



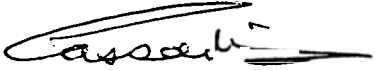
PRESIDENT OF THE REPUBLIC OF MAURITIUS

**THE INFORMATION AND COMMUNICATION
TECHNOLOGIES ACT 2001**

Act No. ⁴⁴ of 2001

I assent

28th December 2001


President of the Republic

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An Act

To establish the Information and Communication Technologies Authority, the Information and Communication Technologies Advisory Council, the Information and Communication Technologies Appeal Tribunal and to provide for the regulation and democratisation of information and communication technologies and related matters

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Information and Communication Technologies Act 2001.

2. Interpretation

In this Act –

“access” means access by a person to the facilities and services of a licensee excluding his network 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.

“appointed day” in relation to Part V means a day prescribed by the Minister;

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

“Authority” means the ICT Authority established under section 4;

“Board” means the ICT Board established under 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 Transaction Act 2000 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 and an interconnection agreement;

“code of practice” means the code of practice set out in the Fourth Schedule;

“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 service person” means a person who provides another with services in respect of personal data by –

- (a) acting as agent for that other person and causing personal data held by him to be processed; or
- (b) allowing another person to make use of equipment in his possession for the processing of personal data;

“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 established under the Electronic Transactions Act 2000;

“Council” means the ICT Advisory Council set up 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;

“data user” means a person who holds personal data;

“domain name” means a unique alpha-numeric designation used to access a computer on the internet and all domain names located in the *.mu* 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;

“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” means a network for the transmission of messages and 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 and include 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) upon which a licensee obtains interconnection to information and communication services, including telecommunication services supplied by another licensee;

“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;

“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 the Minister to whom responsibility for the subject of information technology and telecommunications is assigned;

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

“personal data” means data consisting of information, including expressions of opinion relating to a living individual who can be identified from that information;

“public operator” means a licensee who operates a public information and communication network including telecommunication network, as well as a public mobile telecommunication network;

“radiocommunication” means any transmission, emission, or reception of signs, signals, writings, sounds or intelligence of any nature, of a frequency less than 3000 gigahertz, propagated in space without artificial guide;

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

“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 electro-magnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception;

“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 electro-magnetic energy or both;

“telecommunication service” –

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

“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.

3. Application of the Act

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

(2) The Minister may, on the recommendation of the Authority and on such terms and conditions as he thinks fit, exempt any Government Department or statutory corporation from compliance with this Act in the interests of the sovereignty of the State, national security and public order.

Part II – ICT AUTHORITY

4. Establishment of the ICT Authority

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

(2) The Authority shall be a body corporate.

5. The ICT Board

(1) The Authority shall be administered and managed by the Information and Communication Technologies Board known as the ICT Board which consists 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; and

(c) 5 other members appointed by the Minister, after consultation with the ICT Advisory Council.

(2) Every appointed member shall hold office on such terms and conditions as the Minister determine.

(3) Members of the Board shall, when viewed collectively, be persons from the public and private sectors who are suited to serve on the Board 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.

(4) Every member shall hold office for a period of 3 years and may be eligible for re-appointment.

6. Meetings of the Board

- (1) The Board shall meet –
 - (a) at least once every month;
 - (b) whenever so decided by the Chairperson; or
 - (c) upon request of any 3 members.
- (2) 4 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) Any person co-opted under sub-section (3) shall have no right to vote on any matter before the Board.
- (6) Every member shall be paid such remuneration and allowances from the General Fund as may be determined by the Minister.

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) is otherwise disqualified by virtue of section 37 (3) (b) of the Interpretation and General Clauses Act.
- (2) No member shall be removed except for a reason specified in subsection (1).

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 interests 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.

9. Declaration of assets

(1) Every member, the Executive Director, and such other employees 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.

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.

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.

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 sub-section (2) shall be selected from among representatives from the public sector, private sector, non-government organisation 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.

13. Functions of the 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 stake-holders 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 thinks fit.

14. The 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 thinks fit.

(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.

15. Employment of staff

(1) The Authority may employ, on such terms and conditions as it thinks fit, 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.

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

16. Objects of the Authority

The objects of the Authority shall be –

- (a) to 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) to create a level playing field for all operators in the interest of consumers in general;

- (c) to license and regulate the information and communication services;
- (d) to 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) to encourage the optimum use of information and communication technologies in business, industry and the country at large, the introduction of new technology and the investment in infrastructure and services;
- (f) to promote the efficiency and international competitiveness of Mauritius in the information and communication sector;
- (g) to 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) to advise the Minister on all matters relating to information and communication technologies and on matters relating to the Authority generally.

