

**BHUTAN INFORMATION, COMMUNICATIONS  
AND MEDIA ACT 2005**

**(A BILL)**



**ROYAL GOVERNMENT OF BHUTAN  
MINISTRY OF INFORMATION AND COMMUNICATIONS  
THIMPHU: BHUTAN**

(Updated 24 February 2005)



# BHUTAN INFORMATION, COMMUNICATIONS AND MEDIA ACT 2005

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# **BHUTAN INFORMATION, COMMUNICATIONS AND MEDIA ACT 2005**

## **PREAMBLE**

An Act to provide for a modern technology-neutral and service sector-neutral regulatory mechanism which implements convergence of information, computing, media, communications technologies and facilitates for the provision of a whole range of new services; to implement new information and communications technology (ICT) and media policy particularly to emphasize the Government's priority to Information, Communications and Media industry, as an industry in itself and an important enabler for other areas of human activity, thus promoting universal service to all Bhutanese, especially in the remote and rural areas of the country; to facilitate privatization and competition in the establishment of ICT and media facilities and services; to encourage and facilitate investment in ICT and media industry; to give new statutory authority to the Ministry of Information and Communications over several new activities in the ICT and media industry; to make the existing regulatory body more capable and independent regulating all aspects of ICT and media industry; to realign and separate responsibilities of the Government and the regulatory body; to make provision for the effective use, management and regulation of radio frequency spectrum; to regulate ICT and media facilities and services with a view to facilitate fair competition among all players, both in the public and private sectors, and to ensure effective use of national ICT and media infrastructure and resources; and to encourage and facilitate an increased use of ICT for new e-services and to effectively regulate the activities related to cyberspace and media operations, including their unwanted contents.

This Act has been approved by the ..... Session of the National Assembly corresponding to ..... day of the ..... month of the Bhutanese Wood Female Rooster Year.

## **CHAPTER ONE: GENERAL PROVISIONS**

### *SHORT TITLE*

1. This Act shall be cited as the Bhutan Information, Communications and Media Act 2005.

### *EXTENT AND COMMENCEMENT*

2. This Act
  - (1) shall apply to all persons throughout the territory of Bhutan or otherwise within the reach of the Royal Government or the Royal Courts of Justice of Bhutan; and
  - (2) shall come into force on such day as the Minister may by order appoint; and different days may be so appointed for different provisions or for different purposes.

### *DEFINITIONS*

3. Unless the context otherwise requires, the following words and terms used in this Act shall have the following meanings assigned to them:

*“Addressee”*, for the purposes of Chapter Seven, of a data message, means a person who is intended by the originator to receive the data message, but does not include a person acting as an intermediary with respect to that data message;

*“Adult”* means a person who is eighteen years of age or above;

*“Apparatus”* means any device which is designed, constructed or adapted for use in connection with the operation of an ICT facility for transmitting, conveying or receiving any ICT and media service and, in particular includes:

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

*“Authority”* means the Bhutan Communications and Media Authority as established under this Act;

*“Bhutan”* means the Kingdom of Bhutan;

*“Book”* includes every volume, part of a volume, pamphlet, booklet, brochure, and every sheet of music notation, map, chart or plan separately printed, in whatever form and language, but it shall not include pamphlets, booklets, brochures or other material produced solely for advertising or publicity purposes or, where it is published by a body, for its internal organisational purposes, or where it is published by a political party, for recognised electoral campaigning purposes;

*“Broadcasting”* means the dissemination, whether through free space (including by satellite) or through cables or bill-boards, in unencoded or encoded form, of any form of communication, including signs, signals, pictures, images, graphics, data or sound, or a combination of them, intended to be received by the general public or any section of the general public, by means of any broadcasting receiving apparatus;

*“Broadcasting receiving apparatus”* means any equipment, device or system capable of, or designed or constructed for, the reception of any broadcasting service and includes “broadcast television receiver” (any apparatus used for audio and visual reception in monochrome or colour of any broadcast signals) or “broadcast sound receiver” (any apparatus used for the aural reception of any broadcast signals);

*“Broadcasting service”* means an ICT service for providing broadcasting to persons having appropriate equipment, including broadcasting receiving apparatus, for receiving that service regardless of the means of delivery of that service, but does not include:

- a service (including a teletext service) that provides only data, or text (with or without associated still images); or
- a service that makes programmes available on demand on a point-to-point basis, including a dial-up service; or

- a service, or a class of services, that the Authority may determine and notify as not being a broadcasting service.

“*Business*” includes a trade, profession or employment and also includes any activity carried out by a person, whether incorporated or unincorporated;

“*Cabinet*” means the Cabinet of the Royal Government of Bhutan;

“*Certificate*”, for the purposes of Chapter Seven, means a data message or other record confirming the link between a signatory and signature creation data;

“*Certification service provider*”, for the purposes of Chapter Seven, means a person that issues certificates and may provide other services related to electronic signatures;

“*Channel*” means a set of frequencies used for transmission of a programme;

“*Cinematograph*” includes any apparatus for the representation of moving pictures;

“*Commercial*”, in addition to its ordinary meaning, be given a wider interpretation for the purposes of Chapter Seven, in order to cover matters arising from all relationships of a commercial nature whether contractual or not, means relationships of a commercial nature and includes, but not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road;

“*Communication*” means the process of conveyance of content through transmission, emission or reception of signals, by wire or other electro-magnetic emissions, and content of a communication;

“*Company*” means a body incorporated under the Companies Act of the Kingdom of Bhutan 2000;

“*Computer*” means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

“*Computer contaminant*” means any set of computer instructions that are designed (a) to modify, destroy, record, transmit data or programme residing within a computer, or (b) by any means to usurp the normal operation of the computer;

“*Computer virus*” means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer or attaches itself to another computer and operates when a programme, data or instruction is executed or some other event takes place in that computer;

“*Consumer*” means a person who uses a product for personal, family, household, or business purposes;

“*Content*” means any information, sound, text, data, picture (still or moving), other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically or otherwise;

“*Control*”, unless the context indicates otherwise, means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement or arrangement, the ownership of any body corporate or otherwise;

“*Court*” means the Royal Courts of Justice having its appropriate jurisdiction;

“*Cross media*” means any combination of components of media;

“*Customer equipment*” means any equipment, apparatus or instrument along with its connecting link unto the interface unit connecting with an ICT facility;

“*Damage*”, in addition to its ordinary meaning, means to destroy, alter, delete, add, modify or rearrange any computer data by any means;

“*Data*”, for the purposes of Chapter Seven, means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

“*Data message*”, for the purposes of Chapter Seven, means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy; and, acts either on its own behalf or on behalf of the person it represents;

“*Decryption information*” means information or technology that enables a person to readily retransform or unscramble encrypted data from its unreadable and incomprehensible format to its plain text version;

“*Director*” means the Director or the Director General of Bhutan Communications and Media Authority;

“*Directory information service*” means a service consisting in the provision by means of an ICT facility or ICT service of directory information for the purpose of facilitating the use of an ICT service;

“*Document*” means any printed material including books, newspapers, magazines, pamphlets, leaflets, maps, charts, plans, and any printed material bound together for sale, distribution or circulation; and the word ‘Document’ includes an electronic document;

“*Dramatic performance*” means any drama, play or other form of artistic expression, which is capable of being performed live by actors before an audience, usually in a public place;

“*Editor*” means a person having editorial or equivalent responsibility for the content of a newspaper or other periodical and for the decision to publish it. This term shall include any person who controls the editorial policy of the newspaper, broadcast, electronic media or other periodical, by whatever title he may be known within his organisation;

“*Electronic*” means relating to technology having electrical, magnetic, optical, electro-magnetic, biometric and photonic or similar capabilities, whether digital, analogue or otherwise;

“*Electronic commerce or e-commerce*” means a commercial activity that involves buying, distribution of products and services, leasing, licensing, marketing, production, publicity, promotion, selling, or otherwise providing a product or service online, including over the Internet; and, this includes soliciting donations and operating contests and clubs;

“*Electronic communication*” means communication by electronic means;

“*Electronic Data Interchange (EDI)*” means the electronic transfer from computer to computer of information using an agreed standard to structure the information;

“*Electronic government or e-government or e-governance*” means giving to citizens with the use of ICT the choice of when and where to access Government information and services;

“*Electronic signature or e-signature*” means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory’s approval of the information contained in the data message;

“*Emergency services*” means the police, fire, ambulance and such other emergency services as may be prescribed in Rules under this Act;

“*Encrypted*” or “*encoded*” means treated electronically or otherwise for the purpose of preventing intelligible reception by unauthorised persons and the word “unencrypted or unencoded” shall have the contrary meaning;

“*Encrypted data*” means data which has been transformed or scrambled from its plain text version to an unreadable or incomprehensible format, regardless of the technique utilised for such transformation or scrambling and irrespective of the medium in which such data occurs or can be found for the purposes of protecting the content of such data;

“*Entertainment*” includes any performance, dance, exhibition, amusement, game, sport or race to which persons are admitted with or without payment, but does not include dramatic performances;

“*Film*” means a cinematograph film and includes cinematograph films contained in celluloid, video-tape or on compact discs (CDs) or on digital versatile discs (DVDs);

“*Foreign company*” means a body corporate incorporated outside Bhutan;

“*Foreign journalist*” means any journalist who (i) regardless of whether he is a citizen or permanent resident of Bhutan, is employed by a foreign newspaper in any journalistic capacity within Bhutan, whether temporarily or on a long-term basis, or (ii) not being either a citizen or

permanent resident of Bhutan, works as a correspondent or reporter within Bhutan for any newspaper, whether temporarily or on a long-term basis;

*“Foreign newspaper”* means any newspaper published outside Bhutan for an audience largely outside Bhutan;

*“Frequency”* means frequency of radio waves;

*“Free-to-air”*, in the context of a broadcasting service, means a non encrypted broadcasting service made available for reception by receiving equipment commonly available to the public without requiring payment of a subscription fee;

*“Government”* means the Royal Government of Bhutan, including its Ministries and Departments;

*“Governmental agency”* means and includes the National Assembly, Ministries, Departments, Divisions, Public Corporations, Authorities, etc.

*“Harmful interference”*, in relation to radiocommunications, means any form of emission, radiation, induction or other electro-magnetic effect which endangers the functioning of, or seriously degrades, obstructs or repeatedly interrupts any radiocommunication service operated in accordance with the provision of this Act;

*“ICT”* means Information and Communications Technology;

*“ICT and Media Advisory Committee”* means the advisory committee as established under Section 12 of the Act;

*“ICT facility”* means any facility, apparatus or other thing that is used or is capable of being used principally for, or in connection with, the provision of ICT services, and includes a transmission facility as well as any or all of the following facilities: fixed links and cables; computer facilities; pay phone/communication facilities; radiocommunication transmitters, receivers and links; satellite earth stations; towers, poles, ducts and pits used in conjunction with other facilities, etc. This term does not include customer premises equipment, but includes such other services as may be prescribed by Rules; unless otherwise stated, ICT facility relates to public ICT facility;

*“ICT facility provider”* means a person who owns or operates or provides any ICT facility;

*“ICT network facility”* means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of ICT services, but does not include customer premises equipment; and, includes such other facilities as may be prescribed by Rules; unless otherwise stated, ICT network facility relates to public ICT network facility;

*“ICT network service”* means any element or combination of elements of ICT services provided with the use of any ICT facility or combination of ICT facilities; and, includes such other services as may be prescribed by Rules; unless otherwise stated, ICT network service relates to public ICT network service;

*“ICT service”* means any or all of the following services: telecommunications services, like public telephony, telegraphy, facsimile, cellular telephony, and pay phone/communication

services; broadcasting services, like satellite broadcasting, broadcasting distribution (cable television), mobile satellite, subscription broadcasting, and, terrestrial free-to-air television and radio broadcasting; information technology services, like Internet service, web-casting, e-mail and all other sorts of e-services, internet protocol (IP) telephony, digital library and commercial information services, network-based information and related specialised professional services provided by electronic means, public-switched data and any other similar service; and, includes such other services as may be prescribed by Rules; unless otherwise stated, ICT service relates to public ICT service;

“*ICT service provider*” means a person who owns or provides or operates any ICT service;

“*ICT system*” means an ICT network service and ICT network facility used by a person or another person to provide ICT and media service; unless otherwise stated, ICT system relates to public ICT system;

“*Information*” includes information (whether in its original form or otherwise) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech;

“*Information system*” means a system for generating, sending, receiving, storing or otherwise processing data messages;

“*Intelligence*” means signs, signals, writing, images, sounds or intelligence of any nature;

“*Intercept*” means the aural or other acquisition of the contents through the use of such devices or means as considered necessary;

“*Interconnection*” means the physical or logical connection of public ICT facilities of different ICT facilities and/or ICT services providers and/or media service providers;

“*Internet*” means an international telecommunication network through which computers are interconnected;

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

“*Intermediary*”, with respect to a particular data message, means an Internet service provider and a person who, on behalf of another person, sends, receives or stores that data message or provides other services with respect to that data message;

“*International organisation*”, unless the context otherwise requires, means the United Nations and any of its specialised agencies and other inter-governmental organisations;

“*Internet-based publication*” means any matter that is made available to the general public via the Internet, including the World Wide Web;

“*Internet Service Provider (ISP)*” means a natural or legal person or associations of persons who make available either their own or third-party content over the Internet or who provide access to the Internet;

“*Journalist*” includes an editor, sub-editor, editorial writer, reporter, freelance contributor and any other person who is engaged in the task of editing, reporting or writing for a newspaper or broadcasting service;

“*Licensee*” or “*permit-holder*” means any person who has been granted a license or a permit under this Act or the Regulations, as the case may be;

“*License fees*” means the initial, annual or renewal fees payable to the Authority by an applicant or a licensee, as the case may be, for a license;

“*Licensed service*” means a service licensed under this Act;

“*Media*” means relevant ICT services, including broadcasting and where pertinent, also includes:

- newspapers, books, journals, periodicals, brochures, pamphlets, circulars, magazines, publications and other works made available to the general public in printed and/or electronic form or format;
- cinematographic films, dramatic performances and other entertainments made accessible to the general public;
- radio and television channels and/or stations broadcasting to the general public (whether terrestrial or satellite-based);
- the Internet accessible to the general public;
- Internet-based suppliers of information, news and entertainment accessible to the general public; and
- news agencies engaged in collecting, processing and collating news reports, feature articles and/or other material, or supplying such material to any of the aforesaid media, for the purposes of public dissemination;

“*Media service*” means service provided through any mode of media and made available to the general public;

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

“*Minister*” means a member of the Cabinet and who is in-charge of the Ministry of Information and Communications acting solely in his official capacity;

“*Ministry*” means the Ministry of Information and Communications of the Government;

“*Movie hall*” or “*movie theatre*” or “*cinema hall*” means any premises used for the exhibition of a film to which members of the public may gain admittance, whether on payment of a charge or otherwise;



*“National Radio Rules”* means Rules having the force of law and made by the Authority;

*“Newspaper”* means any publication containing news, information, reports of events occurrences, or comments, published in any form and in any language for sale or free distribution at regular intervals. This term includes magazines and other periodicals, but does not include any publication published by or for the Government;

*“Number”* means any identifier which would need to be used in conjunction with any public ICT service for the purposes of establishing a connection with any termination point in a public ICT facility, user, ICT apparatus connected to any public ICT facility or service element, but excluding any identifier which is not accessible to the generality of users of a public ICT service;

*“Obscene”* means material and/or information (i) that obviously relates to sex or shows sex, (ii) that is designed to incite to indecency or lust, and (iii) that appeals predominantly to an interest in sexual conduct, depicts or describes sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value, but does not include any material and/or information of specifically artistic or religious nature and scope;

*“Originator”* of a data message, for the purposes of Chapter Seven, means a person by whom, or on whose behalf, the data message purports to have been sent or generated prior to storage, if any, but it does not include a person acting as an intermediary with respect to that data message;

*“Person”* includes any individual, partnership, company, unincorporated organization, Government, governmental agency, trustee, executor, administrator or other legal representative;

*“Personal data or information”* means any data or information which relates to a person who can be identified:

- from that data; or
- from that data or other information which is in the possession of, or is likely to come into the possession of, the ICT service provider or ICT facility provider; and, includes any expression of opinion about that person and any indication of the intentions of the ICT service provider or ICT facility provider or any other person in respect of that person;

*“Plain text version”*, for the purposes of Chapter Seven, means original data before it has been transformed or scrambled to an unreadable or incomprehensible format;

*“Printing”* includes writing, lithography, cyclostyling, photocopying, photography, and any other physical or electronic modes or forms of representing or reproducing words, pictures, designs or objects in a visible form;

*“Product”* means a good, service, contract for service or other item of value;

*“Programme”*, means any matter, or arrangement of matter, including matter whether or not of a commercial nature (such as advertisements), television or radio programme, advertising or sponsorship, which is intended to inform, educate or entertain the audience to which it is broadcast, or intended to be broadcast, but this term does not include any matter that is wholly

or substantially in the form of, or related to, any private communication;

*“Proprietor”*, means owner and for the purposes of fixing responsibility for operations of a company, includes the chief executive officer of the company;

*“Public ICT facility”* means an ICT network facility used by a person to provide ICT service to the public for compensation;

*“Public ICT service”* means an ICT network service used by a person to provide ICT service to the public for compensation;

*“Public ICT system”* means an ICT network service and ICT network facility used by a person to provide ICT service to the public for compensation;

*“Public place”* means any premises, including a building or open air auditorium, to which any member of the general public may be able to gain admission, whether on payment of a charge or otherwise;

*“Publication”*, unless the context indicates otherwise, means the act of making information or stories available to people in any electronic or print form;

*“Radiocommunication”* means telecommunication by means of radio waves and includes the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of a frequency or electro-magnetic energy, being energy which either:

- serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not) or for the actuation of control of machinery or apparatus; or
- is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or any objects of any class;

and references to radiocommunication stations or radiocommunication apparatus shall be construed as references to stations and apparatus for the emitting or receiving as aforesaid of such electro-magnetic energy;

*“Radiocommunication service”* means a service involving the transmission, emission and/or reception of radio waves for specific ICT service, including broadcasting;

*“Radio”*, unless the context indicates otherwise, means the system or work of broadcasting sound programmes for the public to listen to;

*“Radiocommunication station”* includes the radiocommunication apparatus of a ship, aircraft, satellite or earth station;

*“Rate”* means an amount of money or other consideration and includes zero consideration;

*“Regulations”* means Regulations having the force of law and made by the Minister, as specifically authorised under this Act;

*“Relying party”*, for the purposes of Chapter Seven, means a person that may act on the basis of a certificate or an electronic signature;

*“Rules”* means Rules having the force of law and made by the Authority, as authorised under this Act, and includes National Radio Rules;

*“Signatory”*, for the purposes of Chapter Seven, means a person that holds signature creation data and acts either on his own behalf or on behalf of the person he represents;

*“Spectrum”* means a continuous range of radio frequencies up to and including a frequency of 3000 Gigahertz;

*“Station”*, includes all premises housing studios, transmitters, receivers or other equipment or facilities, and relay stations; and, in the context of broadcasting service, also means any place from where any matter is broadcast;

*“Subscriber”* of a service means a person who subscribes to a specific ICT and media service primarily for his own use;

*“Telecommunication”* means any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electro-magnetic systems;

*“Telecommunications service”* means a service provided by means of ICT facilities and includes the provision in whole or in part of ICT facilities and any related equipment, whether by sale, lease or otherwise;

*“Television”* means the conveyance of visual information, together with one or more channels of associated audio or suitable encoded textual information, or both;

*“Terrestrial”*, in the context of broadcasting service, means pertaining to the use of a ground-based transmitter;

*“Transaction”*, for the purposes of Chapter Seven, means an agreement between a vendor and a consumer for provision of a product;

*“Transmission facility”* means any wire, cable, radio, optical or other electro-magnetic system, or any similar technical system, for the transmission of intelligence between termination points, but does not include any transmission apparatus, exempted by Rules;

*“Universal access”* or *“Universal service”* is an evolving precept that the Authority shall precisely define and revise, if necessary, periodically by the Rules, taking into account advances in information and communications technologies and services as well as the principles of quality and just, reasonable, affordable rates; access to advanced services; access in rural and high-cost areas; equitable and non-discriminatory contributions; specific predictable support mechanisms; access to services for schools, libraries, and health care; competitive neutrality;

*“Universal service obligation”* means a condition of license that is imposed or to be imposed by the Authority on a provider of ICT facilities, ICT services and media services to provide universal service and to contribute to the universal service fund that is managed or to be

managed by the Authority; Provided, however, that such obligation shall be imposed in a transparent, non-discriminatory and competitively neutral manner and shall not be more burdensome than necessary for the kind of universal service desired to be achieved by the Authority;

“*Vendor*”, for the purposes of Chapter Seven, means a business or non-profit organization conducting electronic commerce directly with consumers; and

“*Vessel*” means a vessel of any description used in water navigation.

#### *GENERAL INTERPRETATION*

#### 4. In this Act:

- (a) word importing the masculine gender shall include the feminine gender and neutral gender, as the case may be;
- (b) word in the singular shall include the plural and vice versa;
- (c) “act”, in relation to any person, includes any commission or omission of an act which he is under a duty to do and “done” shall be construed accordingly;
- (d) any reference to the sending or the conveying of messages includes a reference to the making of any signal or the sending or conveying of any warning or information, and any reference to the reception of messages shall be construed accordingly;
- (e) any reference to a subsidiary and a wholly owned subsidiary shall be construed in accordance with the Companies Act of the Kingdom of Bhutan 2000; and
- (f) any over-lap or inconsistency between the functions, responsibilities and powers of the Minister on the one hand and those of the Authority on the other hand, shall be resolved keeping in mind that while the Minister is in charge of overall and general policy and legislative aspects of ICT and media industry, the Authority as an independent regulatory body has specific mandate that relates to the actual implementation of the applicable Government policies, laws, Regulations, Directives and Rules in order to effectively and independently regulate the carriage, content and commercial aspects of ICT and media as well as the control and management of the radio spectrum.
- (g) For the purpose of removal of any doubt, the provisions of this Act do not apply to the letter and parcel services of the Bhutan Postal Corporation or a private sector postal operator except as provided by another Act.

## CHAPTER TWO: FUNCTIONS, RESPONSIBILITIES AND POWERS OF THE MINISTRY

### *MANDATE OF THE MINISTRY OF INFORMATION AND COMMUNICATIONS*

5. (1) In Bhutan, the development and functioning of the information, communications and media industry is perceived through three following segments:
  - (a) Information content: It pertains to the creation of information by the original players (writers, composers, artists, photographers, filmmakers, etc.). It also includes compilation of information and reference works, databases, statistical series and real time information services that supply constant flows of information. Management, regulation and trading in intellectual property rights form an integral part of the content segment;
  - (b) Information processing: It is concerned with the processing of information using both hardware and software; and
  - (c) Information communications (delivery/distribution): It is concerned with the establishment, operation and management of the communications and dissemination network(s) through which information is transmitted. Commonly deployed, such communications systems are:
    - (i) Telecommunications companies, cable television networks, satellite broadcasters, radio and television broadcasting networks or re-broadcasters, the Internet, and
    - (ii) Booksellers, libraries, authors, publishers, newspaper companies, journal publishers, drama theatres and movie halls, film-makers, radio and television programme producers, records, compact diskettes and cassette recording companies etc. (in all print and electronic forms).
- (2) All the three segments mentioned in Sub-section (1) constitute the Bhutanese information society and thus form the bases for and determine the scope of the broad mandate of the Ministry of Information and Communications.
- (3) The Ministry shall be the lead Governmental agency in Bhutan with respect to the achievement of the ICT and media policy objectives, as determined, from time to time, by the Minister. Thus, the Ministry would provide the necessary leadership, coordination, encouragement, advice, and support to both the public and private sectors in all ICT and media matters.
- (4) Within the broad mandate of the Ministry specified in Sub-sections (1), (2) and (3) above, general functions, responsibilities and powers of the Minister shall be to:
  - (a) initiate, formulate and present to the National Assembly specific legislations, including amendments to the existing ones, relating to all aspects of ICT and media;

- (b) initiate, formulate and promulgate ICT and media policies and regulations to promote the growth of ICT and media industry. Such activities would comprise of the following components:
  - (i) Research, development and analysis;
  - (ii) Applications and infrastructure development;
  - (iii) Formulation of policy, legislation and regulations; and
  - (iv) Information dissemination and media content standards;
- (c) act as a 'national information agency' to observe and monitor evolution of the Bhutanese information society through:
  - (i) continuous study on how effectively and extensively the information sharing is adopted to pursue socio-economic development and public welfare activities across the Government agencies, public and private institutions/offices;
  - (ii) people's access to choice of information using all ICT and media facilities and services; and
  - (iii) adopting and implementing gender equality policies and programmes in the ICT and media.

*FUNCTIONS RELATING TO RESEARCH, DEVELOPMENT AND ANALYSIS*

- 6. In order to serve in a path finding capacity to determine the appropriateness of a given technology and system suitable to the unique Bhutanese conditions, the Minister's functions relating to research, development and analysis shall be to:
  - (a) conduct research and recommend to all Governmental agencies and private sector for the adoption and use of software applications and ICT operating systems;
  - (b) draft guidelines for the development and quality control of software applications and recommend these guidelines to the relevant units of the Ministry for formulation as technical policy guidelines or Regulations, as appropriate;
  - (c) research networking hardware, software, and cabling;
  - (d) provide assistance (whenever required) to the Authority in the analysis of technical matters, including interconnections, radio-frequency interferences, use of technical standards, etc.;
  - (e) prepare technical specifications for hardware and software and make recommendations about new technologies;
  - (f) carry out certification of hardware and software specifications, including locally assembled computers and evaluation and certification of system development;

- (g) in consultation with other appropriate institutions (both public and private), establish a system of education and training of ICT and media professionals;
- (h) provide technical co-ordination to the ICT units that are set-up in Government agencies and regional offices; and
- (i) study the ICT and media private sector in terms of its opportunities, constraints and difficulties and accordingly propose for positive Governmental intervention.

*FUNCTIONS RELATING TO APPLICATIONS AND INFRASTRUCTURE DEVELOPMENT*

7. In order to provide a concerted Governmental leadership and support in the development of ICT facilities, ICT services and media in Bhutan, the Minister's functions relating to infrastructure and applications shall be to:
- (a) encourage, facilitate and co-ordinate the creation of e-services, like e-government, e-commerce, distance learning or e-learning, e-health, e-medicine, e-marketing, etc.;
  - (b) identify the areas of application development in the Governmental agencies and initiate appropriate development;
  - (c) plan infrastructure development, in consultation with the Authority and the public and private sectors;
  - (d) design and implement projects for national network(s) particularly interconnecting all *Dzongkhags* (Districts) and *Geogs* (Blocks), using appropriate technologies;
  - (e) design, promote and implement projects for the use of *Dzongkha* (National Language of Bhutan) in all sections of ICT and media industry;
  - (f) act as interface between the Government and private sector for planning the required ICT infrastructure and applications, and use to the maximum extent the private sector capabilities by out-sourcing to meet the Government requirements, etc.;
  - (g) to promote the swift and sustainable development of ICT facilities, ICT services and media within Bhutan;
  - (h) to encourage investment and innovation in the ICT and media;
  - (i) to encourage major users of ICT services whose places of business are outside Bhutan to establish places of business in Bhutan;
  - (j) to enable persons producing ICT products in Bhutan to compete effectively in the supply of such products both in and outside Bhutan;
  - (k) facilitate training on ICT for the members of the Government staff, private sector, and the interested members of the general public; and

- (l) organise workshops, seminars, meetings and other fora on emerging ICT and media technologies, on national, regional and international levels.

