

**A BILL
entitled**

AN ACT to amend various laws relating to communications and to make provision with respect to matters ancillary thereto or connected therewith.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) The short title of this Act is the Communications Laws (Amendment) Act, 2007. Short title and commencement.

(2) This Act shall come into force on such date as the Minister responsible for communications may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

Part I

Amendment of the Radiocommunications Act.

2. (1) This Part amends the Radiocommunications Act, and it shall be read and construed as one with the Radiocommunications Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Radiocommunications Act
Cap. 49.

(2) This Part shall come into force on such date as the Minister responsible for communications may by notice in the Gazette

appoint and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of article 2 of the principal Act.

3. Article 2 of the principal Act shall be amended as follows:

(a) before the definition “broadcast receiving apparatus” there shall be added the following new definitions:

“ “this Act” includes any regulations made under this Act;

“apparatus” means any apparatus intended for radiocommunications and includes any component part of any such apparatus;” ; and

(b) before the definition “Malta” there shall be added the following new definitions:

“ “general authorization” means the framework established by or under this Act laying down the rights and obligations of persons making use of or possessing any such radiocommunications apparatus as the Minister may from time to time in accordance with the provisions of this Act designate by order in the Gazette as being covered by a general authorization;

“licence” means an individual licence issued in accordance with this Act and includes any general authorization however so described applicable in relation to any radiocommunications apparatus, as may be provided for under article 19 of this Act;”.

Amendment of article 2A of the principal Act.

4. Article 2A of the principal Act shall be amended as follows:

(a) subarticle (2) thereof shall be renumbered as subarticle (5) thereof;

(b) immediately after subarticle (1) thereof, there shall be added the following new subarticles:

“(2) The Malta Communications Authority may issue any general authorizations relating to any radiocommunications apparatus as the Minister may from time to time by order in the Gazette determine as being covered by any such general authorizations:

Provided that any fees that may be payable in relation to any such general authorizations shall be established by the Minister:

Provided further that the faculty to issue a general authorization shall include the faculty to amend the rights, conditions and specifications stated in any such general authorizations.

(3) In issuing or amending a general authorization the Malta Communications Authority shall first publish a statement of the proposed general authorization or of any amendments thereto, giving any interested parties the opportunity to comment on the proposed general authorization or amendments thereto within a period which the Malta Communications Authority considers reasonable.

(4) The Malta Communications Authority shall ensure that any general authorizations or amendments thereto are given publicity.”; and

(c) in subarticle (5) thereof as renumbered, after the words

“in terms of subarticle (1)” there shall be added the words “and, or any designation made in terms of subarticle (2)”.

5. Article 3 of the principal Act shall be amended as follows:

Amendment of article 3 of the principal Act.

(a) for subarticle (1) thereof there shall be substituted the following:

“3. (1) Subject to the provisions of subarticle (11) no person shall, without an individual licence given in writing by the Minister, make, buy, sell or have in his possession or under his control any apparatus.

(2) Subject to the provisions of subarticle (11) no person shall sell or give any apparatus to any person who has not obtained an individual licence as referred to in subarticle (1) of this article.

(3) The Minister may require any person who:

(a) has in his possession or under his control any apparatus which is in breach of any of the provisions of this Act and, or of any licence conditions as may be applicable to that apparatus, or

(b) is using or allowing such apparatus to be used for unauthorized frequencies, to desist from the use of any such apparatus and, or require such a person to deliver the apparatus to the Minister:

Provided that the Minister may seize and retain any such apparatus and, or cause the use of any such apparatus to be restricted in any manner, under such conditions and for such period of time as the Minister may specify where it results to the Minister that such apparatus is being used in breach of this Act or of any licence conditions that may apply in relation to the said apparatus:

Provided further that any expenses incurred by the Minister in the exercise of his functions under this subarticle including in the seizure, retention or storage however so described of the said apparatus, shall be recoverable as a civil debt by the Minister from any person acting in breach of this article.”;

(b) subarticles (2) to (6) thereof shall be renumbered as subarticles (4) to (8) respectively;

(c) for subarticle (5) thereof as renumbered, there shall be substituted the following:

“(5) Any person who contravenes the provisions of this article or who acts in breach of any terms, conditions or limitations, however so described, attached to a licence, shall be guilty of an offence against this Part of this Act.”; and

(d) immediately after subarticle (8) thereof as renumbered, there shall be added the following new subarticles:

“(9) No licence is required for sound only broadcast receivers.

(10) The Minister may, after consultation with the Malta Communications Authority, by order in the Gazette exempt certain categories of apparatus from the requirements of this article.

