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CONTENTS

No. Page

PART B – ACT

10. The Swaziland Communications Commission Act, 2013 S1

The Swaziland Communications Commission Act, 2013

Act No. 10 of 2013

I ASSENT

MSWATI III

KING OF SWAZILAND

25th July, 2013

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II

SWAZILAND COMMUNICATIONS COMMISSION

3. Establishment of Commission
4. Seal of Commission
5. Impartiality and transparency of Commission
6. General functions of Commission
7. Primary functions of Commission
8. Secondary functions of Commission

PART III

BOARD OF COMMISSION

9. Establishment of Board
10. Composition of Board
11. Disqualification from membership

12. Functions of Board
13. Remuneration of members
14. Vacation of office
15. Filling of vacancies
16. Resignation
17. Removal from office for gross misconduct
18. Suspension
19. Proceedings and committees of Board

PART IV

CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES OF COMMISSION

20. Appointment of Chief Executive Officer
21. Term of office of Chief Executive Officer
22. Duties and responsibilities of Chief Executive Officer
23. Chief Financial Officer
24. Auditors
25. Other employees
26. Employees not to be shareholders in licensee
27. Pension and other financial schemes for employees
28. Indemnity of employees

PART V

CONDUCT OF AFFAIRS

29. Advisory committees
30. Disclosure of confidential information
31. Cooperation with other authorities
32. Consultation process

- 33. Annual National Communications Forum.
- 34. Procedures for applications for authorisations.
- 35. Maintenance of public register for authorisations.
- 36. Investigation of complaints and ex-officio investigations.
- 37. Decisions of Commission.

PART VI

POWERS, ENFORCEMENT AND SANCTIONS

- 38. General power of Commission.
- 39. Power to request information.
- 40. Additional powers of Commission.
- 41. Obstruction of Commission in exercise of powers.
- 42. Sanctions.
- 43. Administrative fine.

PART VII

REVIEW OF DECISIONS AND APPEALS

- 44. Reviews and appeals.
- 45. Communications Appeals Board.
- 46. Jurisdiction of Appeals Board.
- 47. Procedure before Appeals Board.
- 48. Appeal from decisions of Appeals Board.

PART VIII

FINANCIAL PROVISIONS

- 49. Funds of Commission
- 50. Financial year.
- 51. Annual budget
- 52. Accounts.

53. Annual report

PART IX

TRANSITIONAL AND GENERAL PROVISIONS

54. Regulations.

55. Transfer of regulatory powers and savings.

56. Transitional provisions.

PART X

AMENDMENTS

57. Amendment of Swaziland Television Authority Act.

58. Amendment of Swaziland Post and Telecommunications Act.

Schedule – Proceedings of Board

AN ACT

ENTITLED

AN ACT to establish a Swaziland Communications Commission; provide for the appointment of a Board of Directors of the Commission; provide for the regulatory functions of the Commission with regard to electronic communications, data protection in electronic communications, postal services, electronic commerce and broadcasting; transfer the regulatory powers and functions of the Swaziland Post and Telecommunications Corporation, relating to communications, as provided under the Swaziland Post and Telecommunications Act, 1983, to the Commission; transfer the regulatory powers and functions of the Swaziland Television Authority, relating to the issuance of a licence to conduct a television service, as provided under the Swaziland Television Authority Act, 1983, to the Commission; provide for the establishment of a Communications Appeals Board; and provide for incidental matters.

ENACTED by the King and Parliament of Swaziland.

PART I

PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Swaziland Communications Commission act, 2013, and shall come into force on a date to be determined by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires –

“access” has the meaning assigned to it in the Electronic Communications Act, 2010;

“advisory committee” means an advisory committee established in accordance with Section 29;

“Appeals Board” means the Communications Appeals Board established by Section 45(1);

“authorisation” means a licence or individual right of use that a person may hold or be granted under any law which the Commission is entitled to administer;

“Board” means the Board of Directors of the Commission, established in terms of Section 9;

“broadcasting” means the provision of vision, sound, multimedia and data service, principally intended for delivery of news, entertainment and education to the general public;

“broadcasting service” means a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radio frequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means;

“Chief Executive Officer” means the person appointed, under Section 20, as Chief Executive Officer of the Commission;

“Commission: means the Swaziland Communications Commission established by Section 3;

“committee” means a committee of the Board, established under Section 19(3);

“communications” including electronic communications, postal services, electronic commerce and broadcasting;

“Corporation” means the Swaziland Post and Telecommunications Corporation established under the Swaziland Post and Telecommunications Corporation Act, 1983;

“Court” means the High Court of Swaziland;

“decision” includes any directive, determination, authorisation condition, measure, requirement or specification made by the Commission;

“electronic commerce” means a transaction, business or services of a commercial nature generated, communicated, processed, sent, received, recorded or conveyed through electronic means;

“electronic commerce infrastructure” means transmission systems, routing equipment or other resources which permit the conveyance of business transactions and the conducting of commerce through electronic means;

“electronic communications network” has the meaning assigned to it in the Electronic Communications Act, 2010;

“employee” means a person employed by the Commission;

“end-user” means a person who has contracted for, or who requests, any communications service for, or who requests, any communications service for private purposes as the final user in the supply chain;

“interconnection” has the meaning assigned to it in the Electronic Communications Act, 2010;

“licence” means an authorisation granted by the Commission under this Act for the provision of electronic communications networks or services, internet services, postal services and broadcasting services;

“licensee” means a person who is the holder of, or deemed to be the holder of, a licence to provide any kind of communications service under the remit of the Commission in accordance with this Act;

“member” means a member of the Board;

“Minister” means the Minister responsible for communications, and “Ministry” has a corresponding meaning;

“postal service” has the meaning assigned to it in the Swaziland Post and Telecommunications Corporation Act, 1983;

“public broadcasting service” means –

- (a) any broadcasting service provided by the Swaziland Public Broadcasting Corporation;
- (b) a broadcasting service provided by any other statutory body; or
- (c) a broadcasting service provided by a person who receives funding from the State.

“public emergency” shall have the same meaning as attributed to it in Section 36 and 37 of the Constitution of the Kingdom of Swaziland Act, 2005 and shall include state security;

“Standing Committee” has the meaning assigned to it in the Public Enterprises (Control and Monitoring) Act, 1989.

