

VIRGIN ISLANDS
TELECOMMUNICATIONS ACT, 2006
ARRANGEMENT OF SECTIONS

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I Assent

Governor

, 2006

VIRGIN ISLANDS

No. 10 of 2006

An Act to establish a Telecommunications Regulatory Commission to license, regulate and develop the telecommunications services industry in the Virgin Islands and to provide for other matters connected therewith.

[Gazetted _____, 2006]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I
PRELIMINARY**

Short title and
commencement.

1. This Act may be cited as the Telecommunications Act, 2006 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

“access” means, with respect to a telecommunications network or telecommunications service, the ability of an operator, service provider or user to use the telecommunications network or telecommunications service of an, or another, operator or service provider;

“authorisation holder” means a person to whom a frequency authorisation has been granted;

“Board” means the Board of the Commission established under section 7;

“Chairman” means the Chairman of the Board appointed under section 7;

- “Chief Executive Officer” means the person appointed as such under section 7;
- “class licence” means a licence offered on the same terms to any person, or to a category of persons, in respect of a class of telecommunications networks, telecommunications services or radiocommunication services;
- “Commission” means the Telecommunications Regulatory Commission established under section 5;
- “Commissioner” means a person appointed to be a member of the Board under section 7;
- “Council” means the Executive Council;
- “Court” means the High Court;
- “Deputy Chairman” means the Deputy Chairman of the Board appointed under section 7;
- “facility” means premises or a physical component of a telecommunications network, other than terminal equipment, including wires, lines, terrestrial and submarine cables, wave guides, optics or other equipment or object connected therewith, used for the purpose of telecommunications and includes any post, pole, tower, standard, bracket, stay, strut, insulator, pipe, conduit or similar thing used for carrying, suspending, supporting or protecting such a structure;
- “force majeure” means any of the following circumstances:
- (a) act of God, riot or civil commotion;
 - (b) strike, lock-out and other industrial disturbance;
 - (c) war, blockade or insurrection;
 - (d) earthquake, hurricane, flood, fire or explosion;
 - (e) outbreak of pestilence or epidemic;
 - (f) government rationing of electricity or other wartime or emergency control imposed by government; and
 - (g) embargo or trade restriction;

- “foreign regulatory authority” means an authority in a jurisdiction outside the Virgin Islands which exercises a regulatory function that, in the opinion of the Commission, relates to telecommunications services business;
- “frequency authorisation” means an authorisation granted by the Commission under section 19;
- “frequency band” means a discrete continuous range of frequencies within the spectrum;
- “harmful interference” means interference with the authorised use of spectrum that impedes, degrades, obstructs or interrupts a broadcasting service or a radiocommunication service;
- “instructions” means instructions issued by the Commission in any form under or pursuant to this Act, the Regulations, the Telecommunications Code, a licence or a frequency authorisation, whether by Order, notice, directive, direction or otherwise;
- “interconnection” means a form of access established by the physical or logical linking of public telecommunications networks to allow the users of one public telecommunications service to communicate with users of another public telecommunications service or to access services provided by another operator of a public telecommunications network or by another provider of telecommunications services;
- “internal telecommunications service” means a telecommunications service used within a single set of premises under single occupation solely for domestic purposes or for the internal business purposes of the occupier and which is operated without connection to a public telecommunications network and does not enable telecommunications to or from persons other than those physically present within the premises concerned;
- “ITU Treaties” means and includes the Constitution, the Convention and the Regulations of the International Telecommunication Union, as adopted from time to time and in force;
- “licence” means a licence granted under this Act;
- “licensee” means a person to whom a licence has been granted;
- “Minister” means the Minister to whom responsibility for telecommunications is assigned;

“network termination point” means any point on a public telecommunications network at which an operator permits a user to connect terminal equipment;

“operator” means a person licensed under this Act to operate a public telecommunications network;

“prescribed”, in relation to a rate, fee, levy or other charge, means prescribed by the Executive Council under the Statutory Rates, Fees and Charges Act, 2005;

No. 28 of 2005

“programme service” means a service the principal feature of which is the packaging and making available for transmission or broadcast (by any means of telecommunications) to the public generally on a free to air or subscription basis of radio or television programmes or of programmes consisting of other types of audio-visual material, whether or not encrypted and whether in analogue or digital form, but shall not include the provision of individual items of audio-visual material supplied to a person over the Internet in response to a specific demand;

“public ground” includes any open or enclosed space to which, for the time being, the public has or is permitted to have access;

“public supplier” means an operator or a service provider;

“public telecommunications network” means a telecommunications network used wholly or mainly to provide a public telecommunications service;

“public telecommunications service” means a telecommunications service, including a public telephone service, offered to members of the general public or a section of the general public usually for reward, whereby one user can communicate with any other user;

“public telephone service” means the commercial provision to the public of the means to send and receive voice telephony calls by the direct transport and switching or routing of speech-band signals, including those used for facsimile and data transmission, together with such other services as are prescribed in the Telecommunications Code;

“radiocommunication service” means a telecommunications service that is provided through the transmission, emission or reception of electromagnetic waves;

“Regulations” means regulations made under section 91;

“service provider” means a person licensed under this Act to provide a public telecommunications service;

“significant interest”, in respect of a company, means a holding or interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly

- (a) to control ten percent or more of the voting rights of that company at a general meeting of the company;
- (b) to a share of ten per cent or more in dividends declared and paid by the company; or
- (c) to a share of ten per cent or more in any distribution of the surplus assets of the company on a winding up;

“special licence” means a licence granted under section 25;

“special licensee” means a person granted a special licence;

“spectrum” means the complete range of electromagnetic frequencies which may be used for telecommunications;

“telecommunications” means the emission, transmission or reception of signals, whether they represent speech, music, sounds, text, visual images or information of any other description, where such signals are conveyed by means of electrical, magnetic or electro-magnetic energy;

“Telecommunications Code” means such guidelines, standards and other requirements as the Commission may issue or specify in accordance with section 91;

“telecommunications network” means

- (a) a system for the conveyance of telecommunications; and
- (b) apparatus used in conjunction with such a system for the emission, switching, routing or reception of signals and any software or stored data necessary for its functioning;

“telecommunications service” means a service consisting of, or having as a principal feature, the conveyance by means of a telecommunications network of signals for reward;

“terminal equipment” means equipment on the user’s side of the network termination point that is connected directly or indirectly to a telecommunications network by wire, radio, optical or electromagnetic means and with which a user can originate, process or terminate telecommunications;

“universal service” means any public telecommunications services designated by the Commission in accordance with section 28;

“user” means a customer or a subscriber of a telecommunications network or a telecommunications service and includes a customer who is

- (a) an operator of a telecommunications network; or
- (b) a provider of a telecommunications service;

“utility installation” means any physical component of a system designed to provide piped water or electricity to the public;

“utility installation owner” means the owner or operator of any utility installation.

3. This Act shall not apply to

Non-application
of Act.

- (a) persons providing programme services, except insofar as they also operate any telecommunications networks, provide any telecommunications services used in the conveyance of the broadcast material or use spectrum subject to this Act;
- (b) the Crown or entities owned by the Crown;
- (c) telecommunications networks and services operated or provided exclusively by Her Majesty’s Armed Forces, the Royal Virgin Islands Police Force and other public security and civil aviation authorities, except as expressly provided in this Act and in relation to the requirement to be granted a frequency authorisation;
- (d) any ship or aircraft belonging to or exclusively employed in the service of Her Majesty or to any telecommunications equipment thereon; and
- (e) any terminal equipment used exclusively for the purposes of paragraph (c) or (d).

Functions of the Minister.

- 4.** (1) The Minister shall be responsible for
- (a) developing and reviewing telecommunications policies consistent with the purposes of this Act; and
 - (b) matters of international telecommunications affecting the Virgin Islands, including international, regional and bilateral frequency coordination.

(2) In the exercise of his functions and powers under this Act, the Minister shall consult with the Commission.

PART II THE TELECOMMUNICATIONS REGULATORY COMMISSION

Establishment of the Telecommunications Regulatory Commission.

5. (1) There is hereby established a commission to be known as the Telecommunications Regulatory Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and may hold or dispose of property, enter into contracts and perform such acts as a body corporate may legally perform.

Schedule 1

(3) Schedule 1 has effect with respect to the administration of the Commission.

Functions of the Commission.

- 6.** Subject to the provisions of this Act, the Commission shall
- (a) advise the Minister on positions and policies relating to telecommunications issues at international, regional and national levels;
 - (b) establish or monitor the implementation of national telecommunications standards and ensure compliance therewith;
 - (c) implement and enforce the provisions of this Act, the Regulations and the Telecommunications Code and to issue instructions accordingly;
 - (d) be responsible for the regulation of licensees and authorisation holders and for ensuring fair competition among licensees and all other operators of telecommunications networks or providers of telecommunications services;

- (e) determine applications for licences and frequency authorisations for any of the purposes specified in this Act and monitor, enforce and ensure effective compliance therewith and to issue instructions accordingly;
- (f) manage the spectrum;
- (g) administer the numbering plan;
- (h) administer domain names;
- (i) determine which telecommunications services should be made available, pursuant to section 28, throughout the Virgin Islands and establish and monitor the funding mechanisms therefor;
- (j) collect all fees and any other charges payable to the Commission under this Act;
- (k) investigate and resolve any dispute relating to interconnection or to the sharing of facilities or utility installations or any other matters arising under this Act;
- (l) investigate and resolve all complaints of harmful interference made to the Commission or of which it has knowledge;
- (m) where it deems appropriate, investigate within a reasonable period complaints by users of their failure to obtain redress from public suppliers or other licensees in respect of rates, billings and services provided, and to facilitate relief where necessary;
- (n) establish procedures, which shall be included in the Telecommunications Code, for investigations and the facilitation of relief under paragraph (m) and for the resolution of disputes between or among any public operators, other licensees, users and other persons in relation to compliance with this Act, the Regulations, the Telecommunications Code, licences or instructions, and in particular in relation to interconnection, access and access facilities, and such procedures may include provision for regulatory adjudication through public hearings or public consultations or through arbitration, negotiation and

mediation and other alternative dispute resolution processes;

- (o) carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of a person as will enable it to determine whether and to what extent any person is engaging in conduct in contravention of this Act;
- (p) establish quality of service indicators, reporting requirements for operators and service providers and otherwise monitor and protect the interests of users of telecommunications services;
- (q) certify and ensure the testing of telecommunications equipment for compliance with
 - (i) applicable national and international standards; and
 - (ii) environmental health and safety standards, including electromagnetic radiation and emissions;
- (r) promote the systematic development of telecommunications throughout the Virgin Islands;
- (s) obtain such information from persons as is needed to carry out any of its functions;
- (t) prepare legislative briefs for the drafting of the Regulations;
- (u) do all such other things as are necessary or expedient to give effect to its functions specified in paragraphs (a) to (t).

Establishment
and membership
of the Board.

7. (1) There shall be a Board of the Commission whose members shall be known as Commissioners and shall be appointed by the Minister with the approval of the Council.

(2) The Board shall comprise a minimum of three and a maximum of five Commissioners, one of whom shall be the Chief Executive Officer and, without prejudice to the requirements specified in subsection (4), one Commissioner with a telecommunications services background shall be from outside the Virgin Islands.

(3) The Minister shall, after consultation with the Leader of the Opposition, recommend to the Council the appointment of one of the Commissioners as Chairman and another as Deputy Chairman, and the appointment of the Chairman

and Deputy Chairman by the Minister shall be subject to the approval of the Legislative Council by resolution.

(4) In making appointments to the Board, the Minister shall ensure that the persons to be appointed are fit and proper and have relevant knowledge, experience and expertise in telecommunications services, business, consumer affairs or such other area as may aid the Commission in the performance of its functions.

(5) A person is disqualified for appointment as a Commissioner if he

- (a) is a member of the Legislative Council;
- (b) is an undischarged bankrupt or has compounded with his creditors;
- (c) has been convicted of an indictable offence or any offence involving dishonesty;
- (d) has, after being previously appointed as a Commissioner, been removed in accordance with section 11(2);
- (e) has or acquires shares or other interest in a licensee, or had held shares or other interest in a licensee within a period of twelve months prior to the date of his appointment;
- (f) is a public officer; or
- (g) has been certified by a medical practitioner to be of unsound mind.