(11) The provisions of subarticles (1) and (2) of this article shall not apply in relation to any apparatus regulated by a general authorization issued in accordance with the provisions of this Act.”

6. Immediately after article 3 of the principal Act there shall be added the following new article:

Addition of new article 3A to the principal Act.

“Enforcement. 3A. (1) Any person duly authorised by the Minister to act on his behalf when exercising a power under this Act, shall, if requested by any person thereby affected, produce to that person for inspection a certificate issued by the Minister stating that he is duly authorised to act for and on behalf of the Minister.

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

(3) 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 Minister, shall assist and shall collaborate with the Minister in order to enable him to discharge his functions, and shall collate and transmit without any undue delay such information and documentation as the Minister may reasonably request from time to time.

(4) Any person who obstructs, impedes or assaults any person duly authorised by the Minister to act on his behalf in the exercise of any power under this Act, or fails or refuses to comply with a requirement under this Act shall be guilty of an offence against this Act and shall, on conviction, be liable to a fine (*multa*) not exceeding five thousand liri or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.”.

7. Article 19 of the principal Act shall be amended as follows:

Amendment of article 19 of the principal Act.

(a) in paragraph (a) thereof the words “protected or controlled;” shall be substituted with the words “protected or controlled, and in the case of any apparatus seized in accordance with article 3 of this Act, the manner as to the disposal and, or storage of any such apparatus;”;

(b) paragraphs (c) and (d) thereof shall be renumbered as paragraphs (e) and (f) respectively;

(c) immediately before paragraph (d) thereof as renumbered, there shall be inserted the following new paragraphs:

“(c) the imposition of administrative fines upon any person acting in breach of this Act provided that such fines do not exceed ten thousand liri for each infringement and, or two hundred liri for each day during which such infringement persists;

Provided that:

(i) the procedure for the imposition of such administrative fines shall allow for the right to be heard to be respected before any such fines are imposed;

(ii) the procedure for the imposition and contestation of such fines shall be that established in respect of fines imposed by the Malta Communications Authority under Part VII and Part VIII of the Malta Communications Authority Act, and the relevant provisions of the said Act and of any regulations made thereunder in respect of any such procedure shall apply *mutatis mutandis* to administrative fines imposed by the Minister under this Act in such a manner that any reference to the Malta Communications Authority shall be construed as a reference to the Minister;

(iii) in all cases where the Minister imposes an administrative fine in respect of anything done or 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;

(d) any fees and, or charges, however so described, that may be payable in relation to any matters regulated by this Act.”;

(d) in paragraph (e) thereof as renumbered, the words “relating to standards in Malta.” shall be substituted with the words”“relating to standards in Malta:.”; and

(e) after paragraph (e) thereof as renumbered, there shall be added the following:

“Provided that the Minister may, when making any regulations under this article which relate to standards, specifications or to matters of a strictly technical nature, make such regulations in the English language only.”.

8. Article 20 of the principal Act shall be amended as follows: Amendment of article 20 of the principal Act.

(a) the words “public security or civil protection requirements.” shall be substituted with the words “public security or civil protection requirements:”; and

(b) after the words “public security or civil protection requirements:” there shall be added the following proviso:

“Provided that the Prime Minister may in making an order under this article, impose any such conditions as he may consider appropriate. In imposing such conditions the Prime Minister shall consult the Malta Communications Authority.”.

9. The provisions of the Radiocommunications Act as in force prior to the coming into force of the Communication Laws (Amendment) Act, 2007 shall continue to apply in respect of anything done or omitted to be done by any person prior to the said coming into force of Part I of the said Act. Transitory provision.

Part II

Amendment of the Postal Services Act.

10. (1) This Part amends the Postal Services Act, and it shall be read and construed as one with the Postal Services Act, hereinafter in this Part referred to as “the principal Act”. Amendment of the Postal Services Act. Cap. 254.

(2) This Part shall come into force on such date as the Minister responsible for communications may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes thereof.

11. Article 2 of the principal Act shall be amended as follows: Amendment of article 2 of the principal Act.

(a) before the definition “access points” there shall be inserted the following new definition:

“ “this Act” includes any regulations made made under this Act unless the context otherwise requires;”.

(b) before the definition “direct mail” there shall be inserted the following new definition:

“ “decision” includes any determination, direction, measure, requirement or specification, however so described, made by the Authority;”

(c) in the definition “postal article”, the words “periodicals and postal packages” shall be substituted with the words “periodicals and postal parcels, however so described, including packages;”.

General substitution in the principal Act.