17. Powers of the Authority

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

- (a) commission expert evaluations, conduct studies, 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 purposes 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 power to do such acts and things as are incidental or conducive to the attainment of its objects.

18. Functions of the Authority

(1) The Authority shall –

- (a) implement the policy of 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 to ensure that this Act is implemented with due regard to the public interest and so as to prevent any unfair or anti-competitive practices by licensees;

advise and assist in the formulation of national policies with respect to the regulation of the information and communication industry;

act internationally as the national regulatory body of Mauritius in respect of information and communication technologies matters;
- (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;

establish, for public operators, performance standards and linkage standards in relation to the provision of international and local telephone services, and monitor compliance with both of those standards;

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)* ensure compliance with the Code of Practice set out in the Fourth Schedule and review and update its content periodically;
- (k)* develop and, where appropriate, revise, accounting requirements and draw up a cost allocation manual for use by public operators;
- (l)* regulate protection and 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;
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;
manage the Universal Service Fund set up 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) act as Controller of Certification Authorities.

(2) Notwithstanding subsection (1), the Authority shall allocate, and regulate the use of, any frequency to any licensed broadcaster which shall pay to the Authority such fee as may be prescribed.

- (3) The Authority shall furnish to the Minister –
- (a) an annual report of its activities; and
 - (b) an annual report on the development of the information and communication industry in the country, as may be prescribed;
 - (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.

19. Powers of the 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**20. Establishment of the General Fund**

- (1) The Authority shall establish a General Fund –
 - (a) into which all money, 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 may be approved by the Minister.

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

21. Establishment of a Universal Service Fund

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

into which shall be paid any contribution received from licensees in pursuance of sub-section (2); 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;

the dates when such contributions shall become payable and the manner and, if he deems it appropriate, the period over which the contributions shall be paid.

22. Donations and exemptions

(1) Article 910 of the Code Napoleon 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.

**PART V - TRANSFER OF ASSETS, LIABILITIES
AND EMPLOYEES**

23. Transfer of assets, liabilities and employees

(1) As from the appointed day, all assets, interests, rights, privileges, liabilities, and obligations vested in the Mauritius Telecommunications Authority under the repealed Telecommunications Act, shall be transferred to and shall vest in the Authority under this Act without any formality.

(2) If any question arises as to whether any particular asset, interest, right, privilege, liability or obligation has been transferred to or vested in the Authority under subsection (1), a certificate under the hand of the Minister shall be evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

(3) Notwithstanding any other enactment, the Authority shall, within a period of 3 months after the commencement of this Act, offer to every employee of the Mauritius Telecommunications Authority who immediately before the date of the commencement is employed by the Mauritius Telecommunications Authority, the opportunity to be transferred to the Authority from such date and on such terms and conditions, including accrued pension rights in accordance with the Statutory Bodies Pension Funds Act, being terms and conditions not less favourable than those of his current employment as at the date of his transfer, as may be specified in the offer.

(4) An officer who fails to accept in writing an offer made to him by the Authority under sub-section (3) within 4 weeks after such offer has been made to him, shall be deemed to have refused such offer and the officer shall be deemed to have retired from the Authority.

PART VI – LICENSING AND OTHER PROVISIONS

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.

(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) Upon receipt of an application referred to in 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 electro-magnetic 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) The Authority shall, within a period of 90 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 any term or condition that it thinks fit;
- (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.

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 sub-section (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 commits an offence and shall be liable, on conviction, to a fine, the maximum of which shall be 3% of the net turnover of his preceding financial year or 5,000,000 rupees, whichever is the lesser.

26. Obligations of licensees

Every licensee shall –

- 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.

27. Public operators entering premises

(1) A public operator shall, subject to subsection (2), have authority to –

enter any property for the purpose of exercising any of his powers under his licence;
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.

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.

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.

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.

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 Procedure 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.

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 Procedure 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.

30. Competition

(1) A dominant operator shall not take advantage of his power in a market for the supply of an information and communication service, including a telecommunication service with a view to –

- (a) eliminating or substantially damaging another licensee in the market in which he operates or in any other market;
- (b) preventing the entry of any other person into that market or any other market;
- (c) deterring any other licensee from engaging in competitive conduct in that or in any other market.

