

CHAPTER 418**MALTA COMMUNICATIONS AUTHORITY ACT**

To provide for the establishment of an Authority to be known as the Malta Communications Authority and for the exercise by or on behalf of that Authority of regulatory functions regarding electronic communications, certain aspects of data protection in electronic communication, postal services, electronic commerce and similar areas in the field of communications and to make provision with respect to matters ancillary thereto or connected therewith.

*Amended by:
VII. 2004.3.*

1st August, 2000

ACT XVIII of 2000, as amended by Acts VII of 2004 and XIII of 2005; Legal Notice 426 of 2007; and Act XXX of 2007.

**PART I
PRELIMINARY**

1. The short title of this Act is the Malta Communications Authority Act. Title.

2. In this Act, unless the context otherwise requires - Interpretation.
*Amended by:
VII. 2004.4;
XIII. 2005.63;
XXX. 2007.38.*

"advisory committee" or "committee" means an advisory committee established in accordance with article 28 of this Act;

"the Act" means this Act and includes any regulations made thereunder unless the context otherwise requires;

"Appeals Board" means the Communications Appeals Board established by article 36;

"authorization" means any authorization including any general authorization, licence, right to use or permit, however so described, that a person may hold or be granted under any law which the Authority is entitled to enforce or administer;

"Authority" means the Malta Communications Authority established by article 3 and any references in this Act or any other law to the Authority shall, unless the context otherwise requires, be construed as including a reference to any person authorised by the Authority to act for or on its behalf;

"Chairman" means Chairman of the Authority and includes, in the circumstances mentioned in article 3(3), the Deputy Chairman or other person appointed to act as Chairman:

Provided that, in relation to article 28, "Chairman" means the Chairman of an advisory committee;

"communications" includes electronic communications, postal services, data protection in electronic communications, electronic commerce and such other matters as the Minister may by Order from time to time prescribe;

"Community" means the European Community;

"contractor" means a person acting in pursuance of an agreement entered into with the Authority or in accordance with article 5(5);

"decision" includes any determination, direction, licence condition, measure, requirement or specification however so described made by the Authority and the word "decision" shall be construed accordingly;

"directive" means a directive issued by the Authority in terms of article 4;

"Director General" means the Director General appointed under article 5;

"Directorates" means such directorates as are or may be established under article 5;

"employee" means a person employed by the Authority;

"financial year" means any period of twelve months ending on the 31st December, so however that the Minister may, after consultation with the Authority, vary such date;

"Minister" means the Minister responsible for communications;

"person" includes any body corporate and any body of persons whether or not it has a legal personality distinct from that of its members;

"public officer" in relation to article 11, has the same meaning assigned to it by article 124 of the Constitution but does not include a judge of the Superior Courts or a magistrate of the Inferior Courts;

"undertaking" means a person providing or authorised to provide communications networks and, or services and, or associated facilities;

"user" includes any person who uses or requests any communications service.

PART II ESTABLISHMENT, FUNCTIONS AND CONDUCT OF AFFAIRS OF THE AUTHORITY

Establishment and composition of the Malta Communications Authority.

3. (1) There shall be a body, to be known as the Malta Communications Authority, which shall consist of a Chairman and not less than four and not more than six other members.

(2) The members of the Authority shall be appointed by the Minister for a term of one year or for such longer period as may be specified in the instrument of appointment subject to a maximum of three years but the members so appointed may be re-appointed on the expiration of their term of office.

(3) The Minister may designate one of the other members of the Authority as Deputy Chairman and the member so designated shall have all the powers and perform all the functions of the Chairman during his absence or inability to act as Chairman or while the Chairman is on vacation or during any vacancy in the office of chairman, and the Minister may also, in any of the circumstances aforesaid, appoint another person to act as chairman and in such case the foregoing provisions shall apply in respect of such person.

(4) A person shall not be qualified to hold office as a member of the Authority if he -

- (a) is a Minister, Parliamentary Secretary or a member of the House of Representatives; or
- (b) is a judge or magistrate of the courts of justice;
- (c) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions as a member of the Authority:

Provided that the Minister may waive the disqualification of a person under this paragraph if such person declares the interest and such declaration and waiver are published in the Gazette.

(5) Subject to the provisions of this article, the office of a member of the Authority shall become vacant -

- (a) at the expiration of his term of office; or
- (b) if any circumstances arise that, if he were not a member of the Authority, would cause him to be disqualified for appointment as such.

(6) A member of the Authority may be removed from office by the Minister if, in the opinion of the Minister, such member is unfit to continue in office or has become incapable of properly performing his duties as a member.

(7) If a member resigns or if the office of a member of the Authority is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed to be a member to be a temporary member of the Authority; and any person so appointed shall, subject to the provisions of subarticles (5) and (6), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

(8) Any member of the Authority who has any direct or indirect interest in any contract made or proposed to be made by the Authority, not being an interest which disqualifies such member from remaining a member, shall disclose the nature of his interest at the first meeting of the Authority after the relevant facts have come to his knowledge, such disclosure shall then be recorded in the minutes of the Authority, and the member having an interest as aforesaid shall withdraw from any meetings at which such contract is discussed. Any such disclosure shall be communicated to the Minister without delay. Where the interest of the member is such as to disqualify him from remaining a member, he shall report the fact immediately to the Minister and tender his resignation.

4. (1) It shall be a purpose of the Authority to -

- (a) ensure freedom of communication and that communications shall not be limited except when this is necessary for any of the following reasons:

Purpose, functions and powers of the Authority.
Amended by:
VII. 2004.6;
L.N. 426 of 2007;
XXX. 2007.39.

- (i) the protection of the right to privacy;
 - (ii) the defence of national security, territorial integrity or public safety;
 - (iii) the prevention of disorder or crime;
 - (iv) the protection of public health;
 - (v) the protection of morals and respect for the dignity of the human person;
 - (vi) the protection of the rights and freedoms of others;
 - (vii) the prevention of the disclosure of information received in confidence;
 - (viii) the maintenance of the authority and impartiality of the judiciary;
 - (ix) the technical constraints inherent in the means of communication;
- (b) ensure non-discrimination and equality of treatment in matters related to communications.

(2) It shall in particular be the duty of the Authority to exercise such regulatory functions in the field of communications, as may from time to time be assigned to the Authority by or under an Act of Parliament.

(3) The Authority shall also -

- (a) regulate, monitor and keep under review all practices, operations and activities relating to any matter regulated by or under this Act;
- (b) grant any licence, permit or other authorisation, for the carrying out of any operation or activity relating to any matter regulated by or under this Act;
- (c) regulate and secure interconnectivity for the production, transmission and distribution of the services, products, operations or activities relating to any matter regulated by or under this Act;
- (d) ensure fair competition in all such services, products, operations and activities;
- (e) establish minimum quality and security standards for any of the said services, products, operations and activities and to regulate such measures as may be necessary to ensure public and private safety;
- (f) secure and regulate the development and maintenance of efficient communication systems in order to satisfy, as economically as possible, all reasonable demands for the provision of the services, products, operations or activities relating to any matter regulated by or under this Act;
- (g) carry out studies, research or investigation relating to any matter regulated by or under this Act;
- (h) provide information and issue guidelines to the public and to commercial entities relating to any matter

- regulated by or under this Act;
- (i) regulate the price structure for any activity regulated by or under this Act and where appropriate to establish the mechanisms whereby the price to be charged for the services, products, operations or activities is determined;
 - (j) establish the minimum qualifications to be possessed by any person who is engaged or employed in any activity regulated by or under this Act;
 - (k) establish measures for the protection of the environment in the provision of the services, products, operations or activities relating to any matter regulated by or under this Act;
 - (l) ensure that international obligations entered into by Malta relative to matters regulated by or under this Act are complied with;
 - (m) advise the Minister on the formulation of policy in relation to matters regulated by or under this Act, and in particular in relation to such international obligations;
 - (n) otherwise to advise the Minister on any matter connected with its functions under this or any other Act;
 - (o) formulate and implement the policies and strategies with short-term and long-term objectives in relation to the matters connected with its functions under this or any other Act;
 - (p) encourage the provision of communications services in Malta and enable persons providing communications services in Malta to compete effectively in the provision of such services outside Malta;
 - (q) encourage users of communications services to establish places of business in Malta;
 - (r) promote the interests of consumers and other users in Malta, particularly those who are disabled or of a pensionable age, especially in respect of the prices charged for, and the quality and variety of the said services;
 - (s) perform such other functions as may from time to time be assigned to it by the Minister.

