



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

SRI LANKA TELECOMMUNICATIONS
ACT, No. 25 OF 1991

[Certified on 3rd July, 1991]

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Act, No. 25 of 1991*

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L. D.—O 71/90

AN ACT TO PROVIDE FOR THE APPOINTMENT OF A DIRECTOR-GENERAL OF TELECOMMUNICATIONS; FOR THE TRANSFER OF ALL PROPERTY, RIGHTS AND LIABILITIES OF THE DEPARTMENT OF TELECOMMUNICATIONS TO THE CORPORATION NAMED "SRI LANKA TELECOM" ESTABLISHED BY ORDER UNDER SECTION 2 OF THE STATE INDUSTRIAL CORPORATIONS ACT, No. 49 OF 1957; FOR THE REPEAL OF THE TELECOMMUNICATIONS ORDINANCE (CHAPTER 192); AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Sri Lanka Telecommunications Act, No. 25 of 1991 and the provisions of this Act other than the provisions of section 72 shall come into operation on the date on which this Act becomes an Act of Parliament. The provisions of section 72 shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Short title and dates of operation.

PART I

APPOINTMENT OF THE DIRECTOR-GENERAL OF
TELECOMMUNICATIONS

2. There shall be appointed, by name or by office, a Director-General of Telecommunications (hereinafter in this Act referred to as the "Authority") who shall be the authority for the purpose of performing the functions assigned or transferred to him by or under this Act.

Appointment of Director-General of Telecommunications.

3. There may be appointed such officers and servants as may be necessary for the purpose of this Act.

Appointment of officers and servants.

4. The Authority shall exercise his powers under this Act in a manner which he considers is best calculated to promote the national interest and in particular—

General objects to be achieved by the Authority.

(a) to ensure the provision of a reliable and efficient national and international telecommunication service in Sri Lanka (save in so far as the provision thereof is impracticable) such as will satisfy all reasonable demands for such service including emergency services, public call box services, directory information services, maritime services and rural services as may be considered essential for the national well being;

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- (b) without prejudice to the generality of paragraph (a), to secure that every operator shall have and employ the necessary technical, financial and managerial resources to ensure the provision of the services specified in his licence;
- (c) to protect and promote the interests of consumers, purchasers and other users and the public interest with respect to the charges for, and the quality and variety of telecommunication services provided and telecommunication apparatus supplied;
- (d) to maintain and to promote effective competition between persons engaged in commercial activities connected with telecommunication and promote efficiency and economy on the part of such persons;
- (e) to promote the rapid and sustained development of telecommunication facilities both domestic and international;
- (f) to ensure that operators are able to carry out their obligations for providing a reliable and efficient service free of undue delay, hindrance or impediment;
- (g) to promote research into and the development and use of new techniques in telecommunications and related fields;
- (h) to encourage the major users of telecommunication services whose places of business are outside Sri Lanka to establish places of business within Sri Lanka; and
- (i) to promote the use of Sri Lanka for international transit services.

Powers, and
duties
of the
Authority.

5. For the purpose of achieving the objects referred to in section 4, the Authority shall have the following powers, and duties—

- (a) to ensure that the telecommunication services in the country are operated in a manner which will best serve and contribute to its overall economic and social development and advancement;
- (b) to advise the Minister in the granting of licences to operate telecommunication systems under this Act;

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- (c) to advise the government on matters relating to telecommunication including policies on tariffs, pricing and subsidies and legislative measures required for the provision of public telecommunication services ;
- (d) to pay due regard to the public interest and the convenience and wishes of the general public (as regards) the telecommunication services provided by an operator ;
- (e) to comply with such general policy directions as may be given from time to time by the Minister regarding the performance of the duties and exercise of the powers of the Authority, and furnish such information as may be required by him in accordance with the provisions of section 67 ;
- (f) to take such regulatory measures as may be prescribed to comply with any general or special directions that may be given to him from time to time by the Government of Sri Lanka in the interest of national security, public order and the defence of the country ;
- (g) to direct any operator to comply with requirements laid down by the International Telecommunications Union and other relevant International Organisations in respect of both equipment and technical standards ;
- (h) to ensure compliance by operators with international or other obligations entered into by the Government of Sri Lanka in relation to telecommunication ;
- (i) to assist where requested, the relevant Ministries in the conduct of negotiations to establish agreements with the International Telecommunications Union, other international bodies and foreign telecommunication operators, regarding standards and procedures for the establishment of a telecommunication system ;
- (j) where so required at the request of the Minister or of any other relevant Ministry, to represent the Government in international conferences or international and foreign bodies concerned with telecommunication ;

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- (k) to specify by rules in consultation with the Minister and the Minister in charge of the subject of Finance, the tariffs or methods for determining such tariffs, taking into account government policy and the requirements of the operators in respect of the telecommunication services provided by the operators: provided that the tariff rates, call charges and other charges in force immediately prior to the transfer date shall continue in force and shall be deemed to be the tariffs specified under this Act, until revised or amended under the provisions of this Act;
- (l) to approve interconnection charges and charges for calls between licensed interconnected telecommunication systems where operators of those systems are able to agree on such charges, and to determine such charges where operators are unable to agree;
- (m) to require operators of telecommunication systems to adopt such accounting systems as may be approved by the Authority;
- (n) to require any operator to submit to him transmission plans, signalling plans, switching and numbering plans and to approve or modify such plans as well as to publish and ensure compliance with such plans;
- (o) to specify technical standards and procedures for the provision of telecommunication services;
- (p) to specify standards for the education and training of technical manpower in telecommunication;
- (q) to approve types of telecommunication apparatus which may be connected to a telecommunication system;
- (r) to take such regulatory measures including the issue of directives as may be deemed necessary to monitor the quality of services provided by operators and to ensure that these services conform to standards relating to quality of service specified by rules made under this Act;

- (s) to promote, in co-operation with the operators or otherwise, research and development in telecommunication at universities and research institutes in Sri Lanka ;
- (t) to establish such advisory bodies as he may deem necessary for the purpose of advising him on any matter pertaining to the exercise, performance and discharge of the powers, functions and duties of the Authority under this Act;
- (u) to negotiate with any public corporation or other person, for the prevention of any obstruction or interference with a radio beam or any communication facility or for the removal of any such obstruction or interference ;
- (v) to ensure the conservation and proper utilisation of the radio frequency spectrum by operators and other organisations and individuals who need to use radio frequencies ;
- (w) to make and enforce compliance with rules to minimise electro-magnetic disturbances produced by electrical apparatus and all unauthorized radio frequency emissions ; and
- (x) to do all such other acts which may be incidental or conducive to, the attainment of the objects of the Authority or the exercise or discharge of his powers and duties under this Act.

6. (1) In the exercise and discharge of his powers and functions under this Act, the Authority may conduct prescribed technical examinations for the purpose of establishing and maintaining such technical standards as may be deemed necessary for the purpose of providing an adequate and efficient telecommunication service.

Authority to conduct examinations to maintain technical standards.

(2) In giving effect to the provisions of subsection (1), the Authority may appoint boards of examiners for the purpose of conducting examinations.

(3) The fees to be charged from candidates presenting themselves for examinations shall be as prescribed.

7. The Authority may—

- (a) for the purpose of enabling the Authority to ascertain the financial viability and true condition of the affairs of an operator, by notice in writing require such operator to furnish to the Authority within such period as may be specified in the notice—

Power of Authority to require information and to inspect.

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- (i) all books and accounts of such operator deemed necessary by the Authority for inspection; and
- (ii) all such information, whether technical, financial or otherwise as may be required by the Authority for the aforesaid purposes:

Provided however that the Authority shall treat as confidential all information furnished to the Authority by the operator in compliance with any such requirement;

- (b) for the purpose of exercising, performing and discharging his powers, functions or duties under this Act by notice in writing require any person—
 - (i) to furnish to the Authority within such time and at such place as may be specified in the notice any document specified or described in the notice which is in his custody or control;
 - (ii) to produce for inspection any book, return, account or record in his possession or control;

Provided however that a person referred to in this paragraph shall not be compelled for any such purpose to produce any document which he could not be compelled to produce in any civil proceedings before a court.

Annual reports and audited statement of accounts of operator.

Authority to inquire into complaints.

8. As soon as may be after the end of its financial year, every operator shall prepare a report giving a true and fair account of its activities, and of its income and expenditure during the year together with an audited statement of accounts for that financial year and shall forward such report and statement of account to the Authority.

9. (1) Where a subscriber to a telecommunication service or a member of the public makes a complaint to the Authority in relation to the telecommunication service provided by an operator, the Authority may make such investigation as he may deem necessary and shall cause such remedial measures to be taken as the circumstances of the case may require.

