

No. S 38

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

TELECOMMUNICATIONS ORDER, 2001

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

TELECOMMUNICATIONS ORDER, 2001

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Telecommunications Order, 2001 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the operation and provision of telecommunication systems and services in Brunei Darussalam, and for matters connected therewith".

Interpretation.

2. In this Order, unless the context otherwise requires —

"appointed day" means the date of commencement of this Order;

"Authority" means the Authority for Info-communications Technology Industry of Brunei Darussalam established under the Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001;

"Chief Executive" means the Chief Executive of the Authority and includes any temporary Chief Executive of the Authority appointed under section 10 of the Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001;

"code of practice" and "standard of performance" mean, respectively, a code of practice and a standard of performance issued or approved under section 26;

"earthworks" includes —

(a) any act of excavating earth, rock or other material (by whatever means) in connection with —

(i) any works for or relating to the construction, reconstruction, extension, renovation, alteration, demolition or repair of any building, road, railway, bridge, viaduct, flyover, sewer or sewage works;

- (ii) any works for or relating to the laying, inspecting, repairing or renewing of any mains, pipes, cables, fittings or other apparatuses;
 - (iii) any soil investigation works; or
 - (iv) such other works as are usually undertaken by a person carrying on business as a contractor in the construction industry or as a professional civil or structural engineer;
- (b) any act of boring, dredging, jacking, leveling, piling or tunneling on or under any premises or street by any mechanical means; and
- (c) the driving or sinking of any earth rod, casing or tube into the ground;

"equipment" includes any appliance, apparatus or accessory used or intended to be used for telecommunication purposes;

"Hertzian or radio waves" mean electro-magnetic waves of frequencies not exceeding 1,000 terahertz propagated in space without any artificial guide;

"installation or plant used for telecommunications" includes all buildings, lands, structures, machinery, equipment, cables, poles and lines used or intended for use in connection with telecommunications;

"JTB" means the Telecommunications Department of the Government existing immediately before the commencement of the Authority for Information Technology Industry of Brunei Darussalam Order, 2001;

"message" means any sign, signal, writing, image, sound, intelligence or information of any nature transmitted by telecommunications;

"Minister" means the Minister responsible for telecommunication matters;

"public telecommunication licensee" means a person designated by the Authority under section 6;

"public telecommunication licensee's installation or plant" means any installation or plant used for telecommunications belonging to or used by a public telecommunication licensee;

"radio-communication" means any telecommunication by means of Hertzian or radio waves;

"radio-communication service" means any service for radio-communications;

"radio-communication system" means any system used or intended to be used for radio-communications;

"repealed Act" means the Telecommunication Act (Chapter 54) repealed by this Order;

"securities", in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

"shares" includes stock;

"street" includes any way, road, lane, path, passage or open space, whether a thoroughfare or not, over which the public have a right of way and also the roadway and footway over any public bridge and includes any road, footway or passage, used or intended to be used as a means of access to two or more holdings, whether the public has a right of way thereover or not;

"telecommunications cable" means any cable of a telecommunication system belonging to or under the management or control of a telecommunication system licensee;

"telecommunication cable detection work" means any work of detecting or locating any underground telecommunication cable;

"telecommunication cable detection worker" means any person whose trade or occupation requires or includes the personal performance by him of telecommunication cable detection work;

"telecommunication cable detection work licence" means a licence granted under section 29;

"telecommunication licensee" means a person to whom a licence has been granted under section 5;

"telecommunication line" means a wire or cable used for telecommunications with any casing, coating, tube or pipe enclosing the same and any appliance and apparatus connected therewith for the purpose of fixing or insulating the same;

"telecommunication service" means any service for telecommunications but excludes any broadcasting service;

"telecommunication system" means any system used or intended to be used for telecommunications;

"telecommunication system licensee" means a person licensed under section 5 to operate a telecommunication system;

"telecommunications" means a transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio,

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

"vessel" includes any ship, boat, air-cushioned vehicle or floating rig or platform used in any form of operations at sea or any other description of vessel.

PART II

EXCLUSIVE PRIVILEGE AND LICENSING ETC. OF TELECOMMUNICATION SYSTEMS

Exclusive privilege with respect to telecommunications.

3. (1) As from the appointed day and subject to this Order, the Authority shall have the exclusive privilege for the operation and provision of telecommunication systems and services in Brunei Darussalam.

(2) The privilege conferred on the Authority by subsection (1) shall —

- (a) include the rights of establishing, installing, using, working, maintaining, developing, constructing, promoting, hiring and selling telecommunication systems and services; and
- (b) extend to every vessel or aircraft registered in Brunei Darussalam and every other vessel, aircraft and any vehicle, whether mechanically propelled or not, in Brunei Darussalam.

Exceptions to section 3.

4. The privilege conferred by section 3 shall not be infringed by —

- (a) the running by a person solely for his own use or solely for the purposes of his business (but not for providing any telecommunication service to another person) of a telecommunication line system in which all the equipment comprised therein is situated —
 - (i) on a single set of premises in single occupation; or
 - (ii) in a vessel, aircraft or vehicle or in 2 or more vessels, aircraft or vehicles mechanically coupled together; or
- (b) the operation of any telecommunication system in the course of their duties by the officers and men of the Royal Brunei Armed Forces, the Royal Brunei Police Force and other armed forces for the time being in

Brunei Darussalam, or of any visiting forces present for the time being in Brunei Darussalam by virtue of any written law or by virtue of any lawful arrangement made by Brunei Darussalam.

Power to license telecommunication systems and services.

5. (1) A licence may, with the consent of, or in accordance with the terms of a general authority given by the Minister, be granted by the Authority, either unconditionally or subject to such conditions as the Authority may impose and specify in the licence and either irrevocably or subject to revocation as therein specified for the running of such telecommunication systems and services falling within section 3 as are specified in the licence.

(2) A licence granted under subsection (1) may be granted either to any person, class of persons or a particular person, and may include (without prejudice to the power to impose conditions conferred by that subsection) conditions requiring —

- (a) the licensee to enter into agreements or arrangements with any person, class of persons or another telecommunications licensee for —
 - (i) the interconnection of, and access to, telecommunication systems;
 - (ii) the sharing of installation or plant used for telecommunications belonging to any telecommunication licensee; and
 - (iii) such other purpose as may be specified in the licence,

and on such terms and conditions as may be agreed to by the licensee and such other persons or licensees or, in default of agreement, as may be determined by the Authority;

- (b) the payment to the Authority of a fee on the grant of the licence or the payment to it of periodic fees during the currency of the licence or both, of such amount as may be determined by or under the licence;
- (c) the licensee to comply with any direction given by the Authority as to such matters as are specified in the licence or are of a description so specified;
- (d) the licensee to comply with codes of practice and standards of performance that are applicable to the licensee; and
- (e) the licensee to do, or not to do, such things as are specified in the licence or are of a description so specified.

(3) Any payment required by subsection (2) to be rendered to the Authority may be recovered by it in any court of competent jurisdiction as if it were a simple contract debt.

(4) No person shall question whether the grant of a licence under subsection (1) was, or was not, effected with the consent of or in accordance with the terms of a general authority given by the Minister, and the validity of a licence granted under that subsection shall not be impugned on the ground that it was granted neither with the consent of nor in accordance with the terms of a general authority given by the Minister.

(5) The grant of licences under this section shall be at the discretion of the Authority.

(6) Nothing in this section shall prevent the Minister from directing the Authority to grant a licence in any specific case and any person aggrieved by a refusal of the Authority to grant a licence may within 14 days of the refusal appeal to the Minister whose decision shall be final.

(7) Anything done under and in accordance with a licence granted under subsection (1) shall not constitute an infringement of the privilege conferred by section 3.

Designation of public telecommunication licensees.

6. The Authority may, with the approval of the Minister, designate any person who has been granted a licence under section 5 as a public telecommunication licensee to perform all or any of the functions relating to the operation and provision of telecommunication systems and services in Brunei Darussalam within the exclusive privilege of the Authority under this Order.

Modification of licence conditions.

