

**INFORMATION AND COMMUNICATION TECHNOLOGIES ACT**

Act 44 of 2001 – 11 February 2002

*(unless otherwise indicated)*

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## **INFORMATION AND COMMUNICATION TECHNOLOGIES ACT**

### **PART I – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the Information and Communication Technologies Act.

#### **2. Interpretation**

In this Act—

“access” means access by a person to the facilities and services of a licensee excluding interconnection for the purpose of providing information and communication services;

“access agreement” means an agreement which sets out the terms and conditions pursuant to which a licensee grants access to a person where the services operated by the latter do not require the interconnection of physical networks;

“allocation” means the entry of a given frequency band in the Mauritius Frequency Allocation Table to be used by one or more terrestrial or space radio communication service, or the radio astronomy services;

“authorised officer” means the officer designated as such under section 25;

“Authority” or “ICT Authority” means the Information and Communication Technologies Authority established under section 4;

“Board” or “ICT Board” means the Information and Communication Technologies Board referred to in section 5;

“broadcasting” means the emission or transmission of sounds or images for reception by the public;

“certificate” means a document issued by a certification authority for the purpose of supporting digital signatures, which purports to confirm the identity or other significant characteristics of the person who holds a particular key pair;

“certification authority” means a person duly authorised under the Electronic Transactions Act to issue a certificate;

“charging principles” means the principles that may be prescribed for use in determining the prices to be charged from or by a licensee under an access agreement and an interconnection agreement;

“Competition Commission” means the Competition Commission established under section 4 of the Competition Act;

“computer” means any device for storing and processing information whether or not the information is derived from other information by calculation, comparison or otherwise;

“computer system” means a device or combination of devices, including input and output support devices, but excluding calculators which are not programmable, and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

“Controller” means the Controller of Certification Authorities referred to in the Electronic Transactions Act;

“Council” means the ICT Advisory Council established under section 34;

“data” means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose;

“domain name” means a unique alpha-numeric designation used to access a computer on the Internet and all domain names located in the name hierarchy;

“dominant operator” means a licensee who, by the terms of his licence or by reason of his share in the market or the availability to him of technological ability, infrastructure or capital, has a substantial degree of power in the market for the supply of an information and telecommunication services, including a telecommunication service;

“electronic transaction” means any transaction conducted over a network, using computers, information and communication technologies, including telecommunications;

“Executive Director” means the Executive Director of the Authority appointed under section 14;

“facility” means—

- (a) any part of the infrastructure of an information and communication network, including a telecommunication network; or
- (b) any line, cable, radio, equipment, antenna, tower, mast, tunnel, pit, pole or other structure or thing used, or intended for use, in connection with an information and communication network, including a telecommunication network;

“financial year” means the period extending from 1 July in any year to 30 June in the next ensuing year;

“frequency band” means a continuous frequency range of spectrum;

“information” means data, text, images, sounds, codes, computer programmes, software, databases or the like;

“information and communication industry” means any entity—

- (a) carrying on a business; or
- (b) engaged in any commercial activity,

connected with information and communication technologies;

“information and communication network” —

- (a) means a network for the transmission of messages; and
- (b) includes a telecommunication network;

“information and communication service” means any service involving the use of information and communication technologies, including telecommunication services;

“information and communication technologies” means technologies employed in collecting, storing, using or sending out information, including those involving the use of computers or any telecommunication system;

“intercept” means intercept by listening or recording, by any means, a message passing over an information or communication network, including telecommunication network, without the knowledge of the person originating, sending or transmitting the message;

“interconnection” means the linking up of 2 information and communication networks, including telecommunication networks so that users of either network may communicate with users of, or utilise services provided by means of, the other network or any other information and communications network, including telecommunication network;

“interconnection agreement” means an agreement, made between 2 or more licensees, which sets out the terms and conditions—

- (a) for interconnection between the facilities in the information and communication networks, including telecommunication networks of 2 or more licensees; or
- (b) on which a licensee obtains interconnection to information and communication services, including telecommunication services supplied by another licensee;

“International Mobile Station Equipment Identity” or “IMEI” means a unique number which is allocated to every individual mobile station equipment in the Public Land Mobile Network and which shall unconditionally be implemented by the Mobile Station (MS) manufacturer;

“Internet” means a publicly accessible system of global interconnected computer networks which uses the Internet Protocol as its communication protocol to provide a variety of information and communication facilities;

“Internet Protocol” or “IP” means a standard consisting of a set of rules governing digital data communication on the Internet;

“licence” means a licence issued under section 24;

“licensed certification authority” means a certification authority licensed by the Controller;

“licensee” means the holder of a licence;

“member” includes a Chairperson;

“Mauritius Frequency Allocation Table” means the table where the spectrum plan for Mauritius is detailed;

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

“Minister” means—

- (a) the Minister to whom responsibility for the subject of Information and Communication Technologies Authority is assigned; but
- (b) in relation to sections 12, 34, 35 and 36, the Minister to whom responsibility for the subject of information technology and telecommunications is assigned;

“Multiplex Operator” has the same meaning as in the Independent Broadcasting Authority Act;

“network” means a communication transmission system that provides interconnection among a number of local or remote devices;

“public operator” means a licensee who—

- (a)
  - (i) owns or operates a public information and communication network, including a telecommunication network; or
  - (ii) offers an information and communication service, including a telecommunication service to the public; or
- (b) owns or operates a network referred to in paragraph (a) (i), and offers a service referred to in paragraph (a) (ii);

“radio communication” means any transmission, emission or reception of signs, signals, writings, sounds or intelligence of any nature, of a frequency less than 3,000 gigahertz, propagated in space without artificial guide;

“radio spectrum” means the portion of the electromagnetic spectrum which is below 3,000 gigahertz;

“service provider” means any person who provides an information and communication service, including telecommunication;

“significant market power”, in relation to a public operator, means the position of the operator who, individually or jointly with any of its subsidiaries or others, enjoys a position equivalent to dominance in any specific market segment such that its position of economic strength affords it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;

“tariff” means the rate of any fee or charge which a public operator offers to claim for a service which it supplies;

“telecommunication” means a transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems, whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to re-arrangement, computation or other processes by any means in the course of their transmission, emission or reception;

“telecommunication equipment” means an electronic device intended for the purpose of telecommunication;

“telecommunication network” means a system, or a series of systems, operating within such boundaries as may be prescribed, for the transmission or reception of messages by means of guided or unguided electromagnetic energy or both;

“telecommunication service”—

- (a) means a service for carrying a message by means of guided or unguided electromagnetic energy or both; and
- (b) subject to paragraph (c), includes radio-communication; but
- (c) does not include public broadcasting;

“Tribunal” or “ICT Appeal Tribunal” means the Information and Communication Technologies Appeal Tribunal established under section 36;

“universal service” means an information and communication service, including a telecommunication service, determined by the Authority as being a service to be provided by a licensee to an area or sector not served or adequately served by the service.

[S. 2 amended by s. 64 (2) (a) of Act 13 of 2004 w.e.f. 16 February 2009; s. 9 (a) of Act 1 of 2009 w.e.f. 22 May 2009; s. 7 (a) of Act 7 of 2009 w.e.f. 15 July 2009; s. 14 (a) of Act 38 of 2011 w.e.f. 15 December 2011; s. 26 (a) of Act 9 of 2015 w.e.f. 14 May 2015; s. 3 of Act 21 of 2016 w.e.f. 15 December 2016.]

(S. 2 came into operation on 1 June 2002.)

### **3. Application of Act**

(1) Subject to subsection (2), this Act shall bind the State.

(2) The Minister may, on such terms and conditions as he may determine, exempt any Government department, statutory corporation, non-governmental organisation, or foreign governmental or foreign non-governmental agency acting pursuant to such international Convention or treaty as may be prescribed and to which both Mauritius and the government of that agency are signatories, from compliance with this Act in the interests of the sovereignty of the State, national security or public order.

[S. 3 amended by s. 4 of Act 21 of 2016 w.e.f. 15 December 2016.]

(S. 3 came into operation on 1 June 2002.)

## **PART II – ICT AUTHORITY**

(Part II came into operation on 1 June 2002.)

### **4. Establishment of ICT Authority**

(1) There is established for the purposes of this Act an Information and Communication Technologies Authority to be known as the ICT Authority.

(2) The Authority shall be a body corporate.

(S. 4 came into operation on 1 June 2002.)

## 5. ICT Board

(1) There shall be an Information and Communication Technologies Board to be known as the ICT Board.

(2) The ICT Board shall be responsible for the administration and management of the Authority.

(3) The ICT Board shall consist of—

- (a) a Chairperson, to be appointed by the Prime Minister, after consultation with the Leader of the Opposition;
- (b) the Secretary for Home Affairs or his representative;
- (c) a representative of the Ministry responsible for the subject of finance;
- (d) a representative of the Ministry responsible for the subject of information technology and telecommunications;
- (e) a representative of the Attorney-General's Office;
- (f) 4 other members, to be appointed by the Minister.