PART II

SWAZILAND COMMUNICATIONS COMMISSION

Establishment of Commission

3. (1) There shall be a Commission to be known as the Swaziland Communications Commission which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to this Act, to do all such things as a body corporate may by law do or perform.

(2) Except as otherwise provided in this Act or any other written law, the Commission shall be independent in the performance of the functions of the Commission, and shall not be subject to the direction or control of any person or authority.

(3) The Commission is a Category A public enterprise as contemplated in the Public Enterprises (Control and Monitoring) Act, 1989.

Seal of Commission

4. (1) The seal of the Commission shall be such device as may be determined by the Board and shall be kept by the Chief Executive Officer.

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorised to do so by a resolution of the Board.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be executed or issued by the Commission without further proof, unless the contrary is proved.

Impartiality and transparency of Commission.

5. Notwithstanding the other provisions of this Act, the Commission shall carry out functions entrusted to the Commission by or under this Act or any other law in an objective, transparent, proportionate and non-discriminatory manner.

General function of Commission

6. The general functions of the Commission are to –

- (a) regulate and supervise the operation of electronic communications networks and the provision of electronic communications services in Swaziland, including the regulation of data protection in electronic communications;
- (b) regulate and supervise the provision of postal services and electronic commerce;
- (c) regulate and supervise the provision of radio and television broadcasting services and the content of those services;
- (d) promote the development of innovative, secure, modern and competitive communications infrastructure and the delivery of related services;
- (e) ensure freedom of provision of communications services and further ensure that those services are not limited, except when strictly necessary;
- (f) ensure a wide range and variety of communications services;
- (g) ensure that all communications services are provided in a manner that will best promote economic and social development;
- (h) ensure non-discrimination and equality of treatment in all matters under the remit of the Commission;
- (i) promote efficient management and human resource development within the communications industry;
- (j) promote the interest of end-users and licensees as regards the quality of all communications services and equipment within the remit of the Commission;
- (k) administer certain aspects of the Competition Act, 2007, as they relate to the sectors regulated by the Commission;
- (l) administer certain aspects of the Fair Trading Act, 2001, as they relate to the sectors regulated by the Commission;
- (m) administer certain aspects of the Standards and Quality Act, 2003.

Primary functions of Commission

- 7. Without derogating from the functions of the Commission under Section 6, the Commission shall –
 - (a) advise the Government on policy and legislative measures in respect of the provision and operation of communications network and communications services, including radio and television broadcasts, postal services, electronic commerce and data protection in electronic communications;

- (b) formulate such rules and regulations to be issued by the Minister as may be necessary for the implantation and proper administration of the policy and legislative measures referred to in paragraph (a);
- (c) provide information and issue guidelines or codes to the public and to commercial entities with respect to the matters which the Commission regulates;
- (d) establish an electronic communications code;
- (e) establish quality of service codes and content and censorship codes;
- (f) monitor the programme schedules of any person providing broadcasting services;
- (g) grant any authorisation for the carrying out of any operation or activity relating to any matter within the remit of the Commission;
- (h) monitor authorisation conditions;
- (i) Establish the minimum qualifications to be possessed by any person who is engaged or employed in any activity regulated by the Commission;
- (j) generally regulate, monitor and keep under review all practices, operations and activities within the remit of the Commission;
- (k) on approval by the Minister, allocate and authorise the use of radio frequency spectrum;
- (l) on the approval by the Minister, process applications for the allocation of satellite orbital locations;
- (m) establish and run frequency and other monitoring stations;
- (n) on approval by the Minister, draw up, establish, amend and enforce a national numbering plan and perform block number allocations;
- (o) establish minimum quality and security standards for any of the communications services, products, operations and activities relating to any matter regulated by the Commission and regulate such measures as may be necessary to ensure public and private safety;
- (p) ensure compliance with national and international communications standards and obligations laid down by international communications agreements to which Swaziland is a party;

- (q) where necessary, and in adherence to the Swaziland Environmental Authority, establish measures for the protection of the environment in the provision of the services, products, operations or activities relating to any matter regulated by the Commission;
- (r) regulate interconnection and access systems between licensees and users of the electronic communications services;
- (s) ensure fair competition in all communications services, products, operations and activities which the Commission regulates;
- (t) determine issues concerning monopoly and discriminatory practices;
- (u) provide and enforce accounting standards, where necessary;
- (v) establish a pricing system to protect end-users from excessive price increase and to avoid unfair price competition;
- (w) ensure end-user protection and privacy;
- (x) recommend a policy to the Minister for a universal service or access programme and administer a universal service or access programme, where necessary;
- (y) ensure the operation of communications networks and communications services during times of public emergency;
- (z) establish, with assistance from the Ministry, a National Emergency Office to coordinate affairs between Government agencies, electronic communications, broadcasting and other utility providers in times of national emergencies;
- (aa) recommend the approval of the Minister a national priority restoration policy and practice to ensure that adequate communication facilities are available on a preferential basis to public authorities, such as, fire authorities, the police service, hospitals, the defence force, etc., in times of public emergencies as declared by the Government or as a result of network outages;
- (bb) determine complaints and carry out studies, research and investigations as required in relation to any matter within the remit of the Commission;
- (cc) make such decisions as may be necessary in carrying out the functions of the Commission; and
- (dd) perform such other functions as may be assigned to the Commission by the Minister.

Secondary functions of the Commission

8. In addition to the functions provided for under sections 6 and 7, the Commission shall –
- (a) represent the communications sector of Swaziland at national and international for a and at organisations relating to the functions of the Commission, and coordinate the participation of any interested groups;
 - (b) collect and disseminate information for use by the electronic communications industry, end-users and prospective investors;
 - (c) collaborate with educational and research institutions in order to promote knowledge and understanding in the various fields of communications;
 - (d) establish advisory committees composed of individuals with appropriate expertise to fairly represent the views and interests of end-users and providers and advise the Commission on specific or technical questions;
 - (e) encourage the establishment of a communications association representing all types of service providers, whereby the industry may interact amongst itself to coordinate and resolve issues that impact upon the industry and the end-user;
 - (f) conduct, at a minimum, an annual National Communications Forum which shall present an opportunity for the public and the industry to discuss items of interest regarding the state of the communications sectors, their performance and end-user satisfaction; and
 - (g) perform any other function that is related or connected to the functions provided for in this section.