7. (1) Subject to this section, the Authority may modify the conditions of a licence granted under section 5.

(2) Before making modifications to the conditions of a licence of a public telecommunication licensee under this section, the Authority shall give notice to the licensee —

- (a) stating that it proposes to make the modifications in the manner as specified in the notice and the compensation payable for any damage caused thereby; and
- (b) specifying the time (not being less than 28 days from the date of service of notice on such licensee) within which written

representations with respect to the proposed modifications may be made.

(3) Upon receipt of any written representation referred to in subsection (2), the Authority shall consider such representation and may —

- (a) reject the representation; or
- (b) amend the proposed modifications or compensation payable in accordance with the representation, or otherwise,

and, in either event, it shall thereupon issue a direction in writing to such licensee requiring that effect be given to the proposed modifications specified in the notice or to such modifications as subsequently amended by the Authority within a reasonable time.

(4) Any public telecommunication licensee aggrieved by the decision of the Authority under subsection (3) may, within 14 days of the receipt by it of the direction, appeal to the Minister whose decision shall be final.

(5) The Authority shall not enforce its direction —

- (a) during the period referred to in subsection (4); and
- (b) whilst the appeal of the public telecommunication licensee is under consideration by the Minister.

(6) If no written representation is received by the Authority within the time specified in subsection (2) or if any written representation made under subsection (2) is subsequently withdrawn, the Authority may forthwith carry out the modifications as specified in the notice given under subsection (2).

Suspension or cancellation of licence etc.

8. (1) If the Authority is satisfied that a person is granted a licence under section 5 or any regulations made under this Order is contravening, or has contravened, whether by act or omission —

- (a) any of the conditions of the licence or part thereof;
- (b) any provision of any code of practice or standard of performance; or
- (c) any direction of the Authority given under section 27,

the Authority may, by notice in writing, do either or both of the following —

- (i) issue such written order to the person as it considers requisite for the purpose of securing compliance thereof;
- (ii) require the payment, within a specified period, of a financial penalty of such amount not exceeding \$1 million as it thinks fit.

except that where the Authority is satisfied that the person is again likely to so contravene, whether by act or omission, the Authority may (in lieu of an order or financial penalty under paragraph (i) or (ii) or both) by notice in writing and without compensation, do all or any of the following —

- (A) cancel the licence or part thereof;
- (B) suspend the licence or part thereof for such period as it thinks fit;
- (C) reduce the period for which the licence is to be in force.

(2) Any person who is aggrieved by any decision of the Authority under subsection (1) may, within 14 days after such person has been given the notice in writing referred to in subsection (1), appeal to the Minister whose decision shall be final.

(3) An order under sub-paragraph (i) of subsection (1) —

- (a) shall require the person concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified therein;
- (b) shall take effect at such time, being the earliest practical time, as is determined by or under that order; and
- (c) may be revoked at any time by the Authority.

(4) Any person who fails to comply with any order under sub-paragraph (i) of subsection (1) shall be guilty of an offence.

(5) In any proceedings brought against any person for an offence under subsection (4), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(6) Any financial penalty payable by any person by virtue of subsection (1) shall be recoverable by the Authority as a debt to the Authority from that person and the person's liability to pay shall not be affected by his licence ceasing (for any reason) to be in force.

Approval of equipment.

9. (1) Any equipment to be used for connection to any telecommunication system or equipment belonging to a telecommunication licensee shall be approved by the Authority before use.

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

(3) An approval under this section may apply either to particular equipment or to any equipment of a description specified in the approval, and may so apply either for the purposes of a particular telecommunication system or for the purposes of any telecommunication system of a description so specified.

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

(5) The Authority or any other person by whom any matter falls to be determined for the purposes of any requirement imposed in pursuance of subsection (2) or (4) may charge a fee in respect of the carrying out of any test or other assessment made by the Authority or other person.

(6) A public telecommunication licensee may, with the approval of the Authority (except in cases of emergency), cease or refuse to supply a telecommunication service to any person by means of a telecommunication system or telecommunication line operated by the licensee if, through the use of such telecommunication service, there is or is intended to be connected to the telecommunication system or telecommunication line, equipment or cabling that is a threat to —

(a) the safety or proper functioning of the telecommunication system or telecommunication line; or

(b) the safety of any person.

Residual power of Authority to provide telecommunication services.

10. (1) The Authority may provide any telecommunication service notwithstanding that it has granted a licence to any person under section 5, in any of the following circumstances —

- (a) if the Authority is of the opinion that a person licensed under section 5 has failed to discharge or is not discharging to the Authority's satisfaction the obligations imposed by the Authority on the person in the licence granted to the person; or
- (b) to give effect to any direction of the Minister under section 61.

(2) Where the Authority undertakes the provision of telecommunication services under subsection (1), section 2, 9, 12 to 24, subsection (1) of section 25, section 32, 39 to 43, 46 to 57 and 73 shall apply, with the necessary modifications, to the Authority in respect of the provision of such services and the references to public telecommunication licensee in those sections shall be read as references to the Authority.

Charges and other terms for services provided by Authority.

11. (1) The Authority may make, in relation to any service provided by the Authority under this Order, a scheme or schemes for determining either or both of the following —

- (a) the charges which, except in so far as they are the subject of an agreement between the Authority and a person availing himself of the service, are to be made by the Authority;
- (b) the other terms and conditions which, except as provided, are to be applicable to the service.

(2) A scheme made under this section may make different provision for different cases or classes of cases determined by, or in accordance with, the provisions of the scheme.

(3) A charge exigible by virtue of this section may be recovered by the Authority in any court of competent jurisdiction as if it were a simple contract debt.

(4) A scheme or any amendment thereof made under this section shall come into operation on such date as may be determined by the Authority.

(5) Nothing in this section shall be construed as prohibiting the Authority from levying any charge or collecting any dues for anything done or any service rendered by reason only of not being incorporated in a scheme and the rates, charges and fees payable to the Authority for any service rendered shall be in accordance with such rates, charges and fees as may, from time to time, be determined by the Authority.

(6) The rates, charges and fees applied by JTB immediately before the appointed day shall continue to be valid as though determined by the Authority

under this section until rescinded, varied or otherwise determined by the Authority.

PART III

ERECTION, MAINTENANCE AND REPAIR OF TELECOMMUNICATION INSTALLATIONS

Power to enter on and examine land other than State land.

12. (1) Whenever it appears to a public telecommunication licensee that it shall or probably shall be necessary to exercise the powers conferred by this Order upon a public telecommunication licensee in respect of any land other than State land for the provision of any telecommunication service, that licensee or any person authorised by that licensee in that behalf may, after giving not less than 24 hours' previous notice to the occupier thereof, if any, enter upon the land and may survey and take levels and do all other necessary acts preparatory to the provision of the service, so far as the same may be possible without causing any damage or disturbance.

(2) In the event of any damage or disturbance being caused by reason of the entry, the public telecommunication licensee shall pay compensation to the owner or occupier thereof.

(3) Nothing in this section shall be deemed to authorise any employee or agent of a public telecommunication licensee to cut down or clear away any vegetation or any fence or other erection or to enter any building or upon any enclosure attached to any building.

Power to enter on State land for purposes of installation or plant.

13. For the purpose of providing any telecommunication service, a public telecommunication licensee or any person authorised by the Authority in that behalf may, at any reasonable time, enter upon any State land and may, subject to the approval of the Authority and the Commissioner of Land, erect in or upon the State land such installation or plant used for telecommunications or excavate such trenches as may be necessary or proper for the purpose of providing the telecommunication service, and may carry out all necessary works in connection therewith, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary for the purpose, but —

- (a) where any such work interferes with improvements, buildings, growing trees or crops the licensee shall pay compensation for any damage or disturbance; and
- (b) where the land is occupied under a licence for temporary occupation, the compensation shall be paid to the occupant under the licence.

Power to enter on other land for purposes of installation or plant.

14. (1) Subject to this section, whenever it is necessary to do so for the purposes of providing any telecommunication service under this Order, a public telecommunication licensee may lay, place or carry on, and erect under, upon or over any land, other than State land, such installation or plant used for telecommunications as may be necessary or proper for such purposes and may take such other action as may be necessary to render such installation or plant safe and efficient, paying compensation to any person interested for any damage, disturbance or disability that may be caused thereby.

