

THE INDEPENDENT BROADCASTING AUTHORITY (AMENDMENT) BILL
(No. XVIII of 2021)

Explanatory Memorandum

The object of this Bill is to amend the Independent Broadcasting Authority Act in order to provide a better legal framework to regulate licensees of the Authority.

2. The Bill, inter alia –

- (a) empowers the Authority to impose administrative penalties;
- (b) enhances the regulatory provisions in the Act;
- (c) aims to provide more synergy between the Authority and the Information and Communication Technologies Authority by amending the composition of the ICT Authority to provide that the Chairperson shall be a member of the ICT Authority,

and provides for matters related thereto.

P. K. JUGNAUTH

*Prime Minister, Minister of Defence, Home Affairs and
External Communications, Minister for Rodrigues,
Outer Islands and Territorial Integrity*

19 November 2021

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ARRANGEMENT OF CLAUSES

Clause

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| 2. Interpretation | 7. Section 22 of principal Act amended |
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| 4. Section 5 of principal Act amended | 9. Part V of principal Act repealed and replaced |
| 5. New section 18A added to principal Act | 10. Section 31 of principal Act amended |

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A BILL

To amend the Independent Broadcasting Authority Act and to provide for matters related thereto

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Independent Broadcasting Authority (Amendment) Act 2021.

2. Interpretation

In this Act –

“principal Act” means the Independent Broadcasting Authority Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) by deleting the definitions of “Complaints Committee” and “Standards Committee”;

(b) by inserting, in the appropriate alphabetical order, the following new definitions –

“financial crime offence” has the same meaning as in section 41A(5) of the Courts Act;

“Review Panel” means the Independent Broadcasting Review Panel set up under section 30;

4. Section 5 of principal Act amended

Section 5 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) by numbering the existing provision as paragraph (a);
 - (ii) by adding the following new paragraph –
 - (b) Any licensee who fails to comply with paragraph (a) shall commit an offence.
- (b) in subsection (4)(b) –
 - (i) by deleting the words “subject to sections 29 and 30”;
 - (ii) by deleting the words “10,000 rupees” and replacing it by the word “50,000 rupees”;
- (c) by adding the following new subsections –
 - (5) The Authority may, in the exercise of its regulatory functions, impose such administrative penalties as it thinks fit.
 - (6) (a) The Authority may, pursuant to its powers under this Act, issue a Code of Ethics, Code of Advertising Practice or such other Code as it may determine.
 - (b) Any Code issued under paragraph (a) shall be binding on a licensee.
 - (c) The Authority may, from time to time, review the Codes issued pursuant to paragraph (a).
 - (d) The Code of Ethics and Code of Advertising Practice in force shall be deemed to have been issued under paragraph (a).

5. New section 18A added to principal Act

The principal Act is amended by inserting, after section 18, the following new section –

18A. Judge in Chambers

(1) Where a person refuses to give evidence or, to communicate or produce any record, document or article, on the ground of confidentiality, the Director may make an application to the Judge in Chambers for an order directing that person to disclose the evidence required, or communicate or produce any record, document or article needed, for the exercise, by the Authority, of its regulatory powers.

(2) The Judge in Chambers shall make an order under subsection (1) where he is satisfied that the evidence, record, document or article the disclosure of which is sought is bona fide required by the Authority in relation to the exercise of its powers under this Act.

6. Section 19 of principal Act amended

Section 19 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “the prescribed form” and replacing them by the words “such form and manner the Authority may approve”;
- (b) by adding the following new subsection –

(6) An application under this section shall be accompanied by such non-refundable fee as may be prescribed.

7. Section 22 of principal Act amended

Section 22 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) by deleting the words “sections 24” and replacing them by the words “sections 22(4), 24”;
 - (ii) in paragraph (a) by deleting the words “3 years” and replacing them by the words “one year”;
- (b) in subsection (2), by deleting the words “not later than 3 months” and replacing them by the words “90 days before”;
- (c) by adding the following new subsections –

(3) Any licensee who fails to make an application for the renewal of his licence within the delay specified in subsection (2) shall be deemed to have waived his right to renew his licence.

