

ACT 771
NATIONAL INFORMATION TECHNOLOGY ACT, 2008

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ACT 771

NATIONAL INFORMATION TECHNOLOGY ACT, 2008(1)

AN ACT to establish the National Information Technology Agency to regulate information communications technology and to provide for related purposes.

National Information Technology Agency

1. Establishment of the National Information Technology Agency

(1) There is established by this Act, a body to be known as the National Information Technology Agency.

(2) The Agency is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Agency may for the performance of its functions acquire and hold movable and immovable property and may enter into a contract or any other transaction.

(4) Where there is hindrance to the acquisition of property, the property may be acquired for the Agency under the State Property and Contracts Act, 1960 (C.A.6) or the State Lands Act, 1962 (Act 125) and the Agency shall bear the cost.

2. Object of the Agency

The object of the Agency is to regulate the provision of information communications technology, ensure the provision of quality information communications technology, promote standards of efficiency and ensure high quality of service.

3. Functions of the Agency

(1) For the purpose of achieving its object, the Agency shall

- (a) perform the functions of the certifying Agency established under the Electronic Transactions Act, 2008 (Act 772);
- (b) implement and monitor the national information communications technology policy;
- (c) issue licences under this Act and ensure fair competition among licence holders;
- (d) implement and enforce the provisions of this Act, the Electronic Transactions Act, 2008 (Act 772) and regulations made under the Act;

- (e) resolve matters that involve domain names between the Domain Name Registrar under the Electronic Transactions Act in accordance with the provisions of this Act;
 - (f) monitor, enforce and ensure effective compliance with conditions contained in licences and tariffs;
 - (g) maintain registers of licences and applications for licences;
 - (h) maintain registers for approvals given for equipment under the Electronic Transactions Act, 2008 (Act 772);
 - (i) provide access to registers for licences, applications for licences and approvals for equipment except where commercial confidentiality does not allow for access;
 - (j) collect fees and other charges to be paid to the Agency under this Act;
 - (k) investigate and resolve disputes between licence holders under the Electronic Transactions Act referred to the Agency by licence holders;
 - (l) investigate complaints by users who fail to obtain redress from a licence holder;
 - (m) carry out investigations on the conduct of persons at the Agency's own initiative or at the request of another person to determine whether any person is engaging in acts contrary to the provisions of this Act;
 - (n) establish quality of service indicators and reporting requirements that apply to licence holders under the Electronic Transactions Act;
 - (o) ensure the systematic implementation of national information communications technology policy;
 - (p) issue and publish on their website and in the *Gazette* the necessary guidelines and standards;
 - (q) obtain from persons the necessary information for the performance of its functions;
 - (r) carry out investigations and determine complaints that involve anti-competitive, price-fixing and unfair trade practices by persons under the Electronic Transactions Act;
 - (s) formulate the strategy of the Agency;
 - (t) ensure that the policy directions given by the Minister are implemented;
 - (u) ensure high standards of propriety within the Agency;
 - (v) promote efficiency and effective use of resources and staff of the Agency;
 - (w) establish the policy and resource framework for the operations and the overall strategic direction of the Agency;
 - (x) ensure that the principles of good corporate governance are complied with; and
 - (y) perform any other functions that are necessary to attain the objects of the Agency.
- (2) In discharging its functions, the Agency shall take into account the following:
- (a) any principle that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
 - (b) any other principle that represents best regulatory practice;
 - (c) the protection of the interests of consumers under the Electronic Transactions Act, 2008 (Act

- 772) as regards the choice, price, quality of service and value for money;
- (d) the needs of persons who are physically challenged, elderly and those on low incomes;
 - (e) the opinions of consumers and of members of the public generally; and
 - (f) the different interests of persons living in rural and urban areas.

4. Governing body of the Agency

(1) The governing body of the Agency is a Board consisting, of

- (a) the chairperson,
- (b) the Director-General appointed under section 16 of this Act,
- (c) one representative of the National Security Council,
- (d) one person with experience and expertise in information communication technology issues,
- (e) three other persons with knowledge or expertise in electronic engineering, law, economics, business or public administration and at least one of whom is a woman,
- (f) one representative of the Ministry not below the rank of a director, and
- (g) one representative from the industry.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

(3) The Board shall ensure the proper and effective performance of the functions of the Agency.

5. Tenure of office of members

(1) A member of the Board other than the Director-General shall hold office for a period of not more than three years and is eligible for reappointment but a member shall not be appointed for more than two terms.

(2) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(3) A member of the Board, other than the Director-General of the Agency absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(4) The President may by letter addressed to a member revoke the appointment of that member.