PART III**BOARD OF COMMISSION****Establishment of the Board**

9. There shall be a Board of Directors of the Commission, which shall be the governing body of the Commission and shall be responsible for carrying out the objects of, exercising the powers and functions conferred on, the Commission.

Composition of the Board

10. The Board consists of seven members appointed in terms of Section 6 of the Public Enterprises (Control and Monitoring) Act, 1989.

Disqualification from membership

11. A person is not qualified to be appointed as a member of the Board if that person –
- (a) is declared insolvent or bankrupt;
 - (b) has made an assignment to or arrangement or composition with creditors that has not been rescinded or set aside by the court;
 - (c) has, in terms of any law in force in Swaziland, within the past two years immediately preceding the date of appointment, been convicted of a criminal offence of which dishonesty is an element;
 - (d) or the spouse or any other immediate relative of that person, holds or has an interest in an authorisation issued under this Act;
 - (e) is not a citizen of Swaziland who is ordinarily resident in the country; or
 - (f) has any other direct or indirect financial interest in, or other relationship with, a person providing a network or service under the remit of the Commission.

Functions of the Board

12. (1) The Board shall review the activities of the Commission during regular meetings held with the Chief Executive Officer, in order to ensure that the Commission acts in the interests of Swaziland and the end-users, and to monitor the general administration of the Commission.
- (2) In particular, during the meeting of the Board referred to in subsection (1), the Board shall –
- (a) examine the management reports of the Commission as presented to the Board by the Chief Executive Officer;
 - (b) approve the annual report of the activities of the Commission;
 - (c) settle the financial statement for the end of the financial year;
 - (d) adopt the budget of the following financial year; and
 - (e) deliberate on any other issues as required or as the Minister may direct.
- (3) The Board may make recommendations to the Minister regarding communications policy or regarding the operation of the Commission.

(4) The Board may delegate to the Chief Executive Officer such powers and duties of the Board as the Board may consider appropriate to enable the Chief Executive Officer, under the general direction of the Board, to conduct the affairs of the Commission.

Remuneration of members

13. Members of the Board and members of a committee shall be paid such remuneration, allowances and travel expenses, incurred only in connection with the service of a member, as the Minister responsible for finance may determine.

Vacation of office

14. (1) A member shall vacate office and the office of a member shall become vacant if the member –

- (a) becomes disqualified for any of the reasons mentioned in Section 11;
- (b) is declared bankrupt or insolvent;
- (c) is absent from three consecutive meetings of the Board without leave of the chairperson;
- (d) is dismissed for any gross misconduct in accordance with Section 17;
- (e) has the services of that member terminated in accordance with this Act;
- (f) is convicted of an offence under this Act or convicted of any criminal offence of which dishonesty is an element, or is sentenced to imprisonment for a period of six months or more;
- (g) resigns the office of member in accordance with Section 16; or
- (h) becomes mentally or physically incapable of performing the duties of a member.

(2) A member shall also vacate office where a spouse or any other immediate relative of the member holds or acquires an interest in a licensee or becomes the holder of an authorisation or any other prohibited interest as described under section 11(f).

Filling of vacancies

15. Where the office of a member becomes vacant before the expiry of the term of office, the Minister shall, in accordance with Section 6 of the Public Enterprises (Control and Monitoring) Act, 1989, appoint another member in place of the member who vacates office, but that member shall hold office only for the unexpired part of the term of office.

Resignation

16. A member may resign the office of a member by giving not less than three months written notice to the Minister

Removal from office for gross misconduct.

17. (1) A member may be removed from office for gross misconduct.

(2) Where the Minister becomes aware of any alleged gross misconduct by a member, the Minister shall appoint a tribunal, headed by a person of high integrity, to investigate the alleged misconduct, and the Minister shall act in accordance with recommendations of the tribunal.

Suspension

18. The Minister shall, in writing, suspend from office any member against whom an investigation by a tribunal has commenced, or criminal proceedings have been instituted, for an offence in respect of which a sentence of imprisonment may be imposed.

Proceedings and committees of Board

19. (1) The proceedings of the Board and matters relating to the proceedings of the Board shall be governed by the Schedule.

(2) The Minister may, by notice in the Gazette, amend the Schedule.

(3) The Board may, for the purpose of performing the functions of the Board under this Act, establish such committees as the Board considers appropriate.

(4) The Board may appoint as members of a committee persons who are or are not members, except that at least one member of a committee shall be a member who, shall be chairperson of the committee.

(5) A person serving as a member of a committee shall hold office for such period as the Board may determine.

(6) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

PART IV

CHIEF EXECUTIVE OFFICER AND OTHER EMPLOYEES OF THE COMMISSION

Chief Executive Officer

20. (1) There shall be a Chief Executive Officer who shall be appointed and dismissed in accordance with Section 8 of the public enterprises (Control and Monitoring) Act, 1989.
- (2) The Chief Executive Officer shall be appointed on such terms and conditions as the Minister may, in consultation with the Standing Committee, determine.
- (3) The Chief Executive Officer shall be a person having relevant qualification and considerable experience in electronic communications, broadcasting, postal, commerce, finance, law or administration.

Term of office of Chief Executive Officer

21. The Chief Executive Officer shall hold office for a term of three years from the date of appointment and shall be eligible for nomination for re-appointment.

Duties and responsibilities of Chief Executive Officer

22. (1) Subject to this Act and the general supervision and control of the Board, the Chief Executive Officer shall –
- (a) be the head of the Commission and be responsible for the day to day administration of the Commission;
 - (b) implement the policies and programmes approved by the Minister or agreed upon by the Board;
 - (c) manage the funds and property of the Commission;
 - (d) administer, organise, supervise and generally control the employees of the Commission;
 - (e) keep the Board informed about the activities of the Commission; and
 - (f) keep records of all the transactions of the Commission.
- (2) The Chief Executive Officer shall represent the Commission in the day to day dealings of the Commission with Government and other third parties.
- (3) The Chief Executive Officer may, for specific matters, delegate some of the powers and prerogatives of the Chief Executive Officer to employees of the Commission holding administrative posts, subject to the approval of the Board.

