

CAYMAN ISLANDS



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**INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY LAW**

(2016 Revision)

Law 4 of 2002 consolidated with Law 19 of 2003, 22 of 2005, 16 of 2009, 13 of
2011 and 15 of 2016.

Revised under the authority of the Law Revision Law (1999 Revision).

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Consolidated and revised this 28th day of July, 2016.

Note (not forming part of the law): This revision replaces the 2011 Revision which should now be discarded.

**INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY LAW**

(2016 Revision)

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**INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY LAW
(2016 Revision)**

PART I- Preliminary

1. This Law may be cited as the Information and Communications Technology Authority Law (2016 Revision). Short title

2. In this Law- Definitions

“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;

“Authority” means the Information and Communications Technology Authority established by section 3;

“authorised officer” means a person authorised by the Authority;

“Board” means the Board of directors established by section 4;

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

“director” means a director of the Authority appointed under section 5;

“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, and to the extent to which a Deputy appointed under section 34 of Schedule 2 to the Cayman Islands Constitution Order 2009 is authorised to act, that Deputy; UK.S.I. 2009 No. 1379

“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;

“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;

“managing director” means the managing director of the Authority appointed under section 6;

“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);

“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- Establishment, Capital and Administration of Authority

3. (1) There is established an Information and Communications Technology Authority which shall be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in its corporate name.

Establishment of
Authority

(2) For the purpose of carrying out its functions under this Law, the Authority may buy, sell, hold, deal and otherwise acquire and dispose of land and

other property of whatsoever nature and may enter into contracts whether of agency or otherwise.

(3) All deeds, documents and other instruments requiring the seal of the Authority shall be sealed with the common seal of the Authority by the authority of the Authority in the presence of the chairman of the Board or managing director and one other director of the Authority.

(4) The Authority shall establish and maintain its head office and principal place of business within the Islands, and shall cause details thereof to be gazetted, and service of all documents on the Authority shall be deemed to be effective if delivered at the head office.

(5) The Authority may, by resolution, appoint an officer of the Authority or any other agent either generally or in a particular case to execute or sign on behalf of the Authority any agreement or other instrument not under seal in relation to any matter coming within the powers of the Authority.

Board of directors

4. (1) There is a Board of directors of the Authority which is responsible for the policy and general administration of the affairs and business of the Authority.

(2) The Board consists of a Chairman and not less than eight and not more than ten other directors.

Appointment of directors

5. (1) The directors referred to in section 4 shall be appointed by the Cabinet on such terms and conditions as the Cabinet may specify in their instruments of appointment and-

- (a) shall not act as delegates on the Board from any commercial, financial, or such other interests with which they may be connected;
- (b) shall hold office at the pleasure of the Cabinet for a term not less than three years and not exceeding five years and shall be eligible for re-appointment; and
- (c) shall be paid by the Authority out of the funds of the Authority such remuneration and allowances as may be determined by the Authority.

(2) Paragraphs (b) and (c) of subsection (1) shall not apply to a director who is appointed managing director under section 6.

(3) A person shall, prior to accepting an appointment under this section disclose to the Cabinet any commercial, financial, or other such business interests that might reasonably be considered to create a conflict of interest with his duties as a director of the Authority.

(4) If any director appointed under subsection (1) dies or resigns or otherwise vacates his office before the expiry of the term for which he has been appointed, another person may be appointed by the Cabinet for the unexpired period of the term of office of the director in whose place he is appointed.

(5) A person who makes a disclosure under subsection (3) containing particulars which he knows, or ought to know, are false, commits an offence and is liable on summary conviction to a fine of five thousand dollars.

6. (1) The Cabinet shall appoint any individual to be the managing director; but, if a managing director is appointed from among individuals other than the directors appointed under section 5, he shall by virtue of his office be deemed to be a director appointed under section 5.

Managing director of Authority

(2) The managing director shall be an employee of the Authority on such terms and conditions as the Cabinet may decide.

(3) The managing director shall-

- (a) be entrusted with the day to day administration of the Authority to the extent delegated by the Board;
- (b) carry out duties as specified under this Law, any other law or regulations made under such laws or as directed by the Authority; and
- (c) participate in the development and the implementation of the ICT policy of the Islands.

(4) The managing director shall render services exclusively to the Authority and shall be answerable to the Board for his acts and decisions.

(5) In the event of the absence or inability to act of the managing director, the Cabinet may appoint a director to discharge his duties during the period of his absence or inability.

7. (1) The Cabinet shall terminate the appointment of any director who -

Resignation of directors and termination of office

- (a) resigns his office;
- (b) becomes of unsound mind or incapable of carrying out his duties;
- (c) is declared bankrupt, suspends payment to or compounds with his creditors;
- (d) is convicted in the Islands or in any other jurisdiction of an offence involving dishonesty, fraud or any indictable offence;
- (e) is guilty of serious misconduct in relation to his duties;
- (f) is absent, without leave of the chairman, from three consecutive meetings of the Board;

- 2003 Revision
- (g) fails to disclose a conflict of interests in accordance with this Law; or
 - (h) in the Cabinet's reasonable opinion, fails to discharge his duties competently under this Law or the Electronic Transactions Law (2003 Revision).
- Law 16 of 2009
- (2) Without prejudice to the provisions of subsection(1), the Cabinet acting in his discretion may terminate the appointment of any director, whether the director was appointed before, on or after the date of commencement of the Information and Communications Technology Authority (Amendment) Law, 2009.
- Procedure of Board
Schedule 1
8. Schedule 1 has effect with respect to procedure of the Board.
- Powers and functions of
Authority
9. (1) Subject to this Law, the Authority 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 Authority 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 Authority 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;
 - (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);
- 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;
- (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 managing director; and
- (k) to carry out such other functions as are conferred on the Authority by or under this Law or any other law.

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

10. The Authority shall, for the purposes of carrying out its functions under this Law or the regulations made, have power-

Additional powers of Authority

- (a) to summon and examine witnesses;
- (b) to call for and examine documents including, but not limited to, financial records;
- (c) to administer oaths;
- (d) to require that any document submitted to the Authority be verified by affidavit;
- (e) to do anything which is related or incidental to what is specified in paragraphs (a), (b), (c) and (d); and
- (f) to do anything it is authorised to do by this Law, the regulations or any other enactment.

11. (1) The Minister may give to the Authority directions of a general character as to the policy to be followed in the exercise and performance of the functions of the Authority in relation to matters appearing to the Minister to concern the public interest, and the Authority shall give general effect to any such directions.

Directions by Minister

(2) Any direction given by the Minister shall be published in the Gazette, but no such direction shall apply in respect of a matter pending before the Authority on the day on which the directions are published.