(5) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(6) Where there is a vacancy

- (a) under subsection (2), (3) or (4) or section 7 (2), or
- (b) as a result of a declaration under subsection (5), or
- (c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

6. Meetings of the Board

(1) The Board shall meet at least once every three months for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extra-ordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is four members or a greater number determined by the Board in respect of an important matter.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

(7) The proceedings of the Board shall not be invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(8) Subject to this section, the Board may determine the procedure for its meetings.

7. Disclosure of interest

(1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) A member who contravenes subsection (1) ceases to be a member.

8. Duties and liability of members

(1) The duties of directors contained in Part Q of Chapter II of the Companies Act, 1963 (Act 179) shall apply to members of the Board.

(2) A member of the Board is not personally liable for damage or injury to a third party that arises in the execution of an official duty of that member, if the member at all material times acted in good faith.

9. Declaration of registrable interests

(1) Each member of the Board, shall

(a) submit to the Agency a written declaration that includes details of that members shareholdings, debentures or other, interests in a company whether directly or indirectly owned by the member, public and charitable appointments as well as directorships held by the member,

(b) inform the Agency of any change in respect of that member's shareholdings, debentures or other interests in a company, whether directly or indirectly owned by the member, public and charitable appointments as well as directorships held by the member, and

not knowingly make a false declaration.

(2) A member of the Board who contravenes subsection (1) ceases to be a member of the Board.

10. Code of conduct

- (1) The Board shall compile and publish within one year after the commencement of this Act, a code of conduct for the Agency.
- (2) The code of conduct shall among others provide for disciplinary and ethical matters.
- (3) The Board may revise the code of conduct to take account of changing regulatory objectives.

11. Establishment of committees

- (1) The Board may establish committees or advisory bodies consisting of members of the Board or non-members or both to perform a function of the Board.
- (2) A committee composed exclusively of non-members may only advise the Board.

12. Allowances

Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Administrative Provisions

13. Divisions of the Agency

- (1) The Board shall establish divisions of the Agency for the effective and efficient discharge of the functions of the Agency.
- (2) A regional or district office of the Agency shall perform the functions of the Agency in the region or district that the Board may direct.
- (3) The President shall, in accordance with article 195 of the Constitution, appoint officers for a regional or district office of the Agency.

14. Regional and district offices of the Agency

- (1) The Board may establish regional and district offices of the Agency as determined by the Board.
- (2) The President shall in accordance with article 195 of the Constitution appoint officers for a regional or district office of the Agency.
- (3) A regional or district office of the Agency shall perform the functions of the Agency in the region or district that the Board may direct.

15. Ministerial directives

The Minister may give directives to the Board on matters of policy and the Board shall comply.

16. Director-General

- (1) The President shall in accordance with article 195 of the Constitution appoint a Director-General who shall be the Chief Executive of the Agency.
- (2) The Director-General is responsible for the day-to-day administration of the affairs of the Agency

and is answerable to the Board in the performance of the functions under this Act.

(3) The Director-General shall hold office on the terms and conditions specified in the letter of appointment.

(4) The Director-General shall hold office for a period of not more than four years and is eligible for re-appointment.

(5) The Director-General may delegate a function to the Deputy Director-General or an officer of the Agency but is not relieved from the ultimate responsibility for the performance of the delegated function.

17. Deputy Director-General

(1) The President shall in accordance with article 195 of the Constitution, appoint a Deputy Director-General of the Agency.

(2) The Deputy Director-General shall act in the absence of the Director-General.

(3) The Deputy Director-General shall be assigned other responsibilities as the Board may determine.

18. Secretary

The President shall in accordance with article 195 of the Constitution appoint a secretary who is to

- (a) facilitate the smooth operation of the decision-making and reporting machinery of the Agency;
- (b) formulate agenda for meetings with the chairperson and the Director-General;
- (c) advise the Board on
 - (i) content,
 - (ii) organisation of memoranda, or
 - (iii) presentations for Board meetings;
- (d) collect, organise and distribute information, documents or other papers required for meetings of the Board, and
- (e) ensure record minutes at meetings and that all books containing minutes are maintained with certified copies of the minutes.

19. Register

(1) The Director-General shall cause to be kept and maintained a Register in which shall be recorded details of

- (a) licences,
- (b) licence applications, and
- (c) equipment approvals,
- (d) any shareholdings and debentures owned by a member of the Board,
- (e) other financial interests a member of the Board has in a corporate body,
- (f) the public and charitable appointments and directorships of a member, and
- (g) any other matter required to be registered.