- (2) (a) A dominant operator shall not discriminate between persons who acquire or make use of an information and communication service, including a telecommunication service, in the market in which he operates in relation to –
- (i) any fee or charge for the service provided;
 - (ii) the performance characteristics of the service provided;
 - (iii) any other term or condition on which the service is provided.

- (b) Nothing in paragraph (a) shall prevent a dominant operator from making a reasonable allowance, subject to the approval by the Authority, for the cost of providing an information and communication service, including a telecommunication service where the difference results from –
- (i) different quantities in which the service is supplied;
 - (ii) different transmission capacities needed for the supply of the service;
 - (iii) different places from, or to which the service is provided;
 - (iv) different periods for which the service is provided;
 - (v) different performance characteristics of the service provided; or
 - (vi) doing an act in good faith to meet a price or benefit offered by a competitor.

(3) A licensee shall not enter into or give effect to any agreement, arrangement or understanding which has the purpose or has, or is likely to have, the effect of significantly lessening competition in any market for the supply of information and communication service, including telecommunication service or of any product used in connection therewith.

(4) A licensee shall not enter into or give effect to any agreement, arrangement or understanding with another licensee which has the purpose or has, or is likely to have, the effect of fixing, controlling or maintaining the price for or any discount allowance credit or rebate for any information and communication service, including telecommunication service or any product used in connection therewith.

31. Tariffs

(1) Every public operator shall provide the Authority with a tariff of its charges for every information and communication service including telecommunication service which he proposes to supply and of every intended alteration of those charges in a form approved by the Authority, and in compliance with the requirements of this section.

(2) Every tariff shall include information relating to –

- (a) the term during which the tariff is to apply;
- (b) the description of the service;
- (c) the amount of the charges payable for each 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;
- (d) the quantity in which the service is supplied;
- (e) the transmission capacity needed to supply the service;
- (f) the performance characteristics for the service supplied; and
- (g) the terms and conditions on which the service is supplied.

(3) (a) On receipt of a tariff in accordance with subsection (1), the Authority shall within 180 days or such shorter period that may be prescribed, determine whether to allow, or to disallow, or to amend the tariff and shall, in so doing, have regard, inter alia, to the just and reasonable nature of the charges set out therein.

(b) The Authority shall forthwith give public notification in 2 daily newspapers of every determination made pursuant to paragraph (a).

(4) Every public operator shall supply to the Authority such information relating to the proposed tariff as the Authority considers necessary or desirable to enable the Authority to monitor compliance with this Act.

(5) Every public operator shall, at each of his business offices, make available for inspection and purchase a copy of every tariff.

(6) The Authority may, by notice in writing to a public operator, disallow any tariff which does not comply with this Act or with any condition of his licence.

(7) (a) Where the Authority is of opinion that the operation of a tariff by a dominant operator would have an anti-competitive effect in any market for any information and communication service, including telecommunication service, it shall, by notice in writing, inform the dominant operator that it is disallowing the tariff, and of the reasons for which it does so.

(b) For the purposes of paragraph (a), the operation of a tariff shall be deemed to have an anti-competitive effect in a market if, and only if, the operation or continued operation of the tariff, whether or not in conjunction with other tariffs or commercial arrangements, has, or is likely to have, the effect of materially and adversely affecting the development or maintenance of commercially sustainable competition in that market.

(8) No public operator shall demand or receive from any person payment of any fee or charge for the supply of a service which –

exceeds the fee or charge payable under the appropriate tariff;

- (b) is not worked out or computed in accordance with the appropriate tariff; or
- (c) is worked out or computed in accordance with a tariff which has been disallowed pursuant to subsection (6) or (7).

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.
- (3) Every licensee or his employees or agent shall treat as confidential any message or any information relating to a message which comes to his knowledge in the course of his duties.
- (4) Any person who, otherwise than in the course of his duties, makes use of, or records, the contents or substance of 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;

in contravention of this Act:

- (iii) of a nature likely to endanger or compromise State's 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, withhold or disclose to the police, an information or communication message including a telecommunication message.
- (b) An order under paragraph (a) shall –
- (i) not be made unless the Judge is satisfied that 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;
- specify the place where the interception or withholding shall take place.

33. Data protection

(1) The Authority shall ensure data protection and security by –

- (a) monitoring compliance with the Code of Practice;
- (b) conducting a regular review and revision of the Code of Practice;
- (c) receiving and advising on complaints of any unlawful or wrongful act; and
- (d) carrying out such inspection as may be necessary in relation to personal data held under the Act.