Accounts and statements

- Financial year 12. The financial year of the Authority shall end on the 31st December or such other date as the Board may, by resolution, determine.
- Repayment of set up loan 13. Such sums as have been lent by the Government to the Authority to enable it to commence its functions shall be repaid by the Authority at such times and by such methods as the Financial Secretary may determine.
- Financial procedure 14. (1) The revenue of the Authority shall be classified under the following heads of receipt-
- (a) fees received under this Law;
 - (b) amounts borrowed by the Authority; and
 - (c) miscellaneous receipts, including interest on and service of investments,
- and such revenue shall, within seven days of the receipt thereof, be paid into a bank account approved by the Financial Secretary.
- (2) The revenue of the Authority shall be applied to meet the following heads of expenditure-
- (a) interest on loans;
 - (b) repayment of overdraft, if any, on current account;
 - (c) current expenses;
 - (d) salaries, pensions and gratuities;
 - (e) general reserve fund; and
 - (f) miscellaneous expenditure approved by the Financial Secretary.
- (3) The Authority may, with the approval of the Financial Secretary, invest its reserve fund at interest.
- (4) The Authority shall cause estimates of expenditure and revenue to be prepared and adopted each year in respect of the financial year following, and such estimates, when adopted, shall be published in the Gazette.
- (5) Where there is balance of account in favour of the Authority after the Authority has paid all of the expenses specified in subsection (2), such balance shall be paid into the general revenue of the Islands.
- Borrowing powers 15. (1) Subject to subsection (2), the Authority may borrow sums required by it for meeting any of its obligations or discharging its functions.
- (2) The power of the Authority to borrow shall be exercisable only with the approval of the Cabinet as to the amount, sources of the borrowing and terms on

which the borrowing may be effected. An approval given in any respect for the purpose of this subsection may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

16. (1) The Cabinet may, from time to time, make advances and grants to the Authority out of sums placed upon the estimates of the Islands for the purpose and approved by the Legislative Assembly. Advances, grants and guarantees

(2) With the approval of the Legislative Assembly, the Cabinet may guarantee, in such manner and on such conditions as it thinks fit, the payment of the principal and interest on any authorised borrowings of the Authority made otherwise than by way of advance under subsection (1).

(3) Where the Cabinet is satisfied that there has been default in the repayment of any principal moneys or interest guaranteed under subsection (2), it shall, with the prior approval of the Finance Committee of the Legislative Assembly, direct the repayment out of the general assets and revenue of the Islands of the amount in respect of which there has been such default.

17. The Authority shall pay into the Treasury, at such times and in such manner as the Cabinet may direct, such amounts as may be so directed in or towards repayment of advances made to the Authority under section 16, and any sums issued in fulfilment of any guarantee given thereunder, and shall pay into the Treasury on what is outstanding for the time being in respect of such advances and of any sum so issued at such rate as the Cabinet may direct, and different rates of interest may be directed as respects different periods. Repayment of advances

18. (1) The Authority shall maintain a reserve fund. Reserve fund

(2) The management of the reserve fund, the sums to be carried, from time to time, on the credit thereof, and the application of the fund, shall be as the Authority may determine.

(3) Notwithstanding subsection (2), no part of the reserve fund shall be applied otherwise than for the purposes of the Authority.

(4) The power of the Cabinet to give directions to the Authority shall extend to the giving to the Authority of directions as to any matter relating to the establishment or management of the reserve fund, the carrying of funds to the credit thereof or the application thereof, notwithstanding that the direction may be of a specific character.

Balancing of revenue account	19. It is the duty of the Authority so to exercise and perform its functions as to secure that its revenues are sufficient to meet all sums properly chargeable to its revenue account.
Audit	20. (1) The accounts of the Authority shall be prepared and maintained in accordance with the standards recommended for the time being by the International Accounting Standards Committee or by such other body as may be set up in its place. (2) The accounts of all transactions of the Authority shall be audited annually by the Auditor General who shall have such powers in relation to the Authority, its directors, and the property, securities and accounts of the Authority as he has in relation to other public money and public officers by virtue of the Public Management and Finance Law (2010 Revision).
2010 Revision	(3) On completion of the audit of the Authority's accounts under subsection (2), the Auditor General shall prepare a report thereon within three months of the close of the financial year to which the audited accounts relate.
Publication of accounts and annual report	21. (1) The Authority shall submit annually to the Cabinet, not later than six months following the end of the financial year, a report on its activities and transactions during the previous financial year, together with audited accounts including a balance sheet and income and expenditure accounts as at the close of the previous financial year. (2) The report and accounts under subsection (1) shall be laid on the table of the Legislative Assembly by the Minister not later than three months following their submission to the Cabinet. (3) The Authority shall publish in the Gazette a statement of its assets and liabilities as at the 31st December and the 30th June of each year; and the Authority shall publish such statements not later than one month after such dates.
Power to employ staff, etc.	22. (1) The Authority may employ, at such remuneration and on such terms and conditions as may be approved from time to time by the Board, such persons for such offices and such purposes as the Board considers necessary for the performance of the functions of the Authority. (2) The Authority shall create and maintain or subscribe to a fund for the payment of pensions to employees of the Authority in accordance with a scheme, the terms of which shall be approved by the Cabinet. (3) The fund shall be vested in trustees to be appointed by the Authority for that purpose and shall be maintained at a sufficient level according to accepted

actuarial principles to enable pensions to be paid to all employees of the Authority in accordance with the approved scheme.

(4) The Cabinet may, subject to such conditions as it may impose, approve of the appointment of any public officer in the service of Government by way of secondment to any office with the Authority, and any public officer so appointed shall, in relation to pension, gratuity or other allowance and to other rights and obligations as a public officer, be treated as continuing in the service of Government.

PART III-Licensing

23. (1) The Authority may grant licences in accordance with this Law.

Licences

(2) Subject to subsections (3) and (3A), the Authority, 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 Authority, 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 Authority, may establish a class or classes of licence which are exempt from the Local Companies (Control) Law (2015 Revision).

2015 Revision

(5) No ICT network or ICT services licensed under this Law is required to be licensed under the Trade and Business Licensing Law, 2014.

Law 21 of 2014

(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 Authority

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 Authority whose consent shall not be unreasonably withheld.

(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 Authority in writing, and the Authority shall reply in writing to such request within seven days of the receipt of such request.

(4) Where the Authority refuses to give its consent it shall give reasons in writing for such refusal.