(4) Where the Chief Executive Officer is temporarily absent from Swaziland or temporarily incapacitated from performing the functions of the office of Chief Executive Officer, the Minister shall on the recommendation of the Board and subject to Section 8 of the Public Enterprises (Control and Monitoring) Act, 1989, appoint a person to act as Chief Executive Officer during the period of absence or incapacity.

(5) A person appointed under subsection (4) may exercise all the powers conferred upon the Chief Executive Officer from the date of appointment of that person.

Chief Financial Officer

23. (1) There shall be a chief financial officer of the Commission who shall be appointed and dismissed in accordance with section 8(2) of the public enterprises (control and monitoring) Act, 1989.

(2) the chief financial officer shall –

(a) keep all proper books of account and other books and records in relation to the funds, undertakings, activities and property of the Commission;

(b) prepare such statements of account as may be necessary to indicate the financial status of the Commission at the end of each financial year;

(c) cause the accounts of the Commission to be examined, audited and reported on annually by auditors appointed under Section 24;

(d) carry out any other duties assigned to the chief financial officer by the Chief Executive Officer; and

(e) be answerable to the Chief Executive Officer.

Auditors

24. (1) A reputable firm of auditors shall be appointed in the manner provided in section 9 of the Public Enterprises (Control and Monitoring) Act, 1989, as auditors of the Commission for such period as the Minister shall determine.

(2) No person may be appointed as an auditor if that person –

(a) is a member of the Board or an employee of the Commission;

(b) is a partner of a member of the Board or a partner of any employee of the Commission;

(c) is an employer or employee of a member of the Board or the Commission;

- (d) or the spouse or any other immediate relative of that person, holds or has an interest in an authorisation issued under this Act;
- (e) has any other direct or indirect financial interest, in or other relationship with, any person providing a network or service under the remit of the Commission, except that if any such prohibited interest vests by will or succession in the member for the sole benefit of that member, the member shall, within three months after appointment as a member, dispose of the interest; or
- (f) has any pecuniary interest in the Commission or in any of the activities of the Commission.

Other employees.

25. The Commission shall, on such terms and conditions as the Commission may, with the approval of the Board, determine, engage such other employees as the Commission may consider appropriate for the effective discharge of the functions of the Commission.

Employees not to be shareholders in licensee

26. An employee, Commissioner or Board member shall declare shareholding in any licensee which the Commission regulates, and shall not be involved in the management of any network or service under the remit of the Commission.

Pension and other financial schemes for employees

27. The Commission shall establish pension or superannuation schemes and such other financial schemes as the Commission may determine for the benefit of the employees of the Commission.

Indemnity of employees

28. An act or omission by an employee, done in good faith in the execution of the duties of that employee, shall not render the employee personally liable to any civil action or other civil proceedings in respect of that act or omission.

PART V**CONDUCT OF AFFAIRS****Advisory committees**

29. For the efficient discharge of the duties of the Commission, the Commission may, as the Commission considers appropriate, establish such advisory committees, comprised of experts or individuals possessed of appropriate expertise, to fairly represent views and interests of end-users and licensees and to advise members, officers and employees of the Commission.

Disclosure of confidential information

30. (1) In this section “confidential information” means any information which is considered by the Commission to be confidential and in relation to which the Commission has notified the persons concerned of their duty of non-disclosure.

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

(3) A person who contravenes subsection (2) commits an offence and is on conviction liable to a fine not exceeding twenty thousand emalangeni or to imprisonment for a term not exceeding two years, or to both.

(4) Subsection (2) does not prevent the disclosure of any information to the Commission, or by or on behalf of the Commission to the Minister or as may be required by law.

Cooperation with other authorities

31. The Commission shall, where the Commission considers it appropriate, consult with the various competent authorities responsible for competition issues, fair trading and consumer affairs and for such other areas as may impact the sectors regulated by the Commission on matters of common interest in connection with the application of this act and of any other law which the Commission is entitled to administer.

Consultant process

32. (1) Except in relation to –

(a) any complaint being dealt with in accordance with Section 36;

(b) the exercise of any enforcement powers of the Commission under Part VI; or

(c) cases where the Commission considers that there is an urgent need to act in order to safeguard completion and protect the interests of end-users in accordance with law.

Where the Commission intends to make a decision which has a significant impact on a market which the Commission regulates, the Commission shall make the proposed decision publicly available as a consultation document and shall allow any interested parties the opportunity to comment on the proposed decision with or without the opportunity for oral presentation.

(2) The consultation document referred to in subsection (1) shall specify the legal authority of the decision, a description of the subject of the decision or the issue resulting in the making of that decision and the time limits within which the comments are to be submitted.

(3) The Commission shall have the discretion to decide on the time limits for response referred to in subsection (2), except that –

- (a) such period shall not be less than one calendar month from the date of issue of the draft decision; or
- (b) where the decision to be taken is the adoption of a new law, the Minister shall cause a draft of the proposed legislation to be published in the Gazette.

(4) Publication of the consultation document referred to in subsection (1) and consultation procedures of the Commission shall be done in the Gazette and on the website of the Commission, and the Commission shall establish a single information point through which all open consultations can be accessed.

(5) The results of any consultations under this section shall be made publicly available by the Commission through the Gazette and the website of the Commission, except in the case of information which the Commission considers to be confidential.

Annual National Communication Forum

33. The Commission shall conduct an annual national communications forum where all interested parties shall have the opportunity to discuss items of interest regarding the state of the national industries regulated by the Commission, the performance of the industries and end-user satisfaction.

Procedures for applications for authorisations

34. (1) The Commission shall establish procedures to be followed in the application for authorisations, and such procedures shall prescribe to –

- (a) format of the application;
- (b) full details to be provided;
- (c) publication of the application;
- (d) invitation to objections; and
- (e) period for replies to objections

(2) The Commission shall establish objective, transparent and non-discriminatory procedures to be followed in the determination of application for authorisations.

(3) Where the authorisation to be issued is to be limited in number, the Commission may make use of competitive or cooperative selection procedures.

Maintenance of public register for authorisations

35. The Commission shall maintain a public register, in such detail as the Commission may determine, of authorisations that the Commission grants, amends or revokes.