(2) Any compensation payable under subsection (1) may include an annual payment for land or other immovable property used for the purpose of the public telecommunication licensee's installation or plant.

(3) A public telecommunication licensee shall not acquire any right other than that of user only in respect of any land or property under, over, along across in or upon which the licensee places any installation or plant used for telecommunications under this section.

(4) Before entering on any land for the purpose specified in subsection (1), a public telecommunication licensee shall give 14 days' notice stating as fully and accurately as possible the nature and extent of the acts intended to be done.

(5) The notice shall be given to the owner or occupier of the land in the manner provided under this Order.

(6) The owner or occupier of the land may, within 14 days of the receipt of the notice referred to in subsection (4), lodge a written objection with the Authority and the Authority shall specify a date to inquire into any such objection.

(7) If no objection is lodged within the time specified in subsection (6), the public telecommunication licensee may forthwith enter on the land and do all or any of the acts specified in the notice given under subsection (4).

(8) If an objection is lodged and is not withdrawn before the date fixed for the hearing thereof, the Authority shall hold an enquiry, giving each party an opportunity to be heard.

(9) Subject to subsection (10), upon the conclusion of the enquiry, the Authority may authorise, either unconditionally or subject to such terms, conditions and stipulations as it thinks fit, any of the acts mentioned in the notice given under subsection (4) to be carried out.

(10) Any person aggrieved by any decision of the Authority under this section may, within 14 days of the conclusion of the enquiry, appeal to the Minister whose decision shall be final.

Savings of wayleave agreements.

15. Nothing in subsections (1) and (6) of section 14 shall —

- (a) affect the right of a public telecommunication licensee to enter into an agreement, commonly known as a wayleave agreement, with the owner or occupier of any land for the purpose of laying, placing, carrying or erecting any installation or plant used for telecommunications on the land;
- (b) affect any such wayleave agreement subsisting immediately before the appointed day; or
- (c) affect the right of a public telecommunication licensee to negotiate the used of land or facilities belonging to the State or any other person.

Inspection, maintenance and repair of installation or plant for telecommunications.

16. (1) Whenever it is necessary to do so for the purposes of carrying out any functions and duties of the Authority under this Order or any regulations made thereunder the Authority may enter upon any land or building, or stop or board any vessel, aircraft or vehicle and may carry out all necessary inspections or investigations and do all things necessary for such purpose.

(2) Whenever it is necessary to do so for the purpose of inspecting, maintaining or repairing a public telecommunication licensee's installation or plant or for the purpose of carrying out any functions conferred on a public telecommunication licensee under this Order or under any licence granted under section 5, that licensee or any person authorised by that licensee in that behalf may, at any reasonable time, enter upon any land or building, whether or not such installation or plant has been laid, placed, carried or erected on, under, upon or over the land or building, and may carry out all necessary inspection, maintenance or repair, and may in the course thereof, fell or lop trees, remove vegetation and do all other things necessary for the purpose, causing as little damage as possible and paying compensation to any person adversely affected for any damage that may be caused thereby for which compensation has not already been assessed under section 14.

Removal or alteration of installation or plant for telecommunications.

17. (1) Where a public telecommunication licensee's installation or plant has been laid, placed, carried or erected on, under, upon or over any land under section 13 or 14, and any owner or occupier of the land or any person to or by whom the land is subsequently alienated or occupied desires to use the land in such manner as to render it necessary or convenient that such installation or plant should be removed to another part of the land, or to a higher or lower level, or

altered in form, he may require that licensee to remove or alter such installation or plant accordingly.

(2) If the licensee fails to comply with the requisition, the person may apply in writing to the Authority and the Authority shall, as soon as practicable, specify a date to inquire into the facts of the case.

(3) Subject to subsection (8), upon the conclusion of the enquiry, the Authority may require, subject to such terms, conditions and stipulations as it thinks fit, the removal or alteration of such installation or plant.

(4) Whenever a public telecommunication licensee's installation or plant has been laid, placed, carried or erected on any State land by such licensee, and the land is subsequently alienated to any person, the owner or occupier of the land may, unless the terms of the alienation expressly provide otherwise, require the removal to another part of the land, or to a higher or lower level, of such installation or plant, and subsections (1), (2) and (3) shall apply to any such requisition, and the costs of executing the removal shall be defrayed by the person making the requisition.

(5) Where an owner of any land desires to use his land for the purposes of development and he considers it necessary that a public telecommunication licensee's installation or plant that has been laid, placed, carried or erected on his land should be removed therefrom, he may request the licensee to remove the same from his land.

(6) Where a public telecommunication licensee undertakes the work of removal pursuant to the request of the owner under subsection (5), the owner shall pay compensation to the licensee.

(7) Subject to subsection (8), if a public telecommunication licensee does not intend to undertake the work of removal pursuant to the request of the owner under subsection (5), that licensee shall, by notice in writing, inform the owner and the Authority of its intention and the Authority shall specify a date not less than 14 days from the date of the notice to inquire into the facts of the case.

(8) Any person aggrieved by any decision of the Authority under this section may, within 14 days of the conclusion of the enquiry, appeal to the Minister whose decision shall be final.

Removal of trees dangerous to or obstructing any installation or plant for telecommunications.

18. (1) Where, in the opinion of a public telecommunication licensee, there is at any time danger or suspected danger that any tree (which terms in this section includes undergrowth) near the licensee's installation or plant may interrupt or interfere with any telecommunication service or cause damage to such installation or plant, the licensee may cause the tree to be felled or dealt with in such other manner as will, in its opinion, avert the danger.

(2) Where a tree, which has been felled or otherwise dealt with under subsection (1), was in existence before the public telecommunication licensee's installation or plant was placed, erected or installed, the licensee may subject to subsections (3) and (4) pay to any person adversely affected such sum as may be agreed by way of compensation.

(3) No further compensation shall be paid for the felling or lopping of any tree or the clearing of any vegetation where the action is necessary for the maintenance of a public telecommunication licensee's installation or plant and the tree and vegetation has grown or been allowed to grow since the payment of compensation under subsection (2).

(4) No compensation shall be payable by a public telecommunication licensee under subsection (2) in respect of any tree within 20 meters of the centre line of any road constructed or maintained by the Government or by any public authority unless it is proved that the tree was in existence prior to the construction of the road.

(5) In the event of the owner or occupier of any land felling, lopping or clearing any tree or vegetation adjacent to a public telecommunication licensee's installation or plant, the owner or occupier shall give the licensee 14 days' notice in writing of his intention to do so and shall take all such reasonable precautions as the licensee may require for the protection of such installation or plant.

(6) If any such owner or occupier fails to give notice as provided under subsection (5) or having given notice fails to take any such reasonable precautions as the public telecommunication licensee may have required, he shall be liable to pay the licensee any cost and expense incurred by the licensee for any damage caused to any such installation or plant, and a certificate purporting to be under the hand of the Chief Executive of the licensee stating the amount of the cost and expense incurred by the licensee shall be prima facie evidence of the amount due from the owner or occupier.

(7) If the amount due for the cost and expense is not paid within 7 days after demand, the amount may be recovered in the same manner as if it were a simple contract debt.

(8) If any tree is felled or vegetation is cleared upon land adjacent to a public telecommunication licensee's installation or plant, it shall be presumed until the contrary is proved that the tree was felled or the vegetation was cleared by the owner or occupier of the land or by his employees or agents acting as such.

Provision of space or facility by developer or owner of building.

19. Any developer or owner of a building who requires any telecommunication service of a telecommunication licensee shall provide at his expense, and in accordance with such specifications as the Authority may publish, such space and

facilities within or on the building and access thereto, as may be necessary for the operation of any installation or plant to be used in providing the telecommunication service.

Provision of facilities for radio-communication.

20. (1) Any person who intends to install, erect or construct, within a radius of 200 meters from the site of a telecommunication licensee's installation or plant used in connection with its radio-communication service, any building more than 30 meters above ground level shall notify the licensee in writing before carrying out any such installation, erection or construction.

(2) The telecommunication licensee may, after receiving such notification from the person, make arrangements with the person for the licensee to enter upon the building at any reasonable time to provide such accommodation or other facilities in or around the building as may be necessary or proper for any installation or plant used in connection with radio-communication service to be laid, placed, constructed, erected or installed in, on or around the building.

(3) Where, in the opinion of a telecommunication licensee, a building which is installed, erected or constructed after the licensee's installation or plant used in connection with its radio-communication service was laid, placed, constructed, erected or installed in or around the building, interrupts or interferes with the licensee's radio-communication service or system, the licensee may, with the approval of the Authority, at any reasonable time, enter upon the building to provide such accommodation or other facilities in or around the building as may be necessary or proper for such installation or plant to be laid, placed, constructed, erected or installed in, on or around the building for the purposes of eliminating such interruption or interference.

(4) The telecommunication licensee shall pay compensation to the owner or occupier of any building for any disturbance, disability or damage caused as a result of any act of the licensee under subsection (2) or (3).

(5) For the purposes of this section and section 19, "a building" means any permanent or temporary building and includes any structure or erection of any kind (whether permanent or temporary) and any extension, modification or alteration made thereto.

Provision of installation, plant or system or space or facilities by direction of Authority.

21. (1) Where the Authority considers it necessary that any telecommunication service should be provided to any building, whether completed or not, or that the quality of a telecommunication service provided to any building be enhanced, the Authority may by direction —

- (a) require, in connection with paragraph (b), the developer or owner of the building or land to provide at his expense, within such period as may be specified in the direction, such space and facilities within or on the building or land, and access thereto, as the Authority may specify in the direction; and
 - (b) require any telecommunication licensee to install, within such period as may be specified in the direction, such installation, plant or system as the Authority considers necessary for the provision, or the enhancement of quality, of the telecommunication service.
- (2) Any direction under subsection (1) may include —
 - (a) a requirement that the telecommunication licensee shall contribute, wholly or partly, to such costs and expenses incurred for the provision of any installation, plant or system, or space or facilities under subsection (1) as the Authority may determine; and
 - (b) such other requirements as the Authority may specify.
- (3) Any person who fails to comply with any requirement in a direction under subsection (1) shall be guilty of an offence.

Sharing of installation, plant or system.

22. (1) The Authority may direct any telecommunication licensee to co-ordinate and co-operate, in such manner and on such terms as the Authority may specify, with any other person, in the use or sharing of any installation, plant or system, or part thereof, used for telecommunications.

(2) Any person who fails to comply with any direction under subsection (1) shall be guilty of an offence.

Disputes as to compensation.

23. (1) If any dispute arises concerning the sufficiency of compensation to be paid under subsection (2) of section 12, section 13, subsection (1) of section 14, subsection (2) of section 16, subsection (6) of section 17, subsection (2) of section 18 and subsection (4) of section 20, it shall, on application for that purpose by any aggrieved person to the Authority, be determined by the Authority.

(2) If any aggrieved person is dissatisfied with the Authority's determination, he may, within 14 days of the determination, appeal to the Minister whose decision shall be final.

Precautions in execution of work.

24. The execution of any work by a public telecommunication licensee under this Order which may affect any street, railway, river, canal, or other waterway or any system of irrigation, drainage or water supply or any telecommunications, harbour works or other public or private works, and the erection of any installation or plant used for telecommunications whether over, on or under the ground shall be carried out in a lawful manner having regard to the safety of any person or property.

Exemption from distress and attachment etc.

25. (1) The installation or plant used for telecommunications of a public telecommunication licensee shall not be subject to distress or be liable to be taken in execution under any process of a court in any bankruptcy or insolvency proceedings against any person without the prior approval of the Minister in writing.

(2) Every installation or plant used for telecommunications placed under, over, along, across, in or upon any property by a public telecommunication licensee shall remain the property of the licensee concerned whether or not it has become in whole or in part a fixture.

PART IV**CODES OF PRACTICE AND DIRECTIONS****Code of practice and standards of performance.**

26. (1) The Authority may issue or approve and, from time to time, review codes of practice and standards of performance in connection with —

- (a) the operation of telecommunication systems and equipment;
- (b) the provision of telecommunication services; and
- (c) the conduct of telecommunication licensees in the provision of telecommunication services.

(2) If any provision in any code of practice or standard of performance issued or approved by the Authority is inconsistent with any regulations made under this Order, such provision shall, to the extent of the inconsistency, either have effect subject to such regulation or, where appropriate, having regard to such regulation, shall not have effect.

(3) The Authority may exempt, either generally or for such time as the Authority may specify, any telecommunication licensee from any provision in any code of practice or standard of performance.

(4) Every telecommunication licensee shall comply with the relevant codes of practice and standards of performance.

Directions affecting telecommunication licensees.

27. (1) The Authority may give directions to be observed by telecommunication licensees —

- (a) to ensure the reliability of the provision of any telecommunication service to the public;
- (b) to ensure the technical compatibility and safety of operation of any equipment or telecommunication system;
- (c) to ensure fair and efficient market conduct by telecommunication licensees; or
- (d) in the public interest.

(2) A direction under subsection (1) —

- (a) shall require the telecommunication licensee concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the direction or are of a description as specified therein;
- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under that direction; and
- (c) may be revoked at any time by the Authority.

(3) Before giving a direction to any telecommunication licensee under subsection (1), the Authority shall, unless the Authority in respect of any particular direction considers that it is not practicable or desirable, give notice —

- (a) stating that the Authority proposes to make the direction and setting out its effect; and
- (b) specifying the time within which representations or objections to the proposed direction may be made,

and shall consider any representations or objections which are duly made.

(4) Any telecommunication licensee who is aggrieved by any direction of the Authority under subsection (1) may, within 14 days after the licensee is served with the direction, appeal to the Minister whose decision shall be final.

(5) Every telecommunication licensee shall comply with every direction of the Authority given to the licensee under this section.

Advisory guidelines.

28. (1) The Authority may make written advisory guidelines about any aspect of telecommunications.

(2) Advisory guidelines, for example, may be made about —

- (a) any matter in respect of which codes of practice and standards of performance may be made under section 26;
- (b) the use, construction, design or performance of anything;
- (c) interference with radio-communications; or
- (d) frequency allocation and co-ordination.

(3) The Authority must —

- (a) give a copy of each advisory guideline it makes to the Minister; and
- (b) publish each advisory guideline in the way it thinks fit.

PART V

TELECOMMUNICATION CABLE DETECTION WORK

Telecommunication cable detection work to be carried out before earthworks.

29. (1) Subject to subsection (2), no person shall commence or carry out, or cause or permit the commencement or carrying out of, any earthworks which are within the vicinity of any telecommunication cable belonging to or under the management or control of a telecommunication system licensee unless —

- (a) he has given to the telecommunication system licensee not less than 7 days' (or such other period as the Authority may allow in any particular case) notice in writing of the date on which it is proposed to commence the earthworks;

(b) he has obtained from the telecommunication system licensee the necessary information on the location of such telecommunication cable and has consulted the licensee on the steps to be taken to prevent the telecommunication cable from damage while the earthworks are being carried out; and

(c) he has caused telecommunication cable detection work to be performed or carried out by a licensed telecommunication cable detection worker in order to confirm the location of the telecommunication cable.

(2) Nothing in subsection (1) shall prohibit a person from commencing or carrying out any earthworks where he has reasonable cause to believe that it is necessary to do so in the interest of public or private safety except that the person shall, not more than 7 days after the earthworks have been commenced or carried out, give to the telecommunication system licensee notice in writing stating the nature and extent of those earthworks.

(3) It shall be the duty of the person who carries out any earthworks referred to in subsection (1) —

(a) to comply with all reasonable requirements of the telecommunication system licensee for the prevention of damage to the telecommunication cable;

(b) to ensure that reasonable precautions are taken when carrying out such earthworks to prevent any damage to the telecommunication cable, including but not limited to site supervision of the earthworks; and

(c) to allow the telecommunication system licensee reasonable access to the work site for the purpose of inspecting or taking any necessary measures to protect the telecommunication cable.

(4) It shall be the duty of a telecommunication system licensee to whom a notice under subsection (1)(a) has been given —

(a) to promptly inform the person who has given him the notice of the location of the telecommunication cable and to provide such person with any other information as may be necessary to enable him to ascertain the exact location of the telecommunication cable;

(b) to advise the person who has given him the notice on the precautions to be taken to prevent damage to the telecommunication cable; and

(c) to take all such measures at the work site as may be reasonable and necessary for the protection of the telecommunication cable from

damage and, in so doing, the telecommunication system licensee shall have regard to the potential risks and dangers that can arise from any damage to the telecommunication cable.

(5) No person other than a licensed telecommunication cable detection worker shall commence or carry out any telecommunication cable detection work within the vicinity of any telecommunication cable belonging to or under the management or control of a telecommunication system licensee where such telecommunication cable detection work is commenced or carried out in connection or combination with or in relation to any earthworks carried out or to be carried out.

(6) Any person who contravenes or fails to comply with subsection (1) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 3 years or both.

(7) Subject to subsection (8), in any proceedings for an offence under subsection (6), it shall be a defence for the person charged to prove —

(a) that he took all reasonable steps to discharge his duty under subsection (1) or (3), as the case may be; or

(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(8) If in any proceedings for an offence under subsection (6) the defence involves acting on information supplied by a telecommunication system licensee or a licensed telecommunication cable detection worker, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period of 14 clear days before the hearing, he has served on the prosecutor a notice in writing giving such information as was then in his possession identifying or assisting in the identification of the person who supplied him with the information.

(9) Any person who contravenes or fails to comply with subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 12 months or both.

Powers of Authority in relation to telecommunication cable detection work.

30. The Authority may —

(a) grant a telecommunication cable detection work licence permitting a person to perform such telecommunication cable detection work as is specified in the licence and may suspend, cancel, alter, extend, renew or replace any such licence;

- (b) classify any telecommunication cable detection work licence in such manner as it determines;
- (c) specify the nature of the telecommunication cable detection work in respect of which a telecommunication cable detection work licence is granted and restrict such work to any type or class of telecommunication cable detection work;
- (d) specify the circumstances or manner in which licensed cable detection workers may perform or carry out telecommunication cable detection work;
- (e) impose any terms, conditions or restrictions on any telecommunication cable detection work licence;
- (f) require any public telecommunication licensee to conduct approved courses or training, including refresher courses, and provide for examinations for telecommunication cable detection workers;
- (g) keep a register of licensed telecommunication cable detection workers; and
- (h) do any act or thing which is necessary or convenient to carrying out the objects of this Part or is incidental thereto.

Licensed telecommunication cable detection workers.

31. (1) Any person who, not being a licensed telecommunication cable detection worker, advertises or holds himself out or conducts himself in any way or by any means as a person who is a licensed telecommunication cable detection worker shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

(2) No person other than a licensed telecommunication cable detection worker shall be entitled to recover in any court any charge, fee or remuneration for any telecommunication cable detection work performed or carried out by the person.

Duty to enquire before excavation.

32. Any person who digs, bores, trenches, grades, excavates or breaks any ground with any mechanical equipment or explosive or allows his employee or agent to do so without first ascertaining the location of any telecommunication cable belonging to or under the management or control of any telecommunication system licensee that may be interfered with shall be guilty of an offence.

PART VI

OFFENCES AND PENALTIES

Unlawful operation of telecommunication system or service.

33. (1) Subject to this section and section 4, any person who establishes, installs, maintains, provides or operates a telecommunication system or service within Brunei Darussalam without a licence granted under section 5 or otherwise infringes the privilege conferred upon the Authority by section 3 shall be guilty of an offence.

(2) Any person guilty of an offence under this section shall be liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 3 years or both and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(3) In the case of an offence in relation to a telecommunication system or service not extending beyond Brunei Darussalam, the person or every person operating the system or service (or, if different people run different parts of the system or service, each of them) shall be guilty of an offence and, in the case of an offence in relation to a telecommunication system or service extending beyond Brunei Darussalam, the person or every person operating that portion of such system or service within Brunei Darussalam (or, if different people operate different parts of the system or service, each of them) shall be guilty of an offence and shall be similarly liable.

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

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

(6) Where the defence provided by subsection (5) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in his possession.

Prohibitions in respect of telecommunication and radio-communication equipment.

34. (1) No person shall —

(a) offer for sale, sell or possess for sale any telecommunication equipment; or

(b) possess any radio-communication equipment,

except and in accordance with a licence granted under section 5 or any regulations made under this Order.

(2) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence.

Penalty for unlicensed station.

35. (1) Any person who establishes, installs, maintains, provides or operates a radio-communication system or service or any radio-communication equipment in any place or on board any vessel, aircraft or in any vehicle in Brunei Darussalam without a licence granted under section 5 or any regulations made under this Order shall be guilty of an offence.

(2) Any person who is in possession of any radio-communication equipment shall be deemed, until the contrary is proved, to have operated the same.

(3) The occupier of any dwelling-house or premises in which is installed any radio-communication equipment in respect of which a licence is not in force shall be guilty of an offence.

(4) It shall be a defence in any proceedings for an offence under subsection (3) that the occupier was not aware and could not with reasonable diligence have become aware of the existence in the dwelling-house or premises of the radio-communication equipment.

Exemption from sections 33, 34 and 35.

36. Subject to such conditions as the Authority may impose, sections 33, 34 and 35 shall not apply to any person who has been issued with a licence for the installation or working of any telecommunication equipment under the provisions of any written law in force in any country which is a party to a treaty or any other arrangement to which Brunei Darussalam is a party pursuant to which licences issued under the written laws in force in each country for the installation or working of any telecommunication equipment are recognised as having force in the other country.

Powers of search and seizure.

37. (1) Any police officer not below the rank of Inspector may, if he has reasonable grounds for believing that a telecommunication system or service has been established, installed, maintained, operated or provided in contravention of this Order or any regulations made thereunder or in breach of any licence granted by the Authority or that any telecommunication equipment used is of a type that is not approved by the Authority under section 9 or that the telecommunication equipment is imported in contravention of any of the provisions of this Order or any regulations made thereunder —

(a) in the case of any telecommunication equipment or any telecommunication system or service, other than any radio-communication system or service, enter and inspect any place in which the telecommunication equipment is located or the telecommunication system or service is established, installed, maintained, operated or provided, and may seize any telecommunication system or equipment found therein which appears to be used for or in connection with telecommunications; and

(b) in the case of any radio-communication system or service, enter any place in Brunei Darussalam or stop or board any vessel, aircraft or vehicle and inspect any place therein and may seize any radio-communication system or equipment found therein which appears to be used or is capable of being used for or in connection with radio-communications.

(2) Where any police officer not below the rank of Inspector has reasonable grounds for believing that an offence has been or is being committed under section 33, 34, 35, 39 or 42, he may seize any telecommunication system or equipment or any radio-communication system or equipment, or any other thing used in the commission of the offence.

(3) If there is no prosecution with regard to any equipment or system seized under this section, the equipment or system shall be taken and deemed to be forfeited to the Authority unless a claim is made within 2 months from the date of seizure.

(4) Any person asserting that he is the owner of the equipment or system may personally or by his authorised agent give written notice to the Authority that he claims the same.

(5) On receipt of this notice, the Authority may direct that the equipment or system be released or may refer the matter to a Magistrate's Court.

(6) The Magistrate's Court may proceed to the examination of the matter and upon examination shall order that the equipment or system be forfeited or released.

Sealing of telecommunication system or equipment etc.

38. (1) Where it appears to any police officer not below the rank of Inspector that it is not practicable to remove from where it is found any telecommunication system or equipment or any radio-communication system or equipment or any radio-communication system or equipment seized by him under section 37 by reason of its nature, size or amount, he may by any means seal the telecommunication system or equipment or the radio-communication system or equipment.

(2) Any person who, without lawful authority, breaks, tampers with or damages any seal referred to in subsection (1), or removes any telecommunication system or equipment or any radio-communication system or equipment which has been sealed under that subsection, or attempts to do so, shall be guilty of an offence.

Using unlawful telecommunication system or service.

39. Any person who knowing or having reason to believe that a telecommunication system or service has been established, installed, maintained, operated or provided in contravention of this Order, whether or not such system or service is connected to or provided through a public communication licensee's installation or plant, uses the system or service for communication or for performing any service incidental thereto or delivers any message for transmission by the system or service or accepts delivery of any message sent shall be guilty of an offence.

Obstruction of public telecommunication licensees.

40. (1) Any person who —

- (a) whilst in any premises used for the purposes of the business of a public telecommunication licensee, intentionally obstructs the course of business of the licensee concerned; or
- (b) assaults or intentionally obstructs or incites anyone to obstruct or impede an officer or employee of a public telecommunication licensee in the performance of his duties,

shall be guilty of an offence.

(2) A public telecommunication licensee may require any person guilty of an offence under subsection (1) to leave the premises used for the purposes of its business and, if any such offender who is so required refuses or fails to comply with the requirement, he may be removed by an employee of the licensee.

Intentional damage to installation or plant used for telecommunications.

41. Any person who intending —

- (a) to prevent or obstruct the transmission or delivery of any message;
- (b) to intercept or to acquaint himself with the contents of any message; or
- (c) to commit mischief,

damages, removes, tampers with or touches any installation or plant or any part thereof used for telecommunications belonging to a public telecommunication licensee or interferes with the radio-communication service or system of a public telecommunication licensee shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

Offences by officer, employee or agent of public telecommunication licensees.

42. (1) Any officer, employee or agent of a public telecommunication licensee who —

- (a) wilfully secretes, makes away with or alters any message or record of any message; or
- (b) except in obedience to an order under the hand of the Minister or the direction of a court, wilfully omits to transmit or intercepts or acquaints himself with or detains any message or part thereof or deliberately causes a call or connection to be disconnected or not to be connected,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

(2) Paragraph (b) of subsection (1) shall not apply to —

- (a) any act or thing done by an officer, employee or agent of a public telecommunication licensee for or in connection with the installation of a telecommunication line, equipment or the operation or maintenance of a telecommunication system; or
- (b) the tracing of the origin of any telephone call at the request of the subscriber of a telecommunication service.

Fraudulent use of telecommunication service.

43. Any person who dishonestly uses or permits another person to use any telecommunication service provided by a telecommunication licensee 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 \$10,000, imprisonment for a term not exceeding 3 years or both.

Possession or supply of anything for fraudulent purpose in connection with use of telecommunication service.

44. (1) Subsection (2) shall apply if a person has in his custody or under his control any thing which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 43 applies.

(2) If the person intends —

(a) to use the thing referred to in subsection (1) —

(i) to obtain such a service dishonestly; or

(ii) for a purpose connected with the dishonest obtaining of such a service;

(b) dishonestly to allow the thing to be used to obtain such a service; or

(c) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service,

he shall be guilty of an offence.

(3) Subsection (4) shall apply if a person supplies or offers to supply any thing which may be used for the purpose of obtaining, or for a purpose connected with the obtaining of, a service to which section 43 applies.

(4) If the person supplying or offering to supply the thing referred to in subsection (3) knows or believes that the person to whom it is supplied or offered intends or intends if it is supplied to him —

(a) to use the thing —

(i) to obtain such a service dishonestly; or

(ii) for a purpose connected with the dishonest obtaining of such a service;

- (b) dishonestly to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service; or
- (c) to allow the thing to be used for a purpose connected with the dishonest obtaining of such a service,

he shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding \$100,000, imprisonment for a term not exceeding 10 years or both.

Sending false message.

45. Any person who transmits or causes to be transmitted a message which he knows to be false or fabricated shall be guilty of an offence and shall be liable on conviction —

- (a) in the case where the false or fabricated message contains any reference to the presence in any place or location of a bomb or other thing liable to explode or ignite, to a fine not exceeding \$50,000, imprisonment for a term not exceeding 7 years or both; and
- (b) in any other case, to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

Fraudulent retention of messages.

46. Any person who fraudulently retains or wilfully secretes, makes away with or detains a message or record of a message which ought to have been delivered to some other person or being required by a public telecommunication licensee to deliver up any such message or record thereof neglects or refuses to do so shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

Protection of installation or plant used for telecommunications.

47. (1) No person shall, without the written approval of the Authority —

- (a) lay or carry any mains, pipes, conduits or wires in, along, through, across, over or under any street or place in a manner which is likely to interfere with or cause damage to any installation or plant used for telecommunications; or

(b) affix any; placard, advertisement, notice or other thing in or on, or paint, tar or in any way disfigure any installation or plant used for telecommunications.

(2) Any approval under subsection (1) may be refused by the Authority or granted by the Authority on such terms and conditions as it may determine.

(3) Where the commission by any person of an offence under subsection (1) is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(4) In any proceedings for an offence under subsection (1), it shall, subject to subsection (5), be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) Where the defence provided by subsection (4) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in his possession.

(6) Any person who contravenes or fails to comply with subsection (1) shall be guilty of an offence and shall, in addition to the forfeiture of any equipment seized, be liable on conviction to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part thereof during which the offence continues after conviction.

Prohibition of false notice relating to public telecommunication licensees' installation or plant.

48. Any person who, without the permission of a public telecommunication licensee, places or maintains in or on any house or place, belonging to him or under his control, any word, letter or mark which signifies or implies or may reasonably lead the public to believe that the house or place is part of a public telecommunication licensee's installation or plant shall be guilty of an offence.

Damage to public telecommunication licensees' installation or plant.

49. (1) Any person who wilfully removes, destroys or damages any installation or plant used for telecommunications shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding 3 years or both.

(2) Notwithstanding subsection (1), any person who, in the course of carrying out any earthworks, damages or suffers to be damaged any cable of a

telecommunication system belonging to or under the management or control of a telecommunication system licensee shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million, imprisonment for a term not exceeding 5 years or both.

(3) Where an offence under subsection (2) is committed by any person acting as the agent or employee of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under that subsection in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance or that it was not attributable to any neglect on his part.

(4) In any proceedings for an offence under subsection (2), it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(5) If in any proceedings for an offence under subsection (2) the defence involves acting on information supplied by a telecommunication system licensee or a licensed telecommunication cable detection worker, the person charged shall not, without leave of the court, be entitled to rely on that defence unless within a period of 14 clear days before the hearing, he has served on the prosecutor a written notice giving such information as was then in his possession identifying or assisting in the identification of the telecommunication system licensee or telecommunication cable detection worker.

Compensation for damage caused to public telecommunication licensees' installation or plant.

50. (1) Any person who removes, destroys or damages, whether wilfully, negligently, accidentally or otherwise, the installation or plant used for telecommunications shall, in addition to any penalty for which he is liable for an offence under this Order, be liable to pay compensation for the damage he has done and the compensation shall be recoverable by civil action or suit before any court of competent jurisdiction.

(2) Subject to subsection (1), any court before which a person is charged with an offence under this Order may assess the compensation payable under this section and may make an order for the payment of the same.

(3) Any order under subsection (2) may be enforced as if it were a judgment in a civil action or suit.

Penalty for removing any mark denoting used device for telephony purposes.

51. (1) Any person who, with fraudulent intent, erases or removes from any device, any mark put or impressed upon the device denoting that the same has been used, or sells or uses any such device shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

(2) For the purpose of this section, "device" means any device provided for use by a public telecommunication licensee for accessing any telecommunication equipment of the licensee to enable the telecommunication service of the licensee to be used.

Failure to disconnect equipment not approved under section 9.

52. Where —

- (a) any person has under his control a telecommunication system or equipment connected to the telecommunication system or equipment of a telecommunication system licensee which is of a type not approved by the Authority under section 9;
- (b) the Authority has given to the person a written notice stating that —
 - (i) the telecommunication system or equipment under his control is of a type that has not been approved by the Authority under section 9; and
 - (ii) the person must disconnect the telecommunication system or equipment from the telecommunication system or equipment of the telecommunication system licensee within such period as specified in the notice; and
- (c) the person has failed to comply with any written notice under paragraph (b),

then the person shall be guilty of an offence.

PART VII

INTERNATIONAL OBLIGATIONS AND NATIONAL INTERESTS

Right to conduct international business dealings.

53. For the purposes of the conduct of any international telecommunication service by a public telecommunication licensee, and subject to this Order, the

licensee may enter into direct communication, arrangement and agreement with the lawfully constituted telecommunication authority of any country or with any duly authorised international agency or organisation concerned with telecommunication matters for the purpose of providing facilities, fixing rates, arranging terms of payment or accounting, for operational, engineering or administrative purposes or for any other purpose necessary for the proper fulfilment of its functions.

Government's overriding international rights.

54. Nothing in section 53 shall be deemed to abrogate the right of the Government at any time to determine its relations with any country or with any international agency or organisation and a public telecommunication licensee shall so discharge its responsibilities and conduct its business as to comply with and fulfil all international agreements, conventions or undertakings relating to telecommunication to which Brunei Darussalam is a party.

Liability for international financial obligations.

55. A public telecommunication licensee shall be fully responsible for meeting all financial obligations arising from the operation of any international telecommunication service and shall settle accounts with other telecommunication authorities.

Contribution by Government.

56. Where the Government considers it necessary that any telecommunication service of an exceptional nature should be provided, and where a public telecommunication licensee considers it uneconomic to provide the service without contribution from the Government, the Government may make such contribution towards the capital outlay necessary to provide any such service as may be estimated by the licensee and agreed to by the Government.

Provisions to Government of telecommunication services etc.

57. The Minister may direct a public telecommunication licensee to undertake and provide such telecommunication services and facilities as may be necessary for aeronautical, maritime, meteorological, government, defence or other purposes and upon being so directed, the licensee shall so provide the services or facilities, and shall be entitled to fair and proper payment therefor.

System of universal service provision.

58. The Authority may, with the approval of the Minister, determine a system to promote the widespread availability and usage of telecommunication services

throughout Brunei Darussalam by encouraging the installation of telecommunication systems in underserved areas or for underserved groups within the community.

Definition of "underserved areas" and "underserved groups within the community".

59. (1) A determination by the Authority under section 58 shall include definitions of "underserved areas" and "underserved groups within the community".

(2) In determining the definition of "underserved areas", the Authority may have regard to —

- (a) the level of competition in particular areas or places;
- (b) the availability of telecommunication services in particular areas or places; and/or
- (c) the commercial viability of installing telecommunication systems in particular areas or places.

(3) In determining the definition of "underserved groups within the community", the Authority may have regard to —

- (a) the availability of services to such groups; and/or
- (b) any barriers to the use of available services.

Universal Service Provision Fund.

60. For the purposes of this Order, a fund to be known as the Universal Service Provision Fund (USP Fund) is established and it shall be controlled and operated by the Authority.

Directions by Minister.

61. (1) The Minister may, after consultation with the Authority or any public telecommunication licensee, give to the Authority or licensee, as the case may be, such directions as the Minister thinks fit as to the exercise by the Authority or that licensee of its functions under this Order.

(2) Without prejudice to subsection (1), if it appears to the Minister to be requisite or expedient to do so —

- (a) on the occurrence of any public emergency, in the public interest or in the interests of public security, national defence, or relations with the government of another country; or

(b) in order —

- (i) to discharge or facilitate the discharge of an obligation binding on the Government by virtue of its being a member of an international organisation or a party to an international agreement.
- (ii) to attain or facilitate the attainment of any other object the attainment of which is in the opinion of the Minister requisite or expedient in view of the Government being a member of an international organisation or a party to an international agreement; or
- (iii) to enable the Government to become a member of an international organisation or a party to an international agreement,

the Minister may, after consultation with the Authority or any public telecommunication licensee, give such directions to the Authority or that licensee as are necessary in the circumstances of the case.

(3) Any direction given under subsection (1) or (2) may include —

- (a) provisions for the prohibition or regulation of such use of telecommunications in all cases or of such cases as may be considered necessary;
- (b) provisions for the taking of, the control of or the usage for official purposes of, all or any such telecommunication system and equipment; and
- (c) provisions for the stopping, delaying and censoring of messages and the carrying out of any other purposes which the Minister thinks necessary.

(4) Nothing in any direction give under subsection (3) shall apply to the use of any telecommunications for the purpose of making or answering signals of distress

(5) The Authority and any public telecommunication licensee shall give effect to any direction given to it under subsection (1) or (2) notwithstanding any other duty imposed on the Authority or the licensee by or under this Order.

(6) The Authority and any public telecommunication licensee shall not disclose any direction given to that person under subsection (1) or (2) if the Minister notifies that person that the Minister is of the opinion that the disclosure of the directions is against the public interest.

(7) The Minister may –

- (a) pay compensation for any damage caused to a public telecommunication licensee by reason of its compliance with the directions of the Minister under paragraph (b) of subsection (3); or
- (b) make grants to public telecommunication licensees for defraying or contributing towards any losses which they may sustain by reason of their compliance with the directions of the Minister under any other provisions of this section.

(8) Any sums required by the Minister for paying compensation or making grants under subsection (7) shall be paid out of the Consolidated Fund.

(9) If any doubt arises as to the existence of a public emergency or as to whether any act done under this section was in the public interest or in the interests of public security, national defence or relations with the government of another country, a certificate signed by the Minister shall be conclusive evidence of the matters state therein.

PART VIII

ENFORCEMENT POWERS AND PROCEDURES

Power to require information etc.

62. (1) The Authority or any officer authorised by the Authority in that behalf may, for the purpose of discharging its functions under this Order, by order –

- (a) require any person to furnish the Authority with any information in his possession which relates to any telecommunication service or telecommunication system; and
- (b) require any person who has in his custody or under his control any document which relates to any telecommunication service or telecommunication system –
 - (i) to furnish the Authority with a copy of or extract from the document; or
 - (ii) unless the document forms part of the records or other documents of a court or public authority, to transmit the document itself to the Authority for inspection.

(2) The Authority or such duly authorised officer shall be entitled without payment to keep any copy or extract furnished to him under subsection (1).

(3) The Authority or any officer authorised by the Authority in that behalf shall at all reasonable times in the day have full and free access to all buildings, places, books, documents and other papers for the purpose of discharging its functions under this Order, and may, without payment, inspect, copy or make extracts from any such books, documents or papers.

(4) The Authority may take possession of any equipment, books, documents or papers where in its opinion —

- (a) the equipment, books documents or papers may be interfered with or destroyed unless possession is taken; or
- (b) the equipment, books documents or papers may be required as evidence in proceedings for an offence under this Order or any regulations made thereunder.

(5) The rights conferred by this section shall, in relation to information recorded otherwise than in legible form include the right to require the information to be made available in legible form for inspection or for a copy or extract to be made of or from it.

(6) Any person who —

- (a) fails to comply with any requirement specified in any order under subsection (1);
- (b) intentionally alters, suppresses or destroys any document or information which he has been required by any order under subsection (1) to furnish or transmit to; or
- (c) in furnishing any information required of him under any order under subsection (1), makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 12 months or both and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(7) No person shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy.

Powers of arrest and search in respect of seizable offences.

63. (1) Any police officer may arrest without warrant —

- (a) any person found committing or attempting to commit or employing or aiding any person to commit a seizable offence under this Order, or
- (b) any person against whom a reasonable suspicion exists that he has been guilty of a seizable offence under this Order,

and may search any person so arrested, except that no female shall be searched except by a female.

(2) Every person so arrested shall, together with any article as to which an offence may have been committed or attempted to be committed, be taken to a police station.

(3) For the purposes of this section, offences punishable under sections 33, 41, 42, 43, 44, 45, 46, 49 and 52 shall be deemed to be seizable offences within the meaning of the Criminal Procedure Code (Chapter 7).

Powers of search and arrest in respect of offences under section 33 or 44.

64. (1) Whenever it appears to any police officer that an offence under section 33 or 44 is being committed or is about to be committed or attempted, or that any article is concealed or deposited or contained in or on any vessel, aircraft, vehicle or premises in contravention of either of those sections, the police officer may, if he has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the article is likely to be removed —

- (a) stop and examine the vessel, aircraft or vehicle or enter the premises and there search for and take possession of any article and of any book or document which is reasonably believed to have a bearing on the case; and
- (b) arrest any person being in the vessel, aircraft, vehicle or premises in whose possession the article may be found or whom the police officer may reasonably suspect to have concealed or deposited the article and may search any person so arrested, except that no female shall be searched except by a female.

(2) Every person so arrested shall, together with any such article, be taken to a police station.

Obstruction of police officer.

65. Any person who intentionally obstructs a police officer in the execution of his duty under section 37 or 64 shall be guilty of an offence.

No costs or damages or other relief arising from seizure to be recoverable unless seizure without reasonable or probable cause.

66. No person shall, in any proceedings before any court in respect of any equipment, article, book or document seized in the exercise or the purported exercise of any power conferred under this Order, be entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the equipment, article, book or document or the payment of their value unless the seizure was made without reasonable or probable cause.

Composition of offences.

67. (1) Any police officer not below rank of Inspector specially authorised by name in that behalf by the Minister, or any employee of the Authority specially authorised by name in that behalf by the Chief Executive, may in his discretion compound any such offence under this Order or any regulations made thereunder as may be prescribed as being an offence which may be compounded by collecting from the person reasonably suspected of having committed the offence a sum not exceeding \$1,000.

(2) The Authority may, with the approval of the Minister, make regulations prescribing the offences which may be compounded.

(3) All sums collected under this section shall be paid to the Authority.

General penalties.

68. Any person guilty of an offence under this Order or any regulations made thereunder for which no penalty is expressly provided shall, in addition to the forfeiture of any article seized, be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 3 years or both.

Saving of prosecutions under other written laws.

69. Nothing in this Order shall prevent any person from being prosecuted under any other written law for any act or omission which constitutes an offence under this Order or any regulations made thereunder, or from being liable under that other written law to any punishment or penalty higher or other than that provided by this Order or the regulations, but no person shall be punished twice for the same offence.

Jurisdiction of Courts.

70. A Magistrate's Court shall have jurisdiction to hear and determine all offences under this Order and, notwithstanding anything to the contrary in the Criminal Procedure Code (Chapter 7), shall have power to impose the full penalty or punishment in respect of any offence under this Order.

Offences by bodies of persons.

71. Where an offence under this Order or any regulations made thereunder has been committed by a company, firm, society or other body of persons, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer or a partner of a company, firm, society or other body of persons or was purporting to act in such capacity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

PART IX

GENERAL PROVISIONS

Appeal to Minister.

72. (1) Any telecommunication licensee aggrieved by —

(a) any decision of the Authority in the exercise of any discretion vested in it by or under this Order; or

(b) anything contained in any code of practice or standard of performance or in any direction of the Authority given under section 27,

may appeal to the Minister in the prescribed manner.

(2) Unless otherwise provided, where an appeal is lodged under this section the decision, direction or other thing appealed against shall be complied with until the determination of the appeal.

(3) The Minister may determine an appeal under this section by confirming, varying or reversing any decision or direction of the Authority or by amending any code of practice or standard of performance.

(4) The decision of the Minister in any appeal shall be final.

Exclusion of liability of public telecommunication licensees.

73. A public telecommunication licensee shall not be liable in respect of any injury, loss or damage suffered by any person by reason of —

- (a) any failure to provide or delay in providing any telecommunication services or any equipment associated therewith or service ancillary thereto;
- (b) any failure, interruption, suspension or restriction of any telecommunication service or service ancillary thereto or delay of, or fault in any communication by means of telecommunications;
- (c) any error in, or omission of, any information transmitted through telecommunication; or
- (d) any loss of secrecy in communication arising from the use of any telecommunication service,

which is due to the act or default of another person, or an accident or some other cause beyond the public telecommunication licensee's control.

Service of documents.

74. (1) Unless otherwise expressly provided in this Order, any notice, order or document required or authorised by this Order or any regulations made thereunder to be given or served on any person, and any summons issued by a court in connection with any offence under this Order or any regulations made thereunder may be served on the person concerned —

- (a) by delivering it to the person or to some adult member or employee of his family at his last known place of residence;
- (b) by leaving it at his usual or last known place of residence or place of business in a cover addressed to him;
- (c) by affixing it to some conspicuous part of his last known place of residence;
- (d) by sending it by registered post addressed to the person at his usual or last known place of residence or place of business; or
- (e) where the person is a body corporate —
 - (i) by delivering it to the secretary or other like officer of the body corporate at its registered or principal office; or

- (ii) by sending it by registered post addressed to the body corporate at its registered or principal office.

(2) Any notice, order, document or summons sent by registered post to any person in accordance with subsection (1) shall be deemed to be duly served on the person to whom the letter is addressed at the time when the letter would, in the ordinary course of post, be delivered and in proving service of the same, it shall be sufficient to prove that the envelope containing the notice, order, document or summons was properly addressed, stamped and posted by registered post.

Excluded matters.

75. This Order shall not apply to the licensing of any broadcasting service or any broadcasting apparatus under the Broadcasting Act (Chapter 180) except in respect of the regulation of any telecommunication system required for the operation of any broadcasting service or the approval of any broadcasting apparatus used in accordance with section 9.

Exemption by Minister.

76. The Minister may exempt any person or class of persons from all or any of the provisions of this Order.

Regulations.

77. (1) The Authority may, with the approval of the Minister, make regulations for any purpose for which regulations are required to be made under this Order and generally for carrying out the purposes and provisions of this Order.

(2) Without prejudice to the generality of subsection (1), the Authority may, with the approval of the Minister, make regulations for or with respect to all or any of the following matters —

- (a) the proficiency examinations, including the syllabi and the details thereof, for the certification of competency of individuals operating telecommunication services or for the grant of any licence by the Authority;
- (b) the classes and the conditions for the grant of licences by the Authority;
- (c) in relation to cable detection work licences —
 - (i) the class or classes of licences to be granted, the form and duration of those licences, the terms and conditions upon, and the circumstances in, which those licences may be granted,

held, suspended, cancelled, altered, extended, renewed or replaced and the fees payable in respect thereof;

- (ii) the qualifications and other requirements for applicants for such licences, the examination or testing of such applicants, the fees payable in respect of such examination or testing and the circumstances in and conditions on which an applicant may be exempted from such examination or testing; and
- (iii) the duties and responsibilities of licensed cable detection workers;
- (d) the control and regulation of dealing in and use of telecommunication equipment;
- (e) the control and regulation of interference by radiowaves or electrical or other means of telecommunications in Brunei Darussalam;
- (f) the control and regulation of installation, wiring, cabling and other types of works to be carried out on the telecommunication systems of a public telecommunication licensee;
- (g) the implementation of section 58;
- (h) contributions by telecommunication licensees under this Order to the USP Fund and any other matters related to or incidental to the establishment and operation of the USP Fund.

Repeal.

78. The Telecommunications Act (Chapter 54) is hereby repealed.

Savings and transitional provisions.

79. (1) Any scheme, contract, document, licence, permission or resolution prepared, made, granted or approved by JTB in relation to telecommunication matters under the repealed Act shall, so far as it is not inconsistent with the provisions of this Order and except as otherwise expressly provided in this Order or in any other written law, continue and be deemed to have been prepared, made, granted or approved by the Authority under the corresponding provisions of this Order.

(2) Any subsidiary legislation made under the repealed Act or any other written law relating to telecommunication matters and in force immediately before the appointed day shall, so far as it is not inconsistent with the provisions of

this Order, continue in force as if made under this Order until it is revoked or repealed by subsidiary legislation made under this Order.

Made this 16th. day of Safar, 1422 Hijriah corresponding to the 10th. day of May, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM**