

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE INFORMATION AND
COMMUNICATIONS TECHNOLOGY AUTHORITY LAW (2006
REVISION)**

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (AMENDMENT) BILL, 2008**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Information and Communications Technology Authority Law (2006 Revision).

Clause 1 of the Bill provides the short title.

Clause 2 amends section 2 of the principal Law so as to insert a definition of “ICT infrastructure” and to amend the definition of “ICT service” so that it includes the provision of ICT infrastructure. This enables licensing and regulation under the principal Law of businesses which provide such infrastructure. The clause also inserts new definitions of “group of persons” and the related definition of “spouse”.

Clause 3 of the Bill inserts section 2A in the principal Law to make sure that the relevant provisions of the Public Management and Finance Law (2007 Revision) apply to the Authority.

Clause 4 amends section 10 of the principal Law to permit the Information and Communications Technology Authority (hereafter “the Authority”) to levy costs in respect of proceedings determined by it.

Clause 5 amends section 12 of the principal Law to change the end of the financial from 31st December to 30th June.

Clause 6 amends section 14 of the principal Law so as to make it clear that fines and penalties recovered under the principal Law (under section 51 or 58, for example) or under the regulations do not form part of the funds of the Authority, but are instead to be paid to the general revenues of the Islands.

Clause 7 repeals and replaces section 21 (3) of the principal Law so as to make the statement of assets and liabilities to be published only on 30th June each year, rather than on that date and on 31st December of each year.

Clause 8 amends section 24 of the principal Law so as to omit an otiose expression.

Clause 9 amends section 25 of the principal Law so as to extend the prohibition on share trading contained in that section. Currently the consent of the Authority is required to trade in the shares of a corporate licensee. The amendments extend this requirement to trading in shares of another company which constitute a

“controlling interest” in the licensee. The requirement extends to situations where the licensee is controlled through a chain of controlling interests in a hierarchy of companies.

Clause 10 amends section 51 of the principal Law as a consequence of the amendment proposed to be made to section 14.

Clause 11 amends section 55 of the principal Law to make it clear that a “cease and desist” order can be made under that section in respect of conduct that, although not prohibited in terms of the principal Law, contravenes a provision of the regulations or of a lawful order or direction of the Authority.

Clause 12 repeals section 58 of the principal Law and replaces it with various sections dealing with some legal matters.

Clause 13 amends section 78 of the principal Law to bar an appeal to the Grand Court against a decision of the Authority if the appellant has not first made application to the Authority for reconsideration of the decision concerned; and to correct minor errors in the section.

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (AMENDMENT) BILL, 2008**

ARRANGEMENT OF CLAUSES

1. Short title.
2. Amendment of section 2 of the principal Law - definitions.
3. Insertion of section 2A - applicability of Public Management and Finance Law (2005 Revision).
4. Amendment of section 10 - additional powers of Authority.
5. Amendment of section 12 - financial year.
6. Amendment of section 14 - financial procedure.
7. Amendment of section 21 - publication of accounts and annual report.
8. Amendment of section 24 - regulations relating to classes of ICT service.
9. Amendment of section 25 - shares of licensee not to be issued or transferred without approval of Authority.
10. Amendment of section 51- penalties for infringing section 36 or 40 prohibitions.
11. Amendment of section 55 - cease and desist orders.
12. Repeal and substitution of section 58 - various sections.
13. Amendment of section 78 - review of administrative decision by Authority.

CAYMAN ISLANDS

**A BILL FOR A LAW TO AMEND THE INFORMATION AND
COMMUNICATIONS TECHNOLOGY AUTHORITY LAW (2006
REVISION)**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Information and Communications Technology Authority (Amendment) Law, 2008. Short title
2. The Information and Communications Technology Authority Law (2006 Revision), in this Law referred to as the principal Law, is amended in section 2- Amendment of section 2 of the principal Law - definitions
 - (a) by inserting in appropriate alphabetical order the following definitions-
 - “ “group of persons” means two or more persons comprising any person and one or more of the following, that is, his spouse, child, step-child, adopted child, grandchild, parent, step-parent, grandparent, brother, sister, half-brother and half-sister;
 - “ICT infrastructure” means-
 - (a) tangibles, such as 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 designed, constructed, adapted or provided for the purpose of any ICT service; or

- (b) intangibles, such as agreements, arrangements, licences, franchises, right of way and easements;

“spouse”, in relation to any person, means-

- (a) the legal husband or wife of that person; or
- (b) a person of the opposite sex who, although not legally married to that person, lives with that person in the same household as if the two were husband and wife and have been so living for a continuous period of five years,

and any reference in this Law to marriage or to a married person shall be construed so as to give effect to paragraph (a) or (b), but where a person is judicially or otherwise separated from a legal spouse he shall not be considered to have any other spouse except that legal spouse;” and

- (b) by inserting after the word “service” where lastly appearing in the definition of “ICT service” the words “and includes a service that consists of or includes the provision of ICT infrastructure;”.