(2) Subject to sub-section (5), every data user or computer service person shall –

- (a) upon a written request to that effect being made to the Authority at any reasonable time by an individual; and
- (b) upon such request being transmitted by the Authority to such user or person,

cause that individual to be informed, without undue delay or expense, whether he holds, or is in possession of, as the case may be, personal data relating to that individual.

(3) Where the Authority so directs, the computer data person shall correct, modify, up-date or delete the personal data relating to any individual.

(4) Any data or computer service person who contravenes subsection (2) shall commit an offence and shall, on conviction, be liable to penal servitude of a term not exceeding 10 years and to a fine not exceeding 1 million rupees.

(5) Subsection (2) shall not apply to any personal data kept for –

- safeguarding the State's defence, public safety or public order;
 - (b) the prevention of crime;
 - (c) the apprehension or prosecution of offences;
 - (d) the assessment or collection of any tax or duty;
 - (e) the following up of the physical or mental health of any individual, where the request is made by a person other than that individual or his next of kin as defined in the Mental Health Care Act 1999;
 - (f) calculating the amount payable by way of remuneration pension in respect of service in any office or employ;
- personal, family or household affairs or recreational purposes; and
determining the results of an academic or other examination.

PART VII – ICT ADVISORY COUNCIL

34. Establishment of the 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 consists of –
- (a) a Chairperson;
 - (b) a representative of the Prime Minister's Office;
 - (c) a representative of the Ministry responsible for the subject of Information Technology and Telecommunications;

- (d) a representative of the Ministry of Finance;
- (e) a representative of the Ministry of Economic Development;
- (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 Chairman may decide.

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

35. Functions of the Council

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

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 the 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 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 shall be paid such fees as the Minister may approve.

37. Staff of the Tribunal

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

38. Disqualification from membership

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

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

he is suffering from such mental or physical infirmity as renders him unfit to discharge his duties as a member.

39. Jurisdiction of the 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 sub-section (4), every appeal under sub-section (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 sub-section (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.

40. Procedure and powers of the 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.

- (1) 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.

41. Right to legal representation

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

42. Determination of the 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.

43. Appeal to the 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;
- (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.

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.

PART IX — MISCELLANEOUS

45. Protection of members and officers

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.

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;

- with intent to defraud or to 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;
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;
knowingly sends, transmits or causes to be transmitted a false or fraudulent message;
uses 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;
causes the licensee to provide a service to some other person without payment by such other person of the appropriate fee or charge; or
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;
- (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;
for the purpose of the administration of justice;
or
as authorised by a Judge;

- (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.

47. Penalties

(1) Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 1,000,000 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 thinks fit;
 - (d) that a service provided to a person convicted of an offence under this Act shall be suspended for such period as the Court thinks fit.
- (3) An offence under this Act shall –
- (a) be triable by the Intermediate Court;
 - (b) not be triable by a District Court.

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 sub-section (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 10,000 rupees and to imprisonment for a term not exceeding one year.

49. Repeal

The following enactments are repealed –

- (a) The Telecommunications Act 1998;
- (b) Section 21A of the National Computer Board Act 1988.

50. Consequential amendments

(1) The Central Tender Board Act is amended in the First Schedule, in Part IV, by inserting in its appropriate alphabetical order, the following item –

The Information and Communication Technologies Authority.

(2) Subject to subsections (3) and (4), the Schedule to the Statutory Bodies (Accounts and Audit) Act is amended in Part II by adding the item –

The Information and Communication Technologies Authority.

(3) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 30 June next following shall be deemed to be the first financial year of the Authority.

(4) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply in relation to the first financial year of the Authority.

(5) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

(6) The Independent Broadcasting Authority Act 2000 is amended in the First Schedule by inserting therein the following items –

Subscription Television Rebroadcasting Services Licence.
Subscription Television Direct to Home Satellite Broadcasting Service Provider Licence”

51. Transitional provisions

(1) Every act done by, or in relation to, the Mauritius Telecommunication Authority established under section 4 of the Telecommunications Act 1998 shall be deemed to have been done, or commenced, as the case may be, by or in relation to the Authority.

(2) Notwithstanding sub-section (1), every person who has before the commencement of this Act been licensed under the Telecommunications Act 1998 for the operation of a telecommunication network or service shall –

(a) be deemed to be licensed for a period not exceeding 3 months after the coming into operation of this Act, after which he shall surrender his licence or authority granted to him; and

(b) furnish to the Authority such further information as it may require concerning his operation under that licence or authority.