(5) The Authority 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 Authority 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 Authority, and within such period of time as the Authority 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 Authority 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 Authority of the number of shares and the identity of the person in whom they have vested, and the Authority 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 Authority in accordance with this section or proceeds to deal with shares where the Authority has refused to consent to such dealing; or
- (b) a licensee fails to comply with subsection (5),

the Authority may, in accordance with this Law, suspend or revoke the 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 Authority submit an application for consideration by the Authority, and the application shall be in the prescribed form and accompanied by such fees as may be determined by the Authority.

Procedure for the grant
of a licence

(2) The Authority 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 Authority, 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. A person shall not assign a licence, or any rights thereunder, without the prior written approval of the Authority.

(2) The Authority may approve an application for the assignment of a licence under subsection (1) where the Authority is satisfied that the proposed assignee satisfies the criteria set out in section 26 (2) and (3).

(3) The Authority 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 fifteen years; and

(b) may be revoked or suspended in accordance with this Law.

29. (1) Where an application for renewal of a licence under section 26 is made, the Authority may refuse to renew that licence if the licensee is or has engaged in conduct that materially contravenes this Law or any regulations. Renewal of licence

(2) Where the Authority 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 Authority in respect of the refusal.

(4) The Authority 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.

30. (1) A licence granted under this Law shall be subject to the prescribed licence fees which shall be determined by the Authority. Licence fees

(2) The licence fees referred to in subsection (1) shall be payable directly by the applicant to the Authority at such time or times as may be prescribed by the Authority.

31. (1) A licence may be modified where the Authority and the licensee, by agreement in writing, agree to modify the licence. Modification of licence

(2) Notwithstanding subsection (1) and subject to any special conditions concerning modification in the relevant licence, the Authority 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 Authority, on the recommendation of the Cabinet, considers that a licence should be modified in the public interest, the Authority 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 seven days, why the licence should not be so modified.

(4) The Authority may modify the licence if, after considering and having regard to all representations made within seven days, the Authority 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 Authority decides to modify the licence, the Authority shall give to the licensee a written notice stating-

- (a) how the licence has been modified; and
- (b) that the licensee may apply to the Authority for a review of its decision in accordance with section 78.

Suspension of licence

32. (1) Subject to any special conditions concerning suspension in the relevant licence, the Authority 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 Authority.

(2) Notwithstanding subsection (1), the Authority, 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 Authority shall, before suspending any licence under subsection (1), give written notice to the licensee, in which notice the Authority shall draw to the attention of the licensee the grounds on which the Authority intends to suspend the licence.

(4) The Authority 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 Authority 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 Authority, 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 Authority shall, before revoking any licence under subsection (1), give written notice to the licensee, in which notice the Authority shall draw to the attention of the licensee the grounds on which the Authority intends to revoke the licence

(4) The Authority 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.

34. (1) The Authority 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.

Register of applications and licences

(2) The Authority-

- (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

35. (1) This Part deals with-

- (a) agreements, decisions and practices; and
- (b) intent or attempts to enter into agreements or practices,

Interpretation for the purposes of this Part

relating to the making available, provision, marketing, sale, trade and distribution of ICT networks and ICT services and such other related agreements, decisions, practices, intent and attempts.

(2) In this Part-

“section 36 prohibition” means the prohibition specified in section 36; and

“section 40 prohibition” means the prohibition specified in section 40.

(3) The offences to which sections 42 and 43 relate are the offences set out in sections 93 to 95.

Agreements, etc.
preventing, restricting or
distorting competition

36. (1) Agreements by or between licensees or between one or more licensees and any other person, decisions by licensees or concerted practices which-

- (a) may affect trade in the Islands; and
- (b) have as their object or effect the prevention, restriction or distortion of competition relating to any ICT service or ICT network subject to this Law,

are prohibited.

(2) Subsection (1) applies, in particular, to agreements, decisions or practices which-

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage; or
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the Islands or is, or is intended to be, implemented in such other manner as will effect the operation of any ICT network or ICT service in the Islands.

(4) Any agreement or decision which is prohibited by subsection (1) is void.

(5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by a licensee or a concerted practice, but with any necessary modifications unless the context otherwise requires.

(6) In this section-

“the Islands” mean, in relation to an agreement which operates or is intended to operate only in a part of the Islands, that part.

Exemptions

37. (1) The Authority may grant an exemption from section 36 with respect to a particular agreement if- Individual exemptions

- (a) a request for an exemption has been made to the Authority by a party to the agreement; and
- (b) the agreement is one to which section 38 applies.

(2) The exemption referred to in subsection (1) may be granted-

- (a) subject to such conditions or obligations; and
- (b) shall have effect for such period,

as the Authority considers appropriate.

(3) The period referred to in subsection (2) shall be specified in the grant of the exemption.

(4) The Authority may grant an exemption which has effect from a date earlier than the date on which it is granted.

(5) The Authority, on an application made in accordance with rules made by the Authority, may extend the period for which an exemption has effect; and the extension shall be made subject to such terms and conditions set out in such rules.

38. The Authority may declare provisions of section 36 inapplicable in the case of any agreement which- Exemption

- (a) contributes to-
 - (i) improving production or distribution; or
 - (ii) promoting technical or economic progress,

while allowing subscribers a fair share of the resulting benefit, but

- (b) does not-
 - (i) impose on the parties to the agreement restrictions which are not indispensable to the attainment of those objectives; or
 - (ii) afford the parties concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

39. (1) Where the Authority has reasonable grounds for believing that there has been a material change of circumstance since it granted an individual exemption, it may by notice in writing- Cancellation, etc. of individual exemptions

- (a) cancel the exemption;
- (b) vary or remove any condition or obligation; or

(c) impose one or more additional conditions or obligations.

(2) Where the Authority has a reasonable suspicion that the information on which it based its decision to grant an individual exemption was incomplete, false or misleading in a material particular, it may, by notice in writing, take any of the steps mentioned in subsection (1).

(3) Breach of a condition has the effect of cancelling the exemption.

(4) Failure to comply with an obligation allows the Authority, by notice in writing, to take any of the steps mentioned in subsection (1).

(5) Any step taken by the Authority under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.

(6) Where an exemption is cancelled under subsection (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.

(7) The Authority may act under subsection (1), (2) or (4) on its own initiative or on a complaint made by any person.

Abuse of dominant position

40. (1) Any conduct on the part of one or more licensees which amounts to the abuse of a dominant position in a market is prohibited if it may affect the trade in ICT networks and ICT services within the Islands.

(2) The conduct referred to in subsection (1) may, in particular, constitute such an abuse if it consists in-

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of subscribers;
- (c) applying dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts; and
- (e) using revenues attributed to a particular ICT service or ICT network to cross subsidize unfairly or affect competition for another ICT service or ICT network, unless otherwise approved or directed by the Authority.