12. The words “package” and “packages” wherever they occur in the principal Act shall be substituted by the words “parcel” and “parcels” respectively.

Amendment of article 24 of the principal Act.

13. Immediately after subarticle (2) of article 24 of the principal Act, there shall be added the following new subarticle:

“(3) The Authority may, when establishing quality of service standards under this article, adopt those measures that it considers to be appropriate in respect of non-compliance with such standards by the universal service provider. Such measures may include requiring the universal service provider to pay such administrative fines as the Authority may establish in accordance with the provisions of this Act.”.

Amendment of article 62 of the principal Act.

14. In subarticle (5) of article 62 of the principal Act the words “any person who contravenes or fails to comply with any provisions of this Act or of any regulations made or directives given thereunder” shall be substituted by the words “any person who contravenes or fails to comply with any provisions of this Act”.

Addition of new article 76A to the principal Act.

15. Immediately after article 76 of the principal Act there shall be added the following new article:

“Issue of directives and administrative fines. Cap. 418.

76A. (1) The Authority may in accordance with the provisions of article 4(6) and (7) of the Malta Communications Authority Act, issue any such directives as the Authority considers to be necessary for the purposes of and in accordance with the provisions of this Act.

(2) Any postal operator who fails to comply with a directive or a decision, however so described, issued by the Authority, shall be liable to the imposition by the Authority of an administrative fine not exceeding the sum of ten thousand liri and, or two hundred liri for each day during which failure to observe the requirements of any such directive or decision persists.”

Amendment of article 81 of the principal Act.

16. In the proviso to article 81(2)(k) of the principal Act, the words “the sum of five thousand liri for each offence” shall be substituted with the words “the sum of ten thousand liri for each offence”.

17. The provisions of the Postal Services Act as in force prior to the coming into force of the Communication Laws (Amendment) Act, 2007 shall continue to apply in respect of anything done or omitted to be done by any person prior to the said coming into force of Part II of the said Act.

Transitory provision.

Part III

Amendment of the Electronic Communications (Regulation) Act.

18. (1) This Part amends the Electronic Communications (Regulation) Act, and it shall be read and construed as one with the Electronic Communications (Regulation) Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of the Electronic Communications (Regulation) Act. Cap. 399.

(2) This Part shall come into force on such date as the Minister responsible for communications may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes thereof.

19. Subarticle (2) of article 6 of the principal Act shall be deleted, and subarticle (1) thereof shall be renumbered as the whole article.

Amendment of article 6 of the principal Act.

20. Subarticle (2) of article 7 of the principal Act shall be deleted, and subarticle (1) thereof shall be renumbered as the whole article.

Amendment of article 7 of the principal Act.

21. Subarticle (2) of article 8 of the principal Act shall be deleted, and subarticle (1) thereof shall be renumbered as the whole article.

Amendment of article 8 of the principal Act.

22. Subarticle (8) of article 11 of the principal Act shall be deleted.

Amendment of article 11 of the principal Act.

23. Subarticle (7) of article 14 of the principal Act shall be deleted.

Amendment of article 14 of the principal Act.

24. Subarticle (2) of article 15 of the principal Act shall be deleted, and subarticle (1) thereof shall be renumbered as the whole article.

Amendment of article 15 of the principal Act.

25. Subarticle (2) of article 16 of the principal Act shall be deleted, and subarticle (1) thereof shall be renumbered as the whole article.

Amendment of article 16 of the principal Act.

26. Subarticle (5) of article 19 of the principal Act shall be deleted, and subarticle (6) thereof shall be renumbered as subarticle (5).

Amendment of article 19 of the principal Act.

27. Subarticle (2) of article 21 of the principal Act shall be deleted, and subarticle (1) thereof shall be renumbered as the whole article.

Amendment of article 21 of the principal Act.

28. Articles 24 to 26 of the principal Act shall be deleted.

Deletion of articles 24 to 26 of the principal Act.

Amendment of article 43 of the principal Act.

29. In subarticle (2) of article 43 of the principal Act, the words “exempt from the provisions of this Act” shall be substituted with the words “exempt from any of the provisions of this Act and from the provisions of any regulations made thereunder”.

Transitory provision.

30. The provisions of the Electronic Communications (Regulation) Act as in force prior to the coming into force of the Communication Laws (Amendment) Act, 2007 shall continue to apply in respect of anything done or omitted to be done by any person prior to the said coming into force of Part III of the said Act.