(6) A previous appointment as a Commissioner does not affect a person's eligibility for further appointment under this section.

(7) The Board may appoint a member of staff of the Commission, other than a Commissioner, to act as Secretary to the Board with such duties as the Board may determine.

8. (1) The Board is the governing body of the Commission and shall be responsible for

Functions of the Board.

- (a) identifying and classifying senior management positions in the Commission to which it shall appoint suitably qualified persons;
- (b) establishing the policy of the Commission and monitoring and overseeing its implementation by the Commission;

- (c) monitoring and overseeing the management of the Commission by the Chief Executive Officer with the objective of ensuring that
 - (i) the resources of the Commission are utilised economically and efficiently;
 - (ii) the internal financial and management controls of the Commission are adequate; and
 - (iii) the Commission is operated in accordance with principles of good governance;
- (d) preparing the estimates and work programme referred to in section 63; and
- (e) preparing and approving the Commission's accounts under section 64.

(2) In establishing the policy of the Commission, the Board shall take into account such policy directions as may be given to the Commission by the Minister pursuant to his functions under section 4.

(3) In the performance of its functions, the Board may

- (a) establish such committees as it considers appropriate on such terms and conditions as it may determine; and
- (b) delegate such duties as it considers necessary to the Chief Executive Officer or such other officers of the Commission as it thinks fit.

Meetings of the Board.

9. (1) The Board shall meet at least once every month at such place and time as may be designated by the Chairman.

(2) At every meeting of the Board, the Chairman shall preside and in his absence the Deputy Chairman shall preside.

(3) The quorum of the Board shall be

- (a) two where the total membership is three; or
- (b) three where the total membership is more than three.

(4) At any meeting for the conduct of its business, the Board shall take its decision by a majority vote of the Commissioners present and, in the event of a

tie, the Chairman, or in his absence the Deputy Chairman, shall have a casting vote.

(5) The Chairman shall at any time convene a special meeting of the Board upon receipt of a requisition signed by at least two Commissioners calling upon him to do so, and such meeting shall be held not later than fourteen days after receipt of the requisition.

(6) No act or proceeding of the Board shall be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a Commissioner.

(7) Notwithstanding anything contained in this section, the Chairman may, in any matter he considers exceptional, make arrangements for a decision of the Board to be taken on such matter through a process of consultation without the need for an actual meeting.

(8) In the conduct of its meetings, the Board shall establish its own rules of procedure, subject to the provisions of this section.

10. (1) Subject to this section, the appointment of a Commissioner shall be on such terms as may be determined by the Minister. Tenure of office.

(2) The appointment of a Commissioner shall be for a term not exceeding three years.

(3) In appointing Commissioners under section 7, the Minister shall specify the periods of appointment so far as possible in such a way that the periods of appointment of the Commissioners expire on different dates.

(4) The Commissioners shall be paid such remuneration as may be determined by the Minister with the approval of the Council and the payments shall be made out of the revenues of the Commission.

(5) A Commissioner shall not act as a delegate of any Government, commercial, financial or other interest with whom he may be connected and shall not accept directions from any person or authority in respect of his duties as a Commissioner or in relation to, or on behalf or in the name of, the Commission.

(6) Where a Commissioner acts contrary to subsection (5), he shall be personally responsible for his actions.

11. (1) A Commissioner may at any time resign his office by giving written notice to the Minister and such resignation becomes effective upon receipt by the Minister. Resignation and removal of Commissioners.

(2) The Minister may, by written notice, remove a Commissioner from office if satisfied that the Commissioner

- (a) has, without the consent of the Board, been absent from three consecutive meetings of the Board or for meetings exceeding one third of the total meetings held in a year;
- (b) has become bankrupt, that his estate has been sequestered or that he has made an arrangement with, or granted a trust deed in favour of, his creditors;
- (c) has been convicted of an indictable offence or any offence involving dishonesty;
- (d) is or becomes disqualified from being appointed as a Commissioner under section 7;
- (e) has an interest that is likely to prejudicially affect the exercise and performance by him of his functions as a Commissioner or is liable to be removed from office under section 78(3);
- (f) is unable or unfit to discharge his functions as a Commissioner; or
- (g) is in breach of any condition imposed upon his appointment.

(3) If a Commissioner dies, resigns, is removed from or otherwise vacates his office prior to the expiry of the term for which he has been appointed, the Minister shall, with the approval of the Council, appoint a new Commissioner to replace him.

(4) An appointment of a Commissioner under subsection (3) may be for the unexpired period of the term of office of the person in whose place he is appointed or for a new term not exceeding three years.

Appointment and functions of Chief Executive Officer.

12. (1) The Minister shall, with the approval of the Council and on the recommendation of the Board if constituted, appoint a fit and proper person to be the Chief Executive Officer of the Commission on such terms and conditions as are considered appropriate.

(2) The Chief Executive Officer shall be a Commissioner and an employee of the Commission and shall

- (a) be responsible for the day-to-day management, administration and operation of the Commission and the supervision of the staff of the Commission;
- (b) implement the decisions of the Board and, subject to any general or special direction of the Board, execute the functions of the Commission outlined in section 6;
- (c) coordinate and execute as required by any enactment all requests for legal and regulatory assistance from foreign regulatory authorities; and
- (d) perform such other duties as may be assigned or delegated to him by the Board.

13. (1) Without prejudice to the powers granted under sections 8(1)(a), the Commission may appoint such officers, employees and agents as it considers necessary and proper for the administration, management and performance by the Commission of its functions under this Act.

Appointment of other staff.

(2) Appointments under subsection (1) shall be on such terms as to remuneration, expenses, pensions and other conditions of service as the Commission thinks fit.

(3) The Commission may establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

14. Subject to this Act and any other enactment, the Commission may do all things necessary for, or reasonably ancillary or incidental to, the pursuance of the carrying out of its duties, functions or powers under this Act, including

General powers of the Commission.

- (a) the employment of advisers and consultants as the Commission considers necessary on such terms and conditions as it deems fit;
- (b) the opening and maintaining of accounts with banks for the purposes of the Commission, within or outside the Virgin Islands; and
- (c) investing its funds that are not immediately required for the discharge of its functions in such manner as it considers prudent.

PART III

LICENCES AND FREQUENCY AUTHORISATIONS

Requirement for
a licence.

15. (1) No person shall operate a telecommunications network or provide a telecommunications service without a licence granted by the Commission.

(2) Subject to subsection (10), a person who wishes to operate a network or provide a service described in subsection (1) shall apply to the Commission for a licence in the manner prescribed in the Telecommunications Code.

(3) The Commission may grant or refuse any application for a licence, based on applicable policies and the Regulations.

(4) On the granting of a licence, the Commission shall cause to be published in the *Gazette* and on its website a notice to that effect.

(5) Where an application for a licence is refused, the Commission shall notify the applicant in writing, giving the reasons for the refusal.

(6) The terms of a licence shall be available for public scrutiny at the office of the Commission and may be reproduced by the Commission at the request of any member of the public on payment of the specified fee.

(7) Subject to any policy directives issued by the Minister under section 4, the Commission shall determine applications for all licences on an objective, transparent and non-discriminatory basis.

(8) A person who intends to land or operate submarine cables within the Virgin Islands for the purpose of connecting to a telecommunications network shall first obtain a licence under this Act, in addition to any other licence, approvals or permits required under the laws of the Virgin Islands.

(9) The Commission may conduct public hearings or public consultations in respect of applications for licences granted under this section, when such applications are made in the first instance or prior to any renewal of any licence.

(10) Where it deems appropriate, the Commission may from time to time issue a class licence and shall publish the class licence in the *Gazette*, a newspaper published and circulated in the Virgin Islands and on the Commission's website.

(11) Notwithstanding any other provision of this Act, the Commission may require that any person within a class of persons operating a telecommunications network or providing a telecommunications service under a class licence shall notify the Commission within one month of commencing operations.

(12) An operator of a telecommunications network used solely to provide internal telecommunications services or a provider of any such services,

- (a) is not required to obtain a licence pursuant to this Act; and
- (b) shall obtain a frequency authorisation pursuant to section 19 if its network provides a radiocommunication service or uses the spectrum.

16. (1) A licensee shall

Obligations with respect to licences.

- (a) not assign its licence without the prior written approval of the Commission;
- (b) upon written request made by the Governor and subject to any enactment, collaborate with the Governor in matters of internal security; and
- (c) comply with this Act, the Regulations, the Telecommunications Code, the terms and conditions of its licence and any instructions.

(2) Unless the prior written approval of the Minister has been obtained,

- (a) a person owning or holding a significant interest in a public supplier shall not sell, transfer, charge or otherwise dispose of his interest in such public supplier, or any part of his interest; or
- (b) a public supplier shall not merge or consolidate with another company.

(3) A public supplier shall not, unless the prior written approval of the Minister has been obtained

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2);
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in
 - (i) a person acquiring a significant interest in such operator or service provider; or
 - (ii) a person who already owns or holds a significant interest in the operator or service provider, increasing or decreasing the size of his interest.

(4) The approval required under subsections (1)(a), (2) and (3) shall not be unreasonably withheld.

(5) Notwithstanding anything in this section, where a sale, transfer, charge or other disposition referred to in subsection (2) is a result of an internal reorganisation of a body corporate that does not result in the transfer of control of a significant interest in a public supplier,

- (a) the prior written approval of the Minister shall not be required; and
- (b) such public supplier shall, as soon as reasonably practicable, notify the Commission of the nature and extent of such sale, transfer, charge or other disposition.

(6) The Commission may, in respect of a public supplier whose shares, or whose ultimate holding company's shares, are publicly traded on a stock exchange recognised by the Commission and for so long as the shares remain publicly traded, waive the obligation to obtain approval under subsection (3) and any such waiver shall be subject to a condition that the public supplier shall, as soon as reasonably practicable, notify the Commission of any sale, transfer, charge or other disposition referred to in subsection (2).

Conditions of licences.

17. A licence shall contain terms and conditions regarding

- (a) the term and expiration of the licence and the time required for an application for renewal;
- (b) the circumstances under which the licence may be amended for reasons of force majeure, national security, changes in national legislation and implementation of international obligations and where the Commission, taking into account the public interest, otherwise deems amendment necessary in the public interest or to achieve the purposes of this Act; and
- (c) such other matters as the Commission may specify for such licence consistent with the purposes of this Act.

Obligations of public suppliers.

18. (1) A public supplier shall maintain the confidentiality of, and refrain from using or disclosing, any

- (a) confidential, personal and proprietary information of any user or licensee, or

- (b) information regarding usage of the service or information received or obtained in connection with the operation of the network or provision of the service,

for any purpose other than a purpose specified in subsection (2), except as otherwise permitted by the user or licensee, as the case may be, or as required by warrant, court order or other government agency with competent authority.

(2) The purposes permitted under subsection (1) are such use and disclosure as is necessary to enable the public supplier to

- (a) operate the network or service, as the case may be;
- (b) bill and collect charges;
- (c) protect the rights or property of the public supplier; or
- (d) protect other licensees from fraudulent use of their networks or services.

(3) Nothing in subsection (1) prohibits the Commission from authorizing a public supplier to disclose lists of its subscribers, including directory access databases, for the publishing of directories or for such other purposes as the Commission may specify.

19. (1) Subject to this Act, no person shall use the spectrum without a frequency authorisation granted by the Commission.

Requirement for a frequency authorisation.

(2) A person who wishes to use the spectrum shall apply to the Commission in the manner specified in the Telecommunications Code.

(3) The Commission may grant or refuse any application for frequency authorisations based on applicable policies and the Regulations.

(4) On the granting of a frequency authorisation, the Commission shall cause to be published on its website and in the *Gazette* and a newspaper published and circulated in the Virgin Islands, a notice to that effect.

(5) The terms of a frequency authorisation shall be made available for public scrutiny at the office of the Commission and may be reproduced by the Commission, at the request of any member of the public, on payment of the prescribed fee.