(3) In this section-

“dominant position” means a dominant position within the Islands.

Investigations relating to anti-competitive practices

41. Without limiting the generality of section 9(3)(c), the Authority may conduct an investigation under this Part, on application by any party or on its own initiative, if there are reasonable grounds for suspecting-

Authority’s power to investigate

- (a) that the section 36 prohibition has been infringed; or
- (b) that the section 40 prohibition has been infringed.

42. (1) For the purposes of an investigation under section 41, the Authority may, by notice in writing, require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.

Powers when conducting investigations

- (2) A notice under subsection (1) shall indicate-
 - (a) the subject matter and purpose of the investigation; and
 - (b) the nature of the alleged offence to which the investigation relates.
- (3) In subsection (1)-

“specified” means-

- (a) specified, or described, in the notice; or
- (b) falling within a category which is specified, or described, in the notice.

- (4) The Authority may also specify in the notice-
 - (a) the time and place at which any document is to be produced or any information is to be provided; and
 - (b) the manner and form in which the document is to be produced or the information is to be provided.

(5) The power under this section to require a person to produce a document includes a power-

- (a) if the document is produced-
 - (i) to take copies of it or extracts from it; and
 - (ii) to require that person or any person who is a present or past officer or employee of his, to provide an explanation of the document; or
- (b) if the document is not produced, to require the person to state, to the best of his knowledge and belief, where it is.

43. (1) On an application made by the Authority to the Court in accordance with rules of court, a judge may issue a warrant if he is satisfied that-

Power to enter premises under a warrant.

- (a) there are reasonable grounds for suspecting that there are, on any premises, documents-
 - (i) the production of which has been required under section 42; and
 - (ii) which have not been produced as required;
- (b) there are reasonable grounds for suspecting that-
 - (i) there are on any premises documents which the Authority has power under section 42 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise a named officer of the Authority, and any other officers of the Authority whose assistance the investigating officer considers necessary in the circumstances-

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
- (c) to take possession of any documents appearing to be of the relevant kind if-
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found; and
- (f) to require any information which is held in a computer and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form in which it can be taken away, and in which it is visible and legible.

(3) Where, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

(4) Any person entering premises by virtue of a warrant under this section may take with him such equipment and materials as appears to him to be necessary.

(5) The named officer, on leaving any premises which he has entered by virtue of a warrant under this section, shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured as he found them.

(6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months; and where no action is taken by the Authority in respect of an offence relating to the document within three months after seizure under this Law, or, if action is taken but no decision relating to forfeiture is made, the document shall be returned by the Authority to the person from whom it is seized.

44. (1) A warrant issued under section 43 shall indicate-

Entry of premises under
warrant: supplementary

- (a) the subject matter and purpose of the investigation; and
- (b) the nature of the offence to which the warrant relates.

(2) The powers conferred by section 43 shall only be exercised on production of a warrant issued under that section.

(3) Where there is no one at the premises when the named officer proposes to execute such a warrant he shall, before executing the warrant-

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
- (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(4) Where the named officer is unable to inform the occupier of the intended entry he shall, when executing the warrant, leave a copy of it in a prominent place on the premises as well as a written notice showing the date and time of the execution of the warrant and the address of the Authority to which enquiries may be made.

(5) In this section-

“named officer” means the officer named in the warrant; and

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

45. (1) A person shall not be required, under this Part, to produce or disclose a privileged communication.

Privileged
communications

(2) In this section-

“privileged communication” means a communication-

- (a) between a professional legal adviser and his client; or
- (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which, in proceedings in the court, would be protected from disclosure on grounds of legal professional privilege.

Decisions following an investigation

46. (1) Subsection (2) applies where, as the result of an investigation conducted under section 41, the Authority proposes to make-

- (a) a decision that the section 36 prohibition has been infringed, or
- (b) a decision that the section 40 prohibition has been infringed.

(2) Before making the decision, the Authority shall-

- (a) give written notice to any person likely to be affected by the proposed decision; and
- (b) give that person an opportunity to make written representations.

Enforcement

Directions in relation to agreements

47. (1) Where the Authority has made a decision that an agreement infringes the section 36 prohibition, it may give to such person as it considers appropriate such written directions as it considers necessary to bring the infringement to an end.

(2) A direction under this section may, in particular, include provision requiring the parties to the agreement to modify the agreement or requiring them to terminate the agreement.

Directions in relation to conduct

48. (1) Where the Authority has made a decision that conduct infringes the section 40 prohibition, it may give to such person or persons as it considers necessary such written directions as it considers necessary to bring the infringement to an end.

(2) A direction under this section may, in particular, include provisions requiring the person concerned to modify the conduct in question or requiring him to cease that conduct.

Enforcement of directions

49. (1) Where a person fails, without reasonable excuse, to comply with a direction under section 47 or 48, the Authority may apply to the court for an order-

- (a) requiring the person in default to comply with the direction within a time specified in the order; or

- (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.

(2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by the person in default or any officer of an undertaking who is responsible for the default.

50. (1) This section applies where the Authority-

Interim measures

- (a) has a reasonable suspicion that the section 36 prohibition has been infringed; or
- (b) has a reasonable suspicion that the section 40 prohibition has been infringed,

but has not completed its investigation into the matter.

(2) Where the Authority considers that it is necessary for it to act under this section as a matter of urgency for the purpose-

- (a) of preventing serious, irreparable damage to a particular person or category of person; or
- (b) of protecting the public interest,

it may give such directions as it considers necessary for that purpose.

(3) The Authority shall, before giving a direction under this section-

- (a) give written notice to any person to whom it proposes to give the direction; and
- (b) give that person an opportunity to make oral or written representations.

(4) A notice under subsection (3) shall indicate the nature of the direction which the Authority is proposing to give and its reasons for wishing to give it.

(5) A direction given under this section has effect while subsection (1) applies, but may be replaced, if the circumstances permit, by a direction under section 47 or, as appropriate, section 48.

(6) In the case of a suspected infringement of the section 36 prohibition, sections 47 (1) and 49 shall also apply to directions given under this section.

(7) In the case of a suspected infringement of the section 40 prohibition, sections 48 (1) and 49 shall also apply to directions given under this section.

51. (1) Where the Authority has decided that an agreement has infringed a section 36 or 40 prohibition, the Authority shall give to the licensee or the

Penalties for infringing section 36 or 40 prohibitions

undertaking involved notice in writing of the decision and the Authority's reasons for the decision and shall invite the licensee or the undertaking to show cause why the Authority should not proceed to act on its decision.