(2) In the course of any investigation under subsection (1), the Authority may direct such operator to take such steps as appears to him to be necessary for the rectification of any cause or matter which gave rise to the complaint, and direct that financial redress be provided where appropriate.

(3) Every complaint made under subsection (1) shall be in writing and shall set out clearly the reasons therefor.

10. (1) The Authority shall be the sole lawful body in Sri Lanka to manage and control the use of the radio frequency spectrum and incidental and restricted emissions, matters relating to the geostationary satellite orbit and shall have the power where he deems necessary to withdraw or suspend its use or prohibit any such emission.

Authority
sole
authority
to manage
radio
frequency
spectrum.

(2) The Authority shall be the sole lawful authority to negotiate with the International Telecommunications Union or its affiliated bodies on all matters referred to in subsection (1).

11. (1) Where the Authority is satisfied that a person who is authorized by a licence under section 17 to operate a telecommunication system is contravening or has contravened any of the conditions of his licence, the Authority may, subject to subsection (2), make an order for the purpose of securing compliance with that condition or may subject to subsection (3), revoke any such order.

Enforcement
of
licence
conditions.

(2) Before making an order under subsection (1) the Authority shall give notice—

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

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

(3) Before revoking an order made under subsection (1), the Authority 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 twenty-eight days from the date of publication of the

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notice) within which representations or objections to the proposed revocation may be made by any person interested in such revocation,

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

(4) A notice under subsection (2) or subsection (3) shall be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by such notice and by sending a copy of the notice to the operator affected by it.

(5) As soon as practicable after an order is made under subsection (1) or subsection (3), the Authority 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 operator affected by it.

Public
hearing
and
procedure.

12. (1) On representations made to him or otherwise, the Authority may where he deems it necessary in the public interest that any matter relating to the exercise or the proposed exercise of his powers, needs investigation or determination, may of his own motion, hold a public hearing.

(2) The Authority shall, where the Minister so directs in the public interest, hold a public hearing in relation to any matter relating to telecommunication specified in such direction.

(3) For the purpose of holding a public hearing under subsection (1) or subsection (2), a committee of inquiry (hereinafter referred to as the "committee") shall be constituted which shall consist of the Authority or any other officer nominated by him who shall preside at any meeting of such committee, and two or more other officers to be nominated by the Authority for that purpose.

(4) The proceedings at any public hearing to be held by the committee under this section may be conducted in any manner not inconsistent with the principles of natural justice which to the committee may seem best adapted to elicit proof or information relating to the matter under investigation.

(5) The committee may require evidence or arguments to be presented in writing and may decide the matters upon which it will hear oral evidence or arguments.

(6) The committee may at a public hearing admit or reject any evidence adduced, whether oral or documentary and the provisions of the Evidence Ordinance relating to the admissibility of evidence shall not apply.

(7) Every person who gives evidence before the committee shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such court.

(8) The proceedings at a public hearing shall be open to the public and minutes thereof, including a summary of the evidence given and a statement of all facts taken into consideration shall be kept by the member presiding at the hearing.

(9) The committee shall determine the periods that are reasonably necessary for the fair and adequate presentation of any matter which is the subject of public hearing under this section and may require those matters to be presented within the respective periods so determined.

(10) Any person who has been summoned or whose interests are likely to be affected by any matter before the committee may appear in person or by authorized representative.

(11) In the event of a difference of opinion among the members of the committee the decision of the majority shall be the decision of the committee.

(12) During or at the conclusion of a public hearing, the committee may—

- (a) make an order or award with reasons therefore relating to the matter before it or part thereof, or give a direction with reasons therefor ;
- (b) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter or part thereof, if it appears that the matter or part thereof is trivial or vexatious or that further proceedings are not necessary or desirable in the public interest ;

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(c) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of any matter before it.

(13) Every order or award made and every direction given in pursuance of paragraph (a) of subsection (12) shall be published in the *Gazette*, and a copy of every such order, award or direction shall be served on each party to the public hearing.

Power to
summon
persons
to give
evidence.

13. (1) The committee shall have power to summon to attend at a public hearing held under section 12, any person who in the opinion of the committee, may be able to give evidence in relation to any matter before the committee or to produce any document, and may examine him on oath or affirmation. Any person so attending may be allowed reasonable expenses necessarily incurred by him in so attending.

(2) If any person summoned to appear before the committee—

(a) fails without reasonable cause to appear at the time and place mentioned in the summons; or

(b) refuses without reasonable cause to be sworn or having been duly sworn, refuses or fails without reasonable cause to answer any question put to him by the committee or wilfully gives a false answer to any such question; or

(c) refuses or fails without reasonable cause to produce before the committee any documents which are in his possession and which he has been required to produce,

such person shall be guilty of the offence of contempt against or in disrespect of the ruling of the committee.

(3) Where the committee determines that a person has committed any offence of contempt referred to in subsection (2) against or in disrespect of its ruling, the committee may cause the member presiding to transmit to the Court of Appeal a certificate setting out its determination. Every such certificate shall be signed by the member who presides at the public hearing.

(4) In any proceeding for the punishment of an offence of contempt which the Court of Appeal may think fit to take cognizance of, any document purporting to be a certificate signed and transmitted to that Court under subsection (3) shall—

- (a) be received in evidence and be deemed to be such a certificate without further proof unless the contrary be proved; and
- (b) be prima facie evidence that the determination set out in the certificate was made by the committee and of the facts stated in the determination.

(5) Every offence of contempt committed against or in disrespect of the ruling of the committee at a public hearing held under section 12, shall be punishable by the Court of Appeal or any judge thereof in the same manner as if it were an offence of contempt committed against or in disrespect of the authority of that Court.

14. (1) An order made by the Authority under section 11 and an order, award or direction made by the committee under section 12 shall, subject to subsection (2) be final.

(2) An appeal shall lie by any person aggrieved from an order, award or direction made under section 11 or 12 on a question of law, to the Court of Appeal.

Finality
of orders
made under
sections 11
and 12 to
be subject
to appeal
on a
question
of law.

(3) An appeal under subsection (2), shall be by written petition and shall—

- (a) be presented in triplicate to the Authority within thirty days after the date of the communication by which the order, award or direction was notified to the appellant;
- (b) set forth the order, award or direction of the Authority or committee as the case may be and the question of law to be argued;
- (c) make any necessary party a respondent to such appeal; and
- (d) be accompanied by a fee of one thousand rupees.

(4) Where a petition of appeal is presented to the Authority in the manner and within the time specified in subsection (3), he shall—

- (a) transmit, or cause to be transmitted to the Court of Appeal a copy of the petition together with the

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record of the proceedings in which the order, award or direction referred to in the petition was made or given;

- (b) issue, or cause to be issued notice of the appeal to the respondent named in the petition of appeal together with a copy of that petition; and
- (c) file or cause to be filed, of record a copy of that petition.

(5) The Court of Appeal may in determining such question of law confirm, vary or annul the order, award or direction of the Authority or the committee, as the case may be, or may remit the case to the Authority or the committee with the decision of that Court on the question of law with such directions as may be deemed appropriate.

Evidence of documents.

15. A copy of any rule, order, award, direction or other document made by or in the custody of the Authority and certified by him to be a true copy thereof, or an order award or direction made by the committee certified by the member who presided at the meeting of such committee where such order, award or direction was made to be a true copy thereof, shall in any court be evidence of the rule, order, award, direction or other document without proof of the signature of the Authority or the member presiding at such meeting of the committee, as the case may be.

Contravention of an order, award or direction made under section 11 or 12.

16. Any person who without lawful authority contravenes or fails to comply with an order of the Authority under section 11 or an order, award or direction of the committee under section 12, shall be guilty of an offence and shall be liable on conviction after summary trial by a Magistrate to a fine not exceeding one hundred thousand rupees and in the event that the offence is continued after conviction an additional fine of not exceeding one thousand rupees in respect of every day the offence is continued after conviction.

PART II

LICENSING

No person to operate telecommunication system without a licence.

17. (1) Subject to the provision of section 20, no person shall operate a telecommunication system in Sri Lanka except under the authority of a licence granted by the Minister in accordance with subsection (2).

(2) The Minister may grant the licence referred to in subsection (1) on the recommendation of the Authority, provided he shall have the power to reject such recommendations for reasons assigned and grant a licence in his own discretion.

(3) (a) Where the Authority consider it in the public interest to do so the Authority may give public notice in such manner as he deems appropriate of his intention to recommend to the Minister the grant of a licence.

(b) The notice referred to in paragraph (a) shall—

(i) state that he propose to recommend the grant of a licence to a particular person ;

(ii) specify the time (not being less than twenty eight days from the date of publication of the notice) within which representations or objections with respect to the grant of the proposed licence may be made.

