as the Cabinet sees fit.
- (4) The Cabinet, upon the recommendation of the Office, may establish a class or classes of licence which are exempt from the *Local Companies (Control) Law (2019 Revision)*.
- (5) No ICT network or ICT services licensed under this Law is required to be licensed under the *Trade and Business Licensing Law (2019 Revision)*.
- (6) A licence may specify —
- (a) the operations which the licensee may undertake under that licence; and



- (b) the conditions to which the licensee is subject, including but not limited to pricing, service standards, Universal Service provision, infrastructure sharing, interconnection and spectrum utilisation.

Regulations relating to classes of ICT service

- 24.** The Cabinet may, by regulations, prescribe for any specified class or classes of ICT service as well as for —
- (a) the contents of such ICT service and the times when they can be provided;
 - (b) the minimum amount of time on such ICT service a licensee shall devote to material containing matter of minority, cultural or educational interest and the times during which such matter shall be provided;
 - (c) the times within which advertisements relating to particular goods or classes of goods may be advertised; and
 - (d) the maximum amount of time in any hour which may be used for advertisements and the maximum amount of time which can be used for that purpose.

Shares of licensee not to be issued or transferred without approval of the Office

- 25.** (1) Where a licensee is a company (other than a company referred to in subsection (5)), the licensee shall not issue shares or a person owning or having an interest in shares in the licensee shall not transfer or otherwise dispose of or deal in those shares or that interest without the prior written consent of the Office whose consent shall not be unreasonably withheld; 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.
- (2) In subsection (1), the reference to shares being issued, transferred, disposed of, or dealt with includes the issue, transfer or disposal of, or dealing with either the legal or a beneficial interest in the shares.
- (3) A licensee or person who wishes to deal with shares as indicated in subsection (1) shall request the approval of the Office in writing, and the Office shall reply in writing to such request within thirty days of the receipt of such request.
- (4) Where the Office refuses to give its consent it shall give reasons in writing for such refusal.

- (5) The Office may, in respect of a licensee whose shares are publicly traded on a stock exchange recognised by the Cayman Islands Monetary Authority, waive the obligation to obtain consent under subsection (1), and any such waiver —
- (a) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Office of —
 - (i) any change in control of the licensee;
 - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee's issued share capital or total voting rights; or
 - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the parent company of the licensee;
 - (b) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Office, and within such period of time as the Office may require, for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
 - (c) shall be subject to such terms and other conditions as the Office may deem necessary.
- (6) In the event of shares in a company which has not been granted a waiver under subsection (5) and which is a licensee under this Law vesting automatically through process of law in a person, the secretary or registrar of the company, as soon as he becomes aware of such vesting, shall inform the Office of the number of shares and the identity of the person in whom they have vested, and the Office shall have power to impose conditions on the licence and to issue instructions as to the management and operations of the licensee.
- (7) Where —
- (a) a licensee or a person referred to in subsection (1) fails or refuses to obtain the consent of the Office in accordance with this section or proceeds to deal with shares where the Office has refused to consent to such dealing; or
 - (b) a licensee fails to comply with subsection (5),
- the Office may, in accordance with this Law, suspend or revoke the licence.

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.

Procedure for the grant of a licence

- 26.** (1) A person who wishes to apply for a licence or the renewal of a licence shall, in accordance with a procedure determined by the Office submit an application for consideration by the Office, and the application shall be in the prescribed form and accompanied by such fees as may be determined by the Office.
- (2) The Office may where necessary, before granting or renewing a licence under this section, take into account the following matters —
- (a) whether the applicant possesses the technical qualification necessary to perform fully the obligations attached to the licence for which the applicant is applying;
 - (b) whether, during the term of any current or prior licence, if any, the applicant has complied with all terms, conditions, specifications and requirements of any licence, order, directive, rule or regulation pertaining to such licence;
 - (c) whether the applicant intends to perform the obligations attached to the licence for which the applicant is applying in a period of time which, in the opinion of the Office, is reasonable;
 - (d) whether the applicant is a fit and proper person to be granted a licence;
 - (e) whether the interests of subscribers, purchasers and other users of ICT services or ICT networks will be protected

- (f) whether competition among providers of ICT services and ICT networks will be promoted;
 - (g) whether the applicant has, at the date of application for a licence or proposes to have within a specified time after a licence has been issued, participation by Caymanians and, if so, the nature and extent of any such participation, including without limitation, the level of beneficial ownership by Caymanians, if any, and any participation by Caymanians as directors, management or otherwise;
 - (h) whether research, development and introduction of new ICT services and ICT networks will be promoted;
 - (i) whether foreign and domestic investors will be encouraged to invest in the ICT sector; and
 - (j) whether the public interests of and the security interests of the Islands will be safeguarded.
- (3) In determining, for the purposes of this Law, whether a person is a fit and proper person, regard shall be had to all circumstances, including evidence of that person's —
- (a) honesty, integrity and reputation;
 - (b) competence and capability; and
 - (c) financial soundness.

Assignment or transfer of licence

- 27.** (1) A person shall not assign a licence, or any rights thereunder, without the prior written approval of the Office.
- (2) The Office may approve an application for the assignment of a licence under subsection (1) where the Office is satisfied that the proposed assignee satisfies the criteria set out in section 26 (2) and (3).
- (3) The Office shall, before approving the assignment of a licence, publish the particulars of the proposed assignment in the Gazette.

Duration of licence

- 28.** A licence —
- (a) shall be for the period specified in the licence and shall not be granted for a period longer than twenty years; and
 - (b) may be revoked or suspended in accordance with this Law.



Renewal of licence

- 29.** (1) Where an application for renewal of a licence under section 26 is made, the Office may refuse to renew that licence if the licensee is or has engaged in conduct that materially contravenes this Law or any regulations.
- (2) Where the Office has reasonable grounds for not renewing a licence under subsection (1), it shall inform the licensee by written notice as soon as practicable of its intention not to renew the licence.
- (3) A licensee referred to under subsection (2) shall have thirty days from the date of service of the said notice to make written submissions to the Office in respect of the refusal.
- (4) The Office shall consider any written submissions made under subsection (3), and shall inform the licensee within seven days of the receipt of the submission of its decision on the matter.

Licence fees

- 30.** (1) A licence granted under this Law shall be subject to the prescribed licence fees which shall be determined by the Office.
- (2) The licence fees referred to in subsection (1) shall be payable directly by the applicant to the Office at such time or times as may be prescribed by the Office.

Modification of licence

- 31.** (1) A licence may be modified where the Office and the licensee, by agreement in writing, agree to modify the licence.
- (2) Notwithstanding subsection (1) and subject to any special conditions concerning modification in the relevant licence, the Office shall, on the direction of the Governor and without the agreement of the licensee, modify a licence for reasons of security of the Islands.
- (3) Where the Office considers that a licence should be modified the Office shall give to the licensee a written notice that —
- (a) sets out the proposed modification;
 - (b) states the reasons for the proposed amendment; and
 - (c) invites the licensee to show, within thirty days, why the licence should not be so modified.
- (4) The Office may modify the licence if, after considering and having regard to all representations made within a period of not less than thirty days, the Office considers the licence should be modified —
- (a) in the manner set out in the notice; or
 - (b) in some other manner consistent with the representations.

- (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.

Suspension of licence

- 32.** (1) Subject to any special conditions concerning suspension in the relevant licence, the Office may suspend any licence for a period not exceeding one year in any of the following circumstances —
- (a) where a licensee breaches any condition attached to his licence;
 - (b) where a licensee contravenes this Law or the regulations;
 - (c) where a licensee is convicted of an offence under this Law;
 - (d) where a licensee fails to discharge his financial commitments under this Law;
 - (e) where a licensee is struck from the Register of Companies;
 - (f) where a licensee is subject to an order of the Court in respect of liquidation or bankruptcy proceedings; or
 - (g) where a licensee compounds with his creditors to the detriment of the Office.
- (2) Notwithstanding subsection (1), the Office, on the order of the Governor, shall without notice suspend any licence if the suspension is necessary for reasons of security of the Islands.
- (3) The Office shall, before suspending any licence under subsection (1), give written notice to the licensee, in which notice the Office shall draw to the attention of the licensee the grounds on which the Office intends to suspend the licence.
- (4) The Office shall, in case of a breach by a licensee of a condition attached to a licence or regulations, give an opportunity to the licensee to remedy the breach within a reasonable time.

Revocation of licence

- 33.** (1) Subject to any special conditions in the relevant licence concerning revocation, the Office may revoke any licence on any of the following grounds —
- (a) where the licensee is in fundamental breach of any condition attached to the licence;
 - (b) where the licensee persistently breaches any condition attached to the licence or repeatedly contravenes this Law or the regulations;
 - (c) where the licensee is dissolved;
 - (d) where the licensee is wound up or declared bankrupt;
 - (e) where a licensee obtained the licence by a fraudulent, false or misleading representation or in some other illegal manner; or



- (f) where a licence has been suspended and a licensee has failed to rectify any ground for suspension under section 32 within a period of three hundred and sixty-four days following upon the date of any such suspension.
- (2) Notwithstanding subsection (1), the Office, on the order of the Governor, shall, without notice, revoke any licence if the revocation is necessary for reasons of security of the Islands.
- (3) The Office shall, before revoking any licence under subsection (1), give written notice to the licensee, in which notice the Office shall draw to the attention of the licensee the grounds on which the Office intends to revoke the licence.
- (4) The Office shall, in the case of a fundamental breach by a licensee of a condition attached to a licence or the regulations, give an opportunity to the licensee to remedy the breach, if capable of remedy, within a reasonable time.

Register of applications and licences

- 34.** (1) The Office shall cause to be kept a register of all applications for licences received by it and all such licences and such register may be kept in electronic form.
- (2) The Office —
- (a) shall make available for public inspection during its business hours, applications and licences; and
 - (b) may permit any person to make copies of any entry in the register and may charge such fees as it considers reasonable for such copies.

Part IV- Anti-Competitive Practices

Repealed

- 35.** *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

- 36.** *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Exemptions

Repealed

37. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

38. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

39. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

40. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Investigations relating to anti-competitive practices

Repealed

41. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

42. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

43. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

44. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

45. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*



Repealed

46. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Enforcement**Repealed**

47. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

48. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

49. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

50. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

51. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

52. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

53. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

54. *Repealed by section 10 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

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 broadcast.

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.

Part VI – Administrative Fines

Repealed by section 12 of [Law 50 of 2016]

Repealed

- 58.** *Repealed by section 12 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

PART VII - Universal Service, Interconnection, Infrastructure Sharing, Numbering, Etc

Universal Service

Universal Service Fund

- 59.** (1) The Office, for the purposes set out in section 60, may establish a fund to be known as the Universal Service Fund and such fund, if established, shall be managed by the Office in accordance with regulations made by the Cabinet after consultation with the Office.
- (2) The Office may cause the Universal Service Fund to be subdivided into one or more sub-funds for the purpose of administering or funding one or more categories of universal service.

