

LAWS OF BRUNEI

CHAPTER 180
BROADCASTING

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CHAPTER 180
BROADCASTING

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FIRST SCHEDULE

SECOND SCHEDULE

BROADCASTING ACT

An Act to regulate dealing in, the operation of and ownership in broadcasting services and broadcasting apparatus, and for connected purposes

*Commencement : 15th March 1997
[S 9/97]*

PART I

PRELIMINARY

Citation.

1. This Act may be cited as the Broadcasting Act.

Interpretation.

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

“broadcasting apparatus” means any apparatus capable of, or designed or constructed for, the reception of any broadcasting service and specified in the **First Schedule**;

“broadcasting apparatus licence” means a licence granted under section 23 in respect of broadcasting apparatus;

“broadcasting company”, for the purposes of Part IX, shall be construed in accordance with subsection (2) of section 34;

“broadcasting licence” means a licence granted under section 11 or 12 for the broadcast of a licensable broadcasting service;

“broadcasting service” means a service whereby signs or signals transmitted, whether or not encrypted, comprise —

- (a) any programme capable of being received, or received and displayed, as visual images, whether moving or still;

(b) any sound programme for reception; or

(c) any programme, being a combination of both visual image (whether moving or still) and sound for reception or reception and display,

by persons having equipment appropriate for receiving, or receiving and displaying, as the case may be, that service, irrespective of the means of delivery of that service;

“class licence” means a licence determined under section 12 to be applicable to certain licensable broadcasting services;

“Code of Practice” means a Code of Practice issued under subsection (1) of section 9;

“Director of Broadcasting” means the person appointed under subsection (1) of section 5;

“dwelling-house” includes a hotel, inn, boarding-house or other similar establishment;

“encrypted” means treated electronically or otherwise for the purpose of preventing intelligible reception;

“foreign broadcasting service” means a broadcasting service which transmits from outside Brunei Darussalam broadcasting services which are capable of being received in Brunei Darussalam;

“foreign source”, for the purposes of sections 37 and 38, shall be construed in accordance with subsection (9) of section 37;

“free-to-air broadcasting service” means a licensable broadcasting service made available for reception in not less than two dwelling-houses by broadcasting apparatus commonly available to the public without payment of a subscription fee;

“free-to-air licence” means a broadcasting licence granted under this Act for the operation of a free-to-air broadcasting service;

“fund”, for the purposes of sections 37 and 38, shall be construed in accordance with subsection (9) of section 37;

“licence” means a licence granted under any provision of this Act;

“licensable broadcasting service” means any broadcasting service specified in the **Second Schedule**;

“Minister” means the Minister for the time being designated by His Majesty the Sultan and Yang Di-Pertuan to be responsible for broadcasting matters;

“part of the public” includes residents in a particular place, employees of any firm, company, or organisation, occupiers of a particular building or part thereof and members of any profession, club or society;

“programme”, in relation to a broadcasting service, means —

(a) any matter the primary purpose of which is to entertain, educate or inform all or part of the public; or

(b) any advertising or sponsorship matter, whether or not of a commercial kind,

but does not include any matter that is wholly related to or connected with —

(i) any communication between two or more persons of a private or domestic nature;

(ii) any internal communication of a business, Government department or other organisation for the purpose of the operation of that business, department or organisation; and

(iii) communications in such other circumstances as may be prescribed;

“regulations” means regulations made under this Act;

“relevant licence”, for the purposes of Part IX, shall be construed in accordance with subsection (2) of section 34;

“state of emergency” means a state of emergency declared by His Majesty the Sultan and Yang Di-Pertuan under section 83 of the Constitution;

“subscription broadcasting service” means a licensable broadcasting service made available to the audience for whom it is intended only upon the payment of a subscription fee;

“subscription fee” means any form of consideration.

PART II

FUNCTIONS, DUTIES AND POWERS OF MINISTER

Functions, duties and powers of Minister.

3. (1) The Minister shall exercise and perform such functions, duties and powers as are conferred on him by or under this Act.

(2) The functions of the Minister shall be —

(a) to exercise licensing and regulatory functions in respect of broadcasting services and broadcasting apparatus;

(b) to act internationally as the national authority or representative of Brunei Darussalam in respect of broadcasting matters;

(c) to encourage the development of broadcasting and related services;

(d) to assign specific frequencies in electromagnetic spectrum and satellite orbits to broadcasting licensees whose broadcasting services are to be transmitted on a frequency in such spectrum and satellite orbits; and

(e) to regulate the broadcast by broadcasting licensees of public service broadcasting obligations.

(3) The Minister shall have the following duties —

(a) to regulate the broadcasting industry so as to achieve an adequate and comprehensive range of broadcasting services which serve the interests of the general public;

(b) to ensure that the broadcasting services provided by licenses are maintained at a high standard in all respects and, in particular, in respect of their content, with quality, proper balance and wide range in their subject-matter, having regard both to the broadcasting services as a whole and also to the days of the week on which, and the times of the day at which, such broadcasting services are broadcast; and

(c) to ensure that nothing is included in any broadcasting service which is against the public interest or national harmony or which offends against good taste or decency.

(4) The Minister shall, subject to this Act, have power to do all such things as are in his opinion necessary for or conducive to the proper discharge of his functions and duties under this Act.

(5) Nothing in this section shall be construed as imposing on the Minister, directly or indirectly, any form of duty or liability enforceable by proceedings in any court.