Insertion of section 2A - applicability of Public Management and Finance Law (2005 Revision)

3. The principal Law is amended by inserting after section 2 the following section-

"Applicability of Public Management and Finance Law (2005 Revision)

2A. (1) The Authority is a statutory authority as defined in section 2 of the Public Management and Finance Law (2005 Revision) and accordingly the provisions of that Law apply, among other things, to-

- (a) the Authority’s expenditure for each financial year; and
- (b) the preparation, maintenance, auditing and publication of the Authority’s accounts.

(2) Where the exercise of any power conferred by or under this Law would be inconsistent with the exercise of a power conferred by or under the Public Management and Finance Law (2005 Revision), the provisions of the Public Management and Finance Law (2005 Revision) shall, to the extent of the inconsistency, prevail over the provisions of this Law.”.

Amendment of section 10 - additional powers of Authority

4. Section 10 of the principal Law is amended-

- (a) by deleting the word “and” where it appears at the end of (e); and
- (b) by deleting paragraph (f) and substituting the following paragraphs-

- “(f) to award, assess and levy costs upon parties to proceedings determined by the Authority under this Law; and
- (g) to do anything it is authorised to do by or under this or any other Law.”.

5. Section 12 of the principal Law is amended by deleting “31st December” and substituting therefor “30th June”. Amendment of section 12 - financial year

6. Section 14 of the principal Law is amended by inserting after subsection (5) the following subsection- Amendment of section 14 - financial procedure

“ (6) Amounts paid to or recovered by the Authority by way of fines or penalties under this Law shall not form part of the funds of the Authority, but shall be paid to the general revenues of the Islands.”.

7. Section 21 of the principal Law is amended by repealing subsection (3) and substituting the following- Amendment of section 21 - publication of accounts and annual report

“ (3) The Authority shall publish in the Gazette a statement of its assets and liabilities as at 30th June of each year; and the Authority shall publish such statements not later than one month after that date.”.

8. The principal Law is amended in section 24 by deleting the words “as well as for”. Amendment of section 24 - regulations relating to classes of ICT service

9. The principal Law is amended in section 25- Amendment of section 25 - shares of licensee not to be issued or transferred without approval of Authority

(a) by repealing subsections (1), (2) and (3) and substituting the following subsections-

“(1) For the purposes of this section-

- (a) a person has an interest in a company if the person-
 - (i) is the legal or beneficial owner of shares in the company; or
 - (ii) by the operation of paragraph (e), is taken to have an interest in the company;
- (b) a person has a direct interest in a company if the person has an interest in it otherwise than by the operation of paragraph (e);
- (c) a person has an indirect interest in a company if the person has an interest in it by the operation of paragraph (e);
- (d) an interest in a company is a controlling interest-
 - (i) if the interest consists of more than fifty per cent of the company’s shares;

- (ii) if any right, power or privilege attached to or accruing by virtue of the interest permits the appointment by the holder of the interest of a majority of the members of the board or governing body of the company;
 - (e) a person (whether a natural person or a company) shall be taken to have an interest in a company if the person has an interest in any company-
 - (i) that has an interest in that company; or
 - (ii) that has an interest in a company that has an interest in that company and so on down the line;
 - (f) “shares” includes tradable equity in any form; and
 - (g) a change in control of a licensee includes, where the licensee is a company, a transfer of a controlling interest in it.
- (2) Where a licensee is a company-
- (a) the company (unless it is the subject of a waiver under subsection (5)) shall not issue shares; and
 - (b) no person having a direct interest in the licensee, or having in it an indirect but controlling interest, shall transfer or otherwise dispose of or deal in that interest,
- without the prior written consent of the Authority unless the resulting shareholding is such that-
- (c) no one person or group of persons will hold shares representing more than ten per cent of the issued share capital or total voting rights of the licensee’s issued capital or total voting rights;
 - (d) no one person or group of persons will hold shares representing more than ten per cent of the issued share capital or total voting rights of a parent company of the licensee.
- (3) The consent of the Authority under subsection (2)-
- (a) may be granted on application in writing by the company or person desiring to obtain it; and
 - (b) shall not be unreasonably withheld.”
- (b) by deleting from subsection (7) (a) “subsection (1)” and substituting therefor “subsection (2)”.