Purpose of Fund

- 60.** (1) The Universal Service Fund shall be used by the Office to compensate any ICT service provider or ICT network provider who is required to provide universal service under section 62.
- (2) The amount of compensation payable under subsection (1) shall be computed in accordance with the regulations made by the Cabinet on the recommendation of the Office, and the conditions attached to the licence of the ICT service or ICT network provider, and such compensation shall be paid to the relevant ICT service provider and ICT network provider by the Office.

Universal Service regulations

- 61.** The Cabinet may, on the recommendation of the Office, by regulations made under this Law specify:
- (a) categories of universal service that are required; and
 - (b) categories of ICT network providers and ICT service providers that may be required to provide one or more of such required universal services.

Provision of Universal Service by specified categories of licensees

- 62.** (1) The Office may include a condition, in the licence of each licensee that provides an ICT service or ICT network specified under section 61, requiring such licensee to provide one or more categories of universal service, provided that such requirement shall be transparent and non-discriminatory as between licensees that provide such a specified service or network, and is not more burdensome than is necessary for the category of universal service required to be offered.
- (2) A licensee who is required by its licence to provide one or more categories of universal service to any person shall do so on such terms, including as to price and the quality of service, as may be specified in the licence.
- (3) For the purposes of subsection (1), the categories of universal service that may be required include —
- (a) public voice telephony services together with free calls to emergency services and directory assistance; and
 - (b) Internet access together with free Internet access for educational or health facilities.

Provision of Universal Service by particular licensee

- 63.** (1) The Office may include a condition, in the licence of any licensee that provides a specified ICT service or ICT network, requiring such licensee to provide one or more categories of universal service.



- (2) A licensee so required by its licence to provide one or more categories of universal service to any person shall be entitled to compensation as specified in section 60.

Contributions to Fund

- 64.** (1) The Office shall include a condition, in the licence of each licensee that provides an ICT service or an ICT network specified under section 61, that each such licensee shall contribute to the Universal Service Fund or any one or more sub-funds of the Universal Service Fund.
- (2) The Cabinet may, on the recommendation of the Office and by order, prescribe the time, frequency and also the quantum or method for calculating the quantum of monies to be paid into the Universal Service fund or any one or more sub-funds of the Universal Service Fund by each licensee providing a specified service or network.
 - (3) Where, within the scope of its licence, a licensee provides more than one service or network specified under subsection (1), the quantum of the monies to be paid into the Universal Service Fund or any one or more sub-funds of the Universal Service Fund by that licensee shall be determined on the basis of a separate amount for each specified service or network.

Interconnection and Infrastructure Sharing

Interconnection and infrastructure sharing

- 65.** (1) Subject to this section, a licensee that operates a public ICT network shall not refuse, obstruct or in any way impede another licensee in the making of any interconnection with its ICT network or the sharing of any infrastructure and shall, in accordance with this section, ensure that the interconnection or infrastructure sharing provided is made at technically feasible physical points.
- (2) A licensee who wishes to make any interconnection or share infrastructure shall make the request for interconnection or infrastructure sharing with another licensee in writing.
 - (3) A licensee to whom a request is made in accordance with this section shall, in writing, respond to the request within a period of one month from the date the request is made to him and, subject to subsection (5), provide the interconnection or infrastructure sharing service in a reasonable time.
 - (4) A request by a licensee to make any interconnection or infrastructure sharing with another licensee shall be refused only on reasonable grounds, and such refusal shall be in writing.
 - (5) Any interconnection or infrastructure sharing provided by a licensee under this section shall be provided at reasonable rates, terms and conditions which are not less favourable than those provided to —

- (a) any non-affiliated supplier;
 - (b) any subsidiary or affiliate of the licensee; or
 - (c) any other part of the licensee's own business.
- (6) Without prejudice to subsection (5), the Authority shall prescribe the cost and pricing standards and other guidelines on which the reasonableness of the rates, terms and conditions of the interconnections or infrastructure sharing will be determined.
- (7) A public ICT network provider shall not, in respect of any rates charged by him for interconnection or infrastructure sharing services, call set up or call termination services provided by him to another public ICT network provider, vary the rates on the basis of the class of customers to be served or the type of services that the public ICT network provider requesting the interconnection or infrastructure sharing services intends to provide.

Interconnection and infrastructure sharing

- 66.** (1) Interconnection or infrastructure sharing agreements between licensees shall be in writing, and copies of each agreement shall be submitted to the Office within seven days of that agreement having been signed.
- (2) Copies of interconnection or infrastructure sharing agreements between licensees shall be kept in a public registry maintained by the Office for that purpose.
- (3) The agreements referred to in subsection (2) shall be open to public inspection during normal working hours.
- (4) The Office shall, after consulting the Cabinet, prepare, publish, and make available copies of the procedures to be followed by the licensees when negotiating interconnection or infrastructure sharing agreements.
- (5) Where parties cannot agree upon interconnection or infrastructure sharing rates, the Office may impose such rates.

Pre-contract disputes

- 67.** (1) Where, during negotiations for the provision of interconnection or infrastructure sharing, there is any dispute between the parties (hereinafter in this section referred to as the “**pre-contract dispute**”) as to the terms and conditions of such provision, either of them may refer the dispute to the Office for resolution.
- (2) The Office may make rules applicable to the resolution of pre-contract disputes by means of arbitration or other dispute resolution mechanisms.
- (3) A decision of the Office in relation to any pre-contract dispute shall be consistent with any agreement reached between the parties as to matters that are not in dispute.



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.

Cost of interconnection and infrastructure sharing

- 68.** (1) The cost of making any interconnection or infrastructure sharing to the ICT network of another licensee shall be borne by the licensee requesting the interconnection.
- (2) In this section —

“**accommodation**” means space within buildings or land adjacent to buildings, belonging to the party providing the interconnection or infrastructure sharing, for use by the requesting party’s equipment or personnel; and

“**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.

- (3) The cost referred to in subsection (1) shall be based on cost-oriented rates that are reasonable and arrived at in a transparent manner having regard to economic feasibility, and shall be sufficiently unbundled such that the licensee requesting the interconnection or infrastructure sharing service does not have to pay for network components that are not required for the interconnection or infrastructure sharing service to be provided.

Infrastructure sharing

- 69.** (1) *Repealed by section 18 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*
- (2) The Office, in order to promote an efficient, economic and harmonised utilisation of infrastructure, may —
- (a) coordinate with, and issue guidelines to, any or all government entities having general authority over matters affecting infrastructure; and
 - (b) inquire into and require modification of any agreement or arrangements entered into between a licensee and a another person or licensee which has the effect of limiting either the efficient and harmonised utilisation of infrastructure or the promotion of competition in the provision of ICT services or ICT networks.
- (3) A licensee shall not deny another licensee access to its infrastructure or infrastructure arrangements except —
- (a) where there is insufficient capacity taking into account reasonably anticipated requirements;
 - (b) there are reasons of safety or security; or
 - (c) there are technical and engineering matters which would make such access difficult or impossible.

Licensee confidential information

- 70.** (1) Where a licensee receives information from another licensee for the purpose of interconnection, infrastructure sharing or the provision of ICT networks or ICT services generally, and such information is of a competitive nature in that the information relates to matters including the following —



- (a) customer orders;
- (b) market forecasts;
- (c) plans for the development of new services;
- (d) network plans;
- (e) new customers; and
- (f) current or proposed business plans,

the licensee shall treat such information in confidence and —

- (i) may only share it amongst such of its employees who need the information in order to provide services to the licensee providing the information; and
 - (ii) shall not provide such information to its employees or other persons who are involved in providing ICT networks or ICT services offered in competition to the licensee providing the information.
- (2) The Office may establish such rules and procedures as it considers necessary to prevent the misuse of licensees' confidential information.

Numbering

Numbering

71. (1) The Office shall establish and manage a national plan for the allocation of telephone numbers among licensees in accordance with the regulations made in that respect under this Law by the Cabinet.
- (2) The Office shall, in managing the national plan for the allocation of numbers among licensees, pay due regard to the existing allocation of numbers.
- (3) Subject to this Law, the Office may make rules imposing on any licensee the responsibility to offer number portability if the Office is satisfied on reasonable grounds that —
- (a) the benefits likely to arise from the requirement to provide a particular form of number portability outweigh the likely cost of implementing it; and
 - (b) the requirement will not impose an unfair burden on any licensee.
- (4) In this section —
- “**number portability**” relates to the ability of customers to change licensee without having to change their telephone numbers.

PART VIII - Service Standards and Data Protection

Quality of service

- 72.** (1) ICT service providers and ICT network providers shall use best endeavours to ensure that their ICT services and ICT networks are —
- (a) reliable;
 - (aa) where practicable, directly interconnected with each of the other ICT network providers' networks;
 - (b) provided with due care and skill; and
 - (c) rendered in accordance with the standards reasonably expected of a competent provider of those ICT services and ICT networks.
- (2) A complaint may be made to the Office by any person who is dissatisfied with the networks or services provided to him by an ICT service provider or ICT network provider or who claims to be adversely affected by the actions or omissions of an ICT service provider or ICT network provider.
- (3) The Office may prescribe quality standards for the provision of ICT services and ICT networks in relation to all ICT service providers and ICT network providers.
- (4) The Office shall make rules and establish procedures relating to the refusal, disconnection or interruption of ICT services or ICT networks and the administration and resolution of subscriber complaints, without limitation, including requirements for and the determinations relating to the payments of the costs of proceedings and procedures for the resolution of subscriber complaints and the payment of compensation to subscriber, which shall be binding upon licensees.

Non-discrimination and continuity of supply

- 73.** ICT service or ICT network providers may, subject to the rules and procedures established under section 72(4) —
- (a) refuse to provide an ICT service or an ICT network to a subscriber; or
 - (b) discontinue or interrupt the provision of such an ICT service or ICT network to a subscriber pursuant to an agreement with that subscriber,
- only on grounds which are reasonable and non-discriminatory, and where any such action is taken, the ICT service or ICT network provider shall, within seven days, provide in writing to the subscriber the reasons therefor.

Equipment standards and technician certification

- 74.** (1) The Office may establish or adopt appropriate standards for equipment that may be connected to a public ICT network and for certification of ICT technicians.