Directions by Minister.

4. (1) The Minister may, after consultation with any licensee, give to him such written directions as he thinks fit as to the exercise by that licensee of his functions under this Act.

(2) Without prejudice to the generality of subsection (1), if it appears to the Minister to be requisite or expedient to do so —

(a) during a state of emergency, in the public interest or in the interests of public security, national defence or relations with the Government of another country; or

(b) in order —

(i) to discharge or facilitate the discharge of an obligation binding on the Government in view of its being a member of an international organisation or a party to a treaty;

- (ii) to attain or facilitate the attainment of any other object the attainment of which is in the opinion of the Minister requisite or expedient in view of the Government being a member of such an organisation or a party to a treaty; or
- (iii) to enable the Government to become a member of such an organisation or a party to a treaty,

the Minister may, after consultation with any licensee, give such written directions to him as are necessary in the circumstances of the case.

(3) Any directions given under subsections (1) or (2) may include provision for —

- (a) the prohibition or regulation of any broadcasting service;
- (b) the taking of, the control of, or the use for official purposes of, all or any system and equipment used in the provision of any broadcasting service; and
- (c) the stopping, delaying and censoring of messages and the carrying out of any other purposes which the Minister thinks necessary.

(4) A licensee shall give immediate effect to any directions given to him under subsections (1) or (2), notwithstanding any other duty imposed on him by or under this Act.

(5) A licensee shall not disclose any directions given to him under subsections (1) or (2) if the Minister notifies him in writing that he is of the opinion that the disclosure of the directions would be against the public interest.

(6) The Government may —

- (a) pay compensation for any damage caused to a licensee by reason of his compliance with the directions of the Minister under paragraph (b) of subsection (3); or
- (b) make grants to a licensee for defraying or contributing towards any losses which he has sustained by reason of his compliance with the directions of the Minister under any other provision of this section.

(7) If any doubt arises whether any act done under this section was in the public interest or in the interests of public security, national defence or relations with the Government of another country, a certificate signed by the Minister shall be conclusive evidence of the matters stated therein.

Director of Broadcasting.

5. (1) His Majesty the Sultan and Yang Di-Pertuan shall appoint a fit and proper person to be the Director of Broadcasting under and for the purposes of this Act.

(2) The Director of Broadcasting shall be responsible to the Minister for the proper administration of this Act in accordance with the policy laid down by the Minister.

(3) The office of Director of Broadcasting shall be a public office.

Protection from personal liability.

6. No suit or other legal proceedings shall lie against the Director of Broadcasting or any person acting under the direction of the Minister for anything which is in good faith done or intended to be done in the execution or purported execution of this Act.

Exclusion of liability of Minister for act or default of licensees.

7. The Minister shall not be liable in respect of any injury, loss or damage suffered by any person by reason of any act, default, neglect or otherwise of any licensee or of any agent or employee of the licensee.

PART III

LICENSING SCHEME

Power of Minister to grant licences.

8. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, grant the following licences —

(a) broadcasting licences; and

(b) broadcasting apparatus licences.

(2) The Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, shall grant licences under subsection (1) in such categories as he may determine are appropriate for the regulation of the broadcasting industry.

Codes of Practice.

9. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, issue and review —

(a) Codes of Practice relating to standards of programmes and advertisements broadcast by licensees; and

(b) Codes of Practice relating to broadcast standards required to be maintained by licensees.

(2) If any provision in any Code of Practice is inconsistent with any regulations, it shall, to the extent of the inconsistency, either have effect subject to such regulations or, where appropriate, having regard to such regulations, shall not have effect.

(3) The Minister may in any licence exempt any licensee from any provision in a Code of Practice generally or for such time as he may specify.

Restriction on transfer of licences.

10. No licence shall be transferable without the prior written approval of the Minister, and any purported transfer without such approval shall for all purposes be void and of no effect.

PART IV

BROADCASTING SERVICES

Licensing of broadcasting services.

11. (1) No person shall provide any licensable broadcasting service in or from Brunei Darussalam without a broadcasting licence granted by the Minister under this section.

(2) Every broadcasting licence granted under subsection (1) shall be in such form and for such period and may contain such terms and conditions as the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, determine.

(3) The Minister may in writing require the licensee to pay a fee on the grant of the licence or such periodic fees during the currency of the licence or both, of such amount as he may determine by or under the licence.

(4) Without prejudice to the generality of subsection (2), conditions attached to a free-to-air licence may include —

(a) a condition requiring the licensee to broadcast such programmes as the Minister may require and at such time, or within such period and on such broadcasting service as he may specify;

(b) a condition prohibiting or restricting, in a manner specified in the licence, the broadcasting by the licensee of advertising material which is of a class or description so specified;

(c) the right of the Minister in the public interest to make modifications to any condition of the licence during the period to which it relates;

(d) a condition requiring the licensee to provide a performance bond to secure compliance by the licensee with any condition attached to the licence;

(e) broadcast requirements, including conditions relating to the assignment and use of frequencies, channel capacities and coverage;

(f) a condition requiring the payment by the licensee of royalties, licence fees, spectrum utilisation fees and other fees and charges as may be prescribed;

(g) a condition requiring the broadcasting of programmes in such languages as may be specified, and the periods and duration of such broadcasts;

(h) conditions imposing controls and restrictions, directly or indirectly, on the creation, holding or disposal of shares in the licensee or its shareholders or interests in the undertaking of the licensee or any part thereof.