(2) A notice to show cause shall state that, within fourteen days of service, the licensee or the undertaking on whom it is served may make representations in writing or otherwise show cause to the Authority concerning the matter, and the Authority shall not determine the matter without considering any submissions or representations received within that period of fourteen days.

(3) Where, after hearing representations under subsection (2), the Authority is of the opinion that its decision is correct, it shall so notify the licensee or the undertaking as soon as possible and, in the case of an infringement of a section 36 prohibition, the Authority-

- (a) may require the licensee or undertaking to pay a penalty in respect of the infringement; and
- (b) in addition, may suspend or revoke any licence issued to any licensee which has infringed section 36.

(4) The Authority, on making a decision that conduct has infringed a section 40 prohibition-

- (a) may require the licensee or undertaking to pay a penalty in respect of the infringement; and
- (b) in addition, may suspend or revoke any licence issued to any licensee which has infringed section 40.

(5) The Authority may impose a penalty on a licensee or an undertaking under subsection (3) or (4) only if it is satisfied that the infringement has been committed intentionally or negligently by the undertaking.

(6) Notice of a penalty under this section shall be in writing and shall specify the date before which the penalty is required to be paid.

(7) The date specified under subsection (6) shall not be earlier than the end of the period within which an appeal against the notice may be brought.

(8) A penalty fixed by the Authority under this section in respect of any single infraction of section 36 or 40 shall not exceed ten per cent of the turnover of the undertaking, and such turnover shall be determined in accordance with such provisions as may be specified in an order made by the Cabinet.

(9) Any sums received by the Authority under this section shall be paid into the reserve fund.

Recovery of penalties

52. (1) Where the specified date in a penalty notice has passed and-

- (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made; or
- (b) such an appeal has been made and determined,

the Authority may recover from the undertaking, as a civil debt due to it, any amount payable under the penalty notice which remains outstanding.

(2) In this section-

“penalty notice” means a notice given under section 51; and

“specified date” means the date specified in the penalty notice.

53. (1) The Authority, with the approval of the Cabinet, shall prepare and publish rules providing for the appropriate amount of any penalty under this Part and the Authority, with the approval of the Cabinet, may, from time to time, amend such rules.

Appropriate level of a penalty

(2) The Authority shall also consult with such persons as it considers appropriate when making or amending rules under this section.

(3) The Authority, when setting the amount of a penalty under this Part, shall have regard to the rules for the time being in force under this section.

54. (1) This section applies to any period of time prior to any person entering into an agreement where that person is of the opinion that the agreement may infringe the section 36 prohibition and he has notified the Authority of the intended agreement and has requested a decision as to whether an exemption can be granted with respect to the intended agreement.

Agreements notified to Authority

(2) The Authority may not impose a penalty under this Part in respect of any infringement of the section 36 prohibition after notification but before the Authority determines the matter.

(3) Where the Authority withdraws the benefit of provisional immunity from penalties with respect to the intended agreement or completed agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.

(4) The fact that an intended agreement has been notified to the Authority does not prevent the investigation of it under this Part.

(5) In this section-

“provisional immunity from penalties” has such meaning as may be prescribed.

PART V – Cease and Desist orders

- Cease and desist orders
55. (1) Where the Authority is satisfied that there are reasonable grounds for believing that any conduct specified in subsection (2) is being carried out by any person, the Authority may issue a cease and desist order to the person concerned.
- (2) The conduct referred to in subsection (1) includes any operations in contravention of this Law or regulations.
- (3) An order under subsection (1) shall -
- (a) state the nature of the alleged conduct and the name of the person against whom the allegation is made; and
 - (b) be accompanied by documents, if any, in support of the allegation
- (4) Any person aggrieved by, or dissatisfied with, the order of the Authority may, within twenty-one days of the communication of the order to him, or such longer period as the Authority may, for good cause shown, allow, apply to the Authority in writing for its decision to be reviewed.
- (5) On receipt of the appeal, the Authority shall, if the appellant has applied to be heard personally or by a representative, decide whether he shall be so heard and, if it is so decided, fix a time and a date for such hearing and notify the appellant.
- (6) At every hearing of an appeal where the appellant or his representative is present, the appellant or his representative shall be given an opportunity to address the Authority.
- (7) The decision of the Authority shall be notified to the appellant with the least possible delay.
- Application for enforcement
56. Where the Court is satisfied on an application by the Authority that a licensee -
- (a) has failed to comply with any term or conditions of the licence;
 - (b) has failed to comply with an order made under section 55; or
 - (c) has contravened this Law or any regulations made hereunder,
- the Court may exercise any of the powers specified in section 57.
- Powers of Court
57. (1) The Court may, under an application under section 56 -
- (a) order the offending licensee to pay to the Government such pecuniary penalty not exceeding five hundred thousand dollars in the case of an individual and not exceeding three million dollars in the case of any other person;

- (b) grant an injunction restraining the offending licensee from engaging in conduct described in section 56; or
- (c) make such other order as the Court thinks fit,

in respect of each contravention or failure specified in that section.

(2) In exercising its powers under this section, the Court shall have regard to

- (a) the nature and extent of the conduct giving rise to the application;
- (b) the nature and extent of any loss suffered by a person as a result of the alleged contravention;
- (c) the circumstances of the alleged contravention; and
- (d) any previous determination against the licensee concerned.

Part VI – Administrative Fines

58. (1) Where the Authority is satisfied that there are reasonable grounds for believing that a licensee may have failed to comply with or contravened one or more terms, conditions, specifications or requirements of any licence, order, directive, rule or regulation, the Authority shall -

Administrative fines

- (a) notify the licensee in writing, stating the nature of such suspected failure to comply or contravention and of the Authority's intention to make a determination in respect of any such suspected failure to comply or contravention; and
- (b) provide to the licensee documents, if any, in support of the suspected failure or contravention.

(2) A notice under subsection (1) shall be sent by post and shall be deemed to have been communicated to the licensee at the time it would have been received in the ordinary course of post.

(3) A licensee notified in accordance with subsection (1) may, within twenty-one days of the date of the notice, provide to the Authority a written response in respect of any such suspected failure to comply or such contravention, and shall also provide any other documentation which the licensee wishes the Authority to consider in making any determination in relation to any suspected failure to comply or contravention.

(4) A licensee, in any response submitted to the Authority as specified in subsection (3), may request that the Authority hear the licensee in person or through a representative and, if so requested, the Authority may in its discretion allow such request.

(5) Any document which the licensee wishes the Authority to consider at a hearing shall be submitted within the time permitted in subsection (3).

(6) Where a licensee, notified as specified in subsection (1), makes no submission as specified in subsection (3) in respect of a suspected failure to comply or contravention, then the licensee shall be considered by the Authority to have no evidence to refute the allegation of failure to comply or the contravention.