Investigation of complaints and ex officio investigations

36. (1) The Commission shall establish procedures for the investigation of any alleged contravention by any licensee of a law or terms and conditions of a licence which the Commission is entitled to administer and which contravention has been brought to the attention of the Commission either –

(a) through a complaint filed by another licensee of the same service or network;

(b) through a complaint filed by an end-user; or

(c) ex officio

(2) The Commission shall only be obliged to commence an investigation under subsection (1)(a) or (b) if the Commission has evidence of the fact that the parties to the complaint had attempted to resolve the matter between themselves, prior to referring the matter to the Commission.

(3) The Commission may decide not to initiate an investigation referred to in subsection (1) –

(a) where the Commission is satisfied that other means of resolving the matter in a timely manner are available to the parties; or

(b) If legal proceedings in relation to the matter have been initiated by any party to the complaint; and, in any such case, the Commission shall, in writing, inform the parties of that decision.

(4) An investigation under this section shall be conducted in accordance with the rules of natural justice, giving each party adequate opportunity to make written submissions, with or without the opportunity for oral presentation.

(5) The Commission shall complete an investigation commenced under subsection (1)(a) or (b) by issuing a decision of the investigation within a period of six months from the date of the submissions of the complaint.

(6) In deciding the outcome of any complaint referred to the Commission under this section, the Commission may issue directives to the licensee against whom the complaint has been lodged, requiring that licensee to comply with any measure that the Commission may specify for the resolution of the matter.

(7) A directive referred to in subsection (6) may include an order to effect the reimbursement of payments received or to make compensation payments in accordance with law, and those payments may also include the whole or part of the costs of any party relating to the engagement of a lawyer, or of a technical adviser, or both, in relation to the complaint

(8) The decision of the Commission shall be issued in accordance with Section 40, and that decision shall be binding upon the parties, subject to Part VII.

Decisions of Commission

37. (1) A decision issued by the Commission and any amendment or revocation of that decision shall be in writing and shall state the reasons upon which the decision is based.
- (2) The decisions of the Commission shall be published in the Gazette and on the website of the Commission and shall become effective after thirty days from the date of publication of the decision.
- (3) The Commission shall have discretionary power to determine an early effective date of its decision where circumstances demand.

PART VI

POWERS, ENFORCEMENT AND SANCTIONS

General Powers of Commission

38. For the proper performance of the functions of the Commission as provided for in this Act, the Commission may –
- (a) issue the necessary authorisations;
 - (b) subject to Part VII, make administrative decisions and issue guidelines necessary for implementing this Act and any other laws which fall under the remit of the Commission;
 - (c) request any information which the Commission may consider appropriate in accordance with Section 39;
 - (d) make use of the additional powers provided for under Section 40, where necessary;

- (e) subject to the protection of any information which the Commission considers confidential, publish such information as would, in the opinion of the Commission, contribute to an open and competitive market;
- (f) investigate complaints arising between licensees, between licensees and end-users, and commence ex officio investigations in accordance with Section 36, and enforce the decisions of the Commission;
- (g) provide a copy of any broadcast to any person feeling aggrieved by the content of that broadcast;
- (h) issue subpoenas for the attendance and examination of witnesses and production of any document at the hearings of the Commission and exercise such powers inherent in a court of law as may be necessary during the hearings of the Commission;
- (i) institute an administrative fee on licensees as required for the administration of the functions of the Commission in accordance with the laws which the Commission is entitled to administer;
- (j) confiscate or disconnect any apparatus that is unlawfully possessed, installed, connected, or operated;
- (k) subject to Section 42, impose the requisite fines on any licensee or other person who contravenes any law which the Commission is entitled to administer, or any decision issued by the Commission;
- (l) borrow money, purchase, hold, manage and dispose of any property whether moveable or immovable;
- (m) enter into any contract or other transaction as may be necessary;
- (n) charge for services provided by the Commission;
- (o) make decisions and issue guidelines for the administrative operations of the Commission;
- (p) delegate the authority of the Commission with the exception of the powers of the Commission to licence;
- (q) establish such internal organs of the Commission, including the creation of bureaux, divisions and offices, as the Commission may consider appropriate for the exercise of the powers of the Commission; and
- (r) appoint, promote, remove and discipline employees.

Power to request information

39. (1) The Commission may require any licensee or any other person to provide the Commission with any information, including financial information and programme schedules, which the Commission considers necessary for the purpose of ensuring compliance with this Act or any other law which the Commission is entitled to administer, or with any decision issued by the Commission.

(2) Any information required by the Commission under this section shall be proportionate to the performance of the functions and obligations of the Commission under this Act, and in requiring any such information, the Commission shall state the reason for which the Commission requires the information requested.

(3) Any licensee or other person who is notified with a requirement under this section shall provide the requested information within the time limits and according to any level of detail as may be requested by the Commission.

(4) A person who contravenes subsection (3) commits an offence and is, on conviction, liable to a fine not exceeding ten thousand emalangeni or to imprisonment for a term not exceeding one year, or to both.

(5) In complying with this section, a licensee or other person shall have the right to request the Commission to treat any information provided by that person as confidential for commercial reasons, and shall give those reasons to the Commission, but the Commission shall have sole discretion to decide whether the information indicated as confidential should be treated as confidential.

Additional powers of Commission

40. Without prejudice to sections 38 and 39, in situations which present difficulties, and in exceptional circumstances, the Commission may –

(a) at any time enter any premises or other place which the Commission reasonably suspects as being connected with any activities regulated by the Commission and search and inspect those premises or other place together with any books, documents or records found on those premises;

(b) require any person to produce for inspection and take extracts from any books, documents, or records relating to any activities regulated by the Commission which are under the control of that person and, in the case of information in a non-legible form to reproduce that information in a legible form, and to give the Commission all the information requested in relation to any entries in those books, documents or records;

(c) remove and retain the books, documents or records referred to in paragraphs (a) and (b) for such period as may be reasonable for further examination;

- (d) require any person to maintain the books, documents or records referred to in paragraphs (a) and (b) for such period, as may be reasonable as the Commission directs; and
- (e) undertake tests and measurements of any machinery, apparatus, appliances and other equipment as the Commission may consider necessary.