Class licences.

12. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by notification published in the *Gazette*, determine a class licence, being a broadcasting licence, for the provision of such subscription broadcasting services and other licensable broadcasting services as he may specify.

(2) The Minister may include in a class licence such conditions as he may think fit.

(3) Different conditions may be specified for —

- (a) different categories of licensable broadcasting services; and
- (b) different types of such services.

(4) Without limiting the conditions that may be imposed, the Minister may impose a condition in a class licence requiring the licensee to comply with a Code of Practice that is applicable to the licensee or designed to ensure that a breach of a condition of the class licence by the licensee does not recur.

Modification of broadcasting licence conditions.

13. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, modify the conditions of a broadcasting licence, other than a class licence, in accordance with this section.

(2) Before making any modification to the conditions of a broadcasting licence under this section, the Minister shall give written notice to the licensee —

(a) stating that he proposes to make the modification in the manner specified in the notice and, unless the modification results from a contravention by the licensee of paragraph (a) of subsection (1) of section 15 or from any other default of the licensee, the compensation (if any) payable for any damage caused thereby; and

(b) specifying the time, being not less than 28 days from the date of service of notice on the licensee, within which written representations with respect to the proposed modification may be made.

(3) After receipt of any representations referred to in paragraph (b) of subsection (2), the Minister shall consider them and may —

(a) reject the representations; or

(b) amend the proposed modification or compensation payable in accordance with the representations, or otherwise,

and, in either event, shall thereupon issue a written direction to the licensee requiring that effect be given to the proposed modification specified in the notice, or to such modification as subsequently amended by him, within a reasonable time.

(4) Any broadcasting licensee aggrieved by a decision of the Minister under subsection (3) may, within 14 days of the receipt of the direction, appeal to His Majesty the Sultan and Yang Di-Pertuan in Council, whose decision shall be final.

(5) The Minister shall not enforce a direction issued under subsection (3) —

(a) during the period referred to in subsection (4); and

(b) whilst the appeal of the licensee is under consideration by His Majesty the Sultan and Yang Di-Pertuan in Council.

(6) If no written representation has been received by the Minister within the time specified in paragraph (b) of subsection (2), or if any written representations made under that subsection have been withdrawn, he may forthwith carry out the modification as specified in the notice given under that subsection.

Modification of class licence conditions.

14. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by notification published in the *Gazette* —

(a) modify the conditions specified in any class licence; or

(b) specify additional conditions of any class licence.

Suspension or cancellation of broadcasting licence etc.

15. (1) If the Minister is satisfied that —

(a) a broadcasting licensee is contravening, or has contravened, any of the conditions of his licence, any Code of Practice, any of the provisions of this Act or there gulations or any direction issued by the Minister to, or applicable to, the licensee;

(b) a broadcasting licensee has gone into compulsory or voluntary liquidation other than for the purpose of amalgamation or reconstruction;

(c) a broadcasting licensee has made an assignment to, or composition with, his creditors; or

(d) the public interest or the interest of public security so requires,

he may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notice in writing and without any compensation, do either or both of the following —

- (i) cancel the licence or suspend it for such period as he thinks fit and, in the case of a class licensee, cancel or suspend the application of the class licence in respect of the licensee for such period as he thinks fit;
- (ii) require the payment of a penalty of such amount as he thinks fit.

(2) Any person aggrieved by a decision of the Minister under this section may, within 14 days of the receipt of the notice referred to in subsection (1), appeal to His Majesty the Sultan and Yang Di-Pertuan in Council, whose decision shall be final.

Compliance with Codes of Practice etc.,

16. (1) Every broadcasting licensee shall comply with the Codes of Practice.

(2) No broadcasting licensee shall allow to be transmitted a broadcasting service other than in accordance with any broadcast standards specified in any regulations or Code of Practice or any condition which may be incorporated in his broadcasting licence.

Free-to-air broadcasting services.

17. (1) A free-to-air licensee shall provide broadcasting services in such languages as may be specified in his licence.

(2) A free-to-air broadcasting service shall be broadcast for not less than such number of hours during each day as may be specified in the licence.

Submission of broadcasting material to Minister.

18. (1) A broadcasting licensee shall supply to the Minister on demand any material, including the script thereof, which is intended for broadcasting.

(2) A broadcasting licensee who is required to supply material under subsection (1) shall —

(a) supply the material in such form as the Minister may determine; or

(b) make available on demand, without charge, such equipment as the Minister may determine.

(3) The Minister may, if he is satisfied that any programme intended to be broadcast by a broadcasting licensee may be against the public interest or national harmony or will offend against good taste or decency, in writing require the broadcasting licensee to pre-record the programme and submit it to him for approval before it is broadcast.

Directions of Minister.

19. (1) The Minister may issue directions in writing to a broadcasting licensee requiring the licensee to take such action with regard to the contents of programmes or advertisements or to broadcast standards as he considers necessary in order to comply with the provisions of this Act, any Code of Practice and any condition attached to the broadcasting licence.

(2) Directions issued under subsection (1) may include a direction prohibiting a broadcasting licensee from broadcasting the whole or any part of a programme or of any class of material.

(3) Any broadcasting licensee and any other person responsible for the broadcasting of any programme prohibited by a direction issued under

subsection (1) is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 2 years, a fine not exceeding \$20,000 or both.

