

BHUTAN TELCOMMUNICATIONS ACT 1999



BHUTAN TELECOMMUNICATIONS AUTHORITY MINISTRY OF COMMUNICATIONS ROYAL GOVERNMENT OF BHUTAN

**POST BOX 1072, G.P.O. THIMPHU : BHUTAN
EXPABX: +975 2 321506/7 FAX: +975 2 326909 E-mail: bta@druknet.net.bt**

TABLE OF CONTENTS

BHUTAN TELECOMMUNICATIONS ACT 1999

PART I PRELIMINARY

SHORT TITLE, COMMENCEMENT AND EXTENT

PART II NEW CORPORATION FOR THE PROVISION OF TELECOMMUNICATION SERVICES

THE CORPORATION
FUNCTIONS OF THE CORPORATION
OBLIGATIONS OF THE CORPORATION
POWERS OF THE CORPORATION
REDISTRIBUTION OF PROPERTY, RIGHTS AND LIABILITIES AMONG WHOLLY OWNED
SUBSIDIARIES
CONTROL OF WHOLLY OWNED SUBSIDIARIES
GENERAL CONTROL AND SUPERVISION BY THE MINISTER
TRANSFER TO THE CORPORATION OF CERTAIN PROPERTY, RIGHTS AND LIABILITIES OF THE
MINISTRY OF COMMUNICATIONS
GENERAL DUTY OF THE CORPORATION AS TO FINANCE
RESERVES OF THE CORPORATION AND ITS WHOLLY OWNED SUBSIDIARIES
BORROWING POWERS OF THE CORPORATION AND ITS WHOLLY OWNED SUBSIDIARIES
LIMITATION OF INDEBTEDNESS
LOANS BY THE GOVERNMENT TO THE CORPORATION
ACCOUNTS OF THE MINISTER WITH REFERENCE TO THE CORPORATION'S INDEBTEDNESS TO
HIM
THE CORPORATION'S ACCOUNTS AND AUDIT THEREOF

PART III EXCLUSIVE PRIVILEGE OF THE CORPORATION WITH RESPECT TO TELECOMMUNICATIONS

EXCLUSIVE PRIVILEGE OF THE CORPORATION WITH RESPECT TO TELECOMMUNICATIONS
GENERAL CLASSES OF ACTS NOT INFRINGING THE TELECOMMUNICATIONS PRIVILEGE
ACTS RELATING TO BROADCASTING NOT INFRINGING THE TELECOMMUNICATION PRIVILEGE
SAVING FOR THINGS DONE UNDER A LICENCE
CHARGES AND OTHER TERMS AND CONDITIONS APPLICABLE TO SERVICES

PART IV TRANSFER OF UNDERTAKING OF THE CORPORATION (BHUTAN TELECOMMUNICATIONS)

VESTING OF PROPERTY
INITIAL GOVERNMENT HOLDING IN THE SUCCESSOR COMPANY
CONVERSION OF CERTAIN LOANS TRANSFERRED TO THE SUCCESSOR COMPANY
GOVERNMENT INVESTMENT IN SECURITIES OF THE SUCCESSOR COMPANY
EXERCISE OF THE MINISTER'S FUNCTIONS THROUGH NOMINEES
TARGET INVESTMENT LIMIT FOR GOVERNMENT SHAREHOLDING

FINANCIAL STRUCTURE OF THE SUCCESSOR COMPANY
TEMPORARY RESTRICTIONS ON SUCCESSOR COMPANY'S BORROWINGS
DISSOLUTION OF BHUTAN TELECOMMUNICATIONS
APPLICATION OF LAW IN RELATION TO OFFER OF SHARES OR DEBENTURES OF THE SUCCESSOR COMPANY

PART V
ABOLITION OF THE EXCLUSIVE PRIVILEGE OF BHUTAN TELECOMMUNICATIONS
(THE CORPORATION)

ABOLITION OF EXCLUSIVE PRIVILEGE OF BHUTAN TELECOMMUNICATIONS

PART VI
ESTABLISHMENT OF THE REGULATORY AUTHORITY FOR COMMUNICATIONS AND
APPOINTMENT OF THE DIRECTOR GENERAL OF COMMUNICATIONS

ESTABLISHMENT OF THE REGULATORY AUTHORITY AND APPOINTMENT OF THE DIRECTOR
GENERAL DUTIES OF THE MINISTER AND THE DIRECTOR
POWERS OF THE DIRECTOR
SEPARATION OF REGULATORY AND OPERATIONAL ACTIVITIES
MEANING OF 'TELECOMMUNICATION SYSTEM' AND RELATED EXPRESSIONS

PART VII
PROVISION OF TELECOMMUNICATION SERVICES

PROHIBITION ON RUNNING UNLICENSED SYSTEMS
EXCEPTIONS TO SECTION 38
POWER TO LICENSE SYSTEMS
SPECIAL PROVISIONS APPLICABLE TO CERTAIN LICENCES
PUBLIC TELECOMMUNICATION SYSTEMS
MODIFICATION OF LICENCE CONDITIONS
SECURING COMPLIANCE WITH LICENCE CONDITIONS
PROCEDURAL REQUIREMENTS
VALIDITY AND EFFECT OF ORDERS
REGISTER OF REGULATIONS, LICENCES AND ORDERS
TELECOMMUNICATION APPARATUS TO BE OF APPROVED TYPE
TECHNICAL STANDARDS FOR TELECOMMUNICATION APPARATUS
REGISTER OF TECHNICAL STANDARDS
OPERATORS TO PERFORM FUNCTIONS IN PRESCRIBED MANNER
ENTRY UPON AND CONSTRUCTION OF TELECOMMUNICATION APPARATUS ACROSS ANY LAND
COMPULSORY PURCHASE OF LAND
UNDERGROUND PIPES FOR TELECOMMUNICATION SERVICE PURPOSES
PIPES ETC UNDER STREETS
REMOVAL OF APPARATUS
FENCES
TREES OBSTRUCTING TELECOMMUNICATION APPARATUS
HEIGHT OR DEPTH OF TELECOMMUNICATION APPARATUS
ELECTRICAL WORKS
INTERPRETATION
FRAUDULENT USE OF TELECOMMUNICATION SYSTEM

IMPROPER USE OF PUBLIC TELECOMMUNICATION SYSTEMS
MODIFICATION ETC OF MESSAGES
INTERCEPTION AND DISCLOSURE OF MESSAGES ETC.
PROHIBITION OF AFFIXING PLACARDS, NOTICES ETC ON THE PROPERTY OF A PUBLIC
TELECOMMUNICATION OPERATOR

**PART VIII
OTHER FUNCTIONS OF THE DIRECTOR**

GENERAL FUNCTIONS
PUBLICATION OF INFORMATION AND ADVICE
INVESTIGATION OF COMPLAINTS
POWER TO REQUIRE INFORMATION
POWER TO ESTABLISH ADVISORY BODIES
ANNUAL AND OTHER REPORTS

**PART IX
PROVISIONS RELATING TO RADIOCOMMUNICATIONS**

CONTROL OF RADIO FREQUENCY SPECTRUM VESTED IN THE DIRECTOR
RADIO FREQUENCY BAND PLANS
POWER TO ISSUE LICENCES AND PERMITS
RESTRICTION ON REVOCATION OR MODIFICATION OF RADIOCOMMUNICATION LICENCES
AMATEUR RADIOCOMMUNICATION OPERATOR'S CERTIFICATE
CONTROL OF POSSESSION OF RADIOCOMMUNICATION APPARATUS
CHARGES FOR RADIOCOMMUNICATION LICENCES
MATTERS TO BE TAKEN INTO ACCOUNT WHEN SETTING CHARGES
BIDDING FOR LICENCES
RADIATION OF ELECTRO-MAGNETIC ENERGY, ETC.
ENFORCEMENT OF REGULATIONS AS TO USE OF APPARATUS
ENFORCEMENT OF REGULATIONS AS TO SALES, ETC., BY MANUFACTURERS AND OTHERS
REGULATIONS WITH RESPECT TO RESISTANCE TO INTERFERENCE
DELIBERATE INTERFERENCE
APPROVAL OF RADIOCOMMUNICATION APPARATUS ETC.
INTERNATIONAL STANDARDS AND AGREEMENTS
IMPLEMENTATION, MONITORING AND ENFORCEMENT OF THE NATIONAL RADIO REGULATIONS
MISLEADING MESSAGES AND INTERCEPTION AND DISCLOSURE OF MESSAGES
ENTRY AND SEARCH OF PREMISES, ETC.
SEIZURE OF APPARATUS AND OTHER PROPERTY USED IN COMMITTING CERTAIN OFFENCES
PENALTIES AND LEGAL PROCEEDINGS
DISPOSAL OF APPARATUS AND OTHER PROPERTY SEIZED BY VIRTUE OF SECTION 92

**PART X
MISCELLANEOUS AND SUPPLEMENTAL**

INTERPRETATION
REGULATIONS
DIRECTIONS IN THE INTERESTS OF NATIONAL SECURITY ETC.
OFFENCES BY BODIES CORPORATE
FINANCIAL PROVISIONS

GENERAL INTERPRETATION

SCHEDULE 1

**PROVISIONS WITH RESPECT TO THE CORPORATION AND THE MEMBERS
THEREOF**

SCHEDULE 2

DIRECTOR GENERAL OF COMMUNICATIONS

SCHEDULE 3

PENALTIES IN RESPECT OF OFFENCES

BHUTAN TELECOMMUNICATIONS ACT 1999

An Act to establish a public corporation to be called Bhutan Telecommunications; to make provision with respect to its functions and to transfer to it certain property, rights and liabilities of the Ministry of Communications; to provide for the vesting of property, rights and liabilities of Bhutan Telecommunications in a company nominated by the Minister of Communications (hereinafter referred to as Minister) and the subsequent dissolution of Bhutan Telecommunications; to make provision with respect to the finances of that company; to provide for the appointment and functions of a Director General of Communications (hereinafter referred to as Director) within the Ministry of Communications; to abolish the exclusive privilege of Bhutan Telecommunications with respect to telecommunications and to make new provision with respect to the provision of telecommunication services and certain related services; to make provision for the installation and use of telecommunication networks on public and private land; to make provision for the use of radiocommunication frequencies and radiocommunication apparatus; to give statutory authority for the payment out of money provided by Ministry of Finance of expenses incurred by the Director General of Communications in providing spectrum and frequency management services; and for connected purposes.

This Act has been approved by the 77th session of the National Assembly on the 9th day of the 6th month of the Female Earth Hare Year.

PART I Preliminary

SHORT TITLE, COMMENCEMENT AND EXTENT

1. (1) This Act may be cited as the Bhutan Telecommunications Act 1999.
- (2) This Act shall come into force on such day as the Minister may by order appoint; and different days may be so appointed for different provisions or for different purposes.
- (3) Parts I, II, III, and sections 98 to 100 inclusive of Part X shall come into force on the same day.
- (4) Part V, VI, VII, VIII and IX and sections 96 and 97 of Part X shall come into force on the same day and sections 17 to 20 of Part III shall be repealed simultaneously with the entry into force of Parts V to IX.
- (5) Subsections 4 (1) to (6) inclusive and section 21 shall be repealed simultaneously with the grant of a licence to Bhutan Telecommunications under Section 40 of Part VI.
- (6) The remaining parts of Part II shall be repealed after Part IV has been brought into force.

PART II
New corporation for the provision of telecommunication services

The Corporation

THE CORPORATION

2. (1) There shall be established a public corporation to be called Bhutan Telecommunications (in this Act referred to as “the Corporation”).
- (2) The Corporation shall be a body corporate with perpetual succession and shall have a seal.
- (3) The Corporation shall have such powers and duties as are conferred and imposed on it by or by virtue of the following provisions of this Part; so however that, until such day as the Minister may by order appoint, the purpose for which the Corporation’s powers are exercised shall be restricted to the preparation for the taking over by it of functions theretofore discharged by the Division of Telecommunications.
- (4) The Corporation shall consist of a chairman and of other members, who may be full-time or part-time.
- (5) The number of the other members of the Corporation shall not exceed 10 nor fall short of 6.
- (6) The Chairman of the Corporation shall be appointed by the Minister, and the other members of the Corporation shall be appointed by the Minister after consultation with the chairman.
- (7) Schedule 1 shall have effect as respects the Corporation and the members thereof.

Functions, Obligations and Powers of the Corporation

FUNCTIONS OF THE CORPORATION

3. (1) The functions of the Corporation are:
- (a) to run public telecommunication systems and to provide telecommunication services;
- (b) to carry on any business or activity relating to the running of public telecommunication systems and the provision of telecommunication services;
- (c) to perform services for the Government; and
- (d) to carry on any business or activity which is incidental to the activities falling within paragraphs (a) to (c) of this section.

OBLIGATIONS OF THE CORPORATION

4. (1) It shall be the duty of the Corporation (consistently with any directions given to it under the following provisions of this Part so to exercise its functions and powers as to provide throughout Bhutan (save in so far as the provision thereof is, in its opinion, impracticable or not reasonably

practicable) such telecommunication services, including the provision of international telecommunication services but excluding broadcasting services, as satisfy all reasonable demands for them.

- (2) It shall also be the duty of the Corporation, in exercising its powers, to have regard to:
 - (a) efficiency and economy;
 - (b) the social, industrial and commercial needs of Bhutan with respect to matters that are subserved by its powers, including the need to provide telecommunication services at the lowest prices consistent with efficient and continuous service and meeting the costs of its duties under subsection (1);
 - (c) maintaining consistency with the appropriate international standards;
 - (d) the desirability of improving and developing its operating systems.
- (3) the Corporation shall operate in a manner consistent with sound business practice.
- (4) the Corporation shall perform its functions in a manner consistent with:
 - (a) the National Telecom Policy and any other general policies of the Government which have been notified to the Corporation in writing;
 - (b) any written directions given by the Minister to the Corporation; and
 - (c) any obligations of Bhutan under any international convention.
- (5) Subsection (1) shall not be taken to preclude the interruption, suspension or restriction, in the case of emergency, of any telephone service provided by the Corporation.
- (6) References in this section to the provision of telecommunication services do not include references to the supply to any customer for use in connection with such services, of any apparatus.

POWERS OF THE CORPORATION

5. (1) The Corporation shall have the power, subject to the other provisions of this Act, for the purpose of securing the effective exercise of any of the functions and the discharge of any of the obligations conferred on it by the foregoing sections, or in connection with or in consequence of an exercise thereof, to do anything that appears to the Corporation to be requisite, advantageous or convenient for it to do, including in particular (but without prejudice to the generality of the foregoing words) power to :
- (a) determine the charges for the provision of its services;
 - (b) determine the terms and conditions for the provision of its services;
 - (c) determine the terms and conditions for the employment of its staff;
 - (d) sue and be sued;
 - (e) enter into contracts and agreements;
 - (f) appoint agents and attorneys and act as agent for other persons;

- (g) acquire, hold, lease, develop and dispose of real and personal property;
- (h) form and participate in the formation of companies;
- (i) participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits;
- (j) borrow from the Government or other persons, and to give security over assets and pay interest on loans;
- (k) by its servants or agents, install on public and private land and buildings such equipment as poles and wires as may be reasonably required, or as to which it can be reasonably foreseen that it will be so required, for the purpose of carrying out all or any part of its functions and obligations under this Act and to enter upon such land or buildings as may be reasonably necessary for the maintenance and upkeep of such installations.

(2) For the avoidance of doubt, it is hereby declared that the foregoing provisions of this section relate only to the capacity of the Corporation as a statutory corporation, and nothing in those provisions shall be construed as authorising the disregard by it of any enactment or rule of law.

(3) The provisions of this section shall not be construed as limiting any power of the Corporation conferred by or under any subsequent provision of this Act.

(4) Nothing in this section shall be taken to confine the exercise of the powers thereby conferred on the Corporation.

REDISTRIBUTION OF PROPERTY, RIGHTS AND LIABILITIES AMONG WHOLLY OWNED SUBSIDIARIES

- 6.** (1) Subject to subsection (5), the Corporation may make schemes:
- (a) for the reorganisation, amalgamation or dissolution of any of its wholly owned subsidiaries;
 - (b) for the transfer, between the Corporation and any such subsidiary or between one such subsidiary and another, of any specified property, rights or liabilities, or of all property, rights and liabilities comprised in a specified part of the transferor's undertaking.

(2) A scheme under subsection (1) may contain such supplementary, incidental and consequential provision as may appear to the Corporation to be necessary or expedient.

(3) Without prejudice to the generality of subsection (2), a scheme under subsection (1) (b) which transfers to a subsidiary property, rights and liabilities comprised in a part of the transferor's undertaking concerned with the provision of services which, by virtue of the provisions of this Part, the Corporation has the exclusive privilege of providing, may provide that such enactments relating to the provision of those services as may be specified in the scheme shall apply in relation to the subsidiary (but only for so long as it remains a wholly owned subsidiary of the Corporation) as they apply in relation to the Corporation.