Obstruction of Commission in exercise of powers

41. A person who –

- (a) obstructs, impedes or assaults an officer of the Commission or any other person duly authorised by the Commission to act on behalf of the Commission in the exercise of a power under this section;
- (b) fails or refuses to comply with a requirement under this section;
- (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 oneself to be an officer of the Commission or a person authorised by the Commission to act on behalf of the Commission, commits an offence and is, on conviction, liable to a fine not exceeding ten thousand Emalangeni or to imprisonment for a term not exceeding one year or to both.

Sanctions

42. (1) Without prejudice to the other provisions of the Act or any other law which the Commission is entitled to enforce, the Commission may take the following measures in respect of any person who contravenes this Act or of any other law which the Commission is entitled to administer, or who fails to comply with any decision made by the Commission –

- (a) the imposition of an administrative fine in accordance with this section and Section 43;
- (b) the withdrawal or suspension of any authorisation in cases where the contraventions under this section are very significant or committed repeatedly.

(2) Before proceeding with any of the measures under subsection (1), the Commission shall give the person concerned written notice of the alleged contravention at least thirty days prior to the taking of that measure, allowing the person concerned the opportunity to rectify the contravention or to make submissions, except that –

(a) the notice shall contain an explanation of the perceived contravention, details of the measures being contemplated and the amount of the fine, if any; and

(b) the Commission may impose such conditions as the Commission may consider reasonable in the circumstances.

(3) If the person concerned rectifies the contravention or gives a valid reason for the alleged contravention within the period mentioned in the notice, and agrees in writing to abide by any conditions that the Commission may impose the Commission shall not proceed with the measures contemplated in subsection (1).

(4) If, after the expiry of the period mentioned in the notice given under subsection (1), the Commission considers that the person concerned has not rectified the contravention, nor given any valid reasons to justify the contravention, the Commission shall proceed as the Commission considers appropriate in accordance with subsection (1).

(5) Notwithstanding subsection (2), where the Commission has *prima facie* evidence that the contravention –

(a) represents an immediate and serious threat to public safety, public security, public health; or

(b) creates or may create serious economic or operational problems for other licensees or other persons in the market, or for end-users. The Commission may take urgent interim measures to remedy the situation before reaching a final decision, including the imposition of administrative fines, or may shorten the period of the notice referred to in that subsection, except that the person against whom those measures are being contemplated shall be given reasonable opportunity to state the arguments of that person and propose any remedies.

Administrative fine

43. (1) In determining the amount of an administrative fine, regard shall be had in particular to the nature and extent of the contravention, and the duration and impact of that contravention on the market and on end-users.

(2) Any administrative fine imposed by the Commission in terms of subsection (1) shall be due to the Commission as a civil debt, as if payment of the amount of the fine had been ordered by the judgement of a court of civil jurisdiction.

PART VII

REVIEW OF DECISIONS AND APPEALS

Reviews and appeals

44. (1) The Commission, on its own motion or upon appeal by an aggrieved party, may, before the expiry of a period of thirty days from the date of publication of a decision made by the Commission, review that decision.
- (2) A person aggrieved by a decision of the Commission may, after thirty days but before sixty days from the date of publication of the decision, appeal against that decision to the Appeals Board.
- (3) The filing of an application for a review of a decision to the Commission is not a condition precedent to an appeal against any action taken by the Commission, except where the party seeking the review was not a party to the proceedings resulting in the decision to be appealed against, or relies on questions of fact or law upon which the Commission had no opportunity to make submissions.
- (4) The filing of an application for a review of a decision to the Commission or of an appeal shall not excuse a party from complying with any decision made or rules issued by the Commission, and subject to subsections (5) and (6), shall not operate in such a manner as to stay or postpone any enforcement of that decision or rules.
- (5) The Commission may postpone the effective date of a decision made by the Commission pending a review or an appeal.
- (6) Upon request by an aggrieved party, the Appeals Board may take the necessary action to postpone the effective date of a decision made by the Commission or to preserve the status of rights pending the conclusion of the review proceedings.

Communications Appeals Board

45. (1) There shall be a Communications Appeals Board the function of which is to hear appeals against actions and decisions of the Commission.
- (2) The Appeals Board shall be appointed by the Minister and consists of –
- (a) a chairperson, who shall be a legal practitioner of at least ten years' experience; and
- (b) two other members who shall be selected by the Chairperson of the Appeals Board from amongst persons appointed by the Minister and having commercial, technical, or financial experience in fields of electronic commerce and other areas falling under the remit of the Commission and in respect of which the Appeals Board has jurisdiction.

(3) The members of the Appeals Board shall be selected as described in subsection (2)(b) on a case by case basis, as the Chairperson of the Appeals Board considers appropriate according to the circumstances of the case, but shall at all times comprise an economist and another person who is technically specialised in the matter being appealed.

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

(5) The Chairperson of the Appeals Board or a member of the Appeals Board may only be removed from office by the Minister on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming of a member of the Appeals Board.

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

(7) The Chairperson of the Appeals Board and a member of the Appeals Board may recuse oneself on one's own motion, or on application by any interested person, for any of the reasons for which a judge may recuse oneself or may be required to recuse oneself in accordance with the law applicable in Swaziland, and in such a case, another person from the persons mentioned in subsection (2)(b) shall be appointed to sit in place of the chairperson or the member.

(8) The Minister shall designate a person to serve as secretary to the Appeals Board and who shall serve in that capacity in accordance with the ethical standards appropriate to the position of that person.

Jurisdiction of appeals Board

46. (1) The Appeals Board shall act upon request by an aggrieved party to decide all relevant questions of law and shall be empowered to compel action by the Commission considered to be unlawfully withheld or unreasonably delayed or otherwise not in accordance with law and to hold unlawful and set aside any decision found to be arbitrary, capricious, abusive or otherwise not in accordance with law.

(2) In subsection (1), the words "not in accordance with law" mean –

(a) excess of the Commission's jurisdiction or authority;

(b) non-observance by the Commission of procedures required by law;

(c) unsupported or insubstantial evidence; or

(d) other illegality.