Public service broadcasting services.

20. A broadcasting licensee shall include, within the broadcasting services required to be broadcast by him under his broadcasting licence, programmes provided by the Government, including programmes for schools or other educational programmes, news and information programmes and arts and cultural programmes, whether or not produced in Brunei Darussalam, and also drama and sports programmes produced in Brunei Darussalam, as may be required by the Minister pursuant to the conditions of the licence.

General requirements regarding public service programmes.

21. (1) Programmes required under section 20 or pursuant to a condition attached to a broadcasting licence to be broadcast by a broadcasting licensee shall be broadcast without charge or with such subsidy as may be provided in the licence.

(2) A broadcasting licensee shall, on the written request of the Minister and on receipt of reasonable notice, make available to him without charge such part of the broadcasting apparatus as the Minister may specify in writing for the purpose of broadcasting programmes required to be broadcast under section 20 or pursuant to a condition attached to the licence.

“Must carry” provision.

22. (1) Notwithstanding anything in this Act but subject to this section, the Minister may, by a written direction, require a broadcasting licensee to provide for transmission and reception any broadcasting service which is —

(a) provided by any other person for such transmission and reception; and

(b) specified in his licence or is of a description so specified.

(2) Where the Minister has given a direction under this section, the broadcasting licensee to whom it was given shall comply with the requirements of the direction until such time as it has been withdrawn.

(3) Before giving a direction under this section, the Minister shall give written notice to the broadcasting licensee —

(a) stating that he proposes to give a direction in the manner specified in the notice, and the compensation (if any) payable for any damage caused thereby; and

(b) specifying the time, being not less than 28 days from the date of service of notice on the broadcasting licensee, within which written representations with respect to the proposed direction may be made.

(4) After receipt of any representations referred to in paragraph (b) of subsection (3), the Minister shall consider them and may —

(a) reject the representations; or

(b) amend the proposed direction or compensation payable in accordance with the representations, or otherwise, and, in either event, shall thereupon issue a further written direction to the broadcasting licensee requiring that effect be given to the direction issued under subsection (1).

(5) Any broadcasting licensee aggrieved by a decision of the Minister under subsection (4) may, within 14 days of the receipt of the direction issued under subsection (4), appeal to His Majesty the Sultan and Yang Di-Pertuan, whose decision shall be final.

(6) The Minister shall not enforce a direction issued under subsection (4) —

(a) during the period referred to in subsection (5); and

(b) whilst the appeal of the broadcasting licensee is under consideration by His Majesty the Sultan and Yang Di-Pertuan.

(7) If no representations have been received by the Minister within the time specified in paragraph (b) of subsection (3), or if any representations made under that subsection have been withdrawn, he may forthwith give effect to the requirements of the direction issued under subsection (1).

PART V

BROADCASTING APPARATUS

Licensing of broadcasting apparatus.

23. (1) Subject to this section, no person shall —

(a) install any broadcasting apparatus in any place, or on board any ship, aircraft or vehicle registered in Brunei Darussalam;

(b) import, offer for sale, sell or have in his possession with a view to sale, any broadcasting apparatus; or

(c) operate or have on any premises in Brunei Darussalam owned or occupied by him broadcasting apparatus on or by which broadcasting services are received,

except under and in accordance with a licence granted under this section.

(2) Every licence granted under subsection (1) shall be in such form and for such period and may contain such terms and conditions as the Minister may determine.

(3) Subsection (1) shall not be construed as requiring any person who operates any broadcasting apparatus in the course of his duty as a member of the Royal Brunei Armed Forces, the Royal Brunei Police Force or of any visiting force present in Brunei Darussalam under any lawful arrangement made by Brunei Darussalam to obtain a licence under this Act.

(4) The Minister may in writing exempt any person or broadcasting apparatus or class of broadcasting apparatus from subsection (1).

Application of parts of Act to broadcasting apparatus licences.

24. Sections 13, 15 and 19 shall apply, *mutatis mutandis*, to broadcasting apparatus licences and broadcasting apparatus licensees.

PART VI

FREQUENCY PLANNING

Frequency planning criteria.

25. In performing his functions under this Act, the Minister shall have regard to —

(a) the social and economic characteristics within Brunei Darussalam;

(b) the number of existing broadcasting services and the demand for new broadcasting services;

(c) developments in technology;

(d) technical restraints relating to the transmission, delivery or reception of broadcasting services;

(e) the demand for electromagnetic, and particularly radio frequency, spectrum for services other than broadcasting services; and

(f) such other matters as he considers appropriate.

Assignment of frequencies.

26. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, in writing assign to any person specific frequencies in the electromagnetic spectrum and satellite orbits for the purpose of broadcasting, having regard to the international allocation plans set by the International Telecommunication Union and to national requirements.

Separate licence for use of frequency not required.

27. Notwithstanding anything in the Telecommunications Act (Chapter 54) or any regulations made thereunder, if a licensee is granted a broadcasting licence under this Act and the licence includes the right for the licensee to use a specific frequency in the electromagnetic spectrum or satellite orbits for the broadcasting or transmission of one or more broadcasting services, then the licensee shall not be required to obtain any other licence under this Act or the Telecommunications Act (Chapter 54) in respect of the use of such frequency or satellite orbits for the period for

which that broadcasting licence is in force and for the purposes permitted by that licence.