(4) Without prejudice to any power conferred on it by any other provision of this Part, the Corporation may establish subsidiaries for the purpose of schemes under subsection (1) (b).

(5) A scheme under subsection (1) shall not come into force unless it has been approved by the Minister or until such date as the Minister may in giving his approval specify; and the Minister may approve a

scheme either without modifications or with such modifications as, after consultation with the Corporation, he thinks fit.

(6) Notice of the coming into force of a scheme under subsection (1) (b) which contains such provision as is mentioned in subsection (3) shall be published by the Corporation in the national newspaper.

(7) In the case of any scheme under subsection (1) (b) the property, rights and liabilities in question shall on the date of the coming into force of the scheme be transferred, and by virtue of the scheme vest, in accordance with the scheme.

CONTROL OF WHOLLY OWNED SUBSIDIARIES

7. (1) As regards any wholly owned subsidiary of the Corporation, the Corporation shall so exercise the rights conferred on it by the holding of its interest therein as to secure that no person is elected chairman of the board of directors of the subsidiary except after consultation with the Minister as to his suitability for election.

(2) As regards any wholly owned subsidiary of the Corporation, the Corporation shall secure that, notwithstanding anything in the subsidiary's memorandum or articles of association, the subsidiary does not:

- (a) engage in any activity which the Corporation itself has no power to engage in or has power to engage in only with the consent of the Minister;
- (b) issue any of its shares, stock or debentures to a person other than :
 - (i) the Corporation or another wholly owned subsidiary of the Corporation; or
 - (ii) a person who is to hold them as a nominee of the Corporation or of a wholly owned subsidiary of the Corporation; or
- (c) transfer any interest of the subsidiary in another wholly owned subsidiary of the Corporation to a person not within paragraph (b)(i) or (ii),

except with the consent of, or in accordance with the terms of any general authority given by the Minister.

(3) As regards any wholly owned subsidiary of the Corporation, the Corporation shall not transfer any of its interest therein to a person other than:

- (a) another wholly owned subsidiary of the Corporation; or
- (b) a person who is to hold it as a nominee of the Corporation or of a wholly owned subsidiary of the Corporation,

except with the consent of, or in accordance with the terms of any general authority given by, the Minister.

Powers of the Minister over the Corporation

GENERAL CONTROL AND SUPERVISION BY THE MINISTER

8. (1) The Corporation shall give effect to any direction given to it by the Minister under the provisions of this Part of this Act and shall secure, so far as appropriate, that each of its wholly owned subsidiaries also gives effect to any such direction.

(2) The Minister may, after consultation with the Corporation, give to it such directions of a general character as to the exercise by it of its powers as appear to the Minister to be requisite in the national interest.

(3) If it appears to the Minister that there is a defect in the general plans or arrangements of the Corporation for exercising any of its powers, he may, after consultation with it, give it directions of a general character for remedying the defect.

(4) Without prejudice to the foregoing provisions of this section, if it appears to the Minister to be requisite or expedient so to do:

(a) in the interests of national security or relations with the government of a country or territory outside Bhutan;

(b) in order :

(i) to discharge, or facilitate the discharge of, an obligation binding on the Government by virtue of its being a member of an international organisation or a party to an international agreement;

(ii) to attain, or facilitate the attainment of, any other object the attainment of which is, in the Minister's opinion, requisite or expedient in view of the Government being a member of such an organisation or a party to such an agreement; or

(iii) to enable the Government to become a member of such an organisation or a party to such an agreement; or

(c) in order to promote the interests of consumers,

he may, after consultation with the Corporation, give to it directions requiring it (according to the circumstances of the case) to secure that a particular thing that it or any of its subsidiaries is doing is no longer done or that a particular thing that it has power to do, but is not being done either by it or by any of its subsidiaries, is so done.

(5) If it appears to the Minister that the Corporation is showing undue preference to, or is exercising undue discrimination against, any person or persons of any class or description in the charges or other terms and conditions applicable to the provision of services which, by virtue of the provisions of this Part, it has the exclusive privilege of providing, he may, after consultation with the Corporation, give it such directions as appear to him requisite to secure that it ceases so to do.

(6) The Minister may, after consultation with the Corporation, direct the Corporation

(a) to make a scheme under subsection (1) of section 6, or to exercise its powers under subsection (4) of that section, for such purposes and in such manner as may be specified in the direction; or

(b) to dispose of any part of its undertaking or any assets held by it or to exercise its control over any of its wholly owned subsidiaries so as to cause the subsidiary to dispose of any part of its undertaking or any assets held by it;

but the Minister shall not give any direction under this sub-section unless he is satisfied that he will not thereby impede or prevent the proper discharge of the Corporation's obligations under section 4 (1).

(7) The Minister shall present to the Cabinet a copy of every direction given under subsection (6).

(8) The Corporation shall not disclose any direction given to it under any of the provisions of this section if the Minister notifies it that he is of the opinion that disclosure of the direction is against:

(a) the interests of national security; or

(b) the commercial interests of a person other than the Corporation and its wholly owned subsidiaries.

(9) The Corporation, in such manner and at such times as the Minister may specify in writing to it, shall furnish him with such information:

(a) as he may so specify; and

(b) as the Corporation has or can reasonably be expected to obtain,

with respect to such matters relating to the Corporation or its subsidiaries or the activities (past, present or future), plans or properties of any of them as the Minister may so specify.

(10) Without prejudice to the provisions of subsection (9), the Corporation shall, as soon as possible after the end of each accounting year, make to the Minister a report on the exercise and performance by it and its subsidiaries of its and their functions during that year (which shall include such particulars as the Minister may, after consultation with the Corporation and with the approval of the Ministry of Finance, direct with respect to its activities and those of its subsidiaries), and the Minister shall present a copy of every such report before the Cabinet.

(11) The report made under subsection (10) for any year shall set out any directions given under this Part by the Minister to the Corporation during that year, except such (if any) as were the subject of notifications under subsection (8)(a).

Transfers of property, rights and liabilities

TRANSFER TO THE CORPORATION OF CERTAIN PROPERTY, RIGHTS AND LIABILITIES OF THE MINISTRY OF COMMUNICATIONS

9. (1) Before the appointed day, the Ministry of Communications shall take steps to separate from the remainder of its undertaking the part thereof concerned with the provision of telecommunication services (that is to say, the part thereof which is under the management and control of the Director of the Division of Telecommunications and within the Division of Telecommunications).

(2) Subject to the following provisions of this section, on the appointed day there shall be transferred from the Ministry of Communications and the Ministry of Finance to, and by virtue of this Act, vested in the Corporation all the property, rights and liabilities which, immediately before that day, were comprised in the part of the Ministry of Communications' undertaking mentioned in subsection (1).

(3) Without limiting its generality, for the purposes of subsection (2), the property, rights and liabilities shall include:

(a) all land, buildings, vehicles, plant, equipment, stores, and any other thing employed in respect of telecommunication services;

(b) any cash in hand, cash at bank, security or other financial entitlement of the Division of Telecommunications in the Royal Government Revenue Accounts administered by the Division of Revenue and Customs or Ministry of Finance;

(c) any building under construction or item for which an order has been placed but not yet fulfilled where that building or item was intended for use of the Division of Telecommunications;

(d) any debt or financial obligation under contract or otherwise;

(e) all the responsibilities, liabilities and duties of the Ministry of Communications and the Government towards the Royal Insurance Corporation of Bhutan's Provident Fund in respect of officers who transfer as employees from the Ministry of Communications to the Corporation.

(4) At any time before the appointed day the Ministry of Communications and the Corporation may agree in writing that subsection (2) shall not have effect in relation to any property, rights and liabilities specified in the agreement.

(5) At any time before the expiration of twelve months beginning with the appointed day the Ministry of Communications and the Corporation may agree in writing that, as from such date, not earlier than the appointed day, as may be specified in or determined by or under the agreement and in such circumstances (if any) as may be so specified:

(a) there shall be transferred from the Ministry of Communications to, and vested in, the Corporation any property, rights and liabilities specified in the agreement; or

(b) there shall be transferred from the Corporation to, and vested in, the Ministry any property, rights and liabilities so specified.

(6) No agreement under subsection (4) shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(7) In the case of any agreement under subsection (5) the property, rights and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.

(8) Any reference in this Part to a transfer by this Act includes a reference to a transfer under subsection (7).

Finance

GENERAL DUTY OF THE CORPORATION AS TO FINANCE

10. (1) It shall be the duty of the Corporation so as to exercise its powers as to secure that the combined revenues of the Corporation and all its wholly owned subsidiaries taken together are not less than sufficient:

(a) to meet all their combined charges properly chargeable to revenue account, taking one year with another; and

(b) to enable the Corporation and its wholly owned subsidiaries to make such allocations to reserve as the Corporation considers adequate, and as may be necessary to comply with any directions given by the Minister under section 11.

(2) The Minister may from time to time determine, after consultation with the Corporation, as respects such period as he may so determine, the financial objectives which, having regard to the duty imposed on it by subsection (1), he considers it reasonable for the Corporation to achieve in that period; and

(a) different determinations may be made for different periods and in relation to different assets and different activities of the Corporation; and

(b) the Minister may, with the like approval and after such consultation as aforesaid, vary or revoke a determination under this section in respect of any period by a further determination.

(3) A determination under subsection (2):

(a) may relate to a period beginning before the date on which it is made; and

(b) may contain incidental or supplemental provisions.

(4) The Minister shall give notice in writing to the Corporation of any determinations under subsection (2).

(5) The Corporation shall conduct its affairs during any period in respect of which a determination has been made under subsection (2) with a view to achieving the financial objectives specified by the determination as for the time being in force.

RESERVES OF THE CORPORATION AND ITS WHOLLY OWNED SUBSIDIARIES

11. (1) The Minister may from time to time, after consultation with the Corporation and with the approval of the Ministry of Finance, give to the Corporation directions:

(a) requiring it to allocate to reserve generally, or to reserve for a particular purpose, or to cause any of its wholly owned subsidiaries so to allocate, either a specified amount or such amount as the Corporation considers adequate;

(b) requiring it to re-allocate for a specified purpose, or to cause any of its wholly owned subsidiaries so to re-allocate, the whole or any part of any amount previously allocated by the Corporation or subsidiary, as the case may be, to reserve for some other purpose; or

(c) with respect to the application by the Corporation or any of its wholly owned subsidiaries of amounts allocated to reserve.

(2) Directions under subsection (1) requiring the allocation of any amount to reserves may provide for it to be so allocated either at a specified time or during the course of a specified period.

BORROWING POWERS OF THE CORPORATION AND ITS WHOLLY OWNED SUBSIDIARIES

12. (1) The Corporation may borrow temporarily, by way of overdraft or otherwise in Ngultrums from the Royal Government such sums as may be required for meeting the obligations and discharging the functions of the Corporation or any of its wholly owned subsidiaries.

(2) The Corporation may borrow, otherwise than by way of temporary loan in Ngultrums from the Royal Government such sums as may be required by the Corporation or any of its wholly owned subsidiaries for all or any of the purposes mentioned in subsection (3).

(3) The said purposes are:

(a) provision of money for meeting any expenses incurred by the Corporation or any of its subsidiaries in connection with any works, the cost of which is chargeable to capital account;

(b) the provision of working capital required by it or any such subsidiary;

(c) subscription for, or acquisition of, securities of any incorporated company or other body corporate, promotion of the formation of an incorporated company or participation in the promotion of such a company or acquisition of an undertaking or part of an undertaking;

(d) repayment of any money borrowed by it or any such subsidiary;

(e) any other purpose for which capital moneys are properly applicable.

(4) The Corporation may borrow from any of its wholly owned subsidiaries without any consent, approval or other authority.

(5) References in this section and section 13 to borrowing by the Corporation do not include references to receiving any money in its capacity as the provider of any services or the supplier of any apparatus, or using money received in that capacity.

(6) It shall be the duty of the Corporation to secure that none of its wholly owned subsidiaries borrows otherwise than from the Corporation or from another of its wholly owned subsidiaries except with the consent of the Minister and the approval of the Ministry of Finance.

(7) This section shall come into operation on the appointed day.

LIMITATION OF INDEBTEDNESS

13. (1) The Corporation shall not have power to borrow money except in accordance with section 12.

(2) The aggregate amount outstanding, otherwise than by way of interest, in respect of money borrowed by the Corporation or any of its wholly owned subsidiaries other than money borrowed or excluded loans, shall not at any time exceed a sum that the Minister may from time to time by order specify.

(3) A loan is an excluded loan for the purposes of subsection (2) if it consists of money borrowed:

- (a) by the Corporation from one of its wholly owned subsidiaries; or
- (b) by one of its wholly owned subsidiaries from another such subsidiary or from the Corporation.

LOANS BY THE GOVERNMENT TO THE CORPORATION

14. (1) The Government may through the Ministry of Finance lend to the Corporation any sums which it has power to borrow under section 12 (1) or (2).

(2) Any loans which the Government makes under this section shall be repaid to it at such times and by such methods and interest thereon shall be paid to it at such rates and at such times as it may, with the approval of the Ministry of Finance, from time to time direct.

ACCOUNTS OF THE MINISTER WITH REFERENCE TO THE CORPORATION'S INDEBTEDNESS TO HIM

15. (1) The Minister shall, as respects each financial year, prepare in such form and manner as the Ministry of Finance may direct, an account of:

- (a) sums received by him under subsection (1) of section 14;
- (b) sums issued to him under subsection (2) of that section; and
- (c) the disposal by him of those sums respectively,

and send it to the Auditor General not later than the end of December following the year; and the Auditor General shall examine, certify and report on the account and present a copy of it together with his report, to the Cabinet.

The Corporation's accounts, and audit thereof

THE CORPORATION'S ACCOUNTS AND AUDIT THEREOF

16. (1) Subject to the following provisions of this section, it shall be the duty of the Corporation :

- (a) to keep proper accounts and proper records in relation thereto;
- (b) to prepare in respect of each accounting year a statement of accounts giving a true and fair view of the state of affairs and profit or loss of the Corporation; and
- (c) to prepare in respect of each accounting year such a statement or statements of consolidated accounts dealing with, and giving a true and fair view of the state of affairs and profit or loss of :
 - (i) the Corporation and all of its subsidiaries (in this section referred to as "the group"); or
 - (ii) some but not all the members of the group, as the Corporation may determine and the Minister and the Ministry of Finance may for the time being approve.

(2) If the Minister with the consent of the Ministry of Finance so requires the Corporation by notice in writing, the Corporation shall, in respect of any accounting year to which the notice relates, comply with its obligation under subsection (1) (c), so far as it relates to those members of the group which are

specified in the notice, by preparing a statement of consolidated accounts dealing with the members of the group specified in the notice and giving a true and fair view of their state of affairs and profit or loss.

(3) Every statement of accounts prepared by the Corporation in accordance with this section shall comply with any requirements which the Minister has, after consultation with the Corporation and with the consent of the Ministry of Finance, notified in writing to the Corporation relating to:

- (a) the information to be contained in the statement;
- (b) the manner in which that information is to be presented; and
- (c) the methods and principles according to which the statement is to be prepared.

(4) Subject to any requirement notified to the Corporation under subsection (3), in preparing any statement of accounts in accordance with this section, the Corporation shall follow with respect to each of the matters specified in paragraphs (a) to (c) of that subsection, such course as may for the time being be approved by the Minister with the consent of the Ministry of Finance.

(5) If the Minister after consultation with the Corporation so directs in relation to an accounting year of the Corporation, that accounting year shall end on such date as may be specified in the direction (whether before or after the date on which it would otherwise end).

(6) The accounts kept, and all statements prepared, by the Corporation under this section shall be audited by auditors appointed for each accounting year by the Minister after consultation with the Corporation.

(7) A person shall not be qualified for appointment under subsection (6) unless he is an accountant appointed from the panel maintained by the Royal Audit Authority under section 40 of the Companies Act of 1989.

(8) As soon as the accounts kept, and the statements prepared, by the Corporation under this section have been audited, the Corporation shall send to the Minister:

- (a) a copy of the statements;
- (b) copies of the statements of accounts for such of its subsidiaries as the Corporation may, with the approval of the Minister and the consent of the Ministry of Finance, determine; and
- (c) if the Minister with the consent of the Ministry of Finance so requires by notice in writing, copies of the statements of accounts for each subsidiary of the Corporation which is specified in the notice,

together with a copy of any report made by the auditors on the statements or on the accounts of the Corporation; and the Minister shall present a copy of every statement and report of which a copy is received by him in pursuance of this subsection before the Cabinet.

PART III

Exclusive Privilege of the Corporation with Respect to Telecommunications, etc.

EXCLUSIVE PRIVILEGE OF THE CORPORATION WITH RESPECT TO TELECOMMUNICATIONS

17. (1) Subject to the following provisions of this Part and to section 32 below, the Corporation shall have throughout Bhutan the exclusive privilege of running telecommunication systems, that is to say systems for the conveyance, through the agency of electric, electro-magnetic, electro-chemical or electro-mechanical energy, or:

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons and things)of any matter otherwise than in the form of sound or visual images; and
- (d) signals serving for the actuation or control of machinery or apparatus.