Procedure before Appeals Board

47. (1) An appeal from a decision of the Commission shall be made by application and shall be filed with the secretary of the Appeals Board after the expiry of a period of thirty days, but before the expiry of a period of sixty days from the date of publication of the decision.
- (2) An application for an appeal under Section (1) shall be notified to the Commission, which shall, not later than twenty days from the date of notification, file a reply of the Commission to the application, with the secretary of the Appeals Board.
- (3) The Appeals Board shall, without delay, set down the appeal for the hearing at the earliest possible date, which date shall in no case be later than forty days from the date of the service of the appeal on the Commission.
- (4) In determining an appeal under this section, the Appeals Board shall take into account the merits of the appeal, and may in whole or in part, confirm, vary or rescind the decision appealed from, giving in writing the reason for that decision and shall cause that decision to be made public and communicated to the parties to the appeal.
- (5) In the exercise of the functions of the appeals Board, the Appeals Board may summon any person to appear before it and give evidence and produce documents, and the chairperson of the appeals Board shall have the power to administer the oath.
- (6) The Appeals Board shall determine an appeal within one hundred and twenty days from the expiry of the period by when the Commission may file a reply of the Commission to the appeal and, in any case, shall deliver the final decision of the Appeals Board not later than sixty days from the date when the parties declare that they have concluded with their evidence and made their final submissions.
- (7) The Appeals Board may appoint independent and impartial experts to advise the Appeals Board on any issue that may be relevant to any appeal lodged before and, in any such case, the Appeals Board shall be entitled to make both provisional and final orders in respect of the payment of the costs and fees of the experts by any of the parties to the appeal.
- (8) The Minister may, subject to this Act, prescribe the procedure to be followed before the Appeals Board, and subject to that procedure and to any other provision of this Act, the Appeals Board may regulate its own procedure.
- (9) The Minister may, with the concurrence of the Minister responsible for finance, by regulations prescribe any such fees as are considered to be necessary in relation to any proceedings before the Appeals Board.

Appeal from decision of Appeals Board

48. A party of an appeal who feels aggrieved by a decision of the Appeals Board, may on a question of law, appeal to the High Court within thirty days from the date of the decision of the Appeals Board.

PART VIII

FINANCIAL PROVISIONS

Funds of Commission

49. (1) The funds of the Commission shall consist of –
- (a) such monies as may be appropriated by Parliament for the purposes of the Commission;
 - (b) such fees as the Commission may impose for authorisations issued under this Act;
 - (c) all monies collected by the Corporation in respect of licences for electronic communications which remain unused on the date of coming into force of this Act; and
 - (d) such other fees or monies as the Commission may impose or make under this Act.
- (2) The Commission may, subject to the approval of the Minister –
- (a) accept monies by way of grants or donations from any source; and
 - (c) raise by way of loans or otherwise such monies as the Commission may require for the discharge of the functions of the Commission.
- (3) There shall be paid from the funds of the Commission –
- (a) the salaries, allowances and loans of the employees of the Commission and allowances of the members and members of a committee;
 - (b) such reasonable travelling, transport and subsistence allowances for the employees, members and members of a committee, when engaged in the business of the Commission, at such rates as the Commission may determine; and
 - (c) any other expenses incurred by the Commission in the performance of the functions of the Commission.

(4) The Commission may invest in such manner as the Commission considers approach such of the funds of the Commission as the Commission does to immediately require for the performance of the functions of the Commission, subject to the approval of the Minister responsible for finance.

(5) The Commission shall utilise the funds of the Commission to defray expenses in connection with the performance of the functions of the Commission and the exercise of the powers of the Commission under this Act.

(6) The funds of the Commission shall be administered through a bank account approved by the Board.

(7) The Commission shall, with the approval of the Minister, issue policies and procedural rules necessary for the proper management of the funds of the Commission.

(8) The Commission shall adopt and use generally accepted accounting practices and keep proper books of accounts.

(9) The Minister may, on receipt of the business plan and budget of the Commission, by notice in the gazette prescribe fees or levies and charges for authorisations, that are payable by a category of licensees or customers set out in the notice.

(10) Any funds or revenue of the Commission remaining unused at the end of the financial year of the Commission shall be remitted into the Universal Service or Access Programme.

Financial year

50. The financial year of the Commission shall be a period of 12 months ending on the 31st March in each year.

Annual budget

51. The Commission shall submit to the Minister estimates of the income and expenditure of the Commission for the next financial year of the Commission and a budget for the annual operations of the Commission two months before the beginning of the financial year.

Accounts

52. The Commission shall, within three months after the end of the financial year of the Commission, cause its book of accounts to be audited by an auditor appointed in terms of Section 9 of the Public Enterprise (Control and Monitoring) Act, 1989.

Annual report

53. (1) "The Commission shall, in terms of the Public Enterprises (Control and Monitoring) Act, No. 8 of 1989, within four months after the end of its financial year prepare a report on its operations which together with a copy of its annual audited accounts as well as any report by the auditors on its management and accounting practices, shall be submitted by the Minister responsible, the Minister of Finance, the Standing Committee and the Public Enterprises Unit, and the report shall include –
- (a) a description of the business plan of the Commission for that year;
 - (b) performance measurement criteria to be applied by the Commission in the annual report of the Commission for the following year;
 - (c) the audited accounts of the Commission; and
 - (d) results of independent end-user surveys which ascertain –
 - (i) usage, quality of service and end-user satisfaction with the various electronic communications services available during that year in Swaziland;
 - (ii) usage, quality of service and end-user satisfaction with the postal services available during that year in Swaziland;
 - (iii) usage, quality of services and end-user satisfaction with electronic commerce products available during that year in Swaziland;
 - (iv) the state of listenership or viewership of broadcasting services provided in Swaziland;
 - (v) the state of public opinion concerning programmes included in broadcasting services provided in Swaziland;
 - (vi) any effects of the programmes referred to in sub paragraph (v) on the attitudes or behaviour of those who watch them; and
 - (vii) the types of services, products or programmes falling within the remit of the Commission, that members of the public would like to be available in Swaziland.
- (2) The results mentioned in paragraph (d) may be published and made available to the general public.
- (3) The Minister shall cause to be laid before Parliament the annual audited accounts of the Commission within six months after its financial year ends.

PART IX

TRANSITIONAL AND GENERAL PROVISIONS

Regulations

54. The Minister may, by notice in the Gazette, make regulations for the better carrying out of the provisions of this Act.