(c) A representation or objection duly made in response to such notice shall be considered by the Authority.

(4) Every application for a licence shall be in writing and shall be made to the Authority in such manner as may be required by the Authority.

(5) Before recommending the grant of a licence, the Authority shall satisfy himself that the applicant is capable of operating the telecommunication system for which licence is being applied for.

(6) A licence under subsection (2) of this section—

(a) shall be issued on payment by the applicant of the licence fee ;

(b) shall be in writing and unless previously revoked in accordance with any terms in that behalf contained in the licence, continue in force for such period as may be specified therein ;

(c) shall set out the terms and conditions subject to which the licence is being granted ;

(d) shall require the provision of such telecommunication services as are specified in the licence by means of such telecommunication system ;

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- (e) may authorise the connection to any telecommunication system to which the licence relates of—
 - (i) any other telecommunication system specified in the licence; and
 - (ii) any apparatus so specified in the licence; and
 - (f) may authorise the provision by means of any telecommunication system to which the licence relates of any such telecommunication services as are specified in the licence.
- (7) The terms and conditions referred to in paragraph (c) of subsection (6) may include—
- (a) such conditions (whether relating to the operating of the telecommunication system to which the licence relates or otherwise) as appear to the Minister to be requisite or expedient having regard to the provisions of section 4;
 - (b) conditions requiring the payment to the Authority on the grant of the licence or during the currency of the licence or both on the grant and during the currency of the licence such sum or sums of money as may be determined by the Authority to defray any expenses incurred by him in granting the licence and requiring the payment of an annual cess calculated at a rate on the annual turnover of the operator to be used by the Authority for prescribed purposes;
 - (c) conditions requiring an operator to furnish to the Authority, in such manner and at such times as may be reasonably required by the Authority, such documents, accounts, estimates, returns or other information as the Authority may require for the performance of his duties under this Act;
 - (d) conditions prohibiting an operator from showing preference to, or from exercising discrimination against a particular person or persons of any class or description as respects any service provided, connection made or permission given;
 - (e) conditions requiring an operator to publish in such manner and at such times as are specified in the licence, a notice specifying the charges and other terms and conditions that are to be applicable to the services provided, connection made or permission given;

(f) conditions requiring an operator to ensure that an adequate and satisfactory information system which may include billing information, tariff information, directory services and directory inquiry services be made available to users :

(g) conditions requiring an operator—

(i) to comply with directions given by the Authority in relation to the national transmission plan, signalling plan, switching plan, numbering plan, and the charging plan to which an operator shall design and maintain his telecommunication network, and conditions requiring approval from the Authority in the event of any departure from any of the aforesaid plans ;

(ii) to keep the Authority informed of the practices followed by him in the routing of national and international traffic ; and

(iii) to ensure that compensation is paid to persons affected by the running of underground cables or overhead lines ;

(h) conditions requiring an operator—

(i) to comply with any direction given by the Authority as to such matters as are specified in the licence ;

(ii) except with the consent of the Authority to do or refrain from doing such things as are required to be done or required not to be done under the licence ;

(iii) to refer for determination by the Authority such questions arising under the licence as are specified in the licence ;

(i) conditions requiring the connection 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.

- (j) conditions requiring an operator to develop and publish a plan to restore service during emergencies;
 - (k) conditions specifying acceptable economic criteria in accordance with which the Authority shall approve tariff adjustments proposed by an operator.
- (8) A licence granted under this section shall be published in such manner as the Authority may determine is best calculated to give publicity thereto.
- (9) All sums paid as fees under this section for the issue of a licence shall be paid into the Consolidated Fund.

Modification of licence granted under section 17.

18. (1) The Authority may, subject to the provisions contained in subsection (6) of section 17, recommend to the Minister the modification of any condition of a licence granted under that section and on receipt of the concurrence of the Minister duly effect such modifications.

(2) Prior to recommending the modification of any condition of a licence to the Minister under subsection (1), the Authority may if he considers it in the public interest to do so, give public notice in like manner as is specified in paragraphs (a) and (b) of subsection (3) of section 17.

(3) The Authority shall consider any representation or objection duly made in response to such public notice.

Offence to operate telecommunication system without licence.

19. (1) A person who operates a telecommunication system in Sri Lanka without obtaining a licence under section 17, shall be guilty of an offence under this Act.

(2) An operator shall be guilty of an offence under this Act if—

- (a) there is connected to the telecommunication system in respect of which the licence is issued—
 - (i) any other telecommunication system which is not authorised by the licence to be so connected; or
 - (ii) any telecommunication apparatus which is not authorised by the licence to be so connected; or
- (b) there are provided by means of the system any telecommunication services which are not authorised by the licence to be so provided.

20. (1) Notwithstanding the provisions contained in subsection (1) of section 17 and subject to subsections (2) and (3) of this section no licence shall be required—

Exemption
from
licensing &c.

(a) to operate a telecommunication system—

(i) where 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 only by the eye ; or

(ii) which is not connected to another telecommunication system where all the apparatus comprised therein is situated either—

(A) in premises of single ownership or tenancy and within a contiguous boundary, for the sole use of the owner or tenant and which is not connected to any licensed system ; or

(B) in a vehicle, vessel, aircraft or hovercraft or in two or more vehicles, vessels, aircrafts or hovercrafts, mechanically coupled together ; or

(iii) where a single individual runs such system and—

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

(B) everything conveyed by it is conveyed solely for his own domestic purposes ;
or

(b) for the connection of approved terminal apparatus to the public switched network of an operator ; or

(c) for a person who carries on a business to run a telecommunication system for the purposes of that business where that telecommunication system is not connected to another telecommunication system, and in respect of which the following conditions are satisfied, namely—

(i) that no person other than the person carrying on the business is concerned in the control of the apparatus comprised in that system ;

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- (ii) that sounds or visual images conveyed by that system, 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 of that business ;
 - (iii) that messages conveyed by the system are conveyed only to the person carrying on the business, to any employee engaged by him on the conduct of that business or for reception or transmission by telecommunication apparatus of such system used in the course of the business and controlled by him ;
 - (iv) that, messages conveyed by the system, are not conveyed for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of that business ; and
 - (v) that nothing falling within the definition of the expression "telecommunication system" is conveyed by the system by way of rendering a telecommunication service to any person other than the person carrying on the business ; or
- (d) for the use of telecommunication systems or telecommunication apparatus by the police, the armed forces and any other services directly employed by the State for national security in the performance of their official duties subject to the provisions of this Act :
- Provided however, that they shall comply with such technical requirements as may be specified by the Authority ; or
- (e) for the use of telecommunication systems or apparatus on board any warship or aircraft in the service of the State ;
 - (f) for the use of any telecommunication system or apparatus in any foreign civil aircraft registered outside Sri Lanka, if such system or apparatus and the members of the crew of the aircraft who use such system or apparatus have been specially licensed in accordance with the requirements of any international convention for the time being in force as to the installation or use of such system or apparatus in aircraft.

(2) (a) Where a telecommunication system referred to in paragraph (d) of subsection (1) extends beyond the boundaries of an area corresponding to the premises occupied by the person operating the system, every person who on the date of coming in to force of this section is operating such a system or on or after that date proposes to operate such a system shall, as a condition of operating that system—

- (i) obtain a licence from the Authority for the type of telecommunication system being operated, or proposed to be operated, the location of the system and its boundaries ;
- (ii) comply with any provision of this Act or any regulations or rules made thereunder in respect of such system.

(b) A person who operates a telecommunication system in contravention of the provisions of paragraph (a) shall be guilty of an offence under this Act and may be prohibited by the Authority from operating such a system.

(3) (a) Where there is an agreement between a person who is operating a telecommunication system as is referred to in paragraph (a) (iii) or (d) of subsection (1) of this section and an operator, for the interconnection of their telecommunication systems such persons shall prior to interconnection obtain a licence from the Authority for such interconnection.

(b) A person who fails to comply with the provisions of paragraph (a) shall be guilty of an offence under this Act and may be prohibited by the Authority from continuing to operate such system.

(4) An operator may if he so desires request the Authority to monitor an interconnection referred to in subsection (3) in the interests of operational efficiency and technical standards and the Authority shall where so requested take appropriate measures to comply with such request.

Control
and regula-
tion of the
manu-
facture,
import &c.
of telecom-
munications
apparatus.

21. (1) No person shall, except under the authority of a licence issued by the Authority under subsection (2) for that purpose—

- (a) manufacture, import, sell, offer for sale, deal in, transfer, hire, lease, demonstrate, maintain or repair by way of trade any telecommunication apparatus; or
- (b) install, establish, work or causes to be worked any telecommunication apparatus (not being any such apparatus as is specified in subsection (1) of section 20) in any premises or vehicle in Sri Lanka or in any part of the territorial waters thereof or in any ship or aircraft registered in Sri Lanka.

