

**SAMOA**

## Arrangement of Provisions

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**2008, No. 18**

**AN ACT to amend the Telecommunications Act 2005.**

*[12<sup>th</sup> June 2008]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**1. Short title and commencement-**(1) This Act may be cited as the Telecommunications Amendment Act 2008.

(2) This Act commences on the date of assent by the Head of State.

**2. Alternative arrangements for appointment of a Regulator** - The Principal Act is amended by inserting after section 7 the following section:

**“7A. Alternative arrangements for the appointment of a Regulator-**(1) Notwithstanding the provisions of sections 6 and 7, Cabinet may approve the appointment of a suitable regulatory body within or outside Samoa to act as Regulator for the purposes of this Act.

(2) An appointment made under this section shall be on such terms and for such period as Cabinet approves, and may be revoked by Cabinet at any time if the arrangement is no longer required or considered to be unsatisfactory in meeting the objectives of this Act.

(3) The appointment of a Regulator under this section shall be in accordance with the terms approved by Cabinet, and shall otherwise be implemented and administered in accordance with a contract approved for that purpose by the Attorney General.”

**3. Appeal of orders of the Regulator** - The Principal Act is amended by deleting section 11 and replacing it with the following section:

**“11. Appeal of orders of the Regulator to the Telecommunications Tribunal-**(1) An appeal from an order, directive, decision, or exercise of discretion of the Regulator may only be made to the Telecommunications Tribunal by way of a Notice of Appeal and in accordance with the provisions of this Act.

(2) A Notice of Appeal must be served on the Minister and must be accompanied by:

- (a) a bank cheque in the amount of \$100,000 tala; and
- (b) a signed written undertaking by the appellant to pay damages and all costs arising in any way from the convening of the Tribunal, the conduct of its proceedings and any subsequent order that is made by the Tribunal or the Regulator as a result of the appeal.

(3) The appellant must also serve, on the same date, copies of the Notice of Appeal and accompanying documents on the Regulator and the Attorney General and where relevant, to the other person who may be a respondent or party to the appeal.

(4) The Notice of Appeal must be served within 30 days after the date of the order, directive, decision, or exercise of discretion of the Regulator which is the subject of the appeal.

(5) The Notice of Appeal must set out:

(a) the relevant section of the Act under which the decision appealed against was made; and

(b) the grounds of appeal which must set out in sufficient detail so as to state -

(i) the grounds upon which the appellant contends that the decision appealed against was based on an error of fact or was wrong in law, or both;

(ii) the grounds upon which the appellant is appealing against the exercise of a discretion by the Regulator.”

**4. Telecommunications Tribunal** - The Principal Act is amended by inserting after Part II a new Part IIA as follows:

#### **“PART IIA**

#### **TELECOMMUNICATIONS TRIBUNAL**

**11A. The establishment of the Telecommunications Tribunal-(1)** The Telecommunications Tribunal is hereby established.

(2) When conducting a proceeding in accordance with this Act, the Tribunal shall be comprised of a presiding member and two (2) other members appointed in accordance with this Part.

(3) The Ministry shall provide the necessary administrative support to the Tribunal whenever it convenes under this Part of the Act.

**11B. Presiding member** - The Tribunal shall be presided over by a Judge or a lawyer who is qualified to be a Judge, who shall be appointed from time to time by the Chief Justice when the Tribunal is required to hear and determine an appeal under section 11.

**11C. Other tribunal members**-(1) Two (2) members of the Tribunal shall be appointed by the presiding member from the panel of Tribunal members for each Tribunal proceeding convened under this Act.

(2) A person may be appointed to the panel of Tribunal members by the Head of State, acting on the advice of Cabinet, if that person:

- (a) has qualifications and/or experience in economics or management finance; or
- (b) has qualifications and/or experience in telecommunications engineering or telecommunications business management; or
- (c) has legal qualifications with telecommunication background.

(3) Prior to the commencement of a Tribunal proceeding, each member shall be required to state that he or she has:

- (a) no personal interest or involvement in the matter under dispute; and
- (b) no association of any nature with any of the disputing parties which may be perceived as affecting the impartiality of the member.