(7) Where the Authority has decided to hold a hearing, it shall hold such hearing within twenty-one days next following the twenty-one day period set out in subsection (3) and, subject to subsection (7), in accordance with such procedure as it may determine.

(8) At every hearing under this section where the licensee or his representative is present, the licensee or his representative shall be given an opportunity to address the Authority.

(9) After any hearing under this section, the Authority shall set out its findings in writing and shall make a determination in regard to any suspected failure to comply or contravention as specified in subsection (1), and where the Authority determines that a licensee has failed to comply with or contravened any term, condition, specification or requirement of any licence, order, directive, rule or regulation, the Authority may consider the nature, circumstances and any actual or potential consequences of each and any such failure to comply or contravention by the licensee as well as any prior determinations in respect of that licensee by the Authority, and may -

- (a) issue a warning or impose a fine not exceeding five hundred thousand dollars in respect of each such failure to comply or contravention; and
- (b) where the licensee's failure to comply or contravention continues after a determination has been made under this subsection, impose a fine in respect of each day on which the licensee failed to comply or the contravention continued, such fine being an amount not exceeding twenty-five thousand dollars for each day.

(10) The Authority shall notify the licensee of its findings and determinations and any fine or warning within twenty-one days of its determination and, following the period provided for an appeal as specified in subsection (11), may cause its findings and any warning and the quantum of any fine imposed to be published in any manner and in its discretion.

(11) An appeal against a determination of the Authority made under subsection (9) shall be made to the Court within twenty-one days next following the date of the notification made under subsection (10).

(12) Any notification of a fine under subsection (10) shall be deemed to also be notice of an intention to suspend any and all licenses of the licensee at the expiration of the twenty-one days next following notification as specified in subsection (10), and any fine imposed by the Authority shall be paid in full by the licensee within that same twenty-one days of notification, and the reasonable time to rectify specified in section 32 (4) shall similarly be deemed to be that same twenty-one days.

(13) Any failure to pay any fine imposed by the Authority within the period specified in subsection (12) shall be deemed to be a contravention of this Law and shall be deemed to be sufficient grounds for the suspension of any and all licenses of the licensee by the Authority under subsection 32 (1) (b).

(14) Representatives appearing on behalf of a licensee need not be persons having legal qualifications.

(15) The power to impose fines under this Part is in addition to or an alternative to any other penalty or remedy provided under this Law.

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

Universal Service

59. (1) The Authority, 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 Authority in accordance with regulations made by the Cabinet after consultation with the Authority.

Universal Service Fund

(2) The Authority 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.

60. (1) The Universal Service Fund shall be used by the Authority to compensate any ICT service provider or ICT network provider who is required to provide universal service under section 62.

Purpose of Fund

(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 Authority, 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 Authority.

Universal Service regulations	<p>61. The Cabinet may, on the recommendation of the Authority, by regulations made under this Law specify:</p> <ul style="list-style-type: none">(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	<p>62. (1) The Authority 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.</p> <p>(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.</p> <p>(3) For the purposes of subsection (1), the categories of universal service that may be required include-</p> <ul style="list-style-type: none">(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	<p>63. (1) The Authority 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.</p> <p>(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.</p>
Contributions to Fund	<p>64. (1) The Authority 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.</p> <p>(2) The Cabinet may, on the recommendation of the Authority 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.</p>

(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

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 and shall, in accordance with this section, ensure that the interconnection provided is made at technically feasible physical points. Interconnection

(2) A licensee who wishes to make any interconnection shall make his request for interconnection 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 service in a reasonable time.

(4) A request by a licensee to make any interconnection with another licensee shall be refused only on reasonable grounds, and such refusal shall be in writing.

(5) Any interconnection 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 will be determined.

(7) A public ICT network provider shall not, in respect of any rates charged by him for interconnection 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 services intends to provide.

Interconnection
agreements

66. (1) Interconnection agreements between licensees shall be in writing, and copies of each agreement shall be submitted to the Authority within seven days of that agreement having been signed.

(2) Copies of interconnection agreements between licensees shall be kept in a public registry maintained by the Authority for that purpose.

(3) The agreements referred to in subsection (2) shall be open to public inspection during normal working hours.

(4) The Authority shall, after consulting the Cabinet, prepare, publish, and make available copies of the procedures to be followed by the licensees when negotiating interconnection agreements.

(5) Where parties cannot agree upon interconnection rates, the Authority may impose such rates.

Pre-contract disputes

67. (1) Where, during negotiations for the provision of interconnection, 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 Authority for resolution.

(2) The Authority 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 Authority 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.

Cost of interconnection

68. (1) The cost of making any interconnection 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, for use by the requesting party’s equipment or personnel; and

“costs” means the cost of accommodation, mechanical and electrical connection and electronic programming and shall not include compensation for the loss of business which the party providing the interconnection may incur by virtue of providing the interconnection 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 service does not have to pay for network components that are not required for the interconnection service to be provided.

69. (1) Sections 65 to 68 shall, with necessary amendment, apply to such infrastructure sharing as the Cabinet may, after consultation with the Authority, prescribe. Infrastructure sharing

(2) The Authority, 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 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.

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- Licensee confidential information

- (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 Authority may establish such rules and procedures as it considers necessary to prevent the misuse of licensees' confidential information.

Numbering

Numbering

71. (1) The Authority 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 Authority 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 Authority may make rules imposing on any licensee the responsibility to offer number portability if the Authority 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 reasonable endeavours to ensure that their ICT services and ICT networks are -

- (a) reliable;
- (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 Authority 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 Authority 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 Authority 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.

73. ICT service or ICT network providers may, subject to the rules and procedures established under section 72(4)-

Non-discrimination and continuity of supply

- (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.

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

Equipment standards and technician certification

(2) Licensees shall, as a condition of licensing, connect only equipment meeting such standards to public ICT networks.

(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 Authority may, by notice published in the Gazette, exempt any equipment from the requirements of this section for such period of time as the Authority considers appropriate and in granting such exemption the Authority 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.

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

Interception of messages prohibited

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 Authority or on the written instructions of the Authority 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 Authority 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).