- (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.
- (3) It shall be a condition of public ICT network use that subscribers connect only equipment to public ICT networks that meet such standards. Failure to comply with such standards is a reasonable ground to refuse to provide, to discontinue or to interrupt the provision of the relevant ICT service or ICT network under section 73.
- (4) Notwithstanding subsections (1), (2) and (3), the Office may, by notice published in the Gazette, exempt any equipment from the requirements of this section for such period of time as the Office considers appropriate and in granting such exemption the Office may indicate —
 - (a) the particular individual or company to which the exemption applies;
 - (b) the reasons why the exemption is being granted;
 - (c) the purpose for which the equipment may be used; and
 - (d) the period of time for which the equipment may be used.

Interception of messages prohibited

- 75.** (1) Subject to subsection (2), a person who intentionally intercepts, alters, replicates, monitors or interrupts any message (whether in whole or in part) during its transmission over an ICT network or by means of an ICT service by any means commits an offence and is liable, for each such message —
- (a) on summary conviction, to a fine of ten thousand dollars;
 - (b) on conviction on indictment, to a fine of twenty thousand dollars and to imprisonment for two years.
- (2) A person shall not have committed an offence under this section if —
- (a) the message is intercepted, monitored or interrupted in obedience to a warrant or order issued by the Governor;
 - (b) the message is intercepted, replicated, monitored or interrupted for the purpose of preventing a contravention of section 77;
 - (c) the person by whom the message is sent or to whom the message is sent has expressly or impliedly consented to the interception, monitoring or interruption;
 - (d) the message is intercepted, monitored or interrupted by the Office or on the written instructions of the Office for purposes connected with the execution of its functions under this Law;

- (e) the message is intercepted, monitored or interrupted by the ICT network provider or ICT service provider over whose network or service the message is being transmitted for the purposes of —
 - (i) providing or billing for that ICT network or ICT service;
 - (ii) preventing the illegal use of the ICT network or ICT service; or
 - (iii) preserving the technical integrity of an ICT network or ICT service; or
- (f) the message is intended to be received by the public.

Privacy of subscriber information

76. (1) In this section —

“**subscriber**” does not include an end user.

- (2) Subject to subsection (3), a licensee who intentionally discloses any personal data of a subscriber or end user commits an offence and is liable for each such disclosure —
 - (a) on summary conviction, to a fine of ten thousand dollars; or
 - (b) on conviction on indictment, to a fine of twenty thousand dollars and to imprisonment for two years.
- (3) Subsection (1) does not apply to —
 - (a) any disclosure which is made to a constable for the prevention or detection of crime or for the purposes of any criminal proceedings;
 - (b) any disclosure under any law for the time being which requires such disclosure;
 - (c) any disclosure which is made with the written consent of the subscriber or end user, as the case may be;
 - (d) any disclosure which is made under a court order;
 - (e) any disclosure which is made in obedience to a warrant or order issued by the Governor; or
 - (f) any disclosure which is made to the Office for purposes connected with the execution of its functions under this Law.
- (4) A licensee shall not be liable for any action or suit for any injury, loss or damage resulting from disclosure of information made under subsection (3).

Refusal to produce records to police officer

77. (1) Subject to subsection (2), an ICT licensee who —

- (a) without reasonable excuse, refuses or fails to produce any document, message, record, thing, statement or information (whether in electronic form or otherwise) relating to its ICT network, ICT service or the users



thereof and required by a constable of the rank of Inspector or above, upon the written request of a constable of the rank of Inspector or above, for the prevention or detection of crime or for the purposes of any criminal proceedings;

- (b) without reasonable excuse, destroys or alters, or causes to be destroyed or altered, any document, message, record, thing, statement or information (whether in electronic form or otherwise) relating to its ICT network, ICT service or the users thereof and required, upon the written request of a constable of the rank of Inspector or above, to be produced for the prevention or detection of crime or for the purposes of any criminal proceedings; or
- (c) knowingly gives false or misleading information to any constable requiring the information, upon the written request of a constable of the rank of Inspector or above, for the prevention or detection of crime or for the purposes of any criminal proceedings,

commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and to imprisonment for one year.

- (2) Subsection (1) applies to any document (including a reverse directory), message, record, thing, statement or information (whether in electronic form or otherwise) held by an ICT licensee and relating to its ICT network, ICT service or the users thereof, other than any such message transmitted earlier than the 15th November, 2000.

PART IX- Review of Administrative Decisions and Appeals

Repealed by section 21 of [Law 50 of 2016]

Repealed

78. *Repealed by section 21 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

79. *Repealed by section 21 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

80. *Repealed by section 21 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

PART X- Offences

Inspections

- 81.** (1) All ICT installations, equipment, apparatus and stations which are used in connection with a license issued or applied for under this Law shall be subject to inspection by a person duly authorised by the Office.
- (2) A person who —
- (a) intentionally impedes or interferes with the inspection referred to in this section;
 - (b) does not give information requested in the course of such inspection; or
 - (c) gives wrong information in response to an inquiry made by the authorised person,
- commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and to imprisonment for one year.

Engaging in ICT activities without a licence

- 82.** (1) A person who operates an ICT network or provides ICT services specified in accordance with section 23(2) contrary to that section commits an offence and is liable, on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for five years, and if the offence is a continuing one to a further fine of ten thousand dollars for every day or part of a day during which the offence has continued.
- (2) The Court may also, on application —
- (a) make an order for forfeiture of any equipment used for the commission of the offence; and
 - (b) grant an order restraining the accused from continuing to engage in similar activities.

Malicious damage to apparatus

- 83.** (1) No person shall remove, alter, damage, disrupt, disable or destroy any ICT network or ICT apparatus except in accordance with this Law or the regulations.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of twenty thousand dollars or to imprisonment for two years or, on conviction on indictment, to a fine of forty thousand dollars or to imprisonment for four years.



Obstruction of investigation

- 84.** A person who in any manner impedes, prevents, or obstructs any investigation being carried out by the Office under this Law commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and to imprisonment for one year.

Repealed

- 85.** *Repealed by section 21 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

- 86.** *Repealed by section 21 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Repealed

- 87.** *Repealed by section 21 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Dangerous transmissions, etc.

- 88.** (1) An originator who —
- (a) with knowledge that a message is dangerous to the security of the Islands or contrary to public order, and;
 - (b) with intent,
- sends that message, commits an offence and is liable, on conviction on indictment, to a fine of five hundred thousand dollars and to imprisonment for ten years.
- (2) For the purposes of this section, an intermediary is not an originator.
- (3) An intermediary shall not be required to monitor any message processed by means of his ICT installation in order to ascertain whether its processing would constitute or give rise to an offence under this section.
- (4) In addition to any other penalty provided in this section, equipment used to commit an offence under this section may, by order of a Court, be forfeited to the Government upon conviction of any owner or other person having control of such equipment or apparatus regardless of the fact that the operation giving rise to the offence has ceased.

Territorial scope of inchoate offences

- 89.** (1) On a charge of conspiracy to commit an offence under this Law, the following questions are immaterial to the accused's guilt —
- (a) the question where a person became a party to the conspiracy; and

- (b) the question whether any act, omission or other event occurred in the Islands.
- (2) On a charge of attempting to commit an offence under this Law, the following questions are immaterial to the accused's guilt —
 - (a) the question where the attempt was made; and
 - (b) the question whether it had an effect in the Islands.
- (3) On a charge of incitement to commit an offence under this Law, the question where the incitement took place is immaterial to the accused's guilt.

Use of an ICT service to defraud, abuse, annoy, threaten or harass

- 90.** (1) A person who knowingly uses an ICT network or ICT service to defraud, abuse, annoy, threaten or harass any other person commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and to imprisonment for one year, or, on conviction on indictment, to a fine of twenty thousand dollars and to imprisonment for two years.
- (2) In addition to imposing any penalty under subsection (1), the Court may, by order, restrain the person from using ICT services or ICT networks as it sees fit.

Repealed

- 91.** *Repealed by section 23 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Unlawfully acting as Administrative Point of Contact or Technical Point of Contact

- 92.** (1) A person who, without the written consent of the Office —
- (a) acts or purports to act as, or holds himself out as being authorised by the Office to act as, the Administrative Point of Contact for the top level of the global Internet Domain Name System assigned to the Islands; or
 - (b) acts or purports to act as, or holds himself out as being authorised by the Office to act as, the Technical Point of Contact for the top level of the global Internet Domain Name System assigned to the Islands,
- commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars or on conviction on indictment to a fine and to imprisonment for one year.
- (2) A person who, without the written consent of the Office —
- (a) deals with or assumes any rights in relation to the top level of the global Internet Domain Name System assigned to the Islands; or
 - (b) makes or attempts to make any request to the Internet Corporation for Assigned Names and Numbers or the Internet Assigned Numbers



Authority to delegate or re-delegate responsibility for the top level of the global Internet Domain Name System assigned to the Islands,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars or on conviction on indictment to a fine and to imprisonment for one year.

- (3) The Office may bring civil proceedings against any person who contravenes this Law, and the Court may, in such proceedings, make such order as it considers appropriate including orders requiring compliance with this Law and the regulations.
- (4) A person who does anything outside the Islands and the action, if it had occurred within the Islands would have constituted the commission of an offence under this section, commits an offence and is liable to any of the penalties specified under this section.

Offences under Part IV

- 93.** (1) A person who fails to comply with a requirement imposed on him under section 42 or 43 commits an offence.
- (2) Where a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove —
 - (a) that the document was not in his possession or under his control; and
 - (b) that it was not reasonably practicable for him to comply with the requirement.
 - (3) Where a person is charged with an offence under subsection (1) in respect of a requirement —
 - (a) to provide information;
 - (b) to provide an explanation of a document; or
 - (c) to state where a document is to be found,it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
 - (4) Failure to comply with a requirement imposed under section 42 is not an offence if the person imposing the requirement has failed to act in accordance with that section.
 - (5) A person who intentionally obstructs an officer acting in the exercise of his powers under section 43 commits an offence.
 - (6) A person who commits an offence under subsection (1) or (5) is liable, on summary conviction, to a fine of four thousand dollars and on conviction on indictment to a fine.
 - (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 43 commits an offence and is liable on

summary conviction to a fine of four thousand dollars and, if he is convicted on indictment, to a fine and imprisonment for two years.

Destroying or falsifying documents

- 94.** (1) A person commits an offence where, having been required to produce a document under section 42 or 43 —
- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it; or
 - (b) he causes or permits its destruction, disposal, falsification or concealment.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of four thousand dollars or on conviction on indictment to a fine and to imprisonment for two years.

False or misleading information

- 95.** (1) Where information is provided by a person to the Office in connection with any function of the Office under Part IV, that person commits an offence if —
- (a) the information is false or misleading in a material particular; and
 - (b) he knows that it is or is reckless as to whether it is.
- (2) A person who —
- (a) provides any information to another person, knowing the information to be false or misleading in a material particular; or
 - (b) recklessly provides any information to another person which is false or misleading in a material particular,
- knowing that the information is to be used for the purpose of providing information to the Office in connection with any of its functions under Part IV, commits an offence.
- (3) A person who commits an offence under this section is liable on summary conviction to a fine of four thousand dollars and on conviction on indictment to a fine and to imprisonment for two years.