#### *FUNCTIONS RELATING TO POLICY, LEGISLATION AND REGULATIONS*

8. In order to ensure that the regulatory environment remains conducive to healthy ICT and media in Bhutan, the Minister's functions relating to ICT and media policies, laws and regulations shall be to:
  - (a) undertake systematic research of the existing laws of Bhutan (and of other countries) for their adaptation, where relevant and when required. This could also entail an in-depth research on various forms of ICT and media, including their impact on the society;
  - (b) prepare ICT and media policies, draft legislations and adopt regulations, taking into account the recommendations of the ICT and Media Advisory Committee and the Authority, suggestions of various units of the Ministry and views of other interested parties in Bhutan, particularly the private sector as well as *Dzongkhags* and *Geogs*;
  - (c) represent Bhutan and participate in regional and international organisations and negotiations relevant to ICT and media matters; and
  - (d) organise information sessions, whenever required, about the policy and regulatory matters relating to ICT and media for the members of the Government staff, private sector, and the interested members of the general public.

#### *FUNCTIONS RELATING TO INFORMATION AND MEDIA*

9. In order to make planned efforts in promoting healthy media and ensuring its role in the appropriate socio-cultural and political development in Bhutan, the Minister's functions relating to information and media shall be to:
  - (a) promote and develop information, communications and media services in order to make people understand the importance of information and its usage;
  - (b) formulate information and media policies, draft legislations and adopt regulations governing the ICT facilities, ICT services and media;
  - (c) develop national information strategies and standards for appropriate contents in information and media;
  - (d) monitor the trends in the ICT and media;
  - (e) facilitate the dissemination of the Government information by using the Government Web Portal and any other means;
  - (f) coordinate the visit by foreign media personnel while in Bhutan;
  - (g) function as a secretariat to the ICT and Media Advisory Committee and submit matters of interest for its deliberations and recommendations; and



- (h) seek funding and technical assistance to promote professionalism in Bhutanese media.

#### *TECHNICAL STANDARDS*

- 10. (1) The Minister may, by Regulations made after consultation with the Authority, establish standards in respect of the technical aspects of ICT and media and require the Authority to give effect to them. In this regard, the Minister shall, specifically:
  - (a) establish national ICT standards and ensure compliance with the Constitution and Convention of the International Telecommunication Union (ITU);
  - (b) facilitate the training and certification of ICT and media personnel in accordance with the regulations adopted by the regional or international bodies; and
  - (c) test and certify ICT equipment to ensure compliance with:
    - (i) international standards; and
    - (ii) environmental health and safety standards, including electro-magnetic radiation and emissions.
- (2) The Minister may, where he is convinced that to do so will achieve efficiency, economy and convenience in the regulation of ICT and media industry, by Regulation delegate to the Authority the performance of all or any of the functions under Sub-section (1) and the making of pertinent Rules.

#### *COLLECTION AND PUBLICATION OF INFORMATION*

- 11. (1) With a view to the Ministry becoming aware of, and ascertaining the circumstances relating to ICT and media matters, the Minister may, so far as it appears to him practicable from time to time, collect information with respect to all activities related to ICT and media as carried on in Bhutan, and the persons by whom they are carried on.
- (2) The Minister may publish, in such form and in such manner as he may consider appropriate, any information or results of a study or an ICT and media plan, as it may appear to him to be valuable to the public, including consumers, purchasers and other users or providers of ICT facilities, ICT services and media in Bhutan.

#### *ICT AND MEDIA ADVISORY COMMITTEE TO ADVISE THE MINISTER*

- 12. (1) There shall be established for the purposes of this Act an ICT and Media Advisory Committee as a “think tank” and adviser to the Minister on the ICT and media matters.
- (2) The functions of the ICT and Media Advisory Committee shall be to advise the Minister on overall policy and legislative guidelines for positive development and operation of ICT and media industry in Bhutan, *inter alia*, and any matter connected with ICT and media referred to it by the Minister for advice, and to hold

enquiries and receive statements from interested parties in connection with any matter on which its advice has been sought. Without prejudice to the generality of the forgoing, under general guidance of the Minister, the ICT and Media Advisory Committee shall perform the following functions:

- (a) advise the Minister in establishing national policy on all ICT and media matters (including the contents of ICT and media services) with the view of ensuring efficient development and operation of all ICT and media as well as the compliance with the country's international commitments;
  - (b) examine long-term national plans for the development of ICT and media sector; and
  - (c) any other matter referred to it by the Minister.
- (3) The ICT and Media Advisory Committee shall consist of such number of persons, not being less than three and not more than seven, as the Minister may from time to time appoint, who are, in the opinion of the Minister, qualified by education and training, and have significant practical experience in the field of culture, information technology, telecommunications, media, law, administration or business. In the appointment of the members of the ICT and Media Advisory Committee, the Minister shall attempt to provide equitable representation to the providers and users of the ICT and media services, public interest groups and appropriate Government agencies.
  - (4) The appointment of a member of the ICT and Media Advisory Committee shall be for a period not exceeding three years, and such member shall be eligible for reappointment. The Minister may at anytime revoke the appointment of any member of the ICT and Media Advisory Committee giving reason in writing for such action.
  - (5) The Minister may appoint any person qualified in accordance with Sub-section (3) to act temporarily in the place of any member of the ICT and Media Advisory Committee in the case of absence or inability to act of such member.
  - (6) The Minister shall appoint one of the members of the ICT and Media Advisory Committee to be the Chairperson thereof and a high ranking official of the Ministry shall *ex-officio* act as a Secretary of the ICT and Media Advisory Committee with the responsibility to record and maintain all the minutes and decisions of the meetings of the ICT and Media Advisory Committee.
  - (7) Any member of the ICT and Media Advisory Committee may at any time resign his office by an instrument in writing addressed to the Minister and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the ICT and Media Advisory Committee.
  - (8) If any vacancy occurs in the membership of the ICT and Media Advisory Committee, such vacancy shall be filled by the appointment of another member and in making such appointment the Minister shall have regard to the provisions of Sub-section (3).

- (9) The names of all members of the ICT and Media Advisory Committee as first constituted and every change in the membership thereof shall be published by the Minister.
- (10) The ICT and Media Advisory Committee shall meet at such times as may be necessary or expedient for the conduct of its business and such meetings shall be held at such places and times as the ICT and Media Advisory Committee may determine.
- (11) The Chairperson may at any time call a special meeting of the ICT and Media Advisory Committee and shall call such meeting within fourteen days of the receipt of a written request for that purpose addressed to him by any two members of the ICT and Media Advisory Committee.

#### *POWER TO MAKE REGULATIONS*

13. (1) In consultation with appropriate Governmental ministries and agencies, security institutions, the Authority, representatives of business enterprises and consumers, and providers of ICT facilities and ICT services and media, the Minister shall make Regulations but under only those provisions of the Act that specifically mention this power.
- (2) Every Regulation made by the Minister under this Act shall become effective after thirty days of its publication or on the date mentioned therein and shall have full effect of the law of Bhutan.

#### *POWER TO REMOVE DIFFICULTIES*

14. If any difficulty arises in giving effect to the provisions of this Act, the Minister may by Regulation, make such provisions, not inconsistent with the provisions of this Act, as he may deem necessary, for the removal of the difficulty; provided that no such Regulation shall be made after the expiry of a period of three years from the commencement of this Act.

#### *DIRECTIVES IN THE INTERESTS OF NATIONAL SECURITY AND INTERNATIONAL RELATIONS, ETC.*

15. (1) If it appears to the Minister to be requisite or expedient to do so in the interests of national security or relations with the Government of a country or territory outside Bhutan, he may, after consultation with a person to whom this Section applies, give to that person a directive requiring (according to the circumstances of the case) to do or not to do, a particular thing specified in the directive.
- (2) The directive contemplated under Sub-section (1) would relate to:
  - (a) discharge, or facilitate the discharge of, an obligation binding on the Government by virtue of it being a member of an international organisation or a party to an international agreement;
  - (b) attain, or facilitate the attainment of, any other objectives the attainment of which is, in the Minister's opinion, requisite or expedient in view of the

Government being a member of such an organisation or a party to such an agreement;

- (c) enable the Government to become a member of such an organisation or a party to such an agreement; or
  - (d) matters relating to national security.
- (3) A person to whom this Section applies shall give effect to any directive given to him by the Minister under this Section notwithstanding any other duty imposed on him by or under this Act.
  - (4) The Minister shall lay before the Cabinet a copy of every directive given under this Section.
  - (5) A person shall not disclose anything done by virtue of this Section if the Minister has notified him that the Minister is of the opinion that disclosure of that thing is against the interests of national security or relations with the Government of a country or territory outside Bhutan, or the commercial interests of some other person.
  - (6) The Minister may, in consultation with the Ministry of Finance, make compensation to the providers of public ICT systems and media services for the purpose of defraying or contributing towards any losses they may sustain by reason of compliance with the directives given under this Section.
  - (7) There shall be paid out of money provided by the Ministry of Finance any sums required by the Minister for making compensation under this Section.
  - (8) This Section applies to the Authority and to any person who is a provider of an ICT system and media service.

*TAKING OVER TEMPORARY CONTROL OF ICT FACILITY OR ICT SERVICE OR MEDIA SERVICE IN PUBLIC INTEREST*

- 16. (1) In the event of war, serious conflict or any emergency of national magnitude, the Minister with specific consent and on behalf of the Cabinet, may by notification, in public interest, take over for a limited period the control and management of any ICT facility or ICT service or media service, suspend its operation or entrust any agency of the Government to manage it in the manner directed by the Minister for such period as provided for in the notification.
- (2) If it appears necessary or expedient to do so, the Minister may, in public interest, at any time request the Authority to direct any licensee to:
  - (a) transmit in its ICT and media service specific announcements, in such a manner as may be considered necessary;
  - (b) stop any ICT and media service, which is prejudicial to the sovereignty or integrity of Bhutan, security of the country, friendly relations with foreign countries, or to public order, decency or morality, or communal harmony.

- (3) It shall be the duty of the licensee to ensure strict and prompt observance of directions issued under Sub-section (2) by the Authority.
- (4) Any take-over contemplated under Sub-section (1) shall only last for such duration as may be strictly necessary having regard to the exigencies of the situation. As soon as the war, serious conflict or national emergency ceases, the Minister shall return the control and management of the ICT facility or ICT service or media service to the person from which it had been taken over, as far as possible in the same condition in which it had been taken over.
- (5) The person from whom an ICT facility or ICT service or media service has been taken over under Sub-section (1) shall be entitled to reasonable compensation for any direct harm, loss or injury suffered as a result of the take-over. The amount of such compensation payable shall be determined by the Authority.
- (6) Any dispute arising in relation to the compensation payable under Sub-section (5) may be appealed to a District Court within thirty days of the determination by the Authority under Sub-section (5).
- (7) Any owner or operator of an ICT facility or ICT service or media service who fails unreasonably to comply with an order under Sub-section (1) shall be deemed to have breached a condition of his license granted under this Act and be subjected to the penalty prescribed herein.

#### *INTERCEPTION OF COMMUNICATIONS*

17. (1) Notwithstanding anything contained in this or any other Act, the Minister or any officer specially authorized in this behalf by the Government, if satisfied that it is necessary or expedient to do in the interests of the sovereignty or security of Bhutan, friendly relations with foreign countries or public order or for preventing incitement to the commission of an offence, may direct:
  - (a) any agency of the Government to intercept any communication by any ICT facility, ICT service or media service;
  - (b) any ICT facility, ICT service or media service provider that any content brought for communication by or communicated or received by him shall not be communicated or shall be intercepted or detained or shall be disclosed to the Government or its agency authorized in this behalf.
- (2) The ICT facility, ICT service or media service provider shall, when called upon by any Governmental agency, which has been directed to carry out interception under Sub-section (1), extend all facilities and technical assistance for interception of the content of communications.
- (3) Any ICT facility, ICT service or media service provider who fails to assist the agency referred to in Sub-section (2) shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding five years.
- (4) Save as otherwise provided under this Section, any person who intercepts any communication or causes any communication to be intercepted or discloses to any

person any content, shall be guilty of an offence and shall be liable to, at the first instance, one month to one year or equivalent *Thrimthue* (fine in lieu of imprisonment) or to both; and for the second instance, one year to three years imprisonment with a fine of Nu. 180,000; and, five years imprisonment for repeated offences.

#### *DIRECTIVES TO THE AUTHORITY ON BROAD POLICY MATTERS*

18. (1) The Minister may, by order, issue to the Authority directives of general application on broad ICT and media policy matters that are considered to be significant and special for national public interest.
- (2) In framing such policy directives the Minister shall consult appropriate Governmental ministries and departments and take into account the Guiding Regulatory Principles for the Authority specified under Section 22 below.
- (3) Any directive proposed to be made under Sub-section (1) shall be published at least sixty days before its proposed effective date, and a reasonable opportunity shall be given to interested persons to make representations to the Minister with respect to the proposed directive.
- (4) The Minister shall consult the Authority with respect to a directive proposed to be made under Sub-section (1) before it is published.
- (5) The proposed directive shall become effective only after approval by the Cabinet.
- (6) A directive made under Sub-section (1) shall not apply in respect of a matter pending before the Authority.
- (7) In exercising its licensing and regulatory functions, the Authority shall follow such policy directives.
- (8) The Authority may request the Minister in a written communication for a review of any policy directive, and if any such request is made the Minister shall respond in writing with all expeditious despatch.

#### *REPORTS FROM THE AUTHORITY*

19. The Minister may request the Authority to make, within a reasonable time, a reasonable number of specific reports on matters within the Authority's jurisdiction under this Act.

### **CHAPTER THREE: THE BHUTAN COMMUNICATIONS AND MEDIA AUTHORITY**

#### *ESTABLISHMENT OF THE REGULATORY AUTHORITY AND APPOINTMENT OF THE DIRECTOR AND MEMBERS*

20. (1) There shall be established a regulatory authority, to be called the Bhutan Communications and Media Authority, for the purpose of performing the functions assigned to it under this or any other Act.

- (2) The Authority shall comprise not less than three and not more than five Members, one of whom shall be the Director. The Members shall be appointed by the Head of State upon recommendation of the Cabinet, from a panel of candidates submitted by the Minister.
- (3) The Authority shall elect a Member from among the Members as the Chairman and the Director of the Authority shall serve as the Member Secretary of the Authority during its meetings.
- (4) The conditions of appointment of Members, administrative requirements and decision-making procedures to be followed by the Authority are detailed in Schedule "A".
- (5) Until such time the Members have been appointed under Sub-section (2), the serving Director shall constitute the Authority.
- (6) The Director of the Authority shall be appointed by the Head of State upon recommendation of the Cabinet, from a panel of candidates submitted by the Minister. The Minister shall submit a panel of candidates after satisfying the following criteria:
  - (a) The individual to be put on the panel of candidates must be a citizen of Bhutan;
  - (b) He must be proficient, and have at least five years experience in the field of information technology, telecommunication, media, law, industry, or administration;
  - (c) Before submitting any individual as the Director, the Minister shall satisfy himself that the individual does not have any financial or other interests or under any legal incapacity as is likely to affect prejudicially his functions as the Director;
  - (d) A person who is in the service of Government shall have to retire from the service or go on secondment before joining as the Director; and
  - (e) Where a vacancy arises whether by reason of death, resignation, or removal of the Director, it shall be filled as soon as practicable, by following the same procedure under this Section.
- (7) The Director shall serve for a term not less than five years and not exceeding seven years but previous appointment to that office shall not affect eligibility for re-appointment.
- (8) The Director may at any time resign from his office as the Director by notice in writing addressed to the Cabinet.
- (9) The Director shall be removed from the office only by the Head of State, on submission from the Cabinet, if he has:
  - (a) been adjudged insolvent;

- (b) become physically or mentally incapable of acting as the Director;
- (c) been convicted of any offence involving moral turpitude;
- (d) acquired such financial or other interest as is likely to affect prejudicially his functions as the Director; or
- (e) so abused his position as to render his continuance in office prejudicial to the public interest.

No Director shall be removed from his office under this Section, unless he has been given a reasonable opportunity of being heard in the matter.

- (10) The Director may appoint or hire such staff members as he thinks fit and necessary for the efficient and professional performance of all the functions and responsibilities of the Authority. In the appointment of personnel of the Authority, the Director shall ensure that, in addition to administrative support staff, the Authority shall have a sufficient number and a good balance of professionals appropriately qualified and experienced in administration, economics, legal and technical fields.
- (11) There shall be paid to the Director and the staff members such remuneration, travelling and other allowances, as the Authority, by Rules, made in consultation with the Ministry of Finance, may determine.
- (12) The activities of the Authority shall be financed from:
  - (a) fees and other charges payable to the Authority under this or any other Act; and
  - (b) funds appropriated by the Ministry of Finance.
- (13) The Government shall ensure, as far as practicable, that the Authority is adequately financed to enable it to exercise its functions and discharge its responsibilities as provided for in this Act.

#### *GENERAL MANDATE OF THE AUTHORITY*

- 21. (1) The development and efficient functioning of the ICT and media industry is believed to be highly dependant upon the ability of the Authority to effectively and efficiently regulate this industry in a competitive ICT and media market environment. Thus the Authority shall have all the regulatory powers that are necessary for its operation as a body independent of ICT and media market players.
- (2) Given the rapid development of ICT and increasing convergence of information technology, telecommunications and media, the Authority shall have a comprehensive mandate in implementing laws, Regulations and Rules pertaining to ICT and media facilities, infrastructure, services as well as the contents of any form of information, communications and media. In particular, the regulatory functions of the Authority shall relate to:
  - (a) ICT facilities;



- (b) ICT services;
  - (c) Radiocommunications management; and
  - (d) Media and content.
- (3) The Director shall be the chief executive and the legal representative of the Authority and have powers of general superintendence and direction in the conduct of affairs of the Authority and shall exercise and discharge such powers and functions of the Authority that have been assigned to the Authority under this or any other Act.

*GUIDING REGULATORY PRINCIPLES FOR THE AUTHORITY*

22. The Authority in exercising its functions and responsibilities shall be guided by the following regulatory principles:

- (a) that ICT and media services are made universally accessible at affordable rates to all areas of the country, particularly in the rural and remote areas;
- (b) that there is increasing access to information for greater empowerment of citizens and towards economic, social and cultural development;
- (c) that quality, plurality, diversity and choice of ICT and media services are promoted;
- (d) that modern and effective ICT facilities for ICT services and media are established taking into account the convergence of information technology, telecommunications and media;
- (e) that the ICT and media industry is developed in a competitive environment and that market dominance in a converged environment is suitably regulated;
- (f) that an open licensing policy allowing any number of new entrants (except in specific cases constrained by limited resources such as the spectrum) is promoted;
- (g) that licensing criteria are transparent and made known to the public;
- (h) that equitable, non-discriminatory interconnection across various ICT facilities, ICT services and media services are promoted;
- (i) that introduction of new technologies, private investment in ICT facilities, ICT services and media services are encouraged;
- (j) that the principle of a level playing field for all providers serving consumer interest, including existing providers on the date of commencement of the Act, is promoted;
- (k) that no unnecessary regulatory burden is created for the private sector; and
- (l) that security, national integrity, economic and socio-cultural interests of Bhutan are fully protected.

### *FUNCTIONS RELATING TO ICT FACILITIES*

23. Some of the functions of the Authority in this regard shall be to:
- (a) regulate, to a minimum required extent, all ICT facility providers;
  - (b) create an appropriately competitive and dynamic ICT market in Bhutan;
  - (c) ensure universal access;
  - (d) promote the development of ICT facilities in Bhutan, *inter alia*, by ensuring the economic health of the ICT facility providers; and
  - (e) encourage investment and innovation in the ICT facilities sector.

### *FUNCTIONS RELATING TO ICT SERVICES*

24. Some of the functions of the Authority in this regard shall be to:
- (a) regulate, to a minimum required extent, all ICT service providers;
  - (b) create competitive and dynamic ICT services market in Bhutan;
  - (c) ensure universal access to all ICT services at affordable rates;
  - (d) promote ICT development, *inter alia*, by ensuring economic health of the ICT service providers;
  - (e) encourage investment and innovation in the ICT services industry;
  - (f) protect the interests of the consumers, purchasers and other users (including, in particular, those who are disabled or of pensionable age) in respect of the rates charged for, and the quality and variety of ICT services provided; and
  - (g) investigate complaints by users and providers of ICT services of their failure to obtain redress from providers of public ICT services, including media services, in respect of rates, billings and services provided generally and to facilitate relief where necessary.

### *FUNCTIONS RELATING TO FREQUENCY SPECTRUM AND RADIOCOMMUNICATIONS*

25. In order to promote the optimal use of the radio frequency spectrum, which is a limited resource, the Authority shall:
- (a) plan, supervise, regulate and manage the use of the radio frequency spectrum, including the licensing and registration of radio frequencies and call signs to be used by all stations operating in Bhutan or on any ship, aircraft, vessel or other floating or airborne contrivance or spacecraft registered in Bhutan;
  - (b) plan and adopt radio frequency allocation management techniques for their utilization in accordance with international agreements;

- (c) promote improvements in the effective and efficient use of the radio spectrum required for the provision of ICT facilities, ICT services and media services;
- (d) if required by Regulations, establish national radiocommunications technical standards and ensure compliance with them; and
- (e) investigate and resolve all allegations of interference and impose on licensees the conditions to respect the rights of use of the assigned radio frequencies by others.

*FUNCTIONS RELATING TO CONTENTS AND MEDIA*

26. (1) For the regulation of the contents of ICT services or media, the Authority shall implement appropriate provisions of this Act and the relevant laws, Regulations, policies, and guidelines adopted by the Ministry and other Governmental agencies. For this purpose, the Authority may act on its own volition, or on the basis of a complaint brought by any public or private person.
- (2) Without prejudice to the generality of the forgoing, with respect to the contents of ICT services or media, the Authority shall:
- (a) ensure that ICT and media facilities and services are owned and controlled to a maximum possible extent by Bhutanese citizens;
  - (b) impose necessary restrictions on cross-media ownership with a view to preventing anti-competitive practices and monopolies;
  - (c) ensure equitable treatment of political parties and politicians by all ICT and media services, particularly during election periods;
  - (d) develop codes of practice relating to the conduct of journalist, standard of programmes and advertisements and ensure that ICT services and media services adhere to such codes;
  - (e) encourage, and keep under review, measures aimed at maximizing the independence of editors and other journalists from proprietorial and other interference;
  - (f) ensure that the content of films intended for public exhibition, whether produced within Bhutan or outside, are not antithetical to the social, cultural and other values of the people of Bhutan;
  - (g) protect the general public and more specifically vulnerable sections of the population such as children and young persons from undesirable influences such as the effects of excessive or gratuitous violence, obscenity, drug-taking and gambling as they appear in films; and
  - (h) carry out such other acts as may be incidental or conducive to the discharge of any of the functions of the Authority under this Section.

*RESPONSIBILITIES AND POWERS OF THE AUTHORITY*

27. (1) It shall be the duty of the Authority, so far as it is practicable from time to time, to keep under review the carrying on both within and outside Bhutan of activities connected with ICT and media.
- (2) It shall be the duty of the Authority, where it is requested by the Government to do so, to give information and advice with respect to any matter in respect of which any function of the Authority is exercisable, including advice on:
- (a) ICT and media policies;
  - (b) Bhutan's positions and policies relating to ICT and media matters at international, regional and national levels; and
  - (c) setting up technical standards and rules applicable to ICT systems and terminal equipment to ensure interoperability and efficient use of telephone numbers.
- (3) The Authority shall have the powers, for the purpose of securing the effective performance of its functions and responsibilities under this Act, or in connection with or in consequence of the performance thereof, to do anything that appears to the Authority to be requisite, advantageous or convenient to do. The Authority shall have the power to exercise the functions assigned to it under this Act in the manner which is best calculated to:
- (a) maintain and promote effective competition between persons engaged in commercial activities connected with ICT facilities, ICT services and media services in Bhutan and to promote efficiency and economy on the part of such persons;
  - (b) take action to prohibit, prevent and bring to an end any abuse of market power or anti-competitive behaviour within the ICT and media industry;
  - (c) ensure that the grant of licenses will not result in eliminating or minimising competition or in one or more service providers becoming dominant to the detriment of other service providers or consumers;
  - (d) regulate the interconnection or sharing of facilities between or among ICT facility providers or ICT service providers, including its financial and technical aspects and to resolve disputes concerning the interconnection or sharing of facilities;
  - (e) ensure that licensees, permit-holders and other users of the radio equipment or devices comply with requirements laid down by relevant international, regional or national organisations in respect of equipment and technical standards and environmental health and safety standards, including electro-magnetic radiation and emissions;
  - (f) ensure compliance by providers with international or other obligations entered into by the Government in relation to ICT and media matters;

- (g) ensure that licensees and permit-holders are able to carry out their obligations to provide services free of undue delay, hindrance or impediment;
- (h) ensure the proper maintenance of accounting systems by public ICT systems and media services providers;
- (i) designate appropriate licensees as universal service providers to establish and/or approve universal service plans and to establish and manage a universal service fund for the financing of such universal service plans;
- (j) grant licenses, certificates and permits (as the case may be) and regulate ICT facilities and ICT services and media services as specified in this Act and determine and enforce license conditions and determine fees (including fees for usage of spectrum) wherever required;
- (k) recover the cost incurred by the Authority for the regulatory activities undertaken with respect to the ICT and media activities, but in imposing fees (including licensing fees) the Authority shall ensure that such fees are reasonable for their stated purposes;
- (l) collect all fees, including license fees, and any other charges levied under this Act;
- (m) determine the categories of licenses to be issued under this Act and to classify types of ICT facilities, ICT services, media services and radiocommunication services for the purpose of their effective regulation under this Act;
- (n) plan, administer, manage and assign numbering for ICT services;
- (o) determine appropriate tariffs and rates for licensed services, wherever considered necessary and keeping in view the ICT and media policy objectives and its Guiding Regulatory Principles specified in the Act;
- (p) take steps to regulate or curtail the harmful and illegal content on the Internet and other ICT services and media services;
- (q) establish such advisory bodies as it sees fit for the purpose of advising the Authority on any matter pertaining to the exercise, performance and discharge of his duties, functions and powers under this Act;
- (r) conduct administrative processes and hearings to address and resolve technological issues, inter-provider disputes, consumer complaints and other matters which affect the structure and functioning of the ICT and media industry;
- (s) issue and enforce guidelines and codes of practice governing the ICT and media industry, and in particular, in respect of the providers operating public ICT systems and/or providing public ICT services and media services;

- (t) view, classify and certify every film, whether produced within Bhutan or imported from outside the country, intended for public exhibition within Bhutan;
  - (u) require the producers and/or owners of all films intended for public exhibition within Bhutan to furnish it with a copy of the script of the film and with at least one copy of the film in such format as it may think fit;
  - (v) require any person who applies for a certificate for the purposes of public exhibition of any film to require the film to be exhibited before it or before any person or body specified by it in this behalf; and
  - (w) carry out such other functions imposed by or under this Act, any other Act, the Regulations and the Directives and do anything incidental to or conducive to the performance of any of its functions.
- (4) Notwithstanding the provisions of Sub-sections (1) to (3), the Authority may make a determination to refrain, in whole or in part and conditionally or unconditionally, till such time as it deems necessary, from the exercise of any power or the performance of any function in relation to an ICT facility or ICT service or media service or class of ICT facilities or ICT services or media services provided by a licensee, where the Authority finds as a question of fact that to refrain would be consistent with ICT and media policy objectives.
- (5) Where the Authority finds as a question of fact that an ICT facility or ICT service or media service or class of ICT facilities or ICT services or media services provided by a licensee is or will be subject to competition sufficient to protect the interests of users, the Authority shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, for a specified period of time, from the exercise of any power or the performance of any function in relation to the ICT facility or ICT service or media service or class of ICT facilities or ICT services or media services. However, the Authority shall not make a determination to refrain under this Section in relation to an ICT facility or ICT service or media service or class of ICT facilities or ICT services or media services if the Authority finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that ICT facility or ICT service or media service or class of ICT facilities or ICT services or media services.