(4) It shall be the duty of the Authority to carry out its functions as established by or under this Act or any other law in an impartial and transparent manner and to ensure compliance therewith, and without prejudice to the generality of the foregoing, to ensure that persons providing any services, products, operations and activities in or from Malta relating to any matter regulated by the Authority, comply with this Act and with any other law which the Authority is entitled to enforce, and with any directives or decisions issued by or under this Act or any such other law.

(5) The Authority shall also have such other functions, responsibilities and powers as are set out by or under this Act or as may be assigned to it by or under any other law including all such powers as are necessary for or incidental to the performance of its functions by or under this Act or any other law. The Authority shall in the carrying out of its functions seek to ensure that the measures taken are proportionate having regard also to the objectives of the Authority.

Issue of directives by the Authority.

(6) The Authority may issue such directives as it may consider to be necessary for the carrying into effect of or compliance with any of the provisions of this Act, or of any other law which the Authority is entitled to enforce, or any decisions that the Authority may make in accordance with its functions under this Act or any other law and it may amend or revoke such directives.

(7) Any directive issued by the Authority in accordance with this article and any amendment or revocation thereof shall be in writing, state the reasons on which it is based and shall be notified to the person concerned. The Authority may also publish any such directive in such manner as it may consider appropriate in the circumstances due account being taken of the importance of the directive and its impact on the market.

Cooperation with the competent authorities responsible for competition issues and consumer affairs, etc.

(8) The Authority shall, where it considers appropriate, consult with the various competent authorities responsible for competition issues and consumer affairs and for such other areas as may impact on the sectors regulated by the Authority on matters of common interest in connection with the application of this Act and of any other law which the Authority is entitled to enforce.

(9) The Authority on the one hand and the competent authorities responsible for competition issues and consumer affairs on the other shall provide each other with the information necessary for the application of the provisions of this Act, and of any other law relating to competition issues and, or consumer affairs, which information shall be provided within an appropriate timeframe taking into consideration the particular circumstances of the issues involved. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

Provision of information.

(10) Without prejudice to the enforcement powers that it has at law, the Authority may require any person to provide it with any information, including financial information, that the Authority considers necessary for the purpose of ensuring compliance with the provisions of, or decisions or directives made in accordance with this Act or any other law which the Authority is entitled to enforce.

(11) Any information required by the Authority under subarticle (10) shall be proportionate to the performance of its functions and obligations under this Act and in requiring any information as aforesaid, the Authority shall state why it requires the information requested.

(12) A person who is notified with a requirement under subarticle (10) shall comply promptly with the requirement within

the timescales and according to any level of detail as may be required by the Authority:

Provided that any such person shall, in complying with the provisions of this subarticle, state clearly to the Authority if any information provided by him is to be considered as confidential for commercial reasons. In doing so he shall give his reasons to the Authority. It shall be the Authority which shall decide whether the information indicated to it as being confidential should be so treated:

Provided further that the provisions of this subarticle relating to confidentiality shall apply to any information provided to the Authority for whatever reason whether under this Act or any other law the Authority is entitled to enforce.

(13) Any person who fails or refuses to comply with a requirement under subarticle (10) shall commit an infringement of this Act and shall be liable to the imposition of an administrative fine by the Authority not exceeding the sum of eleven thousand and six hundred and forty-five euro (11,645) and, or two hundred and thirty euro (230) for each day during which failure to comply persists.

(14) The Authority shall, subject to the protection of any information which it considers confidential, publish from time to time such information as would, in the opinion of the Authority, contribute to an open and competitive market.

Publication of information.

5. (1) Subject to the other provisions of this Act the affairs and business of the Authority shall be the responsibility of the Authority itself but save as aforesaid, the executive conduct of the Authority, its administration and organisation and the administrative control of its officers and employees, shall be the responsibility of the Director General of the Authority, who shall also have such other powers as may from time to time be delegated to him by the Authority.

Conduct of the affairs of the Authority.
Amended by:
VII. 2004.5;
XXX. 2007.40.

(2) There shall be established the Directorates as listed in the Schedule to this Act, which shall have the responsibilities as described therein. The Minister may, after consulting the Authority, by Order in the Gazette, abolish any one or more of the said Directorates vary their responsibilities and establish such other Directorate as he may from time to time deem appropriate.

(3) The Authority shall exercise its functions through the Directorates so established and for such purpose it shall vest in each of the Directorates so established and subject to the overall supervision and control of the Director General, such of its functions as relate or are ancillary to the matters for which it is responsible so as to enable the said Directorate to give effect to the policies of the Authority and to otherwise discharge effectively and efficiently the functions of the Authority in its respective area of operation.

(4) Each of the Directorates so established shall be headed by a person who shall either be a public officer detailed for duty with the Authority or an employee of the Authority or a person detailed

to work for the Authority in accordance with an agreement made between the Authority and a public or private undertaking, in either case having adequate experience or knowledge in his respective area of operation.

(5) The Authority and each of the Directorates may exercise any one or more of their functions either directly or through any of their officers or employees or through an agency authorised for the purpose, or through a contractor or other person with whom an agreement for the performance of any one or more of such functions has been entered into:

Provided that nothing in this subarticle shall authorise the Authority to contract out any of its regulatory or licensing functions.

(6) Where in this Act anything is to be done by or against or with respect to the Authority, or any notice is to be or may be given to the Authority, any such thing or notice may also be done by or against or with respect to or be given to the Directorate under whose jurisdiction the matter falls by reason of a delegation of function to such Directorate; and for the purposes aforesaid any reference in this Act to the Authority includes a reference to the appropriate Directorate.

(7) The Director General and the heads of the Directorates shall be appointed by the Authority after consultation with the Minister for a period of three years which may be extended for further periods of three years each:

Provided that the first Director General and the first head of each Directorate shall be appointed by the Minister.

(8)* The Director General shall attend all the meetings of the Board but shall not vote at such meetings:

Provided that the Authority may if it so deems fit require the Director General not to attend any of the meetings or any part of a meeting.

(9) The Director General shall be responsible for the implementation of the objectives of the Authority in the exercise of its functions and without prejudice to the generality of the foregoing he shall -

- (a) assume full responsibility for the overall supervision and control of the Directorates;
- (b) assign to each Directorate such duties which are by, or in accordance with, the provisions of this Act vested in such Directorate;
- (c) co-ordinate the workings of the Directorates;
- (d) develop the necessary strategies for the implementation of the objectives of the Authority;
- (e) advise the Authority on any matter it may refer to him or on any matter which he considers necessary or expedient; and

*This subarticle is not yet in force.

- (f) perform such other duties as the Authority may assign to him from time to time.

(10) Nothing in this Act shall be construed as giving rise to or as ever having given rise to the nullity or invalidity of any decision or directive made by the Authority at any time during which any one or more of the Directorates was not established.

6. (1) The Minister may in relation to matters that appear to him to affect the public interest, from time to time give to the Authority directions in writing of a general character, not inconsistent with the provisions of this Act, on the policy to be followed in the carrying out of the functions vested in the Authority by or under this Act, and the Authority shall, as soon as may be, give effect to all such directions.

Relations between the Minister and the Authority.

(2) The Authority shall afford to the Minister facilities for obtaining information with respect to its property and activities and furnish him with returns, accounts and other information with respect thereto, and afford to him facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

(3) If the Authority fails to comply with any directions issued under this article, the Prime Minister may make an order transferring to the Minister in whole or in part any of the functions of the Authority

7. (1) The Authority shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of this Act, of entering into contracts, of acquiring, holding and disposing of any kind of property for the purposes of its functions, or suing and being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions under this Act, including the lending or borrowing of money.