Every application for a licence under this section shall be made to the Authority in the prescribed form.

(2) Every licence issued by the Authority for any such purpose as referred to in subsection (1) shall—

- (a) be for such purpose or activity or for such combination of purposes or activities as are specified in subsection (1) ;
- (b) be in the prescribed form and under the hand of the Authority or an officer authorised by him in that behalf ;
- (c) be issued on payment of the prescribed fee ; and
- (d) be subject to such conditions and restrictions as may be determined by the Authority.

(3) The Authority may at any time revoke and determine any licence granted under this section on the breach of any of the conditions and restrictions to which it is subject or in the event of any default in the payment of any consideration payable thereunder or on the failure of the licensee to comply with any regulations made under this Act relating to the same.

(4) where the Authority—

- (a) refuses an application made for a licence made under subsection (1) ; or
- (b) revokes a licence under subsection (3),

the applicant or the licensee may within one month after the date of the communication to him of the decision of the Authority appeal against such refusal or revocation, as the case may be, to the Secretary to the Ministry of the Minister who may on such appeal confirm or set aside the decision of the Authority.

(5) Every person who contravenes the provisions of subsection (1) shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding ten thousand rupees and in default of payment of such fine to imprisonment of either description for a term not exceeding three months.

22. (1) No person shall use any radio frequency in Sri Lanka except under the authority of a licence issued by the Authority for that purpose under subsection (2). Every application for a licence under this section shall be made to the Authority in the prescribed form.

Licence for
use of any
radio
frequency.

(2) Every licence issued by the Authority for any such purpose as is referred to in subsection (1) shall—

- (a) be in the prescribed form under the hand of the Authority or an officer authorized by him in that behalf;
- (b) be issued on payment of the prescribed fee; and
- (c) be subject to such conditions and restrictions as may be determined by the Authority which may include the prohibition of the use of the prescribed frequency equipment in the event of the breach of any such conditions and restrictions.

(3) The Authority may at any time revoke and determine any licence granted under this section on the breach of any of the conditions and restrictions to which it is subject or in the event of any default in the payment of any consideration payable thereunder or on the failure of the licensee to comply with any regulations for the time being in force under this Act relating to the same.

(4) Where the Authority—

- (a) refuses an application made for a licence made under subsection (1); or
- (b) revokes a licence under subsection (3),

the applicant or the licensee may within one month after the date of the communication to him of the decision of the Authority appeal against such refusal or revocation, as the case may be, to the Secretary to the Ministry of the Minister who may on such appeal confirm or set aside the decision of the Authority.

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(5) A person who uses any radio frequency in contravention of the provisions of subsection (1) shall be guilty of an offence under this Act.

PART III

TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES OF THE
DEPARTMENT OF TELECOMMUNICATIONS

Vesting of property of Telecommunications Department in the Corporation named Sri Lanka Telecom.

23. (1) On such day as the Minister by Order published in the *Gazette* appoint (in this Act referred to as the "transfer date") all the property rights and liabilities (other than those excluded by the agreement referred to in subsection (2) to which the Department of Telecommunication was entitled or subject immediately before the transfer date shall vest in the Corporation named "Sri Lanka Telecom" (hereinafter referred to as "the Corporation") established by an incorporation Order made under section 2 of the State Industrial Corporations Act, No. 49 of 1957 and published in *Gazette* No. 596/11 of February 6, 1990.

(2) At any time before the transfer date the Minister and the Corporation may agree in writing as to the property rights and liabilities which shall remain with the Department of Telecommunications after that date.

Transfer and vesting of contracts, rights &c.

24. Except as otherwise excluded by the agreement referred to in subsection (2) of section 23, with effect from the transfer date—

- (a) all contracts, leases or tenancy agreements entered into by, with or for the Department of Telecommunications and subsisting on the day immediately preceding the transfer date shall be deemed with effect from that date to be contracts, leases or tenancy agreements entered into by, with or for the Corporation ;
- (b) all interests, rights, easements, obligations, debts and liabilities of the Department of Telecommunications subsisting on the day immediately preceding the transfer date shall with effect from that date be deemed to be the interests, rights, easements, obligations, debts and liabilities of the Corporation ;
- (c) all installations, plant and equipment and other property installed and maintained or are in the process of being installed and maintained by the

Department of Telecommunications and all matters and things of whatever description required or used to maintain or supply the telecommunication service of the Department of Telecommunications subsisting on the day immediately preceding the transfer date shall be transferred to and be vested in the Corporation with effect from that date ;

- (d) the Corporation shall have the right to recover or receive any moneys that on the day immediately before the transfer date were due and owing to the government in respect of, or for or on account of the telecommunication system transferred under this Act to the Corporation or that would after the transfer date have become due to the Government if such transfer had not taken place.

25. Notwithstanding anything in any other written law to the contrary, the vesting of any immovable property or any interest therein by virtue of section 23 shall be deemed for all purposes to give absolute title to the Corporation to all such immovable property or any interest therein without further proof or any requirement for registration.

Transfer to give absolute title to the Corporation of immovable property.

26. The transfer to the Corporation of all the property, rights and liabilities of the Department of Telecommunications other than those excluded by the agreement referred to in subsection (2) of section 23 shall not in any way be deemed to affect prejudicially the rights of a third party to any contract or agreement subsisting between such third party and the Department of Telecommunications on the day immediately preceding the transfer date and every such contract or agreement shall be valid and enforceable for, or against the Corporation after the transfer date as though every reference in every such contract or agreement to the Department of Telecommunications were a reference to the Corporation.

Third party rights not to be prejudiced.

Authority to exercise, discharge and perform all the regulatory powers, functions and duties hitherto exercised, discharged, and performed by the Director of Telecommunications.

27. From and after the transfer date—

- (a) the Authority shall exercise, discharge or perform any power, function or duty vested in or assigned to or imposed on the Director of Telecommunications by any written law and the Director of Telecommunications shall cease to exercise, discharge or perform all or any of the aforesaid powers, functions or duties from and after that date ;
- (b) in every context in which the Director of Telecommunications is mentioned (whether by name, designation in full or by the abbreviated designation of "Director") in any written law or in any notice, or other document or form required or authorised by any written law, there shall be substituted for the words Director of Telecommunications of the words "Director-General" of Telecommunications appointed under the Sri Lanka Telecommunications Act, No. 25 of 1991.

PART IV

EMPLOYMENT IN THE CORPORATION OF PUBLIC OFFICERS OF THE DEPARTMENT OF TELECOMMUNICATIONS

Notice required to be given by public officers of the Department of Telecommunications before the transfer date.

23. Notwithstanding the provisions contained in the State Industrial Corporations Act, No. 49 of 1957, the following provisions shall apply in relation to the employment in the Corporation of public officers of the Department of Telecommunications—

- (a) every public officer of the Department of Telecommunications not being any such officer in a transferable service of the Government, other than an officer in the Sri Lanka Engineering Service shall, before the transfer date, give notice in writing to the Director of Telecommunications that such officer intends, on the transfer date,—
- (i) to continue in office as a public officer of the Department ;
- (ii) to retire from the public service and become an employee of the Corporation if, being a pensionable officer of the Department of Telecommunications he would on that date have had not less than ten years' pensionable service ; or
- (iii) to leave the public service and become an employee of the Corporation if, being a pensionable officer of the Department of

Telecommunications he would on that date have less than ten years pensionable service; or

(iv) to leave the public service and become an employee of the Corporation if he is a contributor to the Public Service Provident Fund established under the Public Service Provident Fund Ordinance; or

(v) to both retire or leave the public service and not become an employee of the Corporation;

(b) a notice given to the Director of Telecommunications before the transfer date by a public officer of the department under paragraph (a), shall be final.

29. (1) Any public officer of the Department of Telecommunications who does not give the notice required under sub-paragraphs (ii), (iii), (iv) or (v) of paragraph (a) of section 28 before the transfer date, or gives such notice under sub-paragraph (i) of paragraph (a) of that section, shall continue in office as a public officer of the Department of Telecommunications on and after that date.

Effect of not giving notice under section 28(a) or giving notice under section 28 (a) (i).

(2) A public officer referred to in subsection (1) so long as he continues in such office, shall perform the work for and on behalf of the Corporation in his capacity as such officer and be eligible to the same conditions of service as he was entitled to while doing work for the Department of Telecommunications in his capacity as such officer and shall be subject to such disciplinary control as any other public officer.