(4) A Tribunal member shall be entitled to receive a sitting fee, allowance and other expenses approved from time to time by the Minister.

(5) The Head of State, acting on the advice of Cabinet, may at any time revoke the appointment of any member of the Tribunal if such member:

- (a) becomes of unsound mind or otherwise becomes permanently unable to perform his or her functions by way of health;

- (b) is convicted of an offence punishable by a term of imprisonment exceeding five (5) years;
- (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him or her under this Act; or
- (d) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal; or
- (e) has an interest in the proceedings which the member has failed to disclose.

**11D. Convening Tribunal hearings-**(1) The Tribunal shall be convened by the Presiding Member as soon as is necessary for the Tribunal to hear and determine any dispute referred to the Tribunal in accordance with this Act.

(2) The Tribunal shall convene at such time and place, and shall conduct its proceedings as determined by the Presiding Member.

**11E. Tribunal proceedings-**(1) Subject to this Act, the Tribunal shall have the powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964, including:

- (a) protections in accordance with sections 5 and 9 of that Act; and
- (b) powers as provided by section 6 of that Act; and
- (c) a power to hear persons having an interest in a matter which is the subject of a Tribunal proceeding as provided by section 7 of that Act.

(2) A person who, after being summoned or ordered to attend before a Tribunal or to produce any books, papers, writings, or documents to a Tribunal:

- (a) fails to appear according to the requirements of such a summons; or
- (b) refuses to be sworn or to give evidence or to make answer to such questions as may be put to the person by any member of a Tribunal relating to the subject of the inquiry; or

(c) fails to produce any such books, papers, writings, or documents, commits an offence and shall be liable to a fine not exceeding 50 penalty units, or to imprisonment for a term not exceeding six (6) months, or both.

(3) Each Tribunal proceeding shall be conducted so as to accord the principles of natural justice to any party as far as is practicable having regard to the need in any given case to proceed expeditiously to determine the appeal.

(4) Nothing in subsection (3) shall affect the right of the Tribunal to direct that:

(a) sworn statements be submitted by persons intending to provide evidence or make submissions to a Tribunal; and

(b) the right to cross examine any witness shall be restricted only to matters which the Tribunal considers to be of such a highly probative nature that they need to be tested under cross examination; and

(c) each party, and any interested person permitted to participate in a Tribunal proceeding, prepare and submit written submissions, and that these be provided to other parties and their representatives on terms determined by the Tribunal; and

(d) any other things be done or orders be complied with to permit the timely determination of a dispute.

(5) The Tribunal may make final and binding determinations in relation to any matter of procedure, and make orders to that effect.

**11F. Government may be represented in any proceeding-**(1) In all Tribunal proceedings, the Attorney General may elect to represent the Government, and in any such case, the Government shall be regarded as a party to the dispute.

(2) No order for the payment of any costs associated with any Tribunal proceedings may be made against the Government.

**11G. Tribunal decisions-**(1) All decisions of the Tribunal shall be validly made if a majority of members resolve to make the decision.

(2) The Tribunal may:

(a) confirm, modify or reverse the decision or order of the Regulator;

(b) refer the decision or order back to the Regulator for re-consideration by it, either generally or in relation to any matter specified by the Tribunal;

(c) order that the decision of the Regulator to which an appeal relates shall not have effect until the appeal is determined;

(d) dismiss the appeal;

(e) order a party to refund to any specified service provider any amount that has been paid to that party in excess of a revised order imposed by the Tribunal;

(f) subject to section 11F(2), order costs to be paid.

(3) A decision of the Tribunal shall be final and binding on all parties, and all persons named in any order made by a Tribunal.

**11H. Government ministries and agencies to assist Tribunal-**(1) All government ministries and agencies shall cooperate with the Tribunal and shall make available, at no cost, any document or record in its custody which the Tribunal requires, or which may assist in the consideration and determination of a dispute.

(2) This section applies notwithstanding any provision of any law to the contrary.

**11I. Appeal shall bar litigation-**(1) No proceedings relating to any telecommunications dispute may be commenced in any Court after an appeal has been filed under this Part.

(2) This section does not prevent any action taken by way of judicial review in relation to a proceeding of the Tribunal.