*PUBLICATION OF INFORMATION AND ADVICE*

28. (1) The Authority may carry out any study and publish its findings and arrange for other publications, in such form and in such manner as it may consider appropriate, of such information and advice as it may appear expedient to give to providers, consumers, purchasers and other users of ICT facilities, ICT services, media services or ICT apparatus in Bhutan.
- (2) In arranging for the publication of any such information or advice, the Authority shall have regard to the need for excluding any matter which relates to the affairs of a person, where the publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that person.

- (3) Without prejudice to the exercise of its powers under Sub-section (1), it shall be the duty of the Authority to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers, purchasers and other users of ICT facilities, ICT services, or media services in Bhutan.
- (4) The Authority may at any time make and use recordings of any programme broadcast by any licensee for the purpose of maintaining supervision over such programmes.
- (5) The Authority may also require licensees to retain, for a period of at least six months, a recording of every programme broadcast by them, and to produce such recordings when demanded for the purposes of examination.
- (6) The power to require a licensee to retain and produce such recordings, as per Sub-section (5) above, shall include the power to call for the scripts of any programme broadcast by the licensee.
- (7) In this Section, “relevant association” means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the provision of ICT facilities, ICT services, media services or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

*POWER OF THE AUTHORITY TO REGULATE ITS PROCEDURE*

29. The Authority shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil and Criminal Procedure 2001, while trying a suit, in respect of the following matters, namely:
  - (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) requiring the discovery and production of documents;
  - (c) receiving evidence on affidavits;
  - (d) issuing commissions for the examination of witnesses or documents;
  - (e) requisitioning any public record or document or a copy of such record or document, from any office;
  - (f) dismissing an application for default or deciding it, *ex parte*;
  - (g) setting aside any order of dismissal of any application for default or any order passed by it, *ex parte*;
  - (h) reviewing its decisions; and
  - (i) any other matter which may be prescribed in the Rules.

*HEARING OF COMPLAINTS AND RESOLUTION OF DISPUTES BY THE AUTHORITY IN CERTAIN CASES*

30. (1) The Authority shall:
- (a) decide any dispute or matter –
    - (i) between two or more ICT service or media service providers; and
    - (ii) between an ICT service or media service provider and consumers, arising out of enforcement of any provision of this Act;
  - (b) hear and determine any complaint from any person regarding contravention of the provisions of this Act, Regulations, Rules or orders made thereunder including contraventions relating to any formulated codes and technical standards, and of other terms and conditions subject to which any license was granted.
- (2) For purposes of Sub-section (1) the Authority shall pass such orders and issue such directions, as it deems fit, which shall be binding on the parties to the proceedings.
- (3) Where any matter considered by the Authority under Sub-section (1) is one in respect of which any of its functions is exercisable the Authority shall, if it is required to do so or if it thinks fit, exercise that function with respect to that matter.

*POWER TO REQUIRE INFORMATION*

31. (1) The Authority may, for any relevant purpose, by notice in writing:
- (a) require any person to produce, at a time and place specified in the notice, to the Authority or to any person appointed by it for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
  - (b) require any person carrying on any business to furnish to the Authority such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished;

but no person shall be compelled for any such purpose to produce any documents, which he could not be compelled to produce in civil proceedings before the court, or in complying with any requirement for the furnishing of information, to give any information, which he could not be compelled to give in evidence in such proceedings.

- (2) A person who:
- (a) intentionally alters, suppresses or destroys any document which he has been required by any such notice to produce; or
  - (b) in furnishing any estimate, return or other information required of him under any such notice, makes any statement which he knows to be false in a material



particular, or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence.

- (3) A person guilty of an offence under Sub-section (2) shall be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.
- (4) If a person makes default in complying with a notice under Sub-section (1), the court may, on the application of the Authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (5) In this Section, “relevant purpose” means any purpose connected with the:
  - (a) investigation of any offence under Section 37 below or any proceedings for any such offence; or
  - (b) exercise of the Authority’s functions under Section 48 below.

#### *POWER TO ESTABLISH ADVISORY BODIES*

32. (1) The Authority may establish for specified and limited time such *ad hoc* advisory bodies as it thinks fit consisting in each case of such members as it may from time to time appoint.
- (2) It shall be the duty of an advisory body established under Sub-section (1) to advise the Authority on any matter:
  - (a) in respect of which any of the Authority’s functions is exercisable; and
  - (b) which is referred to it by the Authority or is a matter on which it considers it should offer its advice.
- (3) The Director shall submit to the Authority reports on each meeting of the advisory bodies established under Sub-section (1) as soon as practicable.
- (4) The Authority may, in consultation with the Ministry of Finance, defray or contribute towards the expenses of an advisory body established under this Section.

#### *ANNUAL AND OTHER REPORTS*

33. (1) The Authority shall, as soon as practicable, after the end of each calendar year, submit to the Government, through the Minister, a report on its activities during that year.
- (2) Every such report shall include:
  - (a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Authority’s functions; and

- (b) the issues taken up by the *ad hoc* bodies during that year.
- (3) The Minister shall lay a copy of every report made by the Authority under Sub-section (1) before the Cabinet and shall arrange for every such report to be published in such manner as he may consider appropriate.
- (4) The Authority may also prepare other reports as appear to it to be expedient and may arrange for any such report to be published in such manner as it may consider appropriate.

#### *POWER TO MAKE RULES*

- 34. (1) The Authority may, by notification, make Rules consistent with this Act, the Regulations and the Directives to carry out effectively and efficiently all its functions and responsibilities under this Act, the Regulations and the Directives.
- (2) In particular and without prejudice to the generality of the foregoing power such Rules may relate to matters specifically mentioned in this Act and may also provide for all or any of the following matters, namely:
  - (a) the procedure and the time and places at which the Authority shall meet for its business operations;
  - (b) the conditions and restrictions subject to which the license may be issued;
  - (c) the procedure to be followed, the terms and conditions and payment of all fees;
  - (d) the form, period, and fees of licenses;
  - (e) obligations, conditions, tariffs and rates subject to which the ICT service or media service provider shall provide services;
  - (f) the documentary records and transmission schedules to be maintained by a licensee;
  - (g) agreements to be registered with the Authority;
  - (h) the manner in which any enquiry or investigation may be held; etc.
- (3) Before making Rules, the Authority shall:
  - (a) publish a public notice in such manner as it considers appropriate;
    - (i) stating that it proposes to make Rules mentioning the specific provisions of the Act, the Regulations and/or Directives;
    - (ii) setting out the general effect of the proposed Rules;
    - (iii) specifying an address, including an electronic address, from which copies of the proposed Rules may be obtained; and

- (iv) specifying a time (not being less than thirty days from the date of publication of the notice) within which representations with respect to the proposed Rules may be made to the Authority;
  - (b) send a copy of a notice to the Minister; and
  - (c) consider any representations which are made to the Authority within that time.
- (4) Sub-section (2) does not apply in respect of any Rules if it appears to the Authority that by reason of the urgency of the matter it is inexpedient to publish a notice under that Sub-section.
- (5) The Authority shall send a copy of any Rules adopted under any provision of this Act to the Minister; and if, within a period of thirty days from the receipt of such Rules, the Minister directs the Authority not to make the Rules, the Authority shall comply with the direction. If no such direction is received by the Authority, the adopted Rules shall be deemed to have become effective at the end of the said period of thirty days.
- (6) The Minister shall not give a direction under Sub-section (5) above unless it appears to him:
- (a) to be requisite or expedient to do so in the interests of national security or relations with the Government of a country or territory outside Bhutan; or
  - (b) the proposed Rules to be contrary to the provisions of this Act or any Act.

*POWER TO ISSUE DIRECTION, GUIDELINE OR CODE OF PRACTICE*

35. (1) In order to carry out effectively and efficiently its functions and responsibilities under this Act, the Authority may by notification issue any guideline or code of practice consistent with this Act.
- (2) The Authority may issue, and from time to time, review codes of practice relating to the standard of programmes and advertisements broadcast by ICT services and media licensees. Without prejudice to the generality of foregoing sentence, any such code shall provide guidance in relation to:
- (a) the showing of violence, or the inclusion of sounds or images suggestive of violence, drug-taking, sex, or cruelty, in programmes broadcast by licensees, particularly when those programmes are expected to be listened to or watched by large numbers of children or young persons;
  - (b) the avoidance of discrimination in any manner or on any ground in all broadcast programmes, including programmes consisting of news and current affairs; and
  - (c) the content and duration of advertisements that may be broadcast on commercial broadcasting services, including a stipulation as to whether advertisements which are directed towards any political end, or is inserted by

or on behalf of any body whose objects are wholly or mainly of a political nature, may be allowed.

- (3) The Authority may, for reasons to be recorded in writing, exempt any licensee from any provision in a code of practice established under Sub-section (2) for such time as may be specified.
- (4) Any direction, guideline or code of practice issued under this Section, shall be adopted and published in such manner, as the Authority considers appropriate for bringing the contents thereof to the attention of persons likely to be affected by them.

#### **CHAPTER FOUR: PROVISION OF ICT FACILITIES AND ICT SERVICES**

##### *REQUIREMENT OF LICENSE FOR PROVISION OF CERTAIN FACILITIES AND SERVICES*

36. (1) The Authority shall specify in Rules the ICT facilities and ICT services that are required to be licensed.
- (2) Subject to the provisions of Sub-sections (3) and (4), a person shall:
  - (a) own or operate any ICT facility, or
  - (b) own or provide any ICT service,only with and under a valid license in respect of such facility or service procured in accordance with the provisions of this Act.
- (3) Sub-section (2) does not apply to a private ICT facility set up within a single set of private premises without any link or effect on public ICT system.
- (4) For the purpose of removal of any doubt, it is clarified that:
  - (a) terms 'ICT facility' and 'ICT service' as mentioned in this Act shall be construed to include such facility or service, as the case may be, that is used or intended to be used for media services, including broadcasting; and
  - (b) licenses for all broadcasting services shall be in the form of licenses for ICT services.
- (5) In order to achieve efficiency and economy in the performance of its functions and responsibilities, the Authority may, by Rules, make provision for the issuance of one consolidated license where several licences or other authorisations might be required to be procured by one person under various provisions of this Act:

Provided that all the applicable provisions and requirements under this Act and the Regulations are complied with and the inconsistencies, if there are any, are resolved in the light of the Guiding Regulatory Principles for the Authority as specified under Section 22 above and keeping in mind the interests of the applicant to be under minimum regulatory burden;

Provided further that two broad categories of licenses (i.e., facilities and services) are maintained pursuant to Section 40 below.

- (6) Notwithstanding any provision of this Act, the Authority may, by Rules, exempt any class of providers of ICT facilities, ICT services and media services from the licensing requirement under this Act, subject to any conditions contained in the Rules, where the Authority, after holding a public hearing in relation to the exemption, is satisfied that the exemption is consistent with the provisions of this Act, the Regulations, the Directives and the Guiding Regulatory Principles for the Authority as specified under Section 22 above.

#### *OFFENCE FOR PROVISION OF CERTAIN FACILITIES AND SERVICES WITHOUT A LICENSE*

37. (1) A person who owns or operates any ICT facility or owns or provides any ICT service without a valid license as required under Sub-section 36(2) above and a licensee who knowingly breaches any condition of his license shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 10,000 for each day or part of a day during which the offence was committed.
- (2) In any proceedings for an offence under this Section it could, subject to Sub-section (3), be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (3) Where the defence provided by Sub-section (2) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of a District Court, be entitled to rely on that defence unless, within a period ending seven days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (4) No proceedings shall be instituted in respect of an offence under this Section except by or on behalf of the Authority.
- (5) Where a licensee has been convicted of an offence under Sub-section (1) the Authority may suspend this license for such period as it considers appropriate or it may revoke the license.

#### *AUTHORITY MAY GRANT LICENSES*

38. (1) Having regard to the necessity of serving the public interest, ensuring competition and prevention of monopolies in the provision of ICT facilities and ICT services, the Authority may grant licenses in accordance with the provisions of this Act.
- (2) A license granted under this Section may be granted either to all persons, to persons of a class or to a particular person or either singly or jointly for one or more categories as may be prescribed in the Rules.
- (3) No license shall be granted under this Act, if it conflicts with the provisions of this Act, the Regulations, the Directives and the Guiding Regulatory Principles for the

Authority as specified under Section 22 above, particularly in relation to ensuring fair access and promotion of competition.

- (4) A license granted under this Act may include:
  - (a) list of operations which the licensee may undertake pursuant to that license;
  - (b) such conditions as appear to the Authority to be requisite or expedient having regard to the Guiding Regulatory Principles for the Authority as specified under Section 22 above;
  - (c) conditions requiring the rendering to the Authority of a payment on the grant of the license or payments during the currency of the license or both of such amount or amounts as may be determined by or under the license;
  - (d) conditions requiring any licensee comply with any Rules as the Authority may make from time to time under this Act;
  - (e) conditions to which the licensee is subject, including but not limited to pricing, service technical standards, universal service provision, infrastructure sharing, interconnection and frequency spectrum utilisation, programming; and
  - (f) conditions requiring any licensee to furnish to the Authority, in such manner and at such times as it may reasonably require, such documents, accounts, estimates, returns or other information it may require for the purpose of exercising its functions under this Act.
- (5) The Authority may notify, by Rules, from time to time one or more schemes or plans for licensing containing such details as:
  - (a) eligibility conditions, including ownership, for issue of licenses;
  - (b) scope of licenses, facilities and services to be provided;
  - (c) cross-media restrictions having regard to accumulation of interest;
  - (d) restrictions or otherwise on the number of licenses or extent of accumulation of interest in such licenses by a person;
  - (e) renewal, revocation or suspension of licenses;
  - (f) the conditions subject to which a license may be transferred; and
  - (g) such other conditions as may be considered necessary from time to time.
- (6) A license granted under this Section shall be published in such manner as the Authority considers appropriate for bringing it to the attention of the persons for whose benefit it will ensure and to the general public.
- (7) A copy of every license granted under this Act shall be sent to the Ministry.

*PROCEDURE FOR THE GRANT AND RENEWAL OF A LICENSE*

39. (1) Except where provided otherwise in this Act, a person who wishes to apply for a license or the renewal of a license under this Act shall, in accordance with a procedure determined in the Rules by the Authority submit an application to the Authority for consideration by the Authority, and the application shall be in the prescribed form and accompanied by such fees as may be determined by the Authority in the Rules.
- (2) The Authority shall where necessary, before granting a license under this Section, amongst others take into account the following matters:
- (a) whether the applicant possesses the technical qualification necessary to fully perform the obligations attached to the license for which the applicant is applying;
  - (b) whether the applicant is a fit and proper person to be granted a license;
  - (c) whether the Guiding Regulatory Principles for the Authority as specified under Section 22 above be effectively implemented;
  - (d) whether the interests of subscribers, purchasers, and other users of ICT facilities or ICT services will be protected;
  - (e) whether competition among providers of ICT facilities and of ICT services will be promoted;
  - (f) whether research, development and introduction of new ICT facilities and ICT services will be promoted;
  - (g) whether foreign and domestic investors will be encouraged to invest in the ICT and media industry; and
  - (h) whether the public interests and the security interests of Bhutan will be safely guarded.
- (3) In determining for the purposes of this Section whether a person is a fit and proper person, regard shall be had to all relevant circumstances, including that person's:
- (a) honesty, integrity and reputation;
  - (b) competence and capability; and
  - (c) financial soundness.
- (4) The Authority shall provide reasonable opportunity to any interested person to present his views to the Authority on the application under Sub-section (1) and shall take into consideration such views in making the final determination for the purposes of this Section.

### *DURATION OF LICENSE*

40. (1) A license granted under this Act shall be for the period specified in the license or generally specified in the Rules.
- (2) However, a license:
- (a) for an ICT facility license shall not be granted for a period longer than twenty-five years;
  - (b) for an ICT service, including media service, shall not be granted for a period longer than ten years;
  - (c) may be renewed in accordance with the provisions of this Act; and
  - (d) may be suspended or revoked in accordance with the provisions of this Act.

### *LICENSE FEES*

41. (1) A license granted under this Act shall be subject to the prescribed license fees which shall be determined and specified in the Rules made by the Authority.
- (2) The license fees referred to in Sub-section (1) shall be payable directly by the applicant to the Authority prior to actual grant of the requested license.

### *RENEWAL OF LICENSE*

42. (1) Where an application for renewal of a license under Section 39 above is made, the Authority may refuse to renew that license if the licensee is or has engaged in conduct that materially contravenes or contravened this Act, any Regulations, any Directives or any Rules made under this Act or any condition of his original license.
- (2) Where the Authority has reasonable grounds for not renewing a license under Sub-section (1), it shall inform the licensee by written notice as soon as practicable of its intention not to renew the license.
- (3) A licensee referred to under Sub-section (2) shall be given thirty days to make written representations to the Authority in respect of the refusal.
- (4) The Authority shall consider any written representations made under Sub-section (3) and shall inform the licensee within fifteen days of the receipt of the submission, of its decision on the matter.
- (5) The licensee, if aggrieved by the decision under Sub-section (3), may appeal against such decision of the Authority to a District Court within thirty days of the receipt of the information under Sub-section (4).



### *MODIFICATION OF LICENSE*

43. (1) A license granted under this Act may be modified in part or whole, including any terms and/or conditions therein, where the Authority and the licensee, by agreement in writing, agree to modify the license.
- (2) Notwithstanding the provisions of Sub-section (1) and subject to any special conditions concerning modification in the relevant license, the Authority may, on the recommendation of the Minister and without the agreement of the licensee modify a license for reasons of security of Bhutan.
- (3) Where the Authority, on the recommendation of the Minister, considers that a license should be modified for reasons of security of Bhutan, the Authority shall give to the licensee a written notice that:
- (a) sets out the proposed modification;
  - (b) states the reasons for the proposed amendment; and
  - (c) invites the licensee to show within thirty days why the license should not be so modified.
- (4) The Authority may modify the license if, after considering and having regard to all representations made within thirty days, the Authority considers the license should be modified in:
- (a) the manner set out in the notice; or
  - (b) some other manner consistent with the representations.
- (5) The licensee, if aggrieved by the decision under Sub-section (4), may appeal against such decision of the Authority to a District Court within thirty days of the receipt of the information under Sub-section (4).

### *TRANSFER OF LICENSE*

44. (1) A person shall be permitted to transfer a license granted under this Act, or any rights thereunder where prior written approval of the Authority has been obtained; and the transfer shall be deemed to be a license issued by the Authority under this Act.
- (2) The Authority may approve an application for the transfer of a license under Sub-section (1) where the Authority is satisfied that the proposed transferee meets all the requirements of this Act, including those that are specified under Sub-section 39(2) above and will be able to undertake the obligations imposed by this Act or by the license.
- (3) The Authority shall, before approving the transfer of a license, publish by notice the particulars of the proposed transfer.

- (4) Any purported transfer which does not comply with the terms of this Section shall be invalid and of no legal effect whatsoever. In the event of any such transfer taking place, whether *de jure* or *de facto*, the Authority shall have the power, as soon as it comes to the notice of the Authority, to forthwith revoke the license.
- (5) Any person who is involved in effecting any purported transfer of a license other than in accordance with the terms of this Section shall be guilty of an offence and shall be liable to an imprisonment term of one month to one year or an equivalent *Thrimthue* or to both.
- (6) The Authority may, at any time, carry out such enquiries and/or investigations as it may deem necessary where it suspects that there has been a transfer, whether *de jure* or *de facto*, of a license contrary to the provisions of this Section. In exercising this power, the Authority may require any person to answer any questions put to him by the Authority, and it may also enter upon and search premises where it reasonably believes that evidence relating to any transfer may be present.

#### *OBLIGATIONS OF LICENSEES*

45. (1) The Authority may, from time to time, determine by Rules such obligations, conditions, restrictions, tariffs, and rates subject to which the licensee shall provide his facilities or services, as the case may be.
- (2) Without prejudice to the foregoing provision, every ICT facility provider and ICT service provider shall wherever required or applicable:
  - (a) commence operation of his service within such period as may be specified by the Authority;
  - (b) maintain such documentary records as may be specified by the Rules;
  - (c) allow inspection of such facilities and such documentary records as may be specified by the Authority or by any person authorised by the Authority;
  - (d) provide such services to give effect to universal service obligations as may be prescribed;
  - (e) provide such life saving services as may be prescribed;
  - (f) provide service to any person willing to pay on demand (within a reasonable period of time) and on a non-discriminatory basis;
  - (g) follow the codes and standards laid down and specified by the Authority;
  - (h) display his license at a conspicuous place on his principal premises;
  - (i) not show undue preference to, or exercise undue discrimination in any manner or on any ground, against any person or group of persons, as respects any service provided, connection made or permission given in pursuance of such conditions as are mentioned in the foregoing paragraphs (whether in respect of the charges or other terms or conditions applied or otherwise); and

- (j) publish, in such manner and at such times and such circumstances as are specified in the license, a notice specifying the method that is to be adopted for determining, the charges and other terms and conditions that are to be applicable to such services so provided.
- (3) No provider of ICT facility or ICT service, shall, without the prior approval of the Authority, give effect to any agreement or arrangement, whether oral or written, with another provider of ICT facility or ICT service respecting the:
  - (a) interchange of their respective ICT facilities and ICT services;
  - (b) management or operation of either or both of their ICT facilities or ICT services or any other ICT facilities or ICT services with which either or both are connected; and
  - (c) apportionment of rates or revenues between the providers.
- (4) No provider of ICT facility or ICT service shall claim any limitation of its liability for any offence under this Act, unless such limitation has been *a priori* authorized or prescribed by the Authority.
- (5) The Authority may call for any information from the licensee including information necessary for ensuring transparency or for ascertaining the true ownership of the license or licensee.
- (6) The Authority or any officer authorised by the Authority shall have power to inspect and obtain information, wherever necessary, from all licensees.
- (7) It shall be the duty of every licensee to follow the relevant provisions of this Act, the Regulations and the Rules and to carry out appropriate decisions, orders and directions of the Authority.

#### *QUALITY OF SERVICE*

- 46. (1) ICT facility providers and ICT service providers shall make reasonable endeavours to ensure that their ICT facilities and ICT services are:
  - (a) reliable;
  - (b) provided with due care and professional skills; and
  - (c) rendered in accordance with the standards reasonably expected of a competent provider of those ICT facilities and ICT services.
- (2) A complaint may be made to the Authority by any person who is dissatisfied with the facilities or services provided to him by an ICT facility provider or ICT service provider or who claims to be adversely affected by the actions of an ICT facility provider or ICT service provider.

- (3) The Authority, may prescribe quality standards for the provision of ICT facilities and ICT services in relation to all ICT facility providers and ICT service providers.
- (4) The Authority shall make Rules establishing procedures relating to the refusal, disconnection or interruption of ICT facilities or ICT services and the administration and resolution of subscriber complaints, without limitation, including requirements for and the determinations relating to the payments of the costs of proceedings, procedures for the resolution of subscriber complaints, the payment of compensation to subscriber and the upper limits of the licensee's liability, which shall be binding upon licensees.
- (5) For removal of any doubt, it is clarified that the provisions of this Section apply to media services, including broadcasting services.

*NON-DISCRIMINATION AND CONTINUITY OF SUPPLY*

47. (1) By giving reasons in writing, the providers of an ICT facility or ICT service may, subject to the Rules and procedures established under Sub-section 46(4) above:
  - (a) refuse to provide an ICT facility or an ICT service to any person; or
  - (b) discontinue or interrupt the provision of such an ICT service or ICT facility to a subscriber;only on grounds which are reasonable and non-discriminatory.
- (2) A complaint may be made, within thirty days of the decision under Sub-section (1), to the Authority by the person who is dissatisfied with the decision of the ICT facility provider or ICT service provider.

*ENFORCEMENT OF LICENSES AND LICENSE CONDITIONS*

48. (1) Subject to Section 49 below, where it appears to the Authority that:
  - (a) a licensee is contravening or has contravened any of the conditions or other terms of his license; and
  - (b) it is requisite that an order be made;The Authority shall by an order make such provision, including the payment of a fine or fines, as appears to it requisite for the purpose of securing compliance with that condition or term.
- (2) An order under Sub-section (1):
  - (a) shall require the licensee (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;

- (b) may require the licensee (according to the circumstances of the case) to pay such fine or fines, as are specified in the order until such time as the licensee has fully remedied the breach of license giving rise to the order;
  - (c) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (d) may be withdrawn or suspended at any time by the Authority.
- (3) In this Section and Sections 49 and 50 below, “contravention”, in relation to any condition or term of a license, includes any failure to comply with that condition or term and “contravene” shall be construed accordingly.

*PROCEDURAL REQUIREMENTS*

49. (1) Before making an order under Section 48 above, the Authority shall give notice:
- (a) stating that it proposes to make the order and setting out its effect;
  - (b) stating the relevant condition or term of the license and the acts or omissions which, in its opinion, constitute or would constitute contravention; and
  - (c) specifying the time (not being less than thirty days from the date of publication of the notice) within which representations to the proposed order may be made, and shall consider any representations which are duly made and not withdrawn.
- (2) After considering the representation, the Authority may:
- (a) pass/confirm an order under Section 48 above, or
  - (b) propose modifications to the order contemplated to be passed under Section 48 above.
- (3) Before passing an order with modifications, the Authority shall allow representations to be submitted by the licensee and shall consider them. Upon considering the representations, the Authority shall pass an appropriate order.
- (4) At any stage between the issuance of the notice under Sub-section (1) and passing of the appropriate order under Sub-section (3) the licensee may express his consent to such order proposed to be passed by the Authority. The consent will amount to licensee’s express waiver of a right of representation before the Authority and/or a right of appeal before the court and entitles the Authority to pass an order accordingly.
- (5) As soon as practicable after an order is made, the Authority shall:
- (a) serve a copy of the order on the licensee; and
  - (b) publish the order in such manner as it considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.