Legal personality and representation of the Authority.
Amended by:
VII. 2004.5.

(2) The legal representation of the Authority shall jointly vest in the Chairman and the Director General:

Provided that the Authority may appoint any one or more of its members or of the officers or employees of the Authority to appear in the name and on behalf of the Authority in any judicial proceedings and in any act, contract, instrument or other document whatsoever:

Provided further that in respect of any matter falling within the functions vested in a Directorate, the legal and judicial representation of the Authority shall also vest in the head of the Directorate or in such other member, officer or employee of the Authority, as the Authority may appoint or authorise for the purpose.

(3) Any document purporting to be an instrument made or issued by the Authority and signed by the Chairman or by the Director General or by a head of a Directorate in relation to any matter vested in the relative Directorate by the Authority shall be received in evidence and shall, until the contrary is proved, be

deemed to be an instrument made or issued by the Authority.

Provisions with respect to proceedings of the Authority.

8. (1) The meetings of the Authority shall be called by the Chairman as often as may be necessary but at least once a month either on his own initiative or at the request of any two of the other members.

(2) Half the number of members for the time being constituting the Authority shall form a quorum. Decisions shall be adopted by a simple majority of the votes of the members present and voting. The Chairman, or in his absence the Deputy Chairman or other person appointed to act as chairman, shall have an initial vote and in the event of an equality of votes, a casting vote. Without prejudice to the other requirements of this Act, no decision shall be valid which is not supported by at least two members of the Authority.

(3) Subject to the provisions of this Act the Authority may regulate its own procedure.

(4) Subject to the foregoing provisions of this article, no act or proceeding of the Authority shall be invalidated merely by reason of the existence of any vacancy among the members.

(5) All acts done by any person acting in good faith, as a member of the Authority shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered. No act or proceeding of the Authority shall be questioned on the ground of the contravention, by a member, of the provisions of subarticle of article 3(8).

PART III OFFICERS AND EMPLOYEES OF THE AUTHORITY

Staff appointments.

9. Without prejudice to the other provisions of this Act, the appointment of officers and other employees of the Authority shall be made by the Authority. The terms and conditions of employment shall be established by the Authority with the concurrence of the Minister.

Appointment and functions of officer and employees of the Authority.

10. The Authority shall appoint and employ, at such remuneration and upon such time terms and conditions as it may, in accordance with article 9, determine, such officers and employees of the Authority as may from time to time be necessary for the due and efficient discharge of the functions of the Authority.

Detailing of public officers for duty with the Authority.

11. (1) The Prime Minister may, at the request of the Authority, from time to time direct that any public officer shall be detailed for duty with the Authority in such capacity and with effect from such date as may be specified in the Prime Minister's direction.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein, shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, or unless a different date is specified in such direction, cease to have effect after one year from the effective date of such direction unless the direction is revoked earlier by the Prime Minister.

12. (1) Where any officer is detailed for duty with the Authority under any of the provisions of article 11, such officer shall, during the time in which such direction has effect in relation to him, be under the administrative authority and control of the Authority but he shall for other intents and purposes remain and be considered and treated as a public officer.

Status of public officers detailed for duty with the Authority.

(2) Without prejudice to the generality of the foregoing, an officer detailed for duty as aforesaid -

(a) shall not during the time in respect of which he is so detailed -

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the appointment under the Government held by him at a date on which he is so detailed for duty; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the appointment under the Government held by him at the date aforesaid or which would have become attached to such appointment, during the said period, had such officer not been detailed for duty with the Authority; and

(b) shall be entitled to have his service with the authority considered as service with the Government for the purposes of any pension, gratuity, or benefit under the Pensions Ordinance and the Widows and Orphans' Pensions Act and of any other right or privilege to which he would be entitled, and liable to any liability to which he would be liable, but for the fact of his being detailed for duty with the Authority.

Cap. 93.
Cap. 58.

(3) Where an application is made as provided in subarticle (2)(a)(i) the same consideration shall be given thereto as if the applicant had not been detailed for service with the Authority.

(4) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Authority as aforesaid during the period in which he is so detailed.

13. (1) The Authority may, with the approval of the Prime Minister, offer to any officer detailed for duty with the Authority under any of the provisions of article 11 permanent employment with the Authority at a remuneration and on terms and conditions not less favourable than those enjoyed by such officer at the date of such offer.

Offer of permanent employment with the Authority to public officers detailed for duty with the Authority.

(2) The terms and conditions comprised in any offer made as aforesaid shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such offer, if such

terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

Cap. 93.
Cap. 58.

(3) Every officer who accepts permanent employment with the Authority offered to him, under the provisions of subarticle (1) shall for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, and saving the provisions of subarticle (6), be deemed to have ceased to be in service with the Government and to have entered into service with the Authority on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Authority shall be deemed to be service with the Government within the meanings thereof respectively.

(4) Every such officer as aforesaid who, immediately before accepting permanent employment with the Authority was entitled to benefit under the Widows' and Orphans' Pensions Act, shall continue to be so entitled to benefit thereunder to all intents as if his service with the Authority were service with the Government.

(5) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for finance in respect of the cost of pensions and gratuities earned by an officer who has accepted performance of employment with the Authority as aforesaid during the period commencing on the date of such officer's acceptance.

- (6) (a) For the purposes of this article posts and salary grades with the Authority shall be classified in the most nearly corresponding grades and incremental levels in the service under the Government of Malta by reference to job description, skills, responsibilities and other analogous factors.
- (b) The classification referred to in paragraph (a) shall be carried out by a board composed of a chairman appointed by the Ministry responsible for finance and two other members, one appointed by the Ministry responsible centrally for personnel policies in the public service and one appointed by the Authority. The classification shall be subject to the final approval of the Minister responsible for finance.
- (c) Such classification shall take place within three months of any adjustment of salaries of employees in Government service and, or, of employees of the Authority.
- (d) No post shall be classified in a grade higher than that of a Grade 3 in the service of the Government or such other grade that the Minister responsible for finance may from time to time by notice in the Gazette determine.
- (e) Without prejudice to article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the said Pensions Ordinance less favourable than those to which he would have been entitled prior to such classification.

**PART IV
FINANCIAL PROVISIONS**

14. (1) Without prejudice to the following provisions of this article, the Authority shall so conduct its affairs that the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its revenue.

Authority to meet expenditure out of revenue.

(2) For such purpose the Authority shall levy all fees, rates and other payments prescribed or deemed to be prescribed by or under this Act or any other law related to the powers and functions of the Authority.

(3) The Authority shall also be paid by Government out of the Consolidated Fund such sums as Parliament may from time to time authorise to be appropriated to meet the costs of specified works to be continued or otherwise carried out by the Authority, being works of infrastructure or a similar capital nature.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for finance, may from time to time give, be applied by the Authority to the formation of reserve funds to be used for the purposes of the Authority; and without prejudice to the generality of the powers given to the Minister by this subarticle, any direction given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees, rates and other payments levied in accordance with subarticle (2) or any such excess as aforesaid.

(5) Any funds of the Authority not immediately required to meet expenditure may be invested in such manner as may from time to time be approved by the Minister.

15. (1) For the purpose of carrying out any of its functions under this Act, the Authority may, with the approval in writing of the Minister given after consultation with the Minister responsible for finance, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

Power to borrow or raise capital.
Amended by:
L.N. 426 of 2007.

(2) The Authority may also, from time to time, borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Act:

Provided that for any amount in excess of one hundred and sixteen thousand and four hundred and sixty-five euro (116,465), there shall be required the approval of the Minister in writing.

16. The Minister responsible for finance may, after consultation with the Minister, make advances to the Authority of such sums as he may agree to be required by the Authority for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister responsible for finance out of the

Advances from Government.

Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advance.

Borrowing from Government.