(6) Where an application for a frequency authorisation is refused, the Commission shall notify the applicant in writing, giving reasons for the refusal.

(7) Where it appears to the Commission that the frequency authorisation contains information contrary to national security or international obligations, the Commission shall withhold that information from public scrutiny.

(8) A frequency authorisation shall be consistent with the spectrum plan established pursuant to section 34 and any Regulations and shall confer the right on the authorisation holder to use a certain frequency band or bands subject to such terms and conditions as may be set out in the frequency authorisation.

(9) Subject to the other subsections of this section, the Commission shall determine all frequency authorisations on an objective, transparent and non-discriminatory basis.

(10) Regulations may exempt a part of the spectrum from the requirement for a frequency authorisation.

Obligations with respect to frequency authorisations.

20. (1) An authorisation holder shall

- (a) strictly adhere to the authorised frequency band;
- (b) not assign the frequency authorisation without the prior written approval of the Commission;
- (c) upon request made by the Governor and subject to any enactment collaborate with the Governor in matters of internal security; and
- (d) comply with this Act, the Regulations, the Telecommunications Code, the terms and conditions of its authorisation and any instructions.

(2) A person owning or holding a significant interest in an authorisation holder shall not sell, transfer, charge or otherwise dispose of his interest in such authorisation holder, or any part of his interest, unless the prior written approval of the Commission has been obtained.

(3) An authorisation holder shall not, unless the prior written approval of the Commission has been obtained,

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (2);
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in

- (i) a person acquiring a significant interest in such authorisation holder; or
- (ii) a person who already owns or holds a significant interest in the authorisation holder, increasing or decreasing the size of his interest.

(4) The approval of the Commission required under subsections (1)(b), (2) and (3) shall not be unreasonably withheld.

(5) Notwithstanding anything in this section, where a sale, transfer, charge or other disposition referred to in subsection (2) is a result of an internal reorganisation of a body corporate that does not result in the transfer of control of a significant interest in an authorisation holder,

- (a) the prior written approval of the Commission shall not be required; and
- (b) such authorisation holder shall, as soon as reasonably practicable, notify the Commission of the nature and extent of such sale, transfer, charge or other disposition.

(6) The Commission may, in respect of an authorisation holder whose shares or whose ultimate holding company's shares are publicly traded on a stock exchange recognised by the Commission and for so long as such shares remain publicly traded, waive the obligation to obtain approval under subsection (3) and any such waiver shall be subject to a condition that such authorisation holder shall, as soon as reasonably practicable, notify the Commission of any sale, transfer, charge or other disposition referred to in subsection (2).

21. A frequency authorisation shall contain conditions regarding

Conditions of
frequency
authorisations.

- (a) the expiration of the frequency authorisation and the time required for an application for renewal;
- (b) the circumstances under which the frequency authorisation may be amended for reasons of force majeure, national security, changes in national legislation and implementation of international obligations and where the Commission, taking into account the public interest, otherwise deems amendment necessary in the public interest or to achieve the purposes of this Act;
- (c) the use of the frequency band so authorised;

- (d) the type of emission, power and other technical requirements for the radiocommunication service; and
- (e) such other matters as the Commission may specify for such frequency authorisation.

Authorisation to operate in territorial waters or airspace.

22. Notwithstanding section 19(1), the Commission may, with the approval of the Minister, exempt a ship or aircraft that is not registered in the Virgin Islands from the requirement to have authorisation from the Commission while operating in the territorial waters or airspace of the Virgin Islands for any radiocommunication service as long as, and to the extent that, the service is operated under a valid authority or frequency authorisation issued elsewhere than in the Virgin Islands in accordance with international agreements relating to radiocommunication in respect of ships or aircraft.

Amendment of licences and frequency authorisations.

23. (1) Subject to sections 17(b) and 21(b), a licence or a frequency authorisation may be amended by the written agreement of the licensee or the authorisation holder or by the Commission, where

- (a) force majeure, national security considerations, changes in national legislation or the implementation of international obligations require amendment; or
- (b) the Commission, taking into account the public interest, otherwise deems amendment necessary to achieve the purposes of this Act.

(2) Where a licence or a frequency authorisation is amended pursuant to subsection (1) on grounds of national security, the rights of the licensee or the authorisation holder to compensation shall not be prejudiced.

(3) Before amending a licence or a frequency authorisation, the Commission shall give the licensee or authorisation holder adequate advance notice in writing, which, absent exigent circumstances, shall not be less than ninety days, giving reasons for the amendment and the date by which the amendment shall take effect, and shall give the licensee or the authorisation holder the opportunity

- (a) to present its views, and
- (b) to submit to the Commission within such time as the Commission may specify a written statement of objections to the amendment of the licence or the frequency authorisation, which may include proposed alternatives to the amendment,

which the Commission shall take into account before reaching a decision on amendment.

(4) Nothing in this section precludes the Commission from immediately amending a licence or a frequency authorisation where there is, or is likely to be, a risk to national security, or where immediate amendment is essential to the public interest.

(5) The licensee or the authorisation holder may request that the Commission consent to an amendment of its licence or its frequency authorisation.

24. (1) Subject to the terms and conditions of a licence or frequency authorisation, the Commission may renew the licence or frequency authorisation provided that the licensee or authorisation holder

Renewal of licences and frequency authorisations.

- (a) has operated within the terms of the current licence or frequency authorisation,
- (b) has complied in material respects with, or is not in persistent breach of, any of the provisions of this Act, the Regulations, the Telecommunications Code or the terms and conditions of the licence or the frequency authorisation, and
- (c) has complied in material respects with, or is not in persistent breach of, any instructions, and

unless, in the case of a public supplier, the Commission has determined that it is not in the public interest to renew the licence and has given notice not less than three years before the expiration of the licence that the licence will not be renewed.

(2) Before determining not to renew a licence or a frequency authorisation pursuant to subsection (1), the Commission shall give the licensee or the authorisation holder adequate advance notice, which, absent exigent circumstances and except as provided for in subsection (1), shall not be less than thirty days, in writing of its intention not to renew such licence or frequency authorisation, specifying the grounds on which it proposes not to renew, and shall give the licensee or the authorisation holder the opportunity

- (a) to present its views, and
- (b) to submit to the Commission within such time as the Commission may specify a written statement of objections

to the decision not to renew the licence or the frequency authorisation,

which the Commission shall take into account before reaching a decision on renewal.

Special licences.

25. (1) The Commission may grant a special licence where it determines that an emergency or other exigent circumstance exists.

(2) A person who wishes to obtain a special licence shall apply to the Commission in the manner specified in the Telecommunications Code.

(3) Special licences are subject to subsections (3) to (6) of section 15.

(4) A special licence shall be for a term not exceeding ten calendar days and may be renewed for good cause shown.

PART IV INTERCONNECTION AND ACCESS TO FACILITIES

Interconnection.

26. (1) In addition to the obligations of section 18, a public supplier shall

- (a) provide for the transmission and routing of the services of other public suppliers at such technically feasible point and on such terms as may be specified by the Commission;
- (b) provide other public suppliers, where requested in writing, with access to any of its facilities at such point as may be considered technically feasible, and on such terms as may be specified, by the Commission; and
- (c) not, with respect to its network or services, refuse, obstruct or in any way impede, another public supplier from making a direct interconnection, or an indirect interconnection through the public telecommunications network or public telecommunications services of other public suppliers, to the public telecommunications network he operates or to the public telecommunications services he provides, on such terms as may be specified by the Commission under the Telecommunications Code.

(2) In respect of the obligations pursuant to subsection (1), a public supplier shall comply with the Telecommunications Code.

(3) For purposes of this Act, the Commission may determine that a public supplier is dominant with respect to a telecommunications network or a telecommunications service where, individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and users and, for such determination, the Commission shall take into account the following factors:

- (a) the relevant market;
- (b) technology and market trends;
- (c) the market share of the public supplier;
- (d) the power of the public supplier to introduce and sustain a material price increase independently of competitors;
- (e) the degree of differentiation among networks and services in the market; and
- (f) any other matters that the Commission deems relevant.

(4) Where the Commission determines that a public supplier is dominant in any market, the Commission shall include in the licence of the public supplier, upon issuing or by amending the licence, such additional terms and conditions to the licence for the purposes of regulating tariffs, protecting the interest of users and other licensees including the provision of adequate facilities and interconnection and access services, and of ensuring fair competition among licensees as it considers appropriate.

(5) Where a public supplier that was determined to be dominant considers that it has lost its dominance with respect to a telecommunications network or a telecommunications service, it may apply to the Commission to be classified as non-dominant in a particular market and, where the Commission approves the application, the Commission shall amend the public supplier's licence by removing the additional terms and conditions included under subsection (4).

(6) Before determining that a public supplier is dominant, or has lost its dominance, with respect to a telecommunications network or a telecommunications service, the Commission shall hold a public consultation and shall, at least fourteen days before the commencement of the consultation, publish details in relation to the same and the matter under consideration in the *Gazette*, on the Commission's website and in a newspaper published and circulated in the Virgin Islands.

Access to
facilities.

27. (1) Access to facilities and utility installations shall be negotiated as between or among public suppliers and public utilities on a non-discriminatory and equitable basis.

(2) A public supplier or public utility may deny access to a facility or utility installation only where it demonstrates that there is insufficient capacity in such facility or utility installation, taking into account its reasonably anticipated requirements, or for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(3) Where the parties to such a negotiation are unable to reach agreement on the rates, terms and conditions for access to any facility or utility installation within a period of thirty days, either or any of them may refer the matter to the Commission and the Commission shall determine such rates, terms and conditions as it considers to be just and reasonable.

(4) For purposes of this section, access to facilities does not include interconnection.

PART V UNIVERSAL SERVICE AND PRICES

Universal
service.

28. (1) In accordance with the policy established by the Minister, the Commission shall determine the public telecommunications services in respect of which the requirement of universal service shall apply, taking into account the needs of the public, affordability of the service and advances in technologies.

(2) Such services as are referred to in subsection (1) may, if the Minister so directs, include a high quality public telephone service, including a free telephone directory for subscribers of such service, and operator-assisted information services and free access to emergency telecommunications services for subscribers or users of a public telecommunications service whose account is current or whose service has been suspended.

(3) In accordance with the policy established by the Minister, the Commission shall periodically determine the manner in which a public telecommunications service shall be provided and funded in order to meet the requirements of universal service for that service, including the obligations, if any, of the providers and users of the service.

(4) The Minister may, by Order, require that all licensees, or all licensees falling within a specified category of licensee, contribute to the funding of universal service.

(5) The obligation to provide and contribute to the funding of the services referred to in subsection (1) shall be applied on an objective, transparent and non-discriminatory basis.

(6) Prior to terminating the offering to the public of a public telecommunications service in respect of which the requirement of universal service applies, a licensee shall obtain written approval from the Commission.

29. (1) Prices for telecommunications services, except those regulated by the Commission in accordance with this section, shall be determined by providers in accordance with the principles of supply and demand in the market. Prices.

(2) The Commission may establish price regulation regimes to promote efficiency and sustainable competition and maximise consumer benefits, which shall be specified in the Telecommunications Code, for setting, reviewing and approving prices, in any case where

- (a) there is only one licensee operating a public telecommunications network or providing a public telecommunications service, or where one licensee has a dominant position in the relevant market;
- (b) a sole or dominant licensee operating a public telecommunications network or providing a public telecommunications service cross-subsidises one telecommunications service provided by such licensee by revenues arising from the provision of any other service; or
- (c) the Commission detects anti-competitive pricing or acts of unfair competition.

(3) A service provider shall publish the prices, terms and conditions for its public telecommunications services at such times and in such manner as the Commission shall specify.

PART VI WORKS AND ACCESS TO LAND

30. (1) In connection with its operation of a public telecommunications network, an operator may install or maintain a facility in or over a road or public ground, or on the shore or bed of the sea, or remove the facility therefrom, in accordance with the provisions of the Physical Planning Act, 2004 and, for that purpose, may, in accordance with the development plan for the area and the provisions of the Road Ordinance and any other written law, carry out works.