Part IV

Amendment of the Malta Communications Authority Act

Amendment of the Malta Communications Authority Act. Cap. 418

31. (1) This Part amends the Malta Communications Authority Act, and it shall be read and construed as one with the Malta Communications Authority Act, hereinafter in this Part referred to as “the principal Act”.

(2) This Part shall come into force on such date as the Minister responsible for communications may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes thereof.

Amendment of article 2 of the principal Act.

32. Article 2 of the principal Act shall be amended as follows:

(a) immediately before the definition “Authority” there shall be added the following new definition:

““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;”;

(b) immediately after the definition “communications” there shall be added the following new definition:

““Community” means the European Community;”;

(c) immediately after the definition “undertaking” there shall be added the following new definition:

““user” includes any person who uses or requests any communications service.”.

Amendment of article 4 of the principal Act.

33. In subarticle (9) of article 4 of the principal Act, the words “for the application of the provisions of this Act” shall be substituted

with the words “for the application of the provisions of this Act, and of any other law relating to competition issues and, or consumer affairs,”.

34. Immediately after sub-article (9) of article 5 of the principal Act there shall be added the following new subarticle:

Amendment of article 5 of the principal Act.

“(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.”.

35. Subarticle (1) of article 29 of the principal Act shall be amended as follows:

Amendment of article 29 of the principal Act.

(a) paragraphs (c), (d) and (e) thereof shall be renumbered as paragraphs (d), (e) and (f);

(b) before paragraph (d) thereof as renumbered there shall be added the following new paragraph:

“(c) remove and retain such books, documents or records for such period as may be reasonable for further examination;” and

(c) in paragraph (f) as renumbered the words “make such inspections,” shall be substituted with the words “make such inspections including site inspections to enable the Authority to carry out its functions at law and in doing so the Authority may also undertake”.

36. Articles 31 to 33 of the principal Act shall be substituted with the following:

Substitution of articles 31 to 33 of the principal Act.

“Other sanctions that the Authority may impose. **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:

(a) the imposition of an administrative fine in accordance with the provisions of this article and articles 32 and 33; and

(b) in cases which the Authority considers to constitute a repeated and serious infringement, 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.

Procedure
when taking
a measure
under article
31.

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 within such period not being less than thirty days:

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 thirty day period referred to in subarticle (1) 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 thirty day period referred to in subarticle (1):

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 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.

Quantum of an administrative fine.

33. (1) An administrative fine imposed shall not, unless provided otherwise by or under this Act, exceed one hundred and fifty thousand liri for each infringement or failure to comply and, or five thousand liri for each day of infringement or non-compliance as the case may be:

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).”.

Addition of new article 34A to the principal Act.

37. Immediately after article 34 of the principal Act there shall be added the following new article:

“Limitation on the provision of services, networks to protect public security etc.

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 to hold any authorization or to act in any capacity mentioned in paragraphs (b) or (c) above and that the holding by such person 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 any company, partnership or other body in which the said person holds any said capacity from holding an authorization.

(3) The Authority may, for the purpose of ascertaining whether any person referred to in subarticle (2) of this article is a fit and proper person to hold an authorization or to act in any capacity mentioned in paragraphs (b) or (c) of subarticle (2) of this article, 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 paragraphs (b) or (c) of subarticle (2) of this article;

(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.”.

Amendment of article 37 of the principal Act.

38. Article 37 of the principal Act shall be amended as follows:

(a) in the marginal note thereto there shall be added the words “Cap. 426”; and

(b) in subarticle (1) thereof the words “the Broadcasting Authority Act or the Postal Services Act:” shall be substituted with the words “the Broadcasting Act, the Postal Services Act or the Electronic Commerce Act:”.

Amendment of article 38 of the principal Act.

39. Article 38 of the principal Act shall be amended as follows:

(a) subarticle (2) thereof shall be substituted with the following:

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

(b) in subarticle (3) thereof the words “unless such fine cannot at law be imposed in the circumstances of the case, or cannot at law be fixed in the amount established by the Authority” shall be substituted with the words “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”.

40. (1) Part IX of the principal Act shall be renumbered as Part X and articles 43 to 47 shall be renumbered as articles 45 to 49 respectively.

Renumbering of Part IX and addition of new Part IX to the principal Act.

(2) Immediately after Part VIII of the principal Act, there shall be added the following new Part IX:-

“PART IX
DISPUTE RESOLUTION

Disputes
between
persons
holding an
authorization.

43. (1) In the event of a dispute arising between persons holding an authorization and who are established in Malta, in connection with obligations under any law which the Authority is entitled to enforce, the Authority shall, subject to subarticle (2) of this article, 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:

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) of this article, 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) A person to whom a decision under this article applies shall, saving the provisions of article 42 of this Act, 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.