17. (1) The Minister responsible for finance may, for any requirements of the Authority of a capital nature, contract or raise loans, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate; and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.

(2) Notice of any loans, liabilities or advances made or incurred under the foregoing provisions of this article shall be given to the House of Representatives as soon as practicable.

(3) Pending the raising of any such loan as is mentioned in subarticle (1), or for the purpose of providing the Authority with working capital, the Minister responsible for finance may, by warrant under his hand, and without further appropriation other than this Act, authorise the Accountant General to make advances to the Authority out of the Treasury Clearance Fund under such terms as may be specified by the Minister upon the making thereof.

(4) The proceeds of any loan raised for the purposes of making advances to the Authority, and any other moneys to be advanced to the Authority under this article, shall be paid into a fund specially established for the purpose and which shall be known as the "Malta Communications Authority Loan Fund".

(5) Sums received by the Accountant General from the Authority in respect of advances made to the Authority under subarticle (3) shall be paid, as respects of amounts received by way of repayment into the Treasury Clearance Fund and, as respects of amount received by way of interest into the Consolidated Fund.

Estimates of the Authority.

18. (1) The Authority shall cause to be prepared in every financial year, and shall not later than six weeks after the end of each such year adopt, estimates of the income and expenditure of the Authority for the next following financial year:

Provided that the estimates for the first financial year of the Authority shall be prepared and adopted within such time as the Minister may by notice in writing to the Authority specify.

(2) In the preparation of such estimates the Authority shall take account of any funds and other monies that may be due to be paid to it out of the Consolidated Fund during the relevant financial year, whether by virtue of this Act or an appropriation Act or of any other law; and the Authority shall so prepare the said estimates as to ensure that the total revenues of the Authority are at least sufficient to meet all sums properly chargeable to its revenue account including, but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparison with previous years as the Minister responsible for finance may direct.

(4) A copy of the estimates shall, upon their adoption by the

Authority, be sent forthwith by the Authority to the Minister and to the Minister responsible for finance.

(5) The Minister shall, at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Authority, approve the same with or without amendment after consultation with the Minister responsible for finance.

19. (1) No expenditure shall be made or incurred by the Authority unless it has been approved by the Minister as provided in article 18.

Expenditure to be according to approved estimates.

(2) Notwithstanding the provisions of subarticle (1) -

- (a) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year by the Minister, whichever is the earlier date, the Authority may make or incur expenditure for carrying on its functions under this Act not exceeding in the aggregate one-half of the amount approved by the Minister for the preceding financial year;
- (b) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister given after consultation with the Minister responsible for finance, be made or incurred in respect of another head or sub-head of the estimates;
- (c) in respect of the first financial year, the Authority may make or incur expenditure not exceeding in the aggregate such amounts as the Minister responsible for finance may, after consultation with the Minister, allow;
- (d) if in respect of any financial year it is found that the amount approved by the Minister is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Authority may adopt supplementary estimates for approval by the Minister and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to the supplementary estimates.

20. The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of the estimates and supplementary estimates of the Authority, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause such estimates to be laid on the Table of the House of Representatives.

Publication of approved estimates.

21. (1) The Authority shall cause to be kept proper accounts and other records in respect of its operations, and shall cause to be prepared a statement of accounts in respect of each financial year.

Accounts and audit.

(2) The accounts of the Authority shall be audited by an auditor or auditors to be appointed by the Authority and approved by the Minister:

Provided that the Minister responsible for finance may, after consultation with the Minister, require the books and accounts of the Authority to be audited or examined by the Auditor General who shall for the purpose have the power to carry out such physical checking and other certifications as he may deem necessary.

(3) After the end of each financial year, and not later than the date on which the estimates of the Authority are forwarded to the Minister under article 18, the Authority shall cause a copy of the statement of account duly audited to be transmitted to the Minister and to the Minister responsible for finance together with a copy of any report made by the auditors on that statement or on the accounts of the Authority.

(4) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such statement and report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause every such statement and report to be laid on the Table of the House of Representatives.

Deposit of
revenues and
payment by the
Authority.

22. (1) All monies accruing to the Authority shall be paid into a bank or banks appointed as bankers of the Authority by a resolution of the Authority. Such monies shall, as far as practicable, be paid into any such banks from day to day, except such sum as the Authority may authorise to be retained to meet petty disbursements and immediate cash payments.

(2) All payments out of the funds of the Authority, other than petty disbursements not exceeding a sum fixed by the Authority, shall be made by such officer or officers of the authority as the Authority shall appoint or designate for that purpose.

(3) Cheques against and withdrawals from any bank account of the Authority shall be signed by such officer of the Authority as may be appointed or designated by the Authority for that purpose and shall be countersigned by the Chairman, or such other member or officer of the Authority as may be authorised by the Authority for that purpose.

(4) The Authority shall also make provision with respect to -

- (a) the manner in which and the officer or officers by whom payments are to be authorised or approved;
- (b) the title of any account held with the bank or banks into which the monies of the Authority are to be paid, and the transfer of funds from one account to the other;
- (c) the method to be adopted in making payments out of funds of the Authority;

and generally with respect to any matter which is relevant to the proper keeping and control of the accounts and books, and the control of the finance, of the Authority.

Contracts of supply
of works.
Amended by:
L.N. 426 of 2007.

23. Without prejudice to any directions communicated by the Minister under article 6(1), the Authority shall not, except with the approval of the Minister granted for special reasons and after consultation with the Minister responsible for finance, award or

enter into any contract for the supply of goods or materials or for the execution of works, or for the rendering of services, to or for the benefit of the Authority, which is estimated by the Authority to exceed six thousand and nine hundred and eighty-five euro (6,985) in value, or such other amount as the Minister responsible for finance may by regulations prescribe, except after notice of the intention of the Authority to enter into the contract has been published and competitive tenders have been issued.

24. The Authority shall, not later than six weeks after the end of each financial year, make and transmit to the Minister and to the Minister responsible for finance a report dealing generally with the activities of the Authority during that financial year and containing such information relating to the proceedings and policy of Authority as either of the said Ministers may from time to time require. The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause a copy of every such report to be laid on the Table of House of Representatives.

Annual Report.

PART V TRANSFER OF CERTAIN ASSETS TO THE AUTHORITY

25.(1)(a) The property and undertakings owned by the Government and used by it, immediately before the date of the coming into force of this Part of this Act, and used by it for the operation of any of the functions which by this Act are being transferred to or vested in the Authority shall, on the date aforesaid, by virtue of this Act and without further assurance, be transferred to and vested in the Authority under the same title by which they were held by the Government immediately before the said date. The provisions of this paragraph shall not apply to immovable property.

Transfer of assets to the Authority.

(b) The immovable assets from time to time specified in an Order made by the President of Malta and published in the Gazette (hereinafter referred to as "the immovable assets") being immovable assets which immediately before the coming into force of this Part of this Act were owned by the Government and used by it for the operation of any of the functions which by this Act are being transferred to or vested in the Authority, shall, with effect from such day as may be specified in any such order, and by virtue of this Act and without any further assurance be transferred to and vested in the Authority under the same title by which they were held by the Government before such day.

(2) The transfer and vesting aforesaid shall extend to the whole of such property and undertakings and, without prejudice to the generality aforesaid, shall include all plant, equipment, apparatus, instruments, vehicles, craft, buildings, structures, installations, land, roads, works, stocks and other property, movable or

immovable, assets, powers, rights and privileges and all things necessary or ancillary thereto which are held or enjoyed in connection therewith or appertaining thereto, as well as all obligations affecting or relating to any of the aforesaid property or undertakings or other thing included therein as aforesaid.

Construction of laws, etc.

26. Subject to the provision of this Act, all laws, rules, regulations, orders, judgements, decrees, awards, deeds, bonds, contracts, agreements, instruments, documents, warrants and other arrangements, subsisting immediately before the date of the coming into force of this Part of this Act affecting or relating to any of the properties or undertakings transferred to the Authority by or under this Act shall have full force and effect against or in favour of the Authority, and shall be enforceable freely and effectually, as if instead of the Government or governmental authority the Authority had been named therein or had been a party thereto, and otherwise in substitution of the Government or governmental authority.