(3) Where any public officer of the Department of Telecommunications continues in office as such officer on and after the transfer date performing work for and on behalf of the Corporation in his capacity as such officer, the Corporation shall pay out of the funds of the Corporation to the Deputy Secretary to the Treasury to be credited to the Consolidated Fund, such sum not exceeding such amount as may be determined by the Minister in charge of the subject of Finance as sufficient to cover the salary, and other expenses including pension or provident fund contributions, payable by the Government in respect of such officer.

Effect of a notice given under sub-paragraphs (ii) to (v) of paragraph (a) of section 28.

30. (1) Any public officer of the Department of Telecommunications who gives notice under sub-paragraph (ii) or (iii) or (iv) or (v) of paragraph (a) of section 28 before the transfer date shall—

- (a) where such notice is given by him under sub-paragraph (ii) of that paragraph, become an employee of the Corporation from and after the transfer date and shall, subject to the provisions of section 31 be eligible for such a pension under the Minutes on Pensions as would have been awarded to him had he retired from the public service on the ground of abolition of office on that date ; or
- (b) where such notice is given by him under sub-paragraph (iii) of that paragraph, become an employee of the Corporation from and after the transfer date and shall be deemed to have left the public service on that date and shall, subject to the provisions of section 31 be eligible for such an award under the Minutes on Pensions as would have been awarded to him if he had left the public service on the ground of abolition of office ; or
- (c) where such notice is given by him under sub-paragraph (iv) of that paragraph, become an employee of the Corporation from and after the transfer date and shall be deemed for the purposes of the Public Service Provident Fund to have left the service of the Government upon the determination of a contract with the consent of the Government otherwise than by dismissal on that date ; or
- (d) where such notice is given by him under sub-paragraph (v) of that paragraph, and—
 - (i) if he is a public officer of the class or description referred to in sub-paragraph (ii) of that paragraph, be deemed to have retired from the public service on the transfer date and shall be eligible for such pension under the Minutes on Pensions as would have been awarded to him had he retired from the public service on the ground of abolition of office on that date ;
 - (ii) if he is a public officer of the class or description referred to in sub-paragraph (iii) of that paragraph, be deemed to have left the public service on the transfer date and shall be

eligible for such an award under the Minutes on Pensions as would have been awarded to him if he had left the public service on the ground of abolition of office on that date; or

- (iii) if he is a public officer of the class or description referred to in sub-paragraph (iv) of that paragraph, be deemed for the purposes of the Public Service Provident Fund Ordinance to have left the service of the Government upon the determination of a contract with the consent of the Government otherwise than by dismissal on that date.

(2) In the event of any conflict or inconsistency between the provisions of subsection (1) of this section and subsection (1) of section 29, and any other provisions of this Act, the provisions of those subsections shall to the extent of such conflict or inconsistency prevail over such other provisions.

31. The following provisions shall apply to and in relation to any employee of the Corporation who became such an employee on the transfer date by virtue of the operation of the provisions of section 30—

Special provisions applicable to certain employees of the Corporation.

- (a) such employee shall be employed by the Corporation on such terms and conditions as may be agreed upon by such employee and the Corporation:

Provided however, that such terms and conditions shall not be less favourable than the terms and conditions on which such employee was previously employed in the Department of Telecommunications;

- (b) if on the transfer date, such employee was a public officer of the Department of Telecommunications holding a post declared to be pensionable and who had less than ten and not less than eight years' pensionable service, then—

- (i) he shall be deemed, for the purposes only of the Minutes on Pensions, to be holding the post in the Department of Telecommunications that he held on the transfer date until such period of time as, when added to his pensionable service under the Government, makes an aggregate of ten years pensionable service (service under the Corporation being

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counted as pensionable service under the Government for the computation of such aggregate);

- (ii) in respect of him the Corporation shall pay out of the funds of the Corporation to the Deputy Secretary to the Treasury to be credited to the Consolidated Fund for every complete month of the period of service during which he is deemed for the purposes of the Minutes on Pensions to be holding the post in the Department of Telecommunications that he held on the transfer date, such sum as may be determined by the Minister in charge of the subject of Finance; and
 - (iii) at the end of the period referred to in subparagraph (i) he shall be deemed to have retired from the public service and shall be eligible for such pension under the Minutes on Pensions as would have been awarded to him had he retired from the public service on the ground of abolition of office on the termination of such period;
- (c) notwithstanding the provisions of section 30 and the preceding provisions of this section, and anything to the contrary in any other written law, where a public officer of the Department of Telecommunications becomes an employee of the Corporation by virtue of the operation of the provisions of section 30—
- (i) if such officer is eligible for a pension on the transfer date or later and elects to draw his full pension, he shall not be paid such pension during the period of his employment with the Corporation;
 - (ii) if such officer is eligible for a pension and elects to draw a gratuity in partial computation of one-fourth part of his pension in accordance with the provisions of section 2A(1) (i) of the Minutes on Pensions—
 - (a) such gratuity shall not be paid to him but shall be credited to his account in an approved provident fund of the Corporation;

- (b) the remaining three-fourth part of the pension payable to him under the said Minutes shall not be paid to him during the period of his employment with the Corporation ;
- (c) for the purpose of computation of the period of "ten years from the date of his retirement" referred to in section 2A (1) (ii) of the said Minutes, the date of his retirement shall be deemed to be the last date of his employment with the Corporation ;
- (iii) if such officer is eligible for a gratuity and not a pension under the Minutes on Pensions, such gratuity shall not be paid to him but shall be credited to his account in an approved provident fund of the Corporation ; and
- (iv) if such officer is eligible for the receipt of any sum of money under the Public Service Provident Fund Ordinance, such sum shall not be paid to him but shall be credited to his account in an approved provident fund of the Corporation.

32. (1) Any person who on and after the transfer date continues in office as a public officer of the Department of Telecommunications performing work for and on behalf of the Corporation in his capacity as such officer may at any time with his consent be appointed to the staff of the Corporation.

(2) Where any public officer is appointed to the staff of the Corporation under subsection (1), the provisions of subsection (3) of section 13 of the Transport Board Law, No. 19 of 1978, shall, *mutatis mutandis*, apply to and in relation to him.

Special provisions applicable to certain persons who continue as public officers in the Department of Telecommunications on and after the transfer date while performing the work for and on behalf of the Corporation in their capacity as such officers.

PART V

RIGHT TO USE STATE OR PRIVATE PROPERTY FOR THE INSTALLATION AND MAINTENANCE OF TELECOMMUNICATION SERVICES

Power of the operator to place and maintain telecommunication lines and posts.

33. (1) For the purpose of providing telecommunication service by means of the telecommunication system he is licensed to operate, the operator or any person authorised by him in writing may, from time to time, place and maintain a telecommunication line under, over, along or across, and posts in, or upon, any immovable property and for that purpose it shall be lawful for any officer in the employ of the operator, and for the servants, workmen, and labourers employed by or under such officer—

- (a) at all times on reasonable notice, and with all necessary vehicles, machinery, tools and other means, to enter upon any land and to put up thereon any posts which may be required for the support of any telecommunication line; and
- (b) to fasten or attach to any tree growing on such land or to any building or structure or thing thereon any bracket or other support for such line; and
- (c) to cut down any tree or branch which may in any way injure, or which is likely to injure, impede, or interfere with any telecommunication line; and
- (d) severally to do and perform all other acts, matters and things necessary for the purpose of establishing, constructing, repairing, improving, examining, altering, or removing any telecommunication line, or in any way connected therewith, or for performing any act matter or thing under the provisions of this Act:

Provided that—

- (i) an operator shall not exercise the powers conferred by this section except with the written consent of the owner of the property under, over, along, across, in or upon which any telecommunication line is placed;
- (ii) an operator shall not exercise the powers conferred by this section except for the purposes of a telecommunication service provided or to be provided by the operator;

- (iii) an operator shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which any telecommunication line or post is placed, by reason of such exercise ;
- (iv) except as hereinafter provided an operator or person authorized by him in writing shall not exercise those powers in respect of any property vested in or under the control or management of any local authority or public corporation without the permission of the Mayor or Chairman of such local authority or the Board of Directors or management of such public corporation, as the case may be ; and
- (v) an operator shall do as little damage as possible to the property, and shall pay reasonable compensation to all persons interested for any damage or loss sustained by them by reason of the exercise of the powers under this section on application being made for that purpose to the operator within thirty days after the damage or loss was sustained.

(2) Nothing contained in paragraph (v) of the proviso to subsection (1), shall preclude any person who suffers any loss or damage by reason of the exercise by an operator of the powers conferred upon him under subsection (1), from instituting an action against such operator for compensation.