**11J. Enforcement of orders** - Any person who is directed by the Tribunal or under a legal obligation to implement an order made by a Tribunal under this Act, and who refuses or fails to implement the order, commits an offence and shall be liable upon conviction:

- (a) in the case of a natural person to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 12 months, or both; or
- (b) in the case of a company or other incorporated body, to a fine not exceeding 5,000 penalty units for a first offence and 10,000 penalty units for a subsequent offence.”

**5. Additional grounds for revoking or refusing renewal of a licence** - The Principal Act is amended by inserting after section 18 a new section 18A as follows:

**“18A. Revocation upon conviction for an offence** - Notwithstanding section 18, a licence shall be deemed to be revoked if the licensee is convicted of any offence under the laws of Samoa which involves:

- (a) an element of dishonesty;
- (b) the making of some financial gain from the public or any section of the public by the failure to observe any legal obligation;
- (c) the failure to obtain a licence or permit that is required by law in the course of any aspect of the licensee’s business.”

**6. Interim interconnection charges** - The Principal Act is amended by inserting after section 39 the following sections:

“39A. Interim interconnection charges-(1) The Regulator shall have the power to direct a service provider to implement interconnection charges on an interim basis, either:

- (a) pursuant to the process set out in this section; or
- (b) based on a rate agreed to by the service providers pursuant to section 39B.

(2) Where the Regulator intends to impose an interim interconnection charge, the Regulator shall request the service providers to provide, within 14 days from the date of the request reports containing:

- (a) recommendations as to the appropriate interim charge;
- (b) the basis for the recommended interim charge; and
- (c) any other matter determined by the Regulator.

(3) 14 days after making the request for reports under subsection (2), the Regulator shall consider the reports that have been submitted and any other matter that the Regulator considers relevant in determining the interim interconnection charge.

(4) Before the Regulator finalises the interim interconnection charge, the Regulator shall notify the service providers of the interim interconnection charges that are to be imposed.

(5) The service providers may make submissions to the Regulator within seven (7) days of the receipt of the notification under subsection (4) of the intended interconnection charge if any of them do not agree with the proposed charge.

(6) The Regulator, after receipt and consideration of submissions (if any) from the service providers, shall then issue interim interconnection charges which shall be in force for any period of time determined by the Regulator, but the period shall not exceed six (6) months.

(7) Notwithstanding subsection (6), the Regulator shall have the power during the period of an interim interconnection order:

- (a) to vary the interim interconnection order; or
- (b) to extend the interim interconnection order for any other period provided such extended period does not exceed six (6) months; or
- (c) to cancel the interim interconnection charge.

(8) In varying, extending or cancelling an interim interconnection order pursuant to subsection (7), the Regulator shall adopt as far as is appropriate in the circumstances, the process set out in subsections (2) to (5).

(9) Notwithstanding section 36, any interim interconnection order imposed by the Regulator under this section need not be cost based.

(10) A failure by a service provider to provide any report or submission under this section shall not prevent the Regulator from proceeding with determining the interim interconnection charge.

(11) Any service provider that disagrees with the interim interconnection charge imposed by the Regulator under this section may appeal to the Tribunal in accordance with Part IIA, but no such appeal shall operate to affect the validity of the interim charge pending the outcome of the appeal.

**39B. Service providers to agree on interconnection charges-**(1) The Regulator may direct the parties to enter into negotiations to determine and agree upon an agreed interconnection charge.

(2) If the service providers do not reach an agreement within two (2) weeks from the date of the Regulator directing the parties to negotiate, the Regulator shall impose interim interconnection charges in accordance with section 39A.”

**7. Consequential amendments-**(1) Section 71 of the Principal Act is amended by deleting section 71 (2) (b).

(2) Section 72 of the Principal Act is amended by deleting section 72 (2) (b).

(3) Section 79 of the Principal Act is deleted.

**8. Civil liability** - Section 78 of the Principal Act is amended by inserting subsection (4) as follows:

“(4) The government and the Regulator shall not be liable for any costs or damages in any legal proceedings challenging any action taken under this Act, or for any failure or refusal to take any action which is authorized by this Act.”

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**The Telecommunications Amendment Act 2008 is administered by the Ministry of Communications and Information Technology.**