Order for payment of compensation

- 96.** (1) Where a person is convicted of an offence under this Law, the Court may make an order for the payment of compensation to any person for any damage caused by the offence.
- (2) Any claim by a person for damages sustained by reason of the offence shall be deemed to have been satisfied to the extent of any amount which has been paid to him under an order for compensation, but the order shall not prejudice any right to a civil remedy for the recovery of damages beyond the amount of compensation paid under the order.



PART XI - General

Power to make regulations

97. (1) Without derogating from the powers to make regulations conferred elsewhere in this Law, the Cabinet may make regulations —
- (a) prescribing matters required or permitted by this Law to be prescribed;
 - (b) facilitating —
 - (i) the investigation of; or
 - (ii) the bringing of criminal proceedings in respect of —
the operation of an ICT network or provision of ICT services or use of the frequency spectrum that may be, or is, an offence under this or any other law;
 - (c) on the recommendation of the Office, prescribing matters for the better carrying out of the duties and powers of the Office or
 - (d) for carrying the purpose and provisions of this Law into effect.
- (2) Regulations may provide that the contravention of any provision constitutes an offence and may prescribe penalties for any such offence not exceeding the maximum fine and term of imprisonment prescribed in this Law for any offence under this Law.
- (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.

Repealed

98. *Repealed by section 25 of the Information and Communications Technology Authority (Amendment) (No.2) Law, 2016 [Law 50 of 2016].*

Establishment of ICT installations on land

99. The provisions of Schedule 2 shall govern the acquisition by ICT service providers and ICT network providers of rights to establish ICT installations on the land or property of other persons or authorities, and ancillary rights.

Conflict of laws

- 100.** (1) Where there is any inconsistency between this Law and any other Law, this Law shall prevail to the extent of the inconsistency, subject to subsection (2).
- (2) Where there is any inconsistency between this Law and the *Public Authorities Law, 2017 [Law 21 of 2017]*, the *Public Authorities Law, 2017 [Law 21 of 2017]*, shall prevail to the extent of any inconsistency.

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 Regulations and Competition Law (2019 Revision)* that are inconsistent with the 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

100C.The Office shall ensure the payment of pensions to all of its employees and shall, for the 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 (Amendment) Law, 2016 [Law 17 of 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 (Amendment) Law, 2016 [Law 17 of 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

100D.The *Health Insurance Law (2018 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 (2018 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.

Transitional arrangements

- 101.** (1) Any licences or other enabling instruments issued to any person to provide any aspect of ICT services or ICT networks in the Islands and which are valid immediately before the operative date shall continue to remain in full force and effect and shall authorise the continued ownership and operation of the ICT services and ICT networks provided under such licences or enabling instruments until the such date or such later date as the Cabinet may specify by notice published in the Gazette.

- (2) The Minister may, where the Authority has not been established at the 17th May, 2002 and until such time as the Board may specify by resolution, have the power to issue any concession, licence or authorisation which the Authority is empowered by this Law to issue, and the Cabinet may, for such period of time as it shall determine, appoint such persons as it considers necessary to assist the Minister in carrying out such functions.
- (3) Any fees or charges relating to any licence, concession, authorisation or franchise granted under the repealed *Broadcasting Law (1997 Revision)*, the repealed *Radio Law (1996 Revision)* or the repealed *Telephone Law (1997 Revision)* and owed to the Government in accordance with any such repealed law shall be deemed a debt owed to the Government and shall remain recoverable after the 17th May, 2002.

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 principle Law in force immediately before the date of commencement of the *Information and Communications Technology Authority (Amendment) (No. 2) Law, 2016 [Law 50 of 2016]*;

“**new Law**” means the principle Law as amended by the *Information and Communications Technology Authority (Amendment) (No. 2) Law, 2016 [Law 50 of 2016]*;

“**Office**” means the Office of Competition and Regulation established under the *Utility Regulations and Competition Law, 2016 [Law 49 of 2016]*; and

“**operative date**” means the date of commencement of section 21 of the *Information and Communications Technology Authority (Amendment) (No. 2) Law, 2016 [Law 50 of 2016]*.



SCHEDULE 1

(section 8)

PROCEDURE OF THE BOARD

*Repealed by section 29 of the Information and Communications Technology Authority
(Amendment) (No.2) Law, 2016 [Law 50 of 2016]*

SCHEDULE 2

(section 2)

A CODE TO GOVERN THE ACQUISITION BY LICENSEES OF RIGHTS OVER LAND AND ANCILLARY RIGHTS

Definitions

1. (1) In this Schedule —

“**alter**”, “**alteration**” and “**altered**” shall be construed in accordance with sub-paragraph (2);

“**Court**” means, without prejudice to any right of appeal conferred by virtue of paragraph 25 or otherwise, the Summary Court;

“**emergency works**” in relation to the licensee or a relevant undertaker for the purposes of paragraph 20, means works, the execution of which at the time it is proposed to execute them, is requisite in order to put an end to, or prevent, the arising of circumstances then existing or imminent which are likely to cause —

- (a) danger to persons or property;
- (b) the interruption of any service provided by the licensee’s ICT network or ICT service or interference with the exercise of any functions conferred or imposed on the undertaker by or under any enactment; or
- (c) substantial loss to the licensee or the undertaker,

and such other works as in all the circumstances it is reasonable to execute with those works;

“**ICT apparatus**” includes any ICT apparatus designed or adapted for use in connection with, or as part of, an ICT service or an ICT network and, in particular —

- (a) any line, that is to say, any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is so designed or adapted; and
- (b) any tower, structure, pole or other thing in, on, by or from which any ICT apparatus is or may be installed, supported, carried or suspended,

and references to the installation of ICT apparatus shall be construed accordingly;

“**line**” shall be construed in accordance with the definition of ICT apparatus;

“**public road**” has the same meaning as in the *Roads Law (2005 Revision)*;

“**statutory purposes**” means the purposes of establishing and running the licensee’s ICT network or ICT service; and



“**structure**” does not include a building.

- (2) In this Schedule, references to the alteration of any ICT apparatus include reference to the moving, removal or replacement of the ICT apparatus.
- (3) In relation to any land which, otherwise than in connection with a road on that land, is divided horizontally into different parcels, the references in this Schedule to a place over or under the land shall have effect in relation to each parcel as not including references to any place in a different parcel.

Agreement required to confer right to execute works etc.

2. (1) The agreement in writing of the occupier for the time being of any land shall be required for conferring on a licensee a right for the statutory purposes —
 - (a) to execute any works on that land for or in connection with the provision maintenance, adjustment, repair or alteration of ICT apparatus;
 - (b) to keep ICT apparatus installed on, under or over that land; or
 - (c) to enter that land to inspect any ICT apparatus kept installed (whether on, under or over that land or elsewhere) for the purposes of the licensee’s ICT service or ICT network.
- (2) A person who is the owner of the freehold estate in any land or is a lessee of any land shall not be bound by a right conferred in accordance with subparagraph (1) by the occupier of that land unless —
 - (a) he conferred the right himself as occupier of the land;
 - (b) he has agreed in writing to be bound by the right;
 - (c) he is for the time being treated under subparagraph (3) as having so agreed; or
 - (d) he is bound by the right by virtue of subparagraph (4).
- (3) If a right falling within subparagraph (1) has been conferred by the occupier of any land for purposes connected with the provision to the occupier from time to time of that land of any ICT service or ICT network and —
 - (a) the person conferring the right is also the owner of the freehold estate in that land or is a lessee of the land under a lease for a term of a year or more; or
 - (b) in a case not falling within paragraph (a), a person owning the freehold estate in the land or a lessee of the land under a lease for a term of a year or more has agreed in writing that his interest in the land should be bound by the right,

then, subject to paragraph 4, that right shall (as well as binding the person who conferred it) have effect, at any time when the person who conferred it or a person bound by it under subparagraph (2)(b) or (4) is the occupier of the land, as if every person for the time being owning an interest in that land had agreed

in writing to the right being conferred for the said purposes and, subject to its being exercised solely for those purposes, to be bound by it.

- (4) In any case where a person owning an interest in land agrees in writing (whether when agreeing to the right as occupier or for the purposes of subparagraph (3)(b) or otherwise) that his interest should be bound by a right falling within subparagraph (1), that right shall (except in so far as the contrary intention appears) bind the owner from time to time of that interest and also —
 - (a) the owner from time to time of any other interest in the land, being an interest created after the right is conferred and not having priority over the interest to which the agreement relates; and
 - (b) any other person who is at any time in occupation of the land and whose right to occupation of the land derives (by contract or otherwise) from a person who at the time the right to occupation was granted was bound by virtue of this subparagraph.
- (5) A right falling within subparagraph (1) shall not be exercisable except in accordance with the terms (whether as to payment or otherwise) subject to which it is conferred and, accordingly, every person for the time being bound by such a right shall have the benefit of those terms.
- (6) A variation of a right falling within subparagraph (1) or of the terms on which such a right is exercisable shall be capable of binding persons who are not parties to the variation in the same way as, under subparagraphs (2), (3) and (4), such a right is capable of binding persons who are not parties to the conferring of the right.
- (7) A right falling within subparagraph (1) is not subject to the provisions of any enactment requiring the registration of interests in, charges on or other obligations affecting land.
- (8) In this paragraph and paragraphs 3 and 4 —
 - (a) references to the occupier of any land shall have effect in relation to —
 - (i) a public road as references to the Minister responsible for the time being for roads;
 - (ii) a private road as references to the owner of the land over which the private road runs; and
 - (iii) in relation to any land (not being a road) which is unoccupied, as references to the person, if any, who for the time being exercises powers of management or control over the land or, if there is no such person, to every person whose interest in the land would be prejudicially affected by the exercise of the right in question; and
 - (b) “**lease**” includes any strata lot or leasehold tenancy (whether in the nature of a head lease, sub-lease or underlease) and any agreement to grant such



a tenancy but not a mortgage by demise or sub-demise and “lessee” shall be construed accordingly.

- (9) Subject to paragraphs 9(2) and 11(2), this paragraph shall not require any person to give his agreement to the exercise of any right conferred by any of paragraphs 9 to 12.

Agreement required for obstructing access etc.