(3) If, any dispute arises concerning the sufficiency of the compensation to be paid under paragraph (v) of the proviso to subsection (1), such dispute shall, on application made by way of summary procedure for that purpose by either of the disputing parties to the District Court within the jurisdiction of which the property is situate, be summarily determined by that court.

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, an operator may pay into the District Court within the jurisdiction of which the property is situate such amount as is deemed sufficient or where all the disputing parties have in writing admitted the amount rendered to be sufficient or the amount has been determined under subsection (3), the amount so admitted or determined and the court, after giving notice to the parties and hearing such of them as desire to be heard, shall summarily determine the persons

entitled to receive the compensation, or as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) The cost of all legal proceedings under this section shall be determined by the District Court. An operator shall not be liable to pay any costs unless there is a dispute concerning the sufficiency of the compensation to be paid under paragraph (v) of the proviso to subsection (1), and in such case the operator shall be liable to pay costs should the amount of compensation determined by the District Court be more than the amount deemed sufficient by the operator, unless the court shall be of opinion that the claim of the applicant was so extravagant, or that he was so negligent in putting his claim before the said operator, that some deduction from his costs should be made, or that he should pay part of the costs of the said operator.

(6) Nothing in this section shall affect the right of any person to recover the whole or any part of any compensation paid by the operator from the person who has received such compensation.

Authority to procure written consent for use of immovable property for the operatr.

34. (1) Where an owner of any immovable property fails or refuses to grant to the operator the written consent referred to in paragraph (i) of the proviso to subsection (1) of section 33, the operator may report such fact to the Authority.

(2) Where a report under subsection (1) is made to the Authority, and the Authority after due inquiry is satisfied of the reasonableness of the requirements of the operator, he may take such steps as it deems reasonably necessary to procure the said written consent for the use of the said property for and on behalf of the operator.

Power of local authority or public corporation to give permission under paragraph (iv) of the proviso to section 33 subject to conditions.

35. (1) The Mayor or Chairman of a local authority or the Board of Directors or the management of a public corporation may, having regard to the provisions of paragraph (iv) of the proviso to section 33, permit an operator to exercise all or any of the powers under that section subject to payment to the local authority or public corporation of a fee for the use of the property and to conditions relating to the time or mode of execution of any work or for any other thing connected with or relating to any work undertaken by an operator under that section.

(2) Where any sum of money is payable to a local authority or a public corporation under subsection (1), or where compensation is payable under subsection (2) of section 37 and an operator disputes such payment or compensation as excessive or unreasonable taking into account all the circumstances, then, and in every such case the matter so in dispute shall be referred to the Authority for determination and the Authority shall determine the same.

(3) A party aggrieved by the determination of the Authority under subsection (2) may refer the dispute to two arbitrators, one to be appointed by each party, and such arbitrators shall before entering on the arbitration select an umpire, and the decision of such arbitrators where they are agreed or in the case of a difference of opinion among the arbitrators, the decision of the umpire, shall be final.

36. Where under the preceding provisions of this Act a telecommunication line or post has been placed by the operator or the person authorized by him in writing, over, along, across, in or upon any property vested in or under the control or management of a local authority or public corporation, and that local authority or public corporation, having regard to circumstances which have arisen since the telecommunication line or post was so placed, considers it essential and necessary that it should be removed, or that its position should be altered, the Mayor or Chairman of the local authority or the Board of Directors or the management of the public corporation, as the case may be, may request the operator to remove it or alter its position and subject to section 38 the operator shall comply with such request.

Power of local authority or public corporation to require removal or alteration of telecommunication line or post.

37. (1) The operator may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority or public corporation alter the position thereunder of any pipe (not being a main) for the supply of gas or water or of any line, wire, or cable for the supply of electric power, or of any drain (not being a main drain) subject to the permission of the local authority or public corporation, as the case may be.

Power to alter position of gas or water pipes or drains.

(2) The Mayor or Chairman of a local authority or the Board of Directors or the management of the public corporation may send a person to superintend any work carried out by the operator in the exercise of those powers and the

operator shall execute the work to the reasonable satisfaction of the person so sent and shall pay reasonable compensation in the event of any damage caused by the exercise of its powers.

Disputes
between
operator and
local
authority or
public
corporation.

38. (1) In the event of a dispute between the operator and the Mayor or Chairman of a local authority or the Board of Directors or management of a public corporation, as the case may be, resulting from—

(a) the refusal of permission, referred to in paragraph (iv) of the proviso to section 33 by the Mayor or Chairman of the local authority or the Board of Directors or management of a public corporation; or

(b) any request made by a local authority or public corporation under section 36,

the matter in dispute shall be referred to the Authority for determination.

(2) A party to the dispute who is dissatisfied with the determination of the Authority under paragraph (a) or (b) of subsection (1) may within one month after the date of the communication to such party of that determination appeal therefrom to the Secretary to the Ministry of the Minister whose decision on any such determination shall be final.

Resistance,
&c., to
exercise of
lawful
powers of
the
operator

39. Any person who without reasonable cause resists or obstructs, or threatens or attempts to resist or obstruct, the operator or any person authorized by him in writing, in the exercise of the powers conferred on such operator or person under section 33 he shall be guilty of an offence under this Act:

Provided however that no person shall be guilty of an offence under this section by reason only of the fact that such person being an owner refuses to give his written consent required under paragraph (i) of the proviso to subsection (1) of section 33.

Right to
request
removal or
alteration
of telecom-
munication
line or
post.

40. (1) Where, under the provisions of this Act, a telecommunication line or post has been placed by an operator, under, over, along, across, in, or upon any property, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telecommunication line or post should be removed to any other part of that property or to a higher or lower level or altered in form, he may request the operator to remove or alter the line or post accordingly:

Provided that, if compensation has been paid to such person under paragraph (v) of the proviso to subsection (1) of section 33 he shall, when making the request, tender to the operator an amount sufficient to defray the expenses of the removal or alteration.

(2) If an operator fails to comply with the request within a reasonable time, the person making it may appeal to the Authority in writing requesting the Authority to require the operator to remove or alter the line or post.

(3) Where after any such appeal as is referred to in subsection (2) the person making the request has failed to procure the removal or alteration of the line or post he may apply by way of summary procedure to the District Court within the jurisdiction of which the property is situate for an order requiring such removal or alteration.

(4) A District Court on receiving an application under subsection (3) may in its discretion reject such application or make an order, absolutely or subject to conditions, for the removal of the telecommunication line or post to any other part of the property or to a higher or lower level, or for the alteration of its form.

41. In any case where a telecommunication line has been placed under, over, along, or across any immovable property no person who, subsequent to the date on which such telecommunication line has been so placed plants any tree or shrub which may be likely in the future to injure, impede or interfere with such telecommunication line, shall be entitled to receive any compensation should such tree or shrub or any branch thereof be cut down under the provisions of section 33.

Planting of trees or shrubs likely to injure telecommunication line.

42. Every telecommunication line or post placed before the coming into operation of this section under, over, along, across, in, or upon any property for the purposes of telecommunications established or maintained by the Government, shall be deemed to have been so placed in the exercise of the powers conferred by and after observance of all the requirements of, this Act.

Provisions of this Act extended to telecommunication lines and posts placed before coming into operation of this Act.

PART VI

OFFENCES AND PENALTIES

43. (1) Every person who contravenes or fails to comply with any provision of this Act or any regulation or rule made thereunder or with any requirement imposed thereunder or with any order, award or direction given thereunder shall be guilty of an offence.

Trial of offences.

(2) All offences under subsection (1) shall be triable summarily by the Magistrate's Court.

44. (1) Every person guilty of an offence under subsection (1) of section 19 or section 22 shall be liable on conviction to a fine not less than twenty thousand rupees and not exceeding one hundred thousand rupees or to imprisonment of either description for a term not less than six months and not exceeding three years or to both such fine and such imprisonment.

Offences under section 19 and section 22.

(2) Every person guilty of an offence under subsection (2) of section 19 shall be liable on conviction to a fine not less than ten thousand rupees and not exceeding twenty thousand rupees or to imprisonment of either description for a term not less than three months and not exceeding six months or to both such fine and such imprisonment.

45. Every person who, knowing or having reason to believe that a telecommunication service is being provided in contravention of this Act or of any regulations or rules made thereunder—

Penalty for transmitting or receiving messages &c.

(a) transmits or receives any message by such telecommunication service; or

(b) performs any service incidental thereto; or

(c) delivers any message for transmission by means of such telecommunication service; or

(d) accepts delivery of any message sent thereby,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand rupees and in default of payment of such fine to imprisonment of either description for a term not exceeding three months.