PART VII

BROADCASTING CONDITIONS

Transmission area requirements.

28. (1) A broadcasting licensee shall, within such time as may be specified in the broadcasting licence, broadcast in such a manner as to enable broadcasting services to be received to the satisfaction of the Minister throughout Brunei Darussalam or within such areas thereof as he may specify therein.

(2) The Minister may in writing direct a free-to-air licensee to publish, in such manner as he may require, the commencement dates for broadcasting the services and the areas of Brunei Darussalam within which they may be received satisfactorily.

Sharing of facilities.

29. The Minister may in writing direct any broadcasting licensee or broadcasting apparatus licensee to co-ordinate and co-operate, in such manner and on such terms as he may specify, with any other licensee or any other person specified by him in the use or sharing of any broadcasting apparatus or related equipment or facility owned, operated or used by the broadcasting licensee or broadcasting apparatus licensee for the purpose of broadcasting, whether or not they have been provided, or are intended to be provided, by the licensee, any other licensee or any other person specified by the Minister.

Inspection and testing of broadcasting apparatus.

30. (1) The Minister and any person authorised by him in writing may, at any reasonable time, inspect and test any broadcasting apparatus used, or intended to be used, by a broadcasting apparatus licensee for the transmission of any broadcasting service for the purpose of ascertaining whether or not the licensee is complying, or will comply, at all times with the broadcast standards prescribed by this Act or the regulations, the Codes of

Practice and the conditions of its broadcasting apparatus licence in respect of the transmission of broadcasting services.

(2) The directors, principal officers and other employees of a broadcasting apparatus licensee shall, for the purpose of any inspection or test under subsection (1)—

(a) make available on request to the Minister and any person authorised by him in writing for the purpose of the inspection or test, and permit to be inspected and tested, any part of its broadcasting apparatus used, or intended to be used, for the transmission of any broadcasting service;

(b) assist the Minister or such authorised person in carrying out the inspection or test in any manner specified by him; and

(c) answer directly and truthfully any question put to them by the Minister or such authorised person.

Provision of building space, etc., by owner or developer of building or land.

31. (1) Where the Minister considers it necessary that any licensable broadcasting service should be provided to any building and is of the opinion that any broadcasting apparatus, installation or plant to be used in providing the service has to be installed within or on the building or any land, he may in writing direct the developer or owner of the building or land to provide, within such period as may be specified in the direction, such broadcasting apparatus, installation, plant or space, of a standard acceptable to the Minister, within or on the building or land and such access thereto as he may require.

(2) Where the Minister considers it necessary that the reception of any licensable broadcasting service in any building in any area should be facilitated and is of the opinion that any broadcasting apparatus, installation or plant to be used in facilitating such reception has to be installed within or on any building or land in that area or any other area, he may in writing direct the developer or owner of the building or land to provide, within such period as may be specified in the direction, access to the building or land and access to or interconnection with any broadcasting apparatus, installation or plant within or on the building or land.

(3) Any direction under subsections (1) or (2) may include —

(a) a requirement that the developer or owner of the building or land shall contribute wholly or partly to such costs and expenses incurred for the provision of any broadcasting apparatus, installation, plant or space under subsection (1) as the Minister may determine; and

(b) such other requirements as he may specify.

(4) Any person who fails to comply with any requirement in a direction under subsections (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000.

(5) Nothing in any direction given under subsection (1) shall be construed as granting any exemption from any licensing requirement under this Act or under any other written law with which the developer or owner of any building or land may be required to comply in respect of any broadcasting apparatus, installation or plant.

(6) For the purposes of this section, "installation or plant" includes all buildings, lands, structures, machinery, equipment, cables, poles and lines used or intended for use in connection with broadcasting.

PART VIII

FOREIGN BROADCASTING SERVICES

Orders proscribing unacceptable foreign broadcasting services.

32. (1) If the Minister considers that the quality or content of any foreign broadcasting service is unacceptable and that the service should be the subject of an order under this section, he may make an order proscribing that foreign broadcasting service for the purposes of section 33.

(2) The Minister shall not consider a foreign broadcasting service to be unacceptable for the purposes of subsection (1) unless he is satisfied that the content of that service included any matter which was against the public interest or national harmony or which offended against good taste or decency.

Offence of supporting proscribed foreign broadcasting services.

33. (1) This section applies to any foreign broadcasting service which has been proscribed for the purposes of this section by an order made under section 32; and references in this section to a proscribed service are references to any such service.

(2) Any person who in Brunei Darussalam does any of the following acts is guilty of an offence —

(a) supplying any equipment or other goods for use in connection with the operation of day-to-day running of a proscribed service;

(b) supplying, or offering to supply, programmes to be included in any broadcasting service transmitted as part of a proscribed service;

(c) arranging for, or inviting, any other person to supply programmes to be so included;

(d) advertising, by means of programmes transmitted as part of a proscribed service, goods supplied by him or services provided by him;

(e) publishing the times or other details of any programmes which are to be transmitted as part of a proscribed service or otherwise than by publishing such details) publishing advertising matter calculated to promote a proscribed service, whether directly or indirectly;

(f) supplying, or offering to supply, any decoding equipment which is designed or adapted to be used primarily for the purpose of enabling the reception of programmes transmitted as part of a proscribed service; and

(g) promoting, financially or otherwise, a proscribed service.