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

Refusal to produce records to police officer

- (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

Review of
administrative decision
by Authority

78. (1) This section shall apply to the following decisions of the Authority -

- (a) a decision not to grant a licence;
- (b) a decision to revoke a licence;
- (c) a decision to modify a licence under section 31(4);
- (d) a decision to suspend a licence under section 32(1);
- (e) a decision that a section 36 prohibition has been infringed;
- (f) a decision that a section 40 prohibition has been infringed;
- (g) with regard to an individual exemption under Part IV-
 - (i) a decision to grant or refuse an individual exemption;
 - (ii) a decision to impose any condition or obligation and a decision on the type of condition or obligation where such a condition or obligation has been imposed;
 - (iii) a decision of the date and duration of the individual exemption and as to the period fixed for such exemption;
 - (iv) a decision to extend or not to extend the period for which an individual exemption has effect; or
 - (v) a decision on the duration of the extension referred to in subparagraph (iv);
- (h) a decision to cancel an exemption;
- (i) a decision to impose a penalty in accordance with Part IV and a decision as to the amount of such penalty;
- (j) a decision to give a direction under section 47, 48 or 50;
- (k) a decision in relation to a pre-contract dispute under section 67; and
- (l) such other decision as may be prescribed.

(2) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an application does not suspend the effect of any decision under paragraph (e), (f), (g), (h) or (j) to which the appeal relates.

(3) Where-

- (a) a licensee;
- (b) an applicant for a licence;
- (c) party to an agreement in respect of which the Authority has made a decision under Part IV; or
- (d) a person in respect of whose conduct the Authority has made a decision under Part IV,

is aggrieved by a decision specified in subsection (1) ("the original decision"), he may, within fourteen days of the receipt of the decision and written reasons therefore, apply in the prescribed manner to the Authority for a reconsideration of that decision.

(4) The Authority shall, under subsection (3), confirm, modify or reverse the decision, or any part thereof, specified in subsection (1), and render its determination within a reasonable period of time not to exceed twenty-eight days.

(5) Where the original decision is confirmed, the confirmation shall be deemed to take effect from the date on which the decision was made.

(6) Where an application is made under subsection (2) -

- (a) the Authority may, on application by the aggrieved person, order that the decision shall not take effect until a determination is made under subsection (3); and
- (b) the Court shall not hear an appeal under section 80 in relation to a reconsideration under subsection (3) until the Authority has made a determination under subsection (3).

79. (1) A person who-

Third party appeals
under Part IV

- (a) is not a party to an agreement in respect of which the Authority has made a decision (as specified in paragraphs (e) to (j) of section 78 (1)) (“the relevant decision”);
- (b) is not a person in respect of whose conduct the Authority has made the relevant decision; and
- (c) has no right of a appeal under section 78,

may apply to the Authority asking it to withdraw or vary the relevant decision.

(2) The application made under subsection (1) shall-

- (a) be made in writing, within such period as the Authority may specify in rules; and
- (b) give the applicant’s reasons for considering that the relevant decision should be withdrawn or, as the case may be, varied.

(3) Where the Authority decides-

- (a) that the applicant does not have a sufficient interest in the relevant decision;
- (b) that, in the case of an applicant claiming to represent persons who have such an interest, the applicant does not represent such persons; or
- (c) that the persons represented by the applicant do not have such an interest,

it shall notify the applicant of its decision.

(4) Where the Authority, having considered the application, decides that the application does not show sufficient reason why the Authority should withdraw or

vary the relevant decision, it must notify the applicant of its decision, otherwise the Authority shall deal with the application in accordance with such procedure as may be specified in rules made by the Authority.

(5) The applicant may appeal to the Court against a decision of the Authority made under subsection (3) or (4).

(6) The making of an application does not suspend the effect of the relevant decision.

Appeals to the Court

80. (1) An appeal lies to the Court from any decision of the Authority specified in sections 55, 58 and 78 on one or more of the following grounds, namely, that the decision is-

- (a) erroneous in law;
- (b) unreasonable;
- (c) contrary to the principles of natural justice; or
- (d) not proportionate.

(2) An appeal against the decision of the Authority shall be to the Court by motion.

(3) The appellant, within twenty-eight days after the day on which the Authority has delivered its decision, shall serve a notice in writing signed by the appellant or his attorney-at-law on the Authority of his intention to appeal and of the grounds of his appeal.

(4) Any person aggrieved by a decision of the Authority may, upon notice to the Authority, apply to the Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Court, upon the hearing of such application, may extend the time prescribed by this section as it considers fit.

(5) The Authority shall, upon receiving the notice of appeal, transmit to the Court without delay a copy of the decision and all papers relating to the appeal, provided that the Authority may seek an order from the Court directing the Authority to file under seal any information if it is considered that the public interest would suffer by disclosure of such information.

(6) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which the appellant intends to rely and shall not, unless by leave of the Court, go into any matters not touching upon such grounds of appeal.

(7) The Court may adjourn the hearing of an appeal and may, upon the hearing thereof, confirm, reverse, vary or modify the decision of the Authority or remit the matter with the opinion of the Court thereon to the Authority.

(8) The Court may dismiss an appeal if it is of the opinion that the appeal is frivolous, vexatious or not made in good faith.

(9) An appeal to the Court against a decision of the Authority shall not have the effect of suspending the execution of the decision unless the Court so orders.

PART X- Offences

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 Authority. Inspections

(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.

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. Engaging in ICT activities without a licence

(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.

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. Malicious damage to apparatus

(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 Authority 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.

Refusal to produce documents, etc.

85. A person who, without reasonable excuse-

- (a) refuses to produce any document, record, thing, or information required by the Authority under this Law; or
- (b) destroys or alters, or causes to be destroyed or altered, any document, record, thing or information required to be produced under this Law,

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

Giving false information

86. A person who knowingly gives false or misleading information to the Authority commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars and to imprisonment for one year.

Failure to attend to give evidence

87. A person who-

- (a) refuses or fails, without reasonable excuse, to appear before the Authority, having been required to do so; or
- (b) refuses to take an oath or make an affirmation having appeared before the Authority as a witness,

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

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.

89. (1) On a charge of conspiracy to commit an offence under this Law, the following questions are immaterial to the accused's guilt-

Territorial scope of inchoate offences

- (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.

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.

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

(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.

91. (1) Where an offence under this Law, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall have committed that offence and is liable to be proceeded against and punished accordingly.

Offences by bodies corporate

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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

92. (1) A person who, without the written consent of the Authority-
- (a) acts or purports to act as, or holds himself out as being authorised by the Authority 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 Authority 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 Authority-
- (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 Authority 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.

94. (1) A person commits an offence where, having been required to produce a document under section 42 or 43-

Destroying or falsifying documents

- (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.

95. (1) Where information is provided by a person to the Authority in connection with any function of the Authority under Part IV, that person commits an offence if-

False or misleading information

- (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 Authority 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 Authority, prescribing matters for the better carrying out of the duties and powers of the Authority 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 Authority may make regulations relating to-
- (a) licence fees;
 - (b) infrastructure sharing;
 - (c) the numbering system; and
 - (d) quality standards under section 72 (3),

and the Authority shall consult with the Minister before making such regulations.