- (6) The licensee, if aggrieved by an order passed by the authority under Sub-section 2(a) or an appropriate order passed under Sub-section (3) shall have the right to appeal to a District Court within thirty days of the receipt of the order.
- (7) Before revoking an order, the Authority shall give notice:
  - (a) stating that it proposes to revoke the order and setting out its effect; and
  - (b) specifying the time (not being less than thirty days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made.
- (8) Any notice under Sub-sections (1) or (7) shall be given by sending a copy of the notice to the licensee and by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by it.

#### *VALIDITY AND EFFECT OF ORDERS*

50. (1) If the licensee is aggrieved by an order and desires to question its validity on the ground that the making of it was not within the powers of Section 48 or 49 above or that any of the requirements of Section 49 above have not been complied with in relation to it, he may within thirty days from the date of service on him of a copy of the order make an appeal to a District Court.
- (2) On any such appeal the Court may, if satisfied that the making of the order was not within the powers of Section 48 or 49 above or that the interests of the licensee have been substantially prejudiced by a failure to comply with the requirements of Section 49 above, quash the order or any provision of the order.
- (3) It shall be the obligation of a licensee to be bound by and comply with the order till such time it remains in force.

#### *SUSPENSION OR REVOCATION OF LICENSE*

51. (1) The Authority may suspend or revoke a license granted under this Act where the:
  - (a) licensee contravenes the Act, the Regulations or Rules;
  - (b) licensee is in breach, or is about to breach, or has breached, any of the conditions of his license;
  - (c) licensee is in default of payment of any license fee prescribed;
  - (d) suspension or revocation is necessary in the interest of national security or in the public interest;
  - (e) financial circumstances of the licensee have deteriorated, or is likely to deteriorate, to such an extent that he may not be able to fulfil his obligations under the license, or that his ICT facility or ICT service would not be financially viable any longer; or

- (f) licensee, or any of his associates, by continuing to operate their ICT facility or service, posed a threat, or is likely to pose an imminent threat, to the public interest and/or security or integrity of Bhutan:

Provided, however, that where it is, in the opinion of the Authority, necessary to take urgent action and it is not practicable to give the notice referred to above, the Authority may dispense with this requirement and the requirement to provide the licensee with a reasonable opportunity to make representations before the license is suspended or revoked.

- (2) Where the Authority has reasonable grounds for believing that a license granted under this Act ought to be suspended or revoked, the Authority shall, before suspending or revoking the license, give the licensee a fourteen days notice in writing of its intention to do so, specifying the date and the grounds on which it proposes to suspend or revoke the license; and shall give the licensee an opportunity to:
  - (a) remedy the breach of the license or a term or condition of the license;
  - (b) submit to the Authority, within thirty days of the receipt of the notice, or such longer time as the Authority may specify a written statement of objections to the suspension or revocation of the license which the Authority shall take into account before reaching a decision.
- (3) The suspension or revocation of a license referred to in Sub-section (2) shall take effect on the date specified by the Authority in the notice referred to in that Sub-section or such other date as the Authority specifies.
- (4) Anyone aggrieved by an order of suspension or revocation of a license under this Section may prefer an appeal within thirty days of the receipt of the order to a District Court.

#### *OWNERSHIP OF ICT AND MEDIA ENTERPRISES*

- 52. (1) Every ICT and media enterprise in Bhutan shall be required to disclose to the Authority the names and addresses of the persons holding ownership shares therein. This information shall be furnished in such form and at such time as may be prescribed in Rules made by the Authority for this purpose.
- (2) All the shareholders, proprietors and directors of ICT and media enterprises in Bhutan shall be citizens of Bhutan, except where the Minister dispenses with this requirement by specifying in Regulations.
- (3) For the removal of doubts, it is hereby clarified that the requirements prescribed in this Section are in addition to any requirements laid down in the Companies Act of the Kingdom of Bhutan 2000 relating to shareholders, proprietors and directors of companies.
- (4) Any person who acts in contravention of the provisions of this Section shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 100,000.

## *PREVENTION OF MONOPOLISTIC AND OTHER SIMILAR PRACTICES*

53. (1) In order to prevent monopolies or other similar practices in the ICT and media industry, the Minister after consultation with the Ministry of Trade and Industry may, by Regulation, impose such limits on the ownership and control by one person in the ICT and media industry as it may deem appropriate. The Minister, after consultation with the Ministry of Trade and Industry may, by Regulations, also impose such limits on cross-media ownership and control of ICT and media companies, as it may deem appropriate from time to time.
- (2) Without prejudice to the generality of Sub-section (1), no person who owns or controls over twenty-five per cent of the total paid up capital of any other person engaged in the ICT and media business in Bhutan shall be entitled to apply for an appropriate license under applicable provisions of this Act. However, if the Minister, after consultation with the Ministry of Trade and Industry, is of the opinion that it is necessary for the expansion of the ICT and media industry, he may by Regulation increase the above-mentioned limit.

## *DONATION FUNDS FROM FOREIGN SOURCES*

54. (1) No person shall receive on behalf of, or for the purposes of, ICT and media enterprise any donation funds or any benefits in kind from a foreign source without the prior approval of the Minister:

Provided that no benefits by way of hospitality received by an ICT and media enterprise or its directors or employees from any foreign party shall, as long as the value of such hospitality does not exceed such reasonable amount as may be specified in Regulations made in this behalf by the Minister, be deemed to be “donation funds” or “benefits in kind” for the purposes of Sub-section (1);

Provided further that no moneys received by a broadcasting or newspaper enterprise by way of royalties or syndication fees for news, articles or features supplied by it to a foreign party, or by way of advertising revenue in respect of advertisements commissioned by a foreign party, in the normal course of business, shall be deemed to be “donation funds” or “benefits in kind” for the purposes of Sub-section (1).

- (2) The Minister may grant the approval referred to in Sub-section (1) if it is satisfied that the donation funds from a foreign source are strictly intended for the explicit and direct professional and commercial development of the ICT and media enterprise.
- (3) Where any donation funds from a foreign source are sent to an ICT and media enterprise or to any of its directors or employees without its or their prior knowledge, consent or solicitation, and the donation funds are intended for or given by the sender for the purposes of the ICT and media enterprise, that the person receiving funds shall, within seven days of the receipt thereof, report the circumstances and particulars of the donation funds received and the purposes for which the donation funds have been received to the Minister for its approval.
- (4) Where donation funds from a foreign source have been received in circumstances described in Sub-section (3), and the Minister does not approve the retention of



those funds, the person who has received the funds shall, within such time as is specified in the disapproval order by the Minister, expeditiously return them to the sender thereof or, if the sender cannot be traced, donate the funds to any charity approved by the Government.

- (5) For the purposes of Sub-section (1), “foreign source” includes the following:
  - (a) the Government of any country other than Bhutan or the agent of any such Government, whether resident in Bhutan or otherwise;
  - (b) any company, association or society incorporated or constituted outside Bhutan whether or not it has a branch office or place of business in Bhutan;
  - (c) any person who is not a citizen of Bhutan whether or not he is resident in Bhutan; or
  - (d) such other sources outside Bhutan declared in Regulations by the Minister to be a foreign source for the purposes of this Section.
- (6) For the purposes of this Section, “donation funds” shall include money, securities, movable or immovable property or any other valuable consideration whatsoever.
- (7) Any person who contravenes or fails to comply with this Section shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 500,000 or to an equivalent imprisonment term or to both and a District Court may, in addition, impose any other penalty that it may deem appropriate, including the forfeiture to the Government of any funds which are the subject of the charge.

#### *FOREIGN PARTICIPATION IN THE ICT AND MEDIA INDUSTRY*

55. (1) No foreign Government or its agent or company shall be entitled to apply for and procure a license under the provisions of this Act.
- (2) The Minister after consultation with the Ministry of Trade and Industry may, however, adopt Regulations having regard to all the circumstances, including Bhutan’s national interest, in order to entitle the Authority to issue permits to allow participation by foreign companies in the ICT and media industry under such terms and conditions as it may impose from time to time.
- (3) Any foreign company, which wishes to participate in the ICT and media industry in Bhutan under the terms of Sub-section (2), shall apply to the Authority for a permit for this purpose. The form and manner of applications shall be prescribed in Rules made by the Authority in this behalf, which shall also prescribe the fees, if any, that may be payable for such permits.
- (4) Notwithstanding anything contained in this Section, a domestic company operating within Bhutan under a license issued under this Act may enter into commercial contracts with foreign companies for the sale or purchase of equipment, consumables, hardware or programming or other software, subject to any other law which may govern such contracts and subject to any other requirements or limits prescribed by the law or by Regulations made by the Minister.

- (5) Any person who acts in breach of the provision of this Section shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 1,000,000.

*PROVISION OF UNIVERSAL SERVICE BY SPECIFIED CATEGORIES OF LICENSEES*

56. (1) The Authority may include a condition in the license of a licensee that provides an ICT facility or ICT service, requiring such licensee to provide one or more categories of universal service specified under Section 59 below, provided that such requirement shall be transparent and non-discriminatory as between licensees that provide such a specified service or facility, and is not more burdensome than is necessary for the category of universal service required to be offered.
- (2) A licensee who is required by its license to provide one or more categories of universal service to any person shall do so on such terms, including as to price and the quality of service, as may be specified in the license.

*UNIVERSAL SERVICE FUND*

57. (1) There shall be established a fund known as the Universal Service Fund, which shall be managed by the Authority in accordance with Rules made by the Authority.
- (2) The Authority may cause the Universal Service Fund to be sub-divided into one or more sub-funds for the purpose of administering or funding one or more categories of universal service.

*PURPOSE OF THE FUND*

58. (1) The Universal Service Fund shall be solely used by the Authority to compensate any ICT facility provider or ICT service provider who is required to provide universal service by virtue of Section 56 above.
- (2) The amount of compensation payable by virtue of Sub-section (1) shall be computed on cost-oriented rates in accordance with the Rules made by the Authority, and the conditions attached to the license of the ICT facility or ICT service provider and such compensation shall be paid to the relevant ICT facility provider or ICT service provider by the Authority.

*UNIVERSAL SERVICE CATEGORIES*

59. (1) The Authority may, by Rules specify:
- (a) categories of universal service that are required; and
  - (b) categories of ICT facility providers and ICT service providers that may be required to provide one or more of such required universal services.
- (2) For the purposes of Sub-section (1) the categories may include:
- (a) public voice telephony services together with free calls to emergency services and directory assistance;

- (b) Internet access together with free Internet access for schools and hospitals; and
- (c) such other ICT facility or ICT service as the Authority may specify in licenses.

*PROVISION OF UNIVERSAL SERVICE BY PARTICULAR LICENSEE*

- 60. (1) The Authority may include a condition in the license of any licensee that provides a specified ICT facility or ICT service, requiring such licensee to provide one or more categories of universal service.
- (2) A licensee so required by its license to provide one or more categories of universal service to any person shall be entitled to compensation as specified in Section 58 above.

*CONTRIBUTIONS TO THE FUND*

- 61. (1) The Authority shall include a condition in the license of each licensee that provides a specified ICT facility or ICT service, that each such licensee shall contribute to the Universal Service Fund or any one or more sub-funds of the Universal Service Fund.
- (2) The Authority may, by Rule, prescribe the time, frequency and also the quantum or method for calculating the quantum of monies to be paid into the Universal Service fund or any one or more sub-funds of the Universal Service Fund by each licensee providing a specified service or facility.

*INTERCONNECTION*

- 62. (1) Subject to the provisions of this Section, a licensee that operates an ICT facility or ICT service shall not refuse, obstruct, or in any way impede another licensee in the making of any interconnection with its ICT facility or ICT service, as the case may be, and shall, in accordance with the provisions of this Section, ensure that the interconnection provided is made at technically feasible physical points.
- (2) A licensee who wishes to make any interconnection shall make his request for interconnection in accordance with the provisions of this Section.
- (3) A request by a licensee to make any interconnection with another licensee shall be in writing.
- (4) A licensee to whom a request is made in accordance with the provisions of this Section shall, in writing, respond to the request within a period of thirty days from the date the request is made to him and, subject to Sub-section (5), provide the interconnection service in a reasonable time.
- (5) A request by a licensee to make any interconnection with another licensee shall be refused only on reasonable grounds, which grounds shall be in writing.

- (6) Any interconnection provided by a licensee pursuant to the provisions of this Section shall be provided at reasonable rates, terms, and conditions, which are not less favourable than those, provided to any:
  - (a) other part of the licensee's own business;
  - (b) non-affiliated supplier; or
  - (c) subsidiary or affiliate of the licensee.
- (7) Without prejudice to the generality of Sub-section (6), the Authority shall prescribe the cost and pricing, technical standards and other guidelines on which the reasonableness of the rates, terms, and conditions of the interconnections will be determined.

#### *INTERCONNECTION AGREEMENTS*

63. (1) Interconnection agreements between licensees shall be in writing, and copies of each agreement shall be submitted to the Authority within ten days of that agreement having been finalised and signed.
- (2) Copies of interconnection agreements between licensees shall be kept in the register maintained by the Authority.
- (3) The register referred to in Sub-section (2) shall be open to public inspection during normal working hours.
- (4) The Authority shall adopt Rules, containing criteria and procedures to be followed by the licensees when negotiating interconnection agreements.
- (5) Where parties cannot agree upon interconnection conditions and rates, the Authority may impose binding interconnection conditions and rates.

#### *PRE-CONTRACT DISPUTES*

64. (1) Where, during negotiations for the provision of interconnection there is any dispute between the parties (hereinafter in this Section referred to as the "pre-contract dispute") as to the terms and conditions of such provision, either of them may refer the dispute to the Authority for resolution.
- (2) The Authority may make Rules applicable to the resolution of pre-contract disputes by means of arbitration or other dispute resolution mechanisms.
- (3) A decision of the Authority in relation to any pre-contract dispute shall be consistent with:
  - (a) any agreement reached between the parties as to matters that are not in dispute; and
  - (b) the terms and conditions set out in a reference interconnection offer or any part thereof that is in effect with respect to the interconnection provider.

### *COST OF INTERCONNECTION*

65. (1) The cost of making any interconnection to the ICT facility or ICT service, as the case may be, of another licensee shall be borne by the licensee requesting the interconnection.
- (2) The cost referred to in Sub-section (1) shall be based on cost-oriented rates that are reasonable and arrived at in a transparent manner having regard to economic feasibility, and shall be sufficiently unbundled so that the supplier of the interconnection facility or service does not have to pay for facility or service components that are not required for the interconnection facility or service to be provided.

### *INFRASTRUCTURE SHARING*

66. The provisions of Sections 62 to 65 above inclusive shall, with necessary amendment, apply to such infrastructure sharing as the Authority may prescribe in the Rules.

### *NUMBERING*

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

### *ICT APPARATUS STANDARDS*

68. (1) Subject to the provisions of Section 10 above, the Authority may by Rules establish or adopt appropriate standards for apparatus, including radiocommunication apparatus, prescribing:
- (a) types of ICT apparatus, the use of which shall not require such approval; and
  - (b) circumstances in which the use of ICT apparatus shall not require such approval.
- (2) Any such standard shall be aimed at:
- (a) protecting the integrity of the ICT facilities;

- (b) ensuring the proper functioning of apparatus connected to ICT facilities; or
  - (c) avoiding radio or other interference with ICT facilities.
- (3) Any Rule made under Sub-section (1) may, for the purposes of this Section, incorporate any technical standard, without publishing the text thereof, merely by reference to the number, title and year of issue thereof or to other particulars by which it may be identified sufficiently.
- (4) Licensee shall, as a condition of his license, connect only apparatus meeting such standards to ICT facilities.
- (5) It shall be a condition of ICT facility use that subscribers connect it to only the apparatus that meets such standards. Failure to comply with such standards is a reasonable ground to refuse to provide, to discontinue or to interrupt the provision of the relevant ICT facility or ICT service under Section 47 above.

*CERTAIN AGREEMENTS TO BE REGISTERED WITH THE AUTHORITY*

69. Every agreement entered into or made by any ICT facility provider, ICT service provider and media service provider falling under one or more of the following categories shall, within thirty days from the making of such agreement, be registered with the Authority, including:
- (a) Shareholders or promoters agreements;
  - (b) Change of ownership or control agreements, including those of their parent bodies in Bhutan or abroad, if applicable;
  - (c) Interconnectivity agreements; and
  - (d) Such other agreements as may be specified by Rules by the Authority.

*REGISTER OF REGULATIONS, DIRECTIVES, RULES, LICENSES, ORDERS, ETC.*

70. (1) Subject to any direction given under Sub-section (2), the Authority shall keep a register of Regulations, Directives, Rules, licenses and permits granted, codes of practice and sets of guidelines made, orders made, directions and notices issued, agreements registered, etc. at its premises and in such form as it may determine:

Provided however that if it appears to the Authority that the entry of any information in the register would be against the commercial interests of any person, it shall not enter that information in the register.

- (2) In addition to the register under Sub-section (1), the Authority may maintain separate registers for different purposes under the provisions of this Act.
- (3) All registers shall be kept up to date and be open to public inspection during normal working hours.

- (4) Any person may, on payment of such fee as may be prescribed by an order so made, request the Authority to supply to him a copy of or extract from any part of the register, certified by the Authority to be a true copy or extract.

#### *ENTRY UPON AND CONSTRUCTION OF ICT APPARATUS ACROSS ANY LAND*

71. (1) An ICT facility or ICT service provider may, for the purposes of providing its service, enter upon any land, including any street, road, footpath or land reserved for public purposes and construct and maintain ICT apparatus upon, under, over, along or across any land, street, road, footpath or waterway and alter, remove or replace the same, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.
- (2) In taking any action in terms of Sub-section (1), due regard must be had to the environmental policy of the Government and any relevant laws of the country.

#### *COMPULSORY PURCHASE OF LAND*

72. (1) Subject to Sub-section (2), the Minister may authorise an ICT facility provider to purchase compulsorily any land in Bhutan which is required by the ICT facility provider for, or in connection with, the establishment or operating of an ICT facility provider's system or as to which it can reasonably be foreseen that it will be so required; and the Land Act shall apply to any compulsory purchase under this Section.
- (2) No order shall be made authorising a compulsory purchase under this Section except with the consent of the Authority.
- (3) The power of purchasing land compulsorily under this Section includes power to acquire an easement.
- (4) Where an ICT facility provider has acquired any land under this Section, he shall not dispose of that land or of any interest or right in or over it except with the consent of the Authority.

#### *UNDERGROUND PIPES FOR ICT FACILITY PURPOSES*

73. (1) If any local authority and an ICT facility provider agrees that in a particular area electricity supply and the ICT facilities of that ICT facility provider shall be provided by means of underground cable, that local authority may on any premises within the said area, when installing such cable for an underground electricity supply line on the said premises, in accordance with the requirements of the provider provide a conduit, pipe or other facility for the installation of an underground ICT facility line from a point of connection on the street boundary to a building on those premises.
- (2) A copy of the agreement, including appropriate maps of the underground pipes or cables, referred to under Sub-section (1), shall be filed with the Authority within a period of fifteen days of the conclusion of the agreement.
- (3) The costs of the provision of the said conduit, pipe or other facility shall be payable to the local authority in question and shall for the purpose of any law be deemed to be

fees payable by the owner of the premises in question to the local authority in respect of the installation of the electricity supply line.

*PIPES, ETC. UNDER STREETS*

74. (1) An ICT facility provider may, after reasonable notice in writing to the local authority or person owning or having the care and maintenance of any street, road or footpath, construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for ICT apparatus under any such street, road or footpath, and may alter, remove and replace the same and may for such purposes break or open up any street, road or footpath and alter the position thereunder of any pipe (not being a sewer drain) for the supply of water, gas or electricity:

Provided that the local authority or person to whom any such pipe belongs or by whom it is used shall be entitled at all times, while any work in connection with the alteration in the position of that pipe is in progress, to supervise that work, and the provider shall pay all reasonable expenses incurred by any such local authority or person in connection with any alteration or removal under this Section or any supervision of work relating to such alteration;

Provided further that in case of damage caused during such alteration, removal and replacement, the concerned ICT facility provider shall be liable to pay an appropriate compensation.

- (2) The ICT facility provider shall provide to the Authority as expeditiously as possible all the maps and plans as referred to under Sub-section (1) and the Authority may supply their copies to any interested person, subject to payment of such fee as may be prescribed by an order of the Authority.

*REMOVAL OF ICT APPARATUS*

75. (1) If an ICT facility provider finds it necessary to move any ICT apparatus constructed upon, in, over, along, across or under any land, street, road, footpath or waterway, owing to any alteration of alignment or level or any other work on the part of any public authority or person, the cost of the alteration or removal shall be borne by that local authority or person.
- (2) Where any ICT apparatus constructed by an ICT facility provider passes over any private property and interferes with any building about to be erected on that property, the ICT facility provider shall, on receiving satisfactory proof that a building is actually to be erected, cause the apparatus to be deviated or altered in such manner as will remove all obstacles to building operations.
- (3) Notice that any such deviation or alteration as is contemplated in Sub-section (2) is required shall be given to the ICT facility provider in writing not less than thirty days before the alteration or deviation is to be effected.
- (4) If any deviation or alteration of any ICT apparatus constructed by an ICT facility provider and passing over any private property is desired on any ground other than those contemplated in Sub-section (2), thirty days' notice thereof in writing shall be served on the ICT facility provider, who shall decide whether or not the deviation or



alteration is possible, necessary or expedient, and if the ICT facility provider agrees to make the deviation or alteration, the cost thereof shall be borne by the person at whose request the deviation or alteration is effected:

Provided that in any case where in the opinion of the ICT facility provider it is justified, the ICT facility provider may bear the whole or any part of the said cost.

#### *FENCES*

76. (1) If any fence erected or to be erected on land over which any ICT apparatus is constructed or is to be constructed by an ICT facility provider, renders or would render it impossible or inconvenient for the ICT facility provider to obtain access to that land the ICT facility provider may at its own expense erect and maintain gates in that fence and shall provide duplicate keys thereof, one of which shall be handed to the owner or occupier of the land.
- (2) Any person intending to erect any such fence shall give not less than forty-five days' notice in writing to the ICT facility provider of his intention so to do.

#### *TREES OBSTRUCTING ICT APPARATUS*

77. (1) Any tree or vegetation which in the reasonable opinion of an ICT facility provider obstructs or interferes with the working or maintenance of any of its ICT apparatus, whether growing upon Government-owned land or upon any road or street or upon private land, shall, after reasonable notice to the owner or occupier of the land, be cut down or trimmed in accordance with its requirements by the authority having the care and the management of such Government-owned land, road or street or by the owner or occupier of such private land, as the case may be, at the expense of the ICT facility provider, and, in the event of any failure to comply with any such notice, the ICT facility provider may itself cause the said tree or vegetation to be cut down or trimmed as it may deem necessary:

Provided that where the provision of ICT facilities is actually interfered with or endangered by any such tree or vegetation, the provider may cause the work which is immediately necessary for the removal of the interference or danger to be undertaken without any such notice.

- (2) In taking action in terms of Sub-section (1), due regard must be had to the environmental policy of the Government and any relevant laws of the country.

#### *HEIGHT OR DEPTH OF ICT APPARATUS*

78. (1) Aerial ICT apparatus along any public or private street, road, footpath or land shall be at the height above the surface of the ground as prescribed by the Rules.
- (2) Underground ICT apparatus shall be placed by an ICT facility provider at the depth below the surface of the ground as prescribed by the Rules.
- (3) If the owner of any private land proves to the satisfaction of an ICT facility provider that he is obstructed in the free use of his land by reason of the insufficient height or depth of any ICT apparatus constructed by that ICT facility provider, the ICT facility

provider shall, subject to the provisions of Sections 74 and 75 above, take such steps as it may deem necessary for giving relief to that owner.

- (4) In taking any action in terms of this Section, due regard must be had to the environmental policy of the Government and any relevant laws of the country.

#### *ELECTRICAL WORKS*

79. (1) Any person who constructs, equips or carries on any works for the supply of light, heat or power by means of electricity, shall conform to the requirements of an ICT facility provider for the prevention of any of its ICT apparatus or works being injuriously affected thereby, and shall, before commencing the construction of any such works, seek the prior approval of the Authority and give one month's notice in writing to the ICT facility provider of his intention to commence the construction, and shall furnish the ICT facility provider with a plan of the proposed works, together with particulars showing the manner and position in which the same are intended to be constructed, executed and carried on and any such further information relative to the proposed works as the ICT facility provider may require.
- (2) If it appears to the ICT facility provider that the construction, equipment or operation of such works is likely to affect injuriously any of its ICT apparatus or works, or if any of such ICT apparatus or works are injuriously affected by the construction, equipment or operation of any such works, the ICT facility provider shall give reasonable notice of its requirements to the person concerned, and any person who after receiving any such notice, proceeds with or causes to be proceeded with any such construction, equipment or operation in contravention of the said requirements, shall be liable to the ICT facility provider in damages, recoverable by action in a competent court, of an amount equivalent to average daily returns, as determined by the court, for every day on which the construction, equipment or operation is proceeded with or the injurious effect continues, and shall in addition make good any damage or expense suffered by the ICT facility provider by reason of the failure to comply with the ICT facility provider's requirements.

### **CHAPTER FIVE: PROVISIONS RELATING TO RADIOCOMMUNICATIONS**

#### *CONTROL, MANAGEMENT AND REGULATION OF RADIO FREQUENCY SPECTRUM*

80. (1) The Authority is vested with the control, planning, administration, management, regulation and licensing of the radio frequency spectrum.
- (2) The Authority may make, modify, replace, repeal and enforce radio Rules (in this Act referred to as the "National Radio Rules"), including any National Radio Rules referred to in Sub-section (3), for the purpose of carrying out its mandate under Sub-section (1).
- (3) Without limiting the Authority's powers under Sub-section (2), the National Radio Rules made under this Section may include provisions that:
  - (a) prescribe what is to be done or not to be done in connection with the use of any radiocommunication station or radiocommunication apparatus, and, in

particular, require the use of any such station or apparatus to cease on the demand by any such persons as may be prescribed by or under the National Radio Rules;

- (b) impose on the person to whom an ICT facility license relating to radiocommunication is issued with respect to any radiocommunication station or radiocommunication apparatus, obligations (i) permitting and facilitating the inspection of the station or apparatus, (ii) the condition in which the station or apparatus is to be kept, (iii) in the case of a station or apparatus for the establishment, installation or use of which an ICT facility license relating to radiocommunication is necessary, and (iv) the production of the license, or of such other evidence of the licensing of the station or apparatus as may be prescribed by the National Radio Rules;
  - (c) where sums are or may become due from the person to whom an ICT facility license relating to radiocommunication is issued after the issue or renewal thereof, require that person to keep and produce such accounts and records as may be specified in the National Radio Rules; and
  - (d) require the person to whom an ICT license relating to radiocommunication authorising the establishment or use of a radiocommunication station has been issued to exhibit at the stations such notices as may be specified in the National Radio Rules.
- (4) The National Radio Rules made under this Section:
- (a) may make different provision for different categories of radiocommunication users, radio frequencies, frequency bands, licenses, permits, authorisations or certificates, and areas;
  - (b) may confer exemptions from provisions of the National Radio Rules or provide for such exemptions to be conferred by the Authority in particular cases;
  - (c) may provide for any sums paid by way of charges, fees, rates, royalties or otherwise to be refunded, in whole or in part, in such cases as may be specified in the National Radio Rules or in such cases as the Authority thinks fit; and
  - (d) may include any other provisions as the Authority thinks fit:

Provided that nothing in any such National Radio Rules shall require any person to concede any form of right of entry into private premises for the purpose of permitting or facilitating the inspection of any apparatus not designed or adapted for emission (as opposed to reception).