(3) For the purposes of this section, a person exposing decoding equipment for supply, or having such equipment in his possession for supply, shall be deemed to offer to supply it.

(4) A person guilty of an offence under subsection (2) is liable on conviction to imprisonment for a term not exceeding 3 years, a fine not exceeding \$40,000 or both.

(5) Any equipment and goods used in the commission of an offence under this section shall be forfeited to the Government.

PART IX

OWNERSHIP AND CONTROL OF BROADCASTING COMPANIES

Application of this Part to broadcasting companies.

34. (1) This Part shall apply to every broadcasting company unless exempted in writing by the Minister.

(2) For the purposes of this Part —

“broadcasting company” means a broadcasting company registered under the Companies Act (Chapter 39) which holds a relevant licence;

“relevant licence” means —

(a) any free-to-air licence; or

(b) any broadcasting licence under which a subscription broadcasting service may be provided,

which permits broadcast which is capable of being received in ten thousand dwelling-houses or more, but does not include a class licence; or

(c) such other broadcasting licence as the Minister may from time to time specify in the public interest or in the interests of public security or national defence.

Special features of broadcasting company.

35. (1) Subject to subsection (2), the chief executive officer of a broadcasting company and at least one-half of its directors must be citizens of Brunei Darussalam.

(2) The Minister may in writing approve the appointment of any person who is not a citizen of Brunei Darussalam as a chief executive officer or director of a broadcasting company.

(3) This section has effect notwithstanding the provisions of any other written law or of the memorandum or articles of association, or other constitution, of a broadcasting company.

No person to hold more than 3% ordinary shares without approval.

36. (1) No person shall, without the prior written approval of the Minister, hold, directly or indirectly through a nominee, more than 3% of the ordinary shares issued by a broadcasting company.

(2) The Minister may grant his approval under subsection (1) subject to such conditions as he may think fit.

(3) Any person who, directly or indirectly through a nominee, holds more than 3% of the ordinary shares issued by a broadcasting company without having obtained the prior written approval of the Minister is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 2 years, a fine not exceeding \$5,000 or both; and any surplus shares held by him shall be forfeited to the Government.

(4) The Minister may at any time in writing revoke any approval given under subsection (1) without assigning a reason.

(5) Before the Minister revokes any approval given under subsection (1), he shall give the person concerned a reasonable time to dispose of his surplus shares.

(6) Notwithstanding any other law, a nominee registered as the holder of ordinary shares issued by a broadcasting company shall, at the written request of the Minister, disclose to him the names and addresses of the persons on whose behalf he is holding those shares, and if the information is not furnished within fourteen days of the request he is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 2 years, a fine not exceeding \$5,000 or both.

(7) In this section, "surplus shares" means the ordinary shares of a broadcasting company held by, and on behalf of, a person in excess of the 3% limit prescribed by subsection (1).

Funds from foreign source for purposes of broadcasting service.

37. (1) Subject to this section, no person shall, without the prior written approval of the Minister, receive any fund from any foreign source for the purposes of financing, directly or indirectly, wholly or in part, any broadcasting service owned or operated by any broadcasting company.

(2) The Minister may grant approval under subsection (1) if he is satisfied on such information as he may require to be furnished to him, that the fund from a foreign source is intended for bona fide commercial purposes.

(3) Notwithstanding subsection (1), where any fund from a foreign source is sent to a person without his prior knowledge, consent or solicitation and the fund is intended for or given by the sender for the purpose referred to in that subsection, that person shall, within 7 days of the receipt thereof, report in writing to the Minister the circumstances and particulars of the receipt of the fund and the purpose for which it was received.

(4) Where any fund from a foreign source has been received by a person for the purpose referred to in subsection (1) and the Minister has refused to grant his consent for the retention of the fund, that person shall, within such time as shall be specified by the Minister in writing, return the fund to the sender or, if the sender cannot be traced, donate the fund to any charity specified by the Minister.

(5) Any employee of a broadcasting company who, having received any fund from a foreign source for the broadcasting of any item or programme or for adopting a particular line or bias in respect of any item or programme, fails to report in writing, within 7 days of the receipt thereof, to the chief executive of the company is guilty of an offence and liable on conviction to the penalty prescribed by subsection (8).

(6) For the purposes of subsection (5), any fund received from outside Brunei Darussalam by an employee shall, until the contrary is proved, be presumed to be from a foreign source.

(7) Nothing in this section shall apply to any dealing by any person in the shares of a broadcasting company quoted on any stock exchange in Brunei Darussalam.

(8) Any person who contravenes or fails to comply with subsections (1), (3) or (4) is guilty of an offence and liable on conviction to imprisonment

for a term not exceeding 3 years, a fine not exceeding \$10,000 or both; and the court may, in addition to any other penalty, order the forfeiture to the Government of any fund which is the subject of the charge.

(9) For the purposes of this section and section 38 —

“foreign source” includes —

(a) the government of a country outside Brunei Darussalam or the agent of any such government, whether or not he is resident in Brunei Darussalam;

(b) any company, association or society incorporated or constituted under any law in force outside Brunei Darussalam, whether or not it has a branch office or place of business in Brunei Darussalam;

(c) any person who is not a citizen of Brunei Darussalam, whether or not he is resident in Brunei Darussalam; and

(d) such other source outside Brunei Darussalam as the Minister may, by notification in the *Gazette*, declare to be a foreign source;

“fund” means money, securities, movable or immovable property or other valuable consideration.