Works.
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(2) Before carrying out any works for the purposes specified in subsection (1), an operator shall

- (a) obtain from the Chief Planner plans showing all utility installations that might be affected;
- (b) submit detailed plans of the intended works to each utility installation owner likely to be affected thereby;
- (c) not commence any works that might affect a utility installation without first having requested and obtained written permission from the affected utility installation owner; and
- (d) notify the Commission of any intended works and, in the event of the failure to obtain the permission of a utility installation owner under paragraph (c), the Commission shall resolve any dispute thereof.

(3) Pursuant to the notification received by the Commission under subsection (2)(d), the Commission shall notify other operators or public utilities of the intended works and inquire of them whether they have any intention of undertaking any similar type of works.

(4) No works shall commence until the expiration of fourteen days from the date of the receipt of the permission.

(5) In the event of an emergency, the operator may dispense with the requirement set out in subsection (4).

(6) An operator may dispense with the requirement of subsection (2)(c) where the Commission certifies in writing that the intended works are necessitated by an emergency.

(7) The removal or alteration of any utility installation shall be undertaken by the affected utility installation owner, and the cost thereof shall be borne by the operator.

(8) No operator or public utility notified under subsection (3) shall carry out works within three months of the receipt of such notification except where such operator proves to the satisfaction of the Commission the necessity of carrying out emergency works.

(9) Prior to carrying out works, an operator shall publish a description thereof in at least one newspaper published and circulated in the Virgin Islands

and shall otherwise inform affected persons by such other means as the Commission may specify and for the purposes of this subsection, section 25 of the Physical Planning Act, 2004 shall not apply.

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31. (1) Where an operator damages any utility installation in carrying out works, it shall immediately request the utility installation owner to repair the damage to the utility installation.

Repair and restoration.

(2) The operator shall compensate the utility installation owner for the full cost of repair.

(3) An operator shall, as speedily as possible, complete all works and restore any road or public grounds affected, including the removal of any debris, to the satisfaction of the Chief Planner, such satisfaction to be expressed in writing.

(4) Where an operator fails to comply with subsection (2), it shall be held liable for any expenditure that the Chief Planner incurs in such restoration and for any other loss by any other person.

(5) The liability of the operator under subsection (4) shall continue for a period of two years or until the Chief Planner expresses his satisfaction in writing pursuant to subsection (3).

32. (1) An operator duly authorised in writing by the Chief Planner may, at any reasonable time, enter upon and survey any land, other than land covered by buildings or used as a garden or pleasure ground, for the purpose of ascertaining whether the land would be suitable for use by the operator for, or in connection with, the establishment or operation of the operator's telecommunications network.

Access to lands for inspection and maintenance.

(2) Where, in an exercise of the power conferred by this section, any damage is caused to land or to chattels, the operator shall make good the damage or pay to every person interested in the land or chattels compensation in respect of the damage and where, in consequence of an exercise of that power, any person is disturbed in his enjoyment of any land or chattels, the operator shall pay to that person compensation in respect of the disturbance.

(3) In engaging in the inspection of land, installation of facilities, or maintenance of facilities, an operator shall take all reasonable steps to act in accordance with good engineering practice, to protect the environment, to protect the safety of persons and property, and to ensure that the activity interferes as little as practicable with the operations of a public utility, roads and paths, the movement of traffic, and the use of public grounds and other land.

Installation of facilities on private land or buildings.

33. (1) Where, in connection with the operation of its telecommunications network, an operator wishes to install facilities on private land or buildings, it shall first obtain the permission of the landowner and the landowner shall be entitled to compensation therefor, except where such facilities are used to provide a telecommunications service to the landowner or his tenant.

(2) Subject to subsection (1), an operator, for the purposes of installing facilities on private land or buildings,

- (a) may lop or trim any tree that, in its opinion, is likely to damage or obstruct its facilities;
- (b) shall cause as little damage as possible and shall pay full compensation to all persons for any damage sustained by them by reason or in consequence of the exercise by such operator of such powers; and
- (c) shall be subject to the following restrictions:
 - (i) it shall not place any facilities on any private land or building in such manner as to cause interference with or obstruction of the occupier of any lands in any business or cultivation carried on upon such land or in such building;
 - (ii) it shall not place any facilities on any private land or building, or lop or trim any trees thereon, until it has given at least fourteen days notice in writing to the owner or occupier of the land or building of its intention to do so, specifying the work to be done and notifying such person of his rights to give notice of an objection thereto to the Commission pursuant to subparagraph (iii); and
 - (iii) on receipt of any notice of the intention of an operator to place any facilities on any private land or building, or to lop or trim any trees thereon, the owner or occupier, or his agent may, within fourteen days thereafter, give notice in writing of his objection to the Commission, whereupon the operator shall not proceed with the work or such part thereof as is objected to until authorised by the Commission to do so.

(4) In the event of disagreement over the quantum of any compensation to which a landowner is entitled pursuant to subsection (2) or of any other dispute

relating to the installation or maintenance of facilities on or over private land or buildings, the matter shall be referred to the Court, whose decision shall be final.

(5) To minimise disruption to landowners, an operator shall, to the extent feasible, provide other operators with access to its facilities in accordance with section 27 and shall coordinate its installation or maintenance of facilities on or over private land or buildings.

PART VII SPECTRUM MANAGEMENT, NUMBERING AND DOMAIN NAME MANAGEMENT

34. (1) The Commission shall allocate the uses of the spectrum in order to promote the economic, orderly and efficient utilisation of frequencies for the operation of all telecommunications networks and provision of all telecommunications services, and to recover the cost thereof. Spectrum.

(2) The Commission may adopt an interim spectrum plan and shall, in co-operation and consultation with all users of spectrum in the Virgin Islands, develop and adopt a spectrum plan, which may be amended from time to time, in order to allocate the uses of the spectrum.

(3) In developing the spectrum plan and in frequency coordination, the Commission shall consult the Minister and engage in such other bilateral, regional and international consultations as it thinks fit.

(4) The Commission shall make the spectrum plan available to members of the public on its website and may charge for each paper copy of the spectrum plan such fee as may be prescribed.

(5) The spectrum plan shall state how the spectrum shall be used and the procedures by which the Commission shall assign frequency bands used to provide radiocommunication services.

(6) The procedures referred to in subsection (5) may include, but are not limited to authorising use of frequency bands

- (a) by auction;
- (b) by tender;
- (c) at a fixed price;
- (d) on a first-come, first-served basis; or
- (e) on other stated criteria.

Allocation of
frequency bands.

35. (1) Subject to subsection (2) and notwithstanding any other provision of this Act or any frequency authorisation granted by the Commission, the Commission may, in accordance with the spectrum plan, allocate or re-allocate any frequency band for any particular use.

(2) In the allocation or re-allocation of any frequency bands by the Commission, priority shall be given to the needs of the Government of the Virgin Islands in respect of matters of national security.

(3) In connection with any allocation or re-allocation of a frequency band, the Commission may terminate a frequency authorisation.

Exercise of
functions.

36. The Commission, in exercising the functions under sections 34 and 35, shall take into account

- (a) the objects of this Act;
- (b) the impact of the spectrum plan on existing and future use;
- (c) the efficient use of the spectrum;
- (d) any applicable regional agreements, standards and arrangements;
- (e) any applicable international standards, ITU Treaties and other agreements; and
- (f) any other relevant matters having regard to the circumstances of the case.

Monitoring.

37. (1) The Commission may operate frequency monitoring stations for

- (a) ascertaining whether frequency bands are being used in accordance with this Act;
- (b) monitoring the use of the frequency spectrum; and
- (c) carrying out any technical function necessary for fulfilling the requirements of the Radio Regulations of the International Telecommunication Union for the time being in force.

(2) A frequency monitoring station operated by the Commission is exempt from any of the provisions of this Act.

38. (1) No person shall operate any facility, terminal equipment or other equipment in a manner likely to cause harmful interference. Harmful interference.

(2) Where the Commission is of the opinion that the use of any facility, terminal equipment or other equipment is likely to cause or has caused or is causing harmful interference, whether or not all reasonable steps to minimise interference have been taken, the Commission may

- (a) serve notice on the person in possession of the facility, terminal equipment or other equipment requiring such person to cease such use forthwith from the date of service of the notice; or
- (b) impose limits as to when the facility, terminal equipment or other equipment may be used.

39. The Commission, in allocating frequency bands for radiocommunication services that use satellite systems, shall ensure that access to space segment is made available on a non-discriminatory and equitable basis. Space segment.

40. (1) The Commission shall develop a plan for the numbering of telecommunications services and shall administer and manage such numbers. Numbering plan.

(2) Subject to subsection (5), numbers shall be made available to providers of telecommunications services on a non-discriminatory and equitable basis.

(3) The numbering plan may establish procedures by which providers of telecommunications services may assign or re-assign numbers to users.

(4) The Commission shall make the numbering plan available on its website and shall provide paper copies to the public on payment of the prescribed fee.

(5) In developing the numbering plan referred to in subsection (1), the Commission shall preserve, to the extent feasible, the assignment of numbers made before the commencement of this Act.

(6) The Commission shall notify all service providers of any new numbering assignments made.

41. The Commission is responsible for the registration and management of the Virgin Islands country code domain names, in accordance with the manner that it shall determine, and may appoint registration agents to carry out such functions as it may determine. Domain name management

PART VIII
TERMINAL EQUIPMENT AND TECHNICAL STANDARDS

Terminal
equipment.

42. (1) Any terminal equipment sold or otherwise provided in the Virgin Islands may be connected to a public telecommunications network where the Commission has certified such terminal equipment as

- (a) being safe for the user;
- (b) being in compliance with international standards, and environmental, health and safety standards, including standards for electromagnetic radiation and emissions;
- (c) meeting requirements of electromagnetic compatibility, if specified;
- (d) not posing a risk of physical harm to such network;
- (e) effectively utilising the electromagnetic spectrum and preventing interference between satellite and terrestrial-based systems and between terrestrial systems; and
- (f) being compatible with such network.

(2) The Commission, in certifying terminal equipment pursuant to subsection (1), may recognise the type approvals from such jurisdictions as it may specify.

(3) Terminal equipment certified pursuant to this section shall bear such labels or other markings as the Commission may determine.

(4) The Commission may regulate or prohibit the sale or other provision, or the connection, of any terminal equipment or other device that is provided in the Virgin Islands primarily for the purposes of circumventing, or facilitating the circumvention of, any requirements of this Act.

(5) After this Act comes into force, the Commission shall, as soon as reasonably practicable, specify the means

- (a) by which terminal equipment shall be provided and charged to users separately from the provision of public telecommunications services; and

- (b) to facilitate or require users', as opposed to a licensee's, ownership of inside wiring and such other facilities as the Commission may determine.

43. (1) Subject to the other provisions of this Act, licensees and authorisation holders may implement such technical standards as they deem appropriate and which are in conformity with accepted international standards. Standards.

(2) Notwithstanding subsection (1), the Commission may identify, adopt or establish preferred technical standards in the Telecommunications Code or, where necessary, require conformance to a single standard.

PART IX TESTING AND INSPECTION

44. In addition to any obligations under this Act, to ensure compliance with the conditions of a licence or frequency authorisation, or for any other purpose authorised under this Act, the Commission may require a licensee, authorisation holder or any other person, to supply information, including specific answers to questions submitted to such licensee, authorisation holder or such other person, concerning Power to request information.

- (a) any telecommunications network or use of spectrum for which the licence, or the frequency authorisation was granted;
- (b) the operation of any equipment, or any works carried out, in relation to such network or use; or
- (c) usage of the licensee's or authorisation holder's telecommunications network or telecommunications service.

45. (1) The Commission shall, for the purpose of certifying or approving terminal equipment and other equipment to be installed or used for a public telecommunications network or a public telecommunications service determine whether such equipment fulfills the criteria stipulated in section 42 and such other requirements as the Commission may specify in the Telecommunications Code. Pre-installation testing.

(2) For the purpose of a determination made pursuant to subsection (1), the Commission may require that such equipment be tested in such manner as it may specify.