98. Neither the Authority, nor any director or employee of the Authority, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith. Immunity

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. Establishment of ICT installations on land

100. Where there is any inconsistency between this Law and any other law, this Law shall, to the extent of such inconsistency, prevail. Conflict of laws

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 17th May, 2002 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 31st December, 2002 or such later date as the Cabinet may specify by notice published in the Gazette. Transitional arrangements

(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.

SCHEDULE 1

section 8

PROCEDURE OF THE BOARD

1. The Cabinet shall appoint one of the directors to be the Chairman of the Board, and the Managing Director shall, *ex officio*, be Secretary of the Board.
2. The validity of any meeting of the Board shall not be affected by any vacancy in the directorship of the Board or by any defect in the appointment of any director, or by reason that any individual, not entitled to do so, took part in the meeting.
3. The Board shall meet at least four times each year and at such other times and at such places as the Chairman considers necessary or expedient for the transaction of the business of the Authority.
4. The Chairman may, at any time, call a special meeting of the Board and shall call a special meeting of the Board within fourteen days of receipt of request for that purpose addressed to him in writing and signed by any two directors.
5. In the absence of the Chairman, the directors present shall elect from their number a director to preside at the meeting of the Board.
6. (1) At every meeting of the Board, a quorum shall consist of a majority of the appointed directors, and decisions shall be adopted by a simple majority of the votes of the directors present and voting except that in the case of an equality of votes the Chairman shall in addition have a casting vote.

(2) Members of the Board or any sub-committee of the Board may participate in a meeting of the Board or of the sub-committee by means of a conference telephone or similar communications equipment where such equipment allows all persons participating in the meeting to hear each other at the same time, and participation by such means shall constitute presence in person at the meeting of the Board or sub-committee.
7. The Board shall have power to-
 - (a) act by sub-committee; and
 - (b) delegate any of its daily administrative duties and powers from time to time to such sub-committees and to any of their own number and to the officers, servants and agents of the Authority,

except that where the Board sets up a sub-committee which consists of members other than directors, officers or servants of the Authority, it may only act or delegate its duties or powers to such sub-committee with the approval of the Cabinet.

8. The decisions, resolutions, orders, policies and rules made by the Board shall be recorded in the minutes and kept by the Secretary to the Board, and the Board shall cause any decision, resolution order, policy or rule which affects the members of the public to be published in the Gazette, in a website or in a newspaper of the Islands.

9. The Board may invite any person to attend any meeting of the Board where the Board considers it necessary to do so, but that person shall not vote on any matter before the Board.

10. Subject to this Schedule, the Board may regulate its own procedure, and may delegate to any director power and authority to carry out on behalf of the Board such duties as the Board may determine.

11. If a director has any pecuniary interest, direct or indirect, in any matter before the Authority in which his private capacity conflicts with his duties as a director and which matter is a subject of consideration by the Board, the director shall, as soon as practicable after becoming aware of the interest in the matter, disclose his interest to the chairman.

12. A person who fails to comply with paragraph 11 commits an offence and is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for two years, or on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years, unless he proves that he did not know that the matter in which he had a pecuniary interest was the subject of consideration by the Board.

13. (1) For the purposes of paragraph 11, a director shall be treated as having an indirect pecuniary interest in a contract, proposed contract, licence or other matter if -

- (a) he or any nominee of his is a member of a company or other body which has a direct or indirect pecuniary interest in the contract, proposed contract, licence or other matter under consideration;
- (b) he is a partner, or in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct or indirect pecuniary interest in the contract, proposed contract, licence or other matter under consideration; or

- (c) he or any partner of his is a professional adviser to a person who has direct or indirect pecuniary interest in a contract, proposed contract, licence or other matter under consideration.

(2) In the case of married or co-habiting persons the interest of one spouse or co-habitant shall be deemed for the purpose of paragraph 11 to be also the interest of the other.

14. (1) The Cabinet may, subject to such conditions as it may think fit, appoint persons to act as directors for any specified period in any case in which the number of directors disabled by paragraph 11 at any one time would be so great a proportion of the whole as to impede the transaction of business by the Board.

(2) Nothing in paragraph 11 precludes any director from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Cabinet for the exercise of the powers conferred by subparagraph (1).

(3) Paragraph 11 does not apply to an interest in a contract, proposed contract, licence or other matter which a director has as a member of the public, or to any interest in any matter relating to the terms on which the right to participate is offered to the public.

(4) Where a director has an indirect pecuniary interest in a contract, proposed contract, licence or other matter by reason only of a beneficial interest in securities of a company or other body and the nominal value of those securities does not exceed one thousand dollars or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is less and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, paragraph 11 shall not prevent him from taking part in the consideration or discussion of the contract, proposed contract, licence or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

(5) Paragraph 11 does not apply to membership of or employment by any public body.

15. The director referred to in paragraph 11 shall not, unless otherwise decided by the Board, take part in the consideration of the matter, and if allowed to take part in the consideration of the matter, he shall not vote on the matter.

SCHEDULE 2

section 2

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

1. (1) In this Schedule-

Definitions

“alter”, “alteration” and “altered” shall be construed in accordance with subparagraph (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);

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

2001 Revision

shall, in default of agreement, be referred to and determined in accordance with the Arbitration Law (2001 Revision).

(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 (2001 Revision) by virtue of this paragraph, where compensation is payable under subparagraph (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.

6. (1) The following provisions of this paragraph apply where the licensee gives notice under paragraph 5(1) to any person and-

Acquisition of rights in respect of ICT apparatus already installed

- (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.

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.

Notices and applications
by potential subscribers

(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.

Road works

9. (1) The licensee shall, for the statutory purposes, have the right to do any 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.

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-

Power to install fly lines

- (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.

11. (1) Subject to paragraph 3 and the following provisions of this Schedule, the licensee shall have the right for the statutory purposes-

Tidal waters, etc.

- (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.

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.

Use of certain conduits

(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.
1995 Revision

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.

16. (1) Where any tree overhangs any road and, in doing so, either-

Tree lopping

- (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.

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.

Restriction on right to require the removal of ICT apparatus

(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.

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

Abandonment of ICT
apparatus

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.

Notices under 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.

1995 Revision

(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.

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. Application to the Crown

(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). 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.

23. (1) This Schedule shall not authorise the contravention of any provision made by or under any enactment passed before this Law. Savings for and exclusion of certain remedies etc.

(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.

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. Application of schedule to existing systems

(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.

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Kim Bullings
Clerk of Cabinet

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