(4) The members referred to in subsection (3) (a) and (f) shall—

- (a) be persons having sufficient knowledge and experience in the field of information and communication technologies, computer science, broadcasting and telecommunication law, business and finance, internet or electronic commerce;
- (b) hold office on such terms and conditions as the Prime Minister may determine.

(5) —

[S. 5 repealed and replaced by s. 5 of Act 21 of 2016 w.e.f. 19 January 2017.]

(S. 5 came into operation on 1 June 2002.)

## 6. Meetings of Board

(1) The Board shall meet—

- (a) at least once every month;
- (b) at such time and place as the Chairperson may determine; or
- (c) on request of any 3 members.

(2) At any meeting of the Board, 5 members shall constitute a quorum.

(3) The Board may co-opt such person as may be of assistance in relation to any matter before the Board.

(4) In the absence of the Chairperson at a meeting of the Board, the members present shall elect a member to act as Chairperson for that meeting.

(5) A co-opted person shall not have the right to vote at any meeting of the Board.

(6) Every member shall be paid such remuneration and allowances from the General Fund as the Minister may determine.

[S. 6 amended by s. 6 of Act 21 of 2016 w.e.f. 19 January 2017.]

(S. 6 came into operation on 1 June 2002.)

#### **7. Disqualification from membership**

(1) No person shall be eligible to be appointed or to remain a member of the Authority if he—

- (a) is a shareholder or director or employee of a public operator;
- (b) is an undischarged bankrupt or has made any arrangement with his creditors;
- (c) is incapacitated by physical or mental illness; or
- (d) acts contrary to this Act.

(2) —

[S. 7 amended by s. 7 of Act 21 of 2016 w.e.f. 19 January 2017.]

(S. 7 came into operation on 1 June 2002.)

#### **8. Disclosure of interest**

A member who has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered by the Board shall forthwith, or as soon as is practicable after the relevant facts have come to his knowledge, disclose on record or in writing the nature of his interest to the Board and shall not—

- (a) be present during any deliberation of the Board with respect to that matter; and
- (b) take part in any decision of the Board with respect to that matter.

(S. 8 came into operation on 1 June 2002.)

#### **9. Declaration of assets**

(1) Every member, the Executive Director, and such other employee as the Board may decide, shall, not later than 30 days after their appointment or after their vacation of office, deposit with the Authority a declaration of assets and liabilities in relation to himself, his spouse and children.

(2) A declaration under this section shall be made by way of an affidavit, sworn before the Supreme Court, in the form specified in the Second Schedule.

(S. 9 came into operation on 1 June 2002.)

#### **10. Delegation of powers**

Subject to such instructions and rules of a general nature as it may give or make, the Board may delegate to—

- (a) a committee comprising the Chairperson and 2 other members; or



(b) the Executive Director,

such of its powers under this Act as may be necessary for the effective management of the Authority, other than the power to borrow money or to grant a licence.

(S. 10 came into operation on 1 June 2002.)

### **11. Appointment of committees**

The Board may appoint such committees as it thinks fit to advise the Authority on such matters within the purview of this Act.

(S. 11 came into operation on 1 June 2002.)

### **12. Internet Management Committee**

(1) The Minister shall, after consultation with the Board, appoint an Internet Management Committee.

(2) The Committee under subsection (1) shall consist of a Chairperson and 10 members.

(3) The members shall hold office for a period of 3 years and shall be eligible for reappointment.

(4) Members under subsection (2) shall be selected from among representatives from the public sector, private sector, non-Government organisations and academia, by virtue of their qualifications, expertise and experience in information and communication technologies, computer science, broadcasting and telecommunication law, business and finance, Internet, electronic commerce and related educational and training services.

(5) Every member shall be paid such fee as may be determined by the Board.

(S. 12 came into operation on 1 June 2002.)

### **13. Functions of Internet Management Committee**

(1) The functions of the Internet Management Committee shall be—

- (a) to advise the Authority on Internet and related policies;
- (b) to provide a forum for stakeholders to discuss issues relating to the administration of Internet;
- (c) to administer domain names in the context of the development of the information and communication industry; and
- (d) to make recommendations to the Board on any matter relating to Internet, including the administration and management of domain names.

(2) The Committee may appoint such working groups as may be necessary in the discharge of its functions under the Act.

(3) The Committee shall regulate its meetings and proceedings in such manner as it may determine.

(S. 13 came into operation on 1 June 2002.)

#### **14. Executive Director**

(1) There shall be a chief executive officer of the Authority who shall—

- (a) be known as the Executive Director; and
- (b) be appointed by the Board, with the approval of the Minister, on such terms and conditions as the Board may determine.

(2) The Executive Director shall be responsible for the execution of the policy and the control and management of the day to day business of the Authority.

(3) The Executive Director—

- (a) shall attend every meeting of the Board;
- (b) may take part in the deliberations of the Board;
- (c) shall not be entitled to vote on any question before the Board.

(4) The Executive Director may, with the approval of the Board, delegate any of the functions or powers delegated to him under section 10 to an officer.

(5) In the exercise of his functions, the Executive Director shall act in accordance with such directions as he may receive from the Board.

(S. 14 came into operation on 1 June 2002.)

#### **15. Employment of staff**

(1) The Authority may employ, on such terms and conditions as it may determine, such officers and other members of staff as may be necessary for the proper discharge of the functions of the Authority.

(2) Every employee shall be under the administrative control of the Executive Director.

(3) Every employee who has an interest in any contract with the authority or acquires an interest of any kind from a licensee shall make a declaration on the prescribed or approved form.

(S. 15 came into operation on 1 June 2002.)

### **PART III – OBJECTS, POWERS AND FUNCTIONS OF AUTHORITY**

(Part III came into operation on 1 June 2002.)

#### **16. Objects of Authority**

The objects of the Authority shall be to—

- (a) democratise access to information, taking into account the quality, diversity and plurality in the choice of services available through the use of information and communication technologies;
- (b) create a level playing field for all operators in the interest of consumers in general;
- (c) license and regulate the information and communication services;

- (d) ensure that information and communication services, including telecommunication services are reasonably accessible at affordable cost nationwide and are supplied as efficiently and economically as practicable and at performance standards that reasonably meet the social, educational, industrial, commercial and other needs of Mauritius;
- (e) encourage the optimum use of information and communication technologies in business, industry and the country at large, the introduction of new technology and investment in infrastructure and services;
- (f) promote the efficiency and international competitiveness of Mauritius in the information and communication sector;
- (g) further the advancement of technology, research and development relating to information and communication technologies through modern and effective infrastructure, taking into account the convergence of information technology, media, telecommunications and consumer electronics;
- (h) advise the Minister on all matters relating to information and communication technologies and on matters relating to the Authority generally.

(S. 16 came into operation on 1 June 2002.)

#### **17. Powers of Authority**

(1) The Authority may in addition to the powers it has under section 37 of the Interpretation and General Clauses Act—

- (a) commission expert evaluations, conduct studies and collect data related to the information and communication industry;
- (b) authorise any person to conduct such technical tests or evaluations relating to information and communication services, including telecommunication, as it thinks fit.

(2) For the purpose of subsection (1), the Authority may require a public operator who holds a licence granted under this Act to provide information on the use, area of coverage and means of access to his service.

(3) The Authority shall have the power to make such determinations, issue such directives and guidelines, and do such acts and things, as are incidental or conducive to the attainment of its objects and the discharge of its functions.

[S. 17 amended by s. 14 (b) of Act 38 of 2011 w.e.f. 15 December 2011.]

(S.17 came into operation on 1 June 2002)

#### **18. Functions of Authority**

(1) The Authority shall—

- (a) implement the policy of the Government relating to the information and communication industry;

- (b) provide economic and technical monitoring of the information and communication industry in accordance with recognised international standard practices, protocols and having regard to the convergence of technology;
- (c) promote and maintain effective competition, fair and efficient market conduct between entities engaged in the information and communication industry in Mauritius and ensure that this Act is implemented with due regard to the public interest and so as to prevent any unfair or anticompetitive practices by licensees;
- (d) advise and assist in the formulation of national policies with respect to the regulation of the information and communication industry;
- (e) act internationally as the national regulatory body of Mauritius in respect of matters relating to information and communication technologies;
- (f) exercise licensing and regulatory functions in respect of information and communication services in Mauritius, including the determination of types and classes of licensees and the approval of prices, tariffs and alterations thereto;
- (g) establish, for public operators, performance standards and linkage standards in relation to the provision of local and international telephone services, and monitor compliance with both standards;
- (h) report, in such manner as may be required, to the Minister or to any other person, on any matter that lies within its purview, such as the performance of public operators, the quality of consumer service and consumer satisfaction, measured against the best available international standards of practice;
- (i) ensure the fulfilment by public operators of their obligations under any enactment;
- (j) —
- (k) develop and, where appropriate, revise, accounting requirements and draw up a cost allocation manual for use by public operators;
- (l) regulate the security of data;
- (m) take steps to regulate or curtail the harmful and illegal content on the Internet and other information and communication services;
- (n) ensure the safety and quality of every information and communication services, including telecommunication service and, for that purpose, determine technical standards for telecommunication network, the connection of customer equipment to telecommunication networks;
- (o) entertain complaints from consumers in relation to any information and communication service in Mauritius and, where necessary, refer them to the appropriate authorities;

- (p) allocate frequencies and manage, review and, where appropriate, reorganise the frequency spectrum;
- (q) determine the numbering system to be used for every information and communication services, including telecommunication service, and manage, review, and, where appropriate, reorganise the numbering system;
- (r) set up a radio frequency management unit for the allocation, monitoring, control and regulation of radio frequencies and, with the approval of the Minister, participate in any regional monitoring system;
- (s) monitor every access or interconnection agreement and assist in the resolution of any dispute relating thereto;
- (t) monitor the use of information and communication services on any ship or aircraft;
- (u) control the importation of any equipment capable of being used to intercept a message;
- (v) regulate the conduct of examinations for, and the issue of, certificates of competency to persons wishing to operate any apparatus used for purposes of information and communication services, including telecommunication;
- (w) manage the Universal Service Fund established under section 21;
- (x) determine, whether as conditions of licences or otherwise, the universal service obligations and requirements;
- (y) authorise or regulate the registration, administration and management of domain names for Mauritius; and
- (z) be the Controller.