(3) Section 20(2) shall not apply to the first financial year of the Authority.

(4) Notwithstanding section 24 and subject to subsection (9), no public operator or any other person shall, in respect of the period commencing on the date of coming into operation of this Act and not extending beyond 31 December 2003, supply or offer to supply telecommunication services between places within Mauritius and places outside Mauritius otherwise than in accordance with an interconnection agreement with the Mauritius Telecom Ltd.

(5) A person who uses or provides a service otherwise than specified in subsection (4) shall commit an offence and shall be liable to a fine not exceeding 1,000,000 rupees and to imprisonment not exceeding 5 years.

(6) The Court may, in addition to the penalty imposed under subsection (5), order disconnection of any installation or apparatus used in the commission of the offence.

(7) It shall not be a defence to any prosecution under subsection (5) that the person prosecuted did not know of the non-existence of the interconnection agreement referred to in that subsection.

(8) For the purposes of subsection (5) –

(i) “a telecommunication service between places within Mauritius and places outside Mauritius” includes a “call back service”;

- (ii) "a call back service" includes a service permitting an international call to be made by a caller or subscriber in Mauritius whereby a foreign telecommunication service provider, or a reseller in a foreign country, initiates a return call or provides a dialling tone which enables the caller or subscriber to make an international call through the foreign telecommunication service provider or the reseller resulting in Mauritius Telecom Ltd being deprived of international call charges.

(9) Notwithstanding any other provision of this Act, the Mauritius Telecom Ltd shall be deemed to have, for period not extending beyond 31 December 2003, the exclusive right to supply, or to enter into an interconnection agreement or other appropriate agreement for the supply of telecommunication services between places within Mauritius and places outside Mauritius.

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

Passed by the National Assembly on the eleventh day of December two thousand and one.

ANDRÉ POMPON
Clerk of the National Assembly

52. Commencement

(1) This Act shall come into operation on a day to be fixed by Proclamation.

(2) Different days may be fixed for the coming into operation of different sections.

FIRST SCHEDULE*(Section 24)***INFORMATION AND COMMUNICATION LICENCES****SECTION I*****INFORMATION AND COMMUNICATION OPERATORS'
LICENCES****Code**Licences***SL1****Alarm Monitoring Network Licence**

To establish and operate an alarm monitoring network and service for the public, based on a fixed or mobile public telecommunication network or private radio network or a combination of these networks.

Audiotex Services Provider Licence

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.

Data Services Licence

To establish and operate data services whereby these services are accessed by the public, via a fixed or mobile public telecommunication network.

Facsimile Services Licence

To establish and operate switched or store and forward facsimile services whereby these services are accessed by the public, via a fixed or mobile public telecommunication network.

FIRST SCHEDULE – *continued**Code**Licences***SL5****GMPCS Network Services Licence**

To establish and operate Global Mobile Personal Communication by Satellite (GMPCS) services for the public, whereby the network is satellite based and the satellite coverage extends over the territory of Mauritius.

Internet Services Provider Licence

To provide internet services to the public, whereby the subscriber network is operated by a public fixed or mobile telecommunication network operator.

Payphone Services Licence

To establish and operate payphone services for the public.

Private Access Mobile Radio Network Licence

To establish and operate a private access mobile radio network and service for the public.

International Telecommunication Service Licence

To establish and operate an international telecommunication network and service.

SL10**Public Fixed Terrestrial Telecommunication Network Licence**

To establish and operate a public fixed telecommunication network and service.

Public Mobile Terrestrial Telecommunication Network Licence (GSM)

To establish and operate a public mobile terrestrial telecommunication network and service using GSM technology.

FIRST SCHEDULE — *continued*

<i>Code</i>	<i>Licences</i>
SL12	<p>Public Mobile Terrestrial Telecommunication Network Licence (Analog)</p> <p>To establish and operate a public mobile terrestrial telecommunication network and service using analog technology.</p>
SL13	<p>Public Mobile Terrestrial Telecommunication Network Licence (UMTS)</p> <p>To establish and operate a public mobile terrestrial telecommunication network and service using UMTS technology.</p> <p>Value-Added Network Services Licence</p> <p>To establish and operate value-added network services whereby these services are accessed by the public, via a fixed or mobile public telecommunication network.</p> <p>Wide Area Radio Paging Network Licence</p> <p>To establish and operate a wide area radio paging network and service for the public.</p>

SECTION II

AERONAUTICAL RADIOCOMMUNICATION LICENCES

<i>Code</i>	<i>Licences</i>
AR1	<p>Aeronautical Base Station Licence (erp less than 5 Watts)</p> <p>To install and operate an aeronautical base station with erp less than 5 Watts</p>

FIRST SCHEDULE — *continued***Aeronautical Base Station Licence (erp equal to or more than 5 Watts but less than 100 Watts)**

To install and operate an aeronautical base station with erp equal to or more than 5 Watts but less than 100 Watts.