46. Every person who dishonestly obtains or uses a telecommunication service provided by an operator with intent to avoid payment of any charge applicable to the provision of that service, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand rupees and in default of payment of such fine to imprisonment of either description for a term not exceeding six months.

Fraudulent use of telecommunication service.

47. Every person who, with the intention of—

- (a) preventing or obstructing the transmission or delivery of any message; or
- (b) interrupting or acquainting himself with the contents of any message; or
- (c) transmitting any message which he has no authority to transmit; or
- (d) committing mischief or any act of vandalism,

Penalty for intentionally damaging or tampering with telecommunication installation.

damages, removes or tampers with any telecommunication installation line, post or other thing whatever being part of or used in or about any telecommunication system or in the provision of any service, by means thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment.

48. Every person who transmits or causes to be transmitted or tenders or causes to be tendered to any telecommunication officer or to any person having official duties in connection with a telecommunication service for transmission by telecommunication or for delivery, a message which he knows to be false or fabricated, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand rupees or to imprisonment of either description for a term not exceeding three years or to both such fine and such imprisonment. The burden of proving that he did not know any message to be false or fabricated shall lie on the person charged under this section.

Penalty for tendering false or fabricated message to any telecommunication officer &c.

Offences by
telecommu-
nication
officer &c.,

49. Every telecommunication officer, or any person having official duties in connection with a telecommunication service, who—

- (a) wilfully destroys, secretes, alters or otherwise than in the course of his duty, intentionally modifies or interferes with the contents of any message which he has received for transmission or delivery; or
- (b) wilfully, and otherwise than in obedience to any authority empowered to do so under this Act, omits to transmit, or intercepts or detains any message; or
- (c) otherwise than in pursuance of his official duty or as directed by court discloses the contents or any part of the contents of any message to any person other than the person to whom the message is addressed,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Penalty for
intruding
into a
telecommuni-
cation
office or
premises or
obstructing
telecommuni-
cation
officer.

50. Every person who—

- (a) without the permission of the telecommunication officer in charge, enters a telecommunication office; or
- (b) enters a fenced enclosure round such telecommunication office in contravention of any regulation or notice prohibiting such entry; or
- (c) refuses to quit such office or enclosure on being requested to do so by any officer or servant employed therein; or
- (d) wilfully obstructs or impedes any such officer or servants in the performance of his duty,

shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding five thousand rupees, and in default of payment of such fine, with imprisonment of either description for a term not exceeding three months.

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51. Every person who does any of the acts mentioned in section 50 with the intention of unlawfully learning the contents of any message or of committing any offence punishable under this Act, shall be guilty of an offence and shall be liable on conviction to imprisonment of either description for a term not exceeding six months in addition to the fine prescribed by section 50.

Penalty for intrusion &c., with intent to learn contents of message.

52. Every person who without lawful authority intrudes—

- (a) into the contents of a message or its usage information by electronic or other means ; or
- (b) with the intention of interfering with any message or its usage information ; or
- (c) with the intention of unlawfully learning the contents of any message or its usage information ; or
- (d) with the intention of committing any offence punishable under this Act,

Penalty for intrusion into the contents of a message &c.,

shall be guilty of an offence and shall be liable on conviction to a fine not less than twenty thousand rupees and not exceeding one hundred thousand rupees or to imprisonment of either description to a term not exceeding two years or to both such fine and such imprisonment.

For the purpose of this section and section 54 "usage information" means information relating to the identity of calling subscriber, called subscriber, date and time of originating of message and the type of message.

53. Every person who wilfully seeks to intercept and improperly acquaint himself with the contents of any telecommunication transmission not intended for general reception shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding ten thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment.

Wilful interception of telecommunication transmission.

54. (1) Subject to the provisions contained in subsection (3) every telecommunication officer or any person having official duties in connection with a telecommunication system who otherwise than in the course of his duty—

- (a) intentionally intercepts a message sent by means of that system or its usage information ; or

Interception and disclosure of contents of message by telecommunication officer.

(b) discloses to any person the contents of a message sent by means of that system which he had intentionally intercepted,
shall be guilty of an offence.

(2) Subject to the provisions contained in subsection (3) every telecommunication officer or any person having official duties in connection with the running of a 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 to any other person by means of that system, shall be guilty of an offence.

(3) The provisions of paragraph (a) of subsection (1) shall not apply to anything done in obedience to any direction given under the hand of the Minister under this Act, and paragraph (b) of that subsection and subsection (2) shall not apply to any disclosure in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings.

(4) Every officer or person guilty of an offence under this section shall be liable on conviction to a fine not exceeding ten thousand rupees, or imprisonment of either description for a term not exceeding six months.

Penalty
for
attaching
anything
to
telecom-
munication
line, &c.,

55. Every person who climbs up a telecommunication post or attaches anything to any telecommunication line, post or other apparatus without lawful authority, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand rupees.

Transmission
of
unpaid
message
prohibited.

56. Every telecommunication officer, or other person having official duties connected with any office used as a telecommunication office, who with the intention of defrauding the operator transmits or causes to be transmitted by telecommunication or delivers or causes to be delivered any message on which the charge prescribed by the Authority has not been paid, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand rupees or to imprisonment of either description for a term not exceeding three years, or to both such fine and such imprisonment.

57. Every telecommunication officer, or other person having official duties connected with a telecommunication service who is guilty of any act of drunkardness, or of being under the influence of drugs not medically prescribed or of carelessness, or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, and every such officer who delays or defaults in the transmission or delivery of any message shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and such imprisonment.

Penalty for misconduct of a telecommunication officer.

58. Every person who by himself or by his agent or servant tenders for transmission at any telecommunication office any message of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and such imprisonment.

Penalty for tendering obscene or indecent or seditious message.

59. (1) Every person who persistently makes telephone calls without reasonable excuse for the purpose of causing annoyance or inconvenience to any telecommunication officer or any person, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand rupees, and, in default of payment of such fine, to imprisonment of either description for a term not exceeding three months.

Penalty for causing annoyance by telephone calls.

(2) It shall be lawful for a telecommunication officer to intercept, monitor, trace or record a call of the description referred to in subsection (1) or to refuse to allow such a call to be made.

(3) Every person who unlawfully and wilfully listens into a telephone conversation between two other persons shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and such imprisonment.

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Penalty for retaining message delivered by mistake.

60. Every person who fraudulently retains, or wilfully secretes, or makes away with or detains, a message which ought to have been delivered to some other person, or being required by a telecommunication officer to deliver any such message, neglects or refuses to do so, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding two years, or to both such fine and such imprisonment.

Offence relating to telecommunication wire.

61. (1) Whoever has in his possession, custody or control any telecommunication wire and is unable to establish that such wire has been acquired lawfully shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand rupees or to imprisonment of either description for a term not exceeding three years or to both such fine and such imprisonment.

“telecommunication wire” for the purpose of this section means all conductors metallic and non-metallic used for purposes of telecommunications.

(2) A certificate purporting to be under the hand of an officer authorised in writing by the Authority, certifying that any telecommunication wire in question is of the description referred to in subsection (1) shall be admissible in a court of law and shall be prima facie proof of the truth of the statements made therein.

(3) Any person who—

(a) attempts to commit or does any act preparatory to the commission of; or

(b) aids or abets another person to commit; or

(c) conspires with another person in the commission of, an offence under subsection (1), shall himself be guilty of that offence and shall be liable on conviction to the same punishment as is specified for a person convicted of an offence under subsection (1).

Penalty for attempting to commit offences.

62. Whoever attempts to commit any offence punishable under this Act shall be guilty of an offence and shall be liable on conviction to the punishment herein provided for the offence.

63. Every person guilty of an offence for which no penalty is specially provided by this Act, shall be liable on conviction to a fine not exceeding five thousand rupees, and, in default of payment of such fine, to imprisonment of either description for a term not exceeding three months.

General penalties

64. Where an offence under this Act or any regulations or rules made thereunder is committed by a body of persons, then—

Offences committed by body of persons.

(a) if that body of persons is a body corporate, every person who at the time of commission of the offence was a Director, General Manager, Secretary or other similar officer of that body; or

(b) if that body is not a body corporate, every person who at the time of commission of the offence was the President, Manager, Secretary or other similar officer of that body,

shall be deemed to be guilty of that offence unless he proves that such offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

65. (1) If a Magistrate is satisfied by information on oath that there is reasonable ground for believing that, in contravention of the provisions of this Act, or any regulation or rule made thereunder, any telecommunication apparatus has been installed, or established, or is maintained or worked, or that any telecommunication apparatus has been imported, sold, or offered for sale in any place or in any vehicle or on board any ship or aircraft within his jurisdiction such Magistrate may grant a search warrant to any police officer authorising that officer to enter and inspect the place, vehicle, ship or aircraft, and to seize any apparatus which appears to that officer to be used or intended to be used for any telecommunication and which appears to him to have been imported, sold or offered for sale for the aforesaid purposes.