- (2) The Register shall be publicly accessible, in both physical and electronic form.
- (3) The Register shall be open to the public for physical inspection during normal working hours and subject to the payment of the prescribed fee.
- (4) A person may
 - (a) make a copy of the content of the Register; or
 - (b) take an extract from the Register at the fee that the Agency may determine.

20. Appointment of other staff

- (1) The President shall in accordance with article 195 of the Constitution appoint other staff of the Agency that are necessary for the proper and effective performance of its functions.
- (2) Other public officers may be transferred or seconded to the Agency or may otherwise give assistance to it.
- (3) The Agency may engage the services of consultants and advisers on the recommendations of the Board.
- (4) The terms and conditions of members of staff shall be decided in consultation with the Public Services Commission.
- (5) The Agency shall advertise staff vacancies in the media.

Financial Provisions

21. Funds of the Agency

- (1) The Funds of the Agency include
 - (a) fees and charges payable under this Act or the Electronic Transactions Act, (Act 772),
 - (b) moneys provided by Parliament,
 - (c) donations, grants and gifts, and
 - (d) income derived from the investment of the funds of the Agency.
- (2) The Board shall with the approval of the Controller and Accountant-General open a bank account into which shall be paid moneys received by the Agency.

22. Expenses of the Agency

- (1) The expenses of the Agency shall be paid from fees charged by the Agency.
- (2) Where after having defrayed the outstanding expenses, the Agency has an excess amount, the Agency shall transfer that amount to the Consolidated Fund unless the Minister for Finance in consultation with the Minister approves the retention by the Agency of a part or the whole of that excess amount.

23. Accounts and audit

- (1) The Board shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Agency to the Auditor-General for audit within six months after the end of the financial year.

(3) The Auditor-General shall not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The Internal Audit Agency Act, 2003 (Act 658) shall apply to this Act.

(5) The financial year of the Agency is the same as the financial year of the Government.

24. Annual report and other reports

(1) The Board shall within one month after the receipt of the audit report submit an annual report to the Minister covering the activities and the operations of the Agency for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The report shall be in the form and contain the information set out in the Schedule of this Act.

(4) The Minister shall within one month after the receipt of the annual report submit the report to Parliament with a statement that the Minister considers necessary.

(5) The Board shall also submit to the Minister any other reports which the Minister may require in writing.

25. Budget estimates

The Board shall submit a budget for the operations of the Agency for the following year to Parliament for approval through the Minister within three months after the commencement of the financial year.

26. Tax exemption

The Agency is exempted from the payment of any taxes.

Miscellaneous Provisions

27. Offences

A person who

- (a) makes a false declaration in an application for a licence,
- (b) makes a false declaration in an application for registration of a licence,
- (c) wilfully destroys or damages a register kept under this Act

commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both and in the case of a continuing offence to a further fine of ten penalty units for each day during which the offence continues after written notice has been served on the offender by the Agency.

28. Regulations

The Minister may, on the advice of the Board by legislative instrument make Regulations to

- (a) prescribe fees chargeable under this Act,
- (b) provide for forms for applications,
- (c) prescribe requirements for licences and approvals for equipment,
- (d) prescribe procedures for the conduct of investigations and determination of complaints,
- (e) provide procedures for the systematic implementation of a national information communications technology policy,
- (f) provide for the issue of guidelines and standards to ensure quality of service standards, and
- (g) provide for any matter necessary for the effective implementation of the provisions of this Act.

29. Interpretation

(1) In this Act unless the context otherwise requires,

“**Agency**” means the National Information Technology Agency established under section 1;

“**Board**” means governing board of the Agency;

“**chairperson**” means the chairperson of the Board;

“**customer**” includes a customer or consumer receiving service from an entity issued with a licence by the Agency;

“**domain name**” means a name that identifies one or more Internet Protocol addresses;

“**enactment**” means this Act and regulations made under it;

“**information technology**” means information communications technology;

“**Internet protocol address**” means an identifier for a computer or device on a network Transmission Control Protocol or Internet Protocol;

“**Minister**” means the Minister responsible for Communications;

“**Ministry**” means the Ministry of Communications;

“**prescribed**” means provided for in regulations made under this Act;

“**registrable interest**” means an interest required to be registered in accordance with this Act; and

“**Transmission Control Protocol**” means the suit of communications protocols used to connect hosts on the Internet.

(2) In this Act unless the context otherwise requires, words and expressions defined in the Electronic Transactions Act have the same meaning in this Act.

Schedule

Requirements for Annual Report

[Section 24 (3)]

<i>Ref.</i>	<i>Part of Report</i>	<i>Description</i>
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Endnotes

1 (Popup - Footnote)

1. This Act was assented to on 11th December, 2008 and notified in the *Gazette* on 19th December, 2008.