(4) The Authority may, notwithstanding any pending judicial process, take into account any sanction imposed by it on a licensee, for the purpose of determining whether or not to renew a licence.

(5) The Authority shall consider the past conduct of a licensee prior to determining whether or not to renew a licence.

(6) In this section –

“judicial process” does not include any order or direction by a Court prohibiting the enforcement of the sanction.

8. Section 23A of principal Act amended

Section 23A of the principal Act is amended by adding the following new subsection –

(3) The powers of the Authority under this section may, notwithstanding subsection (1), be used in such circumstances as the Authority may determine and shall not be limited to the exercise of the Authority’s power under Part IV.

9. Part V of principal Act repealed and replaced

The principal Act is amended by repealing Part V and replacing it by the following Part –

PART V – ADMINISTRATIVE PENALTY AND INDEPENDENT BROADCASTING REVIEW PANEL

Sub-Part A – Administrative Penalty

29. Administrative penalty

(1) In the exercise of its powers under section 5(5), the Authority may impose an administrative penalty on a licensee.

(2) (a) Without prejudice to the sanctions provided in sections 24 and 25, the Authority may impose an administrative penalty on any

licensee who refrains from complying, or negligently failed to comply, with the Act or regulations made under the Act, Codes, any direction of the Authority or any conditions of his licence.

(b) The Authority shall, when determining the quantum of the administrative penalty to be imposed on the licensee, consider, inter alia, the gravity of the breach committed by the licensee and his compliance with the Act.

(3) (a) The Authority may cause to be published in the Gazette, in such form and manner as it may determine, a public notice setting out the administrative penalty which is imposed on a licensee.

(b) The notice under paragraph (a) shall not contain any information which the Authority considers to be sensitive.

(4) An administrative penalty imposed under this Act shall not exceed 500,000 rupees.

(5) The imposition of an administrative penalty under this Act shall be without prejudice to any other power, penalty, sanction or remedy provided under this Act.

29A. Disciplinary proceedings

(1) Where the Director has reason to believe that a licensee –

- (a) has contravened this Act or regulations made under this Act, the Codes, any direction or any condition of his licence;
- (b) has not complied with the laws of Mauritius;
- (c) has committed a financial crime offence;
- (d) no longer fulfils any condition or criterion specified under the Act for the grant of a licence;
- (e) is not a fit and proper person,

he may refer the matter to the Authority for a decision.

(2) The Authority may decide to impose an administrative penalty or refer the matter to an appropriate body.

(3) (a) The Director may also refer to the Authority a public complaint in relation to the matters referred to in section 29A(1)(a).

(b) A person aggrieved by a broadcast, or his authorised agent, may, within 30 days of the broadcast, make a complaint in writing to the Director.

(4) Where a matter is referred under subsection (1) or (3) and the Authority considers that the imposition of an administrative penalty is warranted, it shall, in a notice issued to the licensee specify –

- (a) the intention of the Authority to impose an administrative penalty;
- (b) the type and terms of the administrative penalty; and
- (c) the right of the licensee to make written representations to the Authority within such delay as the Authority may determine in the circumstances, but not exceeding 21 days from the date of the notice.

(5) Where –

- (a) after considering the written representations under subsection (4)(c); or
- (b) no written representations are received within the delay specified in the notice under subsection (4)(c); and
- (c) the Authority decides to maintain its recommendation for the imposition of an administrative penalty,

it shall issue a written notification to the licensee, stating the type and the terms of the administrative penalty.

(6) Any licensee who is aggrieved by the decision of the Authority under subsection (5) –

- (a) may, within 21 days of the issue of the written notification, make an application to the Secretary of the Independent Broadcasting Review Panel specifying the reasons for a review of the decision; and

(b) shall, at the same time, file a copy of his application with the Authority.