Transitory provisions.

27. (1) When anything has been commenced by or under the authority of the Government prior to the date of the coming into force of this Part of this Act and such thing relates to any of the properties or undertakings or any right or liability transferred to the Authority by or under this Act, such thing may be carried on and completed by or as authorised by the Authority.

(2) Where immediately before the coming into force of this Part of this Act, any legal proceedings are pending to which the Government is or is entitled to be a party, and such proceedings are related to any of the properties or undertakings, or any right or liability transferred by or under this Act, the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government, or shall be made a part thereto in like manner as the Government could have become, and such proceedings shall not abate by reason of the substitution.

(3) The Minister may by order make such incidental, consequential and supplemental provisions as he may deem necessary or expedient for the purpose of determining, as appropriate, the assets transferred to the Authority by this Act and securing and giving full effect to the transfer of any property or undertaking or any right or liability to the Authority by this Act and make such orders as may be necessary to make any powers and duties exercisable by the Government in relation to any of the transferred property or undertakings exercisable by or on behalf of the Authority.

PART VI ADVISORY COMMITTEES

Appointment and functions of advisory committees.

28. (1) With effect from such day or days as the Minister may by order determine, there shall be appointed in respect of such sector as the Minister may in any such order specify, an advisory committee.

(2) An advisory committee shall, for the better carrying out of the provisions of this Act, advise the Authority on such matters and perform such other functions as the Minister may specify in the

Order.

(3) The members of the committee shall be appointed by the Minister and shall hold office for such period and on such terms and conditions as the Minister may deem appropriate.

(4) Each committee shall consist of one member representing the Authority as Chairman and such other members as the Minister may deem fit to appoint.

(5) The provisions of article 3(4)(a), (5) and (8) shall *mutatis mutandis* apply to the members of the advisory committees.

(6) Each advisory committee shall keep minutes of all its meetings and shall forward copies of such minutes to the Authority. The provisions of article 8 shall *mutatis mutandis* apply to the committee and its acts or proceedings.

PART VII ENFORCEMENT AND SANCTIONS

29. (1) For the purposes of the exercise by the Authority of any of its functions under the Act or any other law the Authority is entitled to enforce, the Authority may:

- (a) enter, at any reasonable time, any premises other than a place of residence, or any other place or any vehicle or vessel where any activity regulated by or under this Act or any other law which the Authority is entitled to enforce, takes place, or in the opinion of the Authority takes place, and search and inspect the premises, place, vehicle or vessel and any books, documents or records found therein;
- (b) require any person to produce for inspection and take extracts from any books, documents or records relating to any activities regulated by or under this Act or any other law which the Authority is entitled to enforce, which are under the control of that person and, in the case of information in a non-legible form to reproduce it in a legible form, and to give to the Authority such information as the Authority may reasonably require in relation to any entries in such books, documents or records;
- (c) remove and retain such books, documents or records for such period as may be reasonable for further examination;
- (d) require any person to maintain such books, documents or records for such period as may be reasonable as the Authority directs;
- (e) require any person to give to the Authority any information that may be required with regard to any activities regulated by or under this Act or any other law the Authority is entitled to enforce;
- (f) make such inspections including site inspections to enable the Authority to carry out its functions at law

Enforcement powers of the Authority.
Added by:
VII. 2004.8.
Amended by:
L.N. 426 of 2007;
XXX. 2007.41.

and in doing so the Authority may also undertake tests and measurements of any machinery, apparatus, appliances and other equipment at any place as the Authority may consider necessary.

(2) Any officer of the Authority or any other person duly authorised by the Authority to act on its behalf when exercising a power conferred by this article, shall if requested by any person thereby affected, produce to that person for inspection a certificate issued by the Authority stating that he is duly authorised to act for and on behalf of the Authority.

(3) In the course of the exercise of any of the powers under this article the Authority may request the assistance of the Police.

(4) The Directors and managers, by whatever name designated, or any other persons who are or have been in charge of the operations or activities falling under the supervisory or regulatory functions of the Authority shall assist and shall collaborate with the Authority in order to enable it to discharge its functions, and shall collate and transmit without any undue delay such information and documentation as the Authority may reasonably request from time to time.

(5) Any person who -

- (a) obstructs, impedes or assaults an officer of the Authority or any other person duly authorised by the Authority to act on its behalf in the exercise of a power under this article;
- (b) fails or refuses to comply with a requirement under this article;
- (c) alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce; or
- (d) falsely represents himself to be an officer of the Authority or a person authorised by the Authority to act on its behalf,

shall be guilty of an offence against this Act, and shall on conviction be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-five euro (11,645) or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

Disclosure of
confidential
information.
Added by:
VII. 2004.8.
Amended by:
L.N. 426 of 2007.

30. (1) Except where otherwise provided by law, a person shall not knowingly disclose confidential information obtained by him while performing the duties of a member, officer or employee of the Authority or of an adviser or consultant to the Authority, unless he is duly authorised by the Authority to do so.

(2) In this article "confidential information" means any information however so described which is considered by the Authority to be confidential and in relation to which the Authority has notified the persons concerned of their duty of non-disclosure.

(3) A person who contravenes this article shall be guilty of an

offence against this Act and shall on conviction be liable to a fine (*multa*) not exceeding two thousand and three hundred and twenty-five euro (2,325).

(4) Nothing in this article shall prevent the disclosure of any information to the Authority or, by or on behalf of the Authority to the Minister or as may be required at law.

31. (1) Without prejudice to any other provisions under this Act or any other law which the Authority is entitled to enforce, the Authority may take the following measures in respect of any person who infringes any provision of this Act or of any other law which the Authority is entitled to enforce, or who fails to comply with any directive or decision given by the Authority:

Other sanctions that the Authority may impose.
Added by:
VII. 2004.8.
Substituted by:
XXX. 2007.42.

- (a) the imposition of an administrative fine in accordance with the provisions of this article and articles 32 and 33; and
- (b) in cases where the Authority considers that the person has seriously and repeatedly infringed the provisions of this Act or of any other law which the Authority is entitled to enforce, or the decisions or directives of the Authority, the Authority may withdraw or suspend the right to provide any services or networks regulated by or under this Act or any other law which the Authority is entitled to enforce.

(2) In all cases where the Authority imposes an administrative fine in respect of anything done or is omitted to be done by any person and such act or omission also constitutes a criminal offence, no proceedings may be taken or continued against the said person in respect of such criminal offence.

32. (1) The Authority shall before proceeding to take any of the measures under article 31 write to the person concerned, warning him of the measure that may be taken and the specific reason why it may be taken, requiring him to rectify his acts or omissions and, or to make his submissions thereto:

Procedure when taking a measure under article 31.
Added by:
VII. 2004.8.
Amended by:
L.N. 426 of 2007.
Substituted by:
XXX. 2007.42.
 Cap. 399.

- (a) within such period not being less than thirty days in relation to any infringement of the Electronic Communications (Regulation) Act or of any regulations made thereunder;
- (b) within such period not being less than fifteen days in relation to any other infringement in relation to which paragraph (a) does not apply, which period, without prejudice to the provisions of subarticle (4), may be abridged if the continuance of the infringement impacts negatively the effective exercise by the Authority of its regulatory functions:

Provided that where the measure is an administrative fine the person concerned shall also be informed of the amount of the fine:

Provided further that when issuing a warning under this subarticle the Authority may impose such conditions as it may

consider reasonable in the circumstances.

(2) If the person concerned remedies the infringement within the period established by the Authority in accordance with subarticle (1), and agrees in writing to abide with any conditions that the Authority may impose, the Authority shall desist from proceeding any further.

(3) If after the lapse of the period mentioned in subarticle (1)(a) and (b) the Authority considers that the person concerned has not given any valid reasons to demonstrate why no measure should be taken against him, the Authority shall give notice in writing to the person concerned specifying the nature of the infringement, stating the measure being taken, and if the measure is an administrative fine, stating the amount of the fine being imposed.