AR3 Aeronautical Base Station Licence (erp equal to or more than 100 Watts)

To install and operate an aeronautical base station with erp equal to or more than 100 Watts.

AR4 Aircraft Station Licence (maximum aircraft take off weight equal to or more than 14,000 kg)

To install and operate a radio transmitting and receiving station on board an aircraft with maximum aircraft take off weight equal to or more than 14,000 kg.

Aircraft Station Licence (maximum aircraft take off weight more than 3,200 but less than 14,000 kg)

To install and operate a radio transmitting and receiving station on board an aircraft with maximum aircraft take off weight more than 3,200 but less than 14,000 kg.

Aircraft Station Licence (maximum aircraft take off weight up to 3,200 kg)

To install and operate a radio transmitting and receiving station on board an aircraft with maximum aircraft take off weight up to 3,200 kg.

FIRST SCHEDULE — *continued*

SECTION III

MARITIME RADIOCOMMUNICATION LICENCES

<i>Code</i>	<i>Licences</i>
MR1	Coast Station Licence To establish and operate a coast station
MR2	Port Station Licence To establish and operate a port station
	VHF Maritime Base Station Licence To install and operate a fixed or portable radio apparatus operating in the VHF maritime mobile frequency band, at a fixed location.
	Ship Station Licence (Full Licence) To establish and operate a ship radio station in the maritime mobile service.
MR5	Ship Station Licence (VHF only) To install and operate a radio apparatus operating in the VHF maritime mobile frequency band, on board a sea going vessel.

SECTION IV

RADIO BROADCASTING LICENCES

<i>Code</i>	<i>Licences</i>
BR1	MF/HF Radio Broadcasting Transmitter Licence To install and operate a radio broadcasting transmitter in the MF and HF frequency bands.
	VHF FM Radio Broadcasting Transmitter Licence (erp equal to or more than 1 kW) To install and operate a radio broadcasting transmitter in the VHF FM frequency band with erp equal to or more than 1 kW.

FIRST SCHEDULE — *continued**Code**Licences***BR3****VHF FM Radio Broadcasting Transmitter Licence
(erp equal to or more than 200 W but less than 1 kW)**

To install and operate a radio broadcasting transmitter in the VHF FM frequency band with erp equal to or more than 200 W but less than 1 kW.

**VHF FM Radio Broadcasting Transmitter Licence
(erp less than 200 W)**

To install and operate a radio broadcasting transmitter in the VHF FM frequency band with erp less than 200 W.

SECTION V

TELEVISION BROADCASTING LICENCES*Code**Licences***BT1****Television Broadcasting Transmitter Licence (erp
equal to or more than 1 kW)**

To install and operate a television broadcasting transmitter in the VHF/UHF frequency bands with erp equal to or more than 1 kW.

**Television Broadcasting Transmitter Licence (erp
equal to or more than 100 W but less than 1 kW)**

To install and operate a radio broadcasting transmitter in the VHF/UHF frequency bands with erp equal to or more than 100 W but less than 1 kW.

**Television Broadcasting Transmitter Licence (erp less
than 100 W)**

To install and operate a radio broadcasting transmitter in the VHF/UHF frequency bands with erp less than 100 W.

FIRST SCHEDULE — *continued*

SECTION VI

FIXED RADIOCOMMUNICATION LICENCES*Code**Licences*

Radio-Relay Link Licence (Class I) (operating in the frequency band below 1 GHz with bandwidth less than 100 kHz)

To install and operate a radio relay link operating in the frequency band below 1 GHz with bandwidth less than 100 kHz.

Radio-Relay Link Licence (Class II) (operating in the frequency band below 1 GHz with bandwidth equal to or more than 100 kHz)

To install and operate a radio relay link operating in the frequency band below 1 GHz with bandwidth equal to or more than 100 kHz.