(7) Where a licensee is unable to make an application within the delay specified in subsection (6)(a) and he proves to the satisfaction of the Independent Broadcasting Review Panel that his inability to do so was due to illness or any other reasonable cause, the Independent Broadcasting Review Panel may accept to hear the belated application on such terms and conditions as it may determine.

(8) Notwithstanding an application under subsection (6)(a) but subject to subsection (10), the decision of the Authority under subsection (5) shall be given effect immediately after the period of 21 days from the date of the decision.

(9) The decision of the Authority shall be published in the Gazette in such form and manner as the Director may determine.

(10) The Independent Broadcasting Review Panel may, after hearing the person aggrieved by the decision or upon examination of an application under subsection (6), within 7 days of a receipt of the application and pending the hearing of the application on its merits, suspend the implementation of the decision of the Authority under subsection (5) on such terms and conditions as it may determine.

(11) Any administrative penalty issued by the Authority pursuant to its powers under section 5(5) shall be a debt due to the Authority and may be recovered by the Authority as a civil debt in a Court of competent jurisdiction.

(12) Any administrative penalty paid to the Authority shall be credited to the General Fund.

(13) This section shall be in addition to, and not in derogation of, the powers of the Authority in sections 24 and 25.

(14) Nothing in this section shall be construed as limiting the powers of the Authority as provided for in sections 24 and 25 where a licensee has breached subsection (1).

Sub-Part B – Independent Broadcasting Review Panel

30. Independent Broadcasting Review Panel

(1) There is set up for the purpose of this Sub-part a review panel which shall be known as the Independent Broadcasting Review Panel.

(2) Any person aggrieved by a decision of the Authority may apply to the Review Panel for a review of that decision.

30A. Membership of Review Panel

(1) The Review Panel shall consist of –

- (a) a Chairperson, who shall be a barrister-at-law of not less than 5 years standing and who shall, from time to time, be appointed by the Minister on such terms and conditions as the Minister may determine; and
- (b) 2 members having wide experience in the field of broadcasting policy and media issues, to be appointed by the Minister.

(2) The Review Panel shall, in the exercise of its functions not be subject to the direction or control of any other person or authority.

(3) (a) The Review Panel shall sit on an ad hoc basis.

(b) At any sitting of the Review Panel, 2 members shall constitute a quorum.

(4) The Director shall designate an officer of the Authority to act as Secretary to the Review Panel.

30B. Termination of appointment

(1) The Chairperson of the Review Panel may resign by giving one month's notice in writing to the Minister.

(2) The Chairperson of the Review Panel shall cease to hold office where he is unfit to be the Chairperson because of breach of trust, misconduct or default in the discharge of his duties.

30C. Staff of Review Panel

The Authority shall extend such technical, administrative and secretarial assistance as may be necessary to enable the Review Panel to properly discharge its functions under the Act.

30D. Composition of Review Panel for particular matters

(1) The Review Panel may co-opt a person having experience in the field of broadcasting, journalism, communication, finance or law for the purposes of dealing with a particular application for review.

(2) A person co-opted under subsection (1) shall be deemed to be a member of the Review Panel for the purpose of that particular application for review.

(3) A person co-opted under subsection (1) shall not have the right to vote.

30E. Disclosure of interests by members of Review Panel

Any member of the Review Panel shall, in relation to any matter before the Review Panel, in which he or any person related to him by blood or marriage has a pecuniary or other material interest –

- (a) disclose the nature of the interest in writing to the Chairperson of the Review Panel and where the member is the Chairperson of the Review Panel, to the other members of the Review Panel, before the meeting convened to discuss that matter; and
- (b) not take part in any deliberations of the Review Panel relating to that matter without the approval of the other members of the Review Panel.

30F. Conduct of reviews

(1) Where the subject of an application for review is a decision of Authority, the Authority shall be a party to the proceedings.

(2) The Authority may, in respect of any other decision, be a party to the review proceedings.