Broadcasting company owned by foreign source.

38. No company shall, unless the Minister otherwise approves in writing, be granted or hold a relevant licence if he is satisfied that 49% or more of its issued and paid-up capital is owned by or on behalf of a foreign source or that all or a majority of the persons having the direction, control or management of the company were appointed by or on behalf of the government of a country outside Brunei Darussalam or the agent of any such government.

Appeal under this Part.

39. Any person aggrieved by a refusal of the Minister to grant his approval under any provision of this Part may, within one month of the

receipt of written notice of such refusal, appeal to His Majesty the Sultan and Yang Di-Pertuan, whose decision shall be final.

PART X

OFFENCES AND PENALTIES

Offences relating to licensable broadcasting services.

40. Any person who contravenes or fails to comply with subsection (1) of section 11 is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 3 years, a fine not exceeding \$200,000 or both, and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues after conviction.

Offences relating to installation, etc., of broadcasting apparatus.

41. Any person who contravenes or fails to comply with subsection (1) of section 23 is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 3 years, a fine not exceeding \$40,000 or both; and any broadcasting apparatus installed or found in the possession of any person so convicted shall be forfeited to the Government.

Unauthorised decoders.

42. (1) No person shall, in the course of any trade or business, import, manufacture, sell, offer for sale, or let for hire any unauthorised decoder.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 3 years, a fine not exceeding \$40,000 or both; and any unauthorised decoder shall be forfeited to the Government.

(3) Proof that a person has, in the course of any trade or business, imported, manufactured, sold, offered for sale, or let for hire any unauthorised decoder shall be evidence that such person knew that the decoder was an unauthorised decoder.

(4) For the purposes of this section —

“decoder” means any apparatus or component part thereof designed or adapted to enable (whether on its own or with any other apparatus) an encrypted audio or visual programme to be decoded;

“unauthorised decoder” means a decoder which will enable encrypted audio or visual programmes to be viewed in decoded form without payment of the subscription payable in respect of the right to view those programmes.

Offence of hindering person discharging duty.

43. Whoever obstructs or hinders any person who is acting in the discharge of his duty under this Act or the regulations is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Power of Minister to requisition information.

44. (1) The Minister or any person authorised by him in writing may by written notice require any person to furnish the Minister or the person so authorised, within such period as shall be specified in the notice, with all such documents or information relating to all such matters as may be required by the Minister for the purposes of this Act and as are within the knowledge of that person, in his custody or under his control.

(2) Any person who, on being required by any notice under subsection (1) to furnish any document or information, fails to comply with any requirement of the notice is guilty of an offence.

(3) A person who —

(a) intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (1) to furnish; or

(b) in furnishing any estimate, return or other information required of him under any notice under subsection (1), makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

is guilty of an offence.

(4) Any person guilty of an offence under subsections (2) or (3) is liable on conviction to imprisonment for a term not exceeding one year, a fine not exceeding \$5,000 or both.

Power of police officer etc., against unlicensed broadcasting service or apparatus.

45. (1) Any police officer or any person authorised by the Minister in writing may, if he has reasonable grounds for believing that a broadcasting service has been or is being provided in contravention of this Act or any regulations, or in breach of any licence, or that any broadcasting apparatus used has not been licensed by the Minister, enter and inspect any premises and seize any broadcasting apparatus found therein which appears to be used for or in connection with broadcasting.

(2) If there is no prosecution with regard to any broadcasting apparatus seized under this section, such broadcasting apparatus shall be forfeited to the Government unless a claim thereto is made within 2 months from the date of seizure.

(3) Any person asserting that he is the owner of any broadcasting apparatus so seized may give written notice to the Minister that he claims the same.

(4) On receipt of the notice, the Minister shall in writing —

(a) direct that the broadcasting apparatus be released; or

(b) refer the matter to the court, in which case the court shall examine the matter, and after examination order that the broadcasting apparatus be either forfeited to the Government or released.

Power of arrest and search.

46. (1) The Director of Broadcasting or any person authorised by him in writing to act under this section may arrest without warrant —

(a) any person found committing or attempting to commit, or employing or aiding any person to commit, a seizable offence under this Act; or

(b) any person against whom a reasonable suspicion exists that he has been guilty of a seizable offence under this Act,

and may search any person so arrested, except that no female shall be searched except by a female.

(2) Every person so arrested shall, together with any article as to which an offence may have been committed, be taken to a police station.

(3) For the purposes of this section, offences punishable under sections 33, 40, 41 and 42 shall be deemed to be seizable offences within the meaning of the Criminal Procedure Code (Chapter 7).

No entitlement to costs or damages.

47. No person shall, in any proceedings before any court in respect of any apparatus, equipment, article, book or document seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of the proceedings or to any damages or other relief other than an order for the return of the apparatus, equipment, article, book or document or the payment of their value, unless the seizure was made without reasonable or probable cause.

Offences against other laws.

48. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under that law, or from being liable under that other law to any punishment or penalty higher or other than that provided by this Act or the regulations, but no person shall be punished twice for the same offence.

Offences committed by bodies corporate.

49. Where an offence under this Act or the regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

Power to compound offences.

50. (1) The Minister may, in his discretion, in writing compound any offence under this Act or the regulations which is prescribed as being an offence which may be compounded, by collecting from the person reasonably suspected of having committed the offence a penalty not exceeding \$1,000.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations prescribing the offences which may be compounded.