Amendment of section
51 - penalties for
infringing section 36 or
40 prohibitions

10. The principal Law is amended in section 51-

- (a) by inserting the words “or any conduct” after the word “agreement” in subsection (1);

- (b) by deleting the words “or the undertaking” where firstly appearing in subsection (1) and substituting the words “and any other person”;
- (c) by deleting the words “or the undertaking” where secondly appearing in subsection (1) and substituting the words “or person”;
- (d) by deleting the words “or the undertaking” wherever appearing in subsections (2) and (3) and substituting the words “or person”;
- (e) by deleting the words “or undertaking” from subsection (3) (a) and substituting the words “or person”;
- (f) by repealing subsection (4) and substituting the following subsection-

“ (4) The Authority, on making a decision that conduct has infringed a section 40 prohibition, may require the licensee to pay a penalty in respect of the infringement and may in addition suspend or revoke the licence.”; and
- (g) by repealing subsection (9) and substituting the following subsection-

“ (9) A fine imposed under this section is a debt due to the Authority recoverable at the suit of the Authority in any court of competent jurisdiction.”.

11. The principal Law is amended in section 55-

Amendment of section
55 - cease and desist
orders

- (a) by repealing subsection (2) and substituting the following subsection-

“ (2) The conduct referred to in subsection (1) is conduct that contravenes this Law, the regulations made under this Law or any order or direction of the Authority (other than a direction under section 47 or 48) made or given in accordance with this Law or any such regulations.”; and
- (b) by deleting the word “apply” from subsection (4) and substituting the word “appeal”.

12. The principal Law is amended by repealing section 58 and substituting the following sections-

Repeal and substitution
of section 58 -
administrative fines

Meaning of “default”
and “default notice”

58. In this Part-

“default” means contravene or fail to comply with one or more of the requirements imposed by-

- (a) this Law or any regulations made under this Law; or

- (b) the terms or conditions of a licence, order or directive made, issued or given under this Law;

“default notice” means a notice under section 58A.

Default notice

58A. (1) Where the Authority suspects on reasonable grounds that a licensee has defaulted, it may by notice in writing served on the licensee, accompanied by such documentary evidence of the default as it may possess-

- (a) give particulars of the suspected default; and
- (b) advise the licensee of its intention to make a determination in respect of it.

(2) A notice under this section shall specify that the licensee may, within seven days after receipt of the notice, provide the Authority with a response in writing admitting or denying the default, together with such submissions in writing and such documentary evidence, if any, as it may wish the Authority to consider in relation to it.

Basis of determination

58B. (1) If a licensee fails to respond within the time limited by the default notice, the Authority may, if it is satisfied that service of the notice was duly effected, proceed to make its determination in the matter on the basis that the licensee has defaulted without mitigating circumstances.

(2) Where the licensee’s response admits the default, the Authority may proceed to make its determination in the matter on the basis that the only mitigating circumstances (if any) are those disclosed in the documents and submissions (if any) that accompany the response.

(3) The Authority may in any case (and shall, where the licensee’s response denies the default) by a further notice convene a hearing of the matter within thirty days after the date of the default notice and shall make its determination only after the conclusion of the hearing.

Hearings

58C. At a hearing convened under section 58B-

- (a) the licensee shall be afforded a reasonable opportunity to be heard in person or by a representative, whether or not legally

	qualified; and
	(b) the procedure to be followed shall be as the Authority determines.
Making of determination.	58D. In accordance with section 58B, the Authority shall determine whether or not the licensee has defaulted.
Penalties	58E. Where it determines that a licensee has defaulted, the Authority, having regard to the nature and circumstances of the default, including its actual or potential consequences and any prior determinations of the Authority in respect of the licensee concerned, may issue a warning to the licensee or may impose a fine not exceeding twenty-five thousand dollars in respect of each day on which the default was found to have occurred or to have continued.
Notice of determination	58F. The Authority shall notify the licensee of its determination and of any action taken under this section within seven days after its determination.

13. The principal Law is amended in section 78-

- (a) by deleting the words “in the case of an appeal against” from subsection (2) and substituting the words “where the application concerns”;
- (b) by deleting the words “the appeal relates” from subsection (2) and substituting the words “the application relates, unless the Authority, at the request of the applicant, otherwise directs”;
- (c) by inserting the word “a” before the word “party” in subsection (3)”;
- (d) by deleting the word “therefore” from subsection (3) and substituting the word “therefor”; and
- (e) by repealing subsection (6) and substituting the following subsection-
 - “(6) No appeal lies to the Court under section 79 against a decision of the Authority-
 - (a) in respect of which no application under this section has been made; or
 - (b) that is the subject of an application under this section which has not yet been determined.”.

Amendment of section 78 - review of administrative decision by Authority

Passed by the Legislative Assembly the day of , 2008.

Speaker.

Clerk of the Legislative Assembly.