(3) (a) Any party to the proceedings before the Review Panel may be represented by counsel or attorney or other representative duly authorised by him who shall be allowed reasonable opportunity to present the case.

(b) The counsel, attorney, or such other person as the party to the proceedings under paragraph (a) may authorise, shall be given reasonable opportunity to present the case.

(4) The Review Panel shall not be bound by the rules of evidence but may remain guided by them on any matter as it considers appropriate in the circumstances.

30G. Proceedings of Review Panel

(1) The Review Panel shall hold hearings which shall be conducted in public unless otherwise directed by the Independent Broadcasting Review Panel.

(2) The Review Panel shall sit at such place and time as the Chairperson of the Review Panel may determine.

(3) The Review Panel shall regulate its proceedings as it may determine and shall ensure that proceedings are conducted in a manner which is consistent with the rules of natural justice and procedural fairness.

(4) The Chairperson of the Review Panel may make rules, not inconsistent with this Act, for or with respect to the proceedings of the Review Panel.

(5) Regulations may provide for the payment of costs by the parties in relation to the matter before the Review Panel.

30H. Powers of Review Panel

In the exercise of its functions under this Act, the Review Panel may –

- (a) administer an oath, an affirmation or a declaration;
- (b) proceed in the absence of a party who, by notice, has been given a reasonable period to attend the proceedings; or
- (c) from time to time, adjourn the proceedings.

- (d) summon a person to appear before the Review Panel to—
 - (i) give evidence; or
 - (ii) produce documents in the possession, custody or control of the person or persons named in the summons;
- (e) require a person appearing before the Review Panel to give evidence either on oath or affirmation.

30I. Protection of persons before Review Panel

(1) A law practitioner or other person appearing before the Review Panel on behalf of a party shall have the same protection and immunity as a law practitioner, legal consultant or law firm has in appearing for a party in proceedings before the Supreme Court.

(2) Subject to this Act, a person summoned to attend or to appear before the Review Panel as a witness shall have the same protection, and shall, in addition to the penalties provided by this Act, be subject to the same liabilities as a witness in proceedings before the Supreme Court.

30J. Offences relating to proceedings of Review Panel

Any person who, without reasonable cause –

- (a) fails to attend the Review Panel after having been summoned to do so;
- (b) refuses to take an oath before the Review Panel, or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Review Panel or to produce documents when required to do so;
- (c) knowingly gives false evidence, or evidence which he knows to be misleading, before the Review Panel;
- (d) at any hearing of the Review Panel –
 - (i) wilfully insults a member;

- (ii) wilfully interrupts or disturbs the proceedings; or
- (e) does any other act or thing that would, if the Review Panel were a Court of law, constitute a contempt of the Court,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 3 years.

30K. Determination of Review Panel

(1) On the hearing of an application for review, the Review Panel may, where the review is conducted pursuant to section 30(2) –

- (a) confirm, amend or cancel a decision made by the Authority; or
- (b) remit the matter to the Authority for reconsideration;

(2) Where there is a disagreement among the members of the Review Panel, the decision of the majority shall be the determination of the Review Panel.

(3) Any determination of the Review Panel shall –

- (a) be in writing; and
- (b) include –
 - (i) the reasons for the determination;
 - (ii) a statement of its findings on material questions of fact; and
 - (iii) a reference to the evidence or other material on which the findings are based.

(4) The Review Panel shall cause its determination to be served on each party to the proceedings.

(5) Subject to subsection (6), a determination of the Review Panel shall come into operation on the date of the determination.

(6) The Review Panel may specify in the determination the date on which the determination is to come into operation.

(7) Any determination of the Review Panel shall be published in such form and manner as the Review Panel may determine.

30L. Judicial review

Any party who is dissatisfied with a decision of the Review Panel under Sub-Part B may apply to the Supreme Court for a judicial review of the decision.

10. Section 31 of principal Act amended

Section 31 of the principal Act is amended by deleting the words “, the Standards Committee or the Complaints Committee” and replacing them by the words “or the Review Panel”.