(3) The requirement for testing may be waived by the Commission, after consultation with the licensee or authorisation holder, if the Commission is

satisfied that the equipment has been certified in accordance with international standards.

Standards for testing.

46. The tests stipulated under section 45 shall be carried out in compliance with international standards and other standards specified by the Commission in the Telecommunications Code.

Entry, search and inspection.

47. (1) Personnel of the Commission may, at all reasonable times, enter any premises, place, vehicle, ship, aircraft, vessel or other contrivance from which any telecommunications network is operated or telecommunications service is provided, or from which any person is using spectrum for telecommunications, and

- (a) test any equipment or article found therein which is used or intended to be used for the purpose of operating a telecommunications network, providing a telecommunications service or using spectrum;
- (b) examine records or other documents relating to the operation of the telecommunications network, the provision of the telecommunications service or the use of spectrum;
- (c) search, where necessary with the assistance of any other person authorised for the purpose by the Commission, for any equipment, articles, books, records or documents that may afford evidence of contravention of this Act or the Regulations, or of any breach of any condition of any licence or frequency authorisation;
- (d) require the owner or person in charge of the premises, place, vehicle, ship, aircraft, vessel or other contrivance to give him all reasonable assistance in the examination or search;
- (e) seize and take away any equipment, articles, books, records or documents if it appears that there has been a contravention of this Act, the Regulations or the Telecommunications Code, or any breach of any term or condition of any licence or frequency authorisation, and such items so seized shall be lodged with the Commission;
- (f) have access to, print and take away any computer records or other documents relating to the operation of the telecommunications network, the provision of the telecommunications service or the use of spectrum.

(2) For the purposes of subsection (1), the personnel of the Commission may be accompanied by any police officer with such further assistance as may be necessary.

(3) Upon request of personnel of the Commission, any licensee or authorisation holder shall exhibit its licence or frequency authorisation.

(4) In carrying out the functions under this section, personnel of the Commission shall at all times act in a reasonable manner.

48. (1) Notwithstanding section 47, the Commission shall not exercise the powers vested in it under that section except upon warrant of a magistrate issued to it for such purpose. Magistrate may issue warrant.

(2) A warrant issued under this section remains in force until the purpose for which the warrant is required has been satisfied or for one month, whichever is sooner.

PART X OFFENCES

49. (1) A person who Offences

- (a) fails to comply with or acts in contravention of section 15(1), including by providing a telecommunications service for which a licence is required pursuant to this Act without having obtained such licence,
- (b) fails to comply with or acts in contravention of section 19(1), 30 or 44,
- (c) uses any equipment in such a manner as to cause harmful interference,
- (d) obstructs or interferes with the sending, transmission, delivery or reception of any communication,
- (e) intercepts, attempts to intercept or procures another person to intercept, without instructions from the Governor under section 90, the authorisation of the provider or user, or a court order, or otherwise obtains, attempts to obtain, or procures another to obtain, unlawful access to, any communication transmitted over a telecommunications network,

- (f) uses, or attempts to use, the content of any communication, knowing or having reason to believe that such content was obtained through interception or access in contravention of paragraph (e),
- (g) manufactures or sells any system, equipment, card, plate or other device whatsoever, or produces, sells, offers for sale or otherwise provides any account number or code, mobile identification number or personal identification number or code, for the purpose of fraudulent use of, or access to, any telecommunications service,
- (h) aids or abets any person operating a telecommunications network or providing a telecommunications service or a broadcasting service contrary to its licence, special licence or frequency authorisation, as the case may be,
- (i) wilfully obstructs, hinders, molests or assaults any personnel of the Commission duly engaged in the exercise of any power conferred on him under or pursuant to this Act,
- (j) fails to contribute to the funding of the services referred to in section 28 in accordance with the directions of the Commission,
- (k) dishonestly obtains a telecommunications service with intent to avoid payment of a charge applicable to the provision of that service,
- (l) has in his possession or under his control anything that may be used for, or in connection with, obtaining a telecommunications service, with intent
 - (i) to use the thing to obtain a telecommunications service dishonestly,
 - (ii) to use the thing for a purpose connected with the dishonest obtaining of such a service,
 - (iii) dishonestly to allow the thing to be used to obtain such a service, or
 - (iv) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service,

- (m) supplies or offers to supply anything which may be used as mentioned in paragraph (l), knowing or believing that the intentions in relation to that thing of the person to whom it is supplied or offered fall within paragraph (l)(i) to (iv),
- (n) sends, or causes to be sent, by means of a public telecommunications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character, or
- (o) for the purpose of causing annoyance, inconvenience or needless anxiety to another,
 - (i) sends, or causes to be sent, by means of a public telecommunications network, a message that he knows to be false, or
 - (ii) persistently makes use of a public telecommunications network,

commits an offence and is liable

- (A) on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years, or to both, or
- (B) on conviction on indictment to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding ten years, or to both, and

in the case of a continuing offence, to a further fine not exceeding five thousand dollars for each day that the offence continues after conviction.

(2) Notwithstanding subsection (1)(e), any person operating a telecommunications network or providing a telecommunications service may intercept any communication that is transmitted over its network or service solely and as is strictly necessary

- (a) to install, maintain or test equipment used or intended for use in the operation of such network or the provision of such service;
- (b) to monitor the network or service quality;

- (c) to bill and collect charges from the sender or recipient of such communication;
- (d) to protect such person's network or services from harm; or
- (e) to protect users or to protect other operators of telecommunications networks or providers of telecommunications services from the fraudulent use of such networks or services.

Giving false information..

50. A person who knowingly gives false or misleading information to the Commission commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding twelve months, or to both.

False signals.

51. A person who knowingly transmits or circulates false or deceptive distress, safety or identification signals commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years, or to both.

False communications.

52. (1) A person who, by means of any telecommunications service, sends any communication that to his knowledge is false or misleading and likely to prejudice the efficiency of any life safety service or to endanger the safety of any person, ship, aircraft, vessel or vehicle commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

(2) For the purposes of subsection (1), a person is taken to know that a communication is false or misleading if he did not take reasonable steps to ensure that it was not false or misleading.

(3) Subsection (2) does not apply to the operator of the telecommunications network or the provider of telecommunications service over which the communication is sent.

Damage to equipment.

53. (1) A person who, by any means,

- (a) recklessly or maliciously damages, removes or destroys any facility, or
- (b) recklessly or intentionally interferes with, or causes damage to, or who intentionally accesses without authorisation, any computer, switch or other facility used in connection with the operation or provision of, any telecommunications network or telecommunications service, or any telecommunications service operated by the Royal Virgin

Islands Police Force, the Prison Service, the Government of the Virgin Islands or any of its other departments, any statutory body or any other entity controlled or funded by Government,

commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years, or to both.

(2) A person who negligently commits any of the acts described in subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

54. A person convicted under section 53 is liable for all expenses reasonably incurred in the repairing, restoration or replacement of any computer, switch or other facility damaged, removed or destroyed by him and the expenses are recoverable summarily as a civil debt. Recovery of civil debt.

55. A person who intentionally discloses any communication that he knows was obtained in violation of section 49(1)(e) or who intentionally uses or discloses any personal information in violation of section 18 commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars. Confidentiality and disclosure of personal information.

56. A person who contravenes or fails to comply with any of the provisions of this Act, the Regulations or the Telecommunications Code commits an offence and except where the provision by or under which the offence is created provides the penalty to be imposed, is liable on summary conviction to a fine not exceeding twenty-five thousand dollars, and in the case of a continuing offence to a further fine not exceeding one thousand dollars for each day that the offence continues after conviction. General penalty.

57. The Minister may, by Order subject to affirmative resolution of the Legislative Council, amend the penalties set out in this Act. Amendment of penalties.

PART XI FINANCIAL AND REPORTING PROVISIONS APPLICABLE TO THE COMMISSION

58. (1) The funds and resources of the Commission shall comprise Funds and resources of the Commission.

- (a) such monies as may be appropriated by the Legislative Council for the purposes of the Commission;
- (b) industry levies, royalties, fees, charges and other monies payable to the Commission under this Act;

- (c) monies paid and property provided to the Commission by way of grants, fees, charges, rent, interest and other income derived from the investment of the Commission's funds;
- (d) monies derived from the disposal of or dealing with real or personal property held by the Commission;
- (e) monies borrowed by the Commission in accordance with this Act; and
- (f) any monies or property lawfully received by or made available to the Commission.

(2) The funds of the Commission shall be applied in accordance with this Act and in the payment of the following:

- (a) the principal of, and any interest or other charges related to the repayment of, any sums borrowed by the Commission;
- (b) the remuneration of the Commissioners and the salaries, remuneration, allowances, pensions, gratuities, provident fund and other superannuation benefits of the officers and staff employed in or in connection with the activities carried on by the Commission;
- (c) the working and establishment expenses of the Commission, including expenses relating to the maintenance of the property and installations of the Commission and the discharge of the functions of the Commission properly chargeable to revenue;
- (d) such sums as the Commission may deem appropriate to set aside for the purposes of the future removal, replacement or renewal of property or installations due to obsolescence and depreciation;
- (e) the cost, or any portion thereof, of any new works, property or installations, not being a replacement or renewal of property or installations, as the Commission may determine to be properly charged to revenue;
- (f) any other expenditure authorised by the Commission and properly chargeable to revenue.

(3) The Commission shall open and maintain an account in its name with a reputable bank licensed and operating in the Territory and approved by the Minister responsible for finance and shall ensure that all monies received by the Commission are paid into that account as soon as practicable.

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59.(1) Following a public consultation and within four weeks of the approval by the Minister responsible for finance under section 63, of its estimates in respect of a financial year, the Commission shall

Industry levy payable to the Commission.

- (a) set an industry levy for that financial year in accordance with subsection (2); and
- (b) assess the proportion of the industry levy to be paid by each licensee and authorisation holder.

(2) The industry levy for a financial year shall be calculated by adding the net estimated expenditure of the Commission as set out in the estimates approved by the Minister responsible for finance and a contingency of ten per cent of the net estimated expenditure, and by adjusting the sum of the net estimated expenditure and the contingency by

- (a) the addition of the deficit, if any, shown in the audited accounts of the Commission for the previous financial year; or
- (b) the subtraction of the surplus, if any, shown in the audited accounts of the Commission for the previous financial year.

(3) The amount assessed by the Commission on a licensee or an authorisation holder shall be paid to the Commission within four weeks after receiving notification of the assessment.

(4) Without prejudice to any other enforcement action available to the Commission, a licensee or an authorisation holder that does not pay an assessment made in accordance with this section is liable to pay interest to the Commission at the rate of five per cent per annum or such other prescribed rate.

(5) The assessment and any interest payable under subsection (4) may be recovered by the Commission as a civil debt in summary proceedings.

(6) Monies received by the Commission by way of the industry levy shall be retained by the Commission for its own use, unless the Minister responsible for finance, with the approval of the Council, otherwise directs.

60.(1) A licensee or authorisation holder shall, in accordance with the provisions of its licence or frequency authorisation, pay to the Commission a royalty at the rate of three per cent of its gross revenue or such other prescribed rate.

Royalty payable to the Commission.

(2) Without prejudice to any other enforcement action available to the Commission, a licensee or an authorisation holder that does not pay the royalty in accordance with this section or the provisions of its licence or frequency authorisation, as the case may be, is liable to pay interest to the Commission at the rate of five per cent per annum or such other prescribed rate.

(3) The royalty and any interest payable under subsection (2) may be recovered by the Commission as a civil debt in summary proceedings.

Borrowing powers.

61. (1) The Commission may, subject to subsection (2) and to the extent it considers it necessary to discharge its functions, borrow monies by way of loan, advance or overdraft.

(2) No monies shall be borrowed under subsection (1) without the approval of the Legislative Council.

(3) A resolution seeking the approval of the Legislative Council under subsection (2) or (4) shall be brought only by the Minister responsible for finance.

(4) The Commission may, with the approval of the Minister responsible for finance, give security over the whole or any part of its assets for the repayment of monies borrowed under this section and the Government may, with the approval of the Legislative Council, guarantee the repayment of any monies borrowed under this section.