(2) (a) Notwithstanding subsection (1), the Authority shall allocate and regulate the use of any frequency to any licensed broadcaster in the case of analogue broadcasting and to the Multiplex Operator in the case of digital broadcasting.

(b) Subject to paragraph (c), the broadcaster or the Multiplex Operator shall pay to the Authority such fee as may be prescribed.

(c) The Multiplex Operator shall be exempt from payment of any fee referred to in paragraph (b) for the broadcast, through transmission stations operated by it, of the proceedings of the National Assembly under any access agreement between the Multiplex Operator and the National Assembly.

(3) The Authority shall furnish to the Minister—

- (a) an annual report of its activities;
- (b) an annual report on the development of the information and communication industry in the country, as may be prescribed; and
- (c) such reports and other information as may be required.

(4) The Minister shall, at the earliest opportunity, lay a copy of a report submitted under subsection (3) (a) before the National Assembly.

[S. 18 amended by s. 9 (b) of Act 1 of 2009 w.e.f. 22 May 2009; s. 7 (b) of Act 7 of 2009 w.e.f. 15 July 2009; s. 26 (b) of Act 9 of 2015 w.e.f. 14 May 2015; s. 8 of Act 21 of 2016 w.e.f. 15 December 2016.]

(S. 18 came into operation on 1 June 2002.)

## **19. Powers of Minister**

The Minister may give such directions of a general character to the Board, not inconsistent with the objects of the Authority, which he considers to be necessary in the public interest, and the Board shall comply with those directives.

## **PART IV – FINANCIAL PROVISIONS**

(Part IV came into operation on 1 June 2002.)

## **20. Establishment of General Fund**

(1) The Authority shall establish a General Fund—

- (a) into which all monies, dues, fees and charges received by the Authority shall be paid; and
- (b) out of which—
  - (i) all payments required to be made by the Authority shall be effected;
  - (ii) shall be paid into the Capital Fund established under the Finance and Audit Act, such surplus money not required for the purposes of subparagraph (i), as the Board may determine.

(2) The Authority may, in furtherance of its objects and in accordance with the terms and conditions upon which its funds may have been obtained or derived, charge to the General Fund all remuneration, allowances, salaries, grants, fees, pensions and superannuation fund contributions, gratuities, working expenses and all other charges properly arising, including any necessary capital expenditure.

(3) The Authority shall derive its income from—

- (a) any charge or fee that may be prescribed;
- (b) any sum appropriated from the Consolidated Fund; and
- (c) such other source as the Minister may approve.

(4) The Authority shall, not later than 3 months before the commencement of every financial year, submit to the Minister for his approval a detailed estimate of its income and expenditure for that year.

(5) The Minister may, in signifying his approval, make comments of a general policy nature regarding the estimate.

(S. 20 came into operation on 1 June 2002.)

**21. Establishment of Universal Service Fund**

(1) The Authority shall establish a Universal Service Fund—

- (a) into which shall be paid any contribution received from licensees pursuant to subsection (2);
- (b) out of which payments may be made to any licensee required by the terms of his licence, or otherwise directed by the Authority, to provide a universal service.

(2) Every public operator shall, in addition to the licence fees payable, pay into the Universal Service Fund, such annual contributions as may be prescribed.

(3) The Minister may, on the recommendation of the Board, prescribe—

- (a) the basis and manner of determination of such contributions;
- (b) the dates when such contributions shall become payable and the manner and, if he considers necessary, the period over which the contributions shall be paid.

(S. 21 came into operation on 1 June 2002.)

**22. Donations and exemptions**

(1) Article 910 of the Code Civil Mauricien shall not apply to the Authority.

(2) Notwithstanding any other enactment, the Authority shall be exempt from payment of all charges, duties, fees, rates or taxes.

(S. 22 came into operation on 1 June 2002.)

**PART V**

[Part V repealed by s. 9 of Act 21 of 2016 w.e.f. 15 December 2016.]

(Part V came into operation on 1 June 2002.)

**23. —**

[S. 23 repealed by s. 9 of Act 21 of 2016 w.e.f. 15 December 2016.]

(S. 23 came into operation on 1 June 2002.)

**PART VI – LICENSING AND OTHER PROVISIONS**

(Part VI came into operation on 1 June 2002.)

**24. Licensing**

(1) No person shall operate an information and communication network or service including telecommunication network or service unless he holds a licence from the Authority.

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(2) Any person who wishes to obtain, transfer, renew, or vary the terms of, a licence for the operation of an information and communication network or service, including a telecommunication network or service specified in the First Schedule, shall make a written application to the Authority in the prescribed form.

(3) On receipt of an application made under subsection (2), the Authority—

- (a) shall, in the case of such licences as may be prescribed, forthwith give public notice of the application in 2 daily newspapers and invite any interested person who wishes to object to the application to do so in writing within 14 days;
- (b) may—
  - (i) require the applicant to furnish any additional information that it considers relevant;
  - (ii) inspect any installation, apparatus or premises relating to the application.

(4) The Authority shall, after hearing any objection that may be made pursuant to subsection (3) (a), determine whether to issue, transfer, renew, or vary the terms of, a licence.

(5) The Authority shall, in the exercise of its powers under subsection (4), have regard, in particular, to—

- (a) the public interest and any likelihood of unfair practice;
- (b) any element of national security;
- (c) the technical and electromagnetic compatibility of the application with any other licensed service;
- (d) any agreement between Mauritius or the Authority with any other State, or any national or international organisation relating to information and communication technologies, including telecommunication.

(6) Subject to subsection (5) (d), the Authority shall, within a period of 30 days from the date of receipt of the application, convey its decision to the applicant.

(7) Where the Authority agrees to issue, transfer, renew, or vary the terms of a licence—

- (a) it may do so by imposing such term or condition as it may determine;
- (b) it shall give written notice of its decision, and the reasons therefor, to any person who has raised an objection pursuant to subsection (3) (a).

(8) Where the Authority refuses to issue, transfer, renew or vary the terms of a licence, it shall give written notice of its decision, and the reasons therefor, to the applicant and to any person who has raised an objection pursuant to subsection (3) (a).

(9) No licence shall be issued or renewed under this section unless the prospective licensee pays such fee as may be prescribed.

(10) Every licence shall specify—

- (a) the name and business address of the licensee;
- (b) the installation, apparatus and premises to which it relates;
- (c) the network or service to be provided by the licensee; and
- (d) any term or condition imposed pursuant to subsection (7) (a).

(11) Subject to subsection (12), the Authority may, of its own motion, vary the terms of, or revoke, a licence on the ground that the licensee has—

- (a) contravened this Act; or
- (b) acted in breach of any term or condition imposed pursuant to subsection (7) (a).

(12) Where the Authority proposes to vary the terms of, or revoke, a licence pursuant to subsection (11), it shall give written notice of its intention to the licensee, stating—

- (a) the reasons for which it proposes to do so; and
- (b) the time, being not less than 14 days, within which the licensee may make written representation to object to the proposal.

(13) The Authority shall, after considering any representations made pursuant to subsection (12), communicate its decision in writing, and the reasons therefor, to the licensee.

(14) Where the urgency of the matter so requires, the Authority may forthwith suspend a licence on any ground specified in subsection (11).

(15) A suspension effected pursuant to subsection (14) shall, unless sooner revoked, lapse after 30 days.

[S. 24 amended by s. 23 of Act 27 of 2013 w.e.f. 21 December 2013.]

(S. 24 came into operation on 1 June 2002.)

## **25. Special powers**

(1) The Board may designate in writing any officer to act as an authorised officer who shall perform the duties specified in this section.

(2) An authorised officer may—

- (a) require a licensee to produce his licence;
- (b) at all reasonable times, inspect any installation, apparatus or premises relating to a licence.