3. (1) A right conferred in accordance with paragraph 2 or by paragraph 9, 10 or 11 to execute any works on any land, to keep ICT apparatus installed on, under or over any land or to enter any land shall not be exercisable so as to interfere with or obstruct any means of entering or leaving any other land unless the occupier for the time being of the other land conferred, or is otherwise bound by, a right to interfere with or obstruct that means of entering or leaving the other land.
- (2) The agreement in writing of the occupier for the time being of the other land shall be required for conferring any right for the purposes of subparagraph (1) on the licensee.
- (3) The references in subparagraph (1) to a means of entering or leaving any land include references to any means of entering or leaving the land provided for use in emergencies.
- (4) Subparagraphs (2) to (7) of paragraph 2, except subparagraph (3), shall apply (subject to the following provisions of this Schedule) in relation to a right falling within subparagraph (1) as they apply in relation to a right falling within paragraph 2(1).
- (5) Nothing in this paragraph shall require the person who is the occupier of, or owns any interest in, any land which is a road, or to which paragraph 11 applies, to agree to the exercise of any right on any other land.

Effect of rights and compensation

4. (1) Anything done by the licensee in exercise of a right conferred in relation to any land in accordance with paragraph 2 or 3 shall be deemed to be done in exercise of a statutory power except as against —
- (a) a person who, being the owner of the freehold estate in that land or a lessee of the land, is not for the time being bound by the right; or
- (b) a person having the benefit of any covenant or agreement which has been entered into as respects the land under any enactment and which, by virtue of that enactment, binds or will bind persons deriving title or otherwise claiming under the covenant or a person who was a party to the agreement.

- (2) Where a right has been conferred in relation to any land in accordance with paragraph 2 or 3 and anything has been done in exercise of that right, any person who, being the occupier of the land, the owner of the freehold estate in the land or a lessee of the land, is not for the time being bound by the right shall have the right to require the licensee to restore the land to its condition before that thing was done.
- (3) Any duty imposed by virtue of subparagraph (2) shall, to the extent that its performance involves the removal of any ICT apparatus from any land, be enforceable only in accordance with paragraph 18.
- (4) Where —
- (a) on a right in relation to any land being conferred or varied in accordance with paragraph 2, there is a depreciation in the value of any relevant interest in the land; and
 - (b) that depreciation is attributable to the fact that paragraph 18 will apply to the removal from the land, when the owner for the time being of that interest becomes the occupier of the land, of any ICT apparatus installed in pursuance of that right,
- the licensee shall pay compensation to the person who, at the time the right is conferred or, as the case may be, varied, is the owner of the relevant interest; and the amount of that compensation shall be equal (subject to subparagraph (9)) to the amount of the depreciation.
- (5) In subparagraph (4) —
- “**relevant interest**”, in relation to land subject to a right conferred or varied in accordance with paragraph 2, means any interest in respect of which the following two conditions are satisfied at the time the right is conferred or varied, namely —
- (a) the owner of the interest is not the occupier of the land but may become the occupier of the land by virtue of that interest; and
 - (b) the owner of the interest becomes bound by the right or variation by virtue only of paragraph 2(3).
- (6) Any question as to a person’s entitlement to compensation under subparagraph (4), or as to the amount of any compensation under that subparagraph shall, in default of agreement, be referred to and determined in accordance with the *Arbitration Law, 2012 [Law 3 of 2012]*.
- (7) A claim to compensation under subparagraph (4) shall be made by giving the licensee notice of the claim and specifying in that notice particulars of —
- (a) the land in respect of which the claim is made;
 - (b) the claimant’s interest in the land and, so far as known to the claimant, any other interests in the land;



- (c) the right or variation in respect of which the claim is made; and
- (d) the amount of the compensation claimed,

and such a claim shall be capable of being made at any time before the claimant becomes the occupier of the land in question, or at any time in a period of three years beginning with that time.

- (8) Without prejudice to the powers of the arbitrator or umpire in respect of the costs of any proceedings before him under the *Arbitration Law, 2012 [Law 3 of 2012]* by virtue of this paragraph, where compensation is payable under sub-paragraph (4) there shall also be payable, by the licensee to the claimant, any reasonable valuation or legal expenses incurred by the claimant for the purposes of the preparation and prosecution of his claim for that compensation.

Power to dispense with the need for required agreement

- 5. (1) Where the licensee requires any person to agree for the purposes of paragraph 2 or 3 that any right should be conferred on the licensee, or that any right should bind that person or any interest in land, the licensee may give a notice to that person of the right and of the agreement that he requires.
- (2) Where a period of twenty-eight days beginning with the giving of a notice under subparagraph (1) has expired without the giving of the required agreement, the licensee may apply to the Court for an order conferring the proposed right, or providing for it to bind any person or any interest in land, and (in either case) dispensing with the need for the agreement of the person to whom the notice was given.
- (3) The Court shall make an order under this paragraph if, but only if, it is satisfied that any prejudice caused by the order —
 - (a) is capable of being adequately compensated for by money; or
 - (b) is outweighed by the benefit accruing from the order to the persons whose access to an ICT service or an ICT network will be secured by the order,and in determining the extent of the prejudice, and the weight of that benefit, the Court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to an ICT service or an ICT network.
- (4) An order under this paragraph made in respect of a proposed right may, in conferring that right or providing for it to bind any person or any interest in land and in dispensing with the need for any person's agreement, direct that the right shall have effect with such modifications, be exercisable on such terms and be subject to such conditions as may be specified in the order.

- (5) The terms and conditions specified by virtue of subparagraph (4) in an order under this paragraph shall include such terms and conditions as appear to the Court appropriate for ensuring that the least possible loss and damage is caused by the exercise of the right in respect of which the order is made to persons who occupy, own interests in or are, from time to time, on the land in question.
- (6) (a) In any proceedings under this paragraph the Magistrate may, if he thinks fit, on the application of either party, summon to his assistance one or more independent persons of skill and experience in the matter to which the proceedings relate who may be willing to sit with the Magistrate and act as his assessors;
- (b) the remuneration of assessors for sitting under this paragraph shall be at such rate as may be prescribed by regulations and shall be costs in the proceedings unless ordered otherwise by the Magistrate;
- (c) an assessor may, if so directed by the Magistrate, inspect the land to which the proceedings relate without the Magistrate and report on the land to the Magistrate in writing; and
- (d) the Magistrate may take the report into account in determining whether to make an order under this paragraph and what order to make.
- (7) Where an order under this paragraph, for the purpose of conferring any right or making provision for a right to bind any person or any interest in land, dispenses with the need for the agreement of any person, the order shall have the same effect and incidents as the agreement of the person the need for whose agreement is dispensed with and accordingly (without prejudice to the foregoing) shall be capable of variation or release by a subsequent agreement.

Acquisition of rights in respect of ICT apparatus already installed

6. (1) The following provisions of this paragraph apply where the licensee gives notice under paragraph 5(1) to any person and —
- (a) that notice requires that person's agreement in respect of a right which is to be exercisable (in whole or in part) in relation to ICT apparatus already kept installed on, under or over the land in question; and
- (b) that person is entitled to require the removal of that ICT apparatus but, by virtue of paragraph 18, is not entitled to enforce its removal.
- (2) The Court may, on the application of the licensee, confer on the licensee such temporary rights as appear to the Court reasonably necessary for securing that, pending the determination of any proceedings under paragraph 5 or 18, the licensee's ICT service or ICT network is maintained and the ICT apparatus properly adjusted and kept in repair.



- (3) In any case where it is shown that a person with an interest in the land was entitled to require the removal of the ICT apparatus immediately after it was installed, the Court shall, in determining for the purposes of paragraph 5 whether the ICT apparatus should continue to be kept installed on, under or over the land, disregard the fact that the ICT apparatus has already been installed there.

Court to fix financial terms where agreement dispensed with

7. (1) The terms and conditions specified by virtue of paragraph 5(4) in an order under that paragraph dispensing with the need for a person's agreement, shall include —
- (a) such terms with respect to the payment of consideration in respect of the giving of the agreement, or the exercise of the rights to which the order relates, as it appears to the Court would have been fair and reasonable if the agreement had been given willingly and subject to the other provisions of the order; and
 - (b) such terms as appear to the Court appropriate for ensuring that that person and persons from time to time bound by virtue of paragraph 2(4) by the rights to which the order relates are adequately compensated (whether by the payment of such consideration or otherwise) for any loss or damage sustained by them in consequence of the exercise of those rights.
- (2) In determining what terms should be specified in an order under paragraph 5 for requiring an amount to be paid to any person in respect of —
- (a) the provisions of that order conferring any right or providing for any right to bind any person or any interest in land; or
 - (b) the exercise of any right to which the order relates,
- the Court shall take into account the prejudicial effect, if any, of the order or, as the case may be, of the exercise of the right on that person's enjoyment of, or on any interest of his in, land other than the land in relation to which the right is conferred.
- (3) In determining what terms should be specified in an order under paragraph 5 for requiring an amount to be paid to any person, the Court shall, in a case where the order is made in consequence of an application made in connection with proceedings under paragraph 18, take into account, to such extent as it thinks fit, any period during which that person —
- (a) was entitled to require the removal of any ICT apparatus from the land in question; but

- (b) by virtue of paragraph 18, was not entitled to enforce its removal, but where the Court takes any such period into account, it may also take into account any compensation paid under paragraph 4(4).
- (4) The terms specified by virtue of subparagraph (1) in an order under paragraph 5 may provide —
 - (a) for the making of payments from time to time to such persons as may be determined under those terms; and
 - (b) for questions arising in consequence of those terms (whether as to the amount of any loss or damage caused by the exercise of a right or otherwise) to be referred to arbitration or to be determined in such other manner as may be specified in the order.
- (5) The Court may, if it thinks fit —
 - (a) where the amount of any sum required to be paid by virtue of terms specified in an order under paragraph 5 has been determined, require the whole or any part of any such sum to be paid into Court; and
 - (b) pending the determination of the amount of any such sum, order the payment into Court of such amount on account as the Court thinks fit.
- (6) Where terms specified in an order under paragraph 5 require the payment of any sum to a person who cannot be found or ascertained, that sum shall be paid into Court.

Notices and applications by potential subscribers

8. (1) Where —
- (a) it is reasonably necessary for the agreement of any person to the conferring of any right, or to any rights binding any person or any interest in land, to be obtained by the licensee before another person (“the potential subscriber”) may be afforded access to the licensee’s ICT service or ICT network; and
 - (b) the licensee has not given a notice or (if he has given a notice) has not made an application in respect of that right under paragraph 5,
- the potential subscriber may, at any time, give a notice to the licensee requiring him to give a notice or make an application under paragraph 5 in respect of that right.
- (2) At any time after notice has been given to the licensee under subparagraph (1), the licensee may apply to the Court to have the notice set aside on the ground that the conditions mentioned in that subparagraph are not satisfied on the ground that, even if the agreement were obtained, the licensee would not afford the potential subscriber access to the licensee’s ICT service or ICT network and could not be required to afford him access to that system.