(2) In the case of an infringement, in relation to a system not extending beyond Bhutan, of the privilege conferred by subsection (1), the person running the system (or, if different people run different parts of it, each of them) shall be guilty of an offence and liable on conviction to a fine not exceeding the maximum specified in Schedule 3 to this Act and in the case of an infringement, in relation to a system extending beyond Bhutan, of that privilege, the person running the portion of the system within Bhutan (or, if different people run different parts of it, each of them) shall be guilty of an offence and similarly liable.

(3) In any proceedings in respect of an offence under this section consisting in the running of a system in the case of which, at the time of the commission of the offence, different parts were run by different persons, it shall be a defence for the defendant to prove that a part of the system had been included without his knowledge and that, had it not been, the running of the system would not have constituted an infringement of the privilege conferred by subsection (1).

(4) References in this Act to services, which by virtue of the provisions of this Part, the Corporation has the exclusive privilege of providing are references to services the provision of which by a person other than the Corporation would necessarily infringe the privilege conferred by subsection (1); and for this purpose licences granted under section 20 (1) otherwise than to all persons shall be disregarded.

GENERAL CLASSES OF ACTS NOT INFRINGING THE TELECOMMUNICATIONS PRIVILEGE

- 18.** (1) The privilege conferred by subsection (1) of section 17 is not infringed by
- (a) the running of a system in the case of which the only agency involved in the conveyance of things thereby conveyed is light and the things thereby conveyed are so conveyed as to be capable of being received or perceived by the eye and without more;
 - (b) the running by a person of a system in the case of which all the apparatus comprised therein is situated either :
 - (i) on a single set of premises occupied by him; or
 - (ii) in a vehicle, vessel, aircraft or in two or more vehicles, vessels or aircraft mechanically coupled together; or
 - (c) the running by a single individual of a system in the case of which :

- (i) all the apparatus comprised therein is under his control; and
- (ii) everything conveyed by it that falls within paragraphs (a) to (d) of the said subsection (1) is conveyed solely for domestic purposes of his.

(2) In the case of a business carried on by a person, the said privilege is not infringed by the running, for the purposes of that business, of a system with respect to which the conditions specified in subsection (3) are satisfied and

- (a) in a case in which all the apparatus therein comprised is situated in Bhutan, no person except him or the Corporation is concerned in the control of the apparatus;
- (b) in any other case, no person except him or the Corporation is concerned in the control of so much of the apparatus as is so situate.

(3) The said conditions are:

- (a) that nothing falling within paragraphs (a) to (d) of subsection (1) of section 17 is conveyed by the system by way of rendering a service to another;
- (b) that, in so far as sounds or visual images are conveyed by the system they are not conveyed for the purpose of their being heard or seen by persons other than the person carrying on the business or any employees of his engaged in the conduct thereof;
- (c) that, in so far as such signals as are mentioned in paragraph (c) of that subsection are conveyed by the system, they are not conveyed for the purpose of imparting matter otherwise than to the person carrying on the business, any employees of his engaged in the conduct thereof or things used in the course of the business and controlled by him; and
- (d) that, in so far as such signals as are mentioned in paragraph (d) of that subsection are conveyed by the system, they are not conveyed for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of the business.

(4) In this section:

“business” includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporated;

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

ACTS RELATING TO BROADCASTING NOT INFRINGING THE TELECOMMUNICATION PRIVILEGE

19. (1) The privilege conferred by subsection (1) of section 17 is not infringed by the Bhutan Broadcasting Service by reason only of the transmission by it, by radiocommunications, of sounds and images from a transmitting station for general reception direct from that station.

SAVING FOR THINGS DONE UNDER A LICENCE

20. (1) A licence may be granted by the Minister either unconditionally or subject to any conditions specified in the licence, and either irrevocably or subject to revocation as therein specified, for the running of any such telecommunication system as is specified in the licence; and anything done under, and in accordance with, a licence granted under this subsection shall not constitute an infringement of the privilege conferred by section 17 (1).

(2) A licence granted under subsection (1) shall, unless previously revoked in accordance with any term in that behalf contained in the licence, continue in force for such period as may be specified therein.

(3) A licence granted under subsection (1) may be granted either to all persons, to persons of a class or to a particular person, and may include (without prejudice to the power to impose conditions conferred by that subsection) conditions requiring the rendering of a payment on the grant of the licence or periodic payments during the currency of the licence or both.

(4) A licence granted under subsection (1) otherwise than to a specified person shall be published in such manner as appears to the Minister to be appropriate for bringing it to the attention of the persons for whose benefit it will enure, and a licence expressed to be so granted must be in writing.

(5) For the purposes of a licence granted under subsection (1), the definition of a class of persons may be framed by reference to any circumstances whatever.

(6) Any sums received by the Minister under this section shall be paid to the Royal Government Revenue Accounts.

CHARGES AND OTHER TERMS AND CONDITIONS APPLICABLE TO SERVICES

21. (1) The Corporation's charges in respect of the telecommunication services provided by it under Part II of this Act and the Corporation's other terms and conditions which are applicable to those services, including any modifications to such charges, terms and conditions will be set by the Corporation and submitted to the Minister for his approval and the Minister shall either approve the same or direct the Corporation to modify its proposals in such manner as he sees fit.

(2) The Corporation's charges, terms and conditions prevailing at the date of entry into force of this Part shall be deemed to have been approved in accordance with subsection (1) but subsequent modifications thereto must be approved in accordance with subsection (1).

(3) A charge exigible by virtue of this section may be recovered by the Corporation in any District Court and may be so recovered as if it were a simple contract debt.

(4) Any charges, terms and conditions set under this section shall come into operation on such day as is specified therein, not being earlier than the day after that on which publication of the charges, terms and conditions (or, if the Minister agrees a summary thereof) has been effected in the national newspaper.

(5) The Corporation shall:

(a) place a copy of its charges, terms and conditions in a publicly accessible part of its main offices, in such manner and in such place that it is readily available for inspection free of charge by members of the general public during normal office hours; and

(b) send a copy of its charges, terms and conditions or such part or parts thereof as are appropriate to any person who may request such a copy.

PART IV
Transfer of Undertaking of the Corporation (Bhutan Telecommunications)

Vesting of property etc. of the Corporation in a company nominated by the Minister

VESTING OF PROPERTY

22. (1) On such day as the Minister may by order appoint for the purposes of this Part (in this Part referred to as “the transfer date”), all the property, rights and liabilities to which the Corporation was entitled or subject immediately before that date shall (subject to the following provisions of this section) become by virtue of this section property, rights and liabilities of a company nominated for the purposes of this section by the Minister (in this Act referred to as “the successor company”).

(2) The Minister may, after consulting the Corporation, by order nominate for the purposes of this section any company formed and registered under the Companies Act; but on the transfer date the company in question must be a company limited by shares which is wholly owned by the Government.

(3) References in this Part to property, rights and liabilities of the Corporation are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by the Corporation.

(4) It is hereby declared for the avoidance of doubt that:

(a) any reference in this Part to property of the Corporation is a reference to property of the Corporation whether situated in Bhutan or elsewhere; and

(b) any such reference to rights or liabilities of the Corporation is a reference to rights to which the Corporation is entitled, or (as the case may be) liabilities to which the Corporation is subject, whether under the law of Bhutan or under the law of any country or territory outside Bhutan.

INITIAL GOVERNMENT HOLDING IN THE SUCCESSOR COMPANY

23. (1) As a consequence of the vesting in the successor company by virtue of section 22 above, of property, rights and liabilities of the Corporation, the successor company shall issue such securities of the company as the Minister may from time to time direct:

(a) to the Minister ; or

(b) to any person entitled to require the issue of the securities following their initial allotment to the Minister .

(2) The Minister shall not give a direction under subsection (1) above at a time when the successor company has ceased to be wholly owned by the Government.

(3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms (as to allotment) as the Minister may direct.

(4) Shares issued in pursuance of this section:

(a) shall be of such nominal value as the Minister may direct; and

(b) shall be issued as fully paid and treated for the purposes of the Companies Act as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.

(5) The Minister may not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Ministry of Finance.

(6) Any dividends or other sums received by the Minister in right of or on the disposal of any securities or rights acquired by virtue of this section shall be paid into the Royal Government Revenue Accounts or its functional successor.

CONVERSION OF CERTAIN LOANS TRANSFERRED TO THE SUCCESSOR COMPANY

24. (1) The Minister may by order extinguish all or any liabilities of the successor company to the Minister in respect of the principal of such transferred loans as may be specified in the order.

(2) As a consequence of the extinguishment by an order under subsection (1) above of any such liabilities, the successor company shall issue such debentures of the company as the Minister may direct:

(a) to the Minister; or

(b) to any person entitled to require the issue of the debentures following their initial allotment to the Minister.

(3) The Minister shall not make an order or give a direction under this section at a time when the successor company has ceased to be wholly owned by the Government.

(4) Except as may be agreed between the Minister and the successor company

(a) the aggregate of the principal sums payable under debentures issued in pursuance of this section shall be equal to the aggregate of the sum of the liability to repay which is extinguished by the order; and

(b) the terms as to the payment of the principal sums so payable, and as to the payment of interest thereon, shall be the same as the corresponding terms of the transferred loans specified in the order.

(5) For the purposes of subsection (4) above any expressed or implied terms of a transferred loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(6) Subsection (3) and subsection (5) of section 23 above shall apply for the purposes of this section as they apply for the purposes of that section.

(7) In this section “transferred loan” means any sum borrowed or treated as borrowed by Bhutan Telecommunications the liability to repay which vests in the successor company by virtue of section 22 above.

GOVERNMENT INVESTMENT IN SECURITIES OF THE SUCCESSOR COMPANY

25. (1) The Minister may at any time, with the consent of the Ministry of Finance, acquire:

(a) securities of the successor company or of any subsidiary of the successor company; or

(b) rights to subscribe for any such securities.

(2) The Minister may not dispose of any securities or rights acquired under this section without the consent of the Ministry of Finance.

(3) Any expenses incurred by the Minister in consequence of the provisions of this section shall be paid out of money provided by the Ministry of Finance.

(4) Any dividends or other sums received by the Minister in right of, or on the disposal of, any securities or rights acquired under this section shall be paid into the Government Revenue Accounts or its functional successor.

EXERCISE OF THE MINISTER'S FUNCTIONS THROUGH NOMINEES

26. (1) The Minister may with the consent of the Ministry of Finance appoint such person or persons as he thinks fit to act as his nominees for the purposes of sections 23, 24 or 25 above; and :

(a) securities of the successor company may be issued under section 23 or 24 above to any nominee of the Minister appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and

(b) any such nominee appointed for the purposes of section 25 above may acquire securities or rights in accordance with that section,

in accordance with directions given from time to time by the Minister with the consent of the Ministry of Finance.

(2) Any person holding any securities or rights as a nominee of the Minister by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Minister may direct with the consent of the Ministry of Finance.

TARGET INVESTMENT LIMIT FOR GOVERNMENT SHAREHOLDING

27. (1) As soon as the successor company ceases to be wholly owned by the Government, the Minister shall by order fix a target investment limit in relation to the shares for the time being held in that company by the Minister or his nominee by virtue of any provision of this Part (in this section referred to as "the Government shareholding").

(2) The target investment limit shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the successor company (in this section referred to as "the ordinary voting rights").

(3) The first target investment limit fixed under this section shall be equal to the proportion of the ordinary voting rights which is carried by the Government shareholding at the time when the order fixing the limit is made.

(4) The Minister may from time to time by order fix a new target investment limit in place of the one previously in force under this section; but:

(a) any new limit must be lower than the one it replaces; and

(b) an order under this section may only be revoked by an order fixing a new limit.

(5) It shall be the duty of the Minister so to exercise:

(a) his powers under section 25 above and his power to dispose of any shares held by him by virtue of any provision of this Part; and

(b) his power to give directions to his nominees,

as to secure that the Government shareholding does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.

(6) Notwithstanding subsection (5) above, the Minister may take up, or direct any nominee of his to take up, any rights for the time being available to him, or to that nominee, as an existing holder of shares or other securities of the successor company or of any subsidiary of the successor company; but if as a result the ordinary voting rights carried by the Government shareholding at any time exceeds the target investment limit it shall be the duty of the Minister to comply with subsection (5) as soon after that time as is reasonably practicable.

(7) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.

FINANCIAL STRUCTURE OF THE SUCCESSOR COMPANY

28. (1) If the Minister so directs at any time before the successor company ceases to be wholly owned by the Government, such sum (not exceeding the accumulated realised profits of the Corporation) as may be specified in the direction shall be carried by the successor company to a reserve (in this section referred to as “the statutory reserve”).

(2) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

(3) For the purposes of any statutory accounts of the successor company:

(a) the vesting effected by virtue of section 22 above shall be taken to have been a vesting of all the property, rights and liabilities to which Bhutan Telecommunications was entitled or subject immediately before the end of the last complete accounting year of Bhutan Telecommunications ending before the transfer date and to have been effected immediately after the end of that year; and

(b) the value of any asset and the amount of any liability of Bhutan Telecommunications taken to have been vested in the successor company by virtue of paragraph (a) above shall be taken to be the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by Bhutan telecommunications in respect of that year.

(4) For the purposes of any statutory accounts of the successor company the amount to be included in respect of any item shall be determined as if anything done by the Corporation (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve or otherwise) had been done by the successor company.

(5) Accordingly (but without prejudice to the generality of subsection (4)) the amount to be included from time to time in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the Corporation had been realised and retained by the successor company.

(6) References in this section to the statutory accounts of the successor company are references to any accounts prepared by the successor company for the purposes of any provision of the Companies Act (including group accounts); and in this section “complete accounting year” means an accounting year ending with 31st December.

TEMPORARY RESTRICTIONS ON SUCCESSOR COMPANY'S BORROWINGS

29. (1) If articles of association of the successor company confer on the Minister powers exercisable with the consent of the Ministry of Finance for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.

(2) For the purposes of this section any alteration of the articles of association of the successor company which:

(a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above; and

(b) is made at a time when that company has ceased to be wholly owned by the Government,

shall be disregarded.

(3) In this section “group” means the successor company and all of its subsidiaries taken together.

DISSOLUTION OF BHUTAN TELECOMMUNICATIONS

30. (1) Bhutan Telecommunications shall continue in existence after the transfer date until it is dissolved in accordance with subsection (2) below; and the period of its continued existence after the transfer date is in this Act referred to as “the transitional period”.

(2) The Minister may by order, after consulting Bhutan Telecommunications and the successor company, dissolve Bhutan Telecommunications on a day specified in the order, as soon as he is satisfied that nothing further remains to be done by the Corporation.

Miscellaneous and supplemental

APPLICATION OF LAW IN RELATION TO OFFER OF SHARES OR DEBENTURES OF THE SUCCESSOR COMPANY

31. (1) This section applies where the Minister or a nominee of his offers for sale to the public shares or debentures of the successor company at a time when that company is wholly owned by the Government; and in this section “full prospectus” means a prospectus which complies, or is deemed to comply, with the requirements of section 19 of the Companies Act (matters to be specified in prospectus and reports to be set out therein).

(2) If the shares or debentures are offered by a full prospectus as respects which the conditions mentioned in subsection (3) below are fulfilled (in this section referred to as “the offer prospectus”), any form of application for the shares or debentures may (instead of being issued with a full prospectus) be issued with a notice given by the Minister which includes:

(a) a brief description of the shares or debentures offered, the terms of the offer, the successor company’s business and its financial position;

(b) an indication of the places in Bhutan where copies of the offer prospectus are to be available for inspection by members of the public; and

(c) a statement of the effect of subsections (4) and (5) below.

- (3) The said conditions are that arrangements have been made with a view to securing :
- (a) that on or before the date of receipt of the form of application by a member of the public a copy of the prospectus is published in the national newspaper;
 - (b) that on that date copies of the prospectus are generally available in Bhutan for inspection by members of the public.
- (4) Where a form of application is issued without a full prospectus but with a notice given by the Minister under subsection (2) above, then, for the purposes of any enactment or any rule of law :
- (a) the notice shall be taken to have incorporated the offer prospectus; and
 - (b) any application for the shares or debentures which is made in pursuance of the notice shall be taken to have been made in pursuance of that prospectus.
- (5) Where a form of application is issued without a full prospectus, neither the form of application nor any document which is issued with it shall be regarded as a prospectus for the purposes of section 19 of the Companies Act but only, where the form of application is issued without a notice given by the Minister under subsection (2) above, for the purpose of determining the liability of persons other than the Minister.