- (5) The National Radio Rules shall apply to all types of radiocommunications, radiocommunication apparatus and radiocommunication stations operated in or from Bhutan, its air space or outer space.
- (6) Any person who contravenes any National Radio Rules made under this Section, or causes or permits any radiocommunication station or radiocommunication apparatus to be used in contravention of any such National Radio Rules, shall be guilty of an

offence and shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.

### *RADIO FREQUENCY BAND PLANS*

81. (1) The Authority may from time to time prepare a Frequency Band Plan in respect of any part of the radio frequency spectrum.
- (2) A Frequency Band Plan shall:
- (a) define how the radio frequency spectrum shall be used;
  - (b) aim at ensuring that the radio frequency spectrum is utilised and managed in an orderly, efficient, economic and effective manner;
  - (c) aim at reducing congestion in the use of radio frequencies and at protecting radio frequency users from any interference or other inability to make use of the radio frequencies assigned to them;
  - (d) avoid obstacles to the introduction of new technologies, facilities and services;
  - (e) aim at providing opportunities for the introduction of the widest range of ICT services and the maximum number of users thereof as is practically feasible.
- (3) In preparing a Frequency Band Plan, the Authority:
- (a) shall have due regard to the reports of experts in the field of radio frequency spectrum or radio frequency band planning and to internationally accepted methods for preparing such Radio Frequency Plans;
  - (b) shall take into account existing uses of radio frequency spectrum and any Frequency Band Plans in existence or in the course of preparation.
- (4) The Authority shall give public notice of its intention to prepare a Frequency Band Plan and in such notice invite interested parties to submit their written representations to the Authority within such period as may be specified in such notice.
- (5) The Authority shall, after the period referred to in Sub-section (4) has passed, hold hearing in respect of the proposed Frequency Band Plan.
- (6) After the hearing and after due consideration of any representations received pursuant to the notice mentioned in Sub-section (4) or tendered at the hearing, the Authority shall adopt the Frequency Band Plan in question, with or without amendment, and cause the Frequency Band Plan to be published.
- (7) Any Frequency Band Plan, or any revision of it, adopted under this Section, shall be issued as the Rules which shall be kept in the register at the offices of the Authority.
- (8) The Authority may at any time and from time to time review a Frequency Band Plan or any section of it, adopted under this Section and Sub-sections (2) to (7) shall apply, with the necessary changes, in relation to any such review and revision.

- (9) The assignment of a radio frequency under an ICT facility license or permit relating to radiocommunication does not in any way confer an exclusive right or a monopoly of the use of such frequency, nor shall such a license or permit be construed as conferring any right of continued tenure in respect of such frequency.
- (10) The assignment, allotment or allocation by the Authority of a radio frequency to any particular ICT facility or ICT service relating to radiocommunication in the Frequency Band Plan shall not confer an exclusive right to use that frequency by that facility or service.
- (11) Issuance of an ICT facility or ICT service license or permit relating to radiocommunication, does not imply that the licensee or the person holding the permit is authorized to do anything that infringes any copyright which may exist in the matter transmitted by his radiocommunication station or radiocommunication apparatus. Neither the Authority nor the Government shall be held liable for any act with which an infringement of copyright has been committed by the licensee or the holder of the permit issued under this Act or the National Radio Rules or Rules.

#### *RADIOCOMMUNICATION LICENSES*

82. (1) No person shall establish or use any radiocommunication station or install or use any radiocommunication apparatus without a valid license in that behalf granted by the Authority in accordance with the applicable provisions of Chapter Four of this Act.
- (2) Notwithstanding the provisions of Section 37 above, any person who establishes or uses any station for radiocommunication or installs or uses any apparatus for radiocommunication except under and in accordance with such a license shall be guilty of an offence punishable with penalties in accordance with Section 197 below.
- (3) The Authority, by National Radio Rules, may specify the class of radiocommunication stations or radiocommunication apparatus that is exempted from the requirement of a license or permit under Sub-section (1) and may reserve certain radio frequency bands for community radiocommunication services.

#### *BIDDING FOR LICENSES*

83. Having regard to the desirability of promoting the optimal use of the radio frequency spectrum, the Authority may provide in the National Radio Rules that, in such cases as may be specified in or determined by it under the National Radio Rules, applications for the grant of ICT facility licenses relating to radiocommunication may be made in accordance with a procedure which involves the making by the applicant of a bid specifying an amount which he is willing to pay to the Authority in respect of the license.

#### *AMATEUR RADIOCOMMUNICATION PROVIDER'S PERMIT*

84. The Authority may issue, modify and revoke amateur radiocommunication station provider's permits in accordance with the provisions of the National Radio Rules and may require such permit holders to pay fees as prescribed in the National Radio Rules.

*CONTROL OF POSSESSION OF RADIOCOMMUNICATION APPARATUS*

85. (1) No person shall have in his possession any radiocommunication apparatus designed or adapted for emission (as opposed to reception) unless he is in possession of:
- (a) a possession permit issued by the Authority in accordance with the National Radio Rules;
  - (b) a permit issued by the Authority under Section 84 above; or
  - (c) an ICT facility license relating to radiocommunication issued under the applicable provisions of Chapter Four of this Act.
- (2) Possession permits referred to in Sub-section (1) shall be issued or refused by the Authority in accordance with the provisions of the National Radio Rules.
- (3) The procedures in relation to applications for a possession permit referred to in Sub-section (1) above shall be as prescribed in the National Radio Rules.
- (4) Where any radiocommunication apparatus is found in the possession of any person in contravention of the provisions of this Section, the Authority may:
- (a) seal or alter such apparatus or any part thereof in order to prevent the use of that radiocommunication apparatus for the purpose of transmission or reception, and issue to such person a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not during such period used for such purpose;
  - (b) seize such apparatus, whether or not it is sealed as contemplated in paragraph (a), for disposal in terms of Sub-section (5).
- (5) Radiocommunication apparatus seized under Sub-section (4)(b) shall be held by the Authority until:
- (a) its possession is authorised in terms of Sub-section (1) or (4)(a); or
  - (b) it is dealt with by a court of competent jurisdiction.

*PROVISIONS REGARDING HARMFUL INTERFERENCE, ETC.*

86. (1) The Authority may make provision in the National Radio Rules for both or either of the following purposes:
- (a) for prescribing the requirements to be complied with in the case of any apparatus to which this Section applies if the apparatus is to be used;
  - (b) for prescribing the requirements to be complied with in the case of any apparatus to which this Section applies if the apparatus is to be sold otherwise than for export, or offered or advertised for sale otherwise than for export, or let on hire or offered or advertised for letting on hire, by any person who in the course of business manufactures, assembles or imports such apparatus.

- (2) The said requirements shall be such as the Authority thinks fit for the purpose of ensuring that the use of the apparatus does not cause harmful interference with radiocommunications, and may in particular include:
  - (a) requirements as to the maximum intensity of electro-magnetic energy of any specified radio frequencies which may be radiated in any direction from the apparatus while it is being used; and
  - (b) in the case of an apparatus the power for which is supplied from electric lines, requirements as to the maximum electro-magnetic energy of any specified frequencies which may be injected into those lines by the apparatus, and, in so far as appears to the Authority necessary or expedient in the case of the National Radio Rules in question, different requirements may be prescribed for different circumstances and in relation to different classes or descriptions of apparatus, different districts or places and different times of use.
- (3) The apparatus to which this Section applies shall be such apparatus as may be specified in the National Radio Rules, being apparatus generating, or designed to generate, or likely to generate fortuitously, electro-magnetic energy at radio frequencies of not more than three million megacycles per second, including radiocommunication apparatus.

*ENFORCEMENT OF RULES AS TO USE OF APPARATUS*

87. (1) If the Authority is of the opinion that:
- (a) any apparatus does not comply with the requirements applicable to it under National Radio Rules made for the purpose specified in Sub-section 86(1)(a) above; and
  - (b) either:
    - (i) the use of the apparatus is likely to cause harmful interference with any radiocommunication used for the purposes of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft, vehicle or spacecraft may depend; or
    - (ii) the use of the apparatus is likely to cause harmful interference with any other radiocommunication and in fact has caused or is causing such interference in a case where it considers that all reasonable steps to minimise interference have been taken in relation to the station or apparatus receiving the radiocommunication, it may serve a notice, not less than seven days in advance, demanding an access for inspection of the premises, vehicle, any vessel or aircraft, to form such opinion. The Authority may then serve on the person in whose possession the apparatus is, a notice requiring that, after a date fixed by the notice, not being less than thirty days from the date of the service thereof, the apparatus shall not be used, whether by the person to whom the notice is given or otherwise, or, if the Authority thinks fit so to frame the notice, shall only be used in such manner, at such times and in such circumstances as may be specified in the notice.

- (2) If there is, after service of notice demanding inspection, a refusal in giving access for inspection, the Authority at its discretion may take recourse to provisions under Section 195 below of this Act.
- (3) A notice under Sub-section (1) may be revoked or modified by a subsequent notice in writing by the Authority served on the person in whose possession the apparatus then is:

Provided that where a notice under this Sub-section has the effect of imposing any additional restrictions on the use of the apparatus, the provisions of Sub-section (1) relating to the coming into force of notices shall apply in relation to the notice under this Sub-section as if it had been a notice served under Sub-section (1).

- (4) Any person who, knowing that a notice of the Authority under this Section is in force with respect to any apparatus, uses that apparatus, or causes or permits it to be used, in contravention of the notice, shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.

#### *ENFORCEMENT OF RULES AS TO SALES, MANUFACTURERS, ETC.*

88. (1) If the Authority is of the opinion that an apparatus does not comply with the requirements applicable to it under National Radio Rules made for the purpose specified in paragraph (b) of Sub-section 86(1) above, it may serve on any person who has manufactured, assembled or imported the apparatus in the course of business a notice in writing prohibiting him from selling the apparatus, otherwise than for export, or offering or advertising it for sale, otherwise than for export, or letting it on hire or offering or advertising it for letting on hire.
- (2) Where a notice has been served under Sub-section (1), the person on whom the notice has been served shall, if he contravenes the provisions of the valid notice, be guilty of an offence and shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.

#### *RULES WITH RESPECT TO RESISTANCE TO INTERFERENCE*

89. (1) This Section applies to radiocommunication apparatus and to any apparatus designed or adapted for use in connection with radiocommunication apparatus.
- (2) The Authority may make provision in the National Radio Rules prescribing requirements (referred to below in this Section as technical requirements) to be complied with in any case of the apparatus to which this Section applies of any class or description specified in the National Radio Rules.
- (3) The technical requirements prescribed in respect of any apparatus shall be such as appear to the Authority to be appropriate for the purpose of minimising so far as practicable the risk of interference, arising from the lawful use of any other apparatus, with any radiocommunication apparatus to which the requirements apply (or any apparatus used in connection with it) is designed or adapted to receive.



- (4) The Authority shall, by National Radio Rules, prescribe any technical requirements that are compatible with the international standards or international obligations of Bhutan.
- (5) Subject to Sub-section (6), any person who in the course of business:
  - (a) sells otherwise than for export or offers for sale otherwise than for export any apparatus which does not comply with the technical requirements applicable to it under National Radio Rules made under this Section; or
  - (b) lets on hire or offers to let on hire any such apparatus; or
  - (c) indicates (whether by display of the apparatus or by any form of advertisement) his willingness to do anything in relation to any such apparatus that falls within paragraph (a) or (b) above;

shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.

- (6) In proceedings for an offence under this Section brought against any person other than one who in the course of business has manufactured, assembled or imported the apparatus to which the proceedings relate, it could be a defence for the accused to show that he did not know and could not with reasonable care have ascertained that the apparatus did not comply with the requirements in question.

#### *DELIBERATE INTERFERENCE*

90. (1) Any person who intentionally uses any apparatus for the purpose of interfering with any radiocommunication shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.
- (2) This Section shall apply whether or not the apparatus in question is radiocommunication apparatus or apparatus to which any of the preceding provisions of this Chapter apply, and whether or not any notice under Section 88 above been given with respect to the apparatus, or, if given, has been varied or revoked.

#### *INTERNATIONAL STANDARDS AND AGREEMENTS*

91. (1) In controlling, planning, administering, managing, regulating, licensing and permitting the use of the radio frequency spectrum, the Authority shall comply with the applicable standards and requirements of the Constitution and Convention of the International Telecommunication Union and the Radio Rules adopted under these international agreements, as adhered to by the Government.
- (2) In exercising its functions under this Act, the Authority shall have due regard to commitments of the Government in terms of international standards and agreements in respect of all radiocommunication matters.

## *MONITORING AND ENFORCEMENT OF THE NATIONAL RADIO RULES*

92. The functions and duties conferred on the Authority by Section 80 above (other than the powers to make, modify, replace or repeal any National Radio Rules) may be exercised by any Government official appointed by the Authority for the purpose of implementation, monitoring and enforcement of the National Radio Rules to such extent and subject to such conditions as may be specified in the appointment; and an appointment under this Section may authorise the person appointed to retain any sums by way of charges, fees, royalties or otherwise received by him in accordance with the provisions of the National Radio Rules.

### **CHAPTER SIX: PROVISIONS RELATING TO MEDIA ISSUES**

#### **Part I: Printing Presses, Books and Newspapers**

##### *LICENSE TO KEEP OR USE PRINTING PRESS*

93. (1) No person shall keep or use any printing press without a valid license procured from the Authority. For the removal of doubts, it is clarified that the expression “press” shall not include any facility established or equipment installed by any person for the sole purpose of printing documents for personal, private or internal organisational purposes.
- (2) The Authority may, on application, grant to any citizen of Bhutan, a license, known as a “printing license”, to keep or use a press for the printing of documents. This license may be revoked if the licensee fails, at any time, to comply with any of the provisions of this Part, or relevant Regulations or Rules.
- (3) The license referred to in Sub-section (1) shall be in such form, and such duration, as prescribed in Rules by the Authority.
- (4) Failure to comply with this Section shall be an offence and the offender shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.
- (5) Where a licensee under this Section has breached any of the provisions of this Part, or relevant Regulations or Rules except Sub-section (1), or has been convicted of any offence carrying a punishment of up to one year’s imprisonment or a fine of up to Nu. 100,000, or where the Authority is of the opinion, for reasons to be recorded in writing, that the continued holding of a license by him is not conducive to the public interest, the Authority may revoke the license in accordance with the relevant provisions of Section 51 above.

##### *OBLIGATIONS OF PRINTERS AND PUBLISHERS OF DOCUMENTS*

94. (1) Without prejudice to the generality of the provisions of Section 45 above, no person shall print, publish or distribute, or assist in printing, publishing or distributing, any document which does not comply with the requirements of this Section and which is not in accordance with the pertinent provisions of this Act, specifically the Guiding Regulatory Principles for the Authority as specified under Section 22 above.

Wherever technically possible, all documents should be printed in Bhutan to promote the growth of the printing industry.

- (2) Every document printed within Bhutan shall have printed legibly on its first or last printed leaf the name and address of its printer, and if the document is published, the name and address of the publisher.
- (3) Every person who prints any document shall, for six months from the date of its printing, keep one copy of the document and produce the document to a police officer or any person authorised by the Authority, when required to do so.

#### *REGISTRATION OF BOOKS AND NEWSPAPERS*

95. (1) Every book or newspaper to be made available for sale or distribution to the public in Bhutan, whether published within Bhutan or otherwise, shall be first registered with the Authority which shall maintain Registers of Books and Newspapers listing the names and other details of all books and newspapers so registered.
- (2) Upon registration, each book or newspaper published in Bhutan shall be assigned a distinct registration number, which number shall be carried on every copy of such book or newspaper before being released for sale or distribution to the general public in Bhutan.
- (3) The form and manner of registration of books and newspapers shall be such as may be prescribed by the Authority in Rules that must conform to the Regulations made by the Minister.

#### *REQUIREMENT OF A LICENSE TO PUBLISH BOOKS AND NEWSPAPERS*

96. (1) No person shall print or publish, or assist in the printing or publishing of, any newspaper in Bhutan except in accordance with a valid license, hereinafter called a “publishing license”, obtained from the Authority authorising the publication thereof.
- (2) An application for a publishing license shall be made by such person who is a citizen of Bhutan and who shall assume responsibility as the publisher of the book or newspaper in relation to which the license is being sought. The form and manner of the application, the fees payable thereon, and duration of license, shall be as specified in Rules made by the Authority in this regard.
- (3) Any person who publishes or assists in the publication of a book or newspaper without first obtaining a license under this Section shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.
- (4) For the removal of doubts, it is hereby clarified that the license under this Section shall be in addition to the license required for the keeping or using of printing presses under Section 93 above.

### *CONSIDERATION OF APPLICATIONS FOR LICENSE*

97. (1) Every application for a license under Section 96 above shall be considered by the Authority in accordance with the relevant provisions of Section 39 above.
- (2) The Authority shall, when considering applications for publishing licenses, have due regard to the importance of free speech, a diverse and vibrant media, convergence of information and communications technology and business, and healthy competition among publishers in Bhutan. Any such application may be refused only on grounds of national security, threat to national integrity, or threat to public order and decency.
- (3) The Authority may impose a condition in a license with respect to the language in which the concerned book or newspaper must be published.
- (4) The Authority may before granting the license require the applicant to execute a bond with or without sureties to secure the payment of any penalties which may be imposed upon the publishing enterprise, its proprietor or editor under this Part or under any other law for the time being in force.
- (5) Without prejudice to Sub-section (2), no license shall be granted to any applicant who has, at the time of making the application, been found guilty of an offence which is an offence under this Act, or an offence under any other law and which carries a fine not less than Nu. 200,000 or to an equivalent imprisonment term.

### *OBLIGATION TO PRINT CERTAIN PARTICULARS*

98. (1) Every book or newspaper published in Bhutan shall carry in legible type in each of its editions:
- (a) the names of its editor (and/or author, where applicable) and publisher;
- (b) the name of its printer and place of printing;
- (c) the address of its registered office.
- (2) Every newspaper published from, and registered in, Bhutan shall also carry, once every year at such time as may be specified in Rules to be made by the Authority, the names, nationalities and addresses of the directors of the publishing enterprise, and of those persons who own more than ten percent of the shareholding in the said enterprise.
- (3) Anyone who fails to comply with the requirements of Sub-sections (1) and (2) above shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 10,000 for each offence.

### *REVOCAION OF LICENSES*

99. If a licensee fails to comply with any of the conditions stated in the license, or if its editor, publisher or printer, is found in breach of any of the provisions of this Part, the

Authority may revoke his license in accordance with the relevant provisions of Section 51 above.

*POWER TO DECLARE A BOOK OR NEWSPAPER DETRIMENTAL TO BHUTAN*

100. (1) The Minister may, if he is satisfied, declare a book or newspaper published outside Bhutan to be detrimental to Bhutan's national interests. Any such declaration shall be made in writing and shall only take effect after it is duly published.
- (2) Where a declaration has been made under Sub-section (1), it shall be an offence for anyone to import, sell or distribute, or possess for sale, within Bhutan a copy or copies of the said book or newspaper. The offender shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both. The Minister may also seize and destroy copies of any such book or newspaper found being imported, sold or distributed to the general public, or kept for the purposes of such sale or distribution, anywhere within Bhutan.
- (3) No person shall be convicted of any offence under this Section if he proves to the satisfaction of a Court that the book or newspaper in respect of which he is charged was published, imported, sold, offered for sale or distributed, as the case may be, without his authority, consent or knowledge and without any want of due care on his part.
- (4) In any proceedings under this Section, it shall be presumed, unless the contrary is proved, that any person found in possession of more than five copies of the relevant book or issue or issues of the newspaper in respect of which a declaration has been made was in possession of them for sale or distribution.

*ACCREDITATION OF JOURNALISTS*

101. (1) The Authority shall operate a scheme of accreditation under which journalists who wish to be recognised as 'accredited journalists' shall apply for such status in the prescribed form. The procedure for application and the criteria for the grant of accreditation shall be specified in Regulations made by the Minister.
- (2) Those recognised as accredited journalists shall enjoy certain privileges, including (but not limited to) access to press conferences and media briefings organised by, or under the auspices of, the Government and other public sector organisations; access to press releases, briefing notes, backgrounders and other material produced by the Government and other public sector organisations for public dissemination; and, inclusion in official visits by the State and Government officials.
- (3) Applications for accreditation shall be dealt with expeditiously by the Authority. Where an application for accreditation is refused, the Authority shall state the reasons for refusal in writing and communicate the reasons to the applicant as soon as possible.
- (4) Any journalist aggrieved by a decision of the Authority to refuse accreditation may appeal the decision to a District Court within thirty days from the date of the receipt of information relating to the refusal.

## *AD HOC ACCREDITATION FOR FOREIGN JOURNALISTS*

102. (1) Where a foreign journalist desires to be accredited by the Authority, he may apply for, and the Authority may grant, ‘*ad hoc* accreditation’ with or without any condition, in accordance with the procedure prescribed for this purpose in Regulations made by the Minister.
- (2) Unless otherwise specified, any *ad hoc* accreditation granted to a foreign journalist shall be valid for a maximum period of one year from the date of grant of such accreditation. A journalist to whom *ad hoc* accreditation has been granted may, before the expiry of such accreditation, apply for an extension of the same for a further period of one year at a time, and the Authority may grant such extension at its discretion.
- (3) Where a journalist to whom *ad hoc* accreditation has been granted breaches any of the conditions attached to such accreditation, or where it appears to the satisfaction of the Authority that the continued holding by him of such accreditation is against the public interest, the Authority may, by an order in writing, revoke the accreditation. Any such revocation shall be effective as soon as the order mentioned above is served upon the journalist, or where it is not possible or practicable to effect such service, as soon as a copy of it is delivered to, or affixed upon, the premises stated in the application for accreditation under Sub-section (1) above as the official address of the journalist.
- (4) Any journalist aggrieved by a decision of the Authority to refuse *ad hoc* accreditation may appeal the decision to a District Court within thirty days from the date of the receipt of information relating to the refusal.

## *POWERS OF SEARCH AND SEIZURE*

103. (1) Any police officer or any customs officer may, after procuring a warrant under Sub-section (2) or (3), seize and detain any book or newspaper found in the possession of any person which the police officer or the officer of customs has reasonable cause to believe has been printed, published, sold or distributed or is intended to be printed, published, sold or distributed in contravention of the provisions of this Act and any such book or newspaper shall, whether or not any person has been convicted of any offence in respect thereof, be forfeited by order of a court and shall be destroyed or otherwise disposed off as the court directs.
- (2) A District Court Judge may, on application, issue a warrant empowering any police officer to enter upon such premises as may be stated on the warrant and search for any book or newspaper, the printing, publication, sale or distribution of which is unlawful under any of the provisions of this Act.
- (3) A District Court Judge may, on application, issue a warrant empowering any police officer to enter upon such premises as may be stated on the warrant and search for any printing press which the police officer or any officer of the Authority may have reason to believe to be kept or operated without a license under Section 93 above. The said police officer may also seize any equipment or documents, which do not comply with the provisions of this Act.

*PRESUMPTION IN REGARD TO PLACE OF PUBLICATION*

104. For the purpose of any proceedings under this Part, a book or newspaper shall be presumed, unless the contrary is proved, to have been printed or published at the place, if any, at which it is stated in any printing thereon to have been printed or published, as the case may be.

**Part II: Cinematographic Films, Dramatic Performances And Other Entertainments**

*EXAMINATION OF FILMS*

105. (1) The producer or owner or importer of every film which is intended for public exhibition by any mode of ICT or media within Bhutan shall submit the film for examination by the Authority in such manner as may be prescribed in Rules made in this behalf by the Authority:

Provided, however, that the Minister may, by Regulations, exempt, unconditionally or subject to conditions, any film or class of films from the requirements of this Section.

- (2) Once a copy of a film is received by the Authority, it shall arrange for the film to be examined by an examining panel consisting of five members chosen from a list of examiners maintained by the Authority in accordance with the provisions of Section 106 below.
- (3) The examining panel shall, after examining the film in the prescribed manner, make one of the following recommendations, namely to:
- (a) sanction the film for unrestricted public exhibition;
  - (b) sanction the film for unrestricted public exhibition, but with an endorsement (hereinafter referred to as a 'parental guidance' or 'PG' endorsement), to be inserted prominently at the beginning of the film and in all the publicity material relating to the film, to the effect that the film shall only be allowed to be seen by a child under the age of twelve years if that child is accompanied by an adult during the showing of the film;
  - (c) sanction the film for public exhibition, but with an endorsement (hereinafter referred to as an 'adult film' endorsement), to be inserted prominently at the beginning of the film and in all publicity material relating to the film, to the effect that the film shall only be allowed to be seen by adults;
  - (d) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary and resubmit it for examination by the panel;
  - (e) refuse to sanction the film for public exhibition.
- (4) Where the panel intends to make a recommendation under Sub-section (3)(b)(c)(d) or (e), it shall, before making the recommendation, give the producer or owner of the film a reasonable opportunity of making representations against such recommendation, and it shall give due consideration to the representations made.

### *LIST OF EXAMINERS*

106. (1) The Authority shall create and maintain a list of examiners being individuals qualified in the opinion of the Authority to judge the effect of films on the public, and this list shall be updated from time to time as necessary.
- (2) The number of examiners on the list at any given time shall not be less than seven and not more than fifteen.
- (3) The recommendation-making procedure to be followed by a panel of examiners, the procedure for appointment of examiners and their terms of service, including any remuneration payable to them, shall be laid down in Rules made in this behalf by the Authority.
- (4) Each member on the list of examiners shall, when called upon to do so, examine any film and make the necessary recommendations in accordance with the provisions of Section 107 below:

Provided, however, that where, for sufficient cause, an examiner is unable to attend an examination session, he may be exempted from such attendance.