- (3) Subject to any order of the Court made in or pending any proceedings under subparagraph (2), if at any time after the expiration of a period of twenty-eight days beginning with the giving to the licensee of a notice under subparagraph (1), the licensee has not complied with the notice, the potential subscriber may himself, on the licensee's behalf, give the required notice and (if necessary) make an application under paragraph 5 or make the required application.
 - (4) The Court may, on an application made by virtue of subparagraph (3), give such directions as it thinks fit —
 - (a) with respect to the separate participation of the licensee in the proceedings to which the application gives rise; and
 - (b) requiring the licensee to provide information to the Court.
 - (5) A covenant, condition or agreement which would have the effect of preventing or restricting the taking by any person as a potential subscriber of any step under this paragraph shall be void to the extent that it would have that effect.
 - (6) Nothing in this paragraph shall be construed as requiring the licensee to reimburse the potential subscriber for any costs incurred by the potential subscriber in or in connection with the taking of any step under this paragraph on the licensee's behalf.
9. (1) The licensee shall, for the statutory purposes, have the right to do any Road works of the following things —
 - (a) install ICT apparatus, or keep ICT apparatus installed, under, over, in, on, along or across a road;
 - (b) inspect, maintain, adjust, repair or alter any ICT apparatus so installed; and
 - (c) execute any works requisite for or incidental to the purposes of any works falling within paragraph (a) or (b), including for those purposes the following kinds of works, that is to say —
 - (i) breaking up or opening a road;
 - (ii) tunnelling or boring under a road; and
 - (iii) breaking up or opening a sewer, drain or tunnel.
- (2) The following provisions of this Schedule, and the rights conferred by this paragraph shall not be exercisable in a road which is not a public road without either the agreement required by paragraph 2 or an order of the Court under paragraph 5 dispensing with the need for that agreement.

Power to install fly lines

10. (1) Subject to paragraph 3 and the following provisions of this Schedule, where any ICT apparatus is kept installed on or over any land for the purposes of the licensee's ICT service or ICT network, the licensee shall, for the statutory purposes, have the right to install and keep installed lines which —
- (a) pass over other land adjacent to or in the vicinity of the land on or over which that ICT apparatus is so kept;
 - (b) are connected to that ICT apparatus; and
 - (c) are not, at any point in the course of passing over the other land, less than three metres the ground or within two metres of any building over which they pass.
- (2) Nothing in subparagraph (1) shall authorise the installation or keeping on or over any land of —
- (a) any ICT apparatus used to support, carry or suspend a line installed in pursuance of that subparagraph; or
 - (b) any line which by reason of its position interferes with the carrying on of any business carried on that land.
- (3) In this paragraph —
- “**business**” includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate.

Tidal waters, etc.

11. (1) Subject to paragraph 3 and the following provisions of this Schedule, the licensee shall have the right for the statutory purposes —
- (a) to execute any works (including placing any buoy or seamark) on any tidal water or lands for or in connection with the installation, maintenance, adjustment, repair or alteration of ICT apparatus;
 - (b) to keep ICT apparatus installed on, under or over tidal water or lands; and
 - (c) to enter any tidal water or lands to inspect any ICT apparatus so installed.
- (2) A right conferred by this paragraph shall not be exercised in relation to any land in which a Crown interest, within the meaning of paragraph 22, subsists unless agreement to the exercise of the right in relation to that land has been given, in accordance with subparagraph (3) of that paragraph, in respect of that interest.
- (3) Before executing any works in exercise of a right conferred by this paragraph, the licensee shall submit a plan of the proposed works to the Minister for the Minister's approval.



- (4) Subparagraph (3) shall not apply to the execution of any emergency works, but, as soon as practicable after commencing any emergency works on any tidal water or lands, the licensee shall submit a plan of those works to the Minister for the Minister's approval.
- (5) As soon as reasonably practicable after a plan is submitted to him under subparagraph (3) or (4), the Minister shall, after consulting such authorities exercising functions in relation to the tidal water or lands in question as it appears to him appropriate to consult, consider whether to approve it, and, if he does approve it, he may do so subject to such modifications and conditions and on such terms as he thinks fit.
- (6) The Minister shall not approve a plan submitted to him under subparagraph (3) or (4) unless he is satisfied that adequate arrangements have been made for compensating any persons appearing to him to be owners of interests in the tidal water or lands in question for any loss or damage sustained by those persons in consequence of the execution of the works to which the plan relates.
- (7) If —
- (a) the licensee executes any works in exercise of a right conferred by this paragraph; but
 - (b) those works are executed otherwise than in accordance with a plan approved by the Minister (including, in the case of emergency works, where works already commenced are not approved) or a condition on which any approval of the Minister is given or has been contravened,
- the Minister may, by notice, require the licensee to execute such remedial works as the Minister thinks appropriate having regard to the terms and conditions of any approval that he has given and, if those works are not executed in accordance with the notice, may execute them himself at the licensee's expense.
- (8) Where, as the result —
- (a) of the failure of the licensee reasonably to maintain any ICT apparatus kept installed for the purposes of the licensee's ICT service or ICT network on, under or over any tidal water or lands; or
 - (b) of the abandonment by the licensee of any such ICT apparatus,
- it appears to the Minister that any remedial works should be executed, he may, by notice, require the licensee to execute those works and, if those works are not executed in accordance with the notice, may execute them himself at the licensee's expense.
- (9) The Minister shall have power for the purposes of exercising his functions under this paragraph, and of determining whether to exercise those functions, to cause a survey or examination to be carried out, at the licensee's expense, of

any works or ICT apparatus or of the site or proposed site of any works or ICT apparatus.

- (10) Where the Minister is authorised by this paragraph to do any thing at the licensee's expense, the expenses incurred by the Minister in or in connection with the doing of that thing shall be recoverable by the Minister from the licensee in the Court.
- (11) In this paragraph —
- “**remedial works**” includes any works of repair or restoration, the alteration of any ICT apparatus and any works to restore the site of any ICT apparatus to its original condition; and
- “**tidal water or lands**” includes any branch of the sea, the shore below mean high water mark and the bed of any tidal water.

Use of certain conduits

12. (1) Nothing in the preceding provisions of this Schedule shall authorise the doing of anything inside a relevant conduit without the agreement of the person with control of that conduit.
- (2) The agreement of the person or authority with control of a public sewer shall be sufficient in all cases to confer a right falling within any of the preceding provisions of this Schedule where the right is to be exercised wholly inside that sewer.
- (3) In this paragraph —
- “**public sewer**” means a pipe or sewer maintained by an authority or person whose business is the provision of drainage to premises, for the conveyance of sewage or trade effluent; and
- “**relevant conduit**” means —
- (a) any conduit which, whether or not it is itself an electric line, is maintained by an authority or person whose business is the transmission or supply of electricity for the purpose of surrounding, enclosing or supporting such a line, including, where a conduit is connected to a box, chamber or other structure (including a building) maintained for the transmission or supply of electricity, that box or chamber; or
- (b) a water main or other conduit maintained by an authority or person whose business is the conveyance or supply of water for the purpose of conveying water from one place to another.



Compensation for injurious affection to neighbouring land, etc.

13. (1) Where a right conferred by or in accordance with any of the preceding provisions of this Schedule is exercised, compensation shall be payable by the licensee under section 11 of the *Land Acquisition Law (1995 Revision)* as if that section had effect in relation to injury caused by the exercise of such a right as it has effect in relation to damage sustained by a person interested in land by reason of the acquisition injuriously affecting his other property.
- (2) Subparagraph (1) shall not confer any entitlement to compensation on any person in respect of the exercise of a right conferred in accordance with paragraph 2 or 3, if that person conferred the right or is bound by it by virtue of paragraph 2(2)(b) or (d), but, save as aforesaid, the entitlement of any person to compensation under this paragraph shall be determined irrespective of his ownership of any interest in the land where the right is exercised.
- (3) Compensation shall not be payable on any claim for compensation under this paragraph unless the amount of the compensation exceeds one hundred dollars.

Objections to overhead ICT apparatus

14. (1) This paragraph applies where the licensee has completed the installation for the purposes of the licensee's ICT service or ICT network of any ICT apparatus, the whole or part of which is at a height of three feet or more above the ground.
- (2) At any time before the expiration of a period of three months beginning with the completion of the installation of the ICT apparatus, a person who is the occupier of or owns an interest in —
- (a) any land over or on which the ICT apparatus has been installed; or
- (b) any land the enjoyment of which, or any interest in which, is, because of the nearness of the land to the land on or over which the ICT apparatus has been installed, capable of being prejudiced by the ICT apparatus,
- may give the licensee notice of objection in respect of that ICT apparatus.
- (3) No notice of objection may be given in respect of any ICT apparatus if the ICT apparatus —
- (a) replaces any ICT apparatus which is not substantially different from the new ICT apparatus; and
- (b) is not in a significantly different position.
- (4) Where a person has both given a notice under this paragraph and applied for compensation under any of the preceding provisions of this Schedule, the Court —

- (a) may give such directions as it thinks fit for ensuring that no compensation is paid until any proceedings under this paragraph have been disposed of; and
 - (b) if the Court makes an order under this paragraph, may provide in that order for some or all of the compensation otherwise payable under this Schedule to that person not to be so payable, or, if the case so requires, for some or all of any compensation paid under this Schedule to that person to be repaid to the licensee.
- (5) At any time after the expiration of a period of two months beginning with the giving of a notice of objection but before the expiration of a period of four months beginning with the giving of that notice, the person who gave the notice may apply to the Court to have the objection upheld.
- (6) Subject to subparagraph (7), the Court shall uphold the objection if the ICT apparatus appears materially to prejudice the applicant's enjoyment of, or interest in, the land in right of which the objection is made and the Court is not satisfied that the only possible alterations of the ICT apparatus will —
- (a) substantially increase the cost or diminish the quality of the service provided by the licensee's ICT network or ICT service to persons who have, or may in future have, access to it;
 - (b) involve the licensee in substantial additional expenditure (disregarding any expenditure occasioned solely by the fact that any proposed alteration was not adopted originally or, as the case may be, that the ICT apparatus has been unnecessarily installed); or
 - (c) give to any person a case at least as good as the applicant has to have an objection under this paragraph upheld.
- (7) The Court shall not uphold the objection if the applicant is bound by a right of the licensee falling within paragraph 2 or 3(1) to install the ICT apparatus, and it appears to the Court unreasonable, having regard to the fact that the applicant is so bound and the circumstances in which he became so bound, for the applicant to have given notice of objection.
- (8) In considering the matters specified in subparagraph (6), the Court shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to an ICT service or to an ICT network.
- (9) If it upholds an objection under this paragraph, the Court may, by order —
- (a) direct the alteration of the ICT apparatus to which the objection relates;
 - (b) authorise the installation (instead of the ICT apparatus to which the objection relates), in a manner and position specified in the order, of any ICT apparatus so specified; or
 - (c) direct that no objection may be made under this paragraph in respect of any ICT apparatus the installation of which is authorised by the Court.