Financial year of the Commission.

62. The financial year of the Commission shall be for the period 1st October in each year to 30th September of the following year.

Budget and annual work plan.

63. (1) Following a public consultation, the Commission shall, not later than three months before the commencement of each financial year, prepare in respect of the financial year, and submit to the Minister responsible for finance estimates of

- (a) expected expenditure; and
- (b) its expected income, if any, arising from any source.

(2) The estimates shall be accompanied by a work programme containing a general description of the work and activities that the Commission plans to undertake in the financial year.

(3) The Minister responsible for finance shall, as soon as practicable, consider the estimates and work programme submitted by the Commission with a view to

- (a) approving the estimates, with or without modification; or

- (b) remitting the estimates back to the Commission without approval.

(3) Where the Minister responsible for finance remits the estimates back to the Commission, he shall provide the Commission with the reasons for his non-approval of the estimates, including any specific recommendations for modification.

(4) Where the estimates are approved, the Minister responsible for finance shall, within three months of the approval, cause them and the work plan to be laid before the Legislative Council.

64. (1) The Commission shall

Accounts and
audit.

- (a) keep proper books of account of its income and other receipts and expenditure; and
- (b) ensure that
 - (i) all monies received are properly brought to account;
 - (ii) all payments out of its monies are correctly made and properly authorised; and
 - (iii) adequate control is maintained over its property and over the incurring of liabilities by the Commission.

(2) The books of account kept under subsection (1) shall be maintained in such form and manner that they

- (a) are sufficient to record and explain the Commission's transactions;
- (b) enable the Commission's financial position to be determined with reasonable accuracy at any time; and
- (c) are sufficient to enable the Commission's financial statements to be prepared and audited in accordance with this section.

(3) Within three months after the end of each financial year, the Commission shall prepare and approve accounts containing

- (a) a statement of the assets and liabilities of the Commission at the end of the financial year;

- (b) a statement of the revenue and expenditure of the Commission during the financial year;
- (c) such other financial statement for the financial year as may be specified by the Minister responsible for finance; and
- (d) proper and adequate explanatory notes to the financial statements.

(4) The accounts of the Commission shall within six months after the end of each financial year, be audited by such person as may be appointed in respect of each financial year by the Board, but until such appointment is made the Auditor General shall be responsible for auditing the accounts of the Commission.

Surplus, how dealt with.

65. Where there is a surplus on the budget approved for the Commission's expenditure for any financial year, such surplus shall, subject to this Act, be paid into the Consolidated Fund, unless otherwise agreed upon with the Minister responsible for finance.

Annual report.

66. (1) Within three months of the completion of the audit of the Commission's accounts in respect of any financial year, the Commission shall submit to the Minister responsible for finance

- (a) a copy of its audited accounts;
- (a) a written report of its operations and activities for that financial year together with a copy of the audited financial statements.

(2) Within three months of receiving the Commission's audited accounts, report and audited financial statements, the Minister responsible for finance shall cause them to be laid in the Legislative Council.

Exemption from taxation, etc.

67. The Commission is exempt from the payment of all taxes, levies and licence fees on its income and operations and from the payment of all taxes, duties and rates on its property and documents.

PART XII GATEWAYS FOR DISCLOSURE AND GATHERING OF INFORMATION

Restrictions on the disclosure of information.

68. (1) Subject to subsection (3), a person to whom this section applies shall not knowingly disclose to any person,

- (a) information concerning the affairs of an individual or the business of any person that he has acquired in the course of

his duties or in the exercise of his functions under this Act;
and

- (b) without limiting paragraph (a), any information, when designated by a person submitting information to the Commission, that is in the nature of a trade secret or other confidential financial, scientific or technical information the disclosure of which could reasonably be expected to result in material financial loss or gain to any person.

(2) This section applies to a person who is or has been a member, employee, advisor or agent of the Commission or a member of a committee of the Commission.

(3) Subsection (1) does not apply to a disclosure of information

- (a) made to the Governor pursuant to a request or order under section 90;
- (b) made to the Council;
- (c) where the Commission determines, after considering representations from the person who supplied such information to the Commission and other persons with a demonstrable commercial or proprietary interest in such information, that the disclosure would facilitate the carrying out of its functions, powers or duties under this Act or any other enactment, or would otherwise be in the public interest;
- (d) made with the written consent of the person to whom the information relates;
- (e) that is otherwise in the public domain;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of the person to whom the information relates to be determined;
- (g) in connection with the investigation of any civil or criminal offence or for the purposes of any civil or criminal proceedings;
- (h) made by one person to whom this section applies to another person to whom this section applies; or

- (i) required or permitted by any court of competent jurisdiction in the Virgin Islands.

Instructions for the reporting of information.

69. (1) The Commission may issue instructions to a licensee or an authorisation holder requiring such person to make returns, or furnish documentation, to the Commission for statistical purposes or where the disclosure would facilitate the carrying out of its functions, powers or duties under this Act or any other enactment, or would otherwise be in the public interest.

(2) Any instructions under subsection (1) shall specify the period within which returns shall be made or documentation furnished.

(3) Any instructions under subsection (1) may make different provisions in relation to different persons, circumstances or cases.

(4) A licensee or an authorisation holder that fails, within the period specified, to make a return or furnish documentation to the Commission in accordance with any instructions under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

General power to request information.

70. (1) Where

- (a) it appears to the Commission that a licensee, an authorisation holder or any other person may be contravening, or may have contravened this Act, the Regulations, the Telecommunications Code, any instructions or any term or condition of a licence or frequency authorisation, or
- (b) it is reasonably required for the purpose of discharging its functions or ensuring compliance with this Act, the Regulations, the Telecommunications Code or any term or condition of a licence or frequency authorisation,

the Commission may serve a notice under subsection (2).

(2) A notice under this subsection may be served upon any person and may require that person to

- (a) produce to the Commission at a time and place specified in the notice any documents specified or described in the notice that are in that person's possession or custody or under his control; or
- (b) furnish to the Commission at the time and place specified in the notice the information specified or described in the notice.

(3) The Commission may require any documents or information provided pursuant to this section

- (a) to be provided in such form or manner as it may require; and
- (b) to be verified or authenticated in such manner as it may reasonably require.

(4) The Commission may take copies or extracts of any document or information produced pursuant to this section.

(5) Where a person claims a lien on a document, the production of the document pursuant to this section is without prejudice to his lien.

(6) A person shall not be required to produce any documents or give any information under this section that he could not be compelled to produce or give as evidence in civil proceedings in the Court.

(7) If a person fails to comply with a notice served under subsection (2), the Court may, on the application of the Commission, make such order as it considers fit for requiring the person to comply with the notice and may make such other order, whether as to costs or otherwise, as it considers fit.

(8) A person who without reasonable excuse fails to comply with a notice issued under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

71.(1) Where

- (a) a person who is issued a notice under section 70 fails to comply or only partly complies with such notice, or
- (b) the Commission is of the opinion that
 - (i) an offence under this Act or the Regulations has been or is being committed, or may be committed unless swift action is taken to prevent the commission of the offence,
 - (ii) there are documents, or there is information, on the premises of a person which may reveal the commission of an offence under this Act or the Regulations, and
 - (iii) if a notice under section 70 is issued it would not be

Commission may apply for search warrant.

complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed,

the Commission may, on oath sworn to on its behalf by a member of the Commission, apply to a Magistrate for a search warrant.

(2) On receipt of an application under subsection (1), the Magistrate may authorise a named representative of the Commission, together with a police officer and any other person named in the warrant,

- (a) to enter the premises specified in the warrant at any time within one month from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

(3) Unless the Court, on the application of the Commission, otherwise orders, any document of which possession is taken under this section may be retained

- (a) for a period of three months; or
- (b) if within that period proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

(4) In this section, “premises” includes a vehicle, a vessel or an aircraft.

PART XIII
ENFORCEMENT PROVISIONS

72. (1) A public supplier shall appoint or designate one of his staff, as may be approved by the Commission, as a Compliance Officer for the purposes of this Act. Appointment of
Compliance
Officers.

(2) A Compliance Officer shall

- (a) be a senior officer with relevant qualifications and experience to enable him to respond sufficiently well to enquiries relating to the public supplier and the conduct of its business;
- (b) be responsible for establishing and maintaining such manual of compliance procedures in relation to the business of the public supplier as the Commission may require;
- (c) be responsible for ensuring compliance by staff of the public supplier with
 - (i) the provisions of this Act, the Regulations, the Telecommunications Code and the conditions of the public supplier's licence;
 - (ii) the provision of any manual of compliance procedures established under paragraph (b); and
 - (iii) any instructions;
- (d) act as the liaison between the public supplier and the Commission in matters relating to compliance with the provisions of this Act, the Regulations, the Telecommunications Code, the conditions of its licence and any instructions; and
- (e) prepare and submit to the Commission written reports on the public supplier's compliance with the provisions of this Act, the Regulations, the Telecommunications Code, the conditions of its licence and any instructions and the reports shall be prepared in such form and submitted at such time as the Commission may determine.

(3) For the purpose of subsection (2)(a), the question as to whether a

senior officer of a public supplier has relevant qualifications and experience shall be determined in accordance with the provisions of the Telecommunications Code.

(4) Notwithstanding the approval by the Commission of the appointment of a Compliance Officer, the Commission may direct the removal of such Officer, and the public supplier to whom the Officer relates shall forthwith appoint another person as Compliance Officer in accordance with the provisions of this section.

Compliance inspections.

73. (1) The Commission may, for the purposes of the prudential supervision of a licensee or authorisation holder,

- (a) issue a notice requiring the licensee or authorisation holder to answer, in writing and within a specified time, such questions as are specified in the notice;
- (b) issue a notice requiring the licensee or authorisation holder to produce at a specified time and place, such documents, records or things as are specified in the notice;
- (c) inspect the premises and business, including the systems and controls, of the licensee or authorisation holder;
- (d) inspect the assets, including cash, belonging to or in the possession or control of the licensee or authorisation holder;
- (e) examine and make copies of documents and records belonging to or in the possession or control of a licensee or authorisation holder that, in the opinion of the Commission, relate to the carrying on of business by it; or
- (f) hold a public consultation on issues relating to the operation of the telecommunications network or the provision of the telecommunications service, as the case may be, by the licensee or authorisation holder.

(2) The Commission shall give reasonable notice to a licensee or authorisation holder of its intention to exercise its powers under subsection (1).

(3) The Commission shall, at least fourteen days before the holding of a public consultation under subsection (1)(f), publish in at least one newspaper published and circulated in the Virgin Islands, a notice informing the public of the time and place of the public consultation and the issues to be discussed.

Appointment of examiners.

74. (1) Where the Commission is entitled to take enforcement action against

a licensee or authorisation holder under section 75, it may appoint one or more competent persons as examiners to conduct an investigation on its behalf.

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following:

- (a) the nature, conduct or state of the business of the licensee or authorisation holder;
- (b) a particular aspect of the business of the licensee or authorisation holder; and
- (c) the ownership or control of the licensee or authorisation holder.

(3) In an investigation involving a public supplier, an examiner appointed under subsection (1) may, if he considers it necessary for the purposes of his investigation, also investigate the business of any person who is, or at any relevant time has been,

- (a) a member of the group of which the person under investigation is a part ; or
- (b) a partnership of which the person under investigation is a member.

(4) Where a person appointed as an examiner under this section is not a member or officer of the Commission, he shall, unless otherwise agreed between him and the Commission, be remunerated on such terms as the Commission may determine.

75. (1) The Commission may take enforcement action against a licensee or authorisation holder if,

Enforcement
action.

- (a) in the opinion of the Commission, the licensee or authorisation holder
 - (i) has contravened or is in contravention of this Act, the Regulations or the Telecommunications Code;
 - (iii) is carrying on or is likely to carry on business in a manner that is detrimental to the public interest, including an anti-competitive manner, or detrimental to the interest of clients, creditors or investors;

- (iv) is or is likely to become insolvent;
 - (v) has failed to comply with an instruction given to it by the Commission;
 - (vi) is in breach of any term or condition of its licence or frequency authorisation;
 - (vii) in the case of a public supplier, is no longer considered to be a fit and proper person to continue holding a licence; or
 - (viii) has provided the Commission with any false, inaccurate or misleading information, whether on making an application for a licence or frequency authorisation or subsequent to the issue of a licence;
- (b) the licensee or authorisation holder is compulsorily wound up or passes a resolution for voluntary winding up or is dissolved;
 - (c) a receiver has been appointed in respect of the business carried on by the licensee or authorisation holder or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge; or
 - (d) in the case of a public supplier, in the opinion of the Commission,
 - (i) a person having a share or interest in the licensee, whether equitable or legal, or any director or officer of the licensee, is not a fit and proper person to have an interest in or be concerned with the management of a licensee, as the case may be; or
 - (ii) a licensee or another person has refused or failed to cooperate with the Commission on a compliance inspection conducted by the Commission under section 73.

(2) If the Commission is entitled to take enforcement action under subsection (1), it may, without prejudice to its powers under sections 49 and 76, exercise one or more of the following powers:

- (a) issue a public censure of the licensee or authorisation

holder;

- (b) impose a fine on the licensee or authorisation holder in such amount as it thinks fit;
- (c) appoint an examiner to conduct an investigation under section 74;
- (d) in the case of a public supplier, appoint a qualified person at the cost of the public supplier to advise the public supplier on the proper conduct of its business;
- (e) issue instructions;
- (f) initiate such investigation as may be necessary to ensure compliance with this Act, the Regulations, the Telecommunications Code, any instructions or a term or condition of the relevant licence or frequency authorisation; or
- (g) make such order against the licensee or authorisation holder as it thinks fit, including a provisional or interim order.

(3) Where a licensee or authorisation holder fails to comply with any enforcement action taken against it under subsection (2), the Court may, on the application of the Commission, make such order as it considers fit for requiring the person to comply with the enforcement action and may make such other order, whether as to costs or otherwise, as it considers fit.

(4) Without prejudice to subsection (3), a licensee or authorisation holder who without reasonable excuse fails to comply with any enforcement action taken against it under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

76. (1) Subject to this section, the Commission may terminate the licence or frequency authorisation of a licensee or authorisation holder if

Termination or suspension of licences or frequency authorisations.

- (a) the licensee or authorisation holder has failed to commence or ceased to carry on the business for which it was licensed or authorised; or
- (b) the licensee or authorisation holder applies to the Commission for its licence or frequency authorisation to be terminated.

(2) Subject to this section, the Commission may suspend the licence or

frequency authorisation of a licensee or authorisation holder if

- (a) it is entitled to take enforcement action against the licensee or authorisation holder under section 75;
- (b) the licensee or authorisation holder has failed to commence or ceased to carry on the business for which it was licensed; or
- (c) the licensee or authorisation holder applies to the Commission for its licence to be terminated.

(3) Subject to subsection (4), the period of suspension of a licence or frequency authorisation under subsection (2) shall not exceed sixty days.

(4) If it is satisfied that it is in the public interest to do so, the Court may, on the application of the Commission, extend the period of suspension of a licence or frequency authorisation under this section for one or more further periods not exceeding thirty days each.

(5) The Commission shall, before exercising the power of suspension or termination conferred by this section, give the licensee or the authorisation holder adequate advance notice in writing, which, absent exigent circumstances, shall not be less than ninety days, specifying the grounds on which it proposes to suspend or terminate the licence or the frequency authorisation, and shall give the licensee or the authorisation holder the opportunity

- (a) to present its views,
- (b) to remedy the breach of the provisions of this Act, the Regulations, the Telecommunications Code, the term or condition of the licence or the frequency authorisation or any instruction, and
- (c) to submit to the Commission within such time as the Commission may specify a written statement of objections to the suspension or termination of the licence or the frequency authorisation,

which the Commission shall take into account before reaching a decision on suspension or termination.

(6) During the period that the Commission is considering exercising its power to suspend or terminate a licence or a frequency authorisation, the licensee or the authorisation holder shall continue to operate until such time as the Commission makes a determination and, in the event that the period of the licence

or the frequency authorisation comes to an end before the determination by the Commission is made, an interim renewal of the licence or the frequency authorisation on the same terms shall be granted.

(7) Nothing in this section precludes the Commission from immediately suspending or terminating a licence or a frequency authorisation where there is, or is likely to be, a risk to national security, or where to do so is essential to the public interest.

77. (1) Where the Commission is entitled to take enforcement action against a licensee or authorisation holder, the Commission may issue a directive directing the licensee or authorisation holder

Power to issue directives.

- (a) to cease to engage in any class or type of business;
- (b) not to enter into any new contracts for any class or type of business.

(2) Without prejudice to subsection (1), where it is considered necessary for the effective performance of its functions and prudential supervision of telecommunications services business, the Commission may issue directives of a special or general nature not inconsistent with the provisions of this Act, the Regulations or the Telecommunications Code.

(3) Where the Commission issues a directive of a general nature under subsection (2), it shall cause such directive to be published on the Commission's website, in the *Gazette* and in at least one newspaper published and circulated in the Virgin Islands.

(4) A directive issued under subsection (2) may, in the case of a public supplier, extend to its compliance officer or such other officer of the public supplier as the Commission may specify in the directive.

PART XIV ADMINISTRATIVE PROVISIONS

78. (1) A Commissioner who has any direct or indirect personal, professional, business or pecuniary interest in any matter which falls to be considered by the Board shall as soon as reasonably practicable, complete declaration of interest in the form prescribed in Schedule 2 and submit it to the Secretary appointed under section 7(7) who shall, before the commencement of the meeting at which the subject matter of the declaration is to be considered, bring the form to the attention of all Commissioners.

Duty of Commissioner to disclose interest.

Schedule 2

(2) A Commissioner who has declared an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he has declared an interest is being considered by the Board and shall not express any view or take part in any vote concerning the matter.

(3) A Commissioner who fails to disclose an interest as required under subsection (1) shall, without prejudice to any penalty that may be imposed on him under this Act, be liable to be removed from office as a Commissioner.

Duty to take
oath.
Schedule 3

79. (1) Every Commissioner and staff of the Commission shall, prior to assuming office with the Commission, subscribe to the Oath of Confidentiality provided in Schedule 3.

(2) The Oath of Confidentiality referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

(3) The Chief Executive Officer shall keep a record of all Oaths of Confidentiality taken pursuant to this section.

Confidentiality.

80. (1) A Commissioner, officer, employee, agent or adviser of the Commission shall not disclose information relating to

- (a) the affairs of the Commission,
- (b) any application made to the Commission under this Act, or
- (c) the affairs of a licensee or authorisation holder or a customer, client or agent of the licensee or authorisation holder or other person benefiting from the work of the licensee or authorisation holder,

that he has acquired in the course of or in relation to his duties or in the exercise or performance of the Commission's powers or duties under this Act.

(2) Subsection (1) shall not apply to a disclosure

- (a) required or permitted by a court of competent jurisdiction in the Virgin Islands;
- (b) made to the Council;
- (c) made to any person for the purpose of discharging any duty or exercising any power under this Act;
- (d) in respect of the affairs of a licensee or authorisation holder

or a customer, client, investor or agent of the licensee or authorisation holder made with the consent of the licensee or authorisation holder or the customer, client, investor or agent of such person;

- (e) if the information disclosed is in the public domain;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a licensee or authorisation holder or any other person to which or to whom the information relates to be determined;
- (g) made by the Commission to a foreign regulatory authority upon the written request of that authority in accordance with this Act;
- (h) lawfully made to a person with a view to the institution or for the purpose of
 - (i) criminal proceedings;
 - (ii) disciplinary proceedings, whether within or outside the Virgin Islands, relating to the discharge by a legal practitioner, auditor, accountant, valuer or actuary of his professional duties;
 - (iii) disciplinary proceedings relating to the discharge by a public officer, a member or employee of a statutory board or a Commissioner or employee of the Commission of his duties; or
- (i) for the purpose of legal proceedings in connection with
 - (i) the winding up or dissolution of a licensee or authorisation holder; or
 - (ii) the appointment or duties of a receiver of a licensee or authorisation holder.

(3) For the purpose of this section, “licensee or authorisation holder” includes a person who has at any time been a licensee or authorisation holder but who has ceased to be a licensee or authorisation holder.

81. No action shall be brought against

Immunity.

- (a) the Commission or any Commissioner or member of a committee of the Commission or an employee or agent of the Commission for anything done, in good faith, in the exercise of powers or performance of duties conferred or imposed by this Act; and
- (b) any person for a disclosure made, or for information provided, in accordance with this Act.

Annual meetings between Council and Board.

82. (1) The Council and the Board shall in each year meet to discuss issues relating to

- (a) the operation, management and performance of the Commission;
- (b) the initiatives and future direction of the Commission;
- (c) Government policy with respect to the telecommunications services industry; and
- (d) such other matters as either party may consider essential for strengthening the role of the Commission and enhancing the welfare of the Virgin Islands.

(2) The meeting referred to in subsection (1) shall be arranged by the Chief Executive Officer in consultation with the Governor and the Chairman and be convened by the Governor.

PART XV STAFF

Transfer of Government officers and employees to the Commission.

83. (1) Subject to subsection (2), every officer or employee of the Government who, immediately before the coming into force of this Act, is holding a post specified in an Order made by the Minister, shall, from the date specified in that Order, be deemed to be transferred from the service of the Government to the service of the Commission upon terms and conditions (including any tax benefits) not less favourable in aggregate than those which were attached to the appointments held by such officers and employees under the Government.

(2) Every officer and employee who is deemed to have been transferred under subsection (1) shall, within six months of the date of the making of the Order under subsection (1) or the date of his transfer, whichever is later, have the option of electing

- (a) to continue in the service of the Commission, in which case such service shall be retrospective from the date of his transfer and he shall be entitled to such pension, gratuity and other allowances and rights, if any, as he would have received had he been retired from the service of the Government on the abolition of his office on the date of his transfer to the Commission;
- (b) to be transferred to another department of the Government, subject to a suitable vacancy existing, with his service with the Commission counting as service with the Government in respect of his pension, gratuity and other allowances and rights, if any; or
- (c) to be deemed to have retired from the service of the Government on the abolition of his office
 - (i) on the date he ceases to be in the service of the Commission, or
 - (ii) where his service with the Commission has not been broken, on the date that he would have completed thirty-three and a third years' continuous service with the Government had he remained in the service of the Government,

whichever is earlier.

(3) Where any officer or employee referred to in this section fails to elect as provided under subsection (2), he shall be deemed to have elected under subsection (2)(a) and he shall be treated accordingly.

(4) The Commission shall reimburse the Government with the cost of any pension, gratuity and other allowances and rights, if any, arising from the period which any such officers or employees who elect not to continue with the Commission did serve with the Commission.

(5) Nothing in this section shall be deemed to affect the right of the Board

- (a) to terminate the employment of any officer or employee transferred to the service of the Commission, or
- (b) to vary the rate of pay or conditions of service of an officer or employee,

in the manner and to the extent that the Government could have done had he

continued in the service of the Government.

(6) Subject to subsection (7), where any officer or employee has elected to continue in the service of the Commission under subsection (2) or has been deemed to so continue under subsection (3), he shall not be entitled to be paid any pension, gratuity or other allowance that may have accrued to him whilst in the service of the Commission, until the time when he would have qualified for a

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pension, gratuity or other allowance under the Pensions Act had he continued in the service of the Government.

(7) Subsection (6) shall not be construed as requiring a person to cease to be in the service of the Commission in order for him to be entitled to be paid any pension, gratuity or other allowance pursuant to that subsection.

(8) Nothing in this section prevents a person who

- (a) has elected to continue in the service of the Commission under subsection (2) or has been deemed to so continue under subsection (3), and
- (b) is or may become entitled to be paid any pension, gratuity or other allowance by virtue of this section,

from participating in and benefitting from any scheme or arrangement for the payment of pensions and other benefits established by the Commission, or from being re-employed by the Commission on contract while receiving any pension, gratuity or other allowance by virtue of this section.