Transfer of regulatory powers and savings

55. (1) Subject to subsection (2), the regulatory powers and functions of the Corporation provide for under the Swaziland Post and Telecommunications Act, 1983, relating to communications shall, as from the date of coming into force of this Act, vest in the Commission.

(2) Notwithstanding the transfer of regulatory powers and functions under subsection (1), anything done by the Corporation, under the Swaziland Post and Telecommunications Corporation Act, 1983, in the exercise of those powers and functions before the coming into force of this Act, shall be deemed to have been done under this Act.

(3) Subject to subsection (4), the regulatory powers and functions of the Swaziland Television Authority provide for under the Swaziland Television Authority Act, 1983, relating to the issuance of a licence to conduct a television service shall, as from the date of coming into force of this Act, vest in the Commission.

(4) Notwithstanding the transfer of regulatory powers and functions under subsection (3), anything done by the Swaziland Television Authority, under the Swaziland Television Authority Act, 1983, in the exercise of those powers and functions before the coming into force of this Act, shall be deemed to have been done under this Act.

Transitional provisions

56. (1) From the date of coming into force of this Act, there shall be transferred to, vest in and subsist in the Commission –

- (a) all data consisting of all files containing all registration licences and pending applications; and
- (b) all radio monitoring equipment which immediately before the coming into force of this Act were under the authority of the Corporation for regulatory purposes.

(2) From the date of coming into force of this Act, there shall be transferred to, vest in and subsist in the Commission –

- (a) all monies collected by the Corporation in respect of licences for electronic communications which remain unused on the date of coming into force of this Act; and
- (b) all monies deposited by the Corporation into the Universal Service Obligations Fund established under the Joint Venture Agreement Between The Mobile Telecommunications Network Ltd and the Swaziland Post and Telecommunications Corporation in 1998, which remain unused on the date of coming into force of this Act, and which monies shall be used as initial funding for the establishment and performance of the functions of the Commission.

(3) Where, under this Act, any equipment referred to in subsection (1) is transferred to the Commission in respect of which transfer the prevailing laws provide for registration, the Commission shall make an application in writing to the appropriate registration authority for registration of the transfer.

(4) Pending appointment of the Chief Executive Officer or of sufficient personnel within the Commission, an acting Chief Executive Officer appointed by the Minister shall conduct the business of the Commission by utilising the personnel of the Ministry as needed for the efficient performance of the functions of the Commission.

(5) After appointment of the Chief Executive Officer, but before appointment of sufficient personnel within the Commission, the Chief Executive Officer shall conduct the business of the Commission by utilising the personnel of the ministry as needed for the efficient performance of the functions of the Commission.

(6) Any regulations made under the Post and Telecommunications Act, 1983, relating to communications shall be continued as if those regulations were made under this Act in so far as those regulations are not inconsistent with this Act unless those regulations are expressly repealed by this Act.

PART X

AMENDMENTS

Amendment of Swaziland Television Authority Act

57. The Swaziland Television Authority Act, 1983, is amended by deleting Section 17.

Amendment of Swaziland Post and Telecommunications Act

58. The Swaziland Post and Telecommunications Corporation Act, 1983, is amended –

(a) by deleting Section 5(b);

(b) by deleting Section 6(a);

- (c) by deleting Section 7(1)(b);
- (d) by deleting Section 11(b);
- (e) in section 13 –
- (i) by deleting the words “to regulate and control radio communication” which appear in subsection (1)(e); and
- (ii) by deleting the words “or for the grant to any person, of any licence, permit or certificate issue under this Act” which appear in subsection (2)(f);
- (f) by substituting for Section 24, the following new section –
 “The Corporation may, in consultation with the Commission, determine the rates of postage and the charges to be paid in respect of any postal service provided by the Corporation and shall publish such rates and charges in the Post Office Guide or any other suitable media”; and
- (g) by deleting sections 19, 20, 63, 66, 71, 86, 87, 89, 90, 93, 94 and 95.

SCHEDULE

(Section 19(1))

PROCEEDINGS OF THE BOARD

Meetings of Board

1. (1) The Board shall, subject to paragraph 2, regulate its own procedure.
- (2) The Board shall meet for the purposes referred to in Section 12(2) of the Act as often as the Board considers necessary or expedient for the discharge of the functions of the Board, except that the Board shall meet at least one a quarter.
- (3) The meetings of the Board may be called by the chairperson at any time, but the chairperson shall always call a meeting of the Board on receipt of a written request of the Chief Executive Officer or of not less than half of the members.
- (4) The meetings of the Board shall be held at such places and times as the Board may determine.
- (5) Three members shall constitute a quorum at a meeting of the Board.
- (6) The Chairperson shall preside at a meeting of the Board and, in the absence of the Chairperson, such member as the members present may elect from their number shall preside.

(7) A decision of the Board on any matter shall be by a majority of the members present and voting and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to the deliberate vote.

(8) The validity of any proceeding, act or decision of the Board shall not be affected by a vacancy in the membership of the Board or by a defect in the appointment of a member, or by reason that any person not entitled to take part in the proceedings took part in those proceedings.

(9) The Board may invite any person whose presence is, in the opinion of the Board, desirable, to attend and to participate in the deliberations of the meeting of the Board, but that person shall have no vote.

(10) The Chairperson shall cause proper minutes of the proceedings of the Board to be recorded and kept and those minutes shall be confirmed at a subsequent meeting of the Board.

Disclosure of interest

2. (1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person or the spouse of that person is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare that interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which the disclosure is made.

(3) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding six thousand emalangeni or to imprisonment for a term not exceeding one year, or to both.

Immunity of members and members of committees

3. An action or other proceedings shall not lie against any member or member of a committee, for or in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of the functions of the Board or a committee.

4. (1) A person shall not, without the consent in writing given by, on behalf of, the Board, publish or disclose to any person, otherwise than in the course of the duties of that person, the contents of any document, communication, or information which relates to, and which has come to the knowledge of that person in the course of, the duties of that person under this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding six thousand emalangi or to imprisonment for a term not exceeding one year or both.

(3) If any person having information, which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates that information to any person, that person commits an offence and is liable, upon conviction, to a fine not exceeding six thousand emalangi or to imprisonment for a term exceeding one year, or both.