- (10) The Court shall not make any order under this paragraph directing the alteration of any ICT apparatus or authorising the installation of any ICT apparatus unless it is satisfied either —
- (a) that the licensee has all such rights as it appears to the Court appropriate that he should have for the purpose of making the alteration or, as the case may be, installing the ICT apparatus; or
 - (b) that —
 - (i) he would have all those rights if the Court, on an application under paragraph 5, dispensed with the need for the agreement of any person; and
 - (ii) it would be appropriate for the Court, on such an application, to dispense with the need for that agreement,
- and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration or installation of any ICT apparatus, the Court shall have the same powers as it would have if an application had been duly made under paragraph 5 for an order dispensing with the need for that person's agreement.
- (11) For the purposes of subparagraphs (6)(c) and (10), the Court shall have power, on an application under this paragraph, to give the applicant directions for bringing the application to the notice of such other interested persons as it thinks fit.

Obligation to affix notices to overhead ICT apparatus

15. (1) Where the licensee has, for the purposes of the licensee's ICT service or ICT network, installed any ICT apparatus the whole or part of which is at a height of three feet or more above the ground, the licensee shall, before the expiration of a period of three days beginning with the completion of the installation, in a secure and durable manner affix a notice —
- (a) to every major item of ICT apparatus installed; or
 - (b) if no major item of ICT apparatus is installed, to the nearest major item of ICT apparatus to which the ICT apparatus that is installed is directly or indirectly connected.
- (2) A notice affixed under subparagraph (1) shall be affixed in a position where it is reasonably legible and shall give the name of the licensee and an address in the Islands at which any notice of objection may be given under paragraph 14 in respect of the ICT apparatus in question, and any person giving such a notice at that address in respect of that ICT apparatus shall be deemed to have been furnished with that address for the purposes of paragraph 21(4)(a).
- (3) If the licensee contravenes the requirements of this paragraph he commits an offence and is liable on summary conviction to a fine of two thousand dollars.

- (4) In any proceedings for an offence under this paragraph it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Tree lopping

16. (1) Where any tree overhangs any road and, in doing so, either —
- (a) obstructs or interferes with the working of any ICT apparatus used for the purposes of the licensee's ICT service or ICT network ; or
 - (b) will obstruct or interfere with the working of any ICT apparatus which is about to be installed for those purposes,
- the licensee may, by notice to the occupier of the land on which the tree is growing, require the tree to be lopped so as to prevent the obstruction or interference.
- (2) If, within a period of twenty-eight days beginning with the giving of the notice by the licensee, the occupier of the land on which the tree is growing gives the licensee a counter-notice objecting to the lopping of the tree, the notice shall have effect only if confirmed by an order of the Court.
- (3) If, at any time, a notice under subparagraph (1) has not been complied with and either —
- (a) a period of twenty-eight days beginning with the giving of the notice has expired without a counter-notice having been given; or
 - (b) an order of the Court confirming the notice has come into force,
- the licensee may himself cause the tree to be lopped as mentioned in subparagraph (1).
- (4) Where the licensee lops a tree in exercise of the power conferred by subparagraph (3) he shall do so in a husband-like manner and in such a way as to cause the minimum damage to the tree.
- (5) Where —
- (a) a notice under subparagraph (1) is complied with either without a counter-notice having been given or after the notice has been confirmed; or
 - (b) the licensee exercises the power conferred by subparagraph (3),
- the Court shall, on an application made by a person who has sustained loss or damage in consequence of the lopping of the tree or who has incurred expenses in complying with the notice, order the licensee to pay that person such compensation in respect of the loss, damage or expenses as it thinks fit.



Power to require alteration of ICT apparatus

17. (1) Where any ICT apparatus is kept installed on, under or over any land for the purposes of the licensee's ICT service or ICT network, any person with an interest in that land or adjacent land may (notwithstanding the terms of any agreement binding that person), by notice given to the licensee, require the alteration of the ICT apparatus on the ground that the alteration is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.
- (2) Where a notice is given under subparagraph (1) by any person to the licensee, the licensee shall comply with it unless he gives a counter-notice under this subparagraph within a period of twenty-eight days beginning with the giving of the notice.
- (3) Where a counter-notice is given under subparagraph (2) to any person, the licensee shall make the required alteration only if the Court, on an application by that person, makes an order requiring the alteration to be made.
- (4) The Court shall make an order under this paragraph for an alteration to be made only if, having regard to all the circumstances and the principle that no person should unreasonably be denied access to a telecommunication system, it is satisfied —
- (a) that the alteration is necessary as mentioned in subparagraph (1); and
 - (b) that the alteration will not substantially interfere with any service provided by the licensee's system.
- (5) The Court shall not make an order under this paragraph for the alteration of any ICT apparatus unless it is satisfied either —
- (a) that the licensee has all such rights as it appears to the Court appropriate that he should have for the purpose of making the alteration; or
 - (b) that —
 - (i) he would have all those rights if the Court, on an application under paragraph 5, dispensed with the need for the agreement of any person; and
 - (ii) it would be appropriate for the Court, on such an application, to dispense with the need for that agreement,

and, accordingly, for the purposes of dispensing with the need for the agreement of any person to the alteration of any ICT apparatus, the Court shall have the same powers as it would have if an application had been duly made under paragraph 5 for an order dispensing with the need for that person's agreement.

- (6) For the purposes of subparagraph (5), the Court shall have power on an application under this paragraph to give the applicant directions for bringing the application to the notice of such other interested persons as it thinks fit.
- (7) An order under this paragraph may provide for the alteration to be carried out with such modifications, on such terms and subject to such conditions as the Court thinks fit, but the Court shall not include any such modifications, terms or conditions in its order without the consent of the applicant, and, if such consent is not given, may refuse to make an order under this paragraph.
- (8) An order made under this paragraph on the application of any person shall, unless the Court otherwise thinks fit, require that person to reimburse the licensee in respect of any expenses which the licensee incurs in or in connection with the execution of any works in compliance with the order.
- (9) In subparagraph (1) —
“**improvement**” includes development and change of use.

Restriction on right to require the removal of ICT apparatus

18. (1) Where any person is for the time being entitled to require the removal of any of the licensee’s ICT apparatus from any land (whether under any enactment or because that ICT apparatus is kept on, under or over that land otherwise than in pursuance of a right binding that person or for any other reason) that person shall not be entitled to enforce the removal of the ICT apparatus except, subject to subparagraph (12), in accordance with the following provisions of this paragraph.
 - (2) The person entitled to require the removal of any of the licensee’s ICT apparatus shall give a notice to the licensee requiring the removal of the ICT apparatus.
 - (3) Where a person gives a notice under subparagraph (2) and the licensee does not give that person a counter-notice within a period of twenty-eight days beginning with the giving of the notice, that person shall be entitled to enforce the removal of the ICT apparatus.
 - (4) A counter-notice given under subparagraph (3) to any person by the licensee shall —
 - (a) state that that person is not entitled to require the removal of the ICT apparatus; or
 - (b) specify the steps which the licensee proposes to take for the purpose of securing a right against that person to keep the ICT apparatus on the land.
 - (5) Those steps may include any steps which the licensee could take for the purpose of enabling him, if the ICT apparatus is removed, to re-install the ICT apparatus, and the fact that by reason of the following provisions of this



paragraph any proposed re-installation is only hypothetical shall not prevent the licensee from taking those steps or any Court or person from exercising any function in consequence of those steps having been taken.

- (6) Where a counter-notice is given under subparagraph (3) to any person, that person may only enforce the removal of the ICT apparatus in pursuance of an order of the Court, and, where the counter-notice specifies steps which the licensee is proposing to take to secure a right to keep the ICT apparatus on the land, the Court shall not make such an order unless it is satisfied —
 - (a) that the licensee is not intending to take those steps or is being unreasonably dilatory in the taking of those steps; or
 - (b) that the taking of those steps has not secured, or will not secure, for the licensee as against that person any right to keep the ICT apparatus installed on, under or over the land or to re-install it if it is removed.
- (7) Where any person is entitled to enforce the removal of any ICT apparatus under this paragraph (whether by virtue of subparagraph (3) or an order of the Court under subparagraph (6)), that person may, without prejudice to any method available to him apart from this subparagraph for enforcing the removal of that ICT apparatus, apply to the Court for authority to remove it himself, and, on such an application, the Court may, if it thinks fit, give that authority.
- (8) Where any ICT apparatus is removed by any person under an authority given by the Court under subparagraph (7), any expenses incurred by him in or in connection with the removal of the ICT apparatus shall be recoverable by him from the licensee in the Court; and in so giving an authority to any person the Court may also authorise him, in accordance with the directions of the Court, to sell any ICT apparatus removed under the authority and to retain the whole or a part of the proceeds of sale on account of those expenses.
- (9) Any ICT apparatus kept installed on, under or over any land shall (except for the purposes of this paragraph and without prejudice to paragraphs 6(3) and 7(3)) be deemed, as against any person who was at any time entitled to require the removal of the ICT apparatus, but by virtue of this paragraph not entitled to enforce its removal, to have been lawfully so kept at that time.
- (10) Where this paragraph applies in relation to ICT apparatus the alteration of which some person (“**the relevant person**”) is entitled to require in consequence of the stopping up, closure, change or diversion of any road or the extinguishment or alteration of any public right of way —
 - (a) the removal of the ICT apparatus shall constitute compliance with a requirement to make any other alteration;
 - (b) a counter-notice under subparagraph (3) may state (in addition to, or instead of, any of the matters mentioned in subparagraph (4)) that the licensee requires the relevant person to reimburse him in respect of any

- expenses which he incurs in or in connection with the making of any alteration in compliance with the requirements of the relevant person;
- (c) an order made under this paragraph on an application by the relevant person in respect of a counter-notice containing such a statement shall, unless the Court otherwise thinks fit, require the relevant person to reimburse the licensee in respect of any expenses which he so incurs; and
 - (d) subparagraph (8) shall not apply.
- (11) References in this paragraph to the licensee's ICT apparatus include references to ICT apparatus which (whether or not vested in the licensee) is being, is to be or has been used for the purposes of the licensee's ICT service or ICT network.
- (12) A person shall not, under this paragraph, be entitled to enforce the removal of any ICT apparatus on the ground only that he is entitled to give a notice under paragraph 11, 14 or 17, and this paragraph is without prejudice to paragraph 20 and to the power to enforce an order of the Court under the said paragraph 11, 14 or 17.