(4) Notwithstanding the provisions of subarticle (1), where the Authority has prima facie evidence that the infringement -

- (a) represents an immediate and serious threat to public safety, public security or public health; or
- (b) creates or may create serious economic or operational problems for other providers of communications services or networks, or for consumers,

the Authority may take urgent interim measures to remedy the situation in advance of reaching a final decision including the imposition of administrative fines, and, or may shorten the periods mentioned in subarticle (1) (a) and (b):

Provided that the person against whom such measures are contemplated, shall be given a reasonable opportunity to state his view and propose any remedies.

(5) The notice as referred to in subarticle (3) shall, upon the expiry of the time limit for appeal therefrom, upon the service of a copy thereof by means of a judicial act on the person indicated in the notice, constitute an executive title for all effects and the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure:

Provided that if the person against whom the notice has been issued, files an appeal before the Appeals Board within the thirty day period referred to under article 38, and concurrently with or before the filing of his appeal requests the Appeals Board to suspend the effects of the notice, then the Authority shall desist from issuing a judicial act as referred to in this subarticle until such time as the the request for suspension has been determined, withdrawn or otherwise dealt with:

Provided further that the Appeals Board shall determine any requests for suspension referred to in this subarticle expeditiously. Before determining any such request the Appeals Board shall give the Authority a reasonable opportunity to reply and make its submissions.

(6) Interest at the rate of eight per cent per annum shall run as from the date set by the Authority for the payment of any

administrative fine imposed by it in terms of this Act. In cases where the Appeals Board or the Court of Appeal, as the case may be, after having upheld an application to suspend the fine pending proceedings, finally decides that the fine is due, such fine shall be due together with any interests accrued thereon as from the date originally set by the Authority for payment including the period during which the payment of the said fine was suspended.

(7) The Authority shall give its reasons for any decision taken under this article.

(8) Notwithstanding the provisions of any law, no precautionary warrant or order shall be issued by any court restraining the Authority from the exercise of any of the powers conferred upon it under this article.

33. (1) An administrative fine imposed shall not, unless provided otherwise by or under this Act, exceed three hundred and forty-nine thousand, four hundred and six euro (€349,406) for each infringement or failure to comply and, or eleven thousand, six hundred and forty-six euro and eighty-six cents (€11,646.86) for each day of infringement or non-compliance as the case may be:

Quantum of an administrative fine.
Added by:
VII. 2004.8.
Amended by:
XIII. 2005.64.
Substituted by:
XXX. 2007.42.

Provided that if the act or omission which constitutes an infringement is committed by an undertaking and the Authority considers that such act or omission has especially significant effects on the market to the detriment of competitors and, or consumers, the stated amount that may be imposed as an administrative fine may be increased to an amount that is not more than five per cent of the turnover of the undertaking in the calendar year immediately preceding the year when the infringement was committed.

(2) In determining the amount of an administrative fine, regard shall be had in particular to the nature and extent of the infringement, its duration and its impact on the market and on consumers.

(3) The Minister may in regulations made under this Act establish the administrative fines that may be imposed by the Authority for breaches of the said regulations:

Provided that the amount of the fines that may be so prescribed shall not exceed the maximum amounts referred to under subarticle (1).

34.* Where an administrative infringement of any provision of this Act or any other law which the Authority is entitled to enforce is committed by a body corporate and is proved to have been committed with the consent or involvement of or to be attributable to any gross negligence on the part of a person being a director, manager, secretary or other officer however so described of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be liable to be proceeded against and punished as if he was responsible for the said infringement.

Administrative infringements by bodies corporate.
Added by:
VII. 2004.8.

*Not yet in force.

Limitation on the provision of services, networks to protect public security etc.
Added by:
XXX. 2007.43.

34A. (1) For the purposes of this article:

- (a) "authorization" means any authorization, however described, that a person may hold or be granted under the Act;
- (b) "shareholder" means:
 - (i) in the case of a company that is not listed on the Malta Stock Exchange or on a Stock Exchange of a Member State of the European Union, a person who holds any amount of shares in a company;
 - (ii) in the case of a company listed on the Malta Stock Exchange or on the Stock Exchange of a Member State of the European Union, a person holding more than two percent of shares in a company.

(2) When the Authority is satisfied that -

- (a) any person holding any authorization; or
- (b) any person who is a secretary, director or other principal officer of any company, partnership or other body holding any authorization or who otherwise exercises control or significant influence over the said company, partnership or other body; or
- (c) any person who is a shareholder of any company, partnership or other body holding any authorization,

is not a fit and proper person or are not fit and proper persons to hold any authorization or to act in any capacity mentioned in paragraphs (b) or (c) and that the holding by such person or persons of an authorization or of any said capacity may reasonably pose a threat to public trust, public security or public order, the Authority may prohibit such person or persons or any company, partnership or other body in which the said person or persons hold any said capacity from holding an authorization.

(3) The Authority may, for the purpose of ascertaining whether any person referred to in subarticle (2) is a fit and proper person to hold an authorization or to act in any capacity mentioned in subarticle (2)(b) or (c), require, within such time as it may consider reasonable in the circumstances, such information and, or consent to obtain any information as the Authority may deem appropriate from any such person or from any person who intends to provide a communications service and, or network in accordance with the Act.

(4) Without prejudice to the other provisions of this article:

- (a) any person convicted, whether in Malta or outside Malta, of a crime against public trust shall not be deemed to be a fit and proper person to hold an authorization or to act in any capacity mentioned in subarticle (2)(b) or (c);
- (b) any authorization enjoyed by any person convicted of a crime against public trust, or enjoyed by a company,

partnership or other body which has a shareholder or a secretary, director or other principal officer who has been convicted, whether in Malta or outside Malta, of a crime against public trust, or over which a person who has been convicted, whether in Malta or outside Malta, of a crime against public trust otherwise exercises control or significant influence, shall be voidable upon a decision of the Authority taken after having considered all the relevant facts.

35. The prosecution of a criminal offence or the initiation of proceedings to impose an administrative fine under this Act or under any other law which the Authority is entitled to enforce shall be prescribed by the lapse of two years from the date on which the offence or administrative infringement is alleged to have been committed.

Prescription for offences and administrative infringements.
Added by:
VII. 2004.8.

PART VIII COMMUNICATIONS APPEALS BOARD

36. (1) There shall be an Appeals Board, to be known as the Communications Appeals Board which shall have jurisdiction to hear and determine appeals from decisions of the Authority as provided in this Act or in any law or regulations.

Communications Appeals Board.
Added by:
VII. 2004.8.
Amended by:
XIII. 2005.65;
L.N. 426 of 2007.

(2) The Communications Appeals Board shall be appointed by the Prime Minister, and shall be composed of:

- (a) a chairman who shall be an advocate with at least seven years practice; and
- (b) two other members who shall be selected by the Chairman of the Appeals Board from amongst a panel of persons appointed by the Prime Minister and having such commercial, technical, or financial experience in the fields of electronic communications, postal services and such other areas relating to communications in respect of which the Appeals Board has jurisdiction.

(3) The Chairman and members of the panels of the Appeals Board shall be appointed for a term of three years and shall be eligible for re-appointment.

(4) The Appeals Board shall be independent in the performance of its functions.

(5) The Chairman and members of the Appeals Board may be challenged or abstain for any of the reasons for which a judge may be challenged or abstain in accordance with the Code of Organization and Civil Procedure. In such a case the Prime Minister shall appoint a person, having the qualifications of the chairman or member challenged or abstaining, to sit in substitution.

Cap. 12.

(6) A member of the House of Representatives or of the European Parliament or of a local council shall be disqualified from being appointed or continuing to be the Chairman or a member of the Appeals Board for as long as he holds that office.

(7) The Chairman or member of the Appeals Board may only be removed from office by the Prime Minister on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Appeals Board. In doing so the Prime Minister shall lay before the House of Representatives a statement giving the reasons for the removal of the said member.