PART V
Abolition of the Exclusive Privilege of Bhutan Telecommunications
(The Corporation)

ABOLITION OF EXCLUSIVE PRIVILEGE OF BHUTAN TELECOMMUNICATIONS

32. As from such date as the Minister may by order appoint for the purposes of this section the exclusive privilege of running telecommunication systems conferred on Bhutan Telecommunications by section 17 above shall cease to exist.

PART VI
**Establishment of the Regulatory Authority for Communications and Appointment
of the Director General of Communications**

ESTABLISHMENT OF THE REGULATORY AUTHORITY AND APPOINTMENT OF THE DIRECTOR

33. (1) There shall be established as an authority within the Ministry of Communications a Regulatory Authority for Communications (in this Act referred to as “the Authority”) for the purpose of performing the functions assigned to the Authority by this Act.

(2) The Authority shall be run by the Director General of Communications (in this Act referred to as “the Director”) and the Director shall report directly to the Minister.

(3) The Minister shall appoint the Director in consultation with the Royal Civil Service Commission. An appointment of a person to hold the office as the Director shall not be for a term exceeding 5 years; but previous appointment to that office shall not affect eligibility for re-appointment.

(4) The Director may at any time resign his office as the Director by notice in writing addressed to the Minister; and the Minister may remove any person from that office on the ground of incapacity or misbehaviour.

(5) Subject to subsections (2) and (3) above, the Director shall hold and vacate office as such in accordance with the terms of his appointment.

(6) The Director may appoint such staff as he may think fit, subject to the approval of the Royal Civil Service Commission as to numbers and as to terms and conditions of service.

(7) The activities of the Authority shall be funded from:

(a) Sums appropriated by the Ministry of Finance

(b) Fees and other charges payable to the Authority in the performance of its functions under this Act.

(8) The provisions of Schedule 2 shall have effect with respect to the Director.

GENERAL DUTIES OF THE MINISTER AND THE DIRECTOR

34. (1) The Minister and the Director shall each have a duty to exercise the functions assigned to him by Parts VI to X of this Act in the manner which he considers is best calculated:

(a) to ensure that the objectives of the Government’s policies, especially, the National Telecom Policy are implemented

(b) to make progress towards the universal provision of telecommunication services within Bhutan;

(c) to secure that there are provided throughout Bhutan, save in so far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services at affordable prices as satisfy all reasonable demands for them including, in particular, emergency services, licensed public call offices, directory information services and services in rural areas; and

(d) without prejudice to the generality of paragraph (c) above, to secure that any person by whom any such services fall to be provided is able to finance the provision of those services at rates consistent with efficient service and the necessity for maintaining independent financial viability.

(2) Subject to subsection (1) above, the Minister and the Director shall each have a duty to exercise the functions assigned to him by Parts VI to X of this Act in the manner which he considers is best calculated :

(a) to promote the interests of consumers, purchasers and other users in Bhutan (including, in particular, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, telecommunication services provided and telecommunication apparatus supplied in Bhutan;

(b) to maintain and promote effective competition between persons engaged in commercial activities connected with telecommunications in Bhutan and to promote efficiency and economy on the part of such persons;

(c) to promote research into and the development and use of new techniques in the provision of telecommunication services by such persons;

(d) to promote the swift and sustainable development of telecommunication facilities within Bhutan;

(e) to ensure that operators are able to carry out their obligations to provide telecommunication services free of undue delay, hindrance or impediment;

(f) to encourage investment and innovation in the telecommunications sector;

(g) to promote improvements in the effective and efficient use of the radio spectrum and effectively to manage other scarce national resources required for the provision of telecommunication services.

(h) to encourage major users of telecommunication services whose places of business are outside Bhutan to establish places of business in Bhutan;

(i) to promote the provision of international transit services by persons providing telecommunication services in Bhutan;

(j) to enable persons providing telecommunication services in Bhutan to compete effectively in the provision of such services outside Bhutan;

(k) to enable persons producing telecommunication apparatus in Bhutan to compete effectively in the supply of such apparatus both in and outside Bhutan.

(3) Subsections (1) and (2) above do not apply in relation to anything done by the Minister in the interests of national security or relations with the government of a country or territory outside Bhutan.

(4) In this section “international transit service” means a telecommunication service consisting in the conveyance of sounds, visual images or signals which have been conveyed from, and are to be conveyed to, places outside Bhutan.

POWERS OF THE DIRECTOR

35. (1) The Director shall have the power, for the purpose of securing the effective performance of his functions and duties under this Act, or in connection with or in consequence of the performance thereof, to do anything that appears to the Director to be requisite, advantageous or convenient for him to do, including in particular (but without prejudice to the generality of the foregoing and subsequent provisions of this Act) powers:

- (a) to designate operators as universal service providers; to establish and/or approve universal service plans and to establish and manage a universal service fund for the financing of such universal service plans;
 - (b) to administer and manage the National Numbering Scheme of Bhutan;
 - (c) to regulate the pricing of telecommunications services;
 - (d) to regulate the interconnection, including its financial and technical aspects, of public telecommunication systems and to resolve disputes between operators of such systems;
 - (e) to establish such advisory bodies as he sees fit for the purpose of advising the Director on any matter pertaining to the exercise, performance and discharge of his duties, functions and powers under this Act;
 - (f) where so required and at the request of the Minister or of any other relevant Ministry, to participate in the preparation of Bhutan's position in international negotiations on telecommunications issues and to participate in representing Bhutan or to represent Bhutan in the relevant international organisations
 - (g) to direct any operator to comply with requirements laid down by the International Telecommunications Union and any other relevant International Organisation in respect of equipment and technical standards;
 - (h) to ensure compliance by operators with international or other obligations entered into by the Government in relation to telecommunication activities;
 - (i) to set technical standards and rules applicable to telecommunication systems and terminal equipment to ensure interoperability, efficient use of radio spectrum and telephone numbers;
 - (j) to conduct administrative processes and hearings to resolve technological issues, inter-operator disputes, consumer complaints and other matters which affect the structure and functioning of the telecoms sector;
 - (k) to take action to prohibit, prevent and bring to an end any abuse of market power or anti-competitive behaviour within the telecommunications sector;
 - (l) to ensure the proper maintenance of accounting systems by public telecommunications operators;
 - (m) to make and enforce regulations, and to issue guidelines and codes of practice governing the telecommunications sector, and in particular, in respect of the operators running public telecommunication systems and/or providing public telecommunication services.
- (2) Any direction, regulation, guideline or code of practice made or issued in accordance with the provisions of subsection (1) or pursuant to any other provisions of this Act shall be adopted and

published in such manner as the Director considers appropriate for bringing the contents thereof to the attention of persons likely to be affected by them and placed on the register in accordance with section 47 below.

(3) In this section:

(a) “National Numbering Scheme” means a plan describing the method adopted or to be adopted for allocating and re-allocating a number to any network termination point in a public telecommunication network or to any user, telecommunications apparatus or service element;

(b) “number” means any identifier which would need to be used in conjunction with any public switched telecommunication service for the purposes of establishing a connection with any network termination point in a public telecommunication network, user, telecommunications apparatus connected to any public switched telecommunication system or service element, but not including any identifier which is not accessible to the generality of users of a public switched telecommunication service;

SEPARATION OF REGULATORY AND OPERATIONAL ACTIVITIES

36. (1) Regulation of the telecommunications sector shall be carried out independently of the operation of telecommunication systems and the provision of telecommunication services.

MEANING OF ‘TELECOMMUNICATION SYSTEM’ AND RELATED EXPRESSIONS

37. (1) In Parts V to X of this Act “telecommunication system” means a system for the conveyance through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of :

(a) speech, music and other sounds;

(b) visual images;

(c) data;

(d) signals serving for the impartation (whether as between persons and persons, things and things or persons and things of any matter otherwise than in the form of things) or any matter otherwise than in the form of sounds or visual images; or

(e) signals serving for the actuation or control of machinery or apparatus.

(2) For the purposes of Parts V to X of this Act telecommunication apparatus which is situated in Bhutan and:

(a) is connected to but not comprised in a telecommunication system which extends beyond Bhutan; or

(b) is connected to and comprised in a telecommunication system which extends beyond Bhutan,

shall be regarded as a telecommunication system and any person who controls the apparatus shall be regarded as running the system.

(3) In Parts V to X of this Act:

“commercial activities connected with telecommunications” means any of the following, that is to say, the provision of telecommunication services, the supply or export of telecommunication apparatus and the production or acquisition of such apparatus for supply or export;

“telecommunication apparatus” means apparatus constructed or adapted for use :

(a) in transmitting or receiving anything falling within paragraphs (a) to (e) of subsection (1) above which is to be or has been conveyed by means of a telecommunication system; or

(b) in conveying, for the purposes of such a system, anything falling within those paragraphs;

“telecommunication service” means any of the following, that is to say :

(a) a service consisting in the conveyance by means of a telecommunication system of anything falling within paragraphs (a) to (e) of subsection (1) above;

(b) a directory information service, that is to say, a service consisting in the provision by means of a telecommunication system of directory information for the purpose of facilitating the use of a service falling within paragraph (a) above and provided by means of that system; and

(c) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system.

(4) Subject to subsection (6) below, a telecommunication system is connected to another telecommunication system for the purposes of Parts IV to IX of this Act if it is being used, or is installed or connected for use, in conveying anything falling within paragraphs (a) to (e) of subsection (1) above which is to be or has been conveyed by means of that other system.

(5) Subject to subsection (6) below, apparatus is connected to a telecommunication system for the purposes of Parts V to X of this Act if it is being used, or is installed or connected for use:

(a) in transmitting or receiving anything falling within paragraphs (a) to (e) of subsection (1) above which is to be or has been conveyed by means of that system; or

(b) in conveying, for the purposes of that system, anything falling within those paragraphs;

and references in this subsection to anything falling within those paragraphs shall include references to energy of any kind mentioned in that subsection.

(6) The connection to a telecommunication system of any other telecommunication system or any apparatus shall not be regarded as a connection for the purposes of this Act if that other telecommunication system or that apparatus would not be so but for its connection to another telecommunication system.

(7) In this section, except subsection (1) above, “convey” includes transmit, switch and receive and cognate expressions shall be construed accordingly.

PART VII
Provision of Telecommunication Services

Licensing etc. of telecommunication systems

PROHIBITION ON RUNNING UNLICENSED SYSTEMS

38. (1) Subject to the provisions of this section and section 39 below, a person who runs a telecommunication system within Bhutan after the appointed day shall be guilty of an offence unless he is authorised to run the system by a licence granted under section 39 below.

(2) Subject to the provisions of this section, a person who runs within Bhutan a telecommunication system which he is authorised to run by a licence granted under section 39 below shall be guilty of an offence if there are provided by means of the system any telecommunication services which are not authorised by the licence to be so provided.

(3) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding the maximum specified in Schedule 3 to this Act.

(4) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(5) In any proceedings for an offence under this section it shall, subject to subsection (6) below, be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(6) Where the defence provided by subsection (5) above involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(7) No proceedings shall be instituted in respect of an offence under this section except by or on behalf of the Minister or the Director.

EXCEPTIONS TO SECTION 38

39. (1) Section 38(1) above is not contravened by the running by a broadcasting authority of a telecommunication system in the case of which every conveyance made by it is either :

- (a) a transmission, by radiocommunication, from a transmitting station for general reception of sounds, visual images or such signals as are mentioned in paragraph (c) of section 37(1) above; or
- (b) a conveyance within a single set of premises of sounds, visual images or such signals which are to be or have been so transmitted.

(2) Section 38(1) above is not contravened by:

(a) the running of a telecommunication system in the case of which the only agency involved in the conveyance of things thereby conveyed is light and the things thereby conveyed are so conveyed as to be capable of being received or perceived by the eye and without more;

(b) the running by a person of a telecommunication system which is not connected to another telecommunication system and in the case of which all the apparatus comprised therein is situated either :

(i) on a single set of premises in single occupation;

or

(ii) in a vehicle, vessel or aircraft or in two or more vehicles, vessels of aircraft mechanically coupled together; or

(c) the running by a single individual of a telecommunication system which is not connected to another telecommunication system and in the case of which:

(i) all the apparatus comprised therein is under his control; and

(ii) everything conveyed by it that falls within paragraphs (a) to (e) of section 37 (1) above is conveyed solely for domestic purposes of this;

and references in paragraphs (b) and (c) above to another telecommunication system do not include references to such a system as is mentioned in subsection (1) above (whether run by a broadcasting authority or by any other person).

(3) In the case of a business carried on by a person, section 38(1) above is not contravened by the running, for the purposes of that business, of a telecommunication system which is not connected to another telecommunication system and with respect to which the conditions specified in subsection (4) below are satisfied:

(4) The said conditions are:

(a) that no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system;

(b) that nothing falling within paragraphs (a) to (d) of section 37(1) above is conveyed by the system by way of rendering a service to another;

(c) that, in so far as sounds or visual images are conveyed by the system, they are not conveyed for the purpose of their being heard or seen by persons other than the person carrying on the business of any employees of his engaged in the conduct thereof;

(d) that in so far as such signals as are mentioned in paragraph (c) of section 37 above are conveyed by the system, they are not conveyed for the purpose of imparting matter otherwise than to the person carrying on the business, any employees of his engaged in the conduct thereof or things used in the course of the business and controlled by him; and

(e) that, in so as such signals as are mentioned in paragraph (d) of section 37(1) above are conveyed by the system, they are not conveyed for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of the business.

(5) The Minister may from time to time by order provide that the running, without a licence granted under this section, of such other systems as he may specify in the order does not constitute a contravention of section 38(1) above.

(6) Any order made pursuant to subsection (5) above shall be published in such manner as the Minister considers appropriate for bringing it to the attention of the persons for whose benefit it will enure and placing a copy of the order on the register in accordance with section 47 below.

(7) In this section :

“broadcasting authority” means a person licensed by the Minister under the relevant legislation to broadcast programmes for general reception;

“business” includes a trade, profession or employment and includes any activity carried on by a body of persons whether corporate or unincorporate;

“radiocommunication” has the meaning given in section 95 below; and

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

POWER TO LICENSE SYSTEMS

40. (1) A licence may be granted :

(a) by the Minister after consultation with the Director; or

(b) with the consent of, or in accordance with a general authorisation given by, the Minister to the Director,

for the running of any such telecommunication system as is specified in the licence or is of a description so specified.

(2) A licence granted under this section shall be in writing and, unless previously revoked in accordance with any term in that behalf contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence.

(3) A licence granted under this section may be granted either to all persons, to persons of a class or to a particular person.

(4) A licence granted under this section may authorise:

- (a) the connection to any telecommunication system to which the licence relates of:
 - (i) any other telecommunication system specified in the licence or of a description so specified; and
 - (ii) any apparatus so specified or of a description so specified; and
- (b) the provision by means of any telecommunication system to which the licence relates of any telecommunication services specified in the licence or of a description so specified.
- (5) A licence granted under this section may include :
 - (a) such conditions (whether relating to the running of a telecommunication system to which the licence relates or otherwise) as appear to the Minister or the Director to be requisite or expedient having regard to the duties imposed on him by section 34 above;
 - (b) conditions requiring the rendering to the Minister of a payment on the grant of the licence or payments during the currency of the licence or both of such amount or amounts as may be determined by or under the licence;
 - (c) conditions requiring any person who is authorised by the licence to run a telecommunication system to comply with any regulations as the Director may make from time to time pursuant to section 35 of this Act;
 - (d) conditions requiring any person who is authorised by the licence to run a telecommunication system to furnish to the Director, in such manner and at such times as he may reasonably require, such documents, accounts, estimates, returns or other information he may require for the purpose of exercising the functions assigned or transferred to him by or under this Parts IV to IX of this Act, and
 - (e) a condition stipulating the process to be complied with by the Director and the licensee in the event that the licensee does not consent to any modification to the licence proposed by the Director in accordance with subsection 43 (5) below and the Director still wishes to make the modification.
- (6) Without prejudice to the generality of paragraph (a) of subsection (5) above, conditions included by virtue of that paragraph in a licence granted under this section to a particular person may require that person:
 - (a) to comply with any direction given by the Director as to such matters as are specified in the licence or are of a description so specified;
 - (b) except in so far as the Director consents to his doing or not doing them, not to or to do such things as are specified in the licence or are of a description so specified; and
 - (c) to refer to determination by the Director such questions arising under the licence as are specified in the licence or are of a description so specified.
- (7) A licence granted under this section otherwise than to a particular person shall be published in such manner as the Minister or the Director considers appropriate for bringing it to the attention of the persons for whose benefit it will enure.
- (8) A copy of every licence granted under this section by the Minister shall be sent to the Director.

(9) Any sums received by the Minister under this section shall be paid to the Royal Government Revenue Accounts.

SPECIAL PROVISIONS APPLICABLE TO CERTAIN LICENCES

41. (1) This section applies to any licence granted under section 40 above to a particular person which includes conditions requiring that person :

(a) to provide such telecommunication services as are specified in the licence or are of a description so specified in the circumstances specified in the licence;

(b) to connect to any telecommunication system to which the licence relates, or permit the connection to any such system of, such other telecommunication systems and such apparatus as are specified in the licence or are of a description so specified in the circumstances specified in the licence;

(c) to permit the provision by means of any telecommunication system to which the licence relates of such services as are specified in the licence or are of a description so specified in the circumstances specified in the licence;

(d) not to show undue preference to, or to exercise undue discrimination against, particular persons or persons of any class or description as respects any service provided, connection made or permission given in pursuance of such conditions as are mentioned in the foregoing paragraphs (whether in respect of the charges or other terms or conditions applied or otherwise); and

(e) to publish, in such manner and at such times and such circumstances as are specified in the licence, a notice specifying, or specifying the method that is to be adopted for determining, the charges and other terms and conditions that are to be applicable to such services so provided, such connections so made and such permissions so given as are specified in the licences or are of a description so specified.

(2) It is immaterial for the purposes of subsection (1) above whether the person to whom the licence is granted is required to refer for determination by the Director such questions arising under the conditions mentioned in those subsections as are specified in the licence or are of a description so specified.

(3) Before granting a licence to which this section applies, the Minister or the Director shall give notice:

(a) stating that he proposes to grant the licence and setting out its effect;

(b) stating the reasons why he proposes to grant the licence; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) above shall be given by publication in such manner as the Minister or the Director considers appropriate for bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

PUBLIC TELECOMMUNICATION SYSTEMS

42. (1) The Minister may by order designate as a public telecommunication system, any telecommunication system the running of which is authorised by a licence to which section 41 above applies; and any reference in this Act to a public telecommunication system which is so designated and the running of which is so authorised.

(2) An order under subsection (1) above shall not come into operation until after end of the period of 28 days beginning with the day on which copies of the order, and of the licence to which section 40 above applies, are laid before the Cabinet.

(3) In this Act “public telecommunications operator” means a person authorised by a licence to which section 41 above applies to run a public telecommunication system.

Modification of licences

MODIFICATION OF LICENCE CONDITIONS

43. (1) Subject to the following provisions of this section, the Director may modify the conditions of, or schedules or annexes to a licence under section 40 above.

(2) Before making modifications under this section, the Director shall give notice :

(a) stating that he proposes to make the modifications and setting out their effect;

(b) stating the reasons why he proposes to make the modifications; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3) A notice under subsection (2) above shall be given by publication in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and, in the case of a licence granted to a particular person, by sending a copy of the notice to that person.

(4) The Director shall also send a copy of a notice under subsection (2) above to the Minister.

(5) In the case of a licence granted to a particular person, the Director shall not make the modifications except with the consent of that person. If that consent is not forthcoming within 28 days of the date of the notice given under subsection (2) above, the Director may only make the modification in accordance with the relevant condition in licence, which condition may not itself be modified except with the consent of the licensee.

(6) In the case of a licence granted to all persons or to persons of a class, the Director shall not make the modifications unless either :

(a) no representations or objections are duly made by persons authorised by that licence to run telecommunication systems; or

(b) any representations or objections duly made by such persons are withdrawn.

(7) In the event that a required consent is not forthcoming within 28 days from the date of publication of the notice given under subsection (2) above, modifications will be made with the consent of the Minister, having given that the particular person to whom the license has been granted has a reasonable opportunity to make representations to the Minister in connection with the proposed modification.

Enforcement of Licences

SECURING COMPLIANCE WITH LICENCE CONDITIONS

44. (1) Subject to subsections (2) and (5) and section 45 below, where the Director is satisfied that a person who is authorised by a licence granted under section 40 above to run a telecommunication system (in this Act referred to as a “telecommunications operator”) is contravening or has contravened any of the conditions or other terms of his licence, the Director shall by a final order make such provision, including the payment of a fine or fines, as is requisite for the purpose of securing compliance with that condition.

(2) Subject to subsection (5) below, where it appears to the Director:

(a) that a telecommunications operator is contravening or has contravened any of the conditions or other terms of his licence; and

(b) that it is requisite that a provisional order be made,

the Director shall (instead of taking steps towards the making of a final order) by a provisional order make such provision, including the payment of a fine or fines, as appears to him requisite for the purpose of securing compliance with that condition or term.

(3) In determining for the purposes of subsection (2) (b) above whether it is requisite that a provisional order be made, the Director shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition is likely to be done, or omitted to be done, before a final order may be made.

(4) Subject to subsection (5) and section 44 below, the Director shall confirm a provisional order with or without modifications if:

(a) he is satisfied that the telecommunications operator is contravening, or has contravened any of the conditions or other terms of his licence; and

(b) the provision made by the order (with any modification) is requisite for the purpose of securing continued compliance with that condition or term.

(5) The duties imposed by subsections (1) and (4) above shall not apply where the Director gives notice that he is satisfied:

(a) that the duties imposed on him by section 34 above preclude the making of final or provisional order, or as the case may be, the confirmation of the provisional order; or

(b) that the contravention or apprehended contraventions are of a trivial nature;

and a notice under this subsection shall be given by publication in such manner as the Director appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and by sending a copy of the notice to the telecommunications operator.

(6) A final or provisional order:

- (a) shall require the telecommunications operator (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
- (b) may require the telecommunications operator (according to the circumstances of the case) to pay such fine or fines, as are specified in the order until such time as the operator has fully remedied the breach of licence giving rise to the order;
- (c) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
- (d) may be revoked at any time by the Director.

(7) In this section and sections 45 to 47 below:

“contravention”, in relation to any condition of a licence, includes any failure to comply with that condition and “contravene” shall be construed accordingly;

“final order” means an order under this section other than a provisional order;

“provisional order” means an order under this section which, if not previously confirmed under subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

(8) References in this section to conditions of a licence include any directions, determinations or guidelines made pursuant to such conditions and any regulations made pursuant to section 28 above, the compliance with which may be required by a condition of a licence.

PROCEDURAL REQUIREMENTS

45. (1) Before making a final order or confirming a provisional order, the Director shall give notice:

- (a) stating that he proposes to make or confirm the order and setting out its effect;
- (b) stating the relevant condition or term of the licence and the acts or omissions which, in his opinion, constitute or would constitute contravention of it; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections to the proposed order or confirmation of the order may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) The Director shall not make a final order, or confirm a provisional order, with modifications except with the consent of the telecommunication operator or after complying with the requirements of subsection (3) below.

(3) The said requirements are that the Director shall:

- (a) give to the telecommunication operator such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
- (b) specify the time (not being less than 28 days from the date of the service of the notice) within which representations or objections to the proposed modifications may be made; and

(c) consider any representations or objections which are duly made and not withdrawn.

(4) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice:

(a) stating that he proposes to revoke the order and setting out its effect; and

(b) specifying the time (not being less than 28 days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under subsection (1) or (4) shall be given by publication in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them and by sending a copy of the notice to the telecommunications operator.

(6) As soon as practicable after a final order is made or a provisional order is made or confirmed, the Director shall:

(a) publish the order in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it; and

(b) serve a copy of the order on the telecommunication operator.

VALIDITY AND EFFECT OF ORDERS

46. (1) If the telecommunication operator is aggrieved by a final or provisional order and desires to question its validity on the ground that the making or confirmation of it was not within the powers of section 44 above or that any of the requirements of section 38 above have not been complied with in relation to it, he may within 42 days from the date of service on him of a copy of the order make an application to the court under this section.

(2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the telecommunications operator have been substantially prejudiced by a failure to comply with the requirements, quash the order or any provision of the order.

(3) Except as provided by this section the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

(4) The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it.

(5) Where a duty is owed by virtue of subsection (4) above to any person:

(a) any breach of the duty which causes that person to sustain loss or damage; and

(b) any act which, by inducing a breach of that duty or interfering with its performance, causes that person to sustain loss or damage and which is done wholly or partly for the purpose of achieving that result,

shall be actionable at the suit or instance of that person.

(6) In any proceedings brought against any person in pursuance of subsection (5) (a) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) Without prejudice to any right which any person may have by virtue of subsection (5) (a) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.

(8) In this section :

“act”, in relation to any person, includes any failure to do an act which he is under a duty to do and “done” shall be construed accordingly;

“contravention” in relation to a final or provisional order, includes any failure to comply with it;

“the court” means the District Court.

REGISTER OF REGULATIONS, LICENCES AND ORDERS

47. (1) The Director shall keep a register of regulations, codes of practice and sets of guidelines made under section 35 above, licences granted under section 40 above and final and provisional orders at such premises and in such form as he may determine.

(2) Subject to any direction given under subsection (3) below, the Director shall cause to be entered in the register the provisions of:

(a) every regulation made under section 35 above, and every modification or revocation of, and every direction or consent given or determination made under such regulations ;

(b) every code of practice and set of guidelines made under section 35 above and every modification or revocation of, and every direction or consent given or determination made under such codes and guidelines;

(c) every licence granted under section 40 above and every modification or revocation of, and every direction, or consent given or determination made under, such a licence; and

(d) every final or provisional order, every revocation of such an order and every notice under section 44 (5) above.

(3) If it appears to the Minister that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Director in writing, not to enter that provision in the register.

(4) The register shall be open to public inspection during such hours and subject to payment of such fee as may be prescribed by an order made by the Minister.

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

(6) Any sums received by the Director under this section shall be paid into the Royal Government Revenue Accounts.

Telecommunication equipment, suppliers and technicians

TELECOMMUNICATION APPARATUS TO BE OF APPROVED TYPE

48. (1) No person shall use any type of telecommunication apparatus, including radiocommunication apparatus, in connection with telecommunications unless that type has, subject to subsection (2), been approved by the Director.

(2) The Director may prescribe :

(a) types of apparatus, the use of which shall not require such approval;

(b) circumstances in which the use of telecommunication apparatus shall not require such approval.

TECHNICAL STANDARDS FOR TELECOMMUNICATION APPARATUS

49. (1) The Director may by regulation prescribe standards for the performance and operation of any telecommunication apparatus, including radio apparatus.

(2) Any such standard shall be aimed at:

(a) protecting the integrity of the public telecommunication systems;

(b) ensuring the proper functioning of apparatus connected to public telecommunication systems;

(c) avoiding radio or other interference with telecommunication services.

(3) Any regulation made under subsection (1) may, for the purposes of this section, incorporate any technical standard, without publishing the text thereof, merely by reference to the number, title and year of issue thereof or to other particulars by which it may be identified sufficiently.

(4) Any technical standard incorporated in the regulations as contemplated in subsection (3) shall, in so far as it is not contrary to the regulations be deemed to be a regulation.

(5) Whenever any technical standard is, at any time after the incorporation thereof under subsection (3), amended or substituted by a competent authority, the regulation whereby such technical standard was incorporated in the regulations shall, unless otherwise stated therein, be deemed to refer to such technical standard as so amended or substituted, as the case may be.

REGISTER OF TECHNICAL STANDARDS

50. (1) The Director shall keep a register of the technical standard incorporated in the regulations made under section 48 above at such premises and in such form as he may determine.

(2) The Director shall cause particulars of every such technical standard, and of every variation or withdrawal of such technical standards, to be entered in the register.

(3) Subsections (4) to (6) of section 47 above shall apply for the purposes of this section as they apply for the purposes of that section.

Functions of public telecommunication operators in relation to works in connection with telecommunication systems

OPERATORS TO PERFORM FUNCTIONS IN PRESCRIBED MANNER

51. (1) A public telecommunication operator (hereinafter in this section and sections 52 to 60 below referred to as “an operator”) shall perform its functions under sections 51 to 60 of this Act in accordance with the regulations contemplated in subsection (2).

(2) The Director shall prescribe:

(a) the manner, form and period of notice to be given by an operator to any person or authority in connection with the performance by the operator of functions contemplated in sections 51 to 60 of this Act; and

(b) the procedure to be followed and consultations to be held between an operator and any affected person or authority.

ENTRY UPON AND CONSTRUCTION OF TELECOMMUNICATION APPARATUS ACROSS ANY LAND

52. (1) An operator may, for the purposes of providing its telecommunication service, enter upon any land, including any street, road, footpath or land reserved for public purposes and construct and maintain telecommunication apparatus upon, under, over, along or across any land, street, road, footpath or waterway and alter, remove or replace the same, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.

(2) In taking any action in terms of subsection (1), due regard must be had to the environmental policy of the Government, the Bhutan Municipal Act and any other laws of the country.

COMPULSORY PURCHASE OF LAND

53. (1) Subject to subsection (2) below, the Minister may authorise a public telecommunications operator to purchase compulsorily any land in Bhutan which is required by the operator for, or in connection with, the establishment or running of the operator’s system or as to which it can reasonably be foreseen that it will be so required; and the Land Act shall apply to any compulsory purchase under this section.

(2) No order shall be made authorising a compulsory purchase under this section except with the consent of the Director.

(3) The power of purchasing land compulsorily under this section includes power to acquire an easement or other right over land by the creation of a new right.

(4) Where a public telecommunications operator has acquired any land under this section, he shall not dispose of that land or of any interest or right in or over it except with the consent of the Director.

UNDERGROUND PIPES FOR TELECOMMUNICATION SERVICE PURPOSES

54. (1) If any local authority and operator agree that in a particular area electricity supply and the telecommunication services of that operator shall be provided by means of underground cable, that local authority may on any premises within the said area, when installing such cable for an underground electricity supply line on the said premises, in accordance with the requirements of the operator provide a conduit, pipe or other facility for the installation of an underground telecommunication service line from a point of connection on the street boundary to a building on those premises.

(2) The costs of the provision of the said conduit, pipe or other facility shall be payable to the local authority in question and shall for the purpose of any law be deemed to be fees payable by the owner of the premises in question to the local authority in respect of the installation of the electricity supply line.

PIPES ETC UNDER STREETS

55. An operator may, after reasonable notice in writing to the local authority or person owning or having the care and maintenance of any street, road or footpath, construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for telecommunication apparatus under any such street, road or footpath, and may alter, remove and replace the same and may for such purposes break or open up any street, road or footpath and alter the position thereunder of any pipe (not being a sewer drain or main) for the supply of water, gas or electricity PROVIDED THAT the local authority or person to whom any such pipe belongs or by whom it is used shall be entitled at all times, while any work in connection with the alteration in the position of that pipe is in progress, to supervise that work, and the operator shall pay all reasonable expenses incurred by any such local authority or person in connection with any alteration or removal under this section or any supervision of work relating to such alteration.

REMOVAL OF APPARATUS

56. (1) If an operator finds it necessary to move any telecommunication apparatus constructed upon, in, over, along, across or under any land, street, road, footpath or waterway, owing to any alteration of alignment or level or any other work on the part of any public authority or person, the cost of the alteration or removal shall be borne by that local authority or person.

(2) Where any telecommunication apparatus constructed by an operator passes over any private property and interferes with any building about to be erected on that property, the operator shall, on receiving satisfactory proof that a building is actually to be erected, cause the apparatus to be deviated or altered in such manner as will remove all obstacles to building operations.

(3) Notice that any such deviation or alteration as is contemplated in subsection (2) is required shall be given to the operator in writing not less than 28 days before the alteration or deviation is to be effected.

(4) If any deviation or alteration of any telecommunication apparatus constructed by an operator and passing over any private property is desired on any ground other than those contemplated in subsection (2), 28 days' notice thereof in writing shall be served on the operator, who shall decide whether or not the deviation or alteration is possible, necessary or expedient, and if the operator agrees to make the deviation or alteration, the cost thereof shall be borne by the person at whose request the deviation or alteration is effected PROVIDED THAT in any case where in the opinion of the operator it is justified, the operator may bear the whole or any part of the said cost.

FENCES

57. (1) If any fence erected or to be erected on land over which any telecommunication apparatus is constructed or is to be constructed by an operator, renders or would render it impossible or inconvenient for the operator to obtain access to that land the operator may at its own expense erect and maintain gates in that fence and shall provide duplicate keys thereof, one of which shall be handed to the owner or occupier of the land.

(2) Any person intending to erect any such fence shall give not less than 6 weeks' notice in writing to the operator of his intention so to do.

TREES OBSTRUCTING TELECOMMUNICATION APPARATUS

58. (1) Any tree or vegetation which in the reasonable opinion of an operator obstructs or interferes with the working or maintenance of any of its telecommunication apparatus, whether growing upon Government-owned land or upon any road or street or upon private land, shall, after reasonable notice to the owner or occupier of the land, be cut down or trimmed in accordance with its requirements by the authority having the care and the management of such Government-owned land, road or street or by the owner or occupier of such private land, as the case may be, at the expense of the operator, and, in the event of any failure to comply with any such notice, the operator may itself cause the said tree or vegetation to be cut down or trimmed as it may deem necessary PROVIDED THAT where the provision of telecommunication services is actually interfered with or endangered by any such tree or vegetation, the operator may cause the work which is immediately necessary for the removal of the interference or danger to be undertaken without any such notice.