Magistrate to grant search warrant in certain cases &c.

(2) Any telecommunication apparatus seized under the provisions of subsection (1) may upon the conviction of the owner or other person in control of such apparatus for an offence under this Act, by order of the Magistrate be forfeited to the State.

PART VII

GENERAL

Power of
Minister to
give general
or special
directions.

66. (1) The Minister may issue from time to time to the Authority, general or special directions in writing.

(2) It shall be the duty of the Authority to comply and to ensure compliance by any operator with any general or special directions issued by the Minister under subsection (1).

General
directions
by the
Minister.

67. The Minister may from time to time direct the Authority to furnish to him in writing such information as may be needed for his official purposes.

Power of
Authority to
make rules.

68. (1) The Authority may make rules in respect of all matters for which rules are required or authorised to be made under this Act.

(2) All rules made by the Authority shall be published in the *Gazette* and shall come into effect on the date of publication or on such later date as may be specified therein.

(3) No rule made by the Authority shall have effect until it has been approved by the Minister.

Power of
Government
to prohibit or
restrict the
use of
telecommuni-

69. If on the occurrence of any public emergency or in the interest of public safety and tranquility, it is expedient or necessary that the transmission and reception of messages, by telecommunication should be prohibited or be subject to supervision and control, the Minister may, upon being satisfied of the above matter by Order made either generally and published in the *Gazette* or specially in writing in respect of any telecommunication service provided in any place in Sri Lanka or in any ship in the territorial waters of Sri Lanka or in any vehicle or aircraft in or over Sri Lanka or the territorial waters thereof—

(a) where prohibition is expedient or necessary, prohibit the transmission or reception of messages by telecommunication either generally or at any specified place or station or in any specified ship, vehicle or aircraft or by any specified telecommunication or by an operator or specified person or class of persons; or

(b) where supervision and control are expedient or necessary—

- (i) prescribe the conditions and restrictions subject to which messages may be transmitted or received by telecommunication either generally or by an operator or person in charge of any specified telecommunication service; and
- (ii) make such provision as he may deem necessary for the interception or the censoring of all or any specified class or description of messages submitted for transmission by, or transmitted or received by telecommunication.

70. No suit or prosecution shall lie—

- (a) against the Authority for any act which in good faith is done or purported to be done by the Authority under this Act or any regulation or rule made thereunder; or
- (b) against any officer, servant or agent of the Authority for any act which in good faith is done or purported to be done by him under this Act or any regulation or rule made thereunder or on the direction of the Authority.

71. (1) The Minister may make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorised by this Act to be made.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations prescribing—

- (a) the regulatory measures as may become necessary in order to comply with any general or special directions that may be given by the Government under paragraph (f) of section 5;
- (b) in respect of each of the licences referred to in this Act, other than the licence referred to in section 17, the form of the licence, the manner in which application for the licence is to be made, the duration of the licence, and the fee payable for the issue and for the renewal of the licence;

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- (c) the technical examinations to be held and the fees to be charged from candidates under section 6 and the form of the certificate to be issued to such candidates who reach the prescribed levels of proficiency at such examinations;
- (d) the manner in which, and the conditions and restrictions subject to which, messages shall be transmitted;
- (e) the precautions to be taken for preventing the improper interception or disclosure of messages;
- (f) the fees to be charged for searching for or furnishing certified copies of messages and other documents in the custody of any telecommunication officer;
- (g) the regulation of the working or use of telecommunication apparatus in any place in Sri Lanka at any time when an Order under section 69 is not in force;
- (h) prohibiting or regulating the working or use of any telecommunication apparatus at any time when an Order under section 69 is not in force—
 - (i) in any ship, whether Sri Lankan or foreign, while it is in the territorial waters of Sri Lanka; or
 - (ii) in any aircraft, whether Sri Lankan or foreign while it is in or over Sri Lanka or the territorial waters thereof;
- (i) the ensuring of the secrecy of any specified class or description of messages.

(3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of publication or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette* be brought before Parliament for approval. Any such regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the *Gazette*.

72. (1) The Telecommunication Ordinance (Chapter 192) is hereby repealed.

Repeal of
Chapter
192 and
savings.

(2) Notwithstanding the repeal of the aforesaid Ordinance—

- (a) every action or proceeding instituted by or against the telecommunication authority and pending under the provisions of the repealed Ordinance in any court, whether original or appellate on the date of coming into operation of this section, shall be deemed to be an action or proceeding instituted by or against the Corporation and every such action or proceeding may be proceeded with to completion and be enforced accordingly;
- (b) every regulation or rule made under the repealed Ordinance as is in force on the date of coming into operation of this section, in so far as such regulation or rule is not inconsistent with the provisions of this Act shall be deemed to be a regulation or rule made under this Act and may be amended or rescinded by regulations or rules made under this Act;
- (c) every application for a licence of a prescribed description made to the telecommunication authority under the provisions of the repealed Ordinance other than applications in respect of matters for which a licence is not required under this Act before the date of coming into operation of this section and not disposed of on that date shall be deemed to be an application made to the Authority under this Act and the Authority shall deal with such application under the provisions of this Act relating to applications made after the date of coming into operation of this section;
- (d) every licence issued by the telecommunication authority under sections 3 and 4 of the repealed Ordinance and in force immediately prior to the date of coming into operation of this section shall be deemed to be a licence granted by the Authority under the provisions of this Act;
- (e) any decree, order or award entered or made in favour of or against the Department of Telecommunications by any court or tribunal or other body in any action, matter, proceeding or thing shall with effect from the date of coming into operation of this section.

be deemed to be a decree, order or award entered or made in favour of or against the Corporation and may be enforced accordingly.

Interpretation.

73. In this Act, unless the context otherwise requires—
“Director-General” means the person for the time being holding the office of Director-General of Telecommunications ;

“message” means any communication sent or received or made by telecommunication or given to a telecommunication officer to be sent by telecommunication or to be delivered and includes any signal or combination of signals used for the broadcasting of music, conversations, speeches, lectures, stage performances, writing, facsimiles, images, pictures or actuation or control of machinery or apparatus ;

“operator” means a person authorised by a licence under section 17 to operate a telecommunication system ;

“post” means a post, pole, bracket, standard, stay, strut or other contrivance for carrying, suspending, or supporting a telecommunication line ;

“prescribed” means prescribed by regulations made under this Act ;

“public switched network” means a set of nodes and links that provide connections between two or more defined points to accommodate telecommunications between them using switched connection at the respective nodes via a combination of the links proper to the connection by means of which an operator may under the authority of a licence given under this Act, provide telecommunication services to the public in Sri Lanka ;

“radio beam” means an electro magnetic radiation wherein the energy is focussed using antenna to enhance the signal strength created by the radiation at a required remote location ;

“telecommunication” means the making of any transmission, emission or reception of signs, signals, writing, images, sound or intelligence of any nature by optical means or by wire or radio waves or any other electromagnetic system ;

"telecommunication apparatus" means apparatus constructed or adopted for use ;

(a) in transmitting or receiving anything falling within the definition of the expression "telecommunication system" 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 that definition ;

"telecommunication line" means a wire or wires or optical fibre used for the purpose of telecommunication, with or without any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing, insulating, protecting or earthing the same ;

"telecommunication network" means a set of nodes and links that provide connections between two or more defined points to accommodate telecommunication between them using dedicated or switched connections established at the nodes via a combination of the links proper to the connections ;

"telecommunication office" means an office or building or any place at which any work incidental to or connected with transmission of messages is carried on under the control of or administered by the Authority or an operator ;

"telecommunication officer" means any person employed either permanently or temporarily in connection with any telecommunication service provided by an operator ;

"telecommunication service" means a service consisting in the conveyance by means of a telecommunication system of any message, or 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 ;

"telecommunication system" means a system for the conveyance by the agency of electric, magnetic, electro-magnetic, optic, electro-chemical or electro-mechanical energy, of—

(a) speech, music and other sounds ;

(b) visual images ;

- (c) information for human comprehension that is intended for presentation in a two dimensional form, consisting of symbols, phrases or sentences in natural or artificial languages, pictures, diagrams and tables ; or
- (d) signals serving for the actuation or control of machinery or apparatus ;

“terminal apparatus” means any telecommunication apparatus used in telecommunication by means of a licensed system and not comprised in that licensed system or any other licensed system for originating or terminating messages transacted.

Sinhala
text to
prevail in
case of
inconsis-
tency.

74. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

JICA



LTE