### *CERTIFICATION OF FILMS*

107. (1) As soon as a film has been examined in accordance with Section 105 above, the Authority shall duly consider the recommendations of the examining panel. The Authority shall ordinarily be bound by such recommendation, but where, in exceptional circumstances, it is of the opinion that the recommendation ought to be departed from, it shall state, in writing, the reasons for so departing, and furnish a copy of the reasons to the applicant. The Authority, in its decision, shall assess, if the:
- (a) film is suitable for unrestricted exhibition, or for unrestricted public exhibition with a 'PG' endorsement, as the case may be, grant to the person applying for a certificate in respect of the film a 'U' certificate;
- (b) film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults, grant to the person applying for a certificate in respect of the film an 'A' certificate, and cause the film to be so marked in the prescribed manner;
- (c) film is not suitable for unrestricted public exhibition as it stands, and in respect of which the examining panel has recommended that the applicant be directed to carry out certain excisions or modifications and resubmit the film for examination by the panel, make an order requiring the applicant to carry out those excisions or modifications and to resubmit the film for examination;
- (d) examining panel has refused to sanction it for public exhibition, make an order refusing it a certificate.
- (2) The producer, owner, distributor or exhibitor of any film in respect of which a certificate has been issued under Sub-section (1), or any other person to whom the



rights in such a film have passed, shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film.

- (3) A copy of the certificate granted or an order refusing to grant a certificate in respect of any film shall be duly recorded by the Authority.

#### *CRITERIA FOR CERTIFICATION OF FILMS*

108. (1) No film shall be certified for public exhibition if, in the opinion of the Authority, the film or any part of it is likely to:
  - (a) threaten the sovereignty or integrity of Bhutan;
  - (b) threaten security of the State or public order;
  - (c) offend public decency or morality;
  - (d) incite the public, or any part of the public, to violence or hatred, whether against the State, other citizen, or other country;
  - (e) threaten social harmony in Bhutanese society;
  - (f) defame any person;
  - (g) result in violation of this Act or any other law, Regulations or Rules; or
  - (h) undermine the authority and dignity of the judiciary and judicial process in Bhutan.
- (2) Without prejudice to the generality of Sub-section (1), the Authority may, from time to time, issue such guidelines to examining panels as it may deem fit for the purposes of this Section.

#### *APPEALS*

109. (1) Any person applying for a certificate in respect of a film who is aggrieved by an order of the Authority either refusing such certificate or awarding an 'A' certificate or a certificate with a 'PG' endorsement, or requiring him to carry out such excisions or modifications as described in the order, may prefer an appeal against the order to a District Court.
- (2) Any appeal under Sub-section (1) shall be filed within thirty days from the date of receipt of the order:

Provided that, where the Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the aforesaid period of thirty days, it may excuse any delay in the filing of the appeal.
- (3) The Court may pass such order as it thinks fit, confirming, modifying or reversing the decision of the Authority.

- (4) The Court may make such further orders as to costs in relation to any appeal.

#### *DISPLAY OF CERTIFICATE*

110. (1) A copy of any certificate issued by the Authority shall be included prominently at the beginning of every copy of the film before it is sent out for public exhibition. This certificate shall be displayed at every public screening of the film.
- (2) Failure to comply with the requirement of Sub-section (1) shall be an offence and the offender shall be liable to a fine not exceeding Nu. 50,000.

#### *ADVERTISEMENTS AND PUBLICITY MATERIALS*

111. (1) No film intended for public exhibition shall be advertised to the general public through any medium before the grant of a certificate by the Authority. The certificate holder for each film shall also ensure that all advertising material for the film carries the appropriate certification mark (such as 'PG' or 'A' or 'U', as the case may be) prominently.
- (2) Anyone who issues an advertisement or other publicity material in breach of the provisions of Sub-section (1) shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 50,000. Every copy of such advertisement or publicity material may also be seized and destroyed in such manner as determined by the Authority.

#### *DEPOSIT OF COPIES*

112. (1) Every person to whom a certificate has been granted under Section 107 above in respect of a film shall deposit, free of charge, a copy of the film with the Authority within sixty days of the grant of the certificate by the Authority.
- (2) Failure to comply with the requirements of Sub-section (1) shall be an offence and the offender shall be liable to a fine of Nu. 1,000 for each day of default.

#### *POWER OF THE MINISTER TO SUSPEND EXHIBITION OF FILMS*

113. (1) Where the Minister is satisfied, either on receipt of a recommendation from the Authority or a complaint from any member of the public or on his own motion, that any film which is being publicly exhibited is likely to cause a breach of the peace in any local area or district, it may, in writing, order the suspension of the film in that local area or district, as the case may be, for such period as may be specified in the order:

Provided, however, that such order shall remain in force only for such period as the cause for breach of the peace remains present.

- (2) The effect of any order issued under Sub-section (1) would be that the film named therein shall be deemed to be an uncertified film within the local area or district in question.

- (3) Any person who exhibits, or assists in the exhibition, or allows the use of his premises for the exhibition, of the film in respect of which an order under Sub-section (1) has been made shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 300,000 or to an equivalent imprisonment term or to both.

#### *APPEALS AGAINST SUSPENSION*

114. (1) Any person who is aggrieved by an order issued under Section 113 above may prefer an appeal against that order to a District Court within thirty days of the date of receipt of that order.
- (2) The Court may pass such order as it may think fit, confirming, modifying or reversing the decision of the Minister.
- (3) The Court may make such further orders as to costs in relation to any appeal.

#### *REGULATION OF DRAMATIC PERFORMANCES*

115. (1) Whenever the Minister is satisfied, either on receipt of a recommendation from the Authority or a complaint from any member of the public or on his own motion, that any dramatic performance being performed, or about to be performed, within Bhutan is:
  - (a) of a scandalous or defamatory or grossly offensive nature;
  - (b) likely to incite violence, or to stir up hatred among the population or any part of it on any ground;
  - (c) likely to incite persons who may be present at the performance to take up arms against the Government or any public authority or any other country;
  - (d) likely to deprave and corrupt persons who may be present at the performance;  
or
  - (e) likely to disturb public peace and tranquillity;the Minister may prohibit the performance.
- (2) A copy of the said order may be served on the organisers of the performance, the owner or occupier of the premises in which the performance is taking place, or is intended to take place, or any person who is taking part, or is about to take part, in the performance. Where any of the abovementioned persons fails or refuses to accept service of the order, it shall be sufficient for a copy of the order to be affixed in a prominent place on the premises in which the performance is taking place or is intended to take place.

#### *PENALTY FOR NON-COMPLIANCE WITH PROHIBITORY ORDERS*

116. Any person who, after a copy of an order issued under Section 115 above has been lawfully served on him or brought to his notice, wilfully disobeys the order by:

- (a) organising or taking part in the performance prohibited thereby or in any performance substantially similar to the performance so prohibited;
- (b) assisting in the staging of such performance;
- (c) remaining present as a spectator during the whole or part of such performance; or
- (d) being the owner or occupier, or for the time being in control, of any premises, using it, or allowing it to be used, for any such performance;

shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 300,000 or to an equivalent imprisonment term or to both.

#### *APPEALS AGAINST AN ORDER OF PROHIBITION*

117. (1) Any person who is aggrieved by an order issued under Section 115 above may appeal against it to a District Court.
- (2) The appeal referred to in Sub-section (1) shall be filed no later than fifteen days from the date on which the order in question is served on the person making the appeal.
- (3) The Court may pass such order as it thinks fit, confirming, modifying or reversing the decision of the Minister.
- (4) The Court may make such further orders as to costs in relation to any appeal.

#### *POWER TO CALL FOR INFORMATION*

118. (1) The Minister may, for the purpose of ascertaining the character of any ongoing or intended dramatic performance, require the producer, director, proprietor, author, or choreographer of the performance, or the owner or occupier of any premises where it is being, or is intended to be, performed to furnish such information as the Minister may deem necessary.
- (2) The request for such information shall be made in writing and it shall be served upon the person or persons referred to in Sub-section (1).
- (3) If any person on whom a request for information is served wilfully or unreasonably fails to furnish the information requested, he shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 50,000.

#### *POWER TO ENTER, SEARCH AND SEIZE*

119. (1) Where the Minister, or such officer as he may empower in this behalf, reasonably suspects that any premises is being used for any dramatic performance prohibited under Section 115 above, he may apply to a District Court for a warrant authorising a police officer to enter and search such premises, with such assistance as may be necessary. The police officer so authorised may enter the said premises and take into custody any person therein who may be involved in conducting, or assisting in

the conduct of, the dramatic performance, and seize all articles found therein which are being used, or are likely to be used, in connection with the performance.

- (2) The Minister may dispose of any or all of the articles seized under Sub-section (1) in such manner as he thinks fit.

#### *PERMITS FOR DRAMATIC PERFORMANCES*

120. (1) Where it appears to the Minister that it is necessary, for exceptional reasons that all dramatic performances being conducted, or intended to be conducted, in any local area can only be conducted under a permit issued for this purpose by the Authority, he shall publish a notification to that effect.
- (2) From the date and time specified in such notification, no dramatic performance shall be conducted except in accordance with the terms of the notification. The producer, director or other person who intends to conduct any dramatic performance, or any future shows of an existing dramatic performance, may only do so after obtaining the permit referred to in Sub-section (1). The form and manner in which applications for such permits may be made shall be specified in Rules made in this behalf by the Authority.

#### *APPEALS AGAINST REFUSAL OF PERMITS*

121. (1) Where anyone who has been refused a permit under Section 120 above is aggrieved by the decision of the Authority, he may appeal against it to a District Court.
- (2) The appeal referred to in Sub-section (1) shall be filed no later than fifteen days from the date on which the decision of the Authority referred to therein is received by the appellant.
- (3) The Court may pass such order as it thinks fit, confirming, modifying or reversing the decision of the Authority.
- (4) The Court may make such further orders as to costs in relation to any appeal.

#### *LICENSING OF PLACES OF ENTERTAINMENTS*

122. (1) No establishment which provides any form of entertainment whatsoever intended for the general public shall be established, maintained or operated without a license obtained for this purpose (hereinafter referred to as an “entertainments license”) from the Authority.
- (2) Without prejudice to the generality of Sub-section (1), the establishments covered by that Sub-section would include movie halls, dance halls, discotheques, music halls, gaming parlours, public houses, bars equipped with facilities for live or recorded music, hospitality lounges, video/computer gaming arcades, circuses, magic shows, fetes, concerts, fairs, carnivals, wrestling bouts, sporting events, and bingo halls.

### *LICENSING RESPONSIBILITY AND PROCEDURE*

123. (1) The responsibility for licensing under Section 122 above shall be of the Authority.
- (2) Any person who owns and/or intends to keep, maintain or operate an establishment of the kind referred to in Section 122 above shall apply to the Authority for a license for this purpose.
- (3) The form and manner of application for a license, duration of a license, terms and conditions for the issuance of a license, and any fees payable for it, shall be as prescribed in the Rules by the Authority.
- (4) Every application shall be considered by the Authority in accordance with appropriate Regulations issued by the Minister, in consultation with the Ministry of Trade and Industry, and it shall normally be disposed of within thirty days from the date on which it is received.
- (5) If the Authority is satisfied that the applicant meets all the requirements for the grant of a license, and that it would not be contrary to the public interest to grant him the license, it shall make an order accordingly:

Provided that, where the Authority is of the opinion that the license being granted requires to be subjected to any special terms, conditions or qualifications, it shall so indicate in the license, and the licensee shall at all times ensure full compliance with those terms, conditions or qualifications, as the case may be.

- (6) Where the Authority does not reach the satisfaction referred to in Sub-section (5), it shall make an order refusing the application for a license. This order of refusal shall be communicated to the applicant as soon as practicable, and in any case no later than seven days from the date of the order.
- (7) Anyone who keeps, maintains, operates, uses or knowingly allows to be used any place which provides any entertainment covered under Section 122 above without a license shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.

### *POWER TO CHARGE FEES*

124. (1) The Authority shall have the power to require any person who submits a film for certification to pay such fees as may be prescribed in Rules in this behalf.
- (2) The Authority may also charge such fees as it thinks fit for any other service rendered by it to any person under the provisions of this Act, and it may require such fees to be paid in advance of the service being rendered.

## CHAPTER SEVEN: PROVISIONS RELATING TO CYBER ISSUES

### Part I: Provisions Relating To Electronic Governance

#### *MINISTRY AS THE LEAD AGENCY FOR E-GOVERNANCE*

125. (1) The Ministry of Information and Communications shall be in-charge of setting strategic direction for implementing electronic Government (with the use of web-based Internet applications and other information technologies to enhance access to and delivery of Government information and services electronically to the public and Government agencies).
- (2) The Ministry shall be the principal interagency forum for improving Governmental practices related to the design, acquisition, development, modernization, use, operation, sharing, and performance of Government information resources for benefit of all citizens. In this regard, the Ministry shall regularly consult with other Governmental agencies in order to promote electronic Government and the efficient use of ICT.

#### *RESPONSIBILITIES OF THE MINISTER*

126. (1) The Minister shall work with other Governmental agencies to maintain and promote an integrated Internet-based system of providing the public with access to Government information and services.
- (2) The Minister shall establish policies, procedures and security framework (for, *inter alia*, electronic signatures) to allow communications among Governmental agencies to remain protected.
- (3) The Minister, in consultation with the appropriate agencies of the Government, shall promote the use of ICT to enhance crisis preparedness, response, and consequence management of natural and man-made disasters.
- (4) The Minister, in consultation with the appropriate agencies of the Government, shall facilitate the development of common protocols for the development, acquisition, maintenance, distribution, and application of geographic information (maps or other geospatial resources) systems (GIS).

#### *RESPONSIBILITIES OF EACH GOVERNMENT AGENCY FOR E-GOVERNMENT SERVICES*

127. Each Governmental agency shall:
- (a) comply with requirements of this Part, the information resources management policies and guidance established by the Minister, and the information technology standards promulgated by the Minister;
- (b) ensure that such policies, guidance, and standards are communicated promptly and effectively to all its relevant employees;

- (c) support the efforts of the Minister to maintain, and promote an integrated Internet-based system of delivering Government information and services to the public;
- (d) adopt, and adapt, where appropriate, its administrative procedures, rules, requirements, forms etc so that they could easily be met or completed using electronic means;
- (e) make e-Government accessible to people with disabilities;
- (f) sponsor activities that use information technology to engage the public in the development and implementation of policies and programmes;
- (g) ensure that its methods for use and acceptance of all electronic communications (including electronic signatures) are compatible with the relevant provisions of this Part and the policies and procedures issued by the Minister;
- (h) determine which Government information it intends to make available and accessible to the public on the Internet and other means, develop priorities and schedules for making such information available;
- (i) ensure that a publicly accessible Government website includes all information required to be published concerning such agency's policies, rules, procedures, etc., for delivery of public services; and
- (j) take appropriate actions, including conducting privacy impact assessments, to ensure sufficient controls are adopted to protect the privacy of personal information as it implements electronic Government programmes.

*DOMAIN DIRECTORY OF PUBLIC GOVERNMENT WEBSITES*

128. The Minister, with the collaboration of all Governmental agencies, shall develop and establish a public domain directory of public Government websites and post the directory on the Internet with a link to the Governmental Portal.

*WEBSITES FOR JUDICIAL INFORMATION AND COURT PROCEDURES*

129. The High Court of Bhutan shall:

- (1) subject to the security interests of the country, establish a website containing specified information on Court house locations, rules, and access to specified court information; and
- (2) make some documents, which it considers appropriate, that have been filed electronically with such Court publicly available online, but keeping in mind the necessary privacy and security requirements. However, each Court may submit a notification to the Minister to defer compliance with such requirements, under specified conditions.



## *APPROPRIATE PERSONNEL NEEDS*

130. The Ministry, in consultation with the Royal Civil Service Commission, shall:
- (1) analyze necessary personnel needs related to Government ICT and resource management;
  - (2) oversee the development of curricula, training methods, and priorities that correspond to such needs; and
  - (3) ensure that such needs are appropriately addressed.

## **Part II: Provisions Relating To Electronic Commerce**

### *SCOPE OF APPLICATION*

131. This Part applies to any kind of information in the form of a data message used in the context of commercial activities.

### *VARIATION BY AGREEMENT*

132. (1) As between parties involved in generating, sending, receiving, storing or otherwise processing data messages, and except as otherwise provided, the provisions of Sections 140 to 144 below may be varied by agreement.
- (2) Sub-section (1) does not affect any right that may exist to modify by agreement any rule of law referred to in Sections 133 to 139 below.

### *LEGAL RECOGNITION OF DATA MESSAGES*

133. Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

### *INCORPORATION BY REFERENCE*

134. Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the data message purporting to give rise to such legal effect, but is merely referred to in that data message.

### *WRITING*

135. (1) Where any law of Bhutan requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference.
- (2) Sub-section (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.

## *SIGNATURE*

136. (1) Where any law of Bhutan requires a signature of a person, that requirement is met in relation to a data message if:
- (a) a method is used to identify that person and to indicate that person's approval of the information contained in the data message;
  - (b) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
  - (c) it is provided in the form of a electronic signature.
- (2) Sub-section (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.

## *ORIGINAL*

137. (1) Where any law of Bhutan requires information to be presented or retained in its original form, that requirement is met by a data message if:
- (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; and
  - (b) where it is required that information be presented, that information is capable of being and readable by, or displayed to, the person to whom it is to be presented.
- (2) Sub-section (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.
- (3) For the purposes of Sub-section (1)(a):
- (a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and
  - (b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

## *ADMISSIBILITY AND EVIDENTIAL WEIGHT OF DATA MESSAGES*

138. (1) In any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence:

- (a) on the sole ground that it is a data message; or
  - (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.
- (2) Information in the form of a data message shall be given due evidential weight. In assessing the evidential weight of a data message, regard shall be had to the reliability of the manner in which the data message was generated, stored or communicated, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.

#### *RETENTION OF DATA MESSAGES*

139. (1) Where any law of Bhutan requires that certain documents, records or information be retained, that requirement is met by retaining data messages, provided that the following conditions are satisfied:
- (a) the information contained therein is accessible so as to be usable for subsequent reference; and
  - (b) the data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and
  - (c) such information, if any, is retained as enables the identification of the origin and destination of a data message and the date and time when it was sent or received.
- (2) An obligation to retain documents, records or information in accordance with Sub-section (1) does not extend to any information the sole purpose of which is to enable the message to be sent or received
- (3) A person may satisfy the requirement referred to in Sub-section (1) by using the services of any other person, provided that the conditions set forth in Sub-sections (1)(a), (b) and (c) are met.

#### *FORMATION AND VALIDITY OF CONTRACTS*

140. In the context of contract formation, unless otherwise agreed by the parties or required by law, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose.

#### *RECOGNITION BY PARTIES OF DATA MESSAGES*

141. As between the originator and the addressee of a data message, a declaration of intent or other statement shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

*ATTRIBUTION OF DATA MESSAGES*

142. (1) A data message is that of the originator if it was sent by the originator himself.
- (2) As between the originator and the addressee, a data message is deemed to be that of the originator if it was sent:
- (a) by a person who had the authority to act on behalf of the originator in respect of that data message;
  - (b) with the originator's full and knowing consent, unless the originator had handed over their authority either temporarily or permanently due to diminished personal capacity, for example in the case of mental illness or disability; or
  - (c) by an information system programmed by, or on behalf of, or with the originator's full and knowing consent of, the originator to operate automatically.
- (3) As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption, if:
- (a) in order to ascertain whether the data message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or
  - (b) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as his own.
- (4) Sub-section (3) does not apply:
- (a) as of the time when the addressee has both received notice from the originator that the data message is not that of the originator, and had reasonable time to act accordingly; or
  - (b) in a case within Sub-section (3)(b), at any time when the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the data message was not that of the originator.
- (5) Where a data message is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the data message as received as being what the originator intended to send, and to act on that assumption. The addressee is not so entitled when he knew or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the data message as received.
- (6) The addressee is entitled to regard each data message received as a separate data message and to act on that assumption, except to the extent that he duplicates

another data message and the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the data message was a duplicate.

#### *ACKNOWLEDGEMENT OF RECEIPT*

143. (1) Sub-sections (2) to (4) shall apply where, on or before sending a data message, or by means of that data message, the originator has requested or has agreed with the addressee that receipt of the data message be acknowledged.
- (2) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by any:
- (a) communication by the addressee, automated or otherwise, or
  - (b) conduct of the addressee,
- sufficient to indicate to the originator that the data message has been received.
- (3) Where the originator has stated that the data message is conditional on receipt of the acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received.
- (4) Where the originator has not stated that the data message is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator:
- (a) may give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and
  - (b) if the acknowledgement is not received within the time specified in Sub-section (4)(a), may, upon notice to the addressee, treat the data message as though it had never been sent, or exercise any other rights he may have.
- (5) Where the originator receives the addressee's acknowledgement of receipt, it is presumed that the addressee received the related data message. That presumption does not imply that the data message corresponds to the message received.
- (6) Except in so far as it relates to the sending or receipt of the data message, this Section is not intended to deal with the legal consequences that may flow either from that data message or from the acknowledgement of its receipt.

#### *TIME AND PLACE OF DISPATCH AND RECEIPT OF DATA MESSAGES*

144. (1) Unless otherwise agreed between the originator and the addressee, the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.

- (2) Unless otherwise agreed between the originator and the addressee, the time of receipt of a data message is determined as follows:
  - (a) if the addressee has designated an information system for the purpose of receiving data messages, receipt occurs:
    - (i) at the time when the data message is time-stamped by the designated information system; or
    - (ii) if the data message is sent to an information system of the addressee that is not the designated information system, at the time when the data message is retrieved by the addressee;
  - (b) if the addressee has not designated an information system, receipt occurs when the data message enters an information system of the addressee.
- (3) Sub-section (2) applies notwithstanding that the place where the information system is located may be different from the place where the data message is deemed to be received under Sub-section (4).
- (4) Unless otherwise agreed between the originator and the addressee, a data message is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business. For the purposes of this Sub-section:
  - (a) if the originator or the addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business;
  - (b) if the originator or the addressee does not have a place of business, reference is to be made to his habitual residence.
- (5) The Ministry shall co-ordinate the time of all its information systems via any system or method, including the Internet-based Network Time Protocol (NTP), to enable the tracking of all data messages in an orderly manner.

### **Part III: Provisions Relating To Electronic Signatures**

#### *SCOPE OF APPLICATION*

145. This Part applies where electronic signatures are used in the context of commercial activities.

#### *EQUAL TREATMENT OF SIGNATURE TECHNOLOGIES*

146. Nothing in this Part, except Section 147 below, shall be applied so as to exclude, restrict or deprive of legal effect, any method of creating an electronic signature that satisfies the requirements referred to in Sub-section 149(1) below, or otherwise meets the requirements of applicable law.

### *VARIATION BY AGREEMENT*

147. The provisions of this Part may be derogated from or their effect may be varied by agreement, unless that agreement is not valid or effective under applicable law.

### *COMPLIANCE WITH A REQUIREMENT FOR A SIGNATURE*

148. (1) Where the law requires a signature of a person, that requirement is met in relation to a data message if an electronic signature is used that is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.
- (2) Sub-section (1) applies whether the requirement referred to therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature.
- (3) An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in Sub-section (1) if:
- (a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
  - (b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person unless the signatory had handed over their authority either temporarily or permanently due to diminished personal capacity, for example in the case of mental illness or disability;
  - (c) Any alteration to the electronic signature, made after the time of signing, is detectable; and
  - (d) Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.
- (4) Sub-section (3) does not limit the ability of any person to:
- (a) establish in any other way, for the purpose of satisfying the requirement referred to in Sub-section (1), the reliability of an electronic signature; or
  - (b) adduce evidence of the non-reliability of an electronic signature.
- (5) The Ministry of Information and Communications may determine, by issuing Regulations, which electronic signatures satisfy the provisions of this Section. Such determination shall be consistent with recognized international standards. Nothing in this Section affects the operation of the rules of private international law.

### *CONDUCT OF THE SIGNATORY*

149. (1) Where signature creation data can be used to create a signature that has legal effect,

each signatory shall:

- (a) Exercise reasonable care to avoid unauthorized use of his signature creation data;
  - (b) Without undue delay, utilize means made available by the certification service provider pursuant to Section 150 below or otherwise use reasonable efforts, to notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if the:
    - (i) signatory knows that the signature creation data have been compromised; or
    - (ii) circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;
  - (c) Where a certificate is used to support the electronic signature, exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory that are relevant to the certificate throughout its entitlement life cycle or that are to be included in the certificate.
- (2) A signatory shall bear the legal consequences of his failure to satisfy the requirements of Sub-section (1).

#### *CONDUCT OF THE CERTIFICATION SERVICE PROVIDER*

150. (1) Where a certification service provider provides services to support an electronic signature that may be used for legal effect as a signature, that certification service provider shall:
- (a) Act in accordance with representations made by it with respect to its policies and practices;
  - (b) Exercise reasonable care to ensure the accuracy and completeness of all material representations made by it that are relevant to the certificate throughout its entitlement life cycle or that are included in the certificate;
  - (c) Provide reasonably accessible means that enable a relying party to ascertain from the certificate:
    - (i) the identity of the certification service provider;
    - (ii) that the signatory that is identified in the certificate had control of the signature creation data at the time when the certificate was issued;
    - (iii) that signature creation data were valid at or before the time when the certificate was issued;
  - (d) Provide reasonably accessible means that enable a relying party to ascertain, where relevant, from the certificate or otherwise:



- (i) The method used to identify the signatory;
  - (ii) Any limitation on the purpose or value for which the signature creation data or the certificate may be used;
  - (iii) That the signature creation data are valid and have not been compromised;
  - (iv) Any limitation on the scope or extent of liability stipulated by the certification service provider;
  - (v) Whether means exist for the signatory to give notice pursuant to Sub-section (1)(b);
  - (vi) Whether a timely revocation service is offered;
- (e) Where services under Sub-section (1)(d)(v) are offered, provide a means for a signatory to give notice pursuant to Sub-section (1)(b) and, where services under Sub-section (1)(d)(vi) are offered, ensure the availability of a timely revocation service;
  - (f) Utilize trustworthy systems, procedures and human resources in performing its services.
- (2) A certification service provider shall bear the legal consequences of its failure to satisfy the requirements of Sub-section (1) and can be held liable for damage caused to any entity or legal or natural person, who reasonably relies on the certificate issued by the certification service provider and suffers damage, unless the certification-service-provider proves that he has not acted negligently.

### *TRUSTWORTHINESS*

151. For the purposes of Sub-section 150(1)(f) above in determining whether, or to what extent, any systems, procedures and human resources utilized by a certification service provider are trustworthy, regard may be had to the following factors:
- (a) Financial and human resources, including existence of assets;
  - (b) Quality of hardware and software systems;
  - (c) Procedures for processing of certificates and applications for certificates and retention of records;
  - (d) Availability of information to signatories identified in certificates and to potential relying parties;
  - (e) Regularity and extent of audit by an independent body;
  - (f) The existence of a declaration by the Government, an accreditation body or the certification service provider regarding compliance with or existence of the foregoing;

- (g) The quality of information system's and network's security; or
- (h) Any other relevant factor.

#### *CONDUCT OF THE RELYING PARTY*

152. A relying party shall bear the legal consequences of its failure to:

- (a) take reasonable steps to verify the reliability of an electronic signature; or
- (b) Where an electronic signature is supported by a certificate, to take reasonable steps to:
  - (i) verify the validity, suspension or revocation of the certificate; and
  - (ii) observe any limitation with respect to the certificate.