(3) Where a Magistrate is satisfied, by information upon oath, that there is reasonable ground to suspect that a person is contravening this Act or any regulations made thereunder, he may grant a warrant to an authorised officer enabling him to—

- (a) enter any premises named in the warrant and search those premises or any person found therein;

- (b) inspect, remove and take copies of any document found therein which he considers relevant;
- (c) inspect and remove any installation or apparatus found therein which he has reason to suspect is operating in contravention of this Act.

(4) When a public operator contravenes this Act, the Authority may require the operator to remedy the default within a delay specified by it.

(5) Where a public operator fails to comply with a decision taken by the Authority under subsection (4), the Authority may—

- (a) revoke or vary the terms of the licence;
- (b) suspend the licence for a period not exceeding 30 days; or
- (c) reduce the period, not exceeding one year, for which the licence was originally granted.

(6) Where it has come to the knowledge of the Authority that there has occurred a substantial change in the composition of the share capital of the public operator, the Authority may cancel the licence forthwith, subject to the public operator being afforded an opportunity to be heard on why the licence should not be cancelled.

(7) Any matter dating back to more than 3 years shall not be the subject-matter of consideration by the Authority unless an inquiry, verification or action has been initiated within that period.

(8) The Authority shall give reasons for its decision under this section and notify the interested party.

(9) Notwithstanding subsection (5), where a public operator fails to comply with a decision of the Authority under subsection (4), he shall commit an offence and shall, on conviction, be liable to a fine, the maximum of which shall be 3 per cent of the net turnover of his preceding financial year or 5 million rupees, whichever is the lesser.

(S. 25 came into operation on 1 June 2002.)

## **26. Obligations of licensees**

Every licensee shall—

- (a) comply with every term and condition attached to his licence;
- (b) maintain any installation, apparatus or premises relating to his licence in such condition as to enable him to provide a safe, adequate and efficient service;
- (c) provide access thereto to an authorised officer;
- (d) furnish to the Authority such reports, accounts and other information relating to his operations as the Authority may require;
- (e) comply with any written direction given to him by the Authority in relation to the exercise of his rights and obligations under a licence.

(S. 26 came into operation on 1 June 2002.)

## **27. Public operators entering premises**

- (1) A public operator shall, subject to subsection (2), have authority to—
- (a) enter any property for the purpose of exercising any of his powers under his licence;
  - (b) establish any installation or apparatus on, over, under or across any land or road.

(2) (a) Before entering on any private property pursuant to subsection (1), a public operator shall give not less than 4 days' written notice of his intention to the owner or occupier, stating the reasons for which he proposes to do so.

(b) Any person who receives a notice issued pursuant to paragraph (a) may apply to the Authority forthwith for a review of the decision specifying the grounds of his objection.

(c) The Authority shall, after hearing the parties, determine every application under paragraph (b) within a reasonable delay.

(3) Where any person suffers any prejudice caused to his property or interest in the property through the acts or omissions of a public operator, he may apply for compensation to the Authority.

(4) The Authority shall, within 30 days, make an award on the claim for compensation and shall, within 7 days of the date of the award, communicate a copy to each of the parties.

(5) Nothing in this section shall prevent a public operator from entering on any property to do whatever may be required to remove any tree, branch, hedge or any other object that is likely to cause danger to any installation or apparatus relating to services provided by him.

(6) For the purpose of this section, establishing an information and communication installation or apparatus including telecommunication installation or apparatus shall include the setting up of poles, wires, stays or struts or other similar structure or any work performed either above or under the ground, in connection with the establishment, alteration, disconnection, modification or repair of the installation or apparatus.

(7) The Authority may, at the request of the owner or occupier of a property over which a public operator has established an information and communication installation including telecommunication installation, require the public operator to alter, modify or divert the installation and the expenses thereby incurred shall be borne by the person making the request.

(S. 27 came into operation on 1 June 2002.)

## **28. Interconnection agreements**

(1) Every network licensee or public operator shall grant access to his network in accordance with this section.

(2) A licensee may make a written application to a network licensee for access to its network with a copy of the application to the Authority.

(3) (a) Where a network licensee receives an application, he shall, unless the Authority otherwise determines, negotiate the terms of an interconnection agreement with the applicant in good faith.

(b) Either party to the proposed agreement may request the Authority to depute a representative to attend and assist in the negotiations.

(4) (a) Subject to paragraph (b), the rates for interconnection shall be determined in accordance with any charging principles in force.

(b) Where an interconnection agreement is negotiated before any charging principles have been prescribed, the agreement shall, where appropriate, be amended by the parties to comply with any charging principles that may subsequently be prescribed.

(5) Where the parties to a proposed interconnection agreement are unable to agree on the terms thereof within 60 days from the date of an application under subsection (2), either party may request the Authority to act as an arbitrator in the matter.

(6) An arbitration made by the Authority pursuant to subsection (5) shall be deemed to be made under and be regulated by the Code de Procédure Civile wherever applicable, subject to this Act.

(7) The award by the Authority on the dispute shall—

(a) be made within 60 days from the date of a request under subsection (5); and

(b) specify—

(i) the facilities and the network covered by the award;

(ii) the extent of any network over which one party is required to carry information and communication messages including telecommunications messages to enable another party to supply services;

(iii) the points of, and the technical standards for, interconnection;

(iv) the rates of interconnection;

(v) the effective date of the award.

(8) Each party to an interconnection agreement shall supply to the Authority—

(a) a copy of the agreement, and of any amendment to it, within 14 days of the execution of the agreement or amendment, as the case may be;

(b) such information relating to the interconnection agreement as the Authority may require.

(S. 28 came into operation on 1 June 2002.)

## **29. Access agreement**

(1) Any person may make an application to a public operator or network licensee for access to its facilities or services other than its network.

(2) Where the public operator or network licensee receives an application, he may, after consideration, grant the application, and negotiate the terms and conditions of the access with the applicant in good faith, or refuse the application.

(3) Where the application is not granted and the applicant has reasonable ground to believe that the operator or network licensee has not acted in good faith, he may refer the matter to the Authority for its decision.

(4) Where the parties to a proposed access agreement are unable to agree on the terms thereof within 60 days from the date of the application under subsection (2), either party may request the Authority to act as an arbitrator in the matter.

(5) An arbitration made by the Authority pursuant to subsection (4) shall be deemed to be made under and be regulated by the Code de Procédure Civile wherever applicable, subject to this Act.

(6) The award of the Authority on the dispute shall be made within 60 days from the date of the application.

(S. 29 came into operation on 1 June 2002.)

## **30. Market definition and determination of significant market power**

(1) The Authority shall, at such times as it may determine, hold a public consultation and carry out a market analysis, to enable it to—

- (a) identify information and communication service markets or market segments;
- (b) designate every information and communication service market and market segment for which tariffs must be approved by the Authority before the service is offered to the public;
- (c) determine whether any public operator has significant market power in those information and communication service markets or market segments.

(2) The Authority shall, following the public consultation referred to in subsection (1), designate and give public notification of—

- (a) every information and communication service market and market segment; and
- (b) every public operator which has a significant market power in an information and communication service market or market segment.

(3) Following the grant of the appropriate licences, every public operator shall, before the commercial launch of the relevant information and communication service, disclose to the Authority the relevant market or market segment in which it intends to operate.

(4) The Authority may, after consultation with the Competition Commission, issue such guidelines as are necessary for the purposes of determining which public operator has significant market power in an information and communication service market or market segment.

(5) Where a public operator has significant market power in a market or market segment, it may also be considered to have a significant market power in a closely related market or market segment, where the links between the 2 markets or market segments are such as to allow the market power held in one market or market segment to be leveraged into the other market or market segment, thereby strengthening the market power of the public operator.

(6) Where a public operator has significant market power in a market or market segment, and wishes to supply promotional offers, including discount practices, he shall submit the relevant cost breakdown for the said service and offers for determination by the Authority.

(7) Every public operator shall—

- (a) before entering into a new market or market segment, notify the Authority of its intention to do so; and
- (b) furnish to the Authority such information relating to its operations as the Authority may require under this section.

[S. 30 repealed and replaced by s. 14 (c) of Act 38 of 2011 w.e.f. 15 December 2011.]

(S. 30 came into operation on 1 June 2002.)

### **30A. Significant market power conditions**

(1) Where the Authority determines that a public operator has significant market power in a relevant market or market segment, it may impose such conditions as it considers appropriate on the public operator.

(2) Every public operator with significant market power shall comply with every condition imposed by the Authority under subsection (1).

[S. 30A inserted by s. 14 (d) of Act 38 of 2011 w.e.f. 15 December 2011.]

### **31. Tariffs**

(1) Every public operator shall submit to the Authority, in such form and manner as the Authority may determine, a tariff for every information and communication service which it wishes to supply and every intended alteration to a tariff, at least 15 days before the implementation of the tariff or the alteration, as the case may be.