(8) The Chairman or a member of the Appeals Board shall for a period of one year following the termination for whatever reason of his appointment not engage in any activity which because of conflict of interest would have been incompatible with the exercise of his functions. Any person who acts in breach of this subarticle shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) of not more than two thousand and three hundred and twenty-five euro (2,325) and shall be barred from being appointed to any similar posts for a period of not less than ten years.

(9) The Prime Minister shall designate a person to serve as secretary to the Appeals Board and who shall serve in such a capacity in accordance with the ethical standards appropriate to his position.

(10) Notwithstanding the coming into force of Part VIII of this Act and the establishment of the Communications Appeals Board, any appeals that may be pending before the Telecommunications Appeals Board and, or the Postal Services Appeals Board on the date of the coming into force of Part VIII of this Act, shall continue to be heard and determined according to the law as in force immediately prior to the coming into force of Part VIII of this Act, by the Telecommunications Appeals Board and, or the Postal Services Appeals Board according to the merits of the case.

Appeals pending before the Telecommunications Appeals Board and the Postal Services Appeals Board.

Appeals from decisions other than the imposition of administrative fines of the Authority.
Added by:
VII. 2004.8.
Amended by:
XXX. 2007.44.
 Cap. 399.
 Cap. 81.
 Cap. 350.
 Cap. 254.
 Cap. 426.

37. (1) Unless otherwise provided by law an appeal shall lie to the Appeals Board from a decision or a directive of the Authority made under this Act, the Electronic Communications (Regulation) Act, the Utilities and Services (Regulation of Certain Works) Act, the Broadcasting Act, the Postal Services Act or the Electronic Commerce Act:

Provided that the Prime Minister may by order in the Gazette extend the jurisdiction of the Appeals Board to -

- (a) any other decisions that the Authority may take under any other law which the Authority is entitled to enforce; and
- (b) any decision taken by or on behalf of Government or by any public authority in relation to or having a substantial bearing on communications.

(2) The right of appeal to the Appeals Board shall be competent to any person aggrieved by the decision:

Provided that in any case, a person making an appeal to the Appeals Board shall also explain his juridical interest in impugning the decision or directive appealed from.

(3) Without prejudice to the provisions of article 38 -

- (a) an appeal from a decision or directive of the Authority shall be made by application and shall be filed with the secretary of the Appeals Board within thirty days from the date on which the said decision has been notified to the party appealing; and
- (b) the application of appeal shall be notified to the Authority, which shall not later than twenty days from such notification file its reply thereto with the secretary of the Appeals Board.

38. (1) Without prejudice to the provisions of this Part, the procedure to be followed in relation to appeals against administrative fines imposed by the Authority shall be regulated by the provisions of this article.

Appeals against an administrative fine imposed by the Authority.
Added by:
VII. 2004.8.
Amended by:
XXX. 2007.45.

(2) A person who is notified with a notice in writing given under article 32(3) may, within thirty days from the date of such notification, lodge an appeal before the Appeals Board objecting to the administrative fine so fixed.

(3) The Appeals Board shall not annul an administrative fine as aforesaid unless it results to it that such fine could not at law be imposed in the circumstances of the case, or could not at law be fixed in the amount established by the Authority due account being given to the principle of proportionality.

(4) The Appeals Board shall, without delay, set down the appeal for hearing at an early date, which date shall in no case be later than forty days from the date of the service of the appeal on the Authority.

(5) The appeal, and the notification of the date fixed for hearing, shall be notified to the Authority without delay, and the Authority shall file its reply thereto within twenty days from the date of the notification of the appeal.

(6) The decision of the Appeals Board upon an appeal referred to in subarticle (2), confirming the imposition of a fine established by the Authority or reducing any such fine, shall upon becoming *res judicata* be deemed to be a decision of the Appeals Board equivalent to a decision of the First Hall of the Civil Court ordering payment by the appellant of the administrative fine as confirmed or reduced.

(7) There shall be a right of appeal to the Court of Appeal to any of the parties to the proceedings before the Appeals Board in accordance with article 41.

39. (1) In determining an appeal the Appeals Board shall take into account the merits of the appeal, and may in whole or in part, confirm or annul the decision appealed from, giving in writing the reasons for its decision and shall cause such decision to be made public and communicated to the parties to the appeal.

Decisions of the Appeals Board.
Added by:
VII. 2004.8.

(2) Subject to the provisions of article 41, the decisions of the Appeals Board shall be final and binding.

(3) Where the Appeals Board considers that, having regard to

its determination of the appeal and all other relevant matters, there are sufficient reasons rendering it equitable to do so, it may, either of its own motion or on application by a consumer being a party to the appeal, order that the whole or part of the costs of any such party appearing before the Appeals Board relating to the engagement of a lawyer and, or of a technical adviser shall be paid to the consumer concerned by any other party to the appeal named in the order.

Procedure of the Appeals Board.
Added by:
VII. 2004.8.

40. (1) In the exercise of its functions the Appeals Board may summon any person to appear before it and give evidence and produce documents, and the Chairman of the Appeals Board shall have the power to administer the oath.

(2) The Appeals Board shall endeavour to determine an appeal within one hundred and twenty days from the lapse of the period by when the Authority may file its reply to the aforesaid appeal and in any case shall deliver its final decision not later than sixty days from when the parties declare that they have concluded with their evidence and made their final submissions.

(3) The Appeals Board in order to assist it in the exercise of its functions may appoint independent and impartial experts to advise it on any issue that may be relevant to any appeal lodged before it. In such cases the Appeals Board shall be entitled to make both provisional and final orders in respect of the payment of the costs and fees of such experts by any of the parties to the appeal.

(4) The Appeals Board in the exercise of its functions shall have the same powers as are competent to the First Hall, Civil Court according to law.

(5) The Minister may subject to the provisions of this Act, by regulations prescribe the procedure to be followed before the Appeals Board, and subject thereto and to any other provisions of this Act, the Appeals Board may regulate its own procedure.

(6) The Minister may, with the concurrence of the Minister responsible for finance by regulation, establish any such fees as are considered to be necessary in relation to any proceedings before the Appeals Board.

(7) The Minister may by regulation amend any of the periods stated in subarticle (2).

Appeal to the Court of Appeal.
Added by:
VII. 2004.8.

Cap. 12.

41. (1) Any party to an appeal to the Appeals Board, including the Authority, who feels aggrieved by a decision of the Appeals Board, may on a question of law appeal to the Court of Appeal (Inferior Jurisdiction) as constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure by means of an application filed in the registry of that court within thirty days from the date of the decision of the Appeals Board.

(2) The Minister responsible for justice may by regulation under this subarticle establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with appeals under this article:

Provided that until such fees are so established, the fees in Schedule A to the Code of Organization and Civil Procedure shall apply. Cap. 12.

(3) The Board established under article 29 of the Code of Organization and Civil Procedure may make Rules of Court governing appeals to the Court of Appeal under this article. Cap. 12.

42. (1) The decision or the directive of the Authority pending an appeal whether before the Appeals Board or the Court of Appeal, shall stand and shall be adhered to by all the parties to whom the decision or the directive applies. Status of decision or directive pending an appeal before the Appeals Board or the Court of Appeal.

(2) The Appeals Board or the Court of Appeal as the case may be, where it considers it to be appropriate, may on the application of a party to the appeal, suspend the decision or the directive of the Authority pending the final determination of the appeal. The Appeals Board or the Court of Appeal in deciding to suspend the decision or the directive shall state their reasons for doing so. *Added by: VII. 2004.8.*

PART IX DISPUTE RESOLUTION

*Added by:
XXX. 2007.46.*

43. (1) Unless otherwise provided in any other law, in the event of a dispute arising between persons holding an authorization and who are established in Malta, in connection with obligations that the persons have towards each other under any law which the Authority is entitled to enforce, the Authority shall, subject to subarticle (2), at the request of any party to the dispute, initiate an investigation of the dispute and, as soon as possible and in any case, other than in circumstances which the Authority considers exceptional, within four months from the date on which the dispute was notified to it by a party to the dispute, make a determination to resolve the dispute and ensure compliance with the applicable law: Disputes between persons holding an authorization. *Added by: XXX. 2007.46.*

Provided that nothing in this article shall be construed as restricting or prohibiting the Authority from undertaking of its own initiative any investigation of any disputes it may become aware of and which the Authority believes ought to be investigated.