Radio-Relay Link Licence (Class III) (operating in the 1.5 GHz frequency band with bandwidth less than 1 MHz)

To install and operate a radio relay link operating in the 1.5 GHz frequency band with bandwidth less than 1 MHz.

Radio-Relay Link Licence (Class IV) (operating in the 1.5 GHz frequency band with bandwidth equal to or more than 1 MHz)

To install and operate a radio relay link operating in the 1.5 GHz frequency band with bandwidth equal to or more than 1 MHz.

FIRST SCHEDULE — *continued**Code**Licences*

Radio-Relay Link Licence (Class V) (operating in the 1.7 to 2.3 GHz frequency band with bandwidth less than 14 MHz)

To install and operate a radio relay link operating in the 1.7 to 2.3 GHz frequency band with bandwidth less than 14 MHz.

Radio-Relay Link Licence (Class VI) (operating in the 1.7 to 2.3 GHz frequency band with bandwidth equal to or more than 14 MHz)

To install and operate a radio relay link operating in the 1.7 to 2.3 GHz frequency band with bandwidth equal to or more than 14 MHz.

Radio-Relay Link Licence (Class VII) (operating in the 6, 7, 8, and 11 GHz frequency bands with bandwidth less than 14 MHz)

To install and operate a radio relay link operating in the 6, 7, 8, and 11 GHz frequency bands with bandwidth less than 14 MHz.

Radio-Relay Link Licence (Class VIII) (operating in the 6, 7, 8, and 11 GHz frequency bands with bandwidth equal to or more than 14 MHz but less than 28 MHz)

To install and operate a radio relay link in the 6, 7, 8, and 11 GHz frequency bands with bandwidth equal to or more than 14 MHz but less than 28 MHz.

FIRST SCHEDULE — *continued*

<i>Code</i>	<i>Licences</i>
FX9	<p>Radio-Relay Link Licence (Class IX) (operating in the 6, 7, 8, and 11 GHz frequency bands with bandwidth equal to or more than 28 MHz)</p> <p>To install and operate a radio relay link in the 6, 7, 8, and 11 GHz frequency bands with bandwidth equal to or more than 28 MHz.</p>
FX10	<p>Radio-Relay Link Licence (Class X) (operating in the 13 and 15 GHz frequency bands with bandwidth less than 14 MHz)</p> <p>To install and operate a radio relay link in the 13 and 15 GHz frequency bands with bandwidth less than 14 MHz.</p>
FX 11	<p>Radio-Relay Link Licence (Class X1) (operating in the 13 and 15 GHz frequency bands with bandwidth equal to or more than 14 MHz)</p> <p>To install and operate a radio relay link in the 13 and 15 GHz frequency bands with bandwidth equal to or more than 14 MHz.</p>
FX 12	<p>Radio-Relay Link Licence (Class X11) (operating in the 18 and 23 GHz frequency bands with bandwidth less than 14 MHz)</p> <p>To install and operate a radio relay link in the 18 and 23 GHz frequency bands with bandwidth less than 14 MHz.</p>
FX 13	<p>Radio-Relay Link Licence (Class X111) (operating in the 18 and 23 GHz frequency bands with bandwidth equal to or more than 14 MHz)</p> <p>To install and operate a radio relay link in the 18 and 23 GHz frequency bands with bandwidth equal to or more than 14 MHz.</p>

FIRST SCHEDULE — *continued*

SECTION VII

*SPECTRUM LICENCES**Code**Licences***MT1****Public Mobile Terrestrial Telecommunication Network Spectrum Licence**

To use radio frequency spectrum for the operation of a public mobile terrestrial telecommunication network.

Public Fixed Terrestrial Telecommunication Network Spectrum Licence

To use radio frequency spectrum for the operation of a public fixed terrestrial telecommunication network.

SECTION VIII

*LAND MOBILE RADIO LICENCES**Code**Licences***LR1****Private Mobile Radio (Base Station) Licence**

To install and operate a radio apparatus, in a private mobile radio network or in a Private Access Mobile Radio Network, at a specific place.

Private Mobile Radio (Mobile/Portable Station) Licence

To install and operate a radio apparatus, in a private mobile radio network or in a Private Access Mobile Radio Network, in a specific vehicle or use a portable handheld radio apparatus in such a network.