(2) Every tariff or alteration submitted to the Authority under subsection (1) shall—

- (a) be calculated in accordance with such guidelines as the Authority may issue;

- (b) include information relating to—
  - (i) the term during which the tariff or alteration is to apply;
  - (ii) the description of the information and communication service;
  - (iii) the amount of all charges payable for each information and communication service, including the amount of any surcharge that may be imposed as a result of non-payment of fees or charges and the cost-related computation thereof;
  - (iv) the breakdown of cost and cost elements involved in supplying every information and communication service;
  - (v) the quantity in which the information and communication service is supplied;
  - (vi) the network configuration, including the capacity needed, to supply the information and communication service;
  - (vii) the performance characteristics for the information and communication service supplied; and
  - (viii) the terms and conditions on which the information and communication service is or is to be supplied, including the mode of payment.

(3) No public operator shall demand or receive from any person payment of any tariff which—

- (a) has not been submitted to the Authority in accordance with subsections (1) and (2);
- (b) is different from the tariff submitted to the Authority under this section; or
- (c) has been disallowed by the Authority.

(4) Every public operator shall display the tariff or alteration applicable for every information and communication service it offers in a conspicuous place at every point of sale of such service.

(5) Where the Authority is provided with a tariff or alteration under subsection (1), it may, where the tariff or alteration has been provided by a public operator having a significant market power, require the public operator to provide such additional information as it considers necessary.

(6) On receipt of a request from the Authority under subsection (5), the public operator shall provide the additional information within 15 days of the date of the request.

(7) (a) The Authority shall—

- (i) in the case of a public operator having significant market power, within 30 days of the date on which it is provided with a tariff or alteration under subsection (1), or it receives additional information under subsection (5), whichever is the later; or



- (ii) in the case of a public operator not having significant market power, within 15 days of the date on which it is provided with a tariff or alteration under subsection (1),

determine whether to allow, disallow, or amend the tariff or alteration and shall, by notice in writing, inform the public operator of its decision.

(b) Where the Authority allows or amends a tariff or alteration, it may impose such terms and conditions as it may determine.

(c) Where the Authority disallows or amends a tariff or alteration, it shall communicate, in writing, the reasons for its decision to the public operator.

(d) Where a tariff or an alteration has been allowed or amended by the Authority, the public operator shall forthwith give public notification of the tariff, alteration or amended tariff in 2 newspapers for 3 consecutive days.

(8) (a) Subject to subsection (9), where a public operator does not receive any communication from the Authority within 15 days of the date the public operator has submitted its tariff to the Authority, the tariff shall be deemed to have been allowed by the Authority.

(b) Paragraph (a) shall not apply to a public operator having significant market power.

(9) The Authority may—

- (a) in the case of an operator not having a significant market power, at any time after the specified period of 15 days referred to in subsection (8) (a); or
- (b) in the case of an operator having a significant market power, at any time after its tariff or alteration has been allowed by the Authority,

disallow or amend the tariff or alteration where—

- (i) the information submitted under subsection (2) (b) or (5), as the case may be, is found to be incorrect or misleading in a material particular;
- (ii) the tariff or alteration—
  - (A) is not calculated in accordance with such guidelines as the Authority may issue;
  - (B) is not accompanied by information required to be submitted under subsection (2) (b); or
  - (C) is otherwise in contravention of the Act or a directive issued by the Authority.

[S. 31 repealed and replaced by s. 14 (e) of Act 38 of 2011 w.e.f. 15 December 2011.]

(S. 31 came into operation on 1 June 2002.)

**32. Confidentiality**

(1) Every member or officer of the Authority shall—

- (a) before he begins to perform his duties under this Act, take the oath set out in the Third Schedule;
- (b) maintain, and aid in maintaining, the secrecy of any matter which comes to his knowledge in the performance, or as a result, of his duties under this Act.

(2) Any person who, without legal cause or reasonable excuse, contravenes subsection (1) (b) shall commit an offence.

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(3) Every licensee and his employees or agents shall treat as confidential any message or any information relating to a message which comes to their knowledge in the course of their duties.

(4) Any person who, otherwise than in the course of his duties, makes use of, or records, a message or any information relating to a message that comes to his knowledge, or to which he has access, by reason of his position as a licensee, or as an employee or agent of a licensee, shall commit an offence.

(5) (a) Nothing in this Act shall prevent a public operator or any of his employees or agents from intercepting, withholding or otherwise dealing with a message which he has reason to believe is—

- (i) indecent or abusive;
- (ii) in contravention of this Act;
- (iii) of a nature likely to endanger or compromise State defence, or public safety or public order.

(b) Where a message is withheld pursuant to paragraph (a), the operator shall forthwith refer it to the Authority for such written directions as the latter may think fit.

(6) (a) Nothing in this Act shall prevent a Judge in Chambers, upon an application, whether ex parte or otherwise, being made to him, by the police, from making an order authorising a public operator, or any of its employees or agents, to intercept or withhold a message, or disclose to the police a message or any information relating to a message.

(b) An order under paragraph (a) shall—

- (i) not be made unless the Judge is satisfied that the message or information relating to the message is material to any criminal proceedings, whether pending or contemplated, in Mauritius;
- (ii) remain valid for such period, not exceeding 60 days, as the Judge may determine;
- (iii) specify the place where the interception or withholding shall take place.

(7) In this section—

“information and communication message” means a message passing over an information and communication network, including telecommunication network;

“message” includes an information and communication message.

[S. 32 amended by s. 10 of Act 21 of 2016 w.e.f. 15 December 2016.]

(S. 32 came into operation on 1 June 2002.)

**33.** —

(S. 33 came into operation on 1 June 2002.)

[S. 33 repealed by s. 64 (2) (b) of Act 13 of 2004 w.e.f. 16 February 2009.]

**PART VII – ICT ADVISORY COUNCIL**

**34. Establishment of Council**

(1) There is established for the purposes of this Act an Information and Communication Technologies Advisory Council known as the ICT Advisory Council.

(2) The Council shall consist of—

- (a) a Chairperson;
- (b) a representative of the Prime Minister's Office;

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- (c) a representative of the Ministry responsible for the subject of information technology and telecommunications;
- (d) a representative of the Ministry of Finance;
- (e) —
- (f) a representative of the Joint Economic Council;
- (g) a representative of the Mauritius Chamber of Commerce and Industry;
- (h) 3 other persons representing the interests of consumers, purchasers and other users of information and communication services, including telecommunication services.

(3) The members of the Council, except the *ex officio* members, shall be appointed by the Minister.

(4) The Council may co-opt persons with specialised qualifications and experience to assist the Council at any of its meetings.

(5) Every member of the Council shall hold office on such terms and conditions as the Minister thinks fit.

(6) The Council shall meet at least once every month or at such other time as the Chairperson may decide.

(7) Five members of the Council shall constitute a quorum.

### 35. Functions of Council

The Council shall advise the Minister on any matter relating to—

- (a) the promotion of the interests of consumers, purchasers and other users in respect of—
  - (i) the quality and variety of information and communication services including telecommunication services provided;
  - (ii) the information and communication equipment including telecommunication equipment and facilities supplied;
  - (iii) the effect of the tariff policy adopted by the Authority;
- (b) the promotion of research into, and the development and use of, new information and communication techniques including telecommunication techniques;
- (c) the improvement of information and communication services including telecommunication services;
- (d) information and communication technologies including telecommunications which, in its opinion, should be referred to the Minister;
- (e) information and communication technologies including telecommunications which may be referred to it by the Minister or by the Authority.

## PART VIII – ICT APPEAL TRIBUNAL

### 36. Establishment of ICT Appeal Tribunal

(1) There is established for the purposes of this Act an Information and Communication Technologies Appeal Tribunal known as the ICT Appeal Tribunal which shall consist of—

- (a) a Chairperson and a Deputy Chairperson, who shall be barristers of not less than 10 years' standing, appointed by the Public Service Commission; and
- (b) such other members, not exceeding 4 in number, as may be appointed by the Minister after consultation with the Prime Minister.

(2) Every member, other than the Chairperson and Deputy Chairperson of the Tribunal, shall hold office on such terms and conditions as the Minister may determine.

(3) The members other than the Chairperson and Deputy Chairperson of the Tribunal shall hold office for a term of 3 years and may be eligible for re-appointment.

(4) Where the Minister is of opinion that the state of business at the Tribunal requires that the number of members should be temporarily increased, he may, after consultation with the Prime Minister, appoint such members on an *ad hoc* basis and for such period as he considers necessary to serve on the Tribunal.

(5) The members, other than the Chairperson and Deputy Chairperson of the Tribunal, shall be paid such fees as the Minister may approve.

(S. 36 came into operation on 1 December 2003.)

### 37. Staff of Tribunal

The Tribunal will be provided with such public officers as are necessary for the proper functioning of the Tribunal.

(S. 37 came into operation on 1 December 2003.)

### 38. Disqualification from membership

No person shall be eligible to remain a member of the Tribunal if—

- (a) he is found guilty of any misconduct or default in the discharge of his duties as a member which renders him unfit to be a member;
- (b) he is convicted of an offence of such nature as renders it desirable that he should be removed from office; or
- (c) he is suffering from such mental or physical infirmity as renders him unfit to discharge his duties as a member.