Abandonment of ICT apparatus

19. Without prejudice to the preceding provisions of this Schedule, where the licensee has a right conferred by or in accordance with this Schedule for the statutory purposes to keep ICT apparatus installed on, under or over any land, he is not entitled to keep that ICT apparatus so installed if, at a time when the ICT apparatus is not, or is no longer, used for the purposes of the licensee's ICT service or ICT network, there is no reasonable likelihood that it will be so used.

Undertaker's works.

20. (1) The following provisions of this paragraph apply where a relevant undertaker is proposing to execute any undertaker's works which involve or are likely to involve a temporary or permanent alteration of any ICT apparatus kept installed on, under or over any land for the purposes of the licensee's ICT service or ICT network.
- (2) The relevant undertaker shall, not less than ten days before the works are commenced, give the licensee a notice specifying the nature of the undertaker's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.
- (3) Subparagraph (2) shall not apply in relation to any emergency works of which the relevant undertaker gives the licensee notice as soon as practicable after commencing the works.
- (4) Where a notice has been given under subparagraph (2) by a relevant undertaker to the licensee, the licensee may, within a period of ten days



- beginning with the giving of the notice, give the relevant undertaker a counter-notice which may state either —
- (a) that the licensee intends himself to make any alteration made necessary or expedient by the proposed undertaker's works; or
 - (b) that he requires the undertaker, in making any such alteration, to do so under the supervision and to the satisfaction of the licensee.
- (5) Where a counter-notice given under subparagraph (4) states that the licensee intends himself to make any alteration —
- (a) the licensee shall (subject to subparagraph (7)) have the right, instead of the relevant undertaker, to execute any works for the purpose of making that alteration; and
 - (b) any expenses incurred by the licensee in or in connection with the execution of those works and the amount of any loss or damage sustained by the licensee in consequence of the alteration shall be recoverable by the licensee from the undertaker in any Court of competent jurisdiction.
- (6) Where a counter-notice given under subparagraph (4) states that any alteration is to be made under the supervision and to the satisfaction of the licensee —
- (a) the relevant undertaker shall not make the alteration except as required by the notice or under subparagraph (7); and
 - (b) any expenses incurred by the licensee in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the licensee in consequence of the alteration shall be recoverable by the licensee from the undertaker in any Court of competent jurisdiction.
- (7) Where —
- (a) no counter-notice is given under subparagraph (4); or
 - (b) the licensee, having given a counter-notice falling within that subparagraph, fails within a reasonable time to make any alteration made necessary or expedient by the proposed undertaker's works or, as the case may be, unreasonably fails to, provide the required supervision,
- the relevant undertaker may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the licensee; but in either case the undertaker shall execute the works to the satisfaction of the licensee.
- (8) If the relevant undertaker or any of his agents —
- (a) executes any works without the notice required by subparagraph (2) having been given; or
 - (b) unreasonably fails to comply with any reasonable requirement of the licensee under this paragraph,

he, subject to subparagraph (9), commits an offence and is liable on summary conviction to a fine —

- (i) if the licensee’s ICT service or ICT network is interrupted by the works or failure, of five thousand dollars; and
- (ii) if that ICT service or ICT network is not so interrupted, of three thousand dollars.

(9) In this paragraph —

“**relevant undertaker**” means —

- (a) any person (including a Minister or a department of Government) authorised by any law or by any order or scheme made under or confirmed by any law to carry on any water supply, electricity supply, airport, road, road traffic, road transport, dock, harbour, pier or lighthouse undertaking;
- (b) any licensee; and
- (c) any person or authority to whom this paragraph is applied by any law amended by, or under, or passed after this Law; and

“**undertaker’s works**” means —

- (a) in relation to a relevant undertaker falling within paragraph (a) of the preceding definition, any works which that undertaker is authorised to execute for the purposes of, or in connection with, the carrying on by him of the undertaking mentioned in that paragraph; and
- (b) in relation to a relevant undertaker falling within paragraph (b) of that definition, any works which that undertaker is authorised to execute by or in accordance with any provision of this Schedule.

21. (1) Any notice required to be given by the licensee to any person for the purposes of any provision of this Schedule shall be in the prescribed form and such notice shall indicate to that person the effect of the notice and shall indicate the steps that may be taken by that person under this Schedule in respect of that notice.
- (2) Any notice required to be given to any person for the purposes of any provision of this Schedule may be given to him either by delivering it to him or by leaving it at his proper address or by post.
- (3) Any notice required to be given under this Schedule may be given to an incorporated company or body by giving it to the secretary or clerk of the company or body.
- (4) For the purposes of this Schedule and in accordance with section 53 of the *Interpretation Law (1995 Revision)*, the proper address of any person shall be —



- (a) if the person to whom the notice is to be given has furnished the person giving the notice with an address for service under this Schedule, that address;
 - (b) in a case not falling within paragraph (a), where the person to whom the notice is to be given is an incorporated company or body, the registered or principal office of the company or body; and
 - (c) in any other case, the last known address of the person to whom the notice is to be given.
- (5) If it is not practicable, for the purposes of giving any notice under this Schedule, after reasonable inquiries to ascertain the name and address —
- (a) of the person who is for the purposes of any provision of this Schedule the occupier of any land; or
 - (b) of the owner of any interest in any land,
- a notice may be given under this Schedule by addressing it to a person by the description of “**occupier**” of the land (describing it) or, as the case may be, “**owner**” of the interest (describing both the interest and the land) and by delivering it to some person on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous object on the land.

Application to the Crown

22. (1) This Schedule shall apply in relation to land in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to land in which no such interest subsists.
- (2) In this paragraph —
- “**Crown interest**” means an interest which is held in accordance with section 2 or 3 of the *Governor (Vesting of Lands) Law (2005 Revision)*.
- (3) An agreement required by this Schedule to be given in respect of any Crown interest subsisting in any land shall be given by the Cabinet.

Savings for and exclusion of certain remedies etc.

23. (1) This Schedule shall not authorise the contravention of any provision made by or under any enactment passed before this Law.
- (2) The provisions of this Schedule, except paragraphs 8(5) and 18 and subparagraph (1), shall be without prejudice to any rights or liabilities arising under any agreement to which the licensee is a party.
- (3) Except as provided under the preceding provisions of this Schedule, a licensee shall not be liable to compensate any person for, or be subject to any other

liability in respect of, any loss or damage caused by the lawful exercise of any right conferred by or in accordance with this Schedule.

- (4) The ownership of any property shall not be affected by the fact that it is installed on or under, or affixed to, any land by any person in exercise of a right conferred by or in accordance with this Schedule.

Application of schedule to existing systems

24. (1) Subject to the following provisions of this paragraph, reference in this schedule to ICT apparatus installed on, under or over any land include references to ICT apparatus so installed before the 17th May, 2002.
- (2) Without prejudice to subparagraph (1), any line or other ICT apparatus lawfully installed before the 17th May, 2002 which if this Schedule had been in force could have been installed under paragraph 12 shall (subject to subparagraph (6)) be treated for the purposes of this Schedule as if it had been so installed.
- (3) Any consent given (or deemed to have been given) for the purposes of any provision of the repealed *Telephone Law (1997 Revision)* before the 17th May, 2002 shall —
- (a) have effect after the 17th May, 2002 as an agreement given for the purposes of this Schedule; and
- (b) so have effect, to any extent that is necessary for ensuring that the same persons are bound under this Schedule as were bound by the consent, as if it were an agreement to confer a right or, as the case may require, to bind any interest in land of the person who gave (or is deemed to have given) the consent.
- (4) Where, under subparagraph (3), any person is bound by any right, that right shall not be exercisable except on the same terms and subject to the same conditions as the right which, by virtue of the giving of the consent, was exercisable before the 17th May, 2002; and where, under the repealed *Broadcasting Law (1997 Revision)*, the repealed *Radio Law (1996 Revision)* or the repealed *Telephone Law (1997 Revision)*, those terms or conditions included a requirement for the payment of compensation or required the determination of any matter by any Court or person, the amount of the compensation or, as the case may be, that matter shall be determined after the 17th May, 2002 in like manner as if this Law had not been passed.
- (5) A person shall not be entitled to compensation under any provision of this Schedule if he is entitled to compensation in respect of the same matter by virtue of subparagraph (4).
- (6) Neither this Schedule nor the repeal of the *Telephone Law (1997 Revision)* shall prejudice any rights or liabilities which arise at any time under any



agreement which was entered into before the 17th May, 2002 and relates to the installation, maintenance, adjustment, repair, alteration or inspection of any ICT apparatus or to keeping any such ICT apparatus installed on, under or over any land.

Publication in consolidated and revised form authorised by the Cabinet this 12th day of February, 2019.

Kim Bullings
Clerk of Cabinet

ENDNOTES

Table of Legislation History:

SL #	Law #	Legislation	Commencement	Gazette
	6/2018	Information and Communications Technology (Amendment) Law, 2018	13-Aug-18	G17/2018/s5
		Information and Communications Technology Authority Law (2017 Revision)	31-May-17	GE45/2017/s17
	50/2016	Information and Communication Technology Authority (Amendment) (No. 2) Law, 2016	19-Dec-16	G26/2016/s4
		Information and Communications Technology Authority Law (2016 Revision)	2-Sep-16	GE69/2016/s12
36/2016		Information and Communications Technology Authority Law (2011 Revision) (Commencement of sections 59 to 64), Order, 2016	8-Jul-16	GE52/2016/s2
	15/2016	Information and Communication Technology Authority (Amendment) Law, 2016	20-Jun-16	G13/2016/s5
		Information and Communications Technology Authority Law (2011 Revision)	7-Nov-11	G23/2011/s4
	13/2011	Information and Communications Technology Authority (Amendment) Law, 2011	9-May-11	G10/2011/s1
		Information and Communications Technology Authority Law (2010 Revision)	8-Nov-10	G23/2010/s6
	16/2006	Information and Communications Technology Authority (Amendment) Law, 2009	12-Aug-09	GE55/2009/s2
		Information and Communications Technology Authority Law (2006 Revision)	24-Jul-06	G15/2006/s1
	22/2005	Information and Communications Technology Authority (Amendment) Law, 2005	15-Nov-05	G23/2005/s7
		Information and Communications Technology Authority Law (2004 Revision)	26-Jul-04	G15/2004/s9
	19/2003	Information and Communications Technology Authority (Amendment) Law, 2003	1-Apr-04	GE15/2004/s2
32/2002		Information and Communications Technology Authority Law, 2002, (Commencement) Order, 2002	16-May-02	GE17/2002/s1
	4/2002	Information and Communications Technology Authority Law, 2002	17-May-02 (Part)	G9/2002/s3

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