#### *RECOGNITION OF FOREIGN CERTIFICATES AND ELECTRONIC SIGNATURES*

153. (1) In determining whether, or to what extent, a certificate or an electronic signature is legally effective, no regard shall be had to the geographic location:

- (a) where the certificate is issued or the electronic signature created or used; or
  - (b) of the place of business of the issuer or signatory.
- (2) A certificate issued outside Bhutan shall have the same legal effect in Bhutan as a certificate issued in Bhutan if it offers a substantially equivalent or more level of reliability.
- (3) An electronic signature created or used outside Bhutan shall have the same legal effect in Bhutan as an electronic signature created or used in Bhutan if it offers a substantially equivalent level of reliability.
- (4) In determining whether a certificate or an electronic signature offers a substantially equivalent level of reliability for the purposes of Sub-sections (2) or (3), regard shall be had to recognized international standards and to any other relevant factors.
- (5) Where, notwithstanding Sub-sections (2), (3) and (4), parties agree, as between themselves, to the use of certain types of electronic signatures or certificates, that agreement shall be recognized as sufficient for the purposes of cross-border recognition, unless that agreement would not be valid or effective under applicable law.

### **Part IV: Provisions Relating To Consumer Protection For Electronic Commerce**

#### *INFORMATION PROVISION*

154. (1) Vendors shall provide consumers with sufficient information to make an informed choice about whether and how to complete a transaction. All of the information requirements described in this Part must be:

- (a) clearly presented in plain language;
  - (b) truthful;
  - (c) conspicuous and easily accessible on vendors' websites at appropriate stages of consumers' decision making, particularly before consumers confirm transactions or provide any personal information; and
  - (d) retainable or printable by consumers.
- (2) Vendors shall ensure that their marketing practices, information and links on their websites are current, accurate and not deceptive or misleading to consumers, and that all objective claims can be substantiated.
- (3) Vendors shall identify themselves on their websites and provide information about their policies, including to whom consumers should direct claims, ask questions, register complaints or obtain warranty information, repair services and support related to the products available on the sites. The information shall be available to consumers before they engage in transactions and shall include:
- (a) the vendor's legal name and the name(s) under which the vendor conducts business;
  - (b) the address and telephone and fax numbers of the vendor's principal office and, when applicable, of local offices or agents;
  - (c) any geographic, age or other restrictions on transactions;
  - (d) the payment methods and currencies the vendor accepts;
  - (e) the vendor's cancellation, return and exchange policies, including any associated charges;
  - (f) contact information for consumer service and support, including days and hours of operation, when applicable, and any associated charges;
  - (g) details of the vendor's complaints process;
  - (h) the vendor's policies on privacy and unsolicited e-mail; and
  - (i) contact information for any seal or other self-regulatory programmes or applicable dispute resolution processes in which the vendor participates, and, whenever possible, an online method of verifying any accreditation claims the vendor makes on its websites.
- (4) Vendors shall make information available about the products for sale in order that consumers can see it before they initiate transactions. The information shall include:
- (a) a fair and accurate description of the products offered for sale, including the terms of any service contracts and material information that consumers would otherwise see when buying the products offline (e.g., restrictions, health and

safety warnings, or limitations or conditions of purchase, such as parental / guardian approval requirements and time restrictions); and

- (b) any product guarantees and warranties.
- (5) Prior to the conclusion of transactions, vendors shall ensure that all terms and conditions of sale related to the transactions are available to consumers. Such information shall include:
- (a) a description of the product(s), including the quantity to be purchased;
  - (b) the full price to consumers, including:
    - (i) the applicable currency;
    - (ii) any shipping charges, taxes, customs duties and customs broker fees and any other charges;
    - (iii) when the vendor cannot reasonably ascertain the amount of potentially applicable charges, the fact that such charges may apply; and
    - (iv) when the full price cannot be worked out in advance, the method the vendor will use to calculate it, including any recurrent costs and the method used to calculate them;
  - (c) all payment terms, including the methods of payment available to consumers, any associated surcharges or discounts and any vendor's non-repudiation clause when a payment is to be submitted electronically;
  - (d) cancellation, return and exchange policies, including any associated charges;
  - (e) applicable warranties, including any associated charges;
  - (f) how the vendor will contact the consumer in the future;
  - (g) any restrictions, limitations or conditions of purchase, such as parental/guardian approval requirements, the length of service contracts, or any geographic limitations applying to the offer; and
  - (h) the time frame for shipping goods or activating service, how consumers will be notified when the vendor is unable to complete the order or service request within this time frame and, when applicable, options for delivery.
- (6) After the transaction has been completed, vendor shall provide the consumer with a retainable record of the transaction on receipt of the order if via electronic means, or within fifteen working days by non-electronic mail, if the vendor's electronic commerce platform is unavailable;
- (7) Except in the case of Sub-section (8), when consumers contract for the ongoing provision of products, vendors shall ensure:

- (a) that they disclose the following to consumers, prior to the conclusion of the transaction:
    - (i) how often and to what address printable statements of account will be delivered;
    - (ii) how the consumer can change and correct such information; and
    - (iii) how the consumer can cancel the contract and the implications of any such cancellation;
  - (b) that each invoice or statement of account identifies the vendor, the product in question and the amount billed.
- (8) When products are ordered for future physical delivery on a one-time basis, vendors shall provide consumers with a printed record of the transaction when the goods are delivered. The record shall include information set out in Sub-sections (5)(a) through (d).
- (9) Vendor shall conduct on-line transactions in a secured manner using encryption technologies where on-line credit facilities are used. If the vendor does not have the facility to allow encrypted transactions, this shall be so specified by the vendor on their web-site, with an opt-out option prior to transaction submission.

*LANGUAGE*

155. (1) When a vendor offers a product on its websites in a given language, the vendor shall use that language to:
- (a) provide all of its material information about the product, the vendor, the vendor's relevant policies, and the terms and conditions of the transaction and all other material information described in Sub-section 154(3) above;
  - (b) conduct online transactions regarding the product; and
  - (c) provide customer service regarding the product.
- (2) When manufacturer product information or after-sales support is not available in the language that the vendor offered the product, this shall be so stated by the vendor in the language in which the transaction was conducted, prior to the transaction being submitted for processing electronically by the vendor.

*CONTRACT FORMATION AND FULFILMENT*

156. (1) Vendors shall take reasonable steps to ensure that consumers' agreement to contract is fully informed and intentional. In particular, consumers shall be provided with a meaningful opportunity to correct or cancel the order, before it is accepted and processed.
- (2) When an order cannot be fulfilled within the time frame originally specified, vendors shall promptly notify consumers, and provide them with the option of

cancelling the order at no charge, except when doing so would be unreasonable.

- (3) When consumers contract for the ongoing provision of products, and there is a material change in the products or contract, vendors shall:
  - (a) in a timely manner notify consumers prior to any contractual change;
  - (b) through a simple online method of cancellation, provide consumers with a meaningful opportunity to decline further supply of the products without incurring cost or further obligation; and
  - (c) provide timely confirmation of any such cancellation.
- (4) Vendors shall not hold consumers liable for any charges related to a transaction in the following circumstances:
  - (a) the transaction was not authorized by the consumer;
  - (b) the product delivered was materially different from that described by the vendor;
  - (c) the vendor failed to provide material information about the product;
  - (d) the product was not delivered in the time specified, or under the conditions stated in the original offer;
  - (e) there was no adequate opportunity for the consumer to cancel an inadvertent transaction when the consumer acted reasonably; or
  - (f) the product was damaged irreparably in transit by the vendor's carrier, or a third party, such that the consumer could not reasonably be expected to accept possession of the goods related to the transaction.

Under these circumstances, vendor shall refund any payments consumers make, including, when applicable, any reasonable charges consumer pay directly to return the product in question to the vendor in good order or return the damaged products, if they were damaged in transit before reaching the consumer, and within a reasonable time.

- (5) Vendors shall maintain effective controls designed to ensure that transactions are billed and completed as agreed, to promptly rectify any mistakes in transaction records, and to ensure that consumers are notified of any such correction.

#### **Part V: Provisions Relating To Online Privacy**

##### *ONLINE PRIVACY*

157. (1) ICT facility providers, ICT service providers and vendors shall respect and protect the privacy of personal information they receive from their users or consumers.
- (2) ICT facility providers, ICT service providers and vendors shall make their privacy

policy easily accessible from their website and whenever personal information is either requested or collected. Information that must be disclosed as part of the privacy policy includes the following:

- (a) the specific kinds and sources of information being received, collected and maintained online, the purposes for which the information is collected, how that information is being used, and to whom the information may be disclosed;
  - (b) the choices available to users or consumers regarding the collection, use and disclosure of their personal information, how they may exercise and change these choices, and the implications of such choices;
  - (c) how users or consumers may review and, when necessary, correct or remove such information; and
  - (d) when the website uses “cookies,” how and why they are used and the consequences, if any, of user’s or consumer’s refusal to accept a cookie.
- (3) ICT facility providers, ICT service providers and vendors shall limit their collection, use and disclosure of personal information to that which a reasonable person would consider appropriate in the circumstances.
  - (4) ICT facility providers, ICT service providers and vendors shall not require users or consumers to consent to the collection, use or disclosure of personal information beyond what is necessary to complete a transaction.
  - (5) ICT facility providers, ICT service providers and vendors shall not disclose personal information to affiliates or third parties for purposes other than the transactions unless specifically and expressly authorized by users or consumers in advance, through a clearly worded opt-in process.
  - (6) When ICT facility providers, ICT service providers and vendors transfer personal information to third parties, they shall remain responsible for the protection of that information. Accordingly, before any such transfer, the ICT facility providers, ICT service providers and vendors shall ensure, through contractual, legal or other means, that the third parties comply with the privacy provisions of this Part.

#### *SECURITY OF PAYMENT AND PERSONAL INFORMATION*

158. (1) ICT facility providers, ICT service providers and vendors shall maintain effective controls to protect the integrity and confidentiality of payment and other personal information that users or consumers provide. Security mechanisms shall be consistent with current global industry standards and appropriate to the type of information collected, maintained or transferred to third parties.
- (2) ICT facility providers, ICT service providers and vendors shall ensure that third parties who are involved in transactions and have access to personal or payment information comply with Sub-section (1).

### *UNSOLICITED E-MAIL*

159. Any e-mail messages ICT facility providers, ICT service providers and vendors send shall prominently display a return e-mail address and shall provide in plain language a simple procedure by which users or consumers can notify the concerned ICT facility providers, ICT service providers and vendors that they do not wish to receive such messages.

### *COMMUNICATIONS WITH CHILDREN*

160. (1) Online activities directed at children impose a social responsibility on ICT facility providers, ICT service providers and vendors. All communications to children, or likely to be of particular interest to children, must be age-appropriate, must not exploit the credulity, lack of experience or sense of loyalty of children.
- (2) Recognizing the unique nature of online communications and specific concerns regarding children, ICT facility providers, ICT service providers and vendors shall take all reasonable steps to prevent transactions or offensive communications with children.
- (3) ICT facility providers, ICT service providers and vendors shall not collect or disclose children's personal information without the express, verifiable consent of their parents or guardians. When seeking parental consent, ICT facility providers, ICT service providers and vendors shall clearly specify the nature of the proposed communications, the personal information being collected and all potential uses of the information.
- (4) ICT facility providers, ICT service providers and vendors shall not knowingly publish or send material of a pornographic or sexually exploitative nature to children.

### *REDRESS*

161. (1) ICT facility providers, ICT service providers and vendors shall provide users or consumers with access to fair, timely and effective means to resolve problems with any transaction.
- (2) ICT facility providers, ICT service providers and vendors shall offer an internal complaints-handling process that:
- (a) is easily accessible online and offline;
  - (b) is available to users or consumers free of charge;
  - (c) is easy to use;
  - (d) acknowledges complaints within ten business days of receipt and endeavours to resolve or address these complaints within thirty days of acknowledgment;
  - (e) records and monitors complaints; and
  - (f) is auditable by a professionally qualified independent third party.



- (3) When a user or consumer on the one hand and an ICT facility provider, ICT service provider and vendor on the other hand cannot resolve a complaint, the Bhutanese ICT facility provider, ICT service provider and/or vendor should offer to refer the matter to the Authority. Similarly, when a complaint remains unresolved and the user or consumer involved is a foreigner, he should refer the matter to Authority.
- (4) The dispute resolution services of the Authority, referred to in Sub-section (3), shall:
  - (a) be available to be initiated online and irrespective of users' or consumers' location;
  - (b) be easily accessible to users or consumers (e.g. via a hyperlink from ICT facility providers', ICT service providers' and vendors' websites);
  - (c) be easy to use;
  - (d) be offered at nominal or no cost to users or consumers;
  - (e) be expeditious, with reasonable time limits for each stage of the process;
  - (f) be fair (i.e. meet the standards of due process); and
  - (g) commit ICT facility providers, ICT service providers and vendors to abide by awards when users or consumers agree to them.
- (5) An appeal against a decision of the Authority under Sub-section (4) may be made within forty-five days of such decision to a District Court. A person guilty of an offence under this Part shall on conviction be liable to a fine not exceeding Nu. 50,000 or to an equivalent imprisonment term or to both.

## **Part VI: Provisions Relating To Domain Names**

### *DISPUTES INVOLVING DOMAIN NAME VIOLATIONS AT INTERNATIONAL LEVEL*

162. The Minister, with the advice of the Authority, may get resolved the disputes involving domain names of the Bhutanese person at international level through appropriate dispute settlement mechanisms, including those established by the World Intellectual Property Organisation and other international bodies.

### *CIVIL ACTION AGAINST A DOMAIN NAME VIOLATOR*

163. (1) A person shall be liable in a civil action by the owner of a trade mark, including a personal name which is protected as a trade mark, if, without regard to the goods or services of the parties, that person with a *mala fide* (bad-faith intent) to profit from that trade mark, including a personal name which is protected as a trade mark, registers, trades in or uses a domain name that:
- (a) in the case of a trade mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that trade mark; and

- (b) in the case of a famous trade mark that is famous at the time of registration of the domain name, is substantially identical or confusingly similar to that trade mark.
- (2) In determining whether a person has a *mala fide* (bad-faith intent) described under Sub-section (1), a court may consider factors such as, but not limited to the:
- (a) trade mark or other intellectual property rights of the person, if any, in the domain name;
  - (b) extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;
  - (c) person's prior use, if any, of the domain name in connection with the *bona fide* offering of any goods or services;
  - (d) person's *bona fide* non-commercial or fair use of the mark in a website accessible under the domain name;
  - (e) person's intent to divert consumers from the trade mark owner's online location to a website accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website;
  - (f) person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the *bona fide* offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;
  - (g) person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;
  - (h) person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and
  - (i) extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous.
- (3) *Mala fide* (bad-faith intent) described under Sub-section (2) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

- (4) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name, the transfer of the domain name to the owner of the mark or to the Bhutan Network Information Centre's delegated administrative and technical contact for domain registration.
- (5) A person shall be liable for using a domain name under Sub-section (1) only if that person is the domain name registrant or that registrant's authorized licensee.
- (6) As used in this Section, the terms "trades in" and "traffics in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

#### *JURISDICTION IN REM CIVIL ACTIONS AGAINST DOMAIN NAME VIOLATORS*

164. The owner of a trade mark may file an *in rem* civil action against a domain name in the jurisdiction in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located if the:
- (a) domain name violates any right of the owner of a registered or protected trade mark, or
  - (b) court finds that the owner is not able to obtain *in personam* jurisdiction over a person who would have been a defendant in a civil action under this Section.

#### *THE MINISTRY TO ACT AS A REGISTRAR OF DOMAIN NAMES*

165. The Ministry, as a public neutral body, shall act as Bhutan's Network Information Centre (BTNIC) and registrar of domain names in Bhutan and shall ensure an effective protection of the registered domain names both at national and international levels.

### **Part VII: Provisions Relating To Internet Service Providers, Their Operations And Liability**

#### *HOSTING*

166. (1) Internet service providers shall be responsible in accordance with general laws of Bhutan for their own content, which they make available (host) for use.
- (2) However, an Internet service provider shall not be liable for storing any third-party content, which he makes available (host) for use provided:
- (a) he has no knowledge of such illegal content and its illegality;
  - (b) he is not aware of facts or circumstances from which the illegal activity or information is apparent;
  - (c) upon obtaining such knowledge or awareness, he acts expeditiously to remove or to disable access to the information; or

- (d) he is not technically able and can not reasonably be expected to block the use of such content.
- (3) This Section shall not affect the possibility for a court or the Authority, of requiring the Internet service provider to terminate or prevent an infringement, nor does it affect the possibility of establishing procedures governing the removal or disabling of access to information.

#### *ACCESS PROVIDING*

167. (1) An Internet service provider shall not be liable for any third-party content which he transmits or routes for merely providing access of that content over the Internet provided the Internet service provider does not:
- (a) initiate the transmission;
  - (b) select the receiver of the transmission; and
  - (c) select or modify the information contained in the transmission.
- (2) The acts of transmission and of provision of access referred to in Sub-section (1) include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission over the Internet, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.
- (3) This Section shall not affect the possibility for a court or the Authority of requiring the Internet service provider to terminate or prevent an infringement.
- (4) The obligations in accordance with general laws of Bhutan to block the use of illegal content shall remain unaffected if the Internet service providers obtain knowledge of such content and if blocking is technically feasible and can reasonably be expected.

#### *CACHING*

168. (1) For the purpose of providing Internet access, Internet service provider shall not be liable for the automatic, intermediate and temporary storage of information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that the Internet service provider:
- (a) does not modify the information;
  - (b) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
  - (c) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and

- (d) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or the Authority has ordered such removal or disablement.
- (2) This Section shall not affect the possibility for a court or the Authority of requiring the Internet service provider to terminate or prevent an infringement.

*NO GENERAL OBLIGATION TO MONITOR*

- 169. (1) Internet service providers shall not be under a general obligation, when providing the services covered by Sections 166, 167, and 168 above to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.
- (2) However, the Internet service providers shall promptly inform the Authority or the Superintendent of Police or in the absence of a Superintendent, the highest ranking Police Officer, in the nearest police station having the jurisdiction, of alleged illegal activities undertaken by recipients of their service.

*NOTICE AND TAKE DOWN*

- 170. (1) An Internet service provider shall not be liable if he, upon notification of claimed infringement as described in Sub-section (2), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.
- (2) Elements of notification:
  - (a) To be effective under this Sub-section, a notification of claimed infringement must be a written or electronic data communication provided to the Internet service provider or his designated agent that includes substantially the following:
    - (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
    - (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
    - (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the Internet service provider to locate the material;
    - (iv) Information reasonably sufficient to permit the Internet service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;

- (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
    - (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
  - (b) A notification that fails to comply substantially with the provisions of Sub-section (2)(a) shall not be considered in determining whether an Internet service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.
- (3) Replacement of removed or disabled material and limitation on other liability:
  - (a) Subject to Sub-section (3)(b), an Internet service provider shall not be liable to any person for any claim based on the Internet service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.
  - (b) Sub-section (3)(a) shall not apply with respect to material residing at the direction of a subscriber of the Internet service provider on a system or network controlled or operated by or for the Internet service provider that is removed, or to which access is disabled by the Internet service provider, pursuant to a notice provided under Sub-section (1), unless the Internet service provider:
    - (i) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;
    - (ii) upon receipt of a counter notification described in Sub-section (4), promptly provides the person who provided the notification under Sub-section (1) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in ten business days; and
    - (iii) replaces the removed material and ceases disabling access to it not less than ten (10), nor more than fifteen business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under Sub-section (1) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the Internet service provider's system or network.
- (4) Contents of counter notification: To be effective under this Sub-section, a counter notification must be a written communication provided to the Internet service provider or his designated agent that includes substantially the following:
  - (a) A physical or electronic signature of the subscriber.

- (b) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
  - (c) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
  - (d) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of courts, and that the subscriber will accept service of process from the person who provided notification under Sub-section (1) or an agent of such person.
- (5) An Internet service provider shall not unlawfully knowingly reinstate, or restore access to, material that is claimed to be infringing or to be the subject of infringing activity, after initially removing, or disabling access to that material, contrary to the above provisions.

### **Part VIII: Provisions Relating To Certain Cyber Offences**

#### *UNAUTHORISED ACCESS TO COMPUTER MATERIAL*

171. (1) A person shall be guilty of an offence if:
- (a) he causes a computer to perform any function with intent to secure access to any programme or data held in any computer;
  - (b) the access he intends to secure is unauthorised; and
  - (c) he knows at the time when he causes the computer to perform the function that that is the case.
- (2) The intent a person has to commit an offence under this Section may be general and needs not to be directed at:
- (a) any particular programme or data;
  - (b) a programme or data of any particular kind; or
  - (c) a programme or data held in any particular computer.
- (3) A person guilty of an offence under this Section shall on conviction be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.
- (4) If any damage is caused as a result of an offence under this Section, a person convicted of the offence shall be liable to a fine not exceeding Nu. 150,000 or to an equivalent imprisonment term or to both.
- (5) If an offender commits, and is convicted of repeated offences, the offender shall be liable to a fine or term of imprisonment in direct proportion to the number of repeated offences.

*UNAUTHORISED ACCESS WITH INTENT TO COMMIT OR FACILITATE COMMISSION OF FURTHER OFFENCE*

172. (1) A person shall be guilty of an offence under this Section if he commits an offence referred to in Section 171 above with intent:
- (a) to commit an offence involving fraud or dishonesty or which causes injury as defined under the provisions of the *Thrimzhung Chhenpo* (Supreme Law of Bhutan 1959), or
  - (b) to facilitate the commission of such an offence whether by himself or by any other person.
- (2) For the purposes of this Section, it is immaterial whether the offence to which this Section applies is to be committed at the same time when the unauthorised access is secured or on any future occasion.
- (3) A person guilty of an offence under this Section shall on conviction be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.

*HACKING*

173. (1) Whoever, with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person, destroys or denies service or deletes or alters any information residing in a computer or diminishes its value or utility or affects it injuriously by any means, including buffer over-flow, commits hacking.
- (2) In addition to any civil action for damages allowed under any law, whoever commits hacking shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding five years or equivalent *Thrimthue* or to both.

*VULNERABILITY ASSESSMENT (PENETRATION) TESTING*

174. (1) Any person, with the intent to assess the security vulnerabilities of a computer by performing a penetration test, shall not cause or knowing that he is likely to cause wrongful loss or damage to the computer, destroy or delete or alter any information residing in the computer or diminishes its value or utility or affect it injuriously by any means.
- (2) Whoever undertakes a test of a computer's security vulnerabilities shall do so only after agreeing to the terms of the vulnerability assessment test with the authorised owner of a computer, or their agent. The agreement shall cover the following areas:
- (a) all consulting and information gathering to probe all devices as specified by the organisation, but not devices which are outside the scope;
  - (b) discuss the organisation's security policy to determine company standards and best practices;



- (c) discuss the issues surrounding the decision to perform the penetration test against a production network, and analyze the risks associated with such a test;
  - (d) discuss the organisation's ability to recover from loss of data during testing by having in place adequate incident-response and disaster-recovery plans that have been developed and verified before testing begins;
  - (e) plan the test with the organisation's ICT technical staff, and determine what is off limits during the test;
  - (f) involve the technical staff of the organisation when required to ensure the integrity of the test and to reduce the risk of vulnerability to the organisation;
  - (g) perform the penetration testing of only the specified devices; and
  - (h) report the findings to the organisation only, and not to other third parties.
- (3) Whoever undertakes a vulnerability assessment (penetration) test, without due regard to the above conditions, shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.

#### *PROHIBITION OF ON-LINE HARASSMENT*

175. (1) Whoever:

- (a) knowingly within Bhutan or in foreign communications with Bhutan by means of an ICT device makes any harassing communication in any form including any comment, request, suggestion, proposal, or image via e-mail, SMS, or other on-line communication means, regardless of whether the maker of such communication placed the call or initiated the communications, or
- (b) knowingly permits any ICT facility under such person's control to be used for an activity prohibited by Sub-sections 171(1) and 172 (1) above with the intent that it be used for such activity,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding Nu. 50,000 or to an equivalent imprisonment term or to both.

- (2) (a) No person shall be held to have violated Sub-section (1) solely for providing access or connection to or from a facility, system, or network over which that person has no control, including related capabilities which are incidental to providing access or connection. This Sub-section shall not be applicable to an individual who is a conspirator with, an entity actively involved in the creation, editing or knowing distribution of harassment communications, which violate this Section.
- (b) No employer shall be held liable under this Section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

### *PROHIBITION OF ON-LINE PROTEST WEB SITES*

176. (1) Whoever, be it an individual or a group, who:

- (a) knowingly within Bhutan or in foreign communications with Bhutan by means of an ICT device makes or makes available any on-line protest website communication which is calculated to undermine the national security of Bhutan or subvert the Government as established by law, in any form including any comment, request, suggestion, proposal, or image regardless of whether the maker of such communication placed the call or initiated the communications; or
- (b) knowingly permits any ICT facility under such person's control to be used for an activity prohibited by Sub-section (1)(a) with the intent that it be used for such activity,

shall, in the case of an individual, be guilty of an offence and shall on conviction be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both. Further, in the case of a group, each individual member of the group shall be guilty of an offence and shall on conviction be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.

- (2) (a) No person shall be held to have violated Sub-section (1) solely for providing access or connection to or from a facility, system, or network over which that person has no control, including related capabilities which are incidental to providing access or connection. This Sub-section shall not be applicable to an individual who is a conspirator with, an entity actively involved in the creation, editing or knowing distribution of on-line protest web-site communications, which violate this Section.
- (b) No employer shall be held liable under this Section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

### *WRONGFUL COMMUNICATION*

177. (1) A person shall be guilty of an offence if he knowingly communicates directly or indirectly a number, code, password or other means of access to a computer to any person other than a person to whom he is duly authorised to communicate.

- (2) A person guilty of an offence under this Section shall on conviction be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.

### *INTRODUCTION OF COMPUTER CONTAMINANT OR COMPUTER VIRUS*

178. Any person, without permission of the owner or any other person who is in-charge of a computer, intentionally introduces or causes to be introduced any computer contaminant or computer virus into any computer, shall be guilty of an offence and shall be liable to

pay damages by way of compensation not exceeding Nu. 300,000 to the person so affected or to an equivalent imprisonment term or to both.

#### *PROHIBITION OF OBSCENE COMMUNICATIONS*

179. (1) Whoever:

- (a) knowingly within Bhutan or in foreign communications with Bhutan by means of an ICT apparatus makes or makes available any obscene communication in any form including any comment, request, suggestion, proposal, or image regardless of whether the maker of such communication placed the call or initiated the communications, or
- (b) knowingly permits any ICT facility or ICT service under such person's control be used for an activity prohibited by Sub-section (1) (a) with the intent that it be used for such activity,

shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.