(S. 38 came into operation on 1 December 2003.)

### 39. Jurisdiction of Tribunal

(1) The Tribunal shall hear and dispose of any appeal against a decision of the Authority regarding information and communication technologies.

(2) No appeal shall lie against any decision made by the Tribunal following a settlement reached with the consent of the parties or their representatives.

(3) Subject to subsection (4), every appeal under subsection (1) shall be lodged within a period of 21 days from the date of notification of the decision to the aggrieved person and it shall be in such form and be accompanied by such fee as may be prescribed.

(4) The Tribunal may entertain an appeal after the expiry of the said period of 21 days if it is satisfied that there was sufficient cause for not lodging it within that period.

(5) The Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit, confirming, varying or setting aside the decision appealed against.

(6) The Tribunal shall send a copy of every order made by it to the parties to the appeal and to the Authority.

(7) Any appeal filed before the Tribunal under subsection (1) shall be dealt with by it as expeditiously as possible and the Tribunal shall endeavour to dispose of the appeal within 6 months from the date the appeal was lodged.

(S. 38 came into operation on 1 December 2003.)

#### **40. Procedure and powers of Tribunal**

(1) The Tribunal shall sit at such place and time as the Chairperson of the Tribunal may determine.

(2) Where the Tribunal adjourns any proceedings, it may resume them at such place and time as the Chairperson of the Tribunal may determine.

(3) Subject to any regulations made under section 48, all appeals before the Tribunal shall be instituted and conducted—

- (a) as far as possible in the same manner as proceedings in a civil matter before a District Magistrate;
- (b) in accordance with the law of evidence in force in Mauritius;
- (c) in public, except where the Tribunal otherwise orders on the ground of public safety or public order or the privacy of persons concerned.

(4) The Tribunal may—

- (a) make such orders for requiring the attendance of persons and the production of articles, documents or other electronic records, as it thinks necessary or expedient;
- (b) take evidence on oath and may for that purpose administer oaths;
- (c) on its own motion, call and hear any person as witness; and
- (d) adopt such procedures as may be necessary for the proper functioning of the Tribunal.

(5) Any person who—

- (a) fails to attend Tribunal after having been required to do so under subsection (4);
- (b) refuses to take an oath before the Tribunal or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal or to produce any article or document when required to do so by the Tribunal;
- (c) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal;
- (d) at any sitting of the Tribunal—
  - (i) wilfully insults any member thereof;
  - (ii) wilfully interrupts the proceedings, or commits any contempt of the Tribunal,

shall commit an offence.

(S. 40 came into operation on 1 December 2003.)

#### **41. Right to legal representation**

The appellant may prosecute his appeal either in person or by a legal practitioner.

(S. 41 came into operation on 1 December 2003.)

#### **42. Determination of Tribunal**

(1) For the purpose of hearing and determining any cause or matter under this Act, the Tribunal shall be constituted of the Chairperson or Deputy Chairperson and at least any 2 of its members.

(2) Where the Tribunal is unable to reach a decision by unanimity, the Tribunal shall proceed to give its determination by a majority.

(3) A member of the Tribunal who has a direct interest in any cause or matter which is the subject of proceedings before the Tribunal shall not take part in those proceedings.

(4) Subject to section 43, a decision or finding of the Tribunal on any cause or matter before it shall be final and binding on the parties.

(5) On hearing an appeal, the Tribunal may confirm, amend, vary or cancel any decision referred to in section 24.

(6) Where a decision is confirmed or amended, the Tribunal shall specify the delay within which it shall be complied with.

(7) Any person who fails to comply with a decision confirmed or amended by the Tribunal, shall commit an offence.

(8) (a) The Tribunal may make such order as to costs as may be prescribed.

(b) An order made under paragraph (a) shall be enforced in the same manner as an order for costs in proceedings before a Magistrate.



(9) Proceedings before the Tribunal shall be exempt from registration dues.

(S. 42 came into operation on 1 December 2003.)

#### **43. Appeal to Supreme Court**

(1) Any party who is dissatisfied with the decision or findings of the Tribunal relating to an appeal as being erroneous in point of law may appeal to the Supreme Court.

(2) Any party wishing to appeal to the Supreme Court under subsection (1) shall, within 21 days of the date of the decision of the Tribunal—

- (a) lodge with, or send by registered post to, the Chairperson of the Tribunal, a written application requiring the Tribunal to state and sign a case for the opinion of the Supreme Court on the grounds stated therein; and
- (b) at the same time, forward a copy of his application by registered post to the other party.

(3) An appeal under this section shall be prosecuted in the manner provided by rules made by the Supreme Court.

(S. 43 came into operation on 1 December 2003.)

#### **44. Decision not suspended on appeal**

No appeal to the Tribunal or the Supreme Court shall have for effect the suspension of any decision of the Authority.

(S. 44 came into operation on 1 December 2003.)

### **PART IX – MISCELLANEOUS**

(Part IX came into operation on 1 June 2002.)

#### **45. Protection from liability**

No liability, civil or criminal, shall attach to any member or officer of the Authority, or to the Authority, in respect of any loss arising from the exercise in good faith by a member or an officer or the Authority of his or its functions under this Act.

(S. 45 came into operation on 1 December 2003.)

#### **45A. Execution of documents**

No deed or document relating to financial matters shall be executed or signed by or on behalf of the Authority unless it is signed by—

- (a) the Chairperson or, in his absence, any other member designated by the Board; and;
- (b) the Executive Director or, in his absence, any other employee designated by the Executive Director.

[S. 45A inserted by s. 11 of Act 21 of 2016 w.e.f. 19 January 2017.]

#### **46. Offences**

Any person who—

- (a) by any form of emission, radiation, induction or other electromagnetic effect, harms the functioning of an information and communication service, including telecommunication service;
- (b) with intent to defraud or prevent the sending or delivery of a message, takes an information and communication message, including telecommunication message from the employee or agent of a licensee;
- (c) with intent to defraud, takes a message from a place or vehicle used by a licensee in the performance of his functions;
- (d) steals, secretes or destroys a message;
- (e) wilfully or negligently omits or delays the transmission or delivery of a message;
- (f) forges a message or transmits or otherwise makes use of a message knowing that it has been forged;
- (g) knowingly sends, transmits or causes to be transmitted a false or fraudulent message;
- (ga) uses telecommunication equipment to send, deliver or show a message which is obscene, indecent, abusive, threatening, false or misleading, or is likely to cause distress or anxiety;
- (h) uses, in any manner other than that specified in paragraph (ga), an information and communication service, including telecommunication service—
  - (i) for the transmission or reception of a message which is grossly offensive, or of an indecent, obscene or menacing character; or
  - (ii) for the purpose of causing annoyance, inconvenience or needless anxiety to any person;
  - (iii) for the transmission of a message which is of a nature likely to endanger or compromise State defence, public safety or public order;
- (i) dishonestly obtains or makes use of an information and communication service, including telecommunication service, with intent to avoid payment of any applicable fee or charge;
- (j) by means of an apparatus or device connected to an installation maintained or operated by a licensee—
  - (i) defrauds the licensee of any fee or charge properly payable for the use of a service;
  - (ii) causes the licensee to provide a service to some other person without payment by such other person of the appropriate fee or charge; or

- (iii) fraudulently installs or causes to be installed an access to a telecommunication line;
- (k) wilfully damages, interferes with, removes or destroys an information and communication installation or service, including telecommunication installation or service, maintained or operated by a licensee;
- (ka) wilfully tampers or causes to be tampered the International Mobile Station Equipment (IMEI) of any mobile device;
- (l) establishes, maintains or operates a network or service without a licence or in breach of the terms or conditions of a licence;
- (m) without the prior approval of the Authority, imports any equipment capable of intercepting a message;
- (n) discloses a message or information relating to such a message to any other person otherwise than—
  - (i) in accordance with this Act;
  - (ii) with the consent of each of the sender of the message and each intended recipient of the message;
  - (iii) for the purpose of the administration of justice; or
  - (iv) as authorised by a Judge;
- (na) knowingly provides information which is false or fabricated;
- (o) except as expressly permitted by this Act or as authorised by a Judge, intercepts, authorises or permits another person to intercept, or does any act or thing that will enable him or another person to intercept, a message passing over a network;
- (p) in any other manner, contravenes this Act or any regulations made under this Act,

shall commit an offence.

[S. 46 amended by s. 12 of Act 21 of 2016 w.e.f. 15 December 2016.]

(S. 46 came into operation on 1 June 2002.)

#### **47. Penalties**

(1) Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

(2) The Court before which a person is convicted of an offence under this Act may, in addition to any penalty imposed pursuant to subsection (1), order—

- (a) the forfeiture of any installation or apparatus used in connection with the offence;
- (b) the cancellation of the licence held by the person convicted;
- (c) that the person convicted shall not be issued with a licence for such period as the Court may determine;

(d) that a service provided to a person convicted of an offence under this Act shall be suspended for such period as the Court may determine.