Transfer of
Government
contracts of
employment and
service to the
Commission.

84. Where, immediately before the coming into force of this Act, the Government had

- (a) a contract of employment with a person, other than an officer or employee referred to in section 83; or
- (b) with any person a contract for the provision of a service in relation to the regulation of telecommunications services, which has not been discharged,

then, upon the coming into force of this Act, such contract shall continue to have effect in accordance with its terms as if it was originally made between such person and the Commission, and all the rights, powers, duties and liabilities which accrued under or in connection with such contract shall be enforceable by or against the Commission as if it were originally made between that person and the Commission.

85. (1) The Board may make appropriate arrangements for the transfer or secondment of an officer or employee of the Government to the service of the Commission.

Transfers of staff between the Commission and the Government.

(2) Where an officer or employee of the Government is transferred or seconded to the service of the Commission

(a) his rights to any pension, gratuity or other allowance for which he would have been eligible had he remained in the service of the Government are preserved; and

(b) his service with the Commission shall, unless the Governor otherwise decides, be pensionable under the Pensions Act as if the officer had not been so transferred or seconded.

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(3) The Board may make arrangements for the loan to the Government of the services of an officer or employee of the Commission.

(4) Where the services of a person employed by the Commission are on loan to the Government for the purpose of providing services within the public service, the person providing such service is entitled to the benefits and terms of employment that are applicable to the post of that person in the service of the Commission, and the service with the Government shall be taken into account as continuous service with the Commission.

PART XVI GENERAL

86. The obligations of a licensee or an authorisation holder shall not be abrogated by reason of any international agreement to which the Virgin Islands is a party.

Obligations under international agreements.

87. Notwithstanding any other provision of this Act, when telecommunications services are being provided in the Virgin Islands by persons not located in the Virgin Islands, to the extent that such services jeopardise the provision of, or otherwise compete unfairly with, services licensed under this Act, the Minister may take such action as he deems appropriate.

Services provided from outside the Virgin Islands.

88. (1) The Commission may refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Act where the Commission finds that ~~so~~ to refrain would further the interests of the people of the Virgin Islands.

Forbearance.

(2) Before determining to refrain from the exercise of any power or the performance of any duty pursuant to subsection (1), the Commission shall hold a public consultation.

Telecommunications during a public emergency.

89. (1) Where a period of public emergency has been declared, the Governor may authorise the taking of possession and control by the Government of any facilities, telecommunications equipment or service to be used

- (a) for Government service;
- (b) for such ordinary service as the Governor may determine;
or
- (c) direct or authorise the control of telecommunications in any manner as he may direct.

(2) Each service provider may, during a period of public emergency, in which facilities are disrupted as a result of force majeure, use its service for emergency communications and in a manner other than that specified in its licence or in the applicable regulations.

(3) Emergency use permitted under this section shall be discontinued when normal telecommunication services are again available or when such special use of the facilities, equipment or service is terminated by the Governor.

(4) Where, during a period of public emergency, the Governor shall require a licensee or an authorisation holder to give priority to communications of the Government of the Virgin Islands, such communications shall have priority over all other communications, consistent with the ITU Treaties.

(5) Operators and service providers shall develop plans for operating networks and providing services during force majeure and where there is serious and substantial interruption in the provision of telecommunications services, and shall cooperate in the development and implementation of any such plans.

Powers of the Governor.

90. The Governor may make written requests and issue orders to operators of telecommunications networks and providers of telecommunications services requiring them, at their expense, to intercept communications for law enforcement purposes or provide any user information or otherwise in aid of his authority.

PART XVII MISCELLANEOUS

Regulations and Telecommunications Code.

91. (1) The Minister may, on the advice of the Commission, make such Regulations as he considers necessary for the effective carrying out of the provisions of this Act.

(2) Regulations made under subsection (1) shall be subject to a negative resolution of the Legislative Council.

(3) The Commission may from time to time issue, supplement or update such guidelines, standards and other requirements relating to telecommunications as the Commission thinks fit, which together shall constitute the Telecommunications Code.

(4) The Commission shall cause the Telecommunications Code or any new part of the same to be published on its website and in the *Gazette*.

(5) A Telecommunications Code may provide for penalties of a fine not exceeding ten thousand dollars for breach of a provision of the Code.

92. (1) Subject to subsection (3), the Commission may, where it is satisfied that a person has committed an offence under this Act or the Regulations, compound the offence by accepting on behalf of the Government from the person a sum of money of not less than one half of the maximum fine specified for that offence.

Powers to compound an offence.

(2) No offence shall be compounded under this section unless the person who has committed the offence has expressed his willingness in writing that the offence be so dealt with.

(3) The compounding of an offence under this Act shall

- (a) be notified in writing, under the signature of the offender and the Chief Executive Officer, to the relevant court; and
- (b) not apply to an offender who has had an offence previously compounded under this Act.

(4) In any proceedings brought against any person for an offence referred to in subsection (1), it shall be a defence if the person proves that the offence with which he is charged has been compounded under this section.

93. (1) Where prior to the coming into force of this Act, a person who was licensed under the Telecommunications Act to provide a public telecommunications network or public telecommunications service loses any existing right pursuant to such licence and such loss results in any pecuniary or other quantifiable disadvantage, the person shall be entitled to seek compensation for such loss.

Compensation. Cap. 171

(2) A person who claims to suffer a loss pursuant to subsection (1) shall, within six months of the coming into force of this Act, provide a written submission to the Minister

- (a) outlining the basis and details of the loss claimed;

- (b) stipulating the value of its current business measured against any benefit that will accrue or is likely to accrue to it as a result of any newly acquired licence under this Act and within the period specified in such licence;
- (c) indicating the type and level of expertise employed by the person to ensure the efficient and effective operation of the person; and
- (d) outlining any other matter which may be essential to the full consideration of the claim submitted by the person.

(3) Where the Minister receives a written submission under subsection (2) and , after consultation with the Commission, forms the opinion that there may be merit in the submission, he shall enter into negotiation with the person concerned with a view to reaching an agreement with respect to the submission and for that purpose the Minister may utilise the services of such other person and on such terms and conditions as he may deem necessary.

(4) Where negotiations are entered into pursuant to subsection (3) and the parties concerned

- (a) reach an agreement regarding the submission made in respect of a claim, or
- (b) fail to reach an agreement regarding the submission made in respect of a claim, within three months from the date of commencement of the negotiations,

the Minister shall refer the matter to the Council for

- (i) ratification, in the case of paragraph (a); and
- (ii) a decision, in the case of paragraph (b).

(5) Where the party submitting a claim under subsection (2) is dissatisfied with a decision of the Council under subsection (4) (b) (ii), such party may appeal to the Court and in such a case the decision of the Council in respect of such matter shall be available to the appellant and the Court for the purpose of the appeal.

(6) Any agreement, or in the case of the Council or the Court the decision of such Council or Court, in respect of any submission may provide that the agreement or decision, as the case may be, be effected in such manner and within such period as the parties may agree or as may be reasonable.

(7) Where pursuant to subsection (3), the Minister forms the opinion that a claim submitted under subsection (2) lacks merit, he may after consultation with the Commission

- (a) require the person making the submission to provide such additional material or information as he may consider necessary; or
- (b) advise the person making the submission that in the opinion of the Minister the claim lacks merit and is rejected.

(8) A person who is aggrieved by a decision of the Minister under subsection (7)(b) may appeal to the Court in accordance with the rules of court.

(9) A decision of the Court under this section shall be final.

94.(1) Subject to this section, the Cable and Wireless (West Indies) Act and Telecommunications Act are repealed.

Repeal and transitional provisions. Caps. 168 and 171

(2) Regulations, Rules and Orders made under the Telecommunications Act shall remain in force until replaced by corresponding subsidiary legislation made pursuant to this Act.

(3) Licences issued under the Telecommunications Act and in force at the commencement of this Act remain in force for at least three months but no later than such date or dates as the Commission may determine, provided that any provision of any licence or agreement that expressly or indirectly grants or purports to grant any exclusive right to operate or provide any telecommunications network or telecommunications service is null and void as of the day this Act comes into force.

(4) Where any person who is licensed under the Telecommunications Act operates a telecommunications network or provides a telecommunications service, radiocommunication service or broadcasting service and is required to obtain a licence or frequency authorisation granted under this Act to continue such operation or provision of service, he shall, during the period referred to in subsection (3), apply to the Commission for such a licence or frequency authorisation, as the case may be, to continue operating such network or providing such service as he operated or provided the day this Act comes into force.

(5) Apart from any prescribed fees for initial applications, any person applying for a licence or frequency authorisation pursuant to subsection (4) shall not be charged additional fees for use of spectrum for which he had been licensed under the Telecommunications Act.

(6) Any person who, prior to the commencement of this Act, had rights of way to roads or other public grounds to operate a telecommunications network shall have such rights under this Act.

(7) The Commission may approve any application submitted pursuant to subsection (4) in accordance with this Act and any licence or frequency authorisation granted shall be subject to the provisions of this Act.

SCHEDULE 1

[Section 5(1)]

ADMINISTRATION AND PROCEEDINGS OF THE COMMISSION

1. The Commission shall have an official seal for the authentication of documents issued by the Commission and the application of the seal of the Commission shall be authenticated by the signature of a person so authorised by the Commission.

2. The Telecommunications Code and any statutory instrument issued by the Commission, including any amendment to such Code or statutory instrument, shall bear the Commission's seal and, notwithstanding paragraph 1, the application of the seal shall be authenticated by the signature of the Chairman of the Board.

3. A document purported to be executed under the seal of the Commission, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, shall be taken to be so executed or signed.

4. Anything permitted or required to be done by the Commission may be done by any Board member or any employee of the Commission who is authorised for that purpose by the Commission either generally or specifically.

5. Paragraph 4 does not apply to the issue of the Telecommunications Code or any statutory instrument issued by the Commission, including any amendment to such Code or statutory instrument.

6. The Board may establish committees which may include persons who are not members of the Commission.

7. The appointment and termination of appointment of Board members shall be published on the Commission's website and notified in the *Gazette* by the Commission.

SCHEDULE 2

[Section 78(1)]

DECLARATION OF INTEREST BY BOARD MEMBERS

I, _____ of
(state address),

being a member of the Board of the Telecommunications Regulatory Commission established under the Telecommunications Act, 2006 and in pursuance of the requirements of section 78 of the Act, hereby declare that I do have a direct/indirect* personal/professional/business/pecuniary* interest in the subject of _____ (state the subject) which has been submitted to, or may be before, the Commission and is due for consideration by the Board on or about the _____ day of _____, 20..... The nature of my interest is as follows (describe nature of interest):

I FURTHER DECLARE that the declaration made herein is correct and true and within my knowledge and I shall not be taking part in the discussion of the interest above described, at the meeting schedule for the _____ day of _____, 20 (same as date indicated above) or the date to which the subject matter of my declaration may be adjourned.

DECLARED this _____ day of _____, _____.

Board Member

Received by me, the Secretary of the Board, this _____ day of _____, 20 _____ at
am/pm.

*** Delete as necessary**

SCHEDULE 3

[Section 79]

OATH OF CONFIDENTIALITY

I, _____, being a Board member/officer/employee/agent/adviser * of the Telecommunications Regulatory Commission solemnly swear/affirm* that I shall keep confidential all information concerning a public supplier, telecommunications services business or other person in connection with or relative to a public supplier or telecommunications services business which has come to my knowledge in my capacity as such Board member/officer/employee/agent/adviser * of the Commission or in relation to such office that I hold and I shall not divulge such information except as authorised by and in accordance with law.

So help me God (*omit if affirming*).

Sworn/Affirmed before me, a Magistrate/Additional Magistrate/Registrar of the High Court/Justice of the Peace * this _____ day of _____, _____.

(Name of person Swearing/Affirming) (Magistrate/Additional Magistrate/
Registrar of the High Court/
Justice of the Peace)*

*** Delete as appropriate**

Passed by the Legislative Council this 2nd day of June, 2006.

Speaker.

Clerk of the Legislative Council.