PART XI**MISCELLANEOUS PROVISIONS****Appeal to His Majesty the Sultan and Yang Di-pertuan in Council.**

51. (1) Any licensee aggrieved by —

(a) any decision of the Minister in the exercise of any discretion vested in him by or under this Act; or

(b) anything contained in any Code of Practice or direction issued by the Minister,

may appeal to His Majesty the Sultan and Yang Di-Pertuan in Council.

(2) Unless otherwise provided, where an appeal has been lodged under this section, the decision, direction or other thing appealed against shall be complied with until the determination of the appeal.

(3) His Majesty the Sultan and Yang Di-Pertuan in Council may determine an appeal under this section by confirming, varying or reversing any decision or direction of the Minister or by amending any Code of Practice.

(4) The decision of His Majesty the Sultan and Yang Di-Pertuan in Council in any appeal shall be final.

Exemption.

52. The Minister may, in his discretion, and subject to such conditions as he may think fit, in writing exempt any person or class of persons from all or any of the provisions of this Act or the regulations.

Equipment of licensee not subject to distress, etc.

53. (1) No equipment or related facility of a licensee used for providing, transmitting or delivering licensable broadcasting services shall be subject to distress or be liable to be taken in execution under any process of a court in any bankruptcy, insolvency or liquidation proceedings by any person without the prior approval of the Minister in writing.

(2) This section does not apply to any class licensee.

International dealings of Minister.

54. For the purposes of the conduct of any international broadcast but subject to this Act, the Minister may enter into direct communication, arrangement and agreement with the lawfully constituted broadcasting authority of any country or with any duly authorised international agency or organisation concerned with broadcasting, as the case may be, for the purpose of providing facilities, fixing rates, arranging terms of payment or accounting, for operational, engineering or administrative purposes or for any other purpose necessary for the proper fulfilment of his functions, duties and powers under this Act.

Government's right to determine international relations.

55. Nothing in section 54 shall be deemed to abrogate the right of the Government at any time to determine its relations with any country or with any international organisation, and the Minister shall so discharge his functions, duties and powers as to comply with and fulfil all international agreements, conventions or undertakings relating to broadcasting to which Brunei Darussalam is a party.

Service of notice etc.,

56. (1) Unless otherwise expressly provided in this Act, any notice, order or other document required or authorised by this Act or the regulations

to be given or served on any person, and any summons issued by a court in connection with any offence under this Act or the regulations may be served on the person concerned —

(a) by delivering it to him or to some adult member or employee of his family at his last known place of residence:

(b) by leaving it at his usual or last known place of residence or business in a cover addressed to him;

(c) by affixing it to some conspicuous part of his last known place of residence;

(d) by sending it by registered post addressed to him at his usual or last known place of residence or business; or

(e) where the person is a body corporate —

(i) by delivering it to the secretary or other like officer of the body corporate at its registered or principal office; or

(ii) by sending it by registered post addressed to the body corporate at its registered or principal office.

(2) Any notice, order, other document or summons sent by registered post to any person in accordance with subsection (1) shall be deemed to have been duly served on him when it would, in the ordinary course of post, have been delivered, and in proving service it shall be sufficient to prove that the envelope containing the notice, order, other document or summons was properly addressed, stamped and posted by registered post.

Amendment of First and Second Schedules.

57. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*, amend the **First and Second Schedules**.

(2) The Minister may, in any notification made under subsection (1), include such incidental, consequential and supplementary provisions as he considers are necessary or expedient.

Regulations.

58. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations —

(a) prescribing all matters which are required or convenient to be prescribed by this Act, including the prescription of fees; and

(b) generally for giving effect to the objects and purposes of this Act and for the due administration thereof.

(2) Such regulations may make different provision as respect different classes of case to which they apply, and may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

FIRST SCHEDULE**(Section 2)****BROADCASTING APPARATUS**

1. Broadcast sound receiver.
2. Broadcast television receiver.
3. Television receive-only satellite receiving system (TVRO system).

For the purposes of this Schedule —

“broadcast sound receiver” means any apparatus used for the aural reception of any broadcasting service;

“broadcast television receiver” means any apparatus used for the visual and aural reception in monochrome or colour of any broadcasting service;

“television receive-only satellite receiving system” means any apparatus (including a dish antenna) or any combination of apparatus capable of direct reception of any broadcasting service emitted from or passing through any communication or broadcast satellite in extra-terrestrial space.

SECOND SCHEDULE**(Section 2)****LICENSABLE BROADCASTING SERVICES**

1. Free-to-air nationwide television services.
2. Free-to-air localised television services.
3. Free-to-air international television services.
4. Subscription nationwide television services.
5. Subscription localised television services.
6. Subscription international television services.
7. Special interest television services.
8. Free-to-air nationwide radio services.
9. Free-to-air localised radio services.
10. Free-to-air international radio services.
11. Subscription nationwide radio services.
12. Subscription localised radio services.
13. Subscription international radio services.
14. Special interest radio services.
15. Audiotext services.
16. Videotext services.
17. Teletext services.
18. Video-on-demand services.
19. Broadcast data services.
20. Computer on-line services. [S 46/98]

For the purposes of this Schedule, a delivery system shall not, by reason only that facilities or expertise are provided for the delivery of any broadcasting service, be deemed to be a licensable broadcasting service.