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

HEIGHT OR DEPTH OF TELECOMMUNICATION APPARATUS

59. (1) Aerial telecommunication apparatus along any public or private street, road, footpath or land shall be at the prescribed height above the surface of the ground.

(2) Underground telecommunication apparatus shall be placed by an operator at the prescribed depth below the surface of the ground.

(3) If the owner of any private land proves to the satisfaction of an operator that he is obstructed in the free use of his land by reason of the insufficient height or depth of any telecommunication apparatus constructed by that operator, the operator shall, subject to the provisions of sections 55 and 56, take such steps as it may deem necessary for giving relief to that owner.

(4) In taking any action in terms of this section, due regard must be had to the environmental policy of the Government.

ELECTRICAL WORKS

60. (1) Any person who constructs, equips or carries on any works for the supply of light, heat or power by means of electricity, shall conform to the requirements of an operator for the prevention of any of its telecommunication apparatus or works being injuriously affected thereby, and shall, before commencing the construction of any such works, give one month's notice in writing to the operator of his intention to commence the construction, and shall furnish the operator with a plan of the proposed works, together with particulars showing the manner and position in which the same are intended to be constructed, executed and carried on and any such further information relative to the proposed works as the operator may require.

(2) If it appears to the operator that the construction, equipment or operation of such works is likely to affect injuriously any of its telecommunications apparatus or works, or if any of such telecommunication apparatus or works are injuriously affected by the construction, equipment or operation of any such works, the operator shall give reasonable notice of its requirements to the person concerned, and any person who after receiving any such notice, proceeds with or causes to be proceeded with any such construction, equipment or operation in contravention of the said requirements, shall be liable to the operator in damages, recoverable by action in a competent court, of an amount specified in Schedule 3 to this Act for every day on which the construction, equipment or operation is proceeded with or the injurious effect continues, and shall in addition make good any damage or expense suffered by the operator by reason of the failure to comply with the operator's requirements.

Interpretation

INTERPRETATION

61. In sections 51 to 60 above :

“telecommunication apparatus” includes any apparatus falling within the definition in section 37 of this Act and any apparatus not so falling which is designed or adapted for use in connection with the running of a telecommunication system and, in particular :

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

and references to the installation of telecommunication apparatus shall be construed accordingly.

Offences

FRAUDULENT USE OF TELECOMMUNICATION SYSTEM

62. (1) A person who dishonestly obtains a service provided by means of a licensed telecommunication system with intent to avoid payment of any charge applicable to the provision of the service shall be guilty of an offence and liable on conviction to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.

(2) A person who uses any authorisation code, password or any other restricted form of electronic access device for the purpose of obtaining a service provided by means of a public telecommunication system with intent to avoid payment of any charge applicable to the provision of the service shall be guilty of an offence and liable on conviction to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.

IMPROPER USE OF PUBLIC TELECOMMUNICATION SYSTEMS

63. (1) A person who :

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

shall be guilty of an offence and liable on conviction to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.

MODIFICATION ETC OF MESSAGES

64. (1) A person engaged in the running of a public telecommunication system who otherwise than in the course of his duty intentionally modifies or interferes with the contents of a message sent by means of that system shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) above shall be liable on conviction, to a fine not exceeding the maximum specified in Schedule 3 to this Act.

INTERCEPTION AND DISCLOSURE OF MESSAGES ETC.

65. (1) A person engaged in the running of a public telecommunication system who otherwise than in the course of his duty :

- (a) intentionally intercepts a message sent by means of that system; or
- (b) where a message so sent has been intercepted, intentionally discloses to any the contents of that message,

shall be guilty of an offence.

(2) A person engaged in the running of a public telecommunication system who otherwise than in the course of his duty intentionally discloses to any person the contents of any statement of account specifying the telecommunication services provided for any other person by means of that system shall be guilty of an offence.

(3) Subsection (1) above does not apply to anything done in obedience to a warrant under the hand of the Minister; and paragraph (b) of that subsection and subsection (2) above do not apply to any disclosure in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings.

(4) A person guilty of an offence under this section shall be liable to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.

PROHIBITION OF AFFIXING PLACARDS, NOTICES ETC ON THE PROPERTY OF A PUBLIC TELECOMMUNICATION OPERATOR

66. A person who without due authority affixes or attempts to affix any placard, advertisement, notice, list, document, board or thing in or on any office, telegraph post or other property belonging to or used by a public telecommunication operator shall be guilty of an offence and liable on conviction to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.

PART VIII

Other Functions of the Director

GENERAL FUNCTIONS

67. (1) It shall be the duty of the Director, so far as it appears to him practicable from time to time, to keep under review the carrying on both within and outside Bhutan of activities connected with telecommunications.

(2) It shall also be the duty of the Director, so far as it appears to him practicable from time to time, to collect information with respect to commercial activities connected with telecommunications carried on in Bhutan, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, matters with respect to which his functions are exercisable.

(3) The Minister may give general directions indicating :

(a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in the performance of his duty under subsection (1) or (2) above; and

(b) considerations to which, in cases where it appears to the Director that any of his functions are exercisable, he should have particular regard in determining whether to exercise those functions.

(4) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Minister to do so, to give information, advice and assistance to the Minister with respect to any matter in respect of which any function of the Director is exercisable.

PUBLICATION OF INFORMATION AND ADVICE

68. (1) The Director may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to be expedient to give to consumers, purchasers and other users of telecommunication services or telecommunication apparatus in Bhutan.

(2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable,

(a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and

(b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.

(3) Without prejudice to the exercise of his powers under subsection (1) of this section, it shall be the duty of the Director to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers, purchasers and other users of telecommunication services or telecommunication apparatus in Bhutan.

(4) In this section “relevant association” means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the provision of telecommunication services or the supply of telecommunication apparatus or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

INVESTIGATION OF COMPLAINTS

- 69.** (1) It shall be the duty of the Director to consider any matter which :
- (a) relates to telecommunication services provided or telecommunication apparatus supplied in Bhutan; and
 - (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter.
- (2) Subsection (1) above does not apply to any matter which relates to the running of such a telecommunication system as is mentioned in section 39 (1) above.
- (3) Where any matter considered by the Director under subsection (1) above is one in respect of which any of his functions is exercisable, the Director shall, if he is required to do so or if he thinks fit, exercise that function with respect to that matter.

POWER TO REQUIRE INFORMATION

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

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

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

shall be guilty of an offence.

- (3) A person guilty of an offence under subsection (2) above shall be liable to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.
- (4) If a person makes default in complying with a notice under subsection (1) of this section, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the

application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

(5) In this section :

“the court” means the District Court;

“relevant purpose” means any purpose connected with :

(a) the investigation of any offence under section 38 or any proceedings for any such offence;
or

(b) the exercise of the Director’s functions under sections 44 or 69 above.

POWER TO ESTABLISH ADVISORY BODIES

71. (1) The Director may establish such advisory bodies as he thinks fit consisting in each case of such members as he may from time to time appoint.

(2) It shall be the duty of an advisory body established under this section to advise the Director on any matter :

(a) in respect of which any of the Director’s functions is exercisable; and

(b) which is referred to it by the Director or is a matter on which it considers it should offer its advice.

(3) Each of the advisory bodies established under subsection (1) above shall, as soon as practicable after the end of the year after the year in which it was established and of each subsequent calendar year, make to the Director a report on its activities during that year.

(4) The Minister or the Director may, to such extent as may be approved by the Ministry of Finance, defray or contribute towards the expenses of an advisory body established under this section.

ANNUAL AND OTHER REPORTS

72. (1) The Director shall, as soon as practicable, after the end of the year 2000 and of each subsequent calendar year, make to the Minister a report on his activities during that year.

(2) Every such report shall include:

(a) a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director’s functions; and

(b) the reports which the advisory bodies established under section 71 above make on their activities during that year.

(3) The Minister shall lay a copy of every report made by the Director under subsection (1) above before the Cabinet and shall arrange for every such report to be published in such manner as he may consider appropriate.

(4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) above and may arrange for any such report to be published in such manner as he may consider appropriate.

PART IX
Provisions relating to Radiocommunications

Control of Radio Frequency Spectrum etc.

CONTROL OF RADIO FREQUENCY SPECTRUM VESTED IN THE DIRECTOR

73. (1) The Director shall be vested with the control, planning, administration, management and licensing of the radio frequency spectrum.

(2) The Director may, with the approval of the Minister, make, modify, replace, repeal and enforce radio regulations (in this Act referred to as the “national radio regulations”), including any regulations referred to in subsection (7), for the purpose of carrying out the functions assigned to him by subsection (1).

(3) Without limiting the Director’s powers under subsection (2), the national radio regulations made under this section may include provisions that:

(a) prescribe the things which are to be done or are not to be done in connection with the use of any radiocommunication station or radiocommunication apparatus, and, in particular, require the use of any such station or apparatus to cease on the demand in that behalf of any such persons as may be prescribed by or under the regulations;

(b) impose on the person to whom a radiocommunication licence is issued with respect to any radiocommunication station or radiocommunication apparatus, obligations as to permitting and facilitating the inspection of the station and apparatus, as to the condition in which the station or apparatus are to be kept and, in the case of a station or apparatus for the establishment, installation or use of which a radiocommunication licence is necessary, as to the production of the licence, or of such other evidence of the licensing of the station or apparatus as may be prescribed by the regulations;

(c) where sums are or may become due from the person to whom a radiocommunication licence is issued after the issue or renewal thereof, require that person to keep and produce such accounts and records as may be specified in the regulations; and

(d) require the person to whom a radiocommunication licence authorising the establishment or use of a radiocommunication station has been issued to exhibit at the stations such notices as may be specified in the regulations

(4) The national radio regulations made under this section :

(a) may make different provision for different categories of radio users, radio frequencies, frequency bands, licences, authorities or certificates, and areas;

(b) may confer exemptions from provisions of the regulations or provide for such exemptions to be conferred by the Director in particular cases;

(c) may provide for any sums paid by way of charges, fees, royalties or otherwise to be refunded, in whole or in part, in such cases as may be specified in the regulations or in such cases as the Director thinks fit; and

(d) may include such transitional provisions as the Director thinks fit

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

(5) The national radio regulations shall apply to all types of radio apparatus and all radio stations operated in or from Bhutan or its air space.

(6) Any person who contravenes any regulations made under this section, or causes or permits any radiocommunication station or radiocommunication apparatus to be used in contravention of any such regulations, shall be guilty of an offence under this Act.

(7) Any radio regulations which were in force immediately prior to the commencement of this Act shall remain in force until modified or repealed under this section.

Radio Frequency Band Plans

RADIO FREQUENCY BAND PLANS

74. (1) The Director may from time to time prepare a frequency band plan in respect of any part of the radio frequency spectrum.

(2) A frequency band plan shall:

(a) define how the radio spectrum shall be used;

(b) aim at ensuring that the radio frequency spectrum is utilised and managed in an orderly, efficient and effective manner;

(c) aim at reducing congestion in the use of frequencies and at protecting frequency users from any interference or other inability to make use of the frequencies assigned to them;

(d) avoid obstacles to the introduction of new technologies and telecommunication services;

(e) aim at providing opportunities for the introduction of the widest range of telecommunication services and the maximum number of users thereof as is practically feasible.

(3) In preparing a frequency band plan in terms of this section, the Director :

(a) shall have due regard to the reports of experts in the field of spectrum or frequency band planning and to internationally accepted methods for preparing such plans;

(b) shall take into account existing uses of radio frequency spectrum and any frequency band plans in existence or in the course of preparation.

(4) The Director shall give notice in the national newspaper of his intention to prepare a plan and in such notice invite interested parties to submit their written representations to the Director within such period as may be specified in such notice.

(5) The Director shall, after the period referred to in subsection (4) has passed, hold a hearing in respect of the proposed plan.

(6) After the hearing and after due consideration of any representations received pursuant to the notice mentioned in subsection (4) or tendered at the hearing, the Director shall adopt the frequency band plan in question, with or without amendment, and cause the plan to be published in the national newspaper.

(7) Any frequency band plan adopted in terms of this section shall be kept in a register at the offices of the Director and subsections (4) to (6) of section 40 shall apply for the purposes of this section as they apply for the purposes of that section.

(8) The Director may at any time and from time to time review a frequency band plan adopted in terms of this section and subsections (2) to (7) shall apply, with the necessary changes, in relation to any such review.

Radiocommunication Licensing

POWER TO ISSUE LICENCES AND PERMITS

75. (1) No person shall establish or use any station for radiocommunication or install or use any apparatus for radiocommunication except under the authority of a licence or permit in that behalf granted by the Director, and any person who establishes or uses any station for radiocommunication or installs or uses any apparatus for radiocommunication except under and in accordance with such a licence or permit shall be guilty of an offence under this Act PROVIDED THAT the Director may by means of the national radio regulations exempt from the provisions of this subsection the establishment, installation or use of stations for radiocommunication or radiocommunication apparatus of such classes or descriptions as may be specified in the national radio regulations, either absolutely or subject to such terms, provisions and limitations as may be so specified.

(2) A licence or permit granted under this section (hereafter in this Act referred to as a radiocommunication licence) may be issued subject to such terms, provisions and limitations as the Director may think fit, including in particular in the case of a licence to establish a radiocommunication station, limitations as to the position and nature of the station, the purposes for which, the circumstances in which, and the persons by whom the station may be used, and the apparatus which may be installed or used therein, and, in the case of any other licence, limitations as to the apparatus which may be installed or used, and the places where, the purposes for which, the circumstances in which and the persons by whom the apparatus may be used.

(3) A radiocommunication licence shall, unless previously revoked by the Director, continue in force for such period as may be specified in the licence.

(4) A radiocommunication licence may be revoked, or the terms, provisions or limitations thereof modified, by a notice in writing of the Director served on the holder of the licence or by a general notice applicable to licences of the class to which the licence in question belongs published in such manner as may be specified in the licence PROVIDED THAT in so doing the Director shall take all reasonable steps to ensure that any such action will not cause substantial prejudice to the licence holder.

(5) Nothing in this section shall authorise the inclusion, in any radiocommunication licence relating solely to apparatus not designed or adapted for emission (as opposed to reception), of any term or provision requiring any person to concede any form of right of entry into any private premises.

RESTRICTION ON REVOCATION OR MODIFICATION OF RADIOCOMMUNICATION LICENCES

76. (1) The Director may include in any radiocommunication licence terms restricting the exercise by him of his power under subsection 4 of section 75 above to revoke or modify the licence.

(2) The terms that may be included in a radiocommunication licence by virtue of subsection (1) include, in particular, terms providing that the licence may not be revoked or modified except with the consent of the licence holder or in such other circumstances and on such grounds as may be specified in the licence.

(3) Any such circumstances or grounds may relate to matters relevant for the purposes of any other enactment (and may, in particular, be dependent on the exercise of a statutory discretion under any other enactment).

(4) A radiocommunication licence containing any terms included in the licence by virtue of subsection (1) may also provide that the national radio regulations :

- (a) do not apply in relation to any station or apparatus to which the licence relates, or
- (b) shall apply in relation to any such station or apparatus to such an extent only or subject to such modifications, as may be specified in the licence.

(5) Notwithstanding any terms or provisions included in a radiocommunication licence in accordance with this section, the Director may at any time by a notice in writing served on the holder of the licence, revoke the licence or modify its terms, provisions or limitations, if it appears to him to be requisite or expedient to do so:

- (a) in the interests of national security, or
- (b) for the purposes of complying with any international agreement or arrangement to which Bhutan is a party.

AMATEUR RADIOCOMMUNICATION OPERATOR'S CERTIFICATE

77. The Director may issue, modify and revoke amateur radiocommunication station operator's certificates in accordance with the provisions of the national radio regulations and may require such certificate holders to pay fees as prescribed in the regulations.

CONTROL OF POSSESSION OF RADIOCOMMUNICATION APPARATUS

78. (1) No person shall have in his possession any radio apparatus designed or adapted for emission (as opposed to reception) unless he is in possession of a possession permit issued by the Director in accordance with the national radio regulations or a radiocommunication licence issued under section 75 above authorising such possession.

(2) Possession permits referred to in subsection (1) shall be issued or refused by the Director in accordance with the provisions of the national radio regulations.

(3) The procedures in relation to applications for a possession permit referred to in subsection (1) above shall be as prescribed in the national radio regulations.

(4) Where any radio apparatus is found in the possession of any person in contravention of the provisions of this section, the Director may :

- (a) seal or alter such apparatus or any part thereof in order to prevent the use of that radio apparatus for the purpose of transmission or reception, and issue to such person a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not during such period used for such purpose;
- (b) seize such apparatus, whether or not it is sealed as contemplated in paragraph (a), for disposal in terms of subsection (5).

(5) Radio apparatus seized under subsection (4)(b) shall be held by the Director until :

- (a) its possession is authorised in terms of subsection (1) or (4) (a); or
- (b) it is dealt with by a court in terms of section 93 below.