- (2) (a) No person shall be held to have violated Sub-section (1) solely for providing access or connection to or from an ICT facility or network over which that person has no control, including related capabilities which are incidental to providing access or connection. This Sub-section shall not be applicable to an individual who is a conspirator with, an entity actively involved in the creation, editing or knowing distribution of communications, which violate this Section.
- (b) No employer shall be held liable under this Section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

#### *PROHIBITION OF ONLINE GAMBLING*

180. (1) A person shall be guilty of an offence if he knowingly engages in betting or wagering with the use of an ICT facility or ICT service.
- (2) An online gambler and Internet service provider, if involved in any activity related to betting or wagering, shall fall within the purview of Sub-section (1) and the term "betting or wagering" encompasses the offering of prizes in lieu of money. Further, no cyber-casinos are allowed to be established, under this Act.
  - (3) A person guilty of an offence under this Section shall on conviction be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.
  - (4) This Section shall not affect the possibility for a court or the Authority of requiring the ICT facility or ICT service provider and the Internet service provider to terminate or prevent an infringement.

- (5) This Section shall not apply to any betting or wagering activity approved or licensed by the Authority or by any other Department or Agency of the Government.

*ABETMENTS AND ATTEMPTS PUNISHABLE AS OFFENCES*

181. (1) A person who abets the commission of or who attempts to commit any offence under this Part shall be guilty of that offence and shall be liable to the punishment provided for the offence.
- (2) A person who does any act preparatory to or in furtherance of the commission of any offence under this Part shall be guilty of that offence and shall be liable to the punishment provided for the offence, provided that any term of imprisonment imposed shall not exceed one-half of the maximum term provided for the offence.

*TERRITORIAL SCOPE OF OFFENCES UNDER THIS CHAPTER*

182. (1) The provisions of this Chapter shall have effect, in relation to any person, whatever his nationality or citizenship, outside as well as within Bhutan.
- (2) Where an offence under this Chapter is committed by any person in any place outside Bhutan, he may be dealt with as if the offence had been committed within Bhutan.
- (3) For the purposes of this Section, this Chapter shall apply if, for the offence in question:
- (a) the accused was in Bhutan at the material time; or
  - (b) the computer, programme or data was in Bhutan at the material time or capable of being connected to or sent to or used by or with a computer in Bhutan at the material time.

*POWER OF POLICE OFFICER TO ACCESS COMPUTER AND DATA*

183. (1) A police officer or a person authorised in writing by the Superintendent of Police shall be:
- (a) entitled at any time to:
    - (i) have access to and inspect and check the operation of any computer to which this Section applies;
    - (ii) use or cause to be used any such computer to search any data contained in or available to such computer; or
    - (iii) have access to any information, code or technology which has the capability of retransforming or unscrambling encrypted data contained or available to such computer into readable and comprehensible format or text for the purpose of investigating any offence under this Act or any

other offence which has been disclosed in the course of the lawful exercise of the powers under this section;

- (b) entitled to require:
  - (i) the person by whom or on whose behalf, the police officer or investigation officer has reasonable cause to suspect, any computer to which this Section applies is or has been used; or
  - (ii) any person having charge of, or otherwise concerned with the operation of, such computer,

to provide him with such reasonable technical and other assistance as he may require for the purposes of Sub-section (1)(a); or

- (c) be entitled to require any person in possession of decryption information to grant him access to such decryption information necessary to decrypt data required for the purpose of investigating any such offence.
- (2) This Section shall apply to a customer equipment, including a computer, which a police officer or a person authorised in writing by the Superintendent of Police has reasonable cause to suspect is or has been in use in connection with any offence under this Chapter or any other offence which has been disclosed in the course of the lawful exercise of the powers under this Section.
  - (3) The powers referred to in Sub-sections (1)(a)(ii) and (iii) and (c) shall be exercised only in accordance with a prior search order from a District Court.
  - (4) Any person who obstructs the lawful exercise of the powers under Sub-section (1)(a) or who fails to comply with a request under Sub-sections (1)(a) or (c) shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both.

#### *JURISDICTION OF COURTS*

184. The Royal Courts of Justice shall have jurisdiction to hear and determine all offences under this Chapter and, notwithstanding anything to the contrary to the provisions of the Civil and Criminal Procedure Code of Bhutan 2001, shall have power to impose the full penalty or punishment in respect of any offence under this Chapter.

#### *ORDER FOR PAYMENT OF COMPENSATION*

- 185. (1) The court before which a person is convicted of any offence under this Chapter may make an order against him for the payment by him of a sum to be fixed by the court by way of compensation to any person for any damage caused to his computer, programme or data by the offence for which the sentence is passed.
- (2) Any claim by a person for damages sustained by reason of the offence shall be deemed to have been satisfied to the extent of any amount which has been paid to him under an order for compensation, but the order shall not prejudice any right to a

civil remedy for the recovery of damages beyond the amount of compensation paid under the order.

- (3) An order of compensation under this Section shall be recoverable as a civil debt.

### **Part IX: Supplemental**

#### *ELECTRONIC TRANSFER OF FUNDS*

186. The Minister, in consultation with appropriate Governmental agencies and representatives of business enterprises, may make Regulations for fund transfer through electronic means between the banks or between the banks and other financial institutions, including the laying down of the conditions subject to which banks and other financial institutions shall participate in such fund transfers, the manner of such fund transfers and the rights and obligations of the participants in such fund transfers.

### **CHAPTER EIGHT: OFFENCES, PENALTIES, LEGAL PROCEEDINGS, MISCELLANEOUS AND SUPPLEMENTAL**

#### *FRAUDULENT USE OF PUBLIC ICT SYSTEM*

187. (1) A person who dishonestly obtains a service provided by means of a public ICT system with intent to avoid payment of any charge applicable to the provision of the service shall be guilty of an offence and shall be liable to repay the cost of service and to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.
- (2) A person who uses any authorisation code, password or any other restricted form of electronic access device for the purpose of obtaining a service provided by means of a public ICT system with intent to avoid payment of any charge applicable to the provision of the service shall be guilty of an offence and shall be liable to repay the cost of service and to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.

#### *IMPROPER USE OF PUBLIC ICT SYSTEM*

188. A person who:
- (a) sends, by means of a public ICT system a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
- (b) sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public ICT system,

shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 50,000 or to an equivalent imprisonment term or to both.

### *MODIFICATION OF MESSAGES*

189. A person engaged in the operation of a public ICT system who otherwise than in the course of his duty in accordance with this Act intentionally modifies or interferes with the contents of a message sent by means of that system shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 500,000.

### *POWER TO PROSCRIBE UNACCEPTABLE FOREIGN BROADCASTING SERVICES*

190. (1) The Authority may, by an order, proscribe any foreign ICT service, including foreign broadcasting service, within Bhutan if it is convinced that there is repeatedly contained in the programmes broadcast by that service matter which threatens the security or territorial integrity of Bhutan, encourages or incites persons to crime or disorder or hatred, or offends against good taste or decency, or is contrary to the provisions of this Act, Regulations, Directives or Rules.

- (2) If after an order under Sub-section (1) is made, any person within Bhutan does any of the following acts, namely:

- (a) supplies, or offers to supply, any goods, equipment or material for or in connection with the operation or day-to-day functioning of the proscribed service;
- (b) supplies, or offers to supply, directly or indirectly, any programmes or other software intended to be included in the programmes transmitted by the proscribed service;
- (c) advertises, by means of any programmes transmitted by the proscribed service, any goods or services provided by him; or
- (d) advertises or publicises through any means to the general public in Bhutan details of any programmes to be transmitted by the proscribed service,

he shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 50,000 or to an equivalent imprisonment term or to both.

- (3) Where, for reasons of national security, the Minister is of the opinion that it is necessary to prevent the receipt within Bhutan of any service referred to in Sub-section (1), it may, by order,

- (a) authorise the preventing or jamming of the signals of such service by appropriate technical means; or
- (b) take an appropriate action contemplated under Section 16 above:

Provided, however, that any such order shall only remain in force for such period as the threat to national security referred to above, in the opinion of the Minister, remains present.

*UNLAWFUL INTERCEPTION AND DISCLOSURE OF MESSAGES, ETC.*

191. (1) A person engaged in the operation of a public ICT system who otherwise than in the course of his duty:
- (a) intentionally intercepts a message sent by means of that system; or
  - (b) where a message so sent has been intercepted, intentionally discloses to any person the contents of that message,
- shall be guilty of an offence.
- (2) A person engaged in the operation of a public ICT system who otherwise than in the course of his duty in accordance with this Act intentionally discloses to any person the contents of any statement of account specifying the ICT services provided for any other person by means of that system shall be guilty of an offence.
- (3) Sub-section (1) above does not apply to anything done in obedience to a warrant issued by a court; and paragraph (b) of that Sub-section and Sub-section (2) do not apply to any disclosure in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings.
- (4) A person guilty of an offence under this Section shall be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.

*MISLEADING MESSAGES AND INTERCEPTION AND DISCLOSURE OF MESSAGES*

192. (1) Any person who:
- (a) by means of a public ICT system, sends or attempts to send, any message which, to his knowledge, is false or misleading and is, to his knowledge, likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or of any vehicle, vessel, aircraft, or spacecraft, and, in particular, any message which, to his knowledge, falsely suggests that a vehicle, vessel, aircraft or spacecraft is in distress or in need of assistance or is not in distress or not in need of assistance; or
  - (b) otherwise than under the authority of the Authority or in the course of his duty as a servant of the Government, either:
    - (i) uses any ICT apparatus with intent to obtain information as to the contents, sender or addressee of any message which neither the person using the apparatus nor any person on whose behalf he is acting is authorised by the Authority to receive; or
    - (ii) except in the course of legal proceedings or for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of an ICT apparatus by him or by another person,



shall be guilty of an offence.

- (2) A person guilty of an offence under this Section shall be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both.

*OFFENCES RELATING TO EXHIBITION OF PROHIBITED FILMS*

193. (1) It shall be an offence for anyone to:
- (a) exhibit publicly or allow the public exhibition on any premises any film which has not been certified by the Authority;
  - (b) exhibit publicly or allow the public exhibition on any premises to any person who is not an adult any film which has been granted an 'A' certificate by the Authority;
  - (c) exhibit publicly or allow the public exhibition on any premises to any child or young person under the age of twelve who is not accompanied by an adult any film which has been granted a certificate with a 'PG' endorsement by the Authority;
  - (d) exhibit publicly or allow the public exhibition on any premises any film which has, without lawful authority, been altered, modified or tampered with in any way after the film has been certified by the Authority.
- (2) For each of the offences listed in Sub-section (1), the offender shall be liable to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment term or to both and in the case of a continuing offence with a further fine not exceeding Nu. 10,000 for each day during which the offence continues.

*PROHIBITION OF AFFIXING PLACARDS, NOTICES, ETC.*

194. A person who without due authority affixes or attempts to affix any placard, advertisement, notice, list, document, board or thing in or on any office, telegraph post or other property belonging to or used by a provider of a public ICT system shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 10,000.

*ENTRY AND SEARCH OF PREMISES, ETC.*

195. (1) If a court is satisfied upon application supported by sworn evidence that there is reasonable ground for suspecting that an offence under this Act (or under Regulations or Rules made under this Act), has been or is being committed, and that evidence of the commission of the offence is to be found on any premises specified in the information, or in any vehicle, vessel or aircraft so specified, it may grant a search warrant authorising any person or persons authorised in that behalf by the Authority and named in the warrant, with or without any police officers, to enter, at any time within thirty days from the date of the warrant, the premises specified in the information, as the case may be, the vehicle, vessel or aircraft so specified and any premises upon which it may be, and to search the premises, or, as the case may be, the vehicle, vessel or aircraft, and to examine and test any apparatus found on the premises, vessel, vehicle or aircraft.

- (2) If a court is satisfied upon application supported by sworn evidence that:
- (a) there is reasonable ground for believing that, on any specified premises or in any specified vessel, aircraft or vehicle, apparatus to which Section 86 above applies is to be found which does not comply with the requirements applicable to it under the National Radio Rules made under that Section;
  - (b) it is necessary to enter those premises, or that vessel, aircraft or vehicle, for the purpose of obtaining such information as will enable the Authority to decide whether or not to serve a notice under Section 87 above; and
  - (c) access to the premises, vessel, aircraft or vehicle for the purpose of obtaining such information as aforesaid has, within fifteen days before the date of the application to the court, been demanded by a person authorised in that and after producing sufficient documentary evidence of his identity and authority, but has been refused;

the court may issue a written authorisation empowering any person or persons authorised in that behalf by the Authority and named in the authorisation, with or without any police officers to enter the premises, or as the case may be vessel, aircraft or vehicle and any premises on which it may be and to search the premises, vessel, aircraft or vehicle with a view to discovering whether any such apparatus as aforesaid is situate thereon or therein, and, if he finds or they find any such apparatus thereon or therein, to examine and test it with a view to obtaining such information as aforesaid:

Provided that, an authorisation shall not be issued under this Sub-section unless either:

- (i) it is shown to the court that the Authority is satisfied that there is reasonable ground for believing that the use of the apparatus in question is likely to cause harmful interference with any radiocommunication used for the purposes of any safety of life service or any purpose on which the safety of any person or of any vessel, vehicle, aircraft or spacecraft may depend; or
  - (ii) it is shown to the court that not less than seven days' notice of the demand for access was served on the occupier of the premises, or, as the case may be, the person in possession or the person in charge of the vessel, aircraft or vehicle, and that the demand was made at a reasonable hour and as unreasonably refused.
- (3) Where under this Section a person has a right to examine and test any apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in or in attendance on, the vessel, aircraft or vehicle, to give him any such assistance as he may reasonably require in the examination or testing of the apparatus.
- (4) Any person who:
- (a) obstructs any person in the exercise of the powers conferred on him under this Section;

- (b) fails or refuses to give to any such person any assistance which he is under this Section under a duty to give to him; or
- (c) discloses, otherwise than for the purposes of this Act or of any report of proceedings thereunder, any information obtained by means of the exercise of powers under this Act, being information with regard to any manufacturing process or trade secret;

shall be guilty of an offence and criminal proceedings for an offence under this Sub-section may be instituted.

- (5) A person guilty of an offence under Sub-section (4) shall be liable to a fine not exceeding Nu. 10,000.

#### *SEIZURE OF APPARATUS AND OTHER PROPERTY*

196. (1) This Section applies to any offence under Sections 82 and 86 to 90 above.

(2) Where

- (a) a search warrant is granted under Section 195 above; and
- (b) the suspected offence (or any of the suspected offences) is an offence to which this Section applies;

the warrant may authorise the person or persons named in it to seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing found in the course of the search carried out in pursuance of the warrant which appears to him or them to have been used in connection with or to be evidence of the commission of any such offence.

- (3) After obtaining a warrant from the court a police officer and/or the person authorized by the Authority, upon entering the premises, vehicle, any vessel or aircraft may seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing which appears to him to have been used in connection with or to be evidence of the commission of any such offence.
- (4) Nothing in this Section shall prejudice any power to seize or detain property which is exercisable by a police officer apart from this Section.
- (5) Any person who intentionally obstructs any person in the exercise of the power conferred on him under Sub-section (3) shall be guilty of an offence.
- (6) References in this Section to relevant proceedings are references to any proceedings for an offence to which this Section applies.

#### *PENALTIES AND LEGAL PROCEEDINGS*

197. (1) Any person committing any offence under this Act:

- (a) shall, if the offence is under Section 82 above, and consists either:

- (i) in the installation or use, otherwise than under and in accordance with a radiocommunication license, of any apparatus not designed or adapted for emission (as opposed to reception); or
- (ii) in a contravention, in relation to any such apparatus, of any Regulation made under Section 82 above;

be liable in the case of the first such offence, to a fine not exceeding Nu. 50,000 or to an equivalent imprisonment term or to both and, in the case of any subsequent such offence, to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both;

- (b) shall, if the offence is under Sections 86 to 90 above and consists in the use, or in the causing or permitting of the use, or in the selling, offering or advertising for letting on hire, of apparatus in contravention of a notice of the Authority, not being apparatus the use of which is likely to cause undue interference with any radiocommunication used for the purposes of any safety of life service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend, be liable in the case of the first such offence, to a fine not exceeding Nu. 100,000 or to an equivalent imprisonment term or to both and, in the case of any subsequent such offence, to a fine not exceeding Nu. 200,000 or to an equivalent imprisonment or to both.

(2) Where a person is convicted of:

- (a) an offence under this Act consisting in any contravention of any of the provisions in Section 82 above in relation to any radiocommunication station or any radiocommunication apparatus or in the use of any apparatus for the purpose of interfering with any radiocommunication; or
- (b) any offence under Sections 86 to 90 above;

the court may, in addition to any other penalty, order all or any (of the apparatus of the station, as the case may be) of the apparatus in connection with which the offence was committed, to be forfeited to the Authority.

The power conferred by virtue of paragraph (a) above does not apply to radiocommunication apparatus not designed or adapted for emission (as opposed to reception).

- (3) Apparatus may be ordered to be forfeited under this Section notwithstanding that it is not the property of the person by whom the offence giving rise to the forfeiture was committed, and any apparatus ordered to be forfeited under this section may be disposed of by the Authority in such manner as it thinks fit.
- (4) The court by whom any apparatus is ordered to be forfeited under this Section may also order the person by whom the offence giving rise to the forfeiture was committed not to dispose of that apparatus except by delivering it up to the Authority within forty-eight hours of being so required by him.

#### *DISPOSAL OF APPARATUS AND OTHER SEIZED PROPERTY*

198. (1) Any property seized by a person authorised by the Authority in pursuance of a warrant under Section 195 above or in exercise of the power conferred by Section 196 above may be detained until the end of the period of six months beginning with the date of the seizure.
- (2) After the end of the period for which its detention is authorised by virtue of Sub-section (1) above, any such property which:
- (a) remains in the possession of the Authority; and
  - (b) has not been ordered to be forfeited under Section 197 above;
- shall be dealt with in accordance with the following provisions of this Section (and references to the relevant property are references to any property to which this Sub-section applies).
- (3) The Authority shall take reasonable steps to deliver the relevant property to any person appearing to it to be its owner.
- (4) Where the relevant property remains in the possession of the Authority after the end of the period of one year immediately following the end of the period for which its detention is authorised by Sub-section (1), the Authority may dispose of it in such manner as it thinks fit.
- (5) The delivery of the relevant property in accordance with Sub-section (3) above to any person appearing to the Authority to be its owner shall not affect the right of any other person to take legal proceedings against the person to whom it is delivered or against anyone subsequently in possession of the property for the recovery of the property.

#### *GENERAL PENALTIES FOR CONTRAVENTION OF ACT, REGULATIONS AND RULES*

199. (1) Any person who contravenes any provision of this Act or of Regulations or of Rules or of order made thereunder for which no penalty is specifically provided shall be guilty of an offence and shall be liable to a fine not exceeding Nu. 50,000 or to an equivalent imprisonment term or to both.
- (2) Notwithstanding any provision of this Act, the civil liability of a licensee shall not exceed two-third of the amount of his average gross annual income for the last five years prior to the year in which the fault for which he is convicted was committed.

#### *OFFENCES BY BODIES CORPORATE*

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

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

#### *CIVIL COURTS NOT TO HAVE JURISDICTION*

201. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority is expressly and specifically empowered under this Act to determine, and no injunction shall be granted by any court in respect of any action taken or to be taken in pursuance of any power conferred upon the Authority under this Act.

#### *PROTECTION AGAINST ACTION TAKEN IN GOOD FAITH*

202. No suit, prosecution or other legal proceeding shall lie against the Minister, the Authority, any officer or other employee thereof for anything, which is in good faith done or intended to be done in pursuance of this Act, Regulations, Directives or Rules or orders made thereunder.

#### *FINANCIAL PROVISIONS*

203. There shall be paid out of money provided by the Ministry of Finance any administrative expenses incurred by the Minister in consequence of the provisions of this Act and any increase attributable to this Act in the sums payable out of money provided under any other Act.

#### *REPEALS AND TRANSITIONAL PROVISIONS*

204. (1) With the enactment of this Act, the Bhutan Telecommunications Act 1999 is hereby repealed, except for the provisions dealing with Bhutan Telecommunications as a Corporation. However, in case of inconsistency between the un-repealed part of the Bhutan Telecommunications Act 1999 and this Act, the provisions of this Act shall prevail to the extent of inconsistency.
- (2) On coming into force of this Act, provisions of any other Act shall become invalid to the extent of inconsistency with any provision of this Act.
- (3) Every person holding an office as the Director or officer immediately before the coming into force of this Act shall continue to hold such office and shall be deemed to have been appointed under this Act.
- (4) After the date of commencement of this Act, the Regulations and Rules regarding any aspect of ICT system or media made under any previous Act in Bhutan shall remain effective only to the extent of their consistency with this Act until such time that they are modified or repealed.
- (5) Any license, permit, certificate or any other authorisation regarding any aspect of ICT system and media issued under any previous Act in Bhutan shall remain effective only to the extent of their consistency with this Act until such time as they are modified or repealed.

- (6) Any fees or other charge owed to the Government under the repealed Act shall be deemed a debt owed to the Government under this Act and shall remain recoverable after the coming into force of this Act.

## **SCHEDULE “A”: THE AUTHORITY, ITS COMPOSITION AND OPERATIONS**

### *COMPOSITION*

1. The Authority shall comprise not less than three and not more than five Members, one of whom shall be the Director. The Director shall serve as the Member Secretary of the Authority during its meetings.

### *APPOINTMENT*

2. (1) The Minister shall submit a panel of candidates for the appointment as the Director of the Authority to the Cabinet, in accordance with the relevant provisions of Section 20 of this Act; and  
  
(2) The Minister shall submit a panel of candidates for appointment as Members of the Authority to the Cabinet, in accordance with the relevant provisions of Section 20 of this Act.

### *ELIGIBILITY*

3. To be appointed as a Member, the individual must be a citizen of Bhutan, proficient, and have at least five years experience, in the field of information technology, telecommunication, media, law, industry, or administration. Before recommending any individual as a Member, the Minister shall satisfy himself that the person does not have any such financial, other interests or under any legal incapacity as is likely to affect prejudicially his functions as a Member.

### *TERM OF OFFICE*

4. An appointment of an individual to hold the office as a Member shall not be for a term less than three years and not exceeding five years from the date of his appointment, subject to Section 6 of this Schedule below; but previous appointment to that office shall not affect eligibility for re-appointment. However, the term of office of a Member who serves as the Director shall be determined subject to the provisions of Sub-section 20(7) of the Act.

### *RESIGNATION*

5. A Member may at any time resign from his office as a Member by notice in writing addressed to the Cabinet. The resignation shall take effect from the date of acceptance of the notice or from such other date as may be agreed between the Member in question and the Cabinet.

### *REMOVAL*

6. (1) A Member of the Authority shall be removed from the office only by the Head of State, on submission by the Cabinet, if he has:
  - (a) been adjudged insolvent;
  - (b) become physically or mentally incapable of acting as a Member;



- (c) been convicted of any offence that involves moral turpitude;
  - (d) acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
  - (e) so abused his position as to render his continuance in office prejudicial to the public interest.
- (2) No Member shall be removed from his office under Sub-section (1), unless he has been given a reasonable opportunity of being heard in the matter.

#### *FILLING OF VACANCIES*

7. (1) Where a vacancy arises whether by reason of death, resignation or removal of a Member, it shall be filled as soon as practicable, in accordance with the criteria and procedure for appointment as specified in Sections 2 and 3 of this Schedule. Any Member appointed to fill a vacancy in accordance with this paragraph shall enjoy a term of office as under Section 4 above of this Schedule.
- (2) Where fresh appointments are to be made as a result of any or all of the existing members reaching the end of their terms, the Minister shall take the necessary steps to ensure that such appointments are made at least three months in advance of the date on which the existing Member or Members, as the case may be, will cease to hold office. Every newly nominated Member shall assume office immediately after the term of office of the outgoing Member comes to an end.

#### *REMUNERATION FOR MEMBERS*

8. There shall be paid to the Members such remuneration, travelling and other allowances, as the Minister, in consultation with the Ministry of Finance, may determine.

#### *MEETINGS OF THE AUTHORITY*

9. (1) The Authority shall meet at such times and places as may be determined by itself from time to time with a minimum of four times a year.
- (2) The Authority shall not be bound by the procedure laid down by any Act of Bhutan and shall have powers to regulate its own procedure based on due process of law and principles of natural justice. The procedure to be followed for the transaction of business at such meetings, including the quorum for meetings, shall be decided by the Authority.
- (3) In the case of a deadlock, the Chairperson will have a casting vote. In the event that the Chairperson is unable to attend any meeting of the Authority, the meeting shall be chaired by a Member nominated by the Chairperson for that particular occasion.

#### *VACANCIES IN THE AUTHORITY NOT TO INVALIDATE ITS ACTS*

10. No act, decision or proceeding of the Authority shall be deemed to be invalid by reason merely of the existence of any vacancy in, or any defect in the constitution of, the Authority.

### *COMING INTO FORCE*

11. (1) This Schedule shall come into force on such date as mentioned in the notification by the Minister.
- (2) From the date of coming into force of this Schedule, the Members will constitute the Authority. Every action taken, order made or power exercised by the Director shall be deemed to have been taken, made or exercised collectively by the Authority as constituted under this Schedule.

### *INDEPENDENCE OF THE AUTHORITY*

12. (1) In order to ensure the Authority's maximum independence, it is affirmed that:
  - (a) Notwithstanding any provision of this Act or any other Act of Bhutan, the Minister, the Cabinet, any other governmental official and the Royal Civil Service Commission shall exercise their respective powers and functions under this Act and this Schedule in such manner as not to undermine, directly or indirectly, the independence of the Authority.
  - (b) No regulation, rule, order, direction, policy or procedure, adopted before or after the coming into force of this Schedule, of the Royal Civil Service Commission shall have any direct or indirect adverse effect on the performance of the functions of any Member of the Authority during his tenure of appointment.
- (2) The Authority shall submit an annual report to the Cabinet through the Minister. Every such report shall include:
  - (a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Authority's functions; and
  - (b) the reports which the advisory bodies established under Section 32 of the Act make on their activities during that year.
- (3) The Chairman of the Cabinet shall lay a copy of every report made by the Authority under Sub-section (2) before the National Assembly and shall arrange for every such report to be published in such manner as he may consider appropriate.
- (4) The Authority may also prepare other reports as appear to it to be expedient and may arrange for any such report to be published in such manner as it may consider appropriate.
- (5) In this Section, the term "independence of the Authority" implies that:
  - (a) In the exercise of his powers and performance of his functions, each Member of the Authority shall faithfully serve to achieve the objectives of this Act and not as a representative of the Government or of any other public or private person.

- (b) Each Member of the Authority shall respect the exclusively neutral, semi-judicial and independent character of the Authority.
- (c) No Member of the Authority shall request or receive instructions relating to the exercise of his powers and performance of his functions from any Government official or public or private person.
- (d) Except as expressly entitled otherwise under this Act or the Regulations or the Directives, the Minister, the Cabinet, any individual representing the Government or any public or private person shall refrain from intervening in, and from attempting to influence, directly or indirectly, any process or decision, of the Authority.