11. Section 32 of principal Act amended

Section 32 of the principal Act is amended by repealing subsection (1) and replacing it by the following new subsection –

(1) Where –

(a) a member;

(b) a member of the Review Panel; or

(c) the spouse or any child of a member specified in paragraphs (a) and (b),

has a pecuniary or other material interest in a matter to be determined by the Authority or the Review Panel, then as the case may be, that person shall, at or before the meeting at which the matter is to be considered, disclose the interest and not take part in the determination.

12. Section 33 repealed and replaced

Section 33 of the principal Act is repealed and replaced by the following new section –

33. Confidentiality

No –

- (a) member of –
 - (i) the Authority;
 - (ii) the Review Panel; or
- (b) employee of the Authority,

shall, except in the course, and for the purpose, of the performance of his duties, disclose to any other person anything that comes to his knowledge which relates to a matter which is to be, is being or has been determined by the Authority or the Review Panel.

13. Section 34 of principal Act amended

Section 34 of principal Act is amended in subsection (1), by deleting the words “, on the recommendation of the Standards Committee,”.

14. Section 36 of principal Act amended

Section 36 of the principal Act is amended by deleting paragraph (a) and replacing it by the following new paragraph –

- (a) a member of the Authority or the Review Panel; or

15. Section 37 of principal Act amended

Section 37 of the principal Act is amended in subsection (2) by deleting the words “100,000 rupees” and “2 years” and replacing them by the words “500,000 rupees” and “5 years”, respectively.

16. Section 38 of principal Act amended

Section 38 of the principal Act is amended in subsection (3)(b) by deleting the words “100,000 rupees” and “2 years” and replacing them by the words “500,000 rupees” and “5 years”, respectively.

17. First Schedule to principal Act amended

The First Schedule to the principal Act is amended –

- (a) in Part I by deleting item 5; and
- (b) in Part IV by deleting item 1.

18. Third Schedule to principal Act repealed and replaced

The Third Schedule to the principal Act is repealed and replaced by the Third Schedule set out in the Schedule to this Act.

19. Consequential amendment

The Information and Communication Technologies Act is amended –

- (a) in section 5, by inserting after paragraph (e), the following new paragraph –
 - (ea) the Chairperson of the Independent Broadcasting Authority;
- (b) in section 6(2) by deleting the words “5 members” and replacing them by the words “6 members”.

20. Transitional provisions and savings

- (1) This subsection shall apply as if Part V has not been repealed.
- (2) The Complaints Committee shall not entertain any application under the repealed section 30 referred to it made on or after 31 January 2022.
- (3) Any referral made under the repealed section 30 before 31 January 2022 shall be dealt with, and determined, by the Complaints Committee not later than 1 March 2022 or, in exceptional or unforeseen circumstances, not later than such later date as may be prescribed.

21. Commencement

- (1) Subject to subsections (2), (3) and (4), this Act shall come into operation on a date to be fixed by Proclamation.
- (2) Different dates may be fixed for the coming into operation of different sections of this Act.

(3) Section 4(c) insofar as it relates to section 5(6) shall be deemed to have come into operation on 1 January 2021.

(4) Section 6(a) shall be deemed to have come into operation 1 January 2021.

SCHEDULE
[Section 20]

THIRD SCHEDULE
[Sections 30H, 30J and 31]

OATH

I,, holder of National Identity Card number, being appointed Chairperson/Member/Director/employee* of the Authority/the Independent Broadcasting Review Panel* do hereby swear/solemnly affirm* that I will, to the best of my judgment, act for the furtherance of the objects of the Authority/ Independent Broadcasting Review Panel and shall not, on any account and at any time, disclose, otherwise than with the authorisation of the Authority, or where it is strictly necessary for the performance of my duties, any confidential information obtained by me by virtue of my official capacity.

.....
Taken by me

.....
Master and Registrar
Supreme Court

* *Delete as appropriate*