CHARGES FOR RADIOCOMMUNICATION LICENCES

79. (1) On the issue or renewal of a radiocommunication licence granted under the national radio regulations and, where such regulations so provide, subsequently at such times during the term of the licence as may be prescribed by such regulations, there shall be paid to the Minister by the person to whom the licence is issued :

- (a) such sums as may be prescribed by the regulations, or
- (b) if the regulations so provide, such sum (whether on the issue or renewal of the licence or subsequently) as the Minister may in the particular case determine.

(2) Regulations under this section :

(a) may make different provision for different cases (including, in particular, different provision for different areas),

(b) may confer exemptions from provisions of the regulations or provide for such exemptions to be conferred by the Director in particular cases,

(c) may provide for sums paid to be refunded, in whole or in part, in such cases as may be specified in the regulations or in such cases as the Director thinks fit, and

(d) may include such transitional provision as the Director thinks fit.

(3) Where sums will or may become payable under the national radio regulations subsequently to the issue or renewal of a licence, the Director may, in the issue or renewal of the licence, require such security to be given, by way of deposit or otherwise, for the payment of the sums which will or may become payable as he thinks fit.

(4) This section does not apply to any licence to which section 80 below applies.

MATTERS TO BE TAKEN INTO ACCOUNT WHEN SETTING CHARGES

80. (1) In exercising his powers under section 73 to prescribe in the national radio regulations sums payable in respect of radio licences of any description, the Director shall have regard, in particular, to the matters specified in subsection (2); and accordingly may, if he thinks fit, prescribe sums which are greater than would be necessary for the purposes of recovering costs incurred by him in connection with any functions relating to radiocommunications.

(2) Those matters are:

(a) the extent of the part of the electro-magnetic spectrum available for use under licences of that description,

(b) the demand and likely future demand for the use of the part of the electro-magnetic spectrum to be used under licences of that description, and

(c) the desirability of promoting :

- (i) the efficient use and management of the electro-magnetic spectrum,
- (ii) any economic benefits arising from the use of radio frequency spectrum,
- (iii) the development of innovative services, and
- (iv) competition in the provision of telecommunication services.

BIDDING FOR LICENCES

81. (1) Having regard to the desirability of promoting the optimal use of the electro-magnetic spectrum, the Director may provide in the national radio regulations that, in such cases as may be specified in or determined by him under the regulations, applications for the grant of radiocommunication licences must be made in accordance with a procedure which :

- (a) is set out in a notice issued by him under the regulations, and
- (b) involves the making by the applicant of a bid specifying an amount which he is willing to pay to the Minister in respect of the licence.

(2) Regulations made under this section shall:

- (a) make provision with respect to the issue of notices by the Director for the purposes of subsection (1)(a),
- (b) provide for the matters to be dealt with in any such notice, and
- (c) require any such notice to be published in such manner as may be prescribed.

(3) Regulations made under this section may make provision with respect to the grant of the licences to which they apply and the terms, provisions and limitations subject to which such licences are issued and may, in particular :

- (a) require the applicant's bid to specify the amount which he is willing to pay :
 - (i) as a cash sum or by reference to a variable to be determined in accordance with the regulations (such as, for example, his income attributable wholly or in part to the holding of the licence), and
 - (ii) as the amount of a single payment or as the amount of a periodic payment,
- (b) specify requirements (such as, for example, technical or financial requirements, requirements relating to fitness to hold the radiocommunication licence and requirements intended to restrict the holding of two or more radiocommunication licences by any one person) which must be met by applicants for a licence,
- (c) require any such applicant to pay a deposit to the Minister,
- (d) specify circumstances in which such a deposit is, or is not, to be refundable,
- (e) specify matters to be taken into account by the Director (in addition to the bids made in accordance with the prescribed procedure) in deciding whether, or to whom, to grant a radiocommunication licence,

- (f) specify the other terms, provisions and limitations subject to which any licence is to be issued,
- (g) make any provision referred to in section 73 (4), and
- (h) enable provision (including provision falling within any of paragraphs (a) to (g)) to be made by the Director in a notice for the purposes of subsection (1)(a).

(4) Except to the extent that regulations under this section or a notice issued for the purposes of subsection (1)(a) otherwise provides, the issue of such a notice in respect of a particular radiocommunication licence does not bind the Director, on the completion of the procedure specified in the notice, to grant the licence.

(5) A radiocommunication licence granted in accordance with regulations under this section shall specify, or specify the method for determining, the sum or sums payable in accordance with the applicant's bid for the licence; and those sums shall be paid to the Minister by the person to whom the licence is issued in accordance with the terms of the licence.

(6) Subsection (3) of section 79 shall apply in relation to sums that will or may become payable under regulations under this section subsequently to the issue of a licence.

- (7) In this section "grant", in relation to a licence, includes renewal.

Special provisions as to interference

RADIATION OF ELECTRO-MAGNETIC ENERGY, ETC.

82. (1) The Director may make provision within the national radio regulations for both or either of the following purposes, that is to say:

- (a) for prescribing the requirements to be complied with in the case of any apparatus to which this section applies if the apparatus is to be used;
- (b) for prescribing the requirements to be complied with in the case of any apparatus to which this section applies if the apparatus is to be sold otherwise than for export, or offered or advertised for sale otherwise than for export, or let on hire or offered or advertised for letting on hire, by any person who in the course of business manufactures, assembles or imports such apparatus.

(2) The said requirements shall be such requirements as the Director thinks fit for the purpose of ensuring that the use of the apparatus does not cause undue interference with radiocommunications, and may in particular include:

- (a) requirements as to the maximum intensity of electro-magnetic energy of any specified frequencies which may be radiated in any direction from the apparatus while it is being used; and
- (b) in the case of an apparatus the power for which is supplied from electric lines, requirements as to the maximum electro-magnetic energy of any specified frequencies which may be injected into those lines by the apparatus,

and, in so far as appears to the Director necessary or expedient in the case of the regulations in question, different requirements may be prescribed for different circumstances and in relation to different classes or descriptions of apparatus, different districts or places and different times of use.

(3) The apparatus to which this section applies shall be such apparatus as may be specified in the regulations made thereunder, being apparatus generating, or designed to generate, or liable to generate fortuitously, electro-magnetic energy at frequencies of not more than three million megacycles per second, including radiocommunications apparatus.

(4) The references in this subsection to apparatus include references to any form of electric line, and other references in this Part of this Act to apparatus shall be construed accordingly.

(5) It shall not be unlawful for any person to use any apparatus to which this section applies or to sell any such apparatus or offer or advertise it for sale or let it on hire or offer or advertise it for letting on hire by reason only that it does not comply with the requirements applicable under any regulations made under this section, but the non-compliance shall be a ground for the giving of a notice under section 83 below or under section 77 of this Act, as the case may be.

ENFORCEMENT OF REGULATIONS AS TO USE OF APPARATUS

83. (1) If the Director is of opinion:

(a) that any apparatus does not comply with the requirements applicable to it under regulations made for the purpose specified in paragraph (a) of subsection (1) of section 82; and

(b) that either :

(i) the use of the apparatus is likely to cause undue interference with any radiocommunication used for the purposes of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or

(ii) the use of the apparatus is likely to cause undue interference with any other wireless telegraphy and in fact has caused or is causing such interference in a case where he considers that all reasonable steps to minimise interference have been taken in relation to the station or apparatus receiving the radiocommunication,

he may serve on the person in whose possession the apparatus is a notice in writing requiring that, after a date fixed by the notice, not being less than 28 days from the date of the service thereof, the apparatus shall not be used, whether by the person to whom the notice is given or otherwise, or, if the Director thinks fit so to frame the notice, shall only be used in such manner, at such times and in such circumstances as may be specified in the notice.

(2) A notice under subsection (1) of this section may be revoked or modified by a subsequent notice in writing by the Director served on the person in whose possession the apparatus then is: PROVIDED THAT where a notice under this subsection has the effect of imposing any additional restrictions on the use of the apparatus, the provisions of subsection (1) relating to the coming into force of notices shall apply in relation to the notice as if it had been a notice served under the said subsection (1).

(3) Any person who, knowing that a notice of the Director under this section is in force with respect to any apparatus, uses that apparatus, or causes or permits it to be used, in contravention of the notice, shall be guilty of an offence under this Part of this Act.

ENFORCEMENT OF REGULATIONS AS TO SALES, ETC., BY MANUFACTURERS AND OTHERS

84. (1) If the Director is of the opinion that any apparatus does not comply with the requirements applicable to it under regulations made for the purpose specified in paragraph (b) of subsection (1) of section 82 above, he may serve on any person who has manufactured, assembled or imported the apparatus in the course of business a notice in writing prohibiting him from selling the apparatus, otherwise than for export, or

offering or advertising it for sale, otherwise than for export, or letting it on hire or offering or advertising it for letting on hire.

(2) Where a notice has been served under subsection (1), the person on whom the notice has been served shall, if he contravenes the provisions of the notice without the notice having been previously revoked by the Director, be guilty of an offence under this Part of this Act.

REGULATIONS WITH RESPECT TO RESISTANCE TO INTERFERENCE

85. (1) This section applies to radiocommunication apparatus and to any apparatus designed or adapted for use in connection with radiocommunication apparatus.

(2) The Director may make provision within the national radio regulations prescribing requirements (referred to below in this section as technical requirements) to be complied with in any case of apparatus to which this section applies of any class or description specified in the regulations.

(3) The technical requirements prescribed in respect of any apparatus shall be such as appear to the Director to be appropriate for the purpose of minimising so far as practicable the risk of interference, arising from the lawful use of any other apparatus, with any radiocommunication the apparatus to which the requirements apply (or any apparatus used in connection with it) is designed or adapted to receive.

(4) The Director shall not by regulations under this section prescribe any technical requirements unless the Director is satisfied that those requirements are compatible with the international obligations of Bhutan.

(5) Subject to subsection (6) of this section, any person who in the course of business :

(a) sells otherwise than for export or offers for sale otherwise than for export any apparatus which does not comply with the technical requirements applicable to it under regulations made under this section; or

(b) lets on hire or offers to let on hire any such apparatus; or

(c) indicates (whether by display of the apparatus or by any form of advertisement) his willingness to do anything in relation to any such apparatus that falls within paragraph (a) or (b) above;

shall be guilty of an offence under this Part of this Act..

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

DELIBERATE INTERFERENCE

86. (1) Any person who uses any apparatus for the purpose of interfering with any radiocommunication shall be guilty of an offence under this Part of this Act.

(2) This section shall apply whether or not the apparatus in question is radiocommunication apparatus or apparatus to which any of the preceding provisions of this Part of this Act apply, and whether or not any notice under section 84 above been given with respect to the apparatus, or, if given, has been varied or revoked.

(3) A person guilty of an offence under this section shall be liable to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.

Approvals

APPROVAL OF RADIOCOMMUNICATION APPARATUS ETC.

87. (1) Where any of the following instruments, namely:

- (a) any radiocommunication licence,
- (b) any regulations made under section 73 above, or
- (c) any regulations made under section 82,

contains any provision which is framed by reference to relevant apparatus for the time being approved under this section for the purposes of that instrument, such apparatus may be approved for those purposes by the Director.

In this subsection “relevant apparatus” means radiocommunication apparatus or apparatus designed or adapted for use in connection with radiocommunication apparatus.

(2) A person applying for an approval under this section may be required by the Director to comply with such requirements as the Director may think appropriate; and those requirements may include a requirement to satisfy some other person with respect to any matter.

(3) An approval under this section may apply either to particular apparatus or to any apparatus of a description specified in the approval, and may so apply either for the purposes of a particular instrument falling within any of paragraphs (a) to (c) of subsection (1) above or for the purposes of instruments falling within any of those paragraphs of a description so specified.

(4) An approval under this section may specify conditions which must be complied with if the approval is to apply, for any purposes specified in the approval, to any apparatus which is so specified or is of a description so specified, and any such condition may impose on the person to whom the approval is given a requirement from time to time to satisfy any person with respect to any matter.

(5) The Director may at any time vary or withdraw any approval given by him under this section.

(6) A person appointed by the Director may exercise any function conferred on the Director by the preceding provisions of this section to such extent and subject to such conditions as may be specified in the appointment.

(7) The Director may by order provide for the charging of fees in respect of the exercise of any function in pursuance of this section by or on behalf of the Director; and an appointment under subsection (6) above may authorise the person appointed to retain any fees received by him in pursuance of any such order.

(8) Nothing in subsection (7) above shall preclude a person (not being the Director or a person acting on his behalf) by whom any matter falls to be determined for the purposes of any requirements imposed in pursuance of subsection (2) or (4) above from charging any fee in respect of the carrying out of any test or other assessment made by him.

(9) Any sums received by the Director under this section shall be paid into the Royal Government Revenue Account.

International Issues

INTERNATIONAL STANDARDS AND AGREEMENTS

88. (1) In controlling, planning, administering, managing and licensing the use of the radio frequency spectrum, the Director shall comply with the applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by the Government.

(2) In exercising his functions under this Part of this Act, the Director shall have due regard to existing and future commitments of the Government in terms of international agreements and standards in respect of radiocommunication matters.

Power of the Director to make appointments

IMPLEMENTATION, MONITORING AND ENFORCEMENT OF THE NATIONAL RADIO REGULATIONS

89. The functions and duties conferred on the Director by section 73 (other than the powers to make, modify, replace or repeal any national radio regulations) shall be exercisable by any person appointed by the Director for the purpose to such extent and subject to such conditions as may be specified in the appointment; and an appointment under this section may authorise the person appointed to retain any sums by way of charges, fees, royalties or otherwise received by him in accordance with the provisions of the national radio regulations.

Offences, penalties and legal proceedings

MISLEADING MESSAGES AND INTERCEPTION AND DISCLOSURE OF MESSAGES

90. (1) Any person who :

(a) by means of radiocommunications, sends or attempts to send, any message which, to his knowledge, is false or misleading and is, to his knowledge, likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or of any vessel, aircraft or vehicle, and, in particular, any message which, to his knowledge, falsely suggests that a vessel or aircraft is in distress or in need of assistance or is not in distress or not in need of assistance; or

(b) otherwise than under the authority of the Director or in the course of his duty as a servant of the Government, either :

(i) uses any radiocommunication apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by means of radiocommunication or not) which neither the person using the apparatus nor any person on whose behalf he is acting is authorised by the Director to receive; or

(ii) except in the course of legal proceedings or for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of radiocommunication apparatus by him or by another person,

shall be guilty of an offence under this Part of this Act..

(2) A person guilty of an offence under this section shall be liable to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.

ENTRY AND SEARCH OF PREMISES, ETC.

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

(2) If a judge is satisfied upon application supported by sworn evidence:

(a) that there is reasonable ground for believing that, on any specified premises or in any specified vessel, aircraft or vehicle, apparatus to which section 82 above applies is to be found which does not comply with the requirements applicable to it under the national radio regulations made under that section; and

(b) that it is necessary to enter those premises, or that vessel, aircraft or vehicle, for the purpose of obtaining such information as will enable the Director to decide whether or not to serve a notice under section 83 above; and

(c) that access to the premises, vessel, aircraft or vehicle for the purpose of obtaining such information as aforesaid has, within 14 days before the date of the application to the judge, been demanded by a person authorised in that or and producing sufficient documentary evidence of his identity and authority, but has been refused,

the judge may issue a written authorisation under his hand empowering any person or persons authorised in that behalf by the Director and named in the authorisation, with or without any police officers to enter the premises, or as the case may be vessel, aircraft or vehicle and any premises on which it may be and to search the premises, vessel, aircraft or vehicle with a view to discovering whether any such apparatus as aforesaid is situate thereon or therein, and, if he finds or they find any such apparatus thereon or therein, to examine and test it with a view to obtaining such information as aforesaid PROVIDED THAT an authorisation shall not be issued under this subsection unless either :

(i) it is shown to the judge that the Director is satisfied that there is reasonable ground for believing that the use of the apparatus in question is likely to cause undue interference with any radiocommunication used for the purposes of any safety of life service or any purpose on which the safety of any person or of any vessel or vehicle may depend; or

(ii) it is shown to the judge that not less than 7 days' notice of the demand for access was served on the occupier of the premises, or, as the case may be, the person in possession or the person in charge of the vessel, aircraft or vehicle, and that the demand was made at a reasonable hour and as unreasonably refused.

(3) Where under this section a person has a right to examine and test any apparatus on any premises or in any vessel, aircraft or vehicle, it shall be the duty of any person who is on the premises, or is in charge of, or in or in attendance on, the vessel, aircraft or vehicle, to give him any such assistance as he may reasonably require in the examination or testing of the apparatus.

(4) Any person who:

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

shall be guilty of an offence under this Part of this Act, and criminal proceedings for an offence under paragraph (c) of this subsection may be instituted without the consent of the Director.

(5) A person guilty of an offence under this section shall be liable to a fine not exceeding the maximum amount specified in Schedule 3 to this Act.