(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) of this article.

Disputes
involving
consumers.

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.”.

Amendment of article 45 as renumbered of the principal Act.

41. For subarticle (2) of article 45 as renumbered of the principal Act, there shall be substituted the following:

“Employment etc. of a member or officer of the Authority after he ceases to be so .

(2) For a period of one year after a member or officer of the Authority has ceased to be a member or officer of the Authority as the case may be, such member or officer shall not accept any office, consultancy or employment where, in the course of such office, consultancy or employment, the member or officer could or might use or disclose any confidential information acquired by him in the exercise of his functions under this Act.

(3) Notwithstanding subarticle (2), a person who was a member or officer of the Authority shall not be precluded from -

(a) holding office, or engagement in, any employment in the civil service or any statutory regulatory body, or

(b) acting as a consultant to any Minister of the Government, on the basis that the period referred to in that subarticle has not expired.

(4) Any person who acts in breach of this article shall be liable to pay an administrative fine which fine shall not exceed the sum of ten thousand Maltese liri.

(5) For the purpose of this article the words “a member or officer of the Authority” shall mean the Chairman, members of the Authority, the Director General, the Directors and such other officers who the Minister, after consultation with the Chairman, considers as being officers responsible for the taking of executive decisions of the Authority as the Minister may from time to time designate by notice in the Gazette.”.

Amendment of article 49 as renumbered of the principal Act.

42. After subarticle (3) of article 49 as renumbered of the principal Act there shall be added the following new subarticle:

“(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.”.

43. The provisions of the Malta Communications Authority Act as in force prior to the coming into force of the Communication Laws (Amendment) Act, 2007 shall continue to apply in respect of anything done or omitted to be done by any person prior to the said coming into force of Part IV of the said Act.

Transitory provision.

Part V

Amendment of the Electronic Commerce Act

44. (1) This Part amends the Electronic Commerce Act, and it shall be read and construed as one with the Electronic Commerce Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of the Electronic Commerce Act. Cap. 426.

(2) This Part shall come into force on such date as the Minister responsible for communications may by notice in the Gazette appoint and different dates may be so appointed for different provisions and different purposes thereof.

45. Article 2 of the principal Act shall be amended as follows:

Amendment of article 2 of the principal Act.

(a) in the definition “recipient”, the word “recipient” shall be substituted with the words “recipient of the service”;

(b) immediately before the definition “signature verification device”, there shall be inserted the following new definition:

“ “service provider” means any person providing an information society service;”.

46. The word “originator” wherever it occurs in the Act other than in Part IV thereof, shall be substituted with the words “service provider”.

General substitution in the principal Act.

47. In subarticle (1) of article 4 of the principal Act, the words “the provisions of articles 5 to 15” shall be substituted with the words “the provisions of this Act, other than any provisions relating to signature certification services,”.

Amendment of article 4 of the principal Act.

48. Article 10 of the principal Act shall be substituted with the following:

Amendment of article 10 of the principal Act.

“Formation of electronic contract.

10. (1) Unless otherwise agreed by parties who are not consumers, where the recipient of the service places his order through technological means:

(a) an electronic contract is concluded when after placing his order, the recipient of the service has received

from the service provider an acknowledgement of receipt of the order made by the recipient:

Provided that the service provider must acknowledge receipt of the order made by the recipient without undue delay and by electronic means; and

(b) the order made by the recipient and the acknowledgement of receipt are deemed to have been received when the parties to whom they are addressed are able to access them.

(2) Unless otherwise agreed by parties who are not consumers, the service provider shall provide the recipient of the service with effective and accessible technical means to identify and correct handling and input errors and accidental transactions prior to the conclusion of the contract.

(3) The provisions of subarticle (1)(a) and of subarticle (2) of this article shall not apply to contracts concluded exclusively by electronic mail or by equivalent individual communications.”.

Amendment of the Fifth Schedule to the principal Act.

49. For paragraph (k) of the Fifth Schedule to the principal Act there shall be substituted the following:

“(k) any contracts governed by family law.”.

Transitory provision.

50. The provisions of the Electronic Commerce Act as in force prior to the coming into force of the Communications Laws (Amendment) Act, 2007 shall continue to apply in respect of anything done or omitted to be done by any person prior to the coming into force of Part V of the said Act.

Objects and Reasons

The object of this Bill is to amend various laws relating to communications sectors enforced by the Malta Communications Authority including the Postal Services Act, Electronic Communications (Regulation) Act, and the Malta Communications Authority Act.