(3) An offence under this Act shall—

(a) be triable by the Intermediate Court;

(b) not be triable by a District Court.

(S. 47 came into operation on 1 June 2002.)

#### **48. Regulations**

(1) The Minister may, after consultation with the Board, make such regulations as he thinks fit for the purpose of this Act.

(2) Any regulation made under subsection (1) may provide—

(a) for the levying of fees and taking of charges;

(b) for an amendment of the Schedules;

(c) for the prescription of charging principles on the recommendation of the Board and such other matters as may be prescribed under this Act;

(d) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

[S. 48 amended by s. 13 of Act 21 of 2016 w.e.f. 15 December 2016.]

(S. 48 came into operation on 1 June 2002.)

**49.** —

#### **50. Consequential amendment**

(1) – (6) —

(S. 50 came into operation on 1 June 2002.)

#### **51. Transitional provision**

(1) – (9) —

(10) The type of licences defined in the First Schedule shall continue until and unless the Authority determines otherwise.

[S. 51 amended by s. 3 of Act 33 of 2002; s. 14 (f) of Act 38 of 2011 w.e.f. 15 December 2011.]

(S. 51 came into operation on 1 June 2002.)

**52.** —

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**FIRST SCHEDULE**

[Section 24]

**INFORMATION AND COMMUNICATION LICENCES**

<b>CATEGORY 1: COMMERCIAL</b>	
<b>Type</b>	<b>Description</b>
A	Network Infrastructure Provider
	To own and provide network infrastructure facilities to service providers and not to the public. The facilities shall include earth stations, cables, wireless equipment, towers, posts, ducts, and pits used in conjunction with other communication infrastructure and distribution facilities including facilities for broadcasting distributions, and does not include services such as provision of bandwidth or any other services covered by this Schedule.
B	Networking Services Provider
B.01	Networking Services Provider (National) To provide networking services for national traffic, such as provision of bandwidth to service providers and not to the public. The service providers may either set up the physical infrastructure themselves or take the infrastructure from network infrastructure providers, but they shall not perform any activities covered under types B.02, C and D licences.
B.02	Networking Services Provider (International) To provide networking services for international traffic of Internet service providers and Internet telephony service providers, such as provision of bandwidth to Internet service providers and Internet telephony service providers and not to the public. The service providers may either setup the physical infrastructure themselves or take the infrastructure from network infrastructure providers, but they shall not perform any activities covered under types C and D licences.

*continued on page 112 – 33*



**FIRST SCHEDULE—continued**

Type	Description
C	Network Application Services Provider
C.01	<p>GMPCS</p> <p>To establish and operate Global Mobile Personal Communication System (GMPCS) by satellite for the public, whereby the network is satellite based and the satellite coverage extends over the territory of Mauritius.</p>
C.02	<p>PSTN</p> <p>To establish and operate a Public Switched (fixed) Telephone Network (PSTN) and service to the public.</p>
C.03	<p>PLMN</p> <p>To establish and operate a Public Land Mobile Network (PLMN) and service to the public.</p>
C.04	<p>ILD</p> <p>To establish and operate an International Long Distance (ILD) network and service to the public.</p>
C.05	<p>PMRTS</p> <p>To establish and operate a Public Mobile Radio Trunking System (PMRTS) and service to the public.</p>
C.06	<p>Audiotex Service</p> <p>To operate a kiosk for the hosting of audiotex services whereby these services are accessed by the public via a fixed or mobile public telecommunication network.</p>
C.07	<p>Data Service</p> <p>To establish and operate data services whereby these services are accessed by the public via a fixed or mobile public telecommunication network.</p>
C.08	<p>Internet Service</p> <p>To provide Internet services to the public. The service providers may either use the public telecommunication network or set up their own last mile from their point of presence to the subscriber using any appropriate technology after taking the necessary spectrum licence where applicable.</p>
C.09	<p>Internet Telephony Service</p> <p>To provide Internet telephony services to the public. The service providers shall use the Internet as the medium for voice conversation using (i) computers, (ii) a computer to a telephone abroad (iii) a telephone in Mauritius to a telephone abroad. No call shall be terminated on a PSTN/PLMN telephone in Mauritius or, any media gateway be established between the Internet and a PSTN/PLMN network of Mauritius.</p>
C.10	<p>Facsimile Service</p> <p>To establish and operate switched or store and forward facsimile services accessible by the public via a public telecommunication network.</p>
C.11	<p>Radio Paging Service</p> <p>To establish and operate a paging network and service to the public.</p>
C.12	<p>Payphone Service</p> <p>To establish and operate payphone services to be accessed by the public.</p>

**FIRST SCHEDULE—continued**

Type	Description
C.13	UMS To establish and operate a Unified Messaging Service (UMS) system to be accessed by the public.
C.14	Alarm Monitoring Service To establish and operate an alarm monitoring network and service for the public, based on a public telecommunication network or private radio network.
D	Value Added Services To provide value added network application services to the public. This would include services such as electronic commerce and tele-trading.
E	Dealers' Licence Includes selling, exposing or offering for sale or hire a radio communication or telecommunication apparatus or device.
<b>CATEGORY 2: PRIVATE NETWORK</b>	
Type	Description
PVT	To establish private networks which are used by organisations or corporate entities for their internal use only and which do not have any connectivity to a public PSTN or PLMN network. The private networks shall be set up using only the telecommunication resources of the network owner.
<b>CATEGORY 3: ENGINEERING</b>	
Licences are issued for spectrum or frequency usage and for the use of radio apparatus or device. Spectrum or radio apparatus or device may be used by the licensed telecommunication network operators or telecommunication service providers or by private users for their private network.	
<b>Station licences</b>	
Type	Description
RA01	Aeronautical Base Station (erp less than 5 W).
RA02	Aeronautical Base Station (erp equal to or more than 5 W but less than 100 W).
RA03	Aeronautical Base Station (erp equal to or more than 100 W).
RA04	Aircraft Station (maximum aircraft take off weight equal to or more than 14,000 kg).
RA05	Aircraft Station (maximum aircraft take-off weight more than 3,200 but less than 14,000 kg).
RA06	Aircraft Station (maximum aircraft take-off weight up to 3,200 kg).
RA07	Coast Station.
RA08	Port Station.
RA09	VHF Maritime Base Station.



**FIRST SCHEDULE—continued**

Type	Description
RA10	Ship Station (Full Licence).
RA11	Ship Station (VHF only).
RA12	Private Mobile Radio Base Station.
RA13	Private Mobile Radio (Repeater Station) Licence (where the licensee has been assigned the shared use of frequencies in a private mobile radio network or in a Private Access Mobile Radio Network).
RA14	Inmarsat Mobile Earth Station (Types A, B, C, M and Mini-M).
RA15	Radiolocation/Radiodetermination station.
RA16	Earth Station (in a fixed satellite service).
RA16A	Portable Satellite communication terminal.
RA17	Telemetry, Command and Ranging (TCR) Satellite Earth Station.
RA18	Disaster recovery station.
<b>Apparatus licences</b>	
RA19	Extended Radio-based Private Network device (ELAN/WLAN beyond one km range and/or EIRP > 20 dBm).
RA20	Radio Paging Transmitter.
RA21	Local Area Private Radio Paging.
RA22	Model Radio Control.
RA23	Radio Amateur Licence (class A).
RA24	Radio Amateur Licence (class B).
RA25	Radio Amateur Visitor's Licence.
RA26	Radio Telemetry System.
RA27	Low Power Radio Devices.
RA28	Data Terminating Radio Devices operating in the band 2.4 to 3.5 GHz
RA29	Data Terminating Radio Devices operating in the band 4.5 to 5.7 GHz
RA30	Local Multipoint Distribution (LMD) transmitter (EIRP equal to or more than 5 W operating in the band 2.4 to 3.5 GHz).
RA31	Local Multipoint Distribution (LMD) transmitter (EIRP equal to or more than one W but less than 5 W, operating in the band 2.4 to 3.5 GHz).
RA32	Local Multipoint Distribution (LMD) transmitter (EIRP less than one W operating in the band 2.4 to 3.5 GHz).
RA33	Local Multipoint Distribution (LMD) transmitter (EIRP equal to or more than 5 W operating in the band 4.5 to 5.7 GHz).
RA34	Local Multipoint Distribution (LMD) transmitter (EIRP equal to or more than one W but less than 5 W, operating in the band 4.5 to 5.7 GHz).
RA35	Local Multipoint Distribution (LMD) transmitter (EIRP less than one W operating in the band 4.5 to 5.7 GHz).
RA36	MF/HF Radio Broadcasting Transmitter.