FIRST SCHEDULE — *continued*

<i>Code</i>	<i>Licences</i>
LR3	<p>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)</p> <p>To install and operate a radio repeater apparatus, in a private mobile radio network or in a Private Access Mobile Radio Network, at an approved specific site for relaying radio communications so as to obtain extended coverage and where the licensee has been assigned the shared use of frequencies.</p>
LR3A	<p>Private Mobile Radio (Repeater Station) Licence (where the licensee has been assigned the exclusive use of frequencies in a private mobile radio network)</p> <p>To install and operate a radio repeater apparatus, in a private mobile radio network, at an approved specific site for relaying radio communications so as to obtain extended coverage and on frequencies exclusively assigned to the licensee.</p>
LR4	<p>Radio Paging Transmitter Licence (in a wide area radio paging network)</p> <p>To install and operate a radio Paging Transmitter, in a wide area radio paging network.</p> <p>Local Area Private Radio Paging Licence</p> <p>To establish and operate a local area Private radio Paging network with a coverage not extending beyond a radius of 2 Km.</p> <p>Model Radio Control Licence</p> <p>To possess or use a radio apparatus at a specific place to control the movement of model objects excluding licence exempt equipment.</p>

FIRST SCHEDULE — *continued*

SECTION IX

*RADIO AMATEUR LICENCES**Code**Licences***AT1****Radio Amateur Licence (class A)**

To establish and operate an amateur radio station in all the frequency bands allocated to the amateur service, at a specific place.

Radio Amateur Licence (class B)

To establish and operate an amateur radio station in all the frequency bands allocated to the amateur service except MF and HF, at a specific place.

Radio Amateur Visitor's Licence

To establish and operate an amateur radio station in all the frequency bands allocated to the amateur service, by a visitor in Mauritius, at a specific place, where the visitor is the holder of an equivalent licence issued by a regulatory authority in another country and recognized by the Authority.

SECTION X

*SATELLITE SERVICES**Code**Licences***SR1****Telemetry, Command and Ranging (TCR) Satellite Earth Station Licence**

To establish and operate a telemetry, command and ranging (TCR) satellite earth station.

SR2**VSAT Licence**

To establish and operate a VSAT terminal subject to Sections 51(4) of the Act.

FIRST SCHEDULE — *continued**Code**Licences*

- SR3 Inmarsat Mobile Earth Station Licence (Types A, B, C, M and Mini-M)**
To establish and operate an Inmarsat Mobile Earth Station of types A, B, C, M and Mini-M.
- Earth Station Licence (in a fixed satellite service)**
To install and operate an earth station in a fixed satellite network for interconnection with a public telecommunication network or service subject to Sections 51(4) of the Act.

SECTION XI

*OTHER LICENCES**Code**Licences*

- OR1 Dealer's Licence**
To deal in telecommunication apparatus and/or operate a workshop for the repairing of radio apparatus.
- Experimenter's Licence**
To establish and operate an experimental radio Station.
- Telemetry and Low Power Radio Devices Licence**
To install and operate radio apparatus for telemetry and other low power radio devices excluding licence exempt equipment.
- OR4 Radio Local Area Network Licence (2.4 – 2.5 GHz)**
To install and operate radio apparatus in a local area network in the 2.4 2.5 GHz frequency band.
- OR5 Radio Local Area Network Licence (2.4 – 2.5 GHz) (with a radio repeater)**
To install and operate radio apparatus in a local area network with a radio repeater, in the 2.4 – 2.5 GHz frequency band.

SECOND SCHEDULE

(section 9)

I,, ofmake 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:
 - (g) landed property.....
 - (h) residential, commercial or industrial building
 - (i) motor vehicles.....
 - (j) boats.....
 - (k) shares.....
 - (l) interest in partnership or société.....

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

.....
Signature

Sworn/solemnly affirmed by the above-named before me at this.....

.....
Day.....of.....20.....

Master & Registrar
Supreme Court

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 ICT Authority Act 2001, I will deal with and regard all documents and information relating to the operations of the Authority and to which I have access as **SECRET AND CONFIDENTIAL** and refrain from delivering disclosing any such document and information to any unauthorized person.

Sworn solemnly affirmed by the deponent in Chambers,

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

Before me,
District Magistrate for

FOURTH SCHEDULE

CODE OF PRACTICE

(section 2)

(1) Information to be contained in personal data shall be obtained and be processed, fairly and lawfully. For the purposes of this paragraph –

- (a) data shall be deemed to have been fairly obtained where, prior to obtaining the data from the data subject, the data user shall have informed 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 data user should not record personal data merely because there is a possibility that extra information will be useful in the future.

FOURTH SCHEDULE – *continued*

(5) Personal data held 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.