SEIZURE OF APPARATUS AND OTHER PROPERTY USED IN COMMITTING CERTAIN OFFENCES

92. (1) This section applies to :

- (a) any offence under sections 82 to 87 of this Part of this Act; and
- (b) any offence under section 75 other than one consisting in the installation or use, otherwise than under and in accordance with a radiocommunication licence, of any apparatus not designed or adapted for emission (as opposed to reception).

(2) Where

- (a) a search warrant is granted under section 91 (1); and
- (b) the suspected offence (or any of the suspected offences) is an offence to which this section applies;

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

(3) If a police officer or any person authorised by the Director to exercise the power conferred by this subsection has reasonable grounds to suspect that an offence to which this section applies has been or is being committed, he may seize and detain, for the purposes of any relevant proceedings, any apparatus or other thing which appears to him to have been used in connection with or to be evidence of the commission of any such offence.

(4) Nothing in this section shall prejudice any power to seize or detain property which is exercisable by a police officer apart from this section.

(5) Any person who intentionally obstructs any person in the exercise of the power conferred on him under subsection (3) of the above shall be guilty of an offence under this Part of this Act.

(6) References in this section to relevant proceedings are references to any proceedings for an offence to which this section applies.

PENALTIES AND LEGAL PROCEEDINGS

- 93.** (1) Any person committing any offence under this Part of this Act :
- (a) shall, if the offence is under sections 75 or 76 above, and consists either :
- (i) in the installation or use, otherwise than under and in accordance with a radiocommunication licence, of any apparatus not designed or adapted for emission (as opposed to reception); or
- (ii) in a contravention, in relation to any such apparatus; of any regulation made under sections 75 or 76 above,

be liable in the case of the first such offence, to a fine not exceeding the maximum amount specified in Schedule 3 to this Act, and, in the case of any subsequent such offence, to a fine not exceeding the maximum amount specified in Schedule 3 to this Act for subsequent offences;

(b) shall, if the offence is under sections 82 to 86 above and consists in the use, or in the causing or permitting of the use, or in the selling, offering or advertising for letting on hire, of apparatus in contravention of a notice of the Director, not being apparatus the use of which is likely to cause undue interference with any radiocommunication used for the purposes of any safety of life service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend, be liable on in the case of the first such offence, to a fine not exceeding the amount specified in Schedule 3 to this Act, and, in the case of any subsequent such offence, to a fine not exceeding the maximum amount specified in Schedule 3 for subsequent offences.

(2) Where a person is convicted of :

(a) an offence under this Part of this Act consisting in any contravention of any of the provisions in sections 75 or 76 in relation to any radiocommunication station or any radiocommunication apparatus or in the use of any apparatus for the purpose of interfering with any radiocommunication; or

(b) any offence under section 82 to 86 above;

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

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

(3) Apparatus may be ordered to be forfeited under this section notwithstanding that it is not the property of the person by whom the offence giving rise to the forfeiture was committed, and any apparatus ordered to be forfeited under this section may be disposed of by the Director in such manner as he thinks fit.

(4) The court by whom any apparatus is ordered to be forfeited under this section may also order the person by whom the offence giving rise to the forfeiture was committed not to dispose of that apparatus except by delivering it up to the Director within 48 hours of being so required by him.

DISPOSAL OF APPARATUS AND OTHER PROPERTY SEIZED BY VIRTUE OF SECTION 92

94. (1) Any property seized by a person authorised by the Director in pursuance of a warrant under section 91 above or in exercise of the power conferred by section 92 above may be detained until the end of the period of 6 months beginning with the date of the seizure.

(2) After the end of the period for which its detention is authorised by virtue of subsection (1) above, any such property which :

- (a) remains in the possession of the Director; and
- (b) has not been ordered to be forfeited under section 93 above;

shall be dealt with in accordance with the following provisions of this section (and references to the relevant property are references to any property to which this subsection applies).

(3) The Director shall take reasonable steps to deliver the relevant property to any person appearing to him to be its owner.

(4) Where the relevant property remains in the possession of the Director after the end of the period of one year immediately following the end of the period for which its detention is authorised by subsection (1) above, the Director may dispose of it in such manner as he thinks fit.

(5) The delivery of the relevant property in accordance with subsection (3) above to any person appearing to the Director to be its owner shall not affect the right of any other person to take legal proceedings against the person to whom it is delivered or against anyone subsequently in possession of the property for the recovery of the property.

PART X
Miscellaneous and Supplemental

Miscellaneous

INTERPRETATION

95. (1) In this Act, except where the context otherwise requires “radiocommunication” means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electromagnetic energy or a frequency not exceeding three million megacycles a second, being energy which either:

(a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not) or for the actuation of control of machinery or apparatus; or

(b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or any objects of any class,

and references to radio communication stations or radiocommunication apparatus shall be construed as references to stations and apparatus for the emitting or receiving as aforesaid of such electro-magnetic energy as aforesaid PROVIDED THAT where :

(i) a radiocommunication station or radiocommunication apparatus cannot lawfully be used without a radiocommunication licence or could not lawfully be used without such a licence but for regulations under section 73 of this Act; and

(ii) any such electro-magnetic energy as aforesaid which is received by that station or apparatus serves for the conveying of messages, sound or visual images; and

(iii) any apparatus is electrically coupled with that station or apparatus for the purpose of enabling any person to receive any of the said messages, sound or visual images. The apparatus so coupled shall itself be deemed for the purposes of this Act to be radiocommunication apparatus.

(2) In this Part of this Act, the expression “radiocommunication station” includes the radiocommunication apparatus of a ship or aircraft.

(3) In this Part of this Act, the expression “interference” in relation to radiocommunication, means the prejudicing by any emission or reflection of electro-magnetic energy of the fulfilment of the purposes of the radiocommunication (either generally or in part, and without prejudice to the generality of the preceding words, as respects all, or as respects any, of the recipients or intended recipients of any message, sound or visual image intended to be conveyed by radiocommunication) and the expression “interfere” shall be construed accordingly.

(4) In considering for any of the purposes of this Part of this Act, whether, in any particular case, any interference with any radiocommunication caused or likely to be caused by the use of any apparatus, is or is not undue interference, regard shall be had to all the known circumstances of the case and the interference shall not be regarded as undue interference if so to regard it would unreasonably cause hardship to the person using or desiring to use the apparatus.

(5) Any reference in this Part of this Act to the sending or the conveying of messages includes a reference to the making of any signal or the sending or conveying of any warning or information, and any reference to the reception of messages shall be construed accordingly.

REGULATIONS

96. (1) Any power of the Director to make regulations under this Act (including the national radio regulations) shall be exercisable by means of the approval of the Minister.

(2) Before making regulations under any provision of this Act, the Director shall :

(a) publish in the national newspaper a notice :

(i) stating that he proposes to make regulations under that provision,

(ii) setting out the general effect of the proposed regulations,

(iii) specifying an address from which copies of the proposed regulations may be obtained, and

(iv) specifying a time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposed regulations may be made to him, and,

(b) consider any representations which are made to him within that time.

(3) Subsection (2) does not apply in respect of any regulations if it appears to the Director that by reason of the urgency of the matter it is inexpedient to publish a notice under that subsection.

(4) The Director shall also send a copy of a notice under subsection (1) above to the Minister; and if, within the time specified in the notice, the Minister directs the Director not to make the regulations, the Director shall comply with the direction.

(5) The Minister shall not give a direction under subsection (4) above unless it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside Bhutan.

DIRECTIONS IN THE INTERESTS OF NATIONAL SECURITY ETC.

97. (1) The Minister may, after consultation with a person to whom this section applies, give to that person such directions of a general character as appear to the Minister to be requisite or expedient in the interests of national security or relations with the government of a country or territory outside Bhutan.

(2) If it appears to the Minister to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside Bhutan, he may, after consultation with a person to whom this section applies, give to that person a direction requiring him (according to the circumstances of the case) to do or not to do, a particular thing specified in the direction.

(3) A person to whom this section applies shall give effect to any direction given to him by the Minister under this section notwithstanding any other duty imposed on him by or under this Act.

(4) The Minister shall lay before the Cabinet a copy of every direction given under this section unless he is of opinion that disclosure of the direction is against the interests of national security or relations with the government of a country or territory outside Bhutan, or the commercial interests of any person.

(5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Minister has notified him that the Minister is of the opinion that disclosure of that thing is against the interests of national security or relations with the government of a country or territory outside Bhutan, or the commercial interests of some other person.

(6) The Minister may, with the approval of the Ministry of Finance, make grants to public telecommunication operators for the purpose of defraying or contributing towards any losses they may sustain by reason of compliance with the directions given under this section.

(7) There shall be paid out of money provided by the Ministry of Finance any sums required by the Minister for making grants under this section.

(8) This section applies to the Director and to any person who is a public telecommunication operator.

Supplemental

OFFENCES BY BODIES CORPORATE

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

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

FINANCIAL PROVISIONS

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

GENERAL INTERPRETATION

100. (1) In this Act :

“the appointed day” has the meaning given by section 1 above;

“Bhutan” means the Kingdom of Bhutan;

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

“commercial activities connected with telecommunications” has the meaning given by section 37 (3) above;

“the Corporation” means Bhutan Telecommunications;

“the Director” means the Director General of Communications;

“directory information service” has the meaning given by section 37 (3) above;

“the Government” means the Royal Government of Bhutan;

“Minister” means the head of the Ministry of Communications responsible for telecommunications;

“modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

“National Numbering Scheme” has the meaning given by section 35 above;

“number” has the meaning given by section 35 above;

“public telecommunication operator” has the meaning given by section 42 above;

“public telecommunication system” has the meaning given by section 42 above ;

“the successor company” and “the transfer date” have the meanings given by section 22 above;

“telecommunication apparatus” except where the extended definition in section 61 above applies) has the meaning given by section 37 above;

“telecommunication service” has the meaning given by section 37 above;

“telecommunication operator” has the meaning given by section 44 above;

“telecommunication system” has the meaning given by section 37 above;

“transitional period” has the meaning given by section 30 (1) above;

(2) Words in this Act :

(a) importing the masculine gender shall include the feminine gender; and

(b) in the singular shall include the plural and vice versa.

(3) Any reference in this Act to a subsidiary shall be construed in accordance with the Companies Act 1989 and any reference to a wholly owned subsidiary shall be construed in accordance with that Act.

(4) Any power conferred on the Minister by this Act to give a direction if it appears to him to be requisite or expedient to do so in the interests of national security or relations with the government of a country or territory outside Bhutan includes power to give the direction if it appears to him to be requisite or expedient to do so in order:

(a) to discharge, or facilitate the discharge of, an obligation binding on the Government by virtue of it being a member of an international organisation or a party to an international agreement;

(b) to attain, or facilitate the attainment of, any other objects the attainment of which is, in the Minister’s opinion, requisite or expedient in view of the Government being a member of such an organisation or a party to such an agreement; or

(c) to enable the Government to become a member of such an organisation or a party to such an agreement.

(5) For the purposes of any licence granted, approval given or order made under this Act any description or class may be framed by reference to any circumstances whatsoever.

SCHEDULES

SCHEDULE 1 PROVISIONS WITH RESPECT TO THE CORPORATION AND THE MEMBERS THEREOF

Status

1. The Corporation shall be a body corporate.

Members

2. (1) A member of the Corporation shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-appointment.

- (2) A member may at any time by notice in writing to the Minister resign his office.

3. (1) Before appointing a person to be a member of the Corporation, the Minister shall satisfy himself that that person shall have no financial or other interest as is likely to affect prejudicially the exercise and performance by him of his functions as a member of the Corporation, and the Minister shall also satisfy himself from time to time with respect to every member of the Corporation that he has no such interest; and a person who is, or whom the Minister proposes to appoint to be, a member of the Corporation shall, whenever requested by the Minister so to do, furnish to him such information as the Minister considers necessary for the performance by the Minister of his duties under this paragraph.

- (2) A member of the Corporation who is in any way directly or indirectly interested in a contract made or proposed to be made by the Corporation, or in a contract made or proposed to be made by a subsidiary of the Corporation which is brought up for consideration by the Corporation, shall disclose the nature of his interest at a meeting of the Corporation; and the disclosure shall be recorded in the minutes of the Corporation, and the member shall not take any part in any deliberation or decision of the Corporation with respect to that contract.

- (3) For the purposes of sub-paragraph (2), a general notice given at a meeting of the Corporation by a member thereof to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with the company or firm shall be regarded as a sufficient disclosure of his interest in relation to any contract so made or proposed to be so made.

- (4) A member of the Corporation need not attend in person at a meeting of the Corporation in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read at the meeting.

4. (1) The Corporation :

- (a) shall pay to the members thereof such salaries or fees, and such allowances, as the Minister may determine; and

- (b) as regards any member in whose case the Minister may so determine, shall pay such pension, allowance or gratuity to or in respect of him or make such payments towards the provision of such a pension, allowance or gratuity as may be so determined;

and if a person ceases to be a member of the Corporation and it appears to the Minister that there are special circumstances which make it right that that person should receive compensation, the Minister may require the Corporation to pay to that person a sum of such amount as the Minister may determine.

(2) The approval of the Royal Civil Service Commission shall be requisite to a determination under this paragraph by the Minister and to the imposition thereunder by him of a requirement.

5. (1) If the Minister is satisfied that a member of the Corporation :
- (a) has been absent from meetings of the Corporation for a period longer than three consecutive months without the permission of the Corporation; or
 - (b) has become bankrupt or made an arrangement with his creditors; or
 - (c) is incapacitated by physical or mental illness; or
 - (d) is otherwise unable or unfit to discharge the functions of a member,

the Minister may declare his office as a member of the Corporation to be vacant, and shall notify the fact in such manner as the Minister thinks fit; and thereupon the office shall become vacant.

Proceedings

6. The validity of any proceedings of the Corporation shall not be affected by a vacancy amongst the members thereof or by a defect in the appointment of a member.

7. The quorum of the Corporation shall be four; and while a member is disqualified from taking part in a decision or deliberation of the Corporation with respect to a matter, he shall be disregarded for the purpose of constituting a quorum of the Corporation for deciding, or deliberating on, that matter.

8. Subject to the foregoing provisions of this Schedule, the Corporation shall have power to regulate its own procedure.

Fixing of seal and proof of instruments

9. The fixing of the seal of the Corporation shall be authenticated by the signature of the secretary of the Corporation or of some other person authorised, either generally or specially, by the Corporation to act for that purpose.

10. A certificate signed by the secretary of the Corporation that an instrument purporting to be made or issued by or on behalf of the Corporation was so made or issued shall be conclusive evidence of that fact.

11. Every document purporting to be an instrument made or issued by or on behalf of the Corporation and to be duly executed under the seal of the Corporation, or to be signed or executed by the secretary of the Corporation or a person authorised by the Corporation to act in that behalf, shall be received in evidence and deemed, without further proof, to be so or issued unless the contrary is shown.

SCHEDULE 2
DIRECTOR GENERAL OF COMMUNICATIONS

1. There shall be paid to the Director such remuneration, and such travelling and other allowances, as the Minister with the approval of the Ministry of Finance may determine.
2. In the case of any such holder of the office of the Director as may be determined by the Minister with the approval of the Ministry of Finance, there shall be paid such pension, allowance or gratuity to or in respect of him on his retirement or death, or such contributions or payments towards provision for such a pension, allowance or gratuity as may be so determined.
3. If, when any person ceases to hold office as the Director, it appears to the Minister with the approval of the Ministry of Finance that there are special circumstances which make it right that he should receive compensation, there may be paid to him a sum by way of compensation of such amount as may be so determined.
4. The Director shall have an official for the authentication of documents required for the purposes of his functions.
5. Anything authorised or required by or under this Act or any other enactment to be done by the Director, other than the making of a statutory instrument, may be done by any member of the staff of the Director who is authorised generally or specially in that behalf by the Director.

SCHEDULE 3
PENALTIES IN RESPECT OF OFFENCES

	Relevant Section of Telecommunications Act	Maximum Penalty in Ngultrums	Repeat Offence Penalty in Ngultrums
17.2	Exclusive Privilege of the Corporation with respect to telecommunications	10,000.00	
38.3	Prohibition on running unlicensed systems	250,000.00	
60.2	Electrical Works	1,000.00 per day	
62.1	Fraudulent Use of Telecommunications Systems	50,000.00	
62.2	Fraudulent Use of Telecommunications Systems	50,000.00	
63.1	Improper use of public telecommunications systems	150,000.00	
64.2	Modification of messages	100,000.00	
65.4	Interception and Disclosure of Messages	100,000.00	
66	Prohibition of affixing placards, notices etc on the property of a public telecommunication operator	25,000.00	
70.4	Power to require information	50,000.00	
86.3	Deliberate Interference	50,000.00	
90.2	Misleading messages and interception and disclosure of messages	100,000.00	
91.5	Entry and search of premises	50,000.00	
93.1a	Penalties and legal proceedings	50,000.00	25,000.00
93.1b	Penalties and legal proceedings	50,000.00	25,000.00