**FIRST SCHEDULE—continued**

<b>Type</b>	<b>Description</b>
RA37	VHF FM Radio Broadcasting Transmitter (EIRP equal to or more than one kW).
RA38	VHF FM Radio Broadcasting Transmitter (EIRP equal to or more than 200 W but less than one kW).
RA39	VHF FM Radio Broadcasting Transmitter (EIRP less than 200 W).
RA40	Television Broadcasting Transmitter (EIRP equal to or more than one kW).
RA41	Television Broadcasting Transmitter (EIRP equal to or more than 100 W but less than one kW).
RA42	Television Broadcasting Transmitter (EIRP less than 100 W).
RA43	Private Mobile Radio Apparatus (Mobile/Portable Station).
RA44	VSAT/USAT (C, Ku, Ka band operation).
RA45	Temporary test licence for frequency usage.
<b>Network Spectrum Licences</b>	
<b>Type</b>	<b>Description</b>
SPL.1	Network Spectrum Licence (operating in the frequency band below one GHz).
SPL.2	Network Spectrum Licence (operating in the frequency band equal to or more than one GHz but less than 3 GHz).
SPL.3	Network Spectrum Licence (operating in the frequency band equal to or more than 3 GHz but less than 10 GHz).
SPL.4	Network Spectrum Licence (operating in the frequency band equal to or more than 10 GHz).
<b>Fixed Radio Spectrum Licences</b>	
<b>Type</b>	<b>Description</b>
SPL.10	Radio-relay Link Licence (operating in the frequency band below one GHz with bandwidth less than 12.5 kHz).
SPL.11	Radio-relay Link Licence (operating in the frequency band below one GHz with bandwidth equal to or more than 12.5 kHz but less than 25 kHz).
SPL.12	Radio-relay Link Licence (operating in the Frequency band below one GHz with bandwidth equal to or more than 25 kHz but less than 50 kHz).
SPL.13	Radio-relay Link Licence (operating in the Frequency band below one GHz with bandwidth equal to or more than 50 kHz but less than 100 kHz).
SPL.14	Radio-relay Link Licence (operating in the frequency band below one GHz with bandwidth equal to or more than 100 kHz).
SPL.15	Radio-relay Link Licence (operating in the frequency band equal to or more than one GHz but less than 3 GHz with bandwidth less than one MHz).
SPL.16	Radio-relay Link Licence (operating in the frequency band equal to or more than one GHz but less than 3 GHz with bandwidth equal to or more than one MHz but less than 7 MHz).
SPL.17	Radio-relay Link Licence (operating in the frequency band equal to or more than one GHz but less than 3 GHz with bandwidth equal to or more than 7 MHz but less than 14 MHz).

FIRST SCHEDULE—continued

Type	Description
SPL.18	Radio-relay Link Licence (operating in the frequency band equal to or more than one GHz but less than 3 GHz with bandwidth equal to or more than 14 MHz but less than 28 MHz).
SPL.19	Radio-relay Link Licence (operating in the frequency band equal to or more than one GHz but less than 3 GHz with bandwidth equal to or more than 28 MHz).
SPL.20	Radio-relay Link Licence (operating in the frequency band equal to or more than 3 GHz but less than 5 GHz with bandwidth less than one MHz).
SPL.21	Radio-relay Link Licence (operating in the frequency band equal to or more than 3 GHz but less than 5 GHz with bandwidth equal to or more than one MHz but less than 7 MHz).
SPL.22	Radio-relay Link Licence (operating in the frequency band equal to or more than 3 GHz but less than 5 GHz with bandwidth equal to or more than 7 MHz but less than 14 MHz).
SPL.23	Radio-relay Link Licence (operating in the frequency band equal to or more than 3 GHz but less than 5 GHz with bandwidth equal to or more than 14 MHz but less than 28 MHz).
SPL.24	Radio-relay Link Licence (operating in the frequency band equal to or more than 3 GHz but less than 5 GHz with bandwidth equal to or more than 28 MHz).
SPL.25	Radio-relay Link Licence (operating in the frequency band equal to or more than 5 GHz but less than 8 GHz with bandwidth less than one MHz).
SPL.26	Radio-relay Link Licence (operating in the frequency band equal to or more than 5 GHz but less than 8 GHz with bandwidth equal to or more than one MHz but less than 7 MHz).
SPL.27	Radio-relay Link Licence (operating in the frequency band equal to or more than 5 GHz but less than 8 GHz with bandwidth equal to or more than 7 MHz but less than 14 MHz).
SPL.28	Radio-relay Link Licence (operating in the frequency band equal to or more than 5 GHz but less than 8 GHz with bandwidth equal to or more than 14 MHz but less than 28 MHz).
SPL.29	Radio-relay Link Licence (operating in the frequency band equal to or more than 5 GHz but less than 8 GHz with bandwidth equal to or more than 28 MHz).
SPL.30	Radio-relay Link Licence (operating in the frequency band equal to or more than 8 GHz but less than 10 GHz with bandwidth less than one MHz).
SPL.31	Radio-relay Link Licence (operating in the frequency band equal to or more than 8 GHz but less than 10 GHz with bandwidth equal to or more than 1 MHz but less than 7 MHz).
SPL.32	Radio-relay Link Licence (operating in the frequency band equal to or more than 8 GHz but less than 10 GHz with bandwidth equal to or more than 7 MHz but less than 14 MHz).
SPL.33	Radio-relay Link Licence (operating in the frequency band equal to or more than 8 GHz but less than 10 GHz with bandwidth equal to or more than 14 MHz but less than 28 MHz).

**FIRST SCHEDULE—continued**

Type	Description
SPL.34	Radio-relay Link Licence (operating in the frequency band equal to or more than 8 GHz but less than 10 GHz with bandwidth equal to or more than 28 MHz).
SPL.35	Radio-relay Link Licence (operating in the frequency band equal to or more than 10 GHz with bandwidth less than one MHz).
SPL.36	Radio-relay Link Licence (operating in the frequency band equal to or more than 10 GHz with bandwidth equal to or more than one MHz but less than 7 MHz).
SPL.37	Radio-relay Link Licence (operating in the frequency band equal to or more than 10 GHz with bandwidth equal to or more than 7 MHz but less than 14 MHz).
SPL.38	Radio-relay Link Licence (operating in the frequency band equal to or more than 10 GHz with bandwidth equal to or more than 14 MHz but less than 28 MHz).
SPL.39	Radio-relay Link Licence (operating in the frequency band equal to or more than 10 GHz with bandwidth equal to or more than 28 MHz).

[First Sch. amended by GN 209 of 2003; repealed and replaced by GN 96 of 2003 w.e.f. 21 July 2003.]

**SECOND SCHEDULE**

[Section 9]

I, ..... of ..... make oath/solemn affirmation as a ..... and declare that—

1. I am unmarried/married under the system of ..... (matrimonial regime).
2. My assets are as follows:
  - (a) landed property .....
  - (b) residential, commercial or industrial building .....
  - (c) motor vehicles .....
  - (d) boats .....
  - (e) shares .....
  - (f) interest in partnership or *société* .....
3. My liabilities are: .....
4. The assets of my spouse, minor children, are—
  - (a) landed property .....
  - (b) residential, commercial or industrial building .....
  - (c) motor vehicles .....
  - (d) boats .....
  - (e) shares .....
  - (f) interest in partnership or *société* .....

**SECOND SCHEDULE—continued**

5. The liabilities of my spouse and minor children are:

.....

.....

Signature

Sworn/solemnly affirmed by the above-named before me on this .....  
day of ..... 20.....

.....

Master and Registrar  
Supreme Court

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**THIRD SCHEDULE**

[Section 32]

**OATH OF SECRECY**

I ..... hereby make  
oath/solemn affirmation as a .....  
and declare that in the discharge of my duties under the Information and Communi-  
cation Technologies Authority Act, I will deal with and regard all documents and in-  
formation relating to the operations of the Information and Communication Techno-  
logies Authority and to which I have access as SECRET AND CONFIDENTIAL and  
refrain from delivering disclosing any such document and information to any unau-  
thorised person.

Sworn/solemnly affirmed by the deponent in Chambers,

This ..... 20.....

.....

Before me,  
District Magistrate for .....

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**FOURTH SCHEDULE**

[Section 2]

1. Information to be contained in personal data shall be obtained and be pro-  
cessed, fairly and lawfully. For the purposes of this paragraph—

- (a) data shall be deemed to have been fairly obtained where, prior to ob-  
taining the data from the data subject, the data user shall have in-  
formed the data subject of the identity of the data user, the intended  
use of data and the persons to whom data would be disclosed; and

(b) data shall be deemed to have been fairly processed where the data shall not have been used contrary to any written personal instruction sent directly to the data user, or via a lawful intermediary, by the data subject.

2. Personal data shall be held for one or more specified and lawful purposes. Personal data held shall only be used for the specified purpose or purposes for which they were collected.

3. Personal data held for any purpose or purposes shall not be used or disclosed in any manner incompatible with the purpose or purposes for which they were collected.

4. Personal data will be held that are adequate, relevant and not excessive in relation to the purpose or purposes. This implies data that the data user should not record personal data merely because there is a possibility that extra information will be useful in the future.

5. Personal data will be accurate and, where necessary, be kept up to date. This implies that data held by the data user will reflect the true state of fact about the data subject.

6. Personal data shall not be kept for longer than is necessary. This implies that data should be destroyed when the specified purpose or purposes for which they were collected has been achieved.

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