(2) The Authority may decide not to initiate an investigation referred to in subarticle (1) where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by any party to the dispute.

(3) Where the Authority decides not to initiate an investigation under subarticle (2), it shall inform the parties of such a decision as soon as possible thereafter.

(4) If four months from the date of a decision referred to in subarticle (3) the dispute is not resolved and the party seeking redress has not initiated legal proceedings before the ordinary courts or any other competent adjudicative forum, however so described, the Authority shall, at the request of any of the parties to the dispute, initiate an investigation and give a decision in accordance with the provisions of this article.

Cap. 399.

(5) In giving a decision under this article the Authority shall in relation to disputes between persons providing electronic communications services and, or networks, have regard to the objectives under article 4 of the Electronic Communications (Regulation) Act.

(6) Without prejudice to the provisions of article 31, a person to whom a decision under this article applies shall, saving the provisions of article 42, forthwith comply with that decision. If such person fails to do so, he shall be deemed to have committed an infringement of this article. The period of non-compliance shall be deemed to have commenced from the date of notification of the decision of the Authority or from any such other date as may be communicated in the decision which date shall in any case be on or subsequent to the date of notification of the decision:

Provided that if it results to the Authority that a breach of this Act or any other law which the Authority is entitled to enforce has been committed by a party to a dispute, the Authority may notwithstanding the provisions of this article apply the provisions of articles 31 to 33.

(7) In issuing a decision under this article the Authority shall state the reasons on which the decision is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(8) The Authority shall publish notice of a decision given under this article and shall indicate where copies of, or information regarding the decision may be obtained.

(9) The procedure referred to in this article shall not preclude any party to the dispute from bringing an action before the courts or any other competent adjudicative forum.

(10) The Minister may by regulation vary the periods stated in subarticles (1) and (4).

Disputes involving consumers.
Added by:
XXX. 2007.46.

44. (1) Where a dispute, however so described, arises between a person holding an authorization and a user further to a complaint by a user alleging an infringement of any law or decision which the Authority is entitled to enforce, any party to such a dispute may refer the dispute to the Authority:

Provided that in making a complaint the user must *prima facie* show that he has been affected by the act or omission of the person holding the authorization in relation to which he has made the complaint.

(2) Upon receipt of any reference as aforesaid, or upon otherwise becoming aware of any such dispute that the Authority believes should be investigated, the Authority shall notify all the parties to the dispute that the matter is being investigated. In doing so the Authority shall regulate its own procedure, which procedure shall, as far as is reasonably possible, be transparent, simple, inexpensive and conducive to a prompt and fair settlement of the dispute, and it shall afford all parties to the dispute reasonable opportunity to make their submissions and to produce any relevant

information:

Provided that the Authority may decide not to initiate an investigation in accordance with this article where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by any party to the dispute.

(3) The Authority in resolving any disputes referred to it under this article, may issue directives to the person against whom the complaint has been lodged requiring that person to comply with any measure that the Authority may specify for the resolution of the dispute. Such directives may, having regard to the determination of the dispute and to all other relevant matters, include an order to effect the reimbursement of payments received or to make compensation payments. Such payments may also include the whole or part of the costs of any party relating to the engagement of a lawyer and, or of a technical adviser in relation to any submissions relating to the dispute.

(4) The Authority shall make publicly available any rules of administrative procedure which it may from time to time establish in relation to the handling of any disputes referred to it under this article.

(5) The provisions of this article shall be without prejudice to the right of a user to have recourse to any other body in resolving any such disputes.

(6) In issuing a decision under this article the Authority shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(7) The Authority shall publish notice of a decision given under this article and shall indicate where copies of, or information regarding the decision may be obtained.

(8) A person may, where the dispute involves persons enjoying authorizations in more than one Member State, request the Authority to co-ordinate its efforts with any relevant regulatory authority in another Member State with a view to bringing about a resolution of the dispute.

PART X MISCELLANEOUS

45. (1) The members of the Authority, the members of the advisory committees and all officers and employees of the Authority shall be deemed to be public officers within the meaning of the Criminal Code.

(2) The Minister and the members of the Authority and its officers shall not for a period of one year following the termination of their appointment or office engage in any activity which in accordance with the provisions of article 3(4)(c) would disqualify a person from holding office as a member of the Authority.

*Amended by:
XXX. 2007.46.*

Persons deemed
public officers.
*Amended by:
VII. 2004.8;
XXX. 2007.46.
Cap. 9.*

Power to make regulations.
Amended by:
VII. 2004.7, 8;
XXX. 2007.46.

46. The Minister may, after consultation with the Authority, make regulations in respect of any of the functions of the Authority and the Minister may, in compliance with any international obligations of Malta, make any regulations relating to the imposition of any fees, rates or other payments however so described that the Authority may levy and in particular may prescribe the manner and the purpose for their imposition.

Exemption from liability.
Added by:
VII. 2004.9.
Amended by:
XXX. 2007.46.

47. The members, officers and employees of the Authority in the performance of their functions under this Act or any other law administered by the Authority, shall not be liable for any loss or damage suffered by any person by reason of anything done or omitted to be done in good faith in the course of the administration of this Act or any other law.

Service of notice.
Added by:
VII. 2004.9.
Amended by:
XXX. 2007.46.

48. Where a notice however so described is required to be given by the Authority to any person whether under this Act or under any other law administered by the Authority, the notice shall be addressed to that person and shall be given to the person in any of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;
- (c) by sending it by registered post to the person at the address at which the person ordinarily resides or carries on business;
- (d) if an address for the service of notices has been provided by the person, by leaving it at, or sending it by registered post addressed to the person to that address;
- (e) in any case where the Authority considers that the immediate giving of the notice is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the facsimile machine of the sender generates a message confirming successful transmission of the total number of pages of the notice or the facility of the sender for the reception of electronic mail generates a message confirming receipt of the electronic mail:

Provided that the provisions of paragraph (e) shall not apply to the notification of documents filed before the Appeals Board or any Court.

Proceedings for debts due to the Authority.
Added by:
VII. 2004.9.
Amended by:
XXX. 2007.46, 48.

49. (1) Where the Authority desires to sue for the recovery of a debt due to the Authority under any law which it is entitled to enforce for any licence or authorisation fee or other similar fee or charge however so described that may be due, the Chairman, Director General or an officer of the Authority duly authorised by

the Authority to act on its behalf may make a declaration on oath before the registrar, a judge or a magistrate wherein he states the nature of the debt and the name of the debtor and confirm that it is due.

(2) The declaration referred to in subarticle (1) shall be served upon the debtor by means of a judicial act and it shall have the same effect as a final judgement of the competent court unless the debtor shall, within a period of twenty days from service upon him of the said declaration, oppose the claim by filing an application demanding that the court declare the claim unfounded.

(3) The application filed in terms of subarticle (2) shall be served upon the Authority, which shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(4) Any debts due to the Authority in accordance with this article shall be prescribed by the lapse of the period of five years from the date on which the debt was due.

SCHEDULE

(Article 5(2))

Directorates

Subject to the Minister's powers under article 5(2), there shall be the following Directorates -

1. Directorate for Telecommunications with responsibility for the regulation of all matters relating to telecommunications as may from time to time be assigned to the Authority by or under an Act of Parliament.
 2. Directorate for Data Protection with responsibility for the regulation of all matters relating to data protection as may from time to time be assigned to the Authority by or under an Act of Parliament.
 3. Directorate for Information and Other Systems with responsibility for the regulation of all matters relating to electronic commerce as well as information and other systems as may from time to time be assigned to the Authority